



State of New Mexico
Human Services Department
Human Services Register



I. DEPARTMENT

NEW MEXICO HUMAN SERVICES DEPARTMENT

II. SUBJECT

REPEAL AND REPLACEMENT OF RULES GOVERNING DOH FUNCTIONS THAT ARE BEING TRANSFERRED TO THE HEALTH CARE AUTHORITY AS OF JULY 1, 2024

III. PROGRAM AFFECTED

DOH DHI, DDS, AND BEHAVIORAL HEALTH SERVICES

IV. ACTION

FINAL RULE

V. BACKGROUND SUMMARY

The Human Services Department (HSD) is finalizing repeal and replacement of regulations that were proposed in Human Register (HSR) Vol. 47 No. 14. By statute, certain divisions currently within the Department of Health (DOH) are being transferred to the Health Care Authority (HCA). Accordingly, rules and regulations promulgated by DOH to carry out those divisions' duties must be transferred to the purview of the HCA.

The Department proposed to make these repeals and replacements to bring the New Mexico Administrative Code (NMAC) into full alignment with this change, the Department is proposing to repeal within Title 7 of the New Mexico Administrative Code several (DOH) rules and to establish HCA authority over certain programs and oversight activities with adoption of new rules within Title 8 of the New Mexico Administrative Code.

Section 9-8-6 NMSA 1978, authorizes the HSD Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions, and DOH has delegated HSD authority to carry out these rule changes on its behalf.

VI. CONCISE EXPLANATORY STATEMENT

The hearing for these rules was held on June 7, 2024. Matt Ortiz of the State Records Center and Archives (SRCA) attended the hearing and provided a statement that requested HSD to enter a finding that SRCA staff may make non-substantive, style changes to the rules and that such changes be within the scope of the rulemaking. HSD so finds and SCRA is authorized to make such changes.

The hearing officer read the following statement into the record, explaining that during the process of updating the rules the Department made some additional style and formatting updates to the rules:

Consistent with all other rules converted from the Human Services Department to the Health Care Authority, throughout this rule, if found: “department” is changed to “authority” or “HCA”; “HSD” is changed to “HCA” and that acronym is generally first introduced in the third section of the rule; “alien” is changed to “non-citizen”; “child support enforcement division” is changed to “child support services division”; “CSED” is changed to “CSSD”; and style and formatting have been updated to conform with current NM State Records Center guidelines.

One other public comment was received:

Comment

"Will it be possible for the HSD to consider rule changes outside of the name change at this time? While reading the rules included in the complete packet, I noticed some concerns with language relating to dietitians and therapeutic diets. I am a Licensed Dietitian in New Mexico and have been involved in volunteer positions to update our licensure act over the past several years. My profession, as well as our credentials and scope of practice have evolved over the past few decades, and it appears that some of the language in the DOH rules have not been updated."

Department

The purpose of this set of rule changes is to make necessary updates related to the upcoming name change of the department and to meet style requirements of the State Records Center. Given the scope of these changes, involving over 400 rules, the department is not going to make any substantive changes at this time.

Therefore, the Title 7 rules are repealed and the Title 8 rules are adopted as proposed.

VII. RULE

The final register and rule language is available on the HSD website at: <https://www.hsd.state.nm.us/lookingforinformation/register/>. If you do not have internet access, a copy of the final register and rules may be requested by contacting HSD Office of the Secretary at (505) 827-7750.

VIII. PUBLICATION DATE

June 25, 2024

IX. EFFECTIVE DATE

The Title 7 rules will be repealed effective July 1, 2024, and the Title 8 replacement rules will be adopted effective July 1, 2024.

X. PUBLICATION

Publication of these rule changes is approved by:

DocuSigned by:

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KARI ARMIJO, SECRETARY
HUMAN SERVICES DEPARTMENT

DOH rules repealed and replaced with new part numbers in Title 8:

DOH Rule number to be repealed	New Title 8 rule numbers	New Title 8 Rule names
7.1.2 NMAC	8.370.2 NMAC	Adjudicatory Hearings for Licensed Facilities
7.1.7 NMAC	8.370.3 NMAC	Health Facility Licensure Fees and Procedures
7.1.8 NMAC	8.370.4 NMAC	Health Facility Sanctions and Civil Monetary Penalties
7.1.9 NMAC	8.370.5 NMAC	Caregivers Criminal History Screening Requirements
7.1.10 NMAC	8.370.6 NMAC	Access to Medical Records by Disability Applicants
7.1.11 NMAC	8.370.7 NMAC	Health Facility Receivership Requirements
7.1.12 NMAC	8.370.8 NMAC	Employee Abuse Registry
7.1.13 NMAC	8.370.9 NMAC	Incident Reporting, Intake, Processing and Training Requirements
7.1.14 NMAC	8.370.10 NMAC	Abuse, Neglect, Exploitation, and Death Reporting, Training and Related Requirements for Community Providers
7.1.32 NMAC	8.370.11 NMAC	Long-Term Care Facility Dementia Training
7.7.2. NMAC	8.370.12 NMAC	Requirements for Acute Care, Limited Services and Special Hospitals
7.7.3 NMAC	8.370.13 NMAC	Requirements for Rural Emergency Hospitals
7.8.2 NMAC	8.370.14 NMAC	Assisted Living Facilities for Adults
7.8.4 NMAC	8.370.15 NMAC	General Requirements for Boarding Homes
7.9.2 NMAC	8.370.16 NMAC	Requirements for Long Term Care Facilities
7.10.2 NMAC	8.370.17 NMAC	Requirements for Freestanding Birth Centers
7.11.2 NMAC	8.370.18 NMAC	Requirements for Facilities Providing Outpatient Medical Services and Infirmaries
7.12.2 NMAC	8.370.19 NMAC	Requirements for In home and Inpatient Hospice Care
7.13.2 NMAC	8.370.20 NMAC	Requirements for Adult Day Care Facilities
7.14.2 NMAC	8.370.21 NMAC	Quality Management System and Review Requirements for Providers of Community Based Services
7.28.2 NMAC	8.370.22 NMAC	Requirements for Home Health Agencies
7.36.2 NMAC	8.370.24 NMAC	Requirements for End Stage Renal Disease Facilities
16.12.20 NMAC	8.370.25 NMAC	Hearing Requirements for Certified Nurse Aides
	8.371.1 NMAC	General Provisions [RESERVED]
7.26.2 NMAC	8.371.2 NMAC	Requirements for Intermediate Care Facilities for the Mentally Retarded
7.26.3 NMAC	8.371.3 NMAC	Rights of Individuals with Developmental Disabilities Living in the Community
7.26.4 NMAC	8.371.4 NMAC	Client Complaint Procedures
7.26.5 NMAC	8.371.5 NMAC	Service Plans for Individuals with Developmental Disabilities Living in the Community
7.26.6 NMAC	8.371.6 NMAC	Requirements for Developmental Disabilities Community

		Programs
7.26.7 NMAC	8.371.7 NMAC	(Appendix A) Individual Transition Planning Process
7.26.8 NMAC	8.371.8 NMAC	(Appendix B) Dispute Resolution Process
7.26.9 NMAC	8.371.9 NMAC	Admission, Discharge and Transfer of Eligible Recipients for Services in ICF / MR Facilities
7.20.3 NMAC	8.321.6 NMAC	Requirements for Community Mental Health Centers
7.20.4 NMAC	8.321.7 NMAC	Behavioral Health Capital Fund Program
7.32.2 NMAC	8.321.8 NMAC	Admission Criteria for Alcohol and Substance Services
7.32.5 NMAC	8.321.9 NMAC	Procurement of Professional Services for Alcohol and Substance Abuse Services
7.32.8 NMAC	8.321.10 NMAC	Opioid Treatment Programs
7.30.13 NMAC	8.321.11 NMAC	Crisis Triage Centers



Michelle Lujan Grisham
Governor

Patrick M. Allen
Cabinet Secretary

April 26, 2024

Pamela Lujan y Vigil, Management Analyst
Administrative Law Division
Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87505

Subject: Issuing Delegated Authority

Dear Ms. Lujan y Vigil,

This letter serves as an update of signatures on file with the Commission of Public Records to comply with 1.24.10.10 NMAC, Issuing Authority. Section 9-7-6(E) NMSA 1978 authorizes the Department of Health (DOH) to adopt and file such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions.

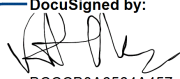
By statute, certain divisions currently within DOH are being transferred to the Health Care Authority (HCA) on July 1, 2024. Accordingly, rules and regulations promulgated by DOH to carry out those divisions' duties must be transferred to the purview of the HCA. The Human Services Department, which will become the HCA on July 1, 2024, is promulgating rules to that effect. I therefore authorize Kari Armijo, Secretary of the Human Services Department, to sign the NMAC Transmittal Form for filing rules identified in the attached list as the signing authority on behalf of the New Mexico Department of Health.

Delegated Authority:

DocuSigned by:

1BA9EB5EAD00499...
Kari Armijo, Cabinet Secretary
Human Services Department

Sincerely,

DocuSigned by:

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Patrick Allen, Cabinet Secretary
Department of Health

NMAC	Title
7.1.2	Adjudicatory Hearings for Licensed Facilities
7.1.4	Data Reporting Requirements for Health Care Facilities
7.1.7	Health Facility Licensure Fees and Procedures
7.1.8	Health Facility Sanctions and Civil Monetary Penalties
7.1.9	Caregivers Criminal History Screening Requirements
7.1.10	Access to Medical Records by Disability Applicants
7.1.11	Health Facility Receivership Requirements
7.1.12	Employee Abuse Registry
7.1.13	Incident Reporting, Intake, Processing and Training Requirements
7.1.14	Abuse, Neglect, Exploitation, and Death Reporting, Training and Related Requirements for Comm
7.1.32	Long-Term Care Facility Dementia Training
7.7.2	Requirements for Acute Care, Limited Services and Special Hospitals
7.7.3	Requirements for Rural Emergency Hospitals
7.8.2	Assisted Living Facilities for Adults
7.8.4	General Requirements for Boarding Homes
7.9.2	Nursing Homes and Intermediate Care Facilities
7.10.2	Requirements for Freestanding Birth Centers
7.11.2	Requirements for Facilities Providing Outpatient Medical Services and Infirmaries
7.12.2	Requirements for Inhome and Inpatient Hospice Care
7.13.2	Requirements for Adult Day Care Facilities
7.14.2	Quality Management System and Review Requirements for Providers of Community Based Servic
7.20.3	Requirements for Community Mental Health Centers
7.20.4	Behavioral Health Capital Fund Program
7.26.2	Requirements for Intermediate Care Facilities for the Mentally Retarded
7.26.3	Rights of Individuals with Developmental Disabilities Living in the Community
7.26.4	Client Complaint Procedures
7.26.5	Service Plans for Individuals with Developmental Disabilities Living in the Community
7.26.6	Requirements for Developmental Disabilities Community Programs
7.26.7	(Appendix A) Individual Transition Planning Process
7.26.8	(Appendix B) Dispute Resolution Process
7.26.9	Admission, Discharge and Transfer of Eligible Recipients for Services in Icf/MR Facilities
7.28.2	Requirements for Home Health Agencies
7.30.8	Requirements for Family Infant Toddler Early Intervention Services
7.30.13	Crisis Triage Centers
7.32.2	Admission Criteria for Alcohol and Substance Services
7.32.5	Procurement of Professional Services for Alcohol and Substance Abuse Services
7.32.8	Opioid Treatment Programs
7.36.2	Requirements for End Stage Renal Disease Facilities
16.12.20	Hearing Requirements for Certified Nurse Aides

TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 6 REQUIREMENTS FOR COMMUNITY MENTAL HEALTH CENTERS

8.321.1 ISSUING AGENCY: New Mexico Health Care Authority - Division of Health Improvement.
[8.321.1 NMAC - N, 7/1/2024]

8.321.2 SCOPE:

A. These regulations apply to the following:
(1) outpatient facilities which are certified by the behavioral health services division of the New Mexico health care authority (authority) to provide psychosocial rehabilitation services to adults with priority given to individuals with severe disabling mental illness (SDMI); and
(2) any facility providing services as outlined by these regulations which by federal regulation must be certified by the behavioral health services division of the authority to obtain or maintain full or partial, permanent or temporary federal funding.

B. These regulations do not apply to offices and treatment facilities of licensed private practitioners.
[8.321.2 NMAC - N, 7/1/2024]

8.321.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.321.3 NMAC - N, 7/1/2024]

8.321.4 DURATION: Permanent.
[8.321.4 NMAC - N, 7/1/2024]

8.321.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.321.5 NMAC - N, 7/1/2024]

8.321.6 OBJECTIVE:

A. to establish minimum standards for licensing of community mental health centers;
B. to monitor community mental health centers through surveys to identify any areas which could be dangerous or harmful to the clients or staff; and
C. to ensure the provision of quality services which maintain or improve the health and quality of life to the clients.

[8.321.6 NMAC - N, 7/1/2024]

8.321.7 DEFINITIONS:

A. “Applicant” means the organization that applies for a license. The individual signing the application on behalf of the organization must have authority from the organization.
B. “Branch” means a part of the certified community mental health center, which is part of the corporation or campus that is certified by HCA, where client care takes place. Branches of facilities must meet the intent of these regulations. The parent facility is responsible for their branches’ compliance. A separate state license is required for separate geographic locations under each certified facility.
C. “Client” means any individual who is requesting or receiving mental health services from a community mental health center as defined in this regulation.
D. “Community-based crisis intervention” means, at a minimum, 24 hour telephone crisis services, initial face-to-face crisis intervention and follow-up crisis support services.
E. “Community mental health center” means a facility certified by the health care authority to provide and manage a comprehensive array of mental health services with priority given to serving adults with severe disabling mental illness (SDMI) in a community-based setting. At a minimum, the following core services must be available and accessible:

- (1)** professional consultation;
- (2)** community-based crisis intervention;

- (3) therapeutic interventions;
- (4) medication services; and
- (5) psychosocial interventions.

F. “Deficiency” means a violation of or failure to comply with a provision(s) of these regulations

G. “Facility” means a building or buildings, including all branches, in which outpatient mental health services are provided to the public and which is licensed pursuant to these regulations.

H. “Governing body” means the governing authority of a facility, which has the ultimate responsibility for all planning, direction, control, and management of the activities and functions of a facility licensed pursuant to these regulations.

I. “License” means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.

J. “Licensee” means the organization which has an ownership, leasehold, or similar interest in the facility and in whose name a license for a facility has been issued and who is legally responsible for compliance with these regulations.

K. “Licensing authority” means the agency within the New Mexico health care authority vested with the authority by HCA to regulate and enforce these regulations.

L. “Medication services” means assessing the need for psychoactive medications and management of pharmacological treatments.

M. “NMSA” means the New Mexico statutes annotated, 1978 compilation, and all the revisions and compilations thereof.

N. “Plan of correction” means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at the time of a survey will be corrected.

O. “Policy” means a statement of principle that guides and determines present and future decisions and actions.

P. “Premises” means buildings, grounds, and equipment of a facility.

Q. “Procedure” means the action(s) that must be taken in order to implement a policy.

R. “Professional consultation” means the initial assessment of the client’s needs and resources, the development of the patient’s treatment plan, its monitoring and review and the access of specialized expertise to provide tests.

S. “Psychosocial interventions” means an array of services designed to help an individual capitalize on their personal strengths, develop coping strategies, and to develop a supportive environment in which to function as independently as possible. This array must include, at a minimum:

- (1) basic living skills;
- (2) psychosocial skills training; and
- (3) therapeutic socialization.

T. “Psychosocial rehabilitation services” means a set of treatment strategies which help persons with mental disorders, including those with co-occurring substance abuse issues, achieve optimum functioning in the personal and social dimensions of their lives. The treatment strategies must be rehabilitative in nature and create, sustain, and encourage empowerment through a recovery process.

U. “Therapeutic interventions” means interactive therapies which, when used in conjunction with other treatment strategies, assist persons with severe disabling mental illness to achieve optimum functioning in the personal and social dimensions of their lives.

V. “U/L approved” means approved for safety by the national underwriters laboratory.

W. “Variance” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of clients or staff of a facility, and is issued at the sole discretion of the licensing authority.

X. “Waive/waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.

[8.321.7 NMAC - N, 7/1/2024]

8.321.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may.” “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate,” “proper,” and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide outpatient mental health services to the public in facilities governed by these regulations.

[8.321.8 NMAC - N, 7/1/2024]

8.321.9 PROHIBITION ON UNLICENSED OPERATION: These regulations apply to all community mental health centers operating within New Mexico as set out in 8.321.2 NMAC, above. No community mental health center, or branch thereof, may operate in New Mexico without being duly licensed according to these regulations.

[8.321.9 NMAC - N, 7/1/2024]

8.321.10 INITIAL LICENSURE PROCEDURES: To obtain an initial license for a facility pursuant to these regulations the following procedures must be followed by the applicant.

A. Application phase: These regulations apply to the design of a new building or renovation or addition to an existing building for licensure as a facility pursuant to these regulations. Prior to starting construction, renovations or additions to an existing building the applicant of the proposed facility shall:

(1) advise the licensing authority in writing of intention to open a facility pursuant to these regulations.

(2) submit a set of floor plans for the building which must be of professional quality, be on substantial paper of at least 18 inches by 24 inches, and be drawn to an accurate scale of one-quarter inch to one foot. These plans must include:

(a) proposed use of each room e.g., waiting room, counseling/therapy room, office, et cetera;

(b) interior dimensions of all rooms;

(c) one building or wall section showing exterior and interior wall construction.

Section must include floor, wall, ceiling, and the finishes, e.g., carpet, tile, gyp board with paint, wood paneling;

(d) door types, swing, and sizes of all doors, e.g. solid core, hollow core, three feet by six feet, eight inches, one and three-quarters inches thick;

(e) if the building is air-conditioned;

(f) all sinks;

(g) furnaces and hot water heaters, and if gas or electric;

(h) windows including size and type;

(i) any level changes within the building, e.g., steps or ramps;

(j) fire extinguishers, heat and smoke detectors and alarm systems;

(k) location of the building on a site/plot plan to determine surrounding conditions, include all steps, ramps, parking areas, walks, and any permanent structures; and

(l) plans if the building is new construction, remodeled or alteration, or an addition. If remodeled or an addition, indicate existing and new construction on the plans.

(3) Blueprints or floor plans must be reviewed by the licensing authority for compliance with current licensing regulations, building and fire codes.

(4) If blueprints or plans are approved, the licensing authority will advise the applicant that construction may begin.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building, the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building, the applicant will submit to the licensing authority the following:

(1) **Application forms:** appropriately completed and notarized.

(2) **Fees:**

(a) Current fee schedules must be provided by the licensing authority.

(b) Fees must be in the form of a certified check, money order, personal, or business check made payable to the state of New Mexico.

(c) Fees are non-refundable.

(3) **Zoning and building approval:**

(a) All initial applications must be accompanied with written zoning approval from the appropriate authority (city, county or municipality).

(b) Prior to licensure, initial applicants must submit written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).

(4) **Fire authority approval:** Prior to licensure, initial applicants must submit written

approval of the fire authority having jurisdiction.

(5) New Mexico environment department approval: Prior to licensure, initial applicants are responsible for submission of the written approval of the New Mexico environment department for the following:

- (a)** private water supply, if applicable;
- (b)** private waste or sewage disposal, if applicable; and
- (c)** kitchen, if meals are prepared on site.

(6) Copy of appropriate drug permit issued by the state board of pharmacy, if applicable.

D. Initial survey: Upon receipt of a properly completed application with all supporting documentation as outlined above, an initial life safety code on-site survey and an on-site health survey of the proposed facility will be scheduled by the licensing authority.

E. Issuance of license: Upon completion of the initial survey and determination that the facility is in compliance with these regulations, the licensing authority will issue a license.

[8.321.10 NMAC - N, 7/1/2024]

8.321.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to a facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey or when it finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director or when there is a change of name for the facility.

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for amended license.

(3) Application must be submitted within 10 working days of the change.

[8.321.11 NMAC - N, 7/1/2024]

8.321.12 LICENSE RENEWAL:

A. Licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application and required fee prior to expiration of their current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in compliance with these regulations.

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[8.321.12 NMAC - N, 7/1/2024]

8.321.13 POSTING OF LICENSE: The facility's license must be posted on the licensed premises in an area visible to the public.

[8.321.13 NMAC - N, 7/1/2024]

8.321.14 NON-TRANSFERABLE RESTRICTION OF LICENSE: A license shall not be transferred by assignment, or otherwise, to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. the facility discontinues operation; or

E. a facility wishing to continue operation as a licensed facility under circumstances in Subsections A - D of 8.321.14 NMAC, above must submit an application for initial licensure in accordance with 8.321.10 NMAC

of these regulations at least 30 days prior to the anticipated change.
[8.321.14 NMAC - N, 7/1/2024]

8.321.15 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless renewed, suspended, or revoked, or

- A. on the day a facility discontinues operation;
- B. on the day a facility is sold, leased, or otherwise changes ownership or licensee; or
- C. on the day a facility changes location.

[8.321.15 NMAC - N, 7/1/2024]

8.321.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.
[8.321.16 NMAC - N, 7/1/2024]

8.321.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE ACTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following:

- A. failure to comply with any provision of these regulations;
- B. failure to allow survey by authorized representatives of the licensing authority;
- C. allowing any person active in the operation of a facility licensed pursuant to these regulations to be under the influence of, or impaired by, alcohol or other behavior altering substances;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. repeated violations of these regulations; or
- F. failure to provide the required care and services as outlined by these regulations for the clients receiving care at the facility.

[8.321.17 NMAC - N, 7/1/2024]

8.321.18 HEARING PROCEDURES:

- A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against a facility's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- B. A copy of the above regulations will be furnished to a facility at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.

[8.321.18 NMAC - N, 7/1/2024]

8.321.19 LICENSED FACILITIES:

- A. Any community mental health center, currently licensed as a limited diagnostic and treatment center on the date these regulations are promulgated and which provides the services prescribed under these regulations, may continue to be licensed as such until that license expires and renewal is required. At that time, the facility must seek licensure as a community mental health center.
- B. Any community mental health center, not currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, must seek licensure as a community mental health center.
 - (1) Community mental health centers may seek variances for those building requirements the facility cannot meet under the criteria outlined in these regulations if not in conflict with existing building and fire codes.
 - (2) Variances or waivers may be considered for circumstances where the facility demonstrates an extreme financial hardship to comply with requirements outlined in these regulations.

[8.321.19 NMAC - N, 7/1/2024]

8.321.20 NEW FACILITY: A new facility may be opened in an existing building or a newly constructed building.

A. If opened in an existing building, a variance may be granted for those building requirements the facility cannot meet under the criteria outlined in these regulations if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

B. A new facility opened in a newly constructed building must meet all requirements of these regulations.

[8.321.20 NMAC - N, 7/1/2024]

8.321.21 FACILITY SURVEYS:

A. Application for licensure, whether initial or renewal, shall constitute permission for entry into, and survey of, a facility by authorized licensing authority representatives at reasonable times during the status of the application and, if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

C. Upon receipt of a written notice of deficiency from the licensing authority, the licensee, or their representative, will be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of correction.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

[8.321.21 NMAC - N, 7/1/2024]

8.321.22 REPORTING OF INCIDENTS: All facilities licensed pursuant to these regulations must report incidents in accordance with the policies established by the division of health improvement of the authority.

[8.321.22 NMAC - N, 7/1/2024]

8.321.23 QUALITY ASSURANCE: All facilities licensed pursuant to these regulations must be in compliance with the quality assurance standards established by the division of health improvement of the authority.

[8.321.23 NMAC - N, 7/1/2024]

8.321.24 CLIENT RECORDS: Each facility licensed pursuant to these regulations must maintain a record for each client in accordance with the client record standards set forth by the division of health improvement of the authority.

[8.321.24 NMAC - N, 7/1/2024]

8.321.25 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE FACILITY: Each facility licensed pursuant to these regulations must keep the following reports and records on file and make them available for review upon request of the licensing authority:

A. a copy of the latest fire inspection report by the fire authority having jurisdiction;

B. a copy of the last survey conducted by the licensing authority and any variances granted;

C. record of fire and emergency evacuation drills conducted by the facility;

D. licensing regulations: A copy of these regulations;

E. a copy of the current license, registration or certificate, of each staff member for which a license, registration, or certification is required by the state of New Mexico; facilities with satellite or branch locations that maintain personnel records in a central location may make arrangements with licensing authority inspectors for viewing such records.

F. valid drug permit as required by the state board of pharmacy; and

G. New Mexico environment department approval of private water system and private waste or sewage disposal, if applicable.

[8.321.25 NMAC - N, 7/1/2024]

8.321.26 CLIENT RIGHTS: All facilities licensed pursuant to these regulations shall support, protect and enhance the rights of clients in accordance with the standards set forth by the division of health improvement of the authority.

[8.321.26 NMAC - N, 7/1/2024]

8.321.27 STAFF RECORDS: Each facility licensed pursuant to these regulations must maintain a

complete record on file for each staff member or volunteer working more than half-time. Staff records will be made available for review upon request of the licensing authority.

A. Staff records will contain at least the following:

- (1) name;
- (2) address and telephone number;
- (3) position for which employed;
- (4) date of employment; and
- (5) health certificate stating that the employee is free from tuberculosis in a transmissible

form as required by New Mexico health care authority regulations, control of communicable disease in health facility personnel, 7.4.4 NMAC.

B. A daily attendance record of all staff must be kept in the facility.

C. The facility must keep weekly or monthly schedules of all staff. These schedules must be kept on file for at least six months.

[8.321.27 NMAC - N, 7/1/2024]

8.321.28 POLICIES AND PROCEDURES: All community mental health centers licensed pursuant to these regulations must have written policies and procedures in accordance with the standards set forth by the division of health improvement of the authority.

[8.321.28 NMAC - N, 7/1/2024]

8.321.29 GENERAL BUILDING REQUIREMENTS:

A. New construction, additions and alterations: When construction of new buildings, additions, or alterations to existing buildings are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire facility must be submitted.

B. Access to the disabled: Community mental health centers licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and clients.

C. Extent of a facility: All buildings of the premises providing client care and services will be considered part of the facility and must meet all requirements of these regulations. Where a part of the facility services are contained in another facility, separation and access shall be maintained as described in current building and fire codes.

D. Additional requirements: A facility applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may stipulate these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review, consultation and on-site surveys during the licensing process.

[8.321.29 NMAC - N, 7/1/2024]

8.321.30 MAINTENANCE OF BUILDING AND GROUNDS: Facilities must maintain the building(s) in good repair at all times. Such maintenance shall include, but is not limited to, the following:

A. all electrical, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems;

B. all equipment and materials used for client care shall be maintained clean and in good repair;

C. all furniture and furnishings must be kept clean and in good repair; and

D. the grounds of the facility must be maintained in a safe and sanitary condition at all times.

[8.321.30 NMAC - N, 7/1/2024]

8.321.31 HOUSEKEEPING:

A. The facility must be kept free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.

B. Counseling/therapy rooms, waiting areas and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the clients.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a slip resistant finish.

D. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

E. Storage areas must be kept free from accumulation of refuse, discarded equipment, furniture, paper, et cetera.
[8.321.31 NMAC - N, 7/1/2024]

8.321.32 WATER:

A. A facility licensed pursuant to these regulations must be provided with an adequate supply of water that is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to insure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.

C. Hot and cold running water under pressure must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods

D. Back flow preventers (vacuum breakers) must be installed on hose bibbs, laboratory sinks, janitor's sinks, and on all other water fixtures to which hoses or tubing can be attached.

E. Water distribution systems are arranged to provide hot water at each hot water outlet at all times. Hot water to hand washing facilities must not exceed 120 degrees F.
[8.321.32 NMAC - N, 7/1/2024]

8.321.33 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the system used must be inspected and approved by the New Mexico environment department or recognized local authority.

C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid wastes generated by the facility must be inspected and approved by the New Mexico environment department or recognized local authority.

D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids. Receptacles must be kept clean.
[8.321.33 NMAC - N, 7/1/2024]

8.321.34 FIRE SAFETY COMPLIANCE: All current applicable requirement of state and local codes for fire prevention and safety must be met by the facility.
[8.321.34 NMAC - N, 7/1/2024]

8.321.35 FIRE CLEARANCE AND INSPECTIONS: Each facility must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the facility, the facility must document the date the request was made and to whom. If the fire authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.
[8.321.35 NMAC - N, 7/1/2024]

8.321.36 STAFF FIRE AND SAFETY TRAINING:

A. All staff of the facility must know the location of, and be instructed in, proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

B. Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards such as frayed electrical cords, faulty equipment, blocked exits or exit pathways and any other condition which could cause burns, falls, or other personal injury to the clients or staff.
[8.321.36 NMAC - N, 7/1/2024]

8.321.37 EVACUATION PLAN: Each facility must have a fire evacuation plan posted in each separate area of the building showing routes of evacuation in case of fire or other emergency.
[8.321.37 NMAC - N, 7/1/2024]

8.321.38 PROVISIONS FOR EMERGENCY CALLS: An easily accessible telephone for summoning

help, in case of emergency, must be available in the facility.
[8.321.38 NMAC - N, 7/1/2024]

8.321.39 FIRE EXTINGUISHERS:

- A. Fire extinguishers as approved by the state fire marshal or fire prevention authority having jurisdiction must be located in the facility.
- B. Fire extinguishers must be properly maintained as recommended by the manufacturer, state fire marshal or fire authority having jurisdiction.
- C. All fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal, or fire authority having jurisdiction. All fire extinguishers must be tagged, noting the date of inspection.

[8.321.39 NMAC - N, 7/1/2024]

8.321.40 ALARM SYSTEM: A manually operated, electrically supervised fire alarm system shall be installed in each facility only as required by national fire protection association (NFPA) 101 (Life Safety Code). Multiple story facilities do require manual alarm systems.

[8.321.40 NMAC - N, 7/1/2024]

8.321.41 FIRE DETECTION SYSTEM: The facility must be equipped with smoke detectors as required by the NFPA 101 (Life Safety Code) and approved in writing by the fire authority having jurisdiction as to number, type and placement.

[8.321.41 NMAC - N, 7/1/2024]

8.321.42 JANITOR'S CLOSET(S):

- A. Each facility shall have at least one janitor's closet.
- B. Each janitor's closet shall contain:
 - (1) a service sink; and
 - (2) storage for housekeeping supplies and equipment.
- C. Each janitor's closet must be vented.
- D. Janitor closets are hazardous areas and must be provided with one hour fire separation and one and three-quarters inches solid core doors which are rated at a 20 minute fire protection rating.

[8.321.42 NMAC - N, 7/1/2024]

8.321.43 EMERGENCY LIGHTING:

- A. A facility must be provided with emergency lighting that will activate automatically upon disruption of electrical service.
- B. The emergency lighting must be sufficient to illuminate paths of egress and exits of the facility.

[8.321.43 NMAC - N, 7/1/2024]

8.321.44 ELECTRICAL STANDARDS:

- A. All electrical installation and equipment must comply with all current state and local codes.
- B. Circuit breakers or fused switches that provide electrical disconnection and over current protection shall be:
 - (1) enclosed or guarded to provide a dead front assembly;
 - (2) readily accessible for use and maintenance;
 - (3) set apart from traffic lanes;
 - (4) located in a dry, ventilated space, free of corrosive fumes or gases;
 - (5) able to operate properly in all temperature conditions.
 - (6) Panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as the circuits they serve.
 - (7) each panel board will be marked showing the services; and
 - (8) the use of jumpers or devices to bypass circuit breakers or fused switches is prohibited.

[8.321.44 NMAC - N, 7/1/2024]

8.321.45 LIGHTING:

- A. All spaces occupied by people, machinery, or equipment within buildings, approaches to

buildings, and parking lots shall have lighting.

- B. Lighting will be sufficient to make all parts of the area clearly visible.
- C. All lighting fixtures must be shielded.
- D. Lighting fixtures must be selected and located with the comfort and convenience of the staff and clients in mind.

[8.321.45 NMAC - N, 7/1/2024]

8.321.46 ELECTRICAL CORDS AND RECEPTACLES:

A. Electrical cords and extension cords:

- (1) Electrical cords and extension cords must be U/L approved.
- (2) Electrical cords and extension cords must be replaced as soon as they show wear.
- (3) Under no circumstances shall extension cords be used as a general wiring method.
- (4) Extension cords must be plugged into an electrical receptacle within the room where used

and must not be connected in one room and extended to some other room.

- (5) Extension cords must not be used in series.

B. Electrical receptacles:

(1) Duplex-grounded type electrical receptacles (convenience outlets) must be installed in all areas in sufficient quantities for tasks to be performed as needed. Each examination must have access to a minimum of two duplex receptacles.

- (2) The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited.

[8.321.46 NMAC - N, 7/1/2024]

8.321.47 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes.

B. The heating method used by the facility must have a minimum indoor-winter-design-capacity of 75 degrees F. with controls provided for adjusting temperature as appropriate for client and staff comfort.

C. The use of non-vented heaters, open flame heaters or portable heaters is prohibited.

D. An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.

E. All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.

F. A facility must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.

G. All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

H. The facility must be provided with a system for maintaining clients and staff's comfort during periods of hot weather.

I. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Door must be self-closing with three-quarters of an hour fire resistance.

[8.321.47 NMAC - N, 7/1/2024]

8.321.48 WATER HEATERS:

A. Must be able to supply hot water to all hot water taps within the facility at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees F.

B. Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.

C. All water heaters must be equipped with a pressure relief valve (pop-off valve).

[8.321.48 NMAC - N, 7/1/2024]

8.321.49 TOILETS AND LAVATORIES:

A. All fixtures and plumbing must be installed in accordance with current state and local plumbing codes.

B. All toilets must be enclosed and vented.

C. All toilet rooms must be provided with a lavatory for hand washing.

- D. All toilets must be kept supplied with toilet paper.
 - E. All lavatories for hand washing must be kept supplied with disposable towels for hand drying or provided with mechanical blower
 - F. The number of and location of toilets and lavatories will be mandated by requirements for each type facility. Such factors as extent of services provided and size of facility will also dictate requirements.
- [8.321.49 NMAC - N, 7/1/2024]

8.321.50 EXITS:

- A. Each facility and each floor of a facility shall have exits as required by national fire protection association 101 (Life Safety Code).
- B. Each exit must be marked by illuminated signs having letters at least six inches high whose principle strokes are at least three-quarters of an inch wide.
- C. Illuminated exit signs must be maintained in operable condition at all times.
- D. Exit ways must be kept free from obstructions at all times.
- E. Exit doors to exit or exit access doors must be at least 36 inches wide.

[8.321.50 NMAC - N, 7/1/2024]

8.321.51 CORRIDORS:

- A. Minimum corridor width shall be five feet except work corridors less than six feet in length may be four feet in width.
- B. Facilities will often be contained within existing commercial or residential buildings and less stringent corridor widths may be allowed other than those contained in Subsection A of 8.321.51 NMAC, above if not in conflict with building or fire codes and approved by the licensing authority prior to occupying the licensed part of the building.

[8.321.51 NMAC - N, 7/1/2024]

8.321.52 DOORS:

- A. The minimum door width for client's use shall be 34 inches in width.
- B. Rooms where client treatment takes place shall have a minimum door width of 36 inches.

[8.321.52 NMAC - N, 7/1/2024]

8.321.53 COMMON ELEMENTS FOR FACILITIES:

- A. Entrance shall be able to accommodate wheelchairs.
- B. Public services shall include:
 - (1) conveniently accessible wheelchair storage;
 - (2) a reception and information counter or desk;
 - (3) waiting areas;
 - (4) conveniently accessible public toilets; and
 - (5) drinking fountain(s) easily accessible to clients or other visitors.
- C. Interview space(s) for private interviews related to mental health, medical information, etc., shall be provided.
- D. General or individual office(s) for business transactions, records, administrative, and professional staff shall be provided. These areas shall be separated from public areas for confidentiality.
- E. Special storage for staff personal effects with locking drawers or cabinets shall be provided.
- F. General storage facilities for supplies and equipment shall be provided.
- G. Drug distribution stations shall be in accordance with standards set forth by the New Mexico board of pharmacy.

[8.321.53 NMAC - N, 7/1/2024]

8.321.54 FLOORS AND WALLS:

- A. Floor and wall areas penetrated by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.
- B. Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

[8.321.54 NMAC - N, 7/1/2024]

8.321.55 GOVERNING BODY: All facilities licensed pursuant to these regulations must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the total operation of the facility. The governing body must ensure that these policies are administered so as to provide quality health care in a safe environment. When services are provided through a contract with an outside resource, the governing body is responsible for assuring that these services are provided in a safe and effective manner.

[8.321.55 NMAC - N, 7/1/2024]

8.321.56 ADMINISTRATOR/DIRECTOR/MANAGER: Each facility must have an administrator, director or manager hired or appointed by the governing body to whom authority has been delegated to manage the daily operation of the facility and implement the policies and procedures adopted by the governing body.

[8.321.56 NMAC - N, 7/1/2024]

8.321.57 STAFF EVALUATION AND DEVELOPMENT: A facility licensed pursuant to these regulations must be in compliance with staff evaluation and development standards set forth by the division of health improvement of the authority.

[8.321.57 NMAC - N, 7/1/2024]

8.321.58 DIRECT SERVICE STAFF: A facility licensed pursuant to these regulations must be in compliance with direct service staff standards set forth by the division of health improvement of the authority.

[8.321.58 NMAC - N, 7/1/2024]

8.321.59 EMERGENCY MEDICAL SERVICES: Each facility licensed pursuant to these regulations must maintain a list of emergency phone numbers co-located with telephones in the facility. This list must include fire and police departments, ambulance or EMS crew numbers, the New Mexico poison control center and the nearest hospital.

[8.321.59 NMAC - N, 7/1/2024]

8.321.60 HOURS OF OPERATION: Each facility licensed pursuant to these regulations must post its hours of operation where it can clearly be seen by clients and visitors.

[8.321.60 NMAC - N, 7/1/2024]

8.321.61 PHARMACEUTICAL SERVICES:

A. Drugs must be stored, prepared and administered in accordance to acceptable standards of practice and in compliance with the New Mexico state board of pharmacy.

B. Outdated drugs and biologicals must be disposed of in accordance with methods outlined by the New Mexico state board of pharmacy.

C. One individual shall be designated responsibility for pharmaceutical services to include accountability and safeguarding.

D. Keys to the drug room or pharmacy must be made available only to personnel authorized by the individual having responsibility for pharmaceutical services.

E. Adverse reactions to medications must be reported to the physician responsible for the client and must be documented in the client's record.

[8.321.61 NMAC - N, 7/1/2024]

8.321.62 LABORATORY SERVICES:

A. All lab test results performed either at the facility or by contract or arrangement with another entity must be entered into the client's record.

B. All laboratory procedures including specimen collection will be conducted in accordance with acceptable standards of practice. A CLIA certificate will be appropriately maintained if so required by federal CLIA standards.

[8.321.62 NMAC - N, 7/1/2024]

8.321.63 RELATED REGULATIONS AND CODES: Facilities or agencies 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. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC;

- B.** Health facility sanctions and civil monetary penalties, 8.370.4 NMAC; and
- C.** Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
[8.321.63 NMAC - N, 7/1/2024]

HISTORY OF 8.321 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 7 BEHAVIORAL HEALTH CAPITAL FUND PROGRAM

8.321.7.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.321.7.1 NMAC - N, 7/1/2024]

8.321.7.2 SCOPE: The behavioral health capital fund program rule shall apply to the use of funds by eligible entities available pursuant to the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978.
[8.321.7.2 NMAC - N, 7/1/2024]

8.321.7.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to:
(1) Subsection E of Section 9-8-6 NMSA 1978; and
(2) the Behavioral Health Capital Funding Act, Sections 6-26-1., et seq., NMSA 1978.
Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.321.7.3 NMAC - N, 7/1/2024]

8.321.7.4 DURATION: Permanent.
[8.321.7.4 NMAC - N, 7/1/2024]

8.321.7.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.321.7.5 NMAC - N, 7/1/2024]

8.321.7.6 OBJECTIVE: The objective is to establish standards and procedures for regulating programs under the Behavioral Health Capital Funding Act.
[8.321.7.6 NMAC - N, 7/1/2024]

8.321.7.7 DEFINITIONS:

- A.** "Act" means the Behavioral Health Capital Funding Act (Sections 6-26-1 to 6-26-8 NMSA 1978).
- B.** "Agreement" means the document or documents signed by the board and the eligible entity receiving a loan that specifies the terms and conditions of obtaining the loan under the program.
- C.** "Applicant" means an eligible entity that has filed a request for a loan with the department and the authority.
- D.** "Application" means a written document filed with the department and the authority by an applicant for the purpose of obtaining a loan. An application may include a form prescribed by the department and the authority, written responses to requests for information by the department and the authority, or other format as determined by the department and the authority.
- E.** "Application committee" means a six-member body, three members appointed by the chief executive officer of the authority from the authority staff and three members appointed by the department from the department staff.
- F.** "Authority" means the New Mexico finance authority.
- G.** "Authorized representative" means one or more individuals authorized by the governing body of an eligible entity to act on behalf of the eligible entity in connection with its application. An authorized representative may act on behalf of the eligible entity to the extent provided by law.
- H.** "Behavioral health care" means a comprehensive array of professional and ancillary services for the treatment of mental illnesses, substance abuse disorders or trauma spectrum disorders.
- I.** "Behavioral health service provider" means an individual or an agency licensed or certified by or receiving funds under contract with the New Mexico health care authority for the provision of behavioral health services.
- J.** "Behavioral health care facility" means a facility operated by a behavioral health service provider.
- K.** "Board" means the New Mexico finance authority board, as created by and set forth in the bylaws of the authority.

- L. **"Department"** means the New Mexico health care authority.
- M. **"Eligible entity"** means a provider that meets the statutory definition of "eligible entity" provided for in the act.
- N. **"Loan"** means a loan made by the authority to an applicant under the program for the funding of a project.
- O. **"Fund"** means the behavioral health capital fund.
- P. **"Program"** means the behavioral health capital fund program authorized by the act.
- Q. **"Project"** means repair, renovation or construction of a behavioral health care facility, purchase of land, or the acquisition of capital equipment of a long-term nature. The following items shall be eligible or ineligible for purposes of funding through a loan:
 - (1) eligible for funding:
 - (a) building, construction, renovation;
 - (b) land;
 - (c) project planning and design;
 - (d) purchase of capital equipment;
 - (2) ineligible for funding:
 - (a) purchase of office supplies;
 - (b) general operating expenses.
- R. **"Sick and medically indigent"** means both those individuals below the federal poverty level not covered by private third party health care insurance and those individuals between one hundred percent and two hundred percent of federal poverty levels who are not covered by any private third party health insurance. Medically indigent individuals are usually expected to pay for some portion of the cost of their health care based upon the level of their income.
[8.321.7.7 NMAC - N, 7/1/2024]

8.321.7.8 LOAN APPLICATION PROCEDURES:

- A. Contingent upon a sufficient balance in the fund, the authority may accept applications at any point during the state fiscal year.
- B. The authority will provide forms and guidelines for a loan application and applications must be submitted on that form. The application shall be signed by the authorized representative and submitted to the department. Only applications that are complete will be considered for a loan. The application shall include the following.
 - (1) The amount of the loan requested and an itemization of the proposed use or uses of the loan.
 - (2) A detailed description of the circumstances that demonstrate the need for the project, including:
 - (a) the eligibility of the applicant;
 - (b) the programmatic appropriateness;
 - (c) the facility's need;
 - (d) the needs of community.
 - (3) A detailed description of the project, including:
 - (a) a description of the scope of work of the project;
 - (b) the estimated cost of the project;
 - (c) the target date for the initiation of the project and the estimated time to completion;
 - (d) the estimated useful life of the project and selected components (furnishings, equipment, etc.), as detailed on the application form;
 - (e) proof of applicable licenses and certifications; and
 - (f) other data as requested by the department or the authority.
 - (4) A copy of the applicant's articles of incorporation and by-laws and a certificate of good standing from the New Mexico public regulation commission.
 - (5) A copy of the applicant's internal revenue service tax exempt determination letter.
 - (6) A letter certifying that the project was duly authorized and approved by the applicant's governing body.
 - (7) The identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the project over its useful life.

- (8) The applicant's audited financial reports for the most recent five years, or term of existence, along with its projected cash flows for five years.
 - (9) The requested loan payback period.
 - (10) Any existing title insurance policies, title abstracts or searches of the real property owned by the applicant.
 - (11) Information on the current and proposed services of the applicant to the sick and medically indigent.
 - (12) Additional information as requested by the department or the authority that is requested at any point in the application process.
- [8.321.7.8 NMAC - N, 7/1/2024]

8.321.7.9 EVALUATION OF APPLICANT AND PROJECT BY DEPARTMENT AND THE APPLICATION COMMITTEE:

A. The department will determine whether an application is complete. Once the application is complete, the department will evaluate the application for eligibility and will determine the programmatic priority of the project.

B. To be eligible for a loan, an eligible entity must:

- (1) be a provider or facility that meets the statutory definition of “eligible entity” provided for in the act;
- (2) have policies and procedures that assure that no person will be denied services because of inability to pay; these policies and procedures must address the medically indigent persons below poverty not covered by third party payors and those between one hundred percent and two hundred percent of poverty without third party coverage; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;
- (3) have billing policies and procedures that maximize patient collections except where federal rules or contractual obligations prohibit the use of such measures; the eligible entity must be able to demonstrate either the successful impact of these policies and procedures, or have a practical plan for their implementation;
- (4) provide evidence satisfactory to the authority that it has proper title, easements, leases, and right of ways to the property upon which any facility proposed for funding is constructed or improved;
- (5) comply with all applicable federal, state, and local laws and rules;
- (6) meet other requirements as determined by the department.

C. The department shall determine the priority for loans from the fund. Priority shall be based on:

- (1) community need and support, including but not limited to the identification of other financing;
- (2) facility or equipment need;
- (3) the appropriateness of the project;
- (4) the ability of an applicant to maintain behavioral health care services;
- (5) whether making the loan would help achieve the goal of a fair geographic distribution of loans; and,
- (6) other factors, as determined by the department.

D. Upon completion of its evaluation of eligibility and its determination of programmatic priority, the department will refer the applications to the application committee. The application committee will evaluate the project. The application committee may confer with outside parties as necessary to obtain more information on the feasibility of the project, the applicant’s administrative capacity, and the applicant’s readiness to proceed. The application committee will make a written recommendation to the authority. The recommendation will include approval or disapproval of specific projects and the estimated costs of the projects. The recommendation may include recommendations for loan covenants needed for programmatic reasons and adjustments to the department’s programmatic prioritization of loans.

E. Although the department and the authority will analyze each project to determine whether the project is feasible, a loan by the authority does not constitute a warranty or other guarantee as to the feasibility of the project and the authority shall not have any responsibility or liability with respect to any project.

[8.321.7.9 NMAC - N, 7/1/2024]

8.321.7.10 FINANCING APPROVAL BY THE AUTHORITY:

A. The authority will perform an independent financial analysis of each application. In evaluating an application, the authority will consider.

(1) The applicant's demonstration that the excess of public support and revenues over expenses for the most recent fiscal year or the projected amount for the fiscal year after the project's completion (after adding back annual depreciation and interest) will provide sufficient coverage of the previous year's annual debt service and sufficient coverage of projected maximum annual debt service after accounting for the loan.

(2) The ability of the applicant to secure financing from other sources and the costs of the loan.

(3) The recommendations of the application committee.

B. The evaluation must include a finding that the useful life of the project will meet or exceed the final maturity of the loan and must meet standards for reasonable costs set by the board.

C. The evaluation must include a finding by the authority that there is adequate protection, including loan guarantees, real property liens, title insurance, security interests in or pledges of accounts and other assets, loan covenants and warranties or restrictions or other encumbrances and pledges for the state funds extended for the loan.

D. The applicant must agree, and such agreement may be included in the agreement at the request of the board:

(1) to maintain separate project accounts in accordance with generally accepted accounting principles and to conduct an annual audit of the project's financial records during the term of the loan; and

(2) to satisfy any other requirements as may be determined by the authority.

E. Once a recommendation has been made on the application by the authority staff, the board will act on the application and any associated loan documents or agreements no later than the next regular board meeting at which such item may be properly considered. The board may approve all or part of the application as recommended by the authority staff. Board approval may specify, at the board's discretion, terms and conditions of the loan as necessary to ensure repayment, including but not limited to, maximum loan term and maximum annual payments.

F. The authority will notify the applicant of the approval or disapproval of its application by telephone and will mail written notification by certified mail within seven working days of board action.

G. All communications regarding an eligible entity's original application shall be directed to the department.

[8.321.7.10 NMAC - N, 7/1/2024]

8.321.7.11 RECONSIDERATION:

A. Decision by department as to eligibility. An applicant may request reconsideration of a contrary decision by the department as to whether it is an eligible entity as defined by the act and under these rules. Notice must be given to the department in writing within 10 working days of receipt of the department's decision as to eligibility. A request for reconsideration not timely or properly made will be barred. The department's secretary will promptly review each timely request for reconsideration. The decision of the department secretary is final. If the decision of the department secretary differs from the decision of the department as to an applicant's eligibility, evaluation of the application shall be resumed by the department based on the decision of the department secretary.

B. Decision by board as to funding. An applicant may request reconsideration of a decision by the board denying funding to an eligible entity by notifying the authority in writing within forty-five days of the date on which the authority gives notice of an adverse decision to an applicant. Notice of an adverse decision is deemed to be given on the fifth business day following the date on which written notice of the adverse decision is mailed to the applicant by the authority by certified United States mail. A request for reconsideration is deemed to have been given on the fifth business day following the date on which the request is mailed to the authority. A request for reconsideration not timely or properly made will be barred. The authority's chief executive officer will promptly review each timely request for reconsideration and will recommend, at the next regular meeting of the board, action to be taken by the board. The board will review and take action on the request for reconsideration and will notify the applicant of the board's decision, in writing, within five working days of the board's decision. The decision of the board is final.

[8.321.7.11 NMAC - N, 7/1/2024]

8.321.7.12 LOAN DOCUMENTS AND AGREEMENT:

A. The authority and the eligible entity will enter into an agreement and any other applicable documentation to establish the terms and conditions of the loan. The agreement will include the terms of repayment and remedies and sanctions available to the authority in the event of a default. The authority will monitor and enforce the terms and conditions of the agreement, including prompt notice and collection. In consultation with the

department, the authority will take actions as necessary to ensure loan repayment and the integrity of the fund. The authority will not monitor the performance of an eligible entity under department credentialing or licensure requirements nor for programmatic requirements and will not make site visits. The department will monitor the performance of an eligible entity under department credentialing or licensure requirements and for programmatic requirements and will make the necessary site visits. The authority will not be responsible for any act or omission of the applicant upon which any claim, by or on behalf of any person, firm, corporation or other legal entity, may be made, arising from the loan or any establishment or modification of the project or otherwise.

B. The board will establish the interest rate for loans. The board will set the rate at the lowest legally permissible interest rate. The interest rate shall not change during the term of the loan unless refinanced.

C. The agreement will contain provisions that require that.

(1) The applicant complies with all applicable federal, state and local laws and rules.

(2) Any contract or subcontract executed for the completion of any project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

(3) The applicant shall require any contractor of a project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions.

D. The authority shall ensure the state's interest in any project by filing a lien equal to the total of the authority's financial participation in the project.

E. If land is to be purchased with a loan from the fund, the applicant shall provide evidence satisfactory to the authority that the title is merchantable and free and clear from liens or encumbrances. The authority shall also require that a title insurance policy insuring the authority's interest as a first lien be obtained as a condition of making the loan. The eligible entity shall not encumber the land purchased by granting or creating any additional security interest in the land while any amount of the loan is unpaid. The eligible entity shall pay immediately any encumbrance or lien against the land that attaches while any amount of the loan is unpaid.

F. If any repayment of a loan is more than 30 days past due, or if the eligible entity is in default on any other conditions as defined under the loan agreement, the authority and the department will report to each other and to the application committee as to the borrower's then current status as it relates to the loan, including credentialing or licensure status and any reported or known violations of applicable laws or rules to which the facility is subject and any known change in financial status. The department may develop workout plans in conjunction with the application committee for any borrower who maintains eligibility as defined in Subsection D of Section 6-26-3 NMSA 1978, but is more than 60 days past due in loan repayment. The authority may develop workout plans in conjunction with the application committee for any borrower who ceases to maintain eligibility as defined in Subsection D of Section 6-26-3 NMSA 1978 and is more than 60 days past due in loan repayments. Any such workout plan and its implementation is in addition to and not instead of the courses of actions, remedies and sanctions available separately to the department or the authority under the act, these rules or the agreement or in any other manner available by law.

G. If an eligible entity that has received a loan for a project ceases to maintain its nonprofit status or ceases to deliver behavioral health services at the site of the project for twelve consecutive months, the authority may pursue the remedies provided in the loan agreement or as provided by law.

H. If an eligible entity has received a loan for a project, the loan may be renegotiated if the entity is still eligible but has had a change in financial status.

I. In the event of default by the borrower, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[8.321.7.12 NMAC - N, 7/1/2024]

8.321.7.13 ADMINISTRATION OF THE BEHAVIORAL HEALTH CAPITAL FUND:

A. The fund shall be administered by the authority as a separate account, but may consist of such sub accounts as the authority deems necessary to carry out the purposes of the fund.

B. Money from repayments of loans or payments on securities held by the authority for projects authorized specifically by law shall be deposited in the fund. The fund shall also consist of any other money appropriated, distributed or otherwise allocated to the fund for the purpose of financing projects authorized specifically by law.

C. The authority shall adopt a uniform accounting system for the fund and related accounts and sub-accounts established by the authority, based on generally accepted accounting principles.

[8.321.7.13 NMAC - N, 7/1/2024]

History of 8.321.7 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 8 ADMISSION CRITERIA FOR ALCOHOL AND SUBSTANCE SERVICES

8.321.8.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.321.8.1 NMAC - N, 7/1/2024]

8.321.8.2 SCOPE: Agencies which receive state or federal funding from the division for the purpose of providing one or more of those substance abuse services authorized by the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8, et seq. NMSA 1978) or the Drug Abuse Act (Sections 26-2-1, et seq. NMSA 1978).
[8.321.8.2 NMAC - N, 7/1/2024]

8.321.8.3 STATUTORY AUTHORITY: Subsection E of Section 9-7-6 NMSA 1978 and Section 43-2-5 NMSA 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.321.8.3 NMAC - N, 7/1/2024]

8.321.8.4 DURATION: Permanent.
[8.321.8.4 NMAC - N, 7/1/2024]

8.321.8.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.321.8.5 NMAC - N, 7/1/2024]

8.321.8.6 OBJECTIVE: To establish minimum standards for admission criteria, policies and procedures for agencies providing substance abuse services. These standards are designed to ensure that each agency that receives funding from the division to provide substance abuse services has in place policies and procedures regarding admissions that ensure nondiscrimination, confidentiality, open accessibility to those policies, proper screening and assessment to match the client to the appropriate service(s), maintenance of a waiting list, a consistent intake procedure, provision of an orientation, development and maintenance of a treatment plan, and appropriate referrals. These standards also establish the basic procedure which must be followed once it has been determined that it is appropriate to admit a client under one of the following circumstances: admission to a substance abuse treatment facility of an adult found able to consent; admission to a substance abuse treatment facility of an adult found not able to consent; admission to a substance abuse treatment facility of a minor; and necessity for the provision of emergency services.
[8.321.8.6 NMAC - N, 7/1/2024]

8.321.8.7 DEFINITIONS:

A. “Admission” means the agency’s acceptance of a client for the purpose of providing services on a scheduled basis in accordance with a client treatment plan.

B. “Adult” means an individual who has attained the age of eighteen years.

C. “Advocate” means any individual, group or organization who pleads another’s cause.

D. “Agency” means a provider of substance abuse treatment, screening or assessment services receiving funds under contract with the New Mexico health care authority.

E. “Assessment” means the initial and on-going process of appraising the client’s strengths, deficits and areas of need for purposes of developing a comprehensive client treatment plan.

F. “Client” means an individual or family requesting or receiving services.

G. “Intake” means the gathering of administrative and clinical data which is used for the screening, admitting and initial treatment of a client.

H. “Medical detoxification” means medically supervised 24 hour care for patients who require hospitalization for treatment of acute intoxication or withdrawal, or a combination of substance abuse/addiction, and other medical conditions which together warrant treatment in this type of setting. Length of stay varies depending on the severity of the disease and withdrawal symptoms.

I. “Minor” means an individual under the age of 18 years.

J. “Outpatient services” means diagnostic and treatment services to clients who will be served ,in accordance with a client treatment plan, intermittently or on a scheduled basis in a non-residential setting. Intervention strategies are aimed at reducing the harm to individuals, families and communities due to the use of alcohol and other substances.

K. “Policy” means a statement of principles that guide and determine present and future decisions.

L. “Procedure” means a series of activities designed to implement program goals or policy.

M. “Residential long-term rehabilitation” means a 24 hour residential treatment program for the chronic alcohol or drug dependent client who lacks an adequate social support system. This program provides multi disciplinary treatment designed to achieve a substance-free lifestyle, explore effective ways of functioning in a work setting within the family, and in the community in accordance with the treatment plan.

N. “Residential short-term rehabilitation” means a 24 hour intensive residential program for clients who require treatment services in a highly structured setting. An organized counseling and education curriculum ordinarily involving a residential stay of 30 day or less. This type of program is appropriate for clients who need concentrated, therapeutic services prior to community residence, and who do not require monitoring of physical withdrawal from alcohol or other drugs.

O. “Residential social detoxification” means a medically supported 24 hour, social rehabilitation residential program which provides physical care, education and counseling as appropriate for the client’s health and safety during their process of physical withdrawal from alcohol dependency. Social detoxification provides access into care and treatment of alcoholism through monitored withdrawal, evaluation of present or potential alcohol dependency and other physical ailments, and intervention into the progression of the disease through timely utilization of resources. Length of stay in a social detoxification program varies from three to seven days depending on the severity of the disease and withdrawal symptoms.

P. “Screening” means the method by which the agency selects appropriate clients for admission or referral to other appropriate services.

Q. “Substance abuse” means the use of one or more drugs or other potentially harmful substances, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.

R. “Substance related disorder” means any disorder related to the taking of a drug of abuse (including alcohol), to the side effects of a medication, or to toxin exposure. (American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition. Washington, DC, American Psychiatric Association, 1994, p.175).

S. “Treatment” means the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to any client.

T. “Treatment plan” means that written strategy which is derived from the client screening/intake/assessment and contains the written goals and objectives of the services to be provided and a schedule of service delivery.

U. “Treatment staff” means any person employed by an agency which is directly involved in treatment and client care.

[8.321.8.7 NMAC - N, 7/1/2024]

8.321.8.8 NONDISCRIMINATION POLICY: Each agency shall have and utilize a written policy on nondiscriminatory practices as described below:

A. No agency shall discriminate or permit discrimination against any person or group of persons in any treatment service on the basis of race, color, religious creed, age, marital status, national origin, sex, sexual preference or physical disability.

B. No person shall be denied admission into a treatment program solely or jointly because of:

- (1) the inability to pay all or part of the cost of services, directly or through third party reimbursement;
- (2) the number of prior admissions to treatment;
- (3) the length of time since the last treatment;
- (4) the location of last treatment; or
- (5) a refusal to undergo previous treatment.

[8.321.8.8 NMAC - N, 7/1/2024]

8.321.8.9 CONFIDENTIALITY: Each agency shall have and utilize a written policy and procedure for ensuring the confidentiality and security of all clients’ case records and identifying information which conform to

the requirements of state and federal confidentiality laws and regulations. The procedure must include, but is not limited to:

- A. a description of the process and requirements for disclosure of confidential information;
- B. copies of forms for documenting the disclosure of confidential information and for obtaining the written consent of the client receiving services when such consent is required; and
- C. staff training requirements on the content of state and federal laws related to confidentiality of client records.

[8.321.8.9 NMAC - N, 7/1/2024]

8.321.8.10 APPLICATION FOR SERVICES:

- A. Any individual who believes that they may have a substance related disorder may present themselves to any agency for the purpose of being screened, admitted or referred to an appropriate treatment program.
- B. Any parent, guardian, spouse, or any interested individual may present an individual who may have a substance related disorder to an agency for the purpose of being screened, admitted or referred to the appropriate treatment program.

[8.321.8.10 NMAC - N, 7/1/2024]

8.321.8.11 ADMISSION CRITERIA:

- A. Each agency shall have and utilize written admission criteria which shall be available to clients, staff, the division and community.
- B. Agency admission criteria shall delineate guidelines which permit the clear identification of who is and is not eligible for admission.
- C. No person shall be admitted into a program unless they meet the agency's admission criteria, and any person who is ineligible because they do not meet the admission criteria shall be re-referred to the original agency or to another appropriate agency. All referrals will be processed in accordance with Section 18 of these regulations.
- D. The written admission criteria shall include, but not be limited to, consideration of the following factors:
 - (1) age;
 - (2) sex;
 - (3) physical health;
 - (4) mental status;
 - (5) previous treatment history;
 - (6) history of substance abuse; and
 - (7) current use of substance(s).

[8.321.8.11 NMAC - N, 7/1/2024]

8.321.8.12 SCREENING:

- A. The agency shall screen the individual to determine:
 - (1) if the individual meets the programs criteria for admission;
 - (2) that the individual's needs are matched with the appropriate agency and treatment services;
 - (3) the least restrictive means of treatment is being provided; and
 - (4) whether the individual should be referred to a more appropriate agency for alternate services.
- B. The agency shall make a diligent effort to involve, in the screening procedure, any reasonable number of people requested by either the individual or their guardian.
- C. When the agency has completed the screening, it shall present, whenever possible, its findings orally and in writing to the individual screened, their guardian, and such other person as the individual may request.
 - (1) If, at the conclusion of the screening process, it is determined that an individual does not meet the program's admission criteria for the provision of services, and the individual objects, that individual may contest the determination of the screening and request a review by the agency's supervisory staff.
 - (2) If the individual screened is found not to meet the programs admission criteria, but is in need of other types of services, the agency will refer the individual to an agency which provides the appropriate services needed. All referrals will be made in accordance with Section 18 of these regulations.

D. If the individual screened is found to meet the agency admission criteria, the following will be explained:

- (1) the procedure for admission into the treatment facility and other services;
- (2) the possibility of being put on a waiting list;
- (3) the intake and assessment process; and
- (4) the individuals right to have his preferences considered during the process from

admission through discharge and referral.

E. If the individual screened is found to meet the agency's admission criteria, the agency shall retain all information obtained through the screening process and open a case record.

F. Information obtained from the screening process should include, but is not limited to the following:

- (1) name;
- (2) date of birth;
- (3) presenting problem(s);
- (4) history of substance abuse and related problems;
- (5) identification of the types of alcohol or other drugs being used;
- (6) frequency and duration of substance(s) used;
- (7) method of administration;
- (8) treatment history;
- (9) legal history;
- (10) referral source (if any);
- (11) general physical and mental conditions;
- (12) types of medication (if any);
- (13) next of kin in case of an emergency;
- (14) allergies;
- (15) handicap or other restrictions; and
- (16) other pertinent information.

G. The information gathered from the screening process shall be consolidated, forwarded and utilized with all other segments of the service delivery process.

[8.321.8.12 NMAC - N, 7/1/2024]

8.321.8.13 WAITING LIST: The agency shall maintain an up-to-date and centrally located waiting list. This waiting list is comprised of individuals who, through the screening process, have met the agency's admission criteria and are waiting for placement into the identified treatment program. Individuals on the waiting list shall be rank ordered based on a prioritized need basis.

[8.321.8.13 NMAC - N, 7/1/2024]

8.321.8.14 INTAKE:

A. The acceptance of a client for treatment shall be based on an intake procedure and assessment of the client.

B. The agency shall have written policies and procedures governing the intake process including the following:

- (1) the types of information to be obtained on all applicants prior to admission;
- (2) the procedures to be followed when accepting referrals from outside agencies;
- (3) the procedures to be followed for referrals when an applicant is found ineligible for

admission. The reason for non-admission shall be documented.

[8.321.8.14 NMAC - N, 7/1/2024]

8.321.8.15 ASSESSMENT:

A. Assessment shall be done by members of the treatment staff and shall be clearly explained to the client, family, spouse, guardian or other interested person as appropriate.

B. During the assessment process, the designated staff member shall collect the following information for each person:

- (1) presenting problems;
- (2) history of substance abuse and problems;
- (3) identification of the alcohol or other drugs used;

- (4) frequency and duration of use;
- (5) method of administration;
- (6) personal and family history;
- (7) education and employment history;
- (8) physical and medical history;
- (9) legal history;
- (10) previous treatment history;
- (11) communicative and cognitive history;
- (12) social and emotional history; and
- (13) rehabilitative and vocational history.

C. The assessment shall be used as a guide to the formulation of the client's treatment plan.

[8.321.8.15 NMAC - N, 7/1/2024]

8.321.8.16 ORIENTATION:

A. Each client to be admitted shall receive an orientation in accordance with a written orientation policy and procedure.

B. Unless an emergency situation is documented during the intake/assessment process, each client to be admitted shall sign acknowledgment that they understands the following:

- (1) the agency's policies, goals and objectives;
- (2) the services offered by the agency and through referral to other service providers;
- (3) the agency's hours of operation;
- (4) the fee policy and fee schedule;
- (5) the client's rights;
- (6) the agency's expectations of the client;
- (7) the protection and restrictions which derive from state and federal confidentiality law and regulations;

(8) the agency's rules and procedures and the consequences to the client of infractions of such rules, and the process for review and appeal; and

- (9) the agency's termination and discharge procedures.

[8.321.8.16 NMAC - N, 7/1/2024]

8.321.8.17 TREATMENT PLAN: Based on the screening/intake/assessment made of the client's needs, a written treatment plan shall be developed and recorded in the client's case record.

A. A preliminary treatment plan shall be developed as soon as possible.

B. The treatment may begin before completion of the plan.

C. The plan shall be development with the client, and the client's participation in the development of treatment goals shall be documented.

D. The treatment plan shall specify the services needed to meet the client's needs and attain the agreed-upon goals.

E. The treatment goals shall be developed with both short and long range expectations and written in measurable terms.

F. A designated treatment staff member shall have primary responsibility for treatment plan development and review.

G. The client's progress and current status in meeting the goals set in the treatment plan shall be reviewed by the client's treatment staff at regularly scheduled case conferences and shall include:

- (1) the date and results of the review and any changes in the treatment plan shall be written into the client's case record;
- (2) the participants in the case conference shall be recorded in the clients case record; and
- (3) the designated treatment staff member shall discuss the review results with the client and document the client's acknowledgment of any changes in the plan.

[8.321.8.17 NMAC - N, 7/1/2024]

8.321.8.18 REFERRAL: There shall be written referral policies and procedures that facilitate client referral between the agency and other community service providers which include:

A. a description of the methods by which continuity of care is assured for the client;

B. a listing of resources that provide services to clients shall contain the following information:

- (1) the name and location of the resource;
- (2) the types of services the resource is able to provide;
- (3) the individual to be contacted when making a referral to a resource;
- (4) the resource's criteria for determining an individual's eligibility for its services; and
- (5) the types of follow-up information that can be expected from the resource and how this

information is to be communicated.

- C. a procedure for referral and monitoring of person on a waiting list for admission to the referred agency;
- D. current information shall be maintained on self-help groups, as well as procedures for referral to those groups;
- E. all relationships with outside resources shall be approved by the director of the agency;
- F. an agreement between the agency and outside resources on the degree of shared responsibility, if any, for client care; and
- G. documentation of annual review and approval of the referral policies and procedures by the director of the agency.

[8.321.8.18 NMAC - N, 7/1/2024]

8.321.8.19 ADMISSION TO ALCOHOL/DRUG TREATMENT FACILITY OF ADULTS FOUND ABLE TO CONSENT:

A. If the individual meets the agency's admission criteria and the screening/intake/assessment shows that:

- (1) the person would benefit from services provided in a treatment facility (outpatient services, residential social detoxification, medical detoxification, residential long-term rehabilitation, residential short-term rehabilitation, etc.);
- (2) the treatment facility is consistent with the least drastic means principle; and
- (3) that the person was able to consent to admission to an agency, then the person shall have the option of accepting or rejecting the recommendation. The person's decision to accept treatment shall be recorded by signature and shall become part of the case record. If an agency agrees to provide treatment services to the person, the person, and only that person, shall determine whether he enters the treatment facility, unless the provisions of Subsection B of 8.321.8.19 NMAC of these regulations are invoked.

B. If a screening/assessment shows that the person would benefit from services offered, and results of the screening/assessment showed that the person was able to consent to admission to a treatment facility, and the person objects to placement in such an agency, then the individual may enter a treatment facility, only upon involuntary commitment under Section 43-2-8 NMSA 1978.

[8.321.8.19 NMAC - N, 7/1/2024]

8.321.8.20 ADMISSION TO ALCOHOL/DRUG TREATMENT FACILITY OF ADULTS FOUND NOT ABLE TO CONSENT:

If a screening/intake/assessment shows that a person is found not able to consent to, admission to an agency, and the screening/intake/assessment shows that treatment services would be in the person's best interest and will be consistent with the least drastic means principle, then the agency may not admit the person without the consent of his guardian, except that the person may be admitted pursuant to 8.321.8.22 NMAC as an emergency admission while the person obtains a guardian or for a period not to exceed five days.

[8.321.8.20 NMAC - N, 7/1/2024]

8.321.8.21 ADMISSIONS OF MINORS TO ALCOHOL/DRUG TREATMENT FACILITY:

A. If the screening/intake/assessment determines that a person who is also a minor needs services in an agency, and parents or guardian of the minor agree, then the minor may be admitted to an agency which agrees to serve the minor.

B. If a minor voluntarily seeks admission to a treatment facility, or if any interest person seeks to have a minor admitted, and no parent or guardian for the child can be located, then a guardian shall be appointed for the child under the provisions of the New Mexico Probate Code, and the admission procedure (except for emergency services) will not proceed until the guardian has been appointed.

[8.321.8.21 NMAC - N, 7/1/2024]

8.321.8.22 EMERGENCY SERVICES:

A. Services in an agency may be provided on an emergency basis to any individual believed to be diagnosed as having a substance related disorder when the agency determines that:

(1) there is imminent danger that the physical health or safety of the individual will be seriously impaired if the services are not provided, and that the normal admissions procedure, including screening, cannot be accomplished in time to avoid danger; or

(2) there is imminent danger that the physical health or safety of the individual will be seriously impaired if the services are not provided, and the person has been evaluated and found unable to consent to admission, but does not have a guardian.

B. When emergency services are provided, the agency shall document the nature of the emergency and the reason for failing to comply with any section or paragraph of these regulations, and copies of the document shall be placed in the individual's case record and shall be sent to the individual, his parents, spouse, guardian or advocate, if applicable.

C. When an individual is receiving emergency services, the agency shall determine if the individual has been evaluated, and if the individual has not, shall make diligent efforts to evaluate the individual as soon as possible. Once completed, the results of the evaluation shall determine if the individual will continue to receive services, unless a court or the New Mexico health care authority (authority) orders the agency to continue to provide services while an issue is resolved in a judicial hearing or within the authority. Emergency services shall not be provided of more than seven days before an evaluation is begun, or for more than 14 days in total, unless a court or the authority orders otherwise, or unless the individual would have been admitted under Section 19 had he had a guardian.

D. The provisions of the section apply to both minors and adults.
[8.321.8.22 NMAC - N, 7/1/2024]

HISTORY OF 8.321.8 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 9 PROCUREMENT OF PROFESSIONAL SERVICES FOR ALCOHOL AND SUBSTANCE ABUSE SERVICES

8.321.9.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.321.9.1 NMAC - N, 7/01/2024]

8.321.9.2 SCOPE: Each entity (offeror/contractor) which submits a proposal(s) for or receives division funding for the purpose of establishing, expanding or continuing one or more of those substance abuse services authorized by the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8 et seq. NMSA 1978) or the Drug Abuse Act (Sections 26-2-1 et seq. NMSA 1978) except where the content of a regulation or any portion thereof is expressly applicable only to a specific group of offerors/contractors.
[8.321.9.2 NMAC - N, 7/01/2024]

8.321.9.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 NMSA 1978, Subsection A of Section 43-3-11 NMSA 1978 of the Alcoholism and Alcohol Abuse Prevention, Screening and Treatment Act (Sections 43-3-8 et seq. NMSA 1978), or Subsection D of Section 26-2-4 of the Drug Abuse Act (Sections 26-2-1 et seq. 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.
[8.321.9.3 NMAC - N, 7/01/2024]

8.321.9.4 DURATION: Permanent.
[8.321.9.4 NMAC - N, 7/01/2024]

8.321.9.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.321.9.5 NMAC - N, 7/01/2024]

8.321.9.6 OBJECTIVE: To establish procedures for procurement of professional services by competitive sealed proposals for substance abuse treatment and/or prevention services; and to establish minimum standards of eligibility for division funding.
[8.321.9.6 NMAC - N, 7/01/2024]

8.321.9.7 DEFINITIONS:

- A. “Client”** means an individual or family requesting or receiving services.
 - B. “Contractor”** means an entity under contract with the authority to provide substance abuse prevention, treatment, screening or assessment services.
 - C. “Director”** means the director of the behavioral health services division/substance abuse of the New Mexico health care authority.
 - D. “Division”** means the behavioral health services division of the New Mexico health care authority.
 - E. “Division funding”** means funding from state and/or federal sources that is available through the behavioral health services division of the New Mexico health care authority for the provision of substance abuse services.
 - F. “Governing body”** means the group of individuals vested with an organization’s policy-making authority for the management of that organization.
 - G. “Offeror”** means an entity who submits a response to a request for proposals solicited by the division.
 - H. “Secretary”** means the secretary of the New Mexico health care authority.
 - I. “Standards”** means those policies and procedures stipulated in such regulations as may be amended or adopted by the authority.
 - J. “Substance abuse”** means the use of one or more drugs, including alcohol, which significantly and negatively impacts one or more major areas of life functioning.
- [8.321.9.7 NMAC - N, 7/01/2024]

8.321.9.8 MINIMUM STANDARDS:

A. These regulations comprise the minimum standards of eligibility for division funding. Meeting the minimum standards of eligibility does not guarantee that a contractor/offeror will receive division funding, nor that funding will be awarded in subsequent fiscal years.

B. The division may impose additional requirements beyond those contained in these regulations on any contractor/offeror through terms in a contract between the contractor and the division. Additional requirements may be imposed when a contractor/offeror has limited financial management or service delivery experience, or has an inadequate performance record, or in order to correct specific weakness identified by the division.

[8.321.9.8 NMAC - N, 7/01/2024]

8.321.9.9 REQUIREMENTS OF OTHER AGENCIES: A contractor/offeror who is required to be licensed by the licensing and certification bureau of the public health division of the department of health must obtain and retain such license.

[8.321.9.9 NMAC - N, 7/01/2024]

8.321.9.10 WAIVER:

A. At the request of a contractor/offeror and with the director's authorization, the division may issue a written waiver of any of the requirements of these regulations which are not otherwise required by law.

B. The request for waiver must be in writing and must be signed by the authorized signatory of the contractor/offeror. The waiver may be granted only if accompanied by documentation which demonstrates that the waiver is in the best interest of the contractor's/offeror's clients.

[8.321.9.10 NMAC - N, 7/01/2024]

8.321.9.11 REVIEW AND EVALUATION:

A. A contractor's performance shall be evaluated by review of:

- (1) its compliance with all applicable federal and state rules and regulations, including such regulations as may be amended or adopted by the authority, and the terms and conditions of its individual contract;
- (2) the degree of achievement of its own self-described objectives as negotiated between the contractor and the division as described in the contractor's approved funding proposal;
- (3) its financial and client status reports to the division and annual audit; and
- (4) the fiscal solvency of the contractor.

B. During any site visit, division staff shall be given access to:

- (1) any person employed at the site who is present at the site at the time of the visit, or any individual member of the contractors governing body whom the division staff wish to interview (interviews with members of the governing body shall be scheduled at the convenience of the members of the governing body);
- (2) all physical facilities which are utilized for division funded activities; and
- (3) clients to whom the contractor is providing substance abuse related services funded by the division and who agree to be interviewed (no client identifying information shall be removed from the program premises as a result of such interviews).

[8.321.9.11 NMAC - N, 7/01/2024]

8.321.9.12 REQUEST FOR PROPOSAL PROCESS:

A. A public notice of the request for proposals (RFP) shall be given by publishing a notice not less than ten (10) calendar days prior to the date set for receipt of the proposal. The notice shall be published at least once in a newspaper of a general circulation in New Mexico or the community where services are proposed. For all expenditures over \$20,000, copies of the notice shall also be sent to interested persons and business who have signified in writing an interest in submitting proposals for particular categories of services.

B. The division will initiate the process for procurement of services through a request for proposals. The RFP shall be issued soliciting competitive proposals, and shall include (but not be limited to) the following:

- (1) the type of service(s) to be procured (i.e., residential, outpatient, prevention, etc.) and the anticipated amount of funding available;
- (2) all contractual terms and conditions applicable to the procurement;
- (3) the location where proposals are to be received;
- (4) the date, time and place where proposals are to be received and reviewed;
- (5) a statement of relative weights to be given to the factors when evaluating proposals;

(6) a statement that offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals (revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers);

(7) a statement that the contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process; and

(8) a statement which reads as follows: “The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks.”
[8.321.9.12 NMAC - N, 7/01/2024]

8.321.9.13 PROPOSAL PROCESS/PROCEDURE:

A. All offerors submitting proposals for division funding shall utilize the format and forms designated by the division and shall submit all information and copies consistent with instructions stipulated in the RFP packet.

B. The proposal by a non-profit corporation shall be signed by the signatory authorized by the organizations board of directors. The proposal of a municipality or other public body shall be signed by a signatory authorized by the municipality or the local public body.

C. The services for which an offeror seeks division funding must be consistent with the service needs for which the RFP is intended.

D. The division may, at its discretion, request proposals to meet service needs or establish research or demonstration projects. Offerors responding to such division requests for proposals shall submit their proposals in the form, time, and manner indicated in the division’s request for such proposal.

[8.321.9.13 NMAC - N, 7/01/2024]

8.321.9.14 RECEIPT OF PROPOSALS:

A. Completed proposals shall be submitted to the division or the organizational unit designated within the division as specified in the notice of the RFP.

B. The organizational unit of the division receiving the completed proposal(s) shall establish a log of all proposals received, which shall include the date and time each proposal was received, the name of the offeror, and a description of the proposal sufficient to identify the service(s) offered.

[8.321.9.14 NMAC - N, 7/01/2024]

8.321.9.15 PROPOSAL REVIEW/RECOMMENDATIONS:

A. Division staff shall, immediately upon receipt of proposals or soon after the deadline for submission, evaluate every responsive proposal submitted.

B. All responsive proposals will be evaluated and ranked in order, taking into consideration the evaluation factors and relative weights set forth in the request for proposals.

C. The list of proposals (in rank order) and the final recommendations from division staff will be provided to the director.

D. The director will recommend to the secretary of the authority those proposals selected for award of contracts for proposed services.

[8.321.9.15 NMAC - N, 7/01/2024]

8.321.9.16 CONTRACT NEGOTIATION/AWARD/NOTICE/ACCEPTANCE:

A. The secretary of the authority will award a contract(s) to the offeror(s) which is (are) most advantageous to the authority.

B. The division’s award is contingent upon the offerors acceptance of any additional or special terms and conditions listed in the contract and any changes in the funding proposal. The offeror shall indicate acceptance of the award and any special or additional conditions it contains during the negotiation process and by signing and returning the contract to the division’s offices. The contract shall become legally binding upon approval by the department of finance and administration of the written document.

C. The division will notify in writing each offeror of the outcome of the award process and will soon thereafter begin negotiations with the offeror(s) accepted.

D. All contracts for services with the authority shall be reviewed:

(1) as to form and legal sufficiency by the office of general counsel of the authority;

(2) for budget sufficiency by the administrative services division of the authority; and

(3) by the department of finance and administration for form, legal sufficiency and budget requirements pursuant to Section 13-1-118 NMSA 1978.

E. The division will negotiate a contract for the services at a fair and reasonable price which will conform to those previously accepted price ranges for specific units of service as determined by the division.

F. The dollar amount and the length of the term of each contract offered lies within the sole discretion of the authority. All awards are subject to the availability of appropriated funds.
[8.321.9.16 NMAC - N, 7/01/2024]

8.321.9.17 PROTEST PROCEDURES: All protests filed with the authority will be governed by 7.1.6 NMAC, "Protest Procedure Under the Procurement Code", or such regulations as may be amended or adopted by the authority.

[8.321.9.17 NMAC - N, 7/01/2024]

HISTORY OF 8.321.9 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 10 OPIOID TREATMENT PROGRAMS

8.321.10.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.321.10.1 NMAC - N, 7/1/2024]

8.321.10.2 SCOPE: This rule is applicable to opioid treatment programs. These regulations are not intended to preempt county or municipal ordinances that supplement and do not conflict with these regulations. County and municipal ordinances are preempted when they conflict with these regulations.
[8.321.10.2 NMAC - N, 7/1/2024]

8.321.10.3 STATUTORY AUTHORITY: 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 facility licensure and health care purchasing and regulation.
[8.321.10.3 NMAC - N, 7/1/2024]

8.321.10.4 DURATION: Permanent.
[8.321.10.4 NMAC - N, 7/1/2024]

8.321.10.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.321.10.5 NMAC - N, 7/1/2024]

8.321.10.6 OBJECTIVE: This rule establishes standards for opioid treatment programs to be consistent with the SAMHSA/CSAT regulations and the OTP accreditation requirements of nationally recognized accreditation bodies approved by SAMSA/CSAT, such as CARF and JCAHO. The intent is to:

- A.** be consistent with, and complimentary to, the substance abuse and mental health services administration/center for substance abuse treatment (SAMHSA/CSAT) regulations, and the OTP accreditation requirements of nationally recognized accreditation bodies approved by SAMHSA/CSAT, such as commission on accreditation of rehabilitation facilities (CARF) and the joint commission on accreditation of healthcare organizations (JCAHO);
- B.** reduce the stigma sometimes associated with opioid dependency treatment and ensure access to it comparable to treatment availability for other chronic medical conditions;
- C.** consider the possible adverse impact on communities in which OTP providers are located in making application approval decisions, and to provide measures to promote mutually satisfactory relationships between OTP providers and their communities.

[8.321.10.6 NMAC - N, 7/1/2024]

8.321.10.7 DEFINITIONS:

A. “Accrediting bodies” means nationally recognized organizations, such as the joint commission on accreditation of healthcare organizations (JCAHO) and the commission on accreditation of rehabilitation facilities (CARF), which promulgate standards for OTPs that are approved by the substance abuse and mental health services administration/center for substance abuse treatment (SAMHSA/CSAT), and offer accreditation to programs that meet these standards.

B. “Administrative withdrawal” means the procedure for withdrawal of a patient’s opioid treatment medication coinciding with the patient’s involuntary discharge from opioid treatment, typically resulting from non-payment of fees, violent or disruptive behavior or incarceration or other confinement.

C. “Application form” means the form created by the health care authority, which must be completed by a program sponsor who wishes to obtain approval to operate an opioid treatment program.

D. “Approval” and “approval to operate” means the written permission given by the health care authority to a program sponsor to operate an opioid treatment program.

E. “Behavioral health services division” (BHSD) is the division of the New Mexico health care authority that is the single state authority for mental health and substance use treatment and prevention programs and methadone authority.

F. “Comprehensive initial assessment” means the collection and analysis of a patient’s social, medical, psychological and treatment history.

G. “Comprehensive maintenance treatment” means a program designed with the intention of lasting longer than six months, for the purpose of maintaining the patient such that they will be free of opioid withdrawal and cravings; such programs are typified by:

(1) dispensing or administering an opioid treatment medication at stable dosage levels for a period in excess of 21 days to an individual for opioid addiction; and
(2) providing medical, therapeutic and supportive services to the individual with opioid dependence.

H. “Dispense” has the same meaning as in Subsection I of Section 61-11-2 NMSA 1978 as amended or renumbered.

I. “Diversion” means the unauthorized transfer of an opioid agonist treatment medication, such as a street sale.

J. “Dosage” means the amount, frequency and number of doses of medication for an individual.

K. “Dose” means a single unit of opioid treatment medication.

L. “Illicit opioid drug” means an illegally obtained opioid drug, such as heroin, that causes dependence and reduces or destroys an individual’s physical, social, occupational, or educational functioning, or misuse of legally prescribed medication.

M. “Intake screening” means determining whether an individual meets the initial criteria for receiving opioid treatment.

N. “Long-term opioid treatment withdrawal procedure” means a treatment program designed to dispense opioid treatment medication to a patient in decreasing doses, after first possibly achieving a stable dose, for a period of more than 30 days but less than 180 days as a method of bringing the individual to a drug-free state.

O. “Medical practitioner” means an individual who:

(1) has been accredited through appropriate national procedures as a health professional;
(2) fulfills the national requirements on training and experience for prescribing procedures;
(3) is a registrant or a licensee, or a worker who has been designated by a registered or licensed employer for the purpose of prescribing procedures;
(4) may be a physician, physician’s assistant, registered nurse, nurse practitioner, or licensed practical nurse.

P. “Opioid treatment” means:

(1) opioid treatment withdrawal procedure/treatment; and
(2) comprehensive maintenance treatment.

Q. “Opioid treatment medication” means a prescription medication that is approved by the U.S. food and drug administration under 21 U.S.C. section 355 and by the code of federal regulations title 42, part 8.12 for use in the treatment of opiate addiction.

R. “Opioid treatment program” (OTP) means a single location at which opioid dependence treatment medication, such as methadone and rehabilitative services, are provided to patients as a substantial part of the activity conducted on the premises.

S. “Opioid treatment withdrawal procedure” is dispensing or administering an opioid dependence treatment medication in decreasing medication levels to an individual to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

T. “Physiologically dependent” means physically addicted to an opioid drug, as manifested by the symptoms of withdrawal in the absence of the opioid drug.

U. “Program clinician” means a behavioral health clinician practicing at an opioid treatment program who is licensed to practice substance abuse treatment in New Mexico

V. “Program medical director” means a physician licensed to practice medicine in New Mexico, who assumes responsibility for administering all medical services, either by performing them directly or by delegating specific responsibility to authorized program medical practitioners functioning under the medical director’s direct supervision.

W. “Program sponsor” means the person named in the application as responsible for the operation of the opioid treatment program and who assumes responsibility directly, by personal oversight, or through policy and procedure, or a combination of both, for the acts and omissions of staff members or employees of the opioid treatment program.

X. “Short-term opioid treatment withdrawal procedure” means a treatment program designed to dispense opioid treatment medication to a patient in decreasing doses, over a continuous period of 30 days or less, as a method of bringing the individual to a drug-free state.

Y. “State methadone authority,” (SMA) means the single state agency for substance abuse designated by the governor or another appropriate official designated by the governor to exercise authority within the state for governing treatment of opiate addiction with an opioid drug. In New Mexico it is the health care authority, behavioral health services division.

Z. “Take-home medication” means one or more doses of an opioid treatment medication dispensed to a patient for use off the premises.
[8.321.10.7 NMAC - N, 7/1/2024]

8.321.10.8 APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM REQUIRED:

Providers who receive written approval by the health care authority, shall be permitted to provide opioid dependency treatment services.
[8.321.10.8 NMAC - N, 7/1/2024]

8.321.10.9 ELIGIBILITY FOR APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM:

Only applicants who possess all of the following shall be eligible to receive approval to operate from the New Mexico health care authority (HCA):

- A.** drug enforcement agency (DEA) approval to operate an OTP;
- B.** SAMHSA/CSAT approval to operate an OTP;
- C.** accreditation by a SAMHSA/CSAT-approved nationally recognized accreditation body, such as JCAHO or CARF, to operate an OTP:

(1) if the applicant is a start-up program unable to obtain such accreditation prior to beginning operation because the accreditation body requires a period of program operation, typically six months, before it will grant accreditation:

(a) the HCA shall grant provisional approval to operate pending accreditation, provided that all other requirements of these regulations are met; and

(b) the program demonstrates in its application to the HCA that it is taking the steps necessary to become accredited as quickly as possible, and provides a timeline for the anticipated accreditation;

(2) during this interim period, the provisional approval to operate is contingent on the ongoing progress of the program, as determined by the HCA, to obtain accreditation within the timeline contained in the application; the program shall immediately inform the HCA of anything that will delay or prevent accreditation according to that timeline;

(3) the HCA shall withdraw its provisional approval if it concludes that accreditation will not be forthcoming; in any event, the program shall obtain accreditation within 12 months of beginning operation, or the provisional approval shall be withdrawn, unless the HCA elects to extend the provisional approval period after consultation with the appropriate federal and accrediting entities.

D. a license from the New Mexico state board of pharmacy to operate an OTP;

E. other permits and licenses such as a business license from the applicant’s local governmental entity, as required by local ordinances;

F. evidence of appropriate liability insurance coverage for the program and its employees.

[8.321.10.9 NMAC - N, 7/1/2024]

8.321.10.10 APPLICATION FOR APPROVAL TO OPERATE AN OPIOID TREATMENT PROGRAM:

A. Each OTP sponsor applicant shall submit to the HCA an application for approval to operate an opioid treatment program application using the form provided by the HCA. This application shall be in addition to the application to drug enforcement agency, SAMHSA/CSAT, the NM board of pharmacy, local government, etc.

B. The HCA shall approve or deny the application within 45 working days of submission, unless the HCA and applicant mutually agree to extend the application review period.

C. The HCA may require the applicant to provide additional written or verbal information in order to reach its decision to grant or deny approval. Such further information shall be considered an integral part of the application.

D. Approval shall be for a duration of three years, except as otherwise provided below for initial grandfathered approvals.

E. The HCA shall not grant approval to operate an OTP to any program sponsor who has been convicted of any crime related to controlled substances laws or any felony within the last five years. No person who

has been convicted of any felony in the last five years shall be employed by the OTP in any capacity that gives that person access to controlled medications.

F. The HCA shall not grant approval to any entity that poses a risk to the health and safety of the public based on a history of noncompliance with state and federal regulations as verified by the DEA, New Mexico state board of pharmacy, FDA, SAMSHA approved accreditation bodies, or the state licensure agency in any state in which the program sponsor currently operates.

G. The HCA may deny approval if there is a documented history of repeated and serious negative neighborhood impact with respect to other OTP programs currently operated by the program sponsor or by any corporation, LLC or partnership with whom the program sponsor has been associated in the past five years.

H. As a condition of approval to operate an OTP, the OTP must maintain or obtain accreditation with a SAMHSA/CSAT-approved nationally recognized accreditation body, (e.g. CARF or JCAHO.) In the event that such accreditation lapses, or approval of an application for accreditation becomes doubtful, or continued accreditation is subject to any formal or informal finding of need for improvement, the OTP program will notify the HCA within two business days of such event. The OTP program will furnish the HCA with all information related to its accreditation status, or the status of its application for accreditation, upon request.

I. The application for approval shall be accompanied by a needs assessment, specifying the proposed geographical area to be served, estimated number of patients anticipated, and such other information as may assist the HCA in review of the application. The HCA shall take into consideration in making its decision the need for an OTP in a given geographic area and the impact on the community.

J. The HCA shall perform on-site inspection of the proposed OTP facility as part of the review and approval process.

K. In the event of change of ownership of an approved opioid treatment program, the HCA approval is not transferable; the new ownership must institute an application for approval as a new program, in accordance with these regulations.

[8.321.10.10 NMAC - N, 7/1/2024]

8.321.10.11 DENIAL OF HCA APPROVAL TO OPERATE; APPEAL OF DENIAL:

A. The HCA shall not deny approval to operate until the applicant has been notified in writing of the deficiency in the application resulting in the contemplated denial, and given opportunity to remedy the application deficiency within a specified time period.

B. The HCA shall provide a written explanation for any denied application. Denial may be appealed to the secretary of the HCA, whose decision shall be final.

C. An applicant who is denied approval may re-apply by submitting a new application 90 days or more after notification of denial.

D. Failure to complete the application form in its entirety, including requests for additional information as specified above, shall be grounds for denial of approval.

[8.321.10.11 NMAC - N, 7/1/2024]

8.321.10.12 RENEWAL OF HCA APPROVAL TO OPERATE:

A. OTP providers who wish to renew their approval shall submit an application form and requested documentation no less than 90 calendar days, and no more than 180 calendar days, before its expiration date.

B. The HCA shall consider the operating history of the OTP provider in making its determination to grant or deny an application to a previously approved provider.

[8.321.10.12 NMAC - N, 7/1/2024]

8.321.10.13 APPROVAL FOR OTPS IN EXISTENCE PRIOR TO THESE REGULATIONS: Opioid treatment programs operating in New Mexico prior to the effective date of these regulations shall be granted approval on the effective date of these regulations (“grandfathered in”).

A. The term of these initial grandfathered approvals shall be not less than 24 months nor more than 36 months, and may have staggered expiration dates to avoid simultaneous expiration.

B. “Grandfathered” opioid treatment programs shall provide the HCA with all written policies, procedures and other documentation required of new opioid treatment programs under these regulations within 45 days of the effective date of these regulations.

[8.321.10.13 NMAC - N, 7/1/2024]

8.321.10.14 RENEWAL OF GRANDFATHERED OPERATING PERMITS: Renewal of grandfathered approvals shall follow the ordinary renewal process. Such approvals shall have a term of 36 months.
[8.321.10.14 NMAC - N, 7/1/2024]

8.321.10.15 INSPECTION AUTHORITY: The HCA shall have the authority to conduct inspections of the records, policies, procedures, physical plant or any other aspect of an OTP for the purpose of determining its compliance with these regulations or the presence of any factor posing a danger to the health or welfare of its patients or the public. Failure of an OTP to cooperate with such inspection shall be grounds for immediate suspension of the approval.
[8.321.10.15 NMAC - N, 7/1/2024]

8.321.10.16 NONCOMPLIANCE WITH REGULATIONS:

A. If an inspection conducted by the HCA shows that an OTP is not in compliance with these regulations, the HCA shall deliver to the program a written notice of the deficiencies identified.

B. The program shall respond to the notification of deficiencies within 30 days of the notification. The program response shall include a corrective action plan together with timeline for implementation, or an explanation, satisfactory to the HCA, of the reason for any deviations from the requirements of these regulations.

C. Failure of the OTP to respond within 30 days of receipt of the notification of deficiencies shall be grounds for immediate suspension of the approval.
[8.321.10.16 NMAC - N, 7/1/2024]

8.321.10.17 IMMEDIATE SUSPENSION OF OTP OPERATING APPROVAL:

A. The HCA, at its discretion, may immediately suspend the approval of any OTP found to be in a substantial violation of this regulation that results in danger to the health and welfare of any patient or of the public, until such time as the violation(s) are corrected to the satisfaction of the HCA.

B. In the event of such suspension, the OPT shall immediately:
(1) cease accepting new patients; and
(2) consult with the HCA regarding the orderly transfer of patients to other OTPs and implementation of the program closure action plan required under the “preparedness planning” section of these regulations in order to minimize adverse impact on its patients; notwithstanding the suspension of the approval, the HCA may allow the OTP to conduct limited operations of its program as the HCA finds necessary to minimize adverse impact on patients.
[8.321.10.17 NMAC - N, 7/1/2024]

8.321.10.18 ADMINISTRATION: The program sponsor shall ensure that:

A. a physician licensed to practice in New Mexico is designated to serve as medical director and to have authority over all medical aspects of opioid treatment;

B. the medical director is responsible for ensuring that the OTP is in compliance with all applicable federal, state and local laws and regulations;

C. the OTP shall be open for patients every day of the week except for federal and state holidays, and Sundays, and be closed only as allowed in advance in writing by CSAT and the state methadone authority;

D. written policies and procedures are developed, implemented, complied with and maintained at the OTP and include:

(1) procedures to prevent a patient from receiving opioid dependency treatment from more than one agency or physician concurrently;

(2) procedures to meet the unique needs of diverse populations, such as pregnant women, children, individuals with communicable diseases, (e.g. hepatitis C, tuberculosis, HIV or AIDS), or individuals involved in the criminal justice system;

(3) procedures for conducting a physical examination, assessment and laboratory tests;

(4) procedures for establishing substance abuse counselor caseloads, based on the intensity and duration of counseling required by each patient;

(5) criteria for when the patient’s blood serum levels should be tested and procedures for having the test performed;

(6) procedures for performing laboratory tests, such as urine drug screens or toxicological tests, including procedures for collecting specimens for testing;

- drugs;
- (7) procedures for addressing and managing a patient’s concurrent use of alcohol or other
 - (8) procedures for providing take home medication to patients;
 - (9) procedures for conducting opioid treatment withdrawal;
 - (10) procedures for conducting an administrative withdrawal;
 - (11) procedures for voluntary discharge, including a requirement that a patient discharged voluntarily be provided or offered follow-up services, such as counseling or a referral for medical treatment;
 - (12) procedures for making temporary or permanent transfer of a patient from the OTP to another OTP;
 - (13) procedures for receiving the temporary or permanent transfer of a patient from another OTP to the OTP;
 - (14) procedures to minimize the following adverse events:
 - (a) a patient’s loss of ability to function;
 - (b) a medication error;
 - (c) harm to a patient’s family member or another individual resulting from ingesting a patient’s medication;
 - (d) sales of illegal drugs on the premises;
 - (e) diversion of a patient’s medication;
 - (f) harassment or abuse of a patient by a staff member or another patient; and
 - (g) violence on the premises;
 - (15) procedures to respond to an adverse event, including:
 - (a) a requirement that the program sponsor immediately investigate the adverse event and the surrounding circumstances;
 - (b) a requirement that the program sponsor develop and implement a plan of action to prevent a similar adverse event from occurring in the future; monitor the action taken; and take additional action, as necessary, to prevent a similar adverse event;
 - (c) a requirement that action taken under the plan of action be documented; and
 - (d) a requirement that the documentation be maintained at the agency for at least two years after the date of the adverse event;
 - (16) procedures for infection control;
 - (17) criteria for determining the amount and frequency of counseling that is provided to a patient; procedures to ensure that the facility’s physical appearance is clean and orderly;
 - (18) a process for resolution of patient complaints, including a provision that complaints which cannot be resolved through the clinic’s process may be referred by either party to the HCA:
 - (a) the complaint process shall be explained to the patient at admission;
 - (b) the patient complaint process shall be posted prominently in its waiting area or other location where it will be easily seen by patients, and include the HCA contact information for use in the event that the complaint cannot be resolved through the clinic’s process.
- E. a written quality assurance plan is developed and implemented;
 - F. all information and instructions for the patient are provided in the patient’s primary language, and, when provided in writing, are clear and easily understandable by the patient.
- [8.321.10.18 NMAC - N, 7/1/2024]

8.321.10.19 ADMISSION:

A. The program sponsor shall ensure through policy and procedure that an individual is only admitted for opioid dependency treatment after the program medical director determines and documents that:

- (1) the individual meets the definition of opioid dependence using generally accepted medical criteria such as those contained in the diagnostic and statistical manual for mental disorders (DSM-IV or subsequent editions);
- (2) the individual has received a physical examination as required by Subsection D of 8.321.10.19 NMAC below; and
- (3) if the individual is requesting maintenance treatment, the individual has been addicted for at least 12 months before the admission, unless the individual receives a waiver of this requirement from the program medical director because the individual:
 - (a) was released from a penal institution within the last six months;
 - (b) is pregnant, as confirmed by the agency physician;

(c) was treated for opioid dependence within the last 24 months; or
(d) is under the age of 18, has had two documented unsuccessful attempts at short term opioid treatment withdrawal procedures or drug-free treatment within a 12-month period, and has informed consent for treatment provided by a parent, guardian, custodian or responsible adult designated by the relevant state authority.

B. A program sponsor shall ensure that an individual requesting long-term or short-term opioid treatment withdrawal treatment who has had two or more unsuccessful opioid treatment withdrawal treatment episodes within a 12-month period is assessed by the program medical director for other forms of treatment.

C. The OTP shall ensure that each patient at the time of admission:

- (1) provides written, voluntary, program-specific informed consent to treatment;
- (2) is informed of all services that are available to the patient through the program and of all policies and procedures that impact the patient's treatment; and
- (3) is informed of the following:
 - (a) the progression of opioid dependency and the patient's apparent stage of opioid dependence;
 - (b) the goal and benefits of opioid dependency treatment;
 - (c) the signs and symptoms of overdose and when to seek emergency assistance;
 - (d) the characteristics of opioid dependency treatment medication, such as its effects and common side effects, the dangers of exceeding the prescribed dose, and potential interaction effects with other drugs, such as other non-opioid agonist treatment medications, prescription medications, and illicit drugs;
 - (e) the requirement for a staff member to report suspected or alleged abuse or neglect of a child or an incapacitated or vulnerable adult according to state law;
 - (f) the requirement for a staff member to comply with the confidentiality requirements of title 42 CFR part 2 of the code of federal regulations, incorporated by reference;
 - (g) drug screening and toxicological testing procedures;
 - (h) requirements to receive take-home medication;
 - (i) testing and treatment available for HIV and other communicable diseases, the availability of immunization for hepatitis A and B, and the availability of harm reduction services;
 - (j) availability of counseling on preventing exposure to and transmission of human immunodeficiency virus (HIV), sexually transmitted diseases, and blood-borne pathogens;
 - (k) the patient's right to file a complaint with the program for any reason, including involuntary discharge, and to have the patient's complaint handled in a fair and timely manner.

D. A program sponsor shall ensure that the program medical director or medical practitioner designee conducts a complete, fully documented physical examination of an individual who requests admission to the program before the individual receives a dose of opioid dependency treatment medication, and that the physical examination includes:

- (1) reviewing the individual's bodily systems;
- (2) obtaining a medical and family history and documentation of current information to determine chronic or acute medical conditions such as diabetes, renal diseases, hepatitis, HIV infection, tuberculosis, sexually transmitted disease, pregnancy or cardiovascular disease;
- (3) obtaining a history of behavioral health issues and treatment, including any diagnoses and medications;
- (4) initiating the following laboratory tests:
 - (a) a mantoux skin test;
 - (b) a test for syphilis;
 - (c) a laboratory drug detection test for at least opioids, methadone, amphetamines, cocaine, barbiturates, benzodiazepines and other substances as may be appropriate, based upon patient history and prevailing patterns of availability and use in the local area;
- (5) recommending additional tests based upon the individual's history and physical condition, such as:
 - (a) complete blood count;
 - (b) EKG, chest X-ray, pap smear or screening for sickle cell disease;
 - (c) a test for hepatitis B and C; or
 - (d) HIV testing.
- (6) the full medical examination including test results must be completed within 14 days of admission to the program;

(7) a patient re-admitted within three months after discharge does not require a repeat physical examination unless requested by the program medical director.

E. A program sponsor shall ensure that the results of a patient's physical examination are documented in the patient record.

F. A patient may not be enrolled in more than one OTP program except under exceptional circumstances, such as residence in one city and employment that requires extended absences from that city, which must be documented in the patient chart by the medical directors of both programs:

(1) an OTP shall make and document good faith efforts to determine that a patient seeking admission is not receiving opioid dependency treatment medication from any other source, within the bounds of all applicable patient confidentiality laws and regulations;

(2) the OTP shall confirm that the patient is not receiving treatment from any other OTP, except as provided in Subsection F of 8.321.10.19 NMAC, within a 50 mile radius of its location, by contacting any such other program, or by using the central registry described in Subsection G of 8.321.10.19 NMAC, when established.

G. The HCA may establish an internet-based central registry of all persons in New Mexico who are current patients of a New Mexico OTP program, for the purpose of creating a system that prevents patients from surreptitiously receiving medication from more than one OTP. Each OTP as a condition of approval to operate shall participate in the central registry as directed by the HCA.

[8.321.10.19 NMAC - N, 7/1/2024]

8.321.10.20 ASSESSMENT AND TREATMENT PLANS: The program sponsor shall ensure that:

A. each patient receives a comprehensive intake assessment upon admission, conducted by a qualified professional, to determine the most appropriate combination of services and treatment, which results in an intake treatment plan based on the patient's goals; the results of the comprehensive intake assessment and the intake treatment plan are documented in the patient record within 24 hours of admission;

B. an individualized treatment plan shall replace the intake treatment plan within 30 days of admission or the third face-to-face contact with the client, and be documented in the patient record;

C. all updates or revisions to any treatment plan or assessment shall be documented in the patient record within seven working days;

D. all assessments and treatment plans shall include, but not necessarily be limited to:

(1) a description of the patient's presenting issue, identification of the patient's behavioral health symptoms and the behavioral health issue or issues that require treatment;

(2) a list of the medical services, including medication, needed by the patient, as identified in the physical examination;

(3) recommendations for further assessment or examination of the patient's needs if indicated;

(4) recommendations for treatment needed by the patient, such as psychosocial counseling or mental health treatment, if indicated;

(5) recommendations for ancillary services or other services needed by the patient, if indicated;

(6) the signature, professional credential, printed name, and date signed of the staff member conducting and developing the assessment, treatment plan, update or revision;

(7) in the case of updated or revised treatment plans, a summary of the patient's progress or lack of progress toward each goal on the previous plan and the program's response; and any new goals;

(8) the signature and date signed, or documentation of the refusal to sign, of the patient or the patient's guardian or agent or, if the patient is a child, the patient's parent, guardian, or custodian;

E. treatment plans shall be reviewed at least every 90 days for the first two years of continuous treatment, and at least every 6 months thereafter, in accordance with the program's established policy and procedure, and the treatment plan modified accordingly, except initial treatment plans must be replaced with individualized plans as provided for in Subsection B of 8.321.10.20 NMAC above;

F. adequate medical, psychosocial counseling, mental health, vocational, educational and other assessment and treatment services are fully and reasonably available to patients, either by the program directly, or through formal, documented referral agreements with other providers.

[8.321.10.20 NMAC - N, 7/1/2024]

8.321.10.21 DOSAGE: The program sponsor shall ensure that:

- A. a dose of opioid dependency treatment medication is administered only after an order from the program medical director;
- B. a patient's dosage of opioid dependency treatment medication is individually determined;
- C. a dose of opioid dependency treatment medication is sufficient to produce the desired response in a patient for the desired duration of time and with consideration for patient safety;
- D. a dose of opioid dependency medication is prescribed to meet a patient's treatment needs by:
 - (1) preventing the onset of subjective or objective signs of withdrawal for 24 hours or more;
 - (2) reducing or eliminating the drug craving that is experienced by opioid dependent individuals who are not in opioid treatment;
 - (3) a patient receiving comprehensive maintenance treatment receives an initial dose of opioid dependency treatment medication based upon the program medical director or medical practitioner designee's physical examination and with consideration for local issues, such as the relative purity of available illicit opioid drugs;
 - (4) a patient receiving methadone in comprehensive maintenance treatment receives an initial dose of methadone that does not exceed 30 milligrams; and
 - (a) if the patient's withdrawal symptoms are not suppressed after the initial dose of 30 milligrams, a patient receives an additional dose that does not exceed 10 milligrams only if a program clinician documents in the patient record that 30 milligrams did not suppress the patient's withdrawal symptoms; and
 - (b) if the patient's withdrawal symptoms are not suppressed by a total dose of 40 milligrams, a patient receives an additional dose only if the program medical director or medical practitioner designee documents in the patient record that 40 milligrams did not suppress the patient's withdrawal symptoms;
 - (5) a patient receiving buprenorphine in opioid treatment withdrawal procedure or comprehensive maintenance treatment receive an initial dose according to the instructions on the opioid dependency treatment medication package insert, and any deviation from the instructions is documented by the program clinician in the patient record;
 - (6) a patient receives subsequent doses of opioid dependency treatment medication:
 - (a) based on the patient's individual needs and the results of the physical examination and assessment;
 - (b) sufficient to achieve the desired response for at least 24 hours, with consideration for day-to-day fluctuations and elimination patterns;
 - (c) that are not used to reinforce positive behavior or punish negative behavior;
 - (d) as long as the patient benefits from and desires comprehensive maintenance treatment; and
 - (e) that are adjusted if a provider changes from one type of opioid dependency treatment medication to another.

[8.321.10.21 NMAC - N, 7/1/2024]

8.321.10.22 DRUG SCREENING: The program sponsor shall ensure that:

- A. staff members have knowledge of the benefits and limitations of laboratory drug detection tests and other toxicological testing procedures;
- B. a patient in comprehensive maintenance treatment receives at least eight random laboratory drug detection tests per year; short-term opioid treatment withdrawal procedure patients receive at least one initial drug abuse test; long-term opioid treatment withdrawal procedure patients receive an initial and monthly random tests; and other toxicological tests are performed according to written orders from the program medical director or medical practitioner designee;
- C. laboratory drug detection tests and other toxicological testing specimens are collected in a manner that minimizes falsification;
- D. laboratory drug detection tests for:
 - (1) opioids;
 - (2) methadone;
 - (3) amphetamines;
 - (4) cocaine;
 - (5) barbiturates;
 - (6) benzodiazepines; and
 - (7) other substances as may be appropriate, based upon patient history and prevailing patterns of drug availability and use in the local area;

E. the results of a patient's laboratory drug detection tests or other toxicological test and any action taken relating to the results are documented in the patient record.
[8.321.10.22 NMAC - N, 7/1/2024]

8.321.10.23 TAKE-HOME MEDICATIONS:

A. The program sponsor shall ensure that policies and procedures are developed, implemented, and complied with for the use of take-home medication and include:

- (1) criteria for determining when a patient is ready to receive take-home medication;
- (2) criteria for when a patient's take-home medication is increased or decreased;
- (3) a requirement that take-home medication be dispensed according to federal and state law;
- (4) a requirement that the program medical director review a patient's take-home medication regimen at intervals of no less than 90 days and adjust the patient's dosage, as needed;
- (5) procedures for safe handling and secure storage of take-home medication in a patient's home; and

(6) criteria and duration of allowing a physician to prescribe a split medication regimen.
B. Treatment program decisions on dispensing OTP medications to patients for unsupervised use, beyond that set forth in Subsection C of 8.321.10.23 NMAC below, shall be made by the program medical director, based on the following criteria:

- (1) absence of recent abuse of drugs, including alcohol;
- (2) regularity of program attendance;
- (3) length of time in comprehensive maintenance treatment;
- (4) absence of known criminal activity;
- (5) absence of serious behavioral problems at the program;
- (6) special needs of the patient such as physical health needs;
- (7) assurance that take-home medication can be safely stored in the patient's home;
- (8) stability of the patient's home environment and social relationships;
- (9) the patient's work, school, or other daily activity schedule;
- (10) hardship experienced by the patient in traveling to and from the program; and
- (11) whether the benefit the patient would receive by decreasing the frequency of program attendance outweighs the potential risk of diversion.

C. A patient in comprehensive maintenance treatment may receive a single dose of take-home medication for each day that a provider is closed for business, including Sundays and state and federal holidays.

D. A program sponsor shall ensure that take-home medication is only issued to a patient in compliance with the following restrictions:

- (1) during the first 90 days of comprehensive maintenance treatment, take-home medication is limited to a single dose each week, in addition to any doses received as described in Subsection C of 8.321.10.23 NMAC above;
- (2) during the second 90 days of comprehensive maintenance treatment, a patient may receive a maximum of two doses of take-home medication each week in addition to any doses received as described in Subsection C of 8.321.10.23 NMAC above;
- (3) during the third 90 days of comprehensive maintenance treatment, a patient may receive a maximum of three doses of take-home medication each week in addition to any doses received as described in Subsection C of 8.321.10.23 NMAC above;
- (4) in the remaining months of the patient's first year, a patient may receive a maximum of six days of take-home medication each week;
- (5) after one year of continuous treatment, a patient may receive a maximum two week supply of take-home medication;
- (6) after two years of continuous treatment, a patient may receive a maximum of one month's supply of take-home medication but must make monthly visits;
- (7) exceptions to the above take-home medication restrictions shall be made only as provided for in center for substance abuse treatment (CSAT) regulations and as approved by the state methadone authority.

E. A program sponsor shall ensure that a patient receiving take-home medication receives:

- (1) take-home medication in a child-proof container; and
- (2) written and verbal information on the patient's responsibilities in protecting the security of take-home medication.

F. The program sponsor shall ensure that the program medical director's determination made under Subsection B of 8.321.10.23 NMAC and the reasons for the determination are documented in the patient record.

G. In accordance with DEA regulations, the program shall not use U. S. mail or express services such as fedex or united parcel service to transport, furnish or transfer opioid treatment medication to any patient, agency, facility or person.

H. The program shall establish policy and procedure to provide for the safe and secure transportation of opioid treatment medication from its facility to another agency where the program's patient temporarily resides, (e.g., from the university of New Mexico's addiction and substance abuse program (ASAP) to the turquoise lodge treatment program.).

[8.321.10.23 NMAC - N, 7/1/2024]

8.321.10.24 WITHDRAWAL TREATMENT AND MEDICALLY SUPERVISED DOSE REDUCTION:

The program sponsor shall ensure that:

A. policies and procedures are developed, implemented, and complied with for withdrawal treatment and:

- (1) are designed to promote successful withdrawal treatment;
- (2) require that dose reduction occur at a rate deemed medically appropriate by the program medical director;
- (3) require that a variety of ancillary services, such as self-help groups, be available to the patient through the program or through referral;
- (4) require that the amount of counseling available to the patient be increased before discharge; and
- (5) require that a patient be re-admitted to the program or referred to another program if relapse occurs;

B. a patient's withdrawal treatment:

- (1) for a patient involved in comprehensive maintenance treatment, is only initiated as administrative withdrawal, or when voluntarily requested by the patient and approved by a program medical director; and
- (2) is planned and supervised by the program medical director;

C. before a patient begins withdrawal treatment, whether with or against the advice of the program medical director, the patient:

- (1) is informed by the program medical director or a medical practitioner designee:
 - (a) that the patient has the right to leave opioid treatment at any time; and
 - (b) of the risks of withdrawal treatment; and
- (2) upon request, receives a schedule for withdrawal treatment that is developed by the program medical director with input from the patient;
- (3) receives a copy of the program policy regarding withdrawal of opioid medication against medical advice and a verbal explanation of that policy;

D. if a patient who is receiving withdrawal treatment, other than a patient experiencing administrative withdrawal, appears to a staff member to relapse, the patient is permitted to begin comprehensive maintenance treatment, if otherwise eligible;

E. if a patient who has completed withdrawal treatment within the past 30 days appears to a staff member to relapse, the patient may be re-admitted without a physical examination or assessment with the consent of the program medical director;

F. a patient experiencing administrative withdrawal is referred or transferred to any program that is capable of or more suitable for meeting the patient's needs, and the referral or transfer is documented in the patient record;

G. the following information is documented in the patient record:

- (1) the reason that the patient sought withdrawal treatment or was placed on administrative withdrawal; and
- (2) the information and assistance provided to the patient in medical withdrawal or administrative withdrawal.

[8.321.10.24 NMAC - N, 7/1/2024]

8.321.10.25 COUNSELING AND MEDICAL SERVICES: The program sponsor shall ensure that:

- A. substance abuse counseling and behavioral health treatment planning is provided by a practitioner licensed in the state of New Mexico to provide behavioral health treatment services to each patient based upon the patient's individual needs, treatment plan and stage of readiness to change behavior;
- B. the program has substance abuse counselors in a number sufficient:
 - (1) to ensure that patients have access to counselors;
 - (2) to provide the treatment in patients' treatment plans; and
 - (3) to provide unscheduled treatment or counseling to patients;
- C. each patient seeking opioid treatment is screened for the presence of a co-occurring mental health disorder by means approved by the HCA, and if indicated, referred for assessment and possible treatment if the program is not able to provide mental health services; an OTP referring a patient to another provider for mental health assessment shall make and document its good faith efforts to follow up with that provider on the results of the referral, and to co-ordinate its treatment with any subsequent treatment by other providers, within the limits of all applicable laws and regulations pertaining to release of patient information and confidentiality;
- D. a program sponsor shall ensure that a patient is offered medical, psychiatric and psychological services, if needed, either at its program or through referral:
 - (1) if a patient receives medical, psychiatric or psychological services, from provider(s) not affiliated with the program, program staff members shall make a good faith effort to communicate and coordinate its treatment services with such provider, including monitoring and evaluating interactions between the patient's opioid treatment medication and medications used to treat the patient's mental disorder, if any;
 - (2) the OTP shall have a procedure to ensure that such good faith coordination efforts are made, in accordance with all state and federal laws and regulations for the release of patient records or information;
- E. a program sponsor shall make good faith efforts to establish effective working relationships with the relevant behavioral health treatment providers in its patient catchment area in order to facilitate patient access to the services available through those providers;
- F. a program sponsor shall ensure that a patient has access to a self-help group or support group, such as narcotics anonymous, either at the agency or through referral to a community group;
- G. treatment services are provided by appropriately licensed staff.

[8.321.10.25 NMAC - N, 7/1/2024]

8.321.10.26 DIVERSE POPULATIONS:

- A. The program sponsor shall ensure that:
 - (1) opioid treatment is provided regardless of race, ethnicity, gender, age, or sexual orientation;
 - (2) the program facility is compliant with the Americans with Disabilities Act (ADA);
 - (3) opioid treatment is provided with consideration for a patient's individual needs, cultural background, and values;
 - (4) provider staff members are culturally competent;
 - (5) unbiased language is used in the provider's print materials, electronic media, and other training or educational materials;
 - (6) HIV testing and education are available to patients either at the provider or through referral;
 - (7) a patient who is HIV-positive and who requests treatment for HIV or AIDS:
 - (a) is offered treatment for HIV or AIDS either at the provider or through referral;
 - (b) has access to an HIV- or AIDS-related peer group or support group and to social services either at the provider or through referral to a community group; and
 - (8) for patients with a communicable disease such as HIV, AIDS, or hepatitis C, the provider has a procedure for transferring a patient's opioid treatment to a non-program medical practitioner treating the patient for the communicable disease when it becomes the patient's primary health concern;
 - (9) an individual who requires administration of opioid treatment medication only for relief of chronic pain is:
 - (a) identified during the physical examination or assessment;
 - (b) not admitted for opioid medication treatment; and
 - (c) referred for medical services; and

(d) for a patient with a chronic pain disorder who is also physically dependent the OTP makes a good faith effort to coordinate treatment and services with the medical practitioner treating the patient for pain management.

B. A program sponsor shall ensure that a policy and procedure is developed, implemented, and complied with for the treatment of female patients, to include requirements that:

- (1) pregnancy tests shall be administered and reviewed for all women of childbearing age prior to initiating a opioid treatment withdrawal procedure or medically supervised withdrawal;
- (2) appropriate staff members be educated in the unique needs of female patients; and
- (3) each female patient be informed about or referred to an appropriate support group, at the provider or in the community.

C. The program sponsor shall ensure that a policy and procedure is developed, implemented, and complied with for the treatment of pregnant patients, to include:

- (1) a requirement that priority be given to pregnant individuals seeking opioid treatment;
- (2) a requirement that the reasons for a pregnant individual's denial of admission to a provider be documented;
- (3) a requirement that a pregnant patient be offered prenatal care to include fetal assessment either at the program or through referral to a non-program medical practitioner;
- (4) a requirement that the program communicate with any non-program medical practitioners who are providing prenatal care to a pregnant patient, to coordinate opioid treatment and prenatal care, in accordance with all state and federal laws and regulations for the release of patient records or information; and document all such communications in the patient records;
- (5) a requirement that a staff member make a good faith effort to educate a pregnant patient who refuses prenatal care services on the importance of prenatal care;
- (6) a requirement that a staff member obtain a written refusal of prenatal care services that are offered either directly by the program or by referral, from a pregnant patient who refuses such services or referral to such services;
- (7) a requirement that a pregnant patient receiving comprehensive maintenance treatment before pregnancy be maintained at the pre-pregnancy dose of opioid medication, if effective;
- (8) a requirement that a pregnant patient be monitored by the program medical director to determine if pregnancy-induced changes in the elimination or metabolism of opioid treatment medication may necessitate an increased or split dose;
- (9) a requirement that withdrawal treatment:
 - (a) is strongly advised against before 14 weeks or after 32 weeks of gestation;
 - (b) the program medical director reviews the case before initiating withdrawal and monitor it until withdrawal is complete;
- (10) a requirement that a pregnant patient discharged from the program be referred to a non-program medical practitioner and that a staff member document the name, address, and telephone number of the medical practitioner in the patient record.

D. A program sponsor who is officially notified by a correctional facility that a patient is in their custody shall ensure that the program:

- (1) makes efforts to obtain approval from the criminal justice system for the continued treatment of the patient by the program while the patient is incarcerated; and
- (2) if approval is obtained the program continues to treat the patient while the patient is incarcerated, within the limits of the program's ability to provide such treatment to the incarcerated patient; and
- (3) if approval is not obtained, the program's attempts to obtain approval are documented in the patient's record.

[8.321.10.26 NMAC - N, 7/1/2024]

8.321.10.27 PREPAREDNESS PLANNING:

A. The program sponsor shall ensure that the program has:

- (1) a written plan to ensure uninterrupted dispensing of medication in the event of dispensing staff turnover; and
 - (2) a written agreement with at least one other provider for the provision of opioid treatment medication to program patients in the event that the program is unable to provide services;
 - (3) 24-hour telephone answering service or other method to reach the program at all times;
- and

(4) a list of all patients and the patients' dosage requirements available and accessible to program on-call staff members.

B. A program sponsor shall ensure that a written plan is developed and implemented for continuity of patient services if the program is voluntarily or involuntarily closed. Such planning shall include a disaster plan that addresses unforeseeable circumstances such as natural disaster or involuntary closure from any cause, and:

(1) includes steps for the orderly transfer of patients to other programs, individuals, or entities that provide opioid treatment;

(2) includes procedures for securing, maintaining, and transferring patient records according to federal and state law; and

(3) the plan is reviewed and updated, as appropriate, at least once every 12 months.

[8.321.10.27 NMAC - N, 7/1/2024]

8.321.10.28 PATIENT RECORDS:

A. The OTP program shall establish and maintain a recordkeeping system that is adequate to document and monitor patient care. The system shall comply with all federal and state requirements relevant to OTPs and to confidentiality of patient records.

B. Each patient record shall include:

(1) the results of the physical examination;

(2) the results of all assessments;

(3) the treatment plan and all updates or revisions;

(4) the results of laboratory tests and a description of any action taken based upon the results;

(5) documentation of the patient's current dose and dosage history;

(6) documentation of counseling provided to the patient;

(7) dates and results of meetings or conferences regarding the patient's treatment;

(8) documentation of the process used and factors considered in making decisions that impact a patient's treatment, such as whether to allow take-home medication and the frequency of laboratory drug detection tests; and

(9) documentation of the agency's efforts to learn of multiple opioid treatment program enrollment;

(10) documentation that the patient has received and understood information regarding the harmful effects of diversion of opioid treatment medication.

[8.321.10.28 NMAC - N, 7/1/2024]

8.321.10.29 COMMUNITY RELATIONS:

A. A program sponsor shall ensure that policies and procedures are developed, implemented, and complied with to educate and promote understanding in the community about opioid treatment and include:

(1) a mechanism for eliciting input from the community about the provider's impact on the community;

(2) a requirement that the program sponsor or designee interface with community leaders to foster positive relations;

(3) a requirement that the program sponsor or designee establish a liaison with community representatives to share information about the program;

(4) a requirement that the agency have information on substance abuse and related health and social issues available to the public;

(5) a mechanism for addressing and resolving community concerns about opioid treatment or the program's presence in the community; and

(6) a mechanism that addresses getting approval for continued treatment in treatment or care facilities and correctional facilities.

B. A program sponsor shall ensure that community relations efforts are documented and are evaluated at least once every six months.

C. A program sponsor shall comply with all valid county and municipal ordinances regarding community relations, and the HCA may consult with local governmental entities when enforcing this section.

[8.321.10.29 NMAC - N, 7/1/2024]

8.321.10.30 DIVERSION CONTROL: The program sponsor shall ensure that a written plan is developed, implemented, and complied with to prevent diversion of opioid treatment medication from its intended purpose to

illicit purposes. This plan shall assign specific responsibility to licensed and administrative staff for carrying out the diversion control measures and functions described in the plan. The program shall develop and implement a policy and procedure providing for the reporting of theft or diversion of medication to the relevant regulatory agencies, and law enforcement authorities.

[8.321.10.30 NMAC - N, 7/1/2024]

HISTORY OF 8.321.10 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 321 SPECIALIZED BEHAVIORAL HEALTH SERVICES
PART 11 CRISIS TRIAGE CENTERS

8.321.11.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.321.11.1 NMAC - N, 7/1/2024]

8.321.11.2 SCOPE: These regulations apply to public, profit and not for profit crisis triage centers providing the services specified in these regulations. Any crisis triage center providing services specified in these regulations must be licensed under these regulations.
[8.321.11.2 NMAC - N, 7/1/2024]

8.321.11.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6, NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3 and Section 24-1-5 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.
[8.321.11.3 NMAC - N, 7/1/2024]

8.321.11.4 DURATION: Permanent.
[8.321.11.4 NMAC - N, 7/1/2024]

8.321.11.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.321.11.5 NMAC - N, 7/1/2024]

8.321.11.6 OBJECTIVE:

- A.** To establish minimum standards for licensing crisis triage centers that provide quality crisis stabilization services outside of a hospital setting.
 - B.** To ensure the provision of quality services which maintain or improve the health and quality of life to the clients.
 - C.** To monitor compliance under these regulations through surveys and to identify any facility areas which could be dangerous or harmful.
- [8.321.11.6 NMAC - N, 7/1/2024]

8.321.11.7 DEFINITIONS:

- A. Definitions beginning with “A”:**
 - (1)** **“Administrator”** means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the crisis triage center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the CTC and all of the services provided at the CTC including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.
 - (2)** **“Advanced practice registered nurse”** means a registered nurse that includes a certified nurse practitioner, or a clinical nurse specialist as defined and licensed under the Nursing Practice Act, as amended, and related regulations, and is currently in good standing.
 - (3)** **“Applicant”** means the individual or legal entity that applies for a CTC license to provide services in a particular facility. If the applicant is a legal entity, the individual signing the license application on behalf of the legal entity must have written legal authority from the legal entity to act on its behalf and execute the application. The license applicant must be the legal owner of the entity providing services, but not necessarily the facility.
- B. Definitions beginning with “B”:** **“Basic life support” (BLS)** means training and current certification in adult cardiopulmonary resuscitation equivalent to American heart association class C basic life support and in emergency treatment of a victim of cardiac or respiratory arrest through cardiopulmonary resuscitation and emergency cardiac care.
- C. Definitions beginning with “C”:**
 - (1)** **“Caregivers criminal history screen”** means pursuant to the criminal history screening for Caregivers Act, Section 29-17-1 through Section 29-17-5 NMSA 1978, the process for health facilities and

medicaid home and community-based waiver providers to complete a caregiver criminal history screening for all caregivers no later than 20 calendar days after the employment hire date. The screening or background check includes the submission of fingerprints required for obtaining state and federal criminal history used to conduct the fitness determination. The caregiver's criminal history screening program receives and processes background check applications for criminal history screenings from care providers in the state of New Mexico. Caregivers may be prohibited from employment if the caregiver has a disqualifying condition.

(2) **“Chemical restraint”** means a drug or medication when it is used as a restriction to manage a client's behavior or restrict a client's freedom of movement and is not a standard treatment or dosage for a client's condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

(3) **“CLIA”** means clinical laboratory improvement amendments of 1988 as amended.

(4) **“Client”** means any person who receives care at a crisis triage center.

(5) **“Compliance”** means the CTC's adherence to these regulations, as well as all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the CTC license.

(6) **“Crisis stabilization services”** means behavioral health services that are provided to help the client return his baseline level of functioning before the crisis.

(7) **“Crisis triage center”** means a health facility that:

(a) is licensed by the health care authority; and

(b) provides stabilization of behavioral health crises and may include residential and nonresidential stabilization.

(8) **“CYFD”** means the New Mexico children youth and families department.

(9) **“CYFD criminal records and background checks”** means pursuant to the Criminal Offender Employment Act, Section 28-2-1 to Section 28-2-6 NMSA 1978, the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to Section 32A-15-4 NMSA 1978, amended, and 8.8.3 NMAC, the process of conducting a nationwide criminal history records check, background check and employment history verification on all operators, staff and employees and prospective operators, staff and employees of treatment facilities and programs with the objective of protecting children/youth and promoting the children's/youth's safety and welfare while receiving service from the facilities and programs. The process shall include submission of electronic fingerprints for those individuals to the department of public safety and the federal bureau of investigation for the purpose of conducting a criminal history and background check; identification of information in applicants' background bearing on whether they are eligible to provide services; a screening of CYFD's information databases in New Mexico and in each state where the applicant resided during the preceding five years; and any other reasonably reliable information about an applicant in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply.

D. Definitions beginning with “D”:

(1) **“Deficiency”** means a violation of or failure to comply with any provision(s) of these regulations.

E. Definitions beginning with “E”: **“Employee”** means any person who works at the CTC and is a direct hire of the owner entity or management company, if applicable.

F. Definitions beginning with “F”: **“Facility”** means the physical premises, building(s) and equipment where the crisis triage center services are provided, whether owned or leased and which is licensed pursuant to these regulations.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”:

(1) **“HCA”** means the New Mexico health care authority.

(2) **“High risk behavior”** means behaviors that place clients, staff or visitors' physical and mental health and safety at risk.

I. Definitions beginning with “I”:

(1) **“Incident”** means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(2) **“Incident management system”** means the written policies and procedures adopted or developed by the CTC for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(3) **“Incident report form”** means the reporting format issued by the authority for the reporting of incidents or complaints.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“Level III.7-D: Medically monitored inpatient detoxification”** means the types of detoxification services described by American Society of Addiction Medicine (ASAM) in its *Patient Placement Criteria, Second Edition, Revised* (PPC-2R) Level III &-D includes 24-hour medically supervised detoxification services requiring 24-hour nursing care and physician visits as necessary, unlikely to complete detox, without medical, nursing monitoring and more intensive detoxification services.

(2) **“Licensee”** means the person(s) or legal entity that operates the CTC and in whose name the CTC license has been issued and who is legally responsible for compliance with these regulations.

(3) **“Licensing authority”** means the New Mexico health care authority.

(4) **“Licensed mental health professional”** means a psychologist, social worker, physician, psychiatrist, physician assistant, registered nurse, practical nurse, advanced practice registered nurse, each shall have behavioral health training and shall be licensed in the state of New Mexico.

M. Definitions beginning with “M”: “Management company” means the legal entity that manages the CTC program, if different from the legal owner of the facility.

N. Definitions beginning with “N”:

(1) **“NFPA”** means the national fire protection association which sets codes and standards for fire and life safety. NFPA 11 and related standards, current edition as required by the authority.

(2) **“NMSA”** means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.

O. Definitions beginning with “O”:

(1) **“Onsite medical professional”** means in this regulation a registered nurse, emergency medical service provider, emergency medical technician, licensed practical nurse, medical assistant, mental health technician, and certified nurse assistant.

(2) **“Outpatient services”** means immediate crisis stabilization services provided to clients who are not admitted to the residential setting. Outpatient crisis stabilization services are not ongoing behavioral health treatment services.

P. Definitions beginning with “P”:

(1) **“Physical restraint”** means the use of physical force, consistent with state and federal laws and regulations, without the use of any device or material that restricts the free movement of all or a portion of a body, but does not include: briefly holding a client in order to calm or comfort the client; holding a client's hand or arm to escort the client safely from one area to another; or intervening in a physical fight.

(2) **“Physician”** means a licensed individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Section 61-6-1 to Section 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Section 61-10-1 to Section 61-10-22 NMSA 1978, as amended, and related regulations.

(3) **“Physician's assistant”** means an individual, currently in good standing, who is licensed and authorized to provide services to patients under the supervision and direction of a licensed physician under the Physician Assistant Act, Section 61-6-7 to Section 61-6-10 NMSA 1978, as amended and related regulations, or is authorized and licensed to provide services to patients under the supervision and direction of a licensed osteopathic physician under the Osteopathic Physicians' Assistants Act, Section 61-10A-1 to Section 61-10-7 NMSA 1978 as amended, and related regulations.

(4) **“Plan of correction”** (POC) means the plan submitted by the licensee or its representative(s) addressing how and when deficiencies identified through a survey or investigation will be corrected. A plan of correction is a public record once it has been approved by the regulatory authority and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a CTC license, including to prove licensee compliance violations or failures.

(5) **“Policy”** means a written statement that guides and determines present and future CTC decisions and actions.

(6) **“Premises”** means all of the CTC including buildings, grounds and equipment.

(7) **“Primary source verification”** means the act of obtaining credentials directly from the original or primary source(s).

(8) **“Procedure”** means the action(s) that must be taken in order to implement a written policy.

Q. Definitions beginning with “Q”:

(1) **“Quality assurance”** means the CTC’s on-going comprehensive self-assessment of compliance with these regulations and other applicable statutes and regulations.

(2) **“Quality committee”** means a committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, and psychiatrist. Other committee members may be specified by rules governing payor requirements. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients.

(3) **“Quality improvement system”** means systematic and continuous actions that lead to measurable improvement in services and focus on reduction and stabilization of crises for clients.

R. Definitions beginning with “R”:

(1) **“Registered nurse”** means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Section 61-3-1 to Section 61-3-30 NMSA 1978, as amended, and related regulations.

(2) **“Residential services”** means any crisis stabilization services provided to a client admitted to the residential setting.

(3) **“Restraint clinician”** means a New Mexico licensed medical doctor, doctor of osteopathy, advanced practice registered nurse, clinical nurse specialist, physician assistant or doctoral level psychologist (Psy.D., Ph.D., or E.D.), who is trained in the use of emergency safety interventions.

S. Definitions beginning with “S”:

(1) **“Sanitize clothes”** means the use of water at a temperature of 212 degrees or use of a disinfectant agent to wash clothes.

(2) **“Scope of practice”** means the procedures, actions, and processes that a healthcare practitioner is permitted to undertake under the terms of their professional license. The scope of practice is limited to that which the applicable law allows for specific education, training, experience and demonstrated competency.

(3) **“Seclusion”** means the involuntary confinement of a client alone in a room where the client is physically prevented from leaving.

(4) **“Short-term residential stay”** means the limit of a client’s stay is eight days for the residential setting.

(5) **“Staff”** means any person who works at the CTC, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the CTC.

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

U. Definitions beginning with “U”: **“U/L approved”** means approved for safety by the national underwriter’s laboratory.

V. Definitions beginning with “V”:

(1) **“Variance”** means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a period that expires upon remodel of the CTC or change of ownership, providing the variance does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A variance can be renewed upon approval of the licensing authority. A variance may be revoked at the discretion of the licensing authority due to changes in state or federal regulations and statutes, or change of circumstances that may jeopardize the health, safety or welfare of clients.

(2) **“Violation”** means all actions or procedures by the CTC or licensee that are not in compliance with these regulations and all other applicable state and federal statutes and regulations.

W. Definitions beginning with “W”:

(1) **“Waiver”** means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a limited and specified time period not to exceed the duration of the license, providing the waiver does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A waiver can be renewed on an annual basis upon approval of the licensing authority. A waiver may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of clients.

(2) **“Withdrawal management”** means the immediate psychological stabilization, diagnosis and treatment of a client who is intoxicated, incapacitated, or experiencing withdrawal of alcohol or drugs.

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

Y. Definitions beginning with “Y”:

(1) **“Youth”** means residents 14 years of age and older up to age 18.

(2) “Youth staff” means a person who has contact with youth in a licensed facility and includes the owner, operator or director of a program, volunteers, full-time, part-time, and contract employees.

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

[8.321.11.7 NMAC - N, 7/1/2024]

8.321.11.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory compliance. “May” means permissive compliance. The words “adequate”, “proper”, and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide services to the public in facilities.

[8.321.11.8 NMAC - N, 7/1/2024]

8.321.11.9 SCOPE OF SERVICES:

A. General scope of services: These regulations apply to crisis triage centers (CTC) which are health facilities offering youth and adult outpatient and residential care services. A CTC provides stabilization of behavioral health crises as outpatient stabilization or short-term residential stabilization in a residential rather than institutional setting, which may provide an alternative to hospitalization or incarceration. The CTC services may vary in array of services offered to meet the specific needs of different communities in New Mexico. A CTC may provide limited detoxification services but is differentiated from a detoxification center in that it does treat individuals who require treatment beyond Level III.7-D: Medically Monitored Inpatient Detoxification. The CTC provides emergency behavioral health triage and evaluation. The CTC may serve individuals 14 years of age or older who meet admission criteria. The CTC shall offer services to manage individuals at high risk of suicide or intentional self-harm. The CTC shall not refuse service to any individual who meets criteria for services.

B. Type of services:

(1) a CTC structured for less than 24-hour stays providing only outpatient withdrawal management or other stabilization services;

(2) a CTC providing outpatient and residential crisis stabilization services; and

(3) a CTC providing residential crisis stabilization services.

C. Limitations on scope of services:

(1) the CTC may accept voluntary admissions, individuals who are voluntarily seeking treatment, involuntary admissions and individuals who are not voluntarily seeking treatment;

(2) the CTC shall not provide detoxification services beyond Level III.7-D: Medically Monitored Inpatient Detoxification services;

(3) the CTC shall not provide medical care not related to crisis triage intervention services beyond basic medical care of first aid and CPR;

(4) the CTC shall not provide residential services in excess of 14 calendar days, unless an involuntary admission is accepted and the CTC shall comply with all hearing and treatment provisions of Section 43-1-1 et al. NMSA;

(5) the CTC shall not provide ongoing outpatient behavioral health treatment;

(6) the CTC shall not exceed the capacity for which the CTC is licensed;

(7) a CTC with both adult and youth occupants must locate youth rooms and restrooms in a unit or wing that is physically separated from the adult facilities;

(8) A CTC shall not administer emergency psychotropic medications as described in Subsection M of Section 43-1-15 NMSA 1978 if admitting only voluntary admissions. Any use of emergency psychotropic medications for involuntary admissions shall only be done in accordance with Subsection M of Section 43-1-15 NMSA 1978.

D. License required:

(1) a CTC shall not be operated without a license issued by the authority;

(2) any facility providing the services described in these regulations on the effective date of these regulations, shall apply for a CTC license within 180 days;

(3) a CTC licensed under these regulations shall not assert, represent, offer, provide or imply that the CTC is or may render care or services other than the services it is permitted to render under these regulations and within the scope of all applicable professional license(s);

(4) if an unlicensed CTC is found to be providing services for which a license is required under these regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or

welfare. The unlicensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.
[8.321.11.9 NMAC - N, 7/1/2024]

8.321.11.10 INITIAL LICENSE PROCEDURES: These regulations should be thoroughly understood and used by the applicant, when applying for the initial CTC license. The applicant for an initial CTC license under these regulations must follow these procedures when applying for a license.

A. Notification and letter of intent: The owner shall advise the licensing authority of its intent to open a crisis triage center pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the owner and the CTC and at a minimum, include the following:

(1) the name of CTC;
(2) the name of the legal owner and licensee and the type of legal entity under which the CTC shall be owned;

- (3) the name of the management company, if any;
- (4) the type of facility license requested;
- (5) the name and resume of the proposed administrator;
- (6) the anticipated number of residential and non-residential clients to be served;
- (7) the intended population and age range of the clients to be served;
- (8) the number of residential beds in the proposed CTC;
- (9) the physical address of CTC including building name or suite number;
- (10) the mailing address, if different from physical address;
- (11) the applicant's contact name(s), address, e-mail address, and telephone number(s);
- (12) the anticipated payers and sources of reimbursement; and
- (13) a list of all services to be provided at the CTC location which is requesting the license.

B. License application and fees: After review by the authority of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall be required to complete a license application on a form provided by the authority. Prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the authority, the applicant must submit to the licensing authority an application form provided by the authority, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. The licensing authority will provide current fee schedules. The authority reserves the right to require additional documentation to verify the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees must be paid in the form of a certified check, money order, personal, or business check, or electronic transfer (if available), made payable to the state of New Mexico, and are non-refundable. The applicant must also attach to the application and submit to the authority, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning approvals by the applicable building authority.

C. Building plans: The CTC building plans must be of professional quality, prepared and stamped by an Architect licensed by the state of New Mexico pursuant to Subsection B of Section 61-15-9 NMSA 1978. One copy of the building plans must be submitted, printed on substantial paper measuring at least 24 inches by 36 inches and drawn to an accurate scale of at least one-eighth inch to 1 foot. The building plans for renovated or building additions to an existing building must include sufficient information to clearly distinguish between new and existing construction, for the authority to make a compliance determination. The following plans are the minimum required for all facilities in new and /or renovated construction:

(1) **Site plan:** showing the location of the building on a site/plot plan to determine surrounding conditions, driveways, all walks and steps, ramps, parking areas, handicapped and emergency vehicle spaces, accessible route to the main entrance, secure yard for clients, any permanent structures, including notes on construction materials used.

(2) **Life safety and code compliance plan:** noting applicable code requirements and compliance data, locations of rated fire walls, smoke partitions (if any), exit paths & distances, fire extinguishers locations.

(3) **Floor plans:** showing location use of each room, (e.g., waiting room, examination room, office, client (resident) rooms, kitchen, common elements, door locations (swings), window locations, restrooms,

locations of all restrooms, plumbing fixtures (sinks, toilets, tubs-showers; location a of all level changes within and outside the building (e.g. steps or ramps, etc.); and all other pertinent explanatory information addressing the requirements in applicable regulations.

(4) **Dimensioned floor plan:** showing all exterior and interior dimensions of all rooms, spaces, and corridors, etc.

(5) **Exterior building elevations:** noting all building heights, locations of exterior doors, and any operable and fixed windows (sill heights).

(6) **Building and wall sections:** showing at least one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, walls, and ceiling/roof construction.

(7) **Schedule sheets:** room finish: noting all room finishes, (e.g., carpet, tile, gypsum board with paint, etc); door schedule; noting door sizes/thickness, door types & ratings; window schedule, noting sizes, type and operation; skylight schedule, noting size, type.

(8) **Special systems plan:** location of fire extinguishers, heat and smoke detectors, nurse call systems, and operational elements of alarm system.

(9) **Mechanical plans:** noting location of heating units, furnaces, hot water heaters, and fuel type and source; all heating, ventilating and air conditioning/cooling systems including locations of fire dampers.

(10) **Plumbing plan:** noting all plumbing fixture locations, fixture types.

(11) **Electrical plan:** noting power and lighting layouts, exit lighting, emergency lighting fixtures, emergency power systems (if any), electrical panel information.

(12) **Other plans:** As necessary (ie; phasing plan) to describe compliance with the other requirements in applicable regulations.

D. New construction: Building plans must be submitted, and will be reviewed by the authority for compliance with these licensing regulations, and applicable building and fire safety codes. If the authority approves the CTC's building plans and local building officials have issued a construction permit, construction may begin. This provision is an ongoing requirement and applies to, and includes all construction at the CTC, which occurs before and after issuance of the initial license. This provision does not generally apply to maintenance and repair. However, if the maintenance or repair impacts or alters any of the CTC requirements under these regulations, the applicant or licensee must notify the authority and verify ongoing compliance with these regulations. The authority shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and proposed construction, the applicant or licensee must submit for building plan approval by the authority before construction begins.

E. Existing or renovated construction: If the proposed CTC includes any remodeling, renovations or additions or new construction of any type, the building plans and specifications covering all portions of the proposed work delineating all existing construction and all new or proposed construction shall be and submitted to the authority for review and approval. Submit phasing plan if project construction will be phased. New facilities proposed for licensure in existing buildings must comply with all requirements building requirements as if it were completely new construction. If the CTC is located within another licensed facility such as a hospital, the life safety inspection will still be required for compliance with 8.321.11 NMAC requirements. For residential CTC programs, the bed count must be separate from the licensed bed count of the original licensed facility. If a CTC is a separate building associated with an existing license, requirements of this regulation apply to that building.

F. Completed construction: All new or renovated construction completed shall comply with the plans and specifications approved by the authority in the plan review process and prior to construction, these rules, and all other applicable rules and codes; and any of the authority's approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities having jurisdiction. Applicant must receive initial life safety code approval and a temporary license from this authority prior to accepting or admitting any clients into the CTC.

G. Additional documents required for license application: The authority reserves the right to require an applicant to provide all additional documents, as part of its license application, in order for the authority to determine whether the applicant and the CTC are in full compliance with these regulations, as well as all other applicable statutes and regulations. At minimum, additional documents required to be provided as part of the initial licensure process prior to the issuance of a temporary license, include, but are not limited to:

(1) **Building approvals:** The applicant must submit all building approvals required for the CTC to operate in the jurisdiction in which it is located, including but not limited to:

(a) written zoning approval, building permit final approval, or certificates of

occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and

(b) written fire marshal approvals from the fire safety authority having jurisdiction.

(2) **Environment department approvals:** If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:

- (a) private water supply;
- (b) private waste or sewage disposal;
- (c) kitchen/food service;
- (d) x-ray equipment (if any).

(3) **Board of pharmacy approvals:** A copy of CTC's drug permit issued by the state board of pharmacy must be provided.

(4) **Program description:** The applicant must submit with its license application a program outlines consistent with these regulations which includes at a minimum, the following information:

(a) a list and description of all services and the scope of those services to be provided by the proposed CTC;

(b) projected number of clients to be served monthly, both residential and non-residential;

(c) a list of staffing and personnel requirements and duties to be performed;

(d) proposed staffing plans for both residential and non-residential programs;

(e) photocopies of written operating agreements with the following: treatment facilities for behavioral health and physical health care needs that are beyond the scope of the CTC;

(f) admission and discharge criteria; and

(g) an organizational structure diagram or chart including the administrator, governing body, clinical director, director of nursing, direct care staff, and other staff.

(5) **Policies and procedures:** The applicant must submit with its license application a copy of the CTC's policies and procedures with a crosswalk to these regulations to show compliance.

[8.321.11.10 NMAC - N, 7/1/2024]

8.321.11.11 LICENSE TYPES, VARIANCES & WAIVERS:

A. Temporary license:

(1) The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(2) The licensing authority may, at its sole discretion, issue a temporary license before clients are admitted, provided that the CTC has:

(a) submitted a license application, with required supporting documents;

(b) has met all of the applicable life safety code requirements; and

(c) its program, policies, and procedures have been reviewed and approved for compliance with these regulations.

(3) a temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(a) a period, not to exceed 120 days, during which the CTC must correct all specified deficiencies;

(b) no more than two consecutive temporary licenses shall be issued in accordance with applicable statutes and regulations;

(c) a finding that the applicant is qualified and in full compliance with life safety code requirements;

(d) the CTC being allowed to accept clients and provide care services, subject to any requirements and restrictions attached to the temporary license;

(e) a statement from the applicant that they are qualified and in full compliance with these regulations and the owner has requested an initial health survey from the licensing authority.

B. Annual license: An annual license is issued for a one-year period to a CTC which has met all requirements of these regulations. If a temporary license is issued, once the authority has issued a written determination of full compliance with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator or when there is a change of name for the CTC, but an amended license shall only

be issued if the administrator is not an owner. If the administrator is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

- (1) be on a form, or filed electronically if available, as required by the licensing authority;
- (2) be accompanied by the required fee for the amended license; and
- (3) be submitted within 10 working days of the change.

D. Variances and waivers: At the licensing authority's sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the CTC's clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations. Variances and waivers are non-transferrable. Waivers and variances may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of clients.

(1) all variances shall be in writing, attached to the license and shall expire upon remodel of the CTC or change of ownership;

(2) all waivers shall be in writing, attached to the license and shall be limited to the term of the license. Upon renewal of a license, waivers shall only be extended or continued at the sole discretion of the licensing authority.

[8.321.11.11 NMAC - N, 7/1/2024]

8.321.11.12 LICENSE RENEWAL:

A. Licensee must submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the CTC complies with all applicable state and federal regulations in force at the time of renewal and that there has been no new construction or remodeling or additions, which differ from the plans provided and reviewed with the prior license application. If there has been any construction, remodeling, or additions to the CTC since issuance of the last license, and the construction has not been previously approved by the authority, the license renewal applicant shall be required to comply with all construction documentation requirements under these regulations when applying for the license renewal. The authority reserves the right to require that a renewal applicant provide all additional documents, including any necessary proof of current compliance, as part of its license renewal application for the authority to determine whether the applicant and the CTC are in full compliance with these regulations.

B. Upon receipt of the renewal application and the required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the CTC is in substantial compliance with these regulations and all other applicable state and federal regulations.

C. If the existing license expires and the licensee has failed to submit a renewal application, the authority may charge the applicant a civil monetary penalty of \$100 for each day, in accordance with Section 24-1-5 NMSA 1978, as amended, that the CTC continues to operate without a license providing that during such time the CTC remains in full compliance with these regulations. If the CTC does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the CTC shall cease operations until it obtains a new license through the initial licensure procedures, and shall still be required to pay civil monetary penalties. Under Section 24-1-5 NMSA 1978, as amended, no crisis triage center shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be responsible to notify the CTC of the renewal date or the expiration date of the CTC's license.

E. After issuance of the initial license, if there has been no construction, remodeling or additions to the CTC and the CTC is in substantially the same condition as the plans on file with the authority, and the CTC is in substantial compliance with these regulations and provides an application and fee the CTC may be issued a license renewal. The authority, at its sole discretion, reserves the right to require additional documentation of compliance with these regulations and all applicable state and federal statutes and regulations by the licensee at the time of license renewal.

[8.321.11.12 NMAC - N, 7/1/2024]

8.321.11.13 POSTING OF LICENSE: The CTC's official license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

[8.321.11.13 NMAC - N, 7/1/2024]

8.321.11.14 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The authority shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

- A. any ownership interest in the CTC changes;
- B. the CTC changes location;
- C. the licensee of the CTC changes; or
- D. the CTC discontinues operation.

[8.321.11.14 NMAC - N, 7/1/2024]

8.321.11.15 CHANGE OF OWNERSHIP: When a change of ownership occurs, an initial license application must be submitted by the new owner per the requirements in this section. The new owner must demonstrate compliance with these regulations the instant it takes responsibility of the CTC. The licensing authority may, at its sole discretion, approve a change of ownership. In addition to the requirements in Section 8.321.11.10 NMAC - application for licensure, the new owner must submit the following at least 60 days prior to completion of the change of ownership:

- A. An explanation of terms of the change of ownership and the date the ownership will change.
- B. Documents evidencing the change of ownership such as proof of sale or donation, lease of any portion of the CTC or other relevant documents.
- C. Building plans of the current structure with any modifications known to the current or new owner.
- D. A continuity of care transition plan that describes how the new owner will maintain the provision of services and continuity of care, keep residential clients safe and meet the requirements of these regulations at the instant it takes responsibility of the CTC. The plan must state the actions that will occur, the party responsible for taking each action, and the expected date of completion for each action. The plan must include the following:
 - (1) list of all residential clients at the time of notice to the licensing authority;
 - (2) review and update of all residential client assessments. All assessments must be current and accurate;
 - (3) review and update of all crisis intervention plans for clients receiving service at the time of transition and for all residential clients. All plans must be current and accurate;
 - (4) staffing as required in Section 8.321.11.29 NMAC of these rules and the number and positions of current staff that will be hired by the new owner;
 - (5) staff training as required in Section 8.321.11.32 NMAC;
 - (6) identification of all waivers or variances held by the current owner, and submission of any necessary waivers or variances. All waivers or variances held by the current owner are void upon the change of ownership;
 - (7) signed transfer agreements as required in Section 8.321.11.22 NMAC of these rules.
 - (8) Failure by any individual or entity to apply for and obtain a new license while continuing to operate under these regulations, shall be considered in violation of these regulations and the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed CTC may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

[8.321.11.15 NMAC - N, 7/1/2024]

8.321.11.16 AUTOMATIC EXPIRATION OR TERMINATION OF LICENSE: An existing license shall automatically expire at midnight on the day indicated on the license, unless it is renewed sooner, or it has been suspended or revoked.

- A. If a CTC discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action.
- B. Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and subject to the imposition of civil monetary penalties, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[8.321.11.16 NMAC - N, 7/1/2024]

8.321.11.17 ENFORCEMENT:

A. Suspension of license without prior hearing: If immediate action is required to protect human health and safety, the licensing authority may act in accordance with Section 24-1-5 NMSA 1978, as amended, and suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

B. An initial license application or a renewal license application may be denied, or an existing license may be revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed, after notice and opportunity for a hearing, for any of the following:

- (1) failure to comply with any provision of these regulations;
- (2) failure to allow access to the CTC and survey(s) by authorized representatives of the licensing authority;
- (3) allowing any person to work at the CTC while impaired physically or mentally or under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the clients, staff or visitors;
- (4) allowing any person, subject to all applicable statutes and regulations, to work at the CTC if that person is listed on the employee abuse registry, nurse aid registry, or considered an unemployable caregiver or has a disqualifying conviction under the caregiver's criminal history screen act, as amended, and related regulations, as amended.

(5) the list above shall not limit the authority from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[8.321.11.17 NMAC - N, 7/1/2024]

8.321.11.18 HEARING PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the authority against a CTC's license will be held in accordance with applicable rules relating to adjudicatory hearings, including but not limited to, Section 8.370.2 NMAC. A copy of the above regulations will be furnished at the time an adverse action is taken against a CTC's license by the licensing authority, if the regulations cannot be obtained from a public website.

[8.321.11.18 NMAC - N, 7/1/2024]

8.321.11.19 FACILITY SURVEYS:

A. Application for licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a CTC by authorized licensing authority representatives at times of operation during the pendency of the license application, and if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

C. Upon receipt of a report of deficiency from the licensing authority, the licensee or their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the CTC intends to correct each violation noted and the expected date of completion. All plans of correction for deficiencies, if any, shall be disclosed in compliance with applicable statutes and regulations. A plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a CTC license, including to prove licensee compliance violations. The plan of correction must contain the following:

(1) what measures will be put into place or what systematic changes will be made to ensure the deficient practice does not recur;

(2) the anticipated implementation date (a reasonable time-frame is allowed);

(3) how the corrective action will be monitored to ensure compliance;

(4) what quality assurance indicators will be put into place;

(5) who will be responsible to oversee their monitoring; and

(6) plan of correction shall be signed and dated by the administrator or authorized representative.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

[8.321.11.19 NMAC - N, 7/1/2024]

8.321.11.20 REPORTING OF INCIDENTS: All CTC's licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with all other applicable statutes and regulations. All facilities shall report to the licensing authority any serious incidents or

unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the clients, including but not limited to:

- A. fire, flood or other man-made or natural disasters including any damage to the CTC caused by such disasters and any incident which poses or creates any life safety or health hazards;
- B. any outbreak of contagious diseases and diseases dangerous to the public health;
- C. any human errors by staff and employees which may or has resulted in the death, serious illness, hospitalization, or physical impairment of a client or staff; and
- D. abuse, neglect, exploitation, and injuries of unknown origin and other reportable incidents in accordance with 8.370.9 NMAC.

[8.321.11.20 NMAC - N, 7/1/2024]

8.321.11.21 GOVERNING BODY: All CTC's licensed under these regulations must have a formally constituted governing body or operate under the governing body of the legal entity, which has ultimate authority over the CTC.

- A. The governing body shall:
 - (1) establish and adopt bylaws that govern its operation;
 - (2) approve policies and procedures;
 - (3) appoint an on-site administrator or chief executive officer/administrator for the CTC; and
 - (4) review the performance of the administrator/chief executive officer at least annually.
- B. The governing body may appoint committees consistent with the size and scope of the CTC.

[8.321.11.21 NMAC - N, 7/1/2024]

8.321.11.22 POLICIES AND PROCEDURES: The CTC shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the CTC's operation. The administrator shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the CTC's written policies and procedures shall include how the CTC intends to comply with all requirements of these regulations and address:

- A. the establishment, composition, and responsibilities of the governing body;
- B. administration including the minimum qualifications of the administrator, the process to hire an administrator, and define the administrator's authority, responsibility, and accountability including plans for the administrator's absence;
- C. quality assurance and improvement systems;
- D. incident management system;
- E. the maintenance of the CTC, equipment and supplies; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures; and proper disposal of waste liquids used for cleaning contaminated areas;
- F. quality of care and services including appropriate and inappropriate admission and discharge criteria; and client risk assessment;
- G. referral of clients for services; transfer of clients to a hospital or other CTC or program; ambulance transfer services; and emergency procedures and resuscitative techniques;
- H. infectious waste and biohazard disposal in accordance with all applicable statutes and regulations;
- I. infection control and prevention;
- J. staffing plan, personnel records, and personnel including written job descriptions for all staff with necessary qualifications consistent with these rules; minimum staffing; and staff development;
- K. maintenance of the client health record including protection of client confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of client records including appropriate document destruction procedures;
- L. the retention, maintenance, security and destruction of client, personnel and CTC records;
- M. research procedures for any research being conducted at the CTC in compliance with these regulations;
- N. dietary services including: meal service; staff in-service training; dietary records; clean and sanitary conditions; and food management;
- O. housekeeping services to keep the CTC safe, clean, and free of hazards and clutter;
- P. laundry services for the CTC's laundry and resident's laundry including handling, process and storage of clean and dirty laundry;

- Q. pharmacy practices including the storage, administration, and disposal of medications; medication management; and documentation;
- R. laboratory services;
- S. client's personal belongings including locked storage and contraband;
- T. client rights;
- U. safety management plan including, but not limited to, risk assessment, control of potentially injurious items, crisis prevention and intervention, physical restraint, and mitigation of high risk behaviors including suicide and assault. The safety plan shall follow a least to most restrictive sequence;
- V. authorized entry to or exit from the CTC including the residential and outpatient components;
- W. withdrawal management services; and
- X. primary source verification of licenses, credentials, experience and competence of staff.

[8.321.11.22 NMAC - N, 7/1/2024]

8.321.11.23 QUALITY IMPROVEMENT SYSTEMS: Each CTC shall establish and maintain quality improvement systems including policies and procedures for quality assurance and quality improvement and have a quality committee.

A. The CTC shall establish a quality committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, certified peer support worker, and psychiatrist. Other committee members may be specified by rules governing payor requirements. Members may participate on the quality committee by teleconference. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients. The systems are approved by the governing body and updated annually.

- (1) the quality improvement systems must include:
 - (a) chart reviews;
 - (b) annual review of policies and procedures;
 - (c) data collection, and other program monitoring processes;
 - (d) data analyses;
 - (e) identification of events, trends and patterns that may affect client health, safety or treatment efficacy;
 - (f) identification of areas for improvement;
 - (g) intervention plans, including action steps, responsible parties, and completion time; and,
 - (h) evaluation of the effectiveness of interventions.

(2) when areas of concern or potential problems are identified by the committee, the CTC shall act as soon as possible to avoid and prevent risks to clients.

(3) the quality committee shall take and maintain meeting minutes.

- B. The quality committee shall review at a minimum, the following:
- (1) high-risk situations and critical incidents (such as suicide, death, serious injury, violence and abuse, neglect and exploitation) within 24 hours;
 - (2) medical emergencies;
 - (3) medication variance;
 - (4) infection control;
 - (5) emergency safety interventions including any instances physical restraints; and
 - (6) environmental safety and maintenance.

C. The quality committee is responsible for the implementation of quality improvement processes.

D. The quality committee shall submit a quarterly report to the governing body for review and approval.

E. The governing body shall evaluate the CTC's effectiveness in improving performance.

[8.321.11.23 NMAC - N, 7/1/2024]

8.321.11.24 RISK ASSESSMENT:

A. The CTC shall develop policies and procedures addressing risk assessment and mitigation including, but not limited to: assessments, crisis intervention plans, treatment, approaches to supporting, engaging, and problem solving, staffing, levels of observation and documentation. The policies and procedures must prohibit seclusion and address physical restraint, if used, and the CTC's response to clients that present with imminent risk to self or others, assaultive and other high-risk behaviors.

B. Use of seclusion is prohibited unless the facility is joint commission accredited, and unless the facility has obtained a prior waiver from the authority authorizing the facility to use seclusion. The use of physical restraint or seclusion must be consistent with federal and state laws and regulation (e.g., Section 32A-6A-10 NMSA 1978, concerning physical restraint and seclusion of minors).

C. Physical restraint, as defined in these regulations, shall be used only as an emergency safety intervention of last resort to ensure the physical safety of the client and others, and shall be used only after less intrusive or restrictive interventions have been determined to be ineffective.

D. Physical restraint shall not be used as punishment or for the convenience of staff.

E. Physical restraint is implemented only by staff who have been trained and certified by a CYFD or HCA recognized program in the prevention and use of physical restraint. This training emphasizes de-escalation techniques and alternatives to physical contact with clients as a means of managing behavior and allows only the use of reasonable force necessary to protect the client or other person from imminent and serious physical harm. Clients and youth do not participate in the physical restraint of other clients and youth.

F. Crisis intervention plans must document the use of physical restraints and address: the client's medical condition(s); the role of the client's history of trauma in their behavioral patterns; specific suggestions from the client regarding prevention of future physical interventions.

G. All clients physically restrained shall be afforded full privacy away from other clients receiving services.

H. A chemical restraint shall not be utilized under any circumstance. A chemical restraint is a drug or medication when it is used as a restriction to manage the client's behavior or restrict the client's freedom of movement, and is not a standard treatment or dosage for the client's condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

I. Mechanical restraint shall not be utilized under any circumstances unless the facility is joint commission accredited, and unless the facility has obtained a prior waiver from the authority authorizing it to utilize mechanical restraint. Mechanical restraint is the use of a mechanical device(s) to physically restrict a client's freedom of movement, performance of physical activity or normal access to their body and is distinct from physical restraint. The use of mechanical restraint must be consistent with federal and state laws and regulation (e.g., Section 32A-6A-10 NMSA 1978, concerning mechanical restraint of minors).

J. The staff implementing the physical restraint shall conduct a debriefing, with the client present if possible, immediately following the incident to include the identification of the precipitating event, unsafe behavior and preventive measures with the intent of reducing or eliminating the need for future physical restraint. The debriefing shall be documented in the client's record.

K. The client's crisis intervention plan shall be updated: within 24 hours of admission or prior to discharge, whichever comes first; and following physical restraint use to incorporate the debriefing and changes needed to lessen the chance of the situation reoccurring.

L. Each incident of physical restraint shall be documented in the client's record including:

- (1) the less intrusive interventions that were attempted or determined to be inappropriate prior to the incident;
- (2) the precipitating event immediately preceding the behavior that prompted the use of physical restraint;
- (3) the behavior that prompted the use of a physical restraint;
- (4) the names of the mental health professional who observed the behavior that prompted the use of the physical restraint;
- (5) the names of the staff members implementing and monitoring the use of physical restraint; and
- (6) a description of the of the physical restraint incident, including the type and length of the use of physical restraint, the client's behavior during and reaction to the physical restraint and the name of the supervisor informed of the use of physical restraint.

M. Physical restraints orders are issued by a restraint/clinician within one hour of initiation of physical restraint and include documented clinical justification for the use of physical restraint.

(1) if the client has a treatment team physician or advanced practice registered nurse and he or she is available, only he or she may order physical restraint;

(2) if physical restraint is ordered by a restraint clinician, not the client's treatment team physician or advanced practice registered nurse, the restraint clinician will contact the client's treatment team physician or advanced practice registered nurse as soon as possible to inform him or her of the situation requiring

the physical restraint, and document in the client's record the date and time the treatment team physician or advanced practice registered nurse was consulted and the information imparted;

(3) if the order for physical restraint is verbal, the verbal order must be received by a restraint/clinician or a New Mexico licensed registered nurse (RN) or practical nurse (LPN). The restraint/clinician must verify the verbal order in a signed, written form placed in the client's record within 24 hours after the order is issued;

(4) each order for physical restraint must be documented in the client's record and must include:

- (a) the name of the restraint/clinician ordering the physical restraint;
- (b) the date and time the order was obtained;
- (c) the emergency safety intervention ordered, including the length of time;
- (d) the time the emergency safety intervention began and ended;
- (e) the time and results of one-hour assessment(s), if ordered;
- (f) the emergency safety situation that required the client to be physically

restrained; and

- (g) the name, title, and credentials of staff involved in the emergency safety

intervention.

N. Suicide risk interventions must include the following:

(1) a registered nurse or other licensed mental health professional may initiate suicide precautions and must obtain physician or advanced practice registered nurse order within one hour of initiating the precautions;

(2) modifications or removal of suicide precautions shall require clinical justification determined by an assessment and shall be ordered by a physician or advanced practice registered nurse and documented in the clinical record;

(3) staff and client shall be debriefed immediately following an episode of a suicide attempt or gesture, identifying the circumstances leading up to the suicide attempt or gesture;

(4) an evaluation of the client by a medical, psychiatric or independently licensed mental health provider must be done immediately, or the client must be transferred to a higher level of care immediately. [8.321.11.24 NMAC - N, 7/1/2024]

8.321.11.25 CLIENT ACCEPTANCE, ADMISSION AND DISCHARGE CRITERIA:

A. The CTC shall develop admission and discharge criteria related to stabilization of behavioral health crises including out-patient and short-term residential stabilization.

B. The CTC shall post operating and admission hours in a location visible from the exterior of the facility.

C. If a client is not admitted to the CTC, the CTC shall maintain documentation of the rationale for the denial of services to the individual and any referrals made.

D. Admission criteria for adults and youth must be available in writing to all clients and visitors to the CTC.

E. Materials describing services offered, eligibility requirements and client rights and responsibilities must be provided in a form understandable to the client with consideration of the client's primary language, and the mode of communication best understood by persons with visual or hearing impairments, as applicable.

F. The CTC shall not refuse to admit a client solely on the basis of the individual living in the community on a court ordered conditional release.

G. The CTC shall conduct an assessment for each client presenting for admission. The admission assessment shall contain an assessment of past trauma or abuse, how the individual served would prefer to be approached should he become dangerous to himself or to others and the findings from this initial assessment shall guide the process for determining interventions.

H. All residential admissions of youth 14 years of age and older must comply with applicable state and federal laws.

I. Staff shall inspect clients, their clothing, and all personal effects for contraband and weapons before admission to the residential component to ensure the safety of the patient and staff.

J. Discharge planning shall begin upon admission.

K. Prior to a client returning to a less restrictive environment, staff, with the consent of the client, shall work with the client's support system, as appropriate, to prepare the client for discharge.

L. Discharge plan and summary information shall be provided to the client at the time of discharge that includes:

- (1) significant findings relevant to the client's recovery;
 - (2) client crisis stabilization plan and progress;
 - (3) recommendations and documentation for continued care, including appointment times, locations and contact information for providers;
 - (4) recommendations for community services if indicated with contact information for the services;
 - (5) documentation of notification to the client's primary care practitioner, if applicable;
 - (6) evidence of involvement by the client as documented by his signature or refusal to sign;
- and
- (7) signatures of all staff participating in the development of plan.

M. A copy of the discharge plan shall be provided to post discharge service provider(s).
[8.321.11.25 NMAC - N, 7/1/2024]

8.321.11.26 PROGRAM SERVICES: A licensed mental health professional must assess each individual with the assessment focusing on the stabilization needs of the client. It must be done in a timely manner congruent with the urgency of the presenting crisis, and consistent with the policies and procedures. The assessment must include: medical and mental health history and status, the onset of illness, the presenting circumstances, risk assessment, cognitive abilities, communication abilities, social history and history as a victim of physical abuse, sexual abuse, neglect, or other trauma as well as history as a perpetrator of physical or sexual abuse.

A. The CTC shall provide education and clinical programming designed to meet the stabilization needs of each client and implement crisis stabilization plans.

B. Crisis stabilization plan - A licensed mental health professional must document a crisis stabilization plan to address needs identified in the assessment.

- (1) the crisis stabilization plan shall include at a minimum:
 - (a) diagnosis, a problem statement or statement of needs to be addressed;
 - (b) identification of behavioral health crisis leading to intake;
 - (c) goals that address the presenting crisis, and are consistent with the client's needs, realistic, measurable, linked to symptom reduction, and attainable by the client during the client's projected length of stay;
 - (d) specific treatment(s) provided, method(s) and frequency of treatment, and staff responsible for delivering treatment;
 - (e) criteria describing evidence of stabilization;
 - (f) discharge planning;
 - (g) evidence of involvement by the client and legal guardian as documented by his signature or refusal to sign; and
 - (h) signatures of all staff participating in the development of plan.

(2) A copy of the individual crisis stabilization plan shall be provided to the client, and guardian if applicable.

(3) When program services are offered in a group setting, groups for adults and groups for youth must be separate.

[8.321.11.26 NMAC - N, 7/1/2024]

8.321.11.27 CLIENT RIGHTS:

A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a CTC, a client, parent, shall be given the applicable written description of the adult's or youth's legal rights, translated into client's preferred language, if necessary, to meet the client's understanding.

B. A written copy of the adult client's legal rights shall be provided to the adult client, or agent, if applicable, or to the most significant responsible party in the following order:

- (1) the client's spouse;
- (2) significant other;
- (3) any of the client's adult children;
- (4) the client's parents;
- (5) the client's advocate.

C. The client rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers to contact the authority to file a complaint.

D. To protect client rights, the CTC shall:

- (1) treat all clients with courtesy, respect, dignity and compassion;
- (2) not discriminate in admission or services based on gender, gender identity, sex, sexual orientation, client's age, race, color, religion, physical or mental disability, or national origin;
- (3) provide clients written information about all services provided by the CTC and their costs and give advance written notice of any changes;
- (4) provide clients with a clean, safe and sanitary living environment;
- (5) provide a humane psychological and physical environment of care for all clients;
- (6) provide the right to privacy, including privacy during assessments, examinations, consultations and treatment;
- (7) protect the confidentiality of the client's clinical record;
- (8) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; and reasonable privacy in the client's own room;
- (9) protect the client's right to receive visitors during designated visiting hours except when restricted for good cause pursuant to a physician's order;
- (10) protect the client's right to receive visits from his attorney, physician, psychologist, clergyman, or social worker in private irrespective of visiting hours;
- (11) provide clients the ability to send and receive private correspondence, as well as reasonable private access to telephone calls and, in cases of personal emergencies, reasonable use of long-distance calls;
- (12) ensure that clients:
 - (a) are free from physical and emotional abuse, neglect, and exploitation;
 - (b) are free to participate or abstain from the practice of religion and shall be afforded reasonable accommodations to worship;
 - (c) have the right to reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment;
 - (d) have the right to voice grievances to the CTC staff, public officials, any state agency, or any other person, without fear of reprisal or retaliation;
 - (e) have the right to prompt and adequate medical attention for physical ailments;
 - (f) have the right to have their grievance addressed within five days;
 - (g) have the right to participate in the development of their crisis stabilization plan;
 - (h) have the right to participate in treatment decisions and formulate advance directives such as living wills and powers of attorney;
 - (i) have the right to refuse treatment and to be free from unnecessary or excessive medication; and
 - (j) have the right to manage and control their personal finances.

[8.321.11.27 NMAC - N, 7/1/2024]

8.321.11.28 CLIENT CLINICAL RECORD: The client clinical records maintained by a crisis triage center in a paper-based or electronic system shall document the degree and intensity of the treatment provided to clients who are furnished services by the CTC. A client's clinical record shall contain at a minimum:

- A. the client's name and address;
- B. name, address, and telephone number of agent, or representatives;
- C. the source of referral and relevant referral information;
- D. all reports from client assessment (see program services assessment);
- E. the signed and dated informed consent for treatment including all medications and transfers;
- F. all additional medical and clinical documentation;
- G. the original crisis stabilization plan and all revisions;
- H. documentation of all treatment;
- I. laboratory and radiology results, if applicable;
- J. documentation of physical restraint observations, if utilized;
- K. a record of all contacts with medical and other services;
- L. a record of medical treatment and administration of medication, if administered;

- M. an original or original copy of all physician medication and treatment orders signed by the physician;
- N. signed consent for the release of information, if information is released;
- O. discharge plan.

[8.321.11.28 NMAC - N, 7/1/2024]

8.321.11.29 STAFFING REQUIREMENTS:

- A. Minimum staffing requirements:
 - (1) The CTC shall have an on-site administrator, which can be the same person as the clinical director.
 - (2) The CTC shall have a full time clinical director appropriately licensed to provide clinical oversight.
 - (3) The CTC shall have an RN present on-site 24 hours a day, seven days a week or as long as clients are present in programs that do not offer residential services, to provide direct nursing services. This requirement does not apply to CTCs offering 23 hours or less non-residential services; instead these CTCs may have onsite medical professionals who have access to immediate support and supervision by an RN or a higher-level provider in accordance with Section 24-25-1 et al. NMSA 1978 New Mexico Telehealth Act.
 - (4) An on-call physician or advanced practice registered nurse shall be available 24 hours a day by phone, and available on-site as needed or through telehealth.
 - (5) Consultation by a psychiatrist or prescribing psychologist may be provided through telehealth.
 - (6) The CTC shall maintain sufficient staff including direct care and mental health professionals to provide for supervision and the care of residential and non-residential clients served by the CTC, based on the acuity of client needs.
 - (7) At least one staff trained in basic cardiac life support (BCLS) and first aid shall be on duty at all times. In addition, one staff trained in the use of the automated external defibrillator (AED) equipment shall also be on duty.

- B. Other staff requirements:
 - (1) The CTC shall ensure that the type and number of professional staff are:
 - (a) licensed, certified or credentialed in the professional field as required, and practice within the scope of the license;
 - (b) present in numbers to provide services, supports, care, treatment and supervision to clients as required; and
 - (c) experienced and competent in the profession they are licensed or practice.
 - (2) The CTC shall comply with all applicable laws, rules and regulations governing caregivers' criminal history screen requirements and employee abuse registry requirements.
 - (3) The CTC shall ensure that, within the first 60 days of providing direct care to individuals, all staff, volunteers and contractors having direct contact with clients shall receive required training.
 - (4) The CTC shall be staffed to ensure the safety of clients when staff are accused of abuse, neglect or exploitation.
 - (5) In instances of involuntary admission as allowed under amendments to Section 43-1-1 NMSA, Mental Health and Developmental Disabilities Code, adequate staffing must be provided to ensure patient and staff safety, and the CTC must meet medical records requirements for licensure of psychiatric hospitals as set forth, in 8.370.12 NMAC.

[8.321.11.29 NMAC - N, 7/1/2024]

8.321.11.30 MINIMUM STAFF QUALIFICATIONS:

- A. Administrator:
 - (1) Must be at least 21 years of age.
 - (2) The administrator shall possess experience in acute mental health and hold at least a bachelor's degree in the human services field or be a registered nurse with experience or training in acute mental health treatment.
- B. Clinical director:
 - (1) Be at least 21 years of age.

(2) Be a licensed independent mental health professional or certified nurse practitioner or certified nurse specialist with experience and training in acute mental health treatment and withdrawal management services, if withdrawal management services are provided.

C. Registered nurse:

(1) Must be at least 18 years of age.

(2) Must have a current NM Registered Nurse license.

(3) Must possess experience and training in acute mental health treatment, and withdrawal management services if withdrawal management services are provided.

D. Direct service staff must be at least 18 years of age.

[8.321.11.30 NMAC - N, 7/1/2024]

8.321.11.31 PERSONNEL RECORDS:

A. The CTC shall have policies and procedures for managing personnel information and records.

B. Staff scheduling records shall be maintained for at least three years.

C. Employee records shall be kept at the CTC and include:

(1) employment application;

(2) training records;

(3) licenses and certifications;

(4) caregiver criminal history screening documentation pursuant to Section 8.370.5 NMAC;

and

(5) employee abuse registry documentation pursuant to Section 8.370.8. NMAC.

[8.321.11.31 NMAC - N, 7/1/2024]

8.321.11.32 STAFF TRAINING:

A. Training for each new employee and volunteer who provides direct care shall include a minimum of 16 hours of training and be completed prior to providing unsupervised care to clients.

B. At least 12 hours of on-going training shall be provided to staff that provides direct care at least annually; the training and proof of competency shall include at a minimum:

(1) behavioral health interventions;

(2) crisis interventions;

(3) substance use disorders and co-occurring disorders;

(4) withdrawal management protocols and procedures, if withdrawal management is

provided;

(5) clinical and psychosocial needs of the population served;

(6) psychotropic medications and possible side effects;

(7) ethnic and cultural considerations of the geographic area served;

(8) community resources and services including pertinent referral criteria;

(9) treatment and discharge planning with an emphasis on crisis stabilization;

(10) fire safety and evacuation training;

(11) safe food handling practices (for persons involved in food preparation), to include:

(a) instructions in proper storage;

(b) preparation and serving of food;

(c) safety in food handling;

(d) appropriate personal hygiene; and

(e) infectious and communicable disease control.

(12) confidentiality of records and client information;

(13) infection control;

(14) client rights;

(15) reporting requirements for abuse, neglect or exploitation in accordance with Section

8.370.9 NMAC;

(16) smoking policy for staff, clients and visitors;

(17) methods to provide quality client care;

(18) emergency procedures; and

(19) adverse medication reactions;

(20) the proper way to implement a crisis intervention plans.

C. Documentation of orientation and subsequent trainings shall be kept in the personnel records at the facility.
[8.321.11.32 NMAC - N, 7/1/2024]

8.321.11.33 MINIMUM SAFETY REQUIREMENTS:

A. The CTC shall have policies and procedures regarding authorized entry to or exit from the CTC including the residential component.

B. Control of potentially injurious items shall be clearly defined in policy to include:

(1) prohibition of flammables, toxins, ropes, wire clothes hangers, sharp pointed scissors, luggage straps, belts, knives, shoestrings, or other potentially injurious items;

(2) management of housekeeping supplies and chemicals, including procedures to avoid access by individuals during use or storage. Whenever practical, supplies and chemicals shall be non-toxic or non-caustic;

(3) safeguarding use and disposal of nursing and medical supplies including drugs, needles and other “sharps” and breakable items;

(4) the use of durable materials for furniture not capable of breakage into pieces that could be used as weapons or present a hanging risk.

C. To the fullest extent permitted by law, weapons shall be prohibited at the CTC.

D. All law enforcement officers or other individuals authorized by law to carry firearms shall be asked to leave their firearms locked in their vehicles or placed in a secure lockbox in an area in the CTC which is not accessible to clients.

E. The CTC shall develop and implement policies and procedures that describe interventions that prevent crises, minimize incidents when they occur, and are organized in a least to most restrictive sequence. The written policies and procedures shall:

(1) emphasize positive approaches to interventions;

(2) protect the health and safety of the individual served at all times; and

(3) specify the methods for documenting the use of the interventions.

[8.321.11.33 NMAC - N, 7/1/2024]

8.321.11.34 NUTRITION: The CTC shall provide planned and nutritionally balanced meals to its residential clients and any client treated at the CTC for eight hours or longer from the basic food groups in accordance with the “recommended daily dietary allowance” of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the current USDA dietary guidelines for Americans, vending machines shall not be considered a source of snacks. Dietary services: The CTC will develop and implement written policies and procedures that are maintained on the premises. All CTC food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

A. at least three nutritious meals per day shall be served;

B. no more than 14 hours may elapse between the end of an evening meal and the beginning of a morning meal;

C. therapeutic diets shall be provided when ordered by the physician;

D. under no circumstances may food be withheld for disciplinary reasons;

E. each CTC shall have seating capacity to reflect the licensed capacity, although clients may eat or be served in shifts during daily operations;

F. nutritional snacks shall be available to each client; and

G. weekly menus shall be posted in the dining area.

[8.321.11.34 NMAC - N, 7/1/2024]

8.321.11.35 PHARMACEUTICAL SERVICES:

A. Pharmacological services shall be provided only on order by a prescribing professional and in accordance with the terms and conditions of such professional’s license. These services may be administered or monitored, if self-administered, by nursing staff.

B. The CTC shall establish and implement policies, procedures and practices that guide the safe and effective use of medications and shall, at a minimum, address the following:

(1) Medications shall be administered upon direct order from a licensed prescriber, and the orders for medications and care shall be written and signed by the licensed prescriber;

- (2) Medications shall be used solely for the purposes of providing effective treatment..
 - C. There shall be no standing orders for psychotropic medication.
 - (1) Every order given by telephone shall be received by an RN or LPN and shall be recorded immediately and read back to the ordering physician. The order shall include the ordering physician's name and shall be signed by a physician within 24 hours. Such telephone orders shall include a note on the order that an order was made by telephone, and the content of, justification for, and the time and date of the order.
 - (2) Medication management policies and procedures shall follow federal and state laws, rules and regulations, and shall direct the management of medication ordering, procurement, prescribing, transcribing, dispensing, administration, documentation, wasting or disposal and security, to include the management of controlled substances, floor stock, and physician sample medications.
 - (3) The CTC shall develop a policy on informed consent on medication, including the right to refuse medication and the CTC's plan for transfer of patients who lack capacity to consent to medications.
 - (4) The CTC shall develop and implement policies and procedures that describe actions to follow when adverse drug reactions and other emergencies related to the use of medications occur, and emergency medical care that may be initiated by a registered nurse in order to mitigate a life-threatening situation.
 - D. Medication distribution stations shall be in accordance with standards set forth by the New Mexico board of pharmacy.
 - E. Drugs and biologicals must be stored, prepared and administered in accordance to acceptable standards of practice and in compliance with the New Mexico state board of pharmacy.
 - F. Outdated drugs and biologicals must be disposed of in accordance with methods outlined by the New Mexico state board of pharmacy.
 - G. One individual shall be designated responsible for pharmaceutical services to include accountability and safeguarding.
 - H. Keys to the drug room or pharmacy must be made available only to personnel authorized by the individual having responsibility for pharmaceutical services.
 - I. Adverse reactions to medications must be reported to the physician responsible for the patient and must be documented in the patient's record.
- [8.321.11.35 NMAC - N, 7/1/2024]

8.321.11.36 LABORATORY SERVICES:

- A. Laboratory work and other diagnostic procedures deemed necessary shall be performed as ordered by the physician.
 - B. The CTC shall comply with clinical laboratory improvement amendments of 1988 (CLIA) requirements.
 - C. All lab test results performed either at the CTC or by contract or arrangement with another entity must be entered into the patient's record.
- [8.321.11.36 NMAC - N, 7/1/2024]

8.321.11.37 INFECTION CONTROL:

- A. The CTC shall develop and implement policies and procedures for infection control and prevention. Policies shall include: educational course requirements; decontamination; disinfection and storage of sterile supplies; cleaning; and laundry requirements, and address the following:
 - (1) universal precautions when handling blood, body substances, excretions, secretions;
 - (2) proper disposal of biohazards;
 - (3) proper hand washing techniques;
 - (4) prevention and treatment of needle stick or sharp injuries; and
 - (5) the management of common illness likely to be emergent in the CTC service setting and specific procedures to manage infectious diseases.
- B. The CTC's infection control risk assessment and plan is reviewed annually for effectiveness and revision, if necessary.
- C. Staff shall be trained in and shall adhere to infection control practices, the release of confidential information and reporting requirements related to infectious diseases.
- D. Where cleaning and decontamination of equipment and supplies are performed in the same room where clean or sterile supplies and equipment are stored, there shall be a physical separation of the clean or sterile supplies and equipment.

E. All special waste including blood, body fluids, sharps and biological indicators shall be disposed of in accordance with OSHA and the New Mexico environment department standards for biohazardous waste.

F. Each CTC shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

[8.321.11.37 NMAC - N, 7/1/2024]

8.321.11.38 RESEARCH:

A. If a CTC is conducting research activities, the CTC must have written policies and procedures for conducting research, documentation that the study has received institutional review board (IRB) approval, and a consent form for each client involved in the research in the client's record.

B. When research is conducted by the CTC or by the employees or by affiliates of the CTC or when the CTC is used as a research site, such that the CTC's clients and staff are involved in or the subjects of research; the research must be conducted:

(1) by qualified researchers, having evidence in formal training and experience in the conduct of clinical, epidemiologic or sociologic research;

(2) in accordance with the written, approved research policies and procedures;

(3) by staff trained to conduct such research; and

(4) in a manner that protects the client's health, safety and right to privacy and the CTC and

its clients from unsafe practices.

[8.321.11.38 NMAC - N, 7/1/2024]

8.321.11.39 CLIENT TRANSFERS:

A. The CTC shall have policies and procedures to stabilize and transfer clients in need of a higher level of care.

B. The CTC shall:

(1) discuss recommendations for transfer with the client or client's legal guardian or agent and upon transfer, notify the client's legal guardian or agent;

(2) make the determination as to the time and manner of transfer to ensure no further deterioration of the client during the transfer between facilities;

(3) specify the benefits expected from the transfer in the client's record;

(4) coordinate care with receiving facility prior to transfer; and

(5) send a copy of the client's record with the client upon transfer.

[8.321.11.39 NMAC - N, 7/1/2024]

8.321.11.40 BUSINESS HOURS: The CTC shall post hours of operation and admissions on signage exterior to the building.

[8.321.11.40 NMAC - N, 7/1/2024]

8.321.11.41 PHYSICAL ENVIRONMENT AND GENERAL BUILDING REQUIREMENTS:

A. When construction of new buildings, additions, or alterations to existing buildings are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire CTC must be submitted.

B. CTCs licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and clients and in compliance with the American's with Disabilities Act (ADA), current edition.

C. All buildings of the premises providing client care and services will be considered part of the CTC and must meet all requirements of these regulations. Where a part of the CTC services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

D. A CTC applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may stipulate these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review, consultation and on-site surveys during the licensing process.

[8.321.11.41 NMAC - N, 7/1/2024]

8.321.11.42 COMMON ELEMENTS FOR FACILITIES:

- A.** Public services shall include:
 - (1) conveniently accessible wheelchair storage;
 - (2) an ADA compliant reception and information counter or desk;
 - (3) waiting areas;
 - (4) conveniently accessible public toilets; and
 - (5) drinking fountain (s) or water dispensers easily accessible to clients or other visitors.
- B.** Interview space(s) for private interviews related to mental health, medical information, etc., shall be provided.
- C.** General or individual office(s) for business transactions, records, administrative, and professional staff shall be provided. These areas shall be separated from public areas for confidentiality.
- D.** Special storage for staff personal effects with locking drawers or cabinets shall be provided.
- E.** General storage facilities for supplies and equipment shall be provided.

[8.321.11.42 NMAC - N, 7/1/2024]

8.321.11.43 PROVISIONS FOR EMERGENCY CALLS:

- A.** An easily accessible hard-wired telephone for summoning help, in case of emergency, must be available in the CTC.
- B.** A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital, poison control center, and the authority's division of health improvement's complaint hotline must be prominently posted by the telephone(s).

[8.321.11.43 NMAC - N, 7/1/2024]

8.321.11.44 PARKING:

Sufficient space for off-street parking for staff, clients and visitors shall be provided. A designated parking space(s) for one emergency, and one police vehicle shall be provided. Parking should be compliant with local zoning requirements and the 2009 New Mexico commercial building code, or current version.

[8.321.11.44 NMAC - N, 7/1/2024]

8.321.11.45 MAINTENANCE OF BUILDING AND GROUNDS: Facilities must maintain the building(s) in good repair at all times. Such maintenance shall include, but is not limited to, the following:

- A.** all electrical, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems;
- B.** all equipment and materials used for client care shall be maintained clean and in good repair;
- C.** all furniture and furnishings must be kept clean and in good repair; and
- D.** the grounds of the CTC must be maintained in a safe and sanitary condition at all times.

[8.321.11.45 NMAC - N, 7/1/2024]

8.321.11.46 HOUSEKEEPING:

- A.** The CTC must be kept free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.
- B.** Treatment rooms, waiting areas and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the clients.
- C.** Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a slip resistant finish.
- D.** Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.
- E.** Storage areas must be kept free from accumulation of refuse, discarded equipment, furniture, paper, et cetera.

[8.321.11.46 NMAC - N, 7/1/2024]

8.321.11.47 CUSTODIAL CLOSET(S):

- A.** Each CTC shall have at least one custodial closet which must be locked and restricted from client access.
- B.** Each custodial closet shall contain:
 - (1) a service sink; and

- (2) storage for housekeeping supplies and equipment.
 - C. Each custodial closet must be mechanically vented to the exterior.
 - D. Custodial closets are hazardous areas and must be provided with one hour fire separation and one and three-quarter inches solid core doors which are rated at a 20 minute fire protection rating.
- [8.321.11.47 NMAC - N, 7/1/2024]

8.321.11.48 HAZARDOUS AREAS:

- A. Hazardous areas include the following:
 - (1) fuel fired equipment rooms;
 - (2) bulk laundries or laundry rooms with more than 100 sq. ft.;
 - (3) storage rooms with more than 50 sq. ft. but less than 100 sq. ft. not storing combustibles;
 - (4) storage rooms with more than 100 sq. ft. storing combustibles;
 - (5) chemical storage rooms with more than 50 sq. ft.; and
 - (6) garages, maintenance shops, or maintenance rooms.
 - B. Hazardous areas on the same floor or abutting a primary means of escape or a sleeping room shall be protected by either:
 - (1) an enclosure of at least one-hour fire rating with self-closing or automatic closing on smoke detection fire doors having a three-quarter hour rating; or
 - (2) an automatic fire protection (sprinkler) and separation of hazardous area with self-closing doors or doors with automatic-closing on smoke detection; or
 - (3) any other hazardous areas shall be enclosed with walls with at least a 20 minute fire rating and doors equivalent to one and three-quarter inches solid bonded wood core, operated by self-closures or automatic closing on smoke detection.
 - C. All boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be one and three-quarter inches solid core.
- [8.321.11.48 NMAC - N, 7/1/2024]

8.321.11.49 FLOORS AND WALLS:

- A. Floor and wall areas penetrated by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.
 - B. Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.
- [8.321.11.49 NMAC - N, 7/1/2024]

8.321.11.50 EXITS:

- A. Each floor of a CTC shall have exits as required by the New Mexico commercial building code and applicable version of the National fire protection association 11.
 - B. Each exit must be marked by illuminated exit signs having letters at least six inches high whose principle strokes are at least three quarters of an inch wide.
 - C. Illuminated exit signs must be maintained in operable condition at all times.
 - D. Exit ways must be kept free from obstructions at all times.
- [8.321.11.50 NMAC - N, 7/1/2024]

8.321.11.51 CORRIDORS:

- A. Minimum corridor width shall be five feet except work corridors less than six feet in length may be four feet in width.
 - B. For facilities contained within existing commercial or residential buildings, less stringent corridor widths may be allowed if not in conflict with building or fire codes. A waiver or variance may be requested but must be approved by the licensing authority prior to occupying the licensed part of the building.
- [8.321.11.51 NMAC - N, 7/1/2024]

8.321.11.52 STAFF STATION:

- A. Each client care area in the residential unit shall have a staff station located to provide visual or virtual monitoring of all resident room corridors and access to secured access to outdoor area, equipped with access

to residential clients' records, a desk or work counter, a cleaning area with a sink with hot and cold running water, operational telephone, and emergency call system.

- B.** Locked storage area for drugs or pharmacy grade, locked medication cart.
- C.** Access to a biohazard disposal unit for needles, and other "sharps," and breakable items.
- D.** A reliable monitored emergency call system shall be provided for staff use in the event of an emergency.
- E.** If a kitchen is not open at all times to residents, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving residents between meal nourishment shall be provided.
- F.** View of fire alarm control panel, generator panel (if any), and any other life safety code components.

[8.321.11.52 NMAC - N, 7/1/2024]

8.321.11.53 SECURED ENVIRONMENT/OUTDOOR AREA:

A. The CTC shall provide a secure environment for client safety. A secured environment is a CTC and grounds that have secured or monitored exits. A secured environment for facilities that offer residential services may include but is not limited to: double alarm systems; gates connected to the fire alarm; or tab alarms for residents at risk for elopement. Locked areas shall have an access code or key which CTC employees shall have on their person or available at all times in accordance with the Life Safety Code, NPFA 11, 212 or subsequent updates. For a CTC located within an existing licensed facility, a request for waiver may be submitted to the licensing authority containing an alternate plan for providing security for clients, provided that health, safety or welfare of the clients or staff would not be adversely affected.

B. In addition to the interior common areas required by this rule, a CTC providing residential services shall provide an outdoor secured environment independently accessible to residents for their year-round use.

(1) Fencing or other enclosures, not less than six feet high, shall protect the safety, security and privacy of the residents and have emergency egress gates that are connected to the emergency call system.

(2) Outdoor area shall not provide access to contact with the public.

[8.321.11.53 NMAC - N, 7/1/2024]

8.321.11.54 ASSESSMENT ROOMS:

- A.** general purpose assessment rooms shall meet the following requirements:
- B.** minimum floor area of 80 square feet, excluding vestibules, toilets, and closets;
- C.** room arrangement shall permit at least two feet - eight inch clearance around furniture items used for exam or assessment;
- D.** a lavatory or sink for hand washing.

[8.321.11.54 NMAC - N, 7/1/2024]

8.321.11.55 THERAPY/TREATMENT ROOMS:

- A.** Shall have a minimum floor area of 120 square feet, excluding vestibule, toilet, and closets.
- B.** All walls shall be constructed to a minimum length of 10 feet.

[8.321.11.55 NMAC - N, 7/1/2024]

8.321.11.56 ACTIVITY OR MULTIPURPOSE ROOM: The CTC shall provide a minimum of 250 square feet for common living area, dining and social spaces, or 40 square feet per resident, whichever is greater.

A. The CTC shall have a living or multipurpose room for the use of the residents. The furnishings shall be well constructed, comfortable and in good repair.

B. The activity or multi-purpose room may be used as a dining area.

C. The activity room or multipurpose rooms shall be provided with supplies to reasonably meet the interests and needs of the residents.

D. Each activity room shall have a window area of at least one tenth of the floor area with a minimum of at least 10 square feet.

E. A dining area shall be provided for meals. Facilities shall have tables and chairs in the dining area to accommodate the total number of residents in one sitting. All seating arrangements during meals shall allow clear access to the exits. Lunch times for adults and youth must be separate if there is only one lunch room.

[8.321.11.56 NMAC - N, 7/1/2024]

8.321.11.57 MEETING ROOM: The CTC shall have adequate meeting rooms and office space for use by staff, the interdisciplinary care team and client and family visits. Other rooms may serve as meeting rooms, provided resident confidentiality is maintained. Meeting and treatment rooms must not hold both adults and youth at the same time.

[8.321.11.57 NMAC - N, 7/1/2024]

8.321.11.58 RESIDENT ROOMS: The regulations in Section 8.321.11.58 NMAC apply to those facilities providing a residential treatment program.

A. A CTC providing residential treatment shall not exceed the bed capacity approved by the licensing authority.

B. Resident rooms may be private or semi-private or dormitory style depending on assessed, resident acuity and need. Resident rooms must be separated by gender.

C. Facilities serving youth and adults must locate youth resident rooms and restrooms in a unit or wing that is physically separated from the adult facilities.

(1) Private rooms shall have a minimum of 100 square feet of floor area. The closet and locker area shall not be counted as part of the available floor space.

(2) Semi-private rooms shall have a minimum of 80 square feet of floor area for each resident and shall be furnished in such a manner that the room is not crowded and passage out of the room is not obstructed.

(3) A separate closet, bed (at least 36 inch wide), chair, towel bar, and non-metal trash receptacle, for each resident shall be provided.

(4) The beds shall be spaced at least three feet apart. Bunk beds, roll away beds, stacked beds, hide-a-beds, or beds with springs, cranks, rails or wheels, are not allowed.

D. Each resident room shall have a window to the outside. The area of the outdoor window shall be at least one tenth of the floor area of the room and allow for emergency egress. Windows may be textured or obscured glass to provide privacy without the use of any window coverings.

E. Resident rooms shall not be less than seven feet in any horizontal direction.

F. There must be no through traffic in resident rooms. Resident rooms must connect directly to hallway or other internal common areas of the facility.

[8.321.11.58 NMAC - N, 7/1/2024]

8.321.11.59 TOILETS, LAVATORIES AND BATHING FACILITIES:

A. General Requirements:

(1) All fixtures and plumbing must be installed in accordance with current state and local plumbing codes.

(2) All toilets must be enclosed and vented.

(3) All toilet rooms must be provided with a lavatory for hand washing.

(4) All toilets must be kept supplied with toilet paper.

(5) All lavatories for hand washing must be kept supplied with disposable towels for hand drying or provided with mechanical blower.

(6) The number of and location of toilets, lavatories and bathing facilities shall be in accordance with International Building Code (IBC) requirements. Toilets for public use shall be located adjacent to the waiting area. Such factors as extent of services provided and size of CTC will also dictate requirements.

(7) Facilities serving youth must provide separate toilet and shower facilities for adults and youth.

B. Residential component: Separate facilities shall be provided for male and female patients. Toilet and bathing facilities shall be located appropriately to meet the needs of residents.

(1) Facilities serving youth and adults must locate youth resident rooms and restrooms in a unit or wing that is physically separated from the adult facilities.

(2) A minimum of one toilet, one lavatory and one bathing unit (tub, shower, or combo unit) shall be provided for every eight residents or fraction thereof.

(3) Toilets to be flush meter type (no tank).

(4) Mirrors cannot be glass or polished metal. A polycarbonate mirror, fully secured and flat mounted to the wall is required.

(5) Individual shower stalls and dressing areas shall be provided. The shower head shall be recessed or have a smooth curve from which items cannot be hung.

(6) There shall not be any overhead rods, fixtures or privacy stall supports or protrusions capable of carrying more than a 30-pound load.

C. **Staff restroom:** The CTC shall provide a separate staff toilet including, lavatory and shower, near staff station.

[8.321.11.59 NMAC - N, 7/1/2024]

8.321.11.60 COLLECTION/DRAW/LAB AREA: Facilities shall be reward to support laboratory procedures, if provided. Minimum facilities provided on-site shall include space for the following:

A. A urine collection room equipped with a toilet and hand washing sink.

B. Blood collection facilities with space for a chair, work counter, and lavatory.

C. Each CTC shall have accommodations for storage and refrigeration of blood, urine and other specimens in a dedicated specimen refrigerator.

[8.321.11.60 NMAC - N, 7/1/2024]

8.321.11.61 NUTRITION: A CTC offering a residential treatment program shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the “recommended daily dietary allowance” of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences.

A. Menus must be approved by a licensed nutritionist. Meals shall meet the nutritional needs of the residents in accordance with the current USDA dietary guidelines for Americans. Vending machines shall not be considered a source of snacks.

B. Dietary services. The CTC will develop and implement written policies and procedures that are maintained on the premises. All CTC food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

(1) at least three nutritious meals per day shall be served;

(2) no more than 14 hours may elapse between the end of an evening meal and the beginning of a morning meal;

(3) therapeutic diets shall be provided when ordered by the physician;

(4) under no circumstances may food be withheld for disciplinary reasons;

(5) each CTC shall have seating capacity to accommodate the licensed capacity and be able to feed adult and youth clients separately, although clients may eat or be served in shifts during daily operations;

(6) nutritional snacks shall be available to each client; and

(7) weekly menus shall be posted in the dining area.

[8.321.11.61 NMAC - N, 7/1/2024]

8.321.11.62 FOOD SERVICE: Requirements of Section 8.321.11.62 NMAC apply to facilities providing a residential treatment program.

A. The CTC shall have either contracted food preparation or prepare food on site.

B. A CTC that contracts food preparation shall have a dietary or a kitchen area adequate to meet food service needs and arranged and equipped for the refrigeration, storage, preparation, and serving of food, dish and utensil cleaning and refuse storage and removal.

C. Dietary areas consisting of a food warming and refrigeration area shall comply with the local health or food handling codes. Food preparation space shall be arranged for the separation of functions and shall be located to permit efficient services to residents and shall not be used for non-dietary functions.

D. A CTC that provides onsite food preparation shall comply with the New Mexico environment department food preparation regulations.

E. A CTC with a kitchen area, whether used for on-site food preparation or not, must adhere to the following requirements:

(1) limit traffic incidental to the receiving, preparation and serving of food and drink;

(2) toilet facilities may not open directly into the kitchen;

(3) food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside;

(4) a separate hand washing sink with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen;

(5) a separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided;

(6) at least a three compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drain boards, at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drain board shall be available for prewashing and liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least fifty percent of the largest utensil used. In lieu of the additional sink for prewashing, a well-type garbage disposal with overhead spray wash may be provided.

(7) mechanical dishwashers and utensil washers, where provided, shall meet the requirements of the current approved list from the national sanitation foundation or equivalent with approval of the authority;

(8) temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of an immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus two degrees fahrenheit or one degree celsius;

(9) approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment;

(10) the walls shall be of plaster or equivalent material with smooth, light- colored, nonabsorbent, and washable surface;

(11) the ceiling shall be of plaster or equivalent material with smooth, light-colored, nonabsorbent, washable, and seamless surface;

(12) the floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be non-absorbent and easily cleaned;

(13) an exterior door from a food preparation area shall be effectively screened. Screen doors shall be self-closing;

(14) all rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted;

(15) rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or waste lines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

[8.321.11.62 NMAC - N, 7/1/2024]

8.321.11.63 LAUNDRY SERVICES:

A. General requirements. The CTC shall provide laundry services, either on the premises or through a commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Staff shall handle, store, process and transport linens with care to prevent the spread of infectious and communicable disease.

(4) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas. An exterior route to the laundry room is not an acceptable alternative, unless it is completely enclosed.

(5) All linens shall be changed as needed and at least weekly or when a new resident is to occupy the bed.

(6) The mattress pad, blankets and bedspread shall be laundered as needed and when a new resident is to occupy the bed.

(7) Bath linens consisting of hand towel, bath towel and washcloth shall be changed as needed and at least weekly.

(8) There shall be a clean, dry, well-ventilated storage area provided for clean linen.

(9) CTC laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage and shall be kept in a secured room or cabinet.

(10) CTC shall have a small washer and dryer for immediate unit needs and to wash clients' clothes. These washing and drying units shall be equipped to sanitize clothes as a preventive measure of infection control.

(11) Residents may do their own laundry, if it is their preference and they are capable of doing so.

[8.321.11.63 NMAC - N, 7/1/2024]

8.321.11.64 WATER:

- A. A CTC licensed pursuant to these regulations must be provided with an adequate supply of water that is of a safe and sanitary quality suitable for domestic use.
- B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the CTC's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.
- C. Hot and cold running water under pressure must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods.
- D. Back flow preventers (vacuum breakers) must be installed on hose bibs, laboratory sinks, service sinks, and on all other water fixtures to which hoses or tubing can be attached.
- E. Water distribution systems are arranged to provide hot water at each hot water outlet at all times.
- F. Hot water to hand washing facilities must not exceed 120 degrees fahrenheit.

[8.321.11.64 NMAC - N, 7/1/2024]

8.321.11.65 SEWAGE AND WASTE DISPOSAL:

- A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.
- B. Where a municipal sewage system is not available, the system used must be inspected and approved by the New Mexico environment department or recognized local authority.
- C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid wastes generated by the CTC must be inspected and approved by the New Mexico environment department or recognized local authority.
- D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids. Receptacles must be kept closed and clean.

[8.321.11.65 NMAC - N, 7/1/2024]

8.321.11.66 ELECTRICAL STANDARDS:

- A. All electrical installation and equipment must comply with all current state and local codes.
- B. Circuit breakers or fused switches that provide electrical disconnection and over current protection shall be:
 - (1) enclosed or guarded to provide a dead front assembly;
 - (2) readily accessible for use and maintenance;
 - (3) set apart from traffic lanes;
 - (4) located in a dry, ventilated space, free of corrosive fumes or gases;
 - (5) able to operate properly in all temperature conditions;
 - (6) panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as the circuits they serve; and
 - (7) each panel board will be marked showing the services.
- C. The use of jumpers or devices to bypass circuit breakers or fused switches is prohibited.
- D. Light switches and electrical devices in the residential unit shall be secured with tamper resistant screws.

[8.321.11.66 NMAC - N, 7/1/2024]

8.321.11.67 LIGHTING:

- A. All spaces occupied by people, machinery, or equipment within buildings, approaches to buildings, and parking lots shall have lighting.
- B. Lighting will be sufficient to make all parts of the area clearly visible.
- C. All lighting fixtures must be shielded.
- D. Lighting fixtures must be selected and located with the comfort and convenience of the staff and clients in mind.
- E. Lighting fixtures in the residential unit shall be recessed, tamperproof or protective translucent cover.

[8.321.11.67 NMAC - N, 7/1/2024]

8.321.11.68 ELECTRICAL CORDS AND RECEPTACLES:

A. Electrical cords and extension cords shall:

- (1) be U/L approved;
- (2) be replaced as soon as they show wear;
- (3) be plugged into an electrical receptacle within the room where used;
- (4) not be used as a general wiring method; and
- (5) not be used in series.

B. Electrical receptacles shall:

(1) Be duplex-grounded type electrical receptacles (convenience outlets) and installed in all areas in sufficient quantities for tasks to be performed as needed.

(2) Be a ground fault circuit interrupter if located within six feet of a water source.

C. The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited.

[8.321.11.68 NMAC - N, 7/1/2024]

8.321.11.69 EMERGENCY POWER & LIGHTING: Emergency electrical service with an independent power source which covers lighting at attendant stations, exit and corridor lights, boiler room, and fire alarm systems shall be provided.

A. The service may be battery operated if effective for at least four hours.

B. Facilities shall have emergency lighting with a minimum of two bulbs to light exit passageways.

C. Independent power source shall be in an exterior area near the exits and activate automatically upon disruption of electrical service.

[8.321.11.69 NMAC - N, 7/1/2024]

8.321.11.70 FIRE SAFETY COMPLIANCE: All current applicable requirements of state and local codes for fire prevention and safety must be met by the CTC.

[8.321.11.70 NMAC - N, 7/1/2024]

8.321.11.71 FIRE CLEARANCE AND INSPECTIONS: Each CTC must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the CTC, the CTC must document the date the request was made and to whom. If the fire authorities do make annual inspections; a copy of the latest inspection must be kept on file in the CTC.

[8.321.11.71 NMAC - N, 7/1/2024]

8.321.11.72 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM: Facilities with residential services shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable. Sprinkler heads in the residential unit shall be of the protective type, either vandal proof or tamper resistant. Sprinkler systems for facilities without residential services must be in compliance with current state building code requirements regarding a sprinkler system.

[8.321.11.72 NMAC - N, 7/1/2024]

8.321.11.73 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT: The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable.

A. Facilities shall have a manual fire alarm system. The manual fire alarm shall be inspected and approved in writing by the fire authority with jurisdiction.

B. Approved smoke detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas. Areas of assembly, such as the dining, living or activity room(s) must also be provided with smoke detectors.

(1) Detectors shall be powered by the house electrical service and have battery backup.

(2) Construction of new facilities or facilities remodeling or replacing existing smoke detectors shall provide detectors in common living areas and in each sleeping room.

(3) Smoke detectors shall be installed in corridors at no more than 30 feet spacing.

(4) Heat detectors shall be installed in all kitchens and also powered by the house electrical service.

[8.321.11.73 NMAC - N, 7/1/2024]

8.321.11.74 FIRE EXTINGUISHERS: Fire extinguisher(s) must be located in the CTC, as approved by the state fire marshal or the fire prevention authority with jurisdiction.

A. Facilities must as a minimum have two 2A10BC fire extinguishers:

(1) one extinguisher located in the kitchen or food preparation area;

(2) one extinguisher centrally located in the CTC;

(3) all fire extinguishers shall be inspected yearly, recharged as needed and tagged noting the date of the inspection;

(4) The maximum distance between fire extinguishers shall be 50 feet.

B. Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

[8.321.11.74 NMAC - N, 7/1/2024]

8.321.11.75 STAFF FIRE AND SAFETY TRAINING:

A. All staff of the CTC must know the location of and instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The CTC should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

B. CTC staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the patients or staff.

C. Fire and evacuation drills: The CTC must conduct at least one fire and evacuation drill for each work shift for each quarter. When drills are conducted between 9:00 pm and 6:00 am, a coded announcement shall be permitted for use instead of audible alarms. A log must be maintained by the CTC showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill.

[8.321.11.75 NMAC - N, 7/1/2024]

8.321.11.76 EVACUATION PLAN: Each CTC must have a fire evacuation plan conspicuously posted in each separate area of the building showing routes of evacuation in case of fire or other emergencies.

[8.321.11.76 NMAC - N, 7/1/2024]

8.321.11.77 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes.

B. The heating, ventilation and air-conditioning system must be able to maintain interior temperatures in all rooms used by clients, staff or visitors with interior temperatures between 65 degrees fahrenheit and 78 degrees fahrenheit year-round.

C. The use of non-vented heaters, open flame heaters or portable heaters is prohibited.

D. An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.

E. All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.

F. A CTC must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.

G. All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

H. The CTC must be provided with a system for maintaining clients and staff's comfort during periods of hot weather, evaporative cooling is not allowed.

I. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. The door must be self-closing with three - quarter hour fire resistance.

J. Fireplace or wood burning stoves are prohibited.

K. The ceiling and air distribution devices (supply & return, etc.) in the residential component shall be a tamper resistant type.

[8.321.11.77 NMAC - N, 7/1/2024]

8.321.11.78 WATER HEATERS:

A. Must be able to supply hot water to all hot water taps within the CTC at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees fahrenheit.

B. Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.

C. All water heaters must be equipped with a pressure relief valve (pop-off valve).

[8.321.11.78 NMAC - N, 7/1/2024]

8.321.11.79 ADDITIONAL REQUIREMENTS FOR FACILITIES SERVING YOUTH: All requirements in the above rules apply to all facilities. For facilities serving youth, the additional requirements of this section must also be met.

A. Physical environment for general building requirements: Facilities serving adults and youth must locate youth resident rooms and restrooms in a unit or wing that is separated by sight and sound barriers from the adult facilities.

B. Enforcement involving suspension of license without prior hearing: Any CTC that allows any person, subject to all applicable statutes and regulations, to work at the CTC if that person is listed on the CYFD unreasonable risk background check and related regulations, as amended, may be subject to immediate suspension of its license without prior hearing.

C. Reporting of incidents: All facilities licensed under these regulations, must comply with all incident intake, processing, training and reporting requirements under all applicable NM Children's Code, Section 32A-1-1 NMSA 1978, Children's Mental Health and Developmental Disabilities Act, Section 32A-6A-1 NMSA 1978, Section 7.20.11 and Section 7.20.12 NMAC.

D. Policies And Procedures: The CTC shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the CTC's operation. The administrator shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the CTC's written policies and procedures shall include how the CTC intends to comply with all requirements of these regulations and address:

(1) immediate reporting of suspected child abuse, neglect or exploitation, pursuant to the NM Children's Code and these licensing regulations;

(2) actions to be taken in case of accidents or emergencies involving a youth, including death;

(3) immediate personnel actions to be taken by the CTC if child abuse or neglect allegations are made involving a direct service staff;

(4) confidentiality of youth' records;

(5) management of a youth who is a danger to themselves or others or presents a likelihood of serious harm to themselves or others. The CTC procedures must specify that immediate actions be taken to prevent such harm. At a minimum, the policies and procedures require that the following actions be taken and documented in the youth's file:

(a) all appropriate actions to protect the health and safety of other youth, clients and staff who are endangered;

(b) all appropriate efforts to manage the youth's behavior prior to proposing emergency discharge;

(6) Clinically appropriate and legally permissible methods of youth behavior management and discipline.

(7) The CTC shall prohibit in policy and practice the following:

(a) degrading punishment;

(b) corporal or other physical punishment;

(c) group punishment for one client's behavior;

(d) deprivation of a client's rights and needs (e.g., food, phone contacts, etc.) when not based on documented clinical rationale;

(e) aversive stimuli used in behavior modification;

(f) punitive work assignments;

(g) isolation or seclusion;

(h) harassment; and

(i) chemical or mechanical restraints.

(8) For those CTCs that serve mixed age occupants, the CTC shall establish policies and procedures to ensure the health and safety of all residents.
[8.321.11.79 NMAC - N, 7/1/2024]

8.321.11.80 RISK ASSESSMENT: Use of physical restraint must be consistent with federal and state laws and regulations and must include the following:

A. Physical restraints of youth are implemented only by staff who have been trained and certified by a state recognized body in the prevention and use of physical restraint. This training emphasizes de-escalation techniques and alternatives to physical contact with clients as a means of managing behavior. Clients and youth do not participate in the physical restraint of other clients and youth.

B. Youth treatment plans document the use of physical restraints and include: consideration of the client's medical condition(s); the role of the client's history of trauma in their behavioral patterns; the treatment team's solicitation and consideration of specific suggestions from the client regarding prevention of future physical interventions.

C. Physical restraints orders for youth are issued by a restraint clinician within one hour of initiation of physical restraint and include documented clinical justification for the use of physical restraint.

D. If the youth has a treatment team physician or advanced practice registered nurse and they are available, only they can order physical restraint.

E. If physical restraint is ordered by someone other than the youth's treatment team physician or advanced practice registered nurse, the restraint clinician will consult with the youth's treatment team physician or advanced practice registered nurse as soon as possible and inform them of the situation requiring the youth to be restrained and document in the youth's record the date and time the treatment team physician or advanced practice registered nurse was consulted and the information imparted.

F. The restraint clinician must order the least restrictive emergency safety intervention that is most likely to be effective in resolving the situation.

G. If the order for physical restraint is verbal, the verbal order must be received by a restraint clinician or a New Mexico licensed registered nurse (RN) or practical nurse (LPN). The restraint clinician must verify the verbal order in a signed, written form placed in the youth's record within 24 hours after the order is issued.

H. A restraint clinician's order must be obtained by a restraint clinician or New Mexico licensed RN or LPN prior to or while the physical restraint is being initiated by staff, or immediately after the situation ends.

I. Each order for physical restraint must be documented in the youth's record and will include:

- (1) the name of the restraint clinician ordering the physical restraint;
- (2) the date and time the order was obtained;
- (3) the emergency safety intervention ordered, including the length of time;
- (4) the time the emergency safety intervention actually began and ended;
- (5) the time and results of any one-hour assessment(s) required; and
- (6) the emergency safety situation that required the client to be restrained; and
- (7) the name, title, and credentials of staff involved in the emergency safety intervention.

J. The CTC will notify the parent(s) or legal guardian(s) that physical restraint has been ordered as soon as possible after the initiation of each emergency safety intervention. This will be documented in the client's record, including the date and time of notification, the name of the staff person providing the notification, and who was notified.

K. After an incident of restraint, the professionals involved in the incident shall conduct a debriefing with the client to discuss the event with the intent of preventing future incidents. Within five days of an incident of restraint, the treatment team must meet to review the incident and revise plan of treatment if appropriate.

[8.321.11.80 NMAC - N, 7/1/2024]

8.321.11.81 CLIENT RIGHTS: All licensed facilities shall understand, protect and respect the rights of all youth demonstrating substantial compliance with all applicable New Mexico Children's Code, Section 32A-1-1 NMSA 1978, including the NM Children's Mental Health and Developmental Disabilities Act, Section 32A-6A-1 NMSA 1978.

[8.321.11.81 NMAC - N, 7/1/2024]

8.321.11.82 CLIENT CLINICAL RECORD:

The client clinical records maintained by a crisis triage center in a paper-based or electronic system shall document the degree and intensity of the treatment provided to clients who are furnished services by the CTC. A client's clinical record shall contain at a minimum all required NM Children's Code documentation defined in Subsection A through Subsection O of Section 32A-6A-10 NMSA 1978 associated with the use of any emergency interventions such as physical restraint.

[8.321.11.82 NMAC - N, 7/1/2024]

8.321.11.83 STAFFING REQUIREMENTS: Other staff requirements:

A. All CYFD background check requirements governing criminal records clearances must remain in effect while a program is accredited.

B. When a prospective employee that will work with or have access to youth has not lived in the United States continuously for the five years prior to hire, the CTC must obtain the equivalent of a criminal records and background clearance from any country in which the prospective employee has lived within the last five years, for a period longer than one year.

C. If the CTC receives reliable evidence that indicates that an employee or prospective employee poses an unreasonable risk, as defined or pursuant to Subsection W of Section 8.8.3.7 NMAC, the CTC may not hire the prospective employee or retain the employee.

[8.321.11.83 NMAC - N, 7/1/2024]

8.321.11.84 PERSONNEL RECORDS: Each CTC licensed pursuant to these regulations intending to work with youth must maintain a complete record on file for each staff member or volunteer including:

A. Completed CYFD criminal records and background check, including the FBI-approved electronic fingerprint for each employee that serves as direct service staff working with youth including licensed and certified staff. (supervisors, physicians, nurses, therapists, client care workers, coordinators, or other agency personnel who work in immediate direct unsupervised contact with youth.) The agency must have received the background clearance from the CYFD background check unit prior to the employee's direct, unsupervised contact with youth.

B. The date the employee was first employed and dates of transfers or changes in position.

C. Documentation that of a minimum of three references were checked.

D. A clearance letter from CYFD stating the applicant's background check has been conducted with negative results or a signed statement by the administrator, director, or operator attesting to direct supervision of an uncleared employee by a cleared employee until official clearance is received.

E. Documentation that each uncleared employee is identified on the staff schedule.

[8.321.11.84 NMAC - N, 7/1/2024]

8.321.11.85 STAFF TRAINING: At least 12 hours of on-going training shall be provided to staff that provides direct care at least annually; the training and proof of competency shall include at a minimum: NM Children's Mental Health and Developmental Disabilities Act Section 32A-6A-1 et. seq., NMSA 1978.

[8.321.11.85 NMAC - N, 8.321.11.85 7/1/2024]

HISTORY of 8.321.11 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 2 ADJUDICATORY HEARINGS FOR LICENSED FACILITIES

8.370.2.1 ISSUING AGENCY: This rule is promulgated and issued by the New Mexico Health Care Authority.
[8.370.2.1 NMAC - N, 7/1/2024]

8.370.2.2 SCOPE: Except as otherwise specifically provided by statute or rule, the scope of the sections in this part apply to adjudicatory proceedings conducted by the authority.
[8.370.2.2 NMAC - N, 7/1/2024]

8.370.2.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the authority granted under Section 9-8-1 et seq. NMSA 1978 which establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation; the authority granted pursuant to 42 U.S.C. Section 1396a(i); the authority granted under 42 C.F.R. Sections 431.151 through 431.154; 442.118; and 8.353.2.9 NMAC, based on sanctions imposed by the authority on licensed facilities in which medicaid recipients receive services. This rule does not provide adjudicatory procedures for appeals from actions related to the home and community based waiver.
[8.370.2.3 NMAC - N, 7/1/2024]

8.370.2.4 DURATION: Permanent.
[8.370.2.4 NMAC - N, 7/1/2024]

8.370.2.5 EFFECTIVE DATE: This rule becomes effective on July 1, 2024, unless a later date is cited at the end of a section.
[8.370.2.5 NMAC - N, 7/1/2024]

8.370.2.6 OBJECTIVE: This rule provides adjudicatory procedures for licensed health facilities: administrative appeals of the initial denial of an annual license; of an emergency prehearing suspension of license and of emergency intermediate sanctions; of authority action denying renewal, suspending, or revoking a license, or of the authority's imposition of an intermediate sanction or civil monetary penalty; and of a cease and desist order.
[8.370.2.6 NMAC - N, 7/1/2024]

8.370.2.7 DEFINITIONS: For purposes of this rule, the following shall apply.

A. "Adjudicate" means to decide, settle or determine a disputed action. The term applies to a determination of facts and the application of law and reason to the facts by an impartial decision maker.

B. "Administrator" means the person or manager in charge of the day-to-day operation of the facility or medicaid provider. The administrator may be the licensee or an authorized representative of the licensee.

C. "Annual license" is the legally required authority-issued license authorizing a facility to operate for the one year period of time noted on the face of the document and issued on an initial and renewal basis.

D. "Appellant" means the party seeking review in a court of competent jurisdiction of a final decision of the licensing authority.

E. "Applicant" means the individual responsible for the day-to-day operations of the facility, and who signs the license application. The applicant must be the individual. The applicant may be the same individual as the prospective licensee or may be an authorized representative of the prospective licensee.

F. "Application" means the forms, attachments and other writings and drawings required by the licensing authority, to be completed and submitted by the applicant for the licensing authority's review for granting or denying a license.

G. "Burden of proof" refers to the requirement of a party to produce an amount of evidence tending to prove a proposition.

H. "Cease and desist order" means a formal, enforceable order of the licensing authority issued to a facility, usually in instances where the facility is operating without a license.

I. "Certification" means the determination made by the licensing authority as to whether a health facility or agency complies with applicable federal regulations and the conditions of participation in the medicare or medicaid program. Certification of noncompliance may be the basis for denial or termination of provider participation in the medicare or medicaid programs, or the basis for the imposition of other sanctions including license revocation.

J. "Denial of an application" and "denial of an annual license" mean action by the licensing authority declining to grant an annual license on the basis of noncompliance with applicable laws and regulations.

K. "Director" means the director of the division of health improvement of the New Mexico health care authority.

L. "Emergency suspension of license" means the licensing authority's prohibition of operation of a facility for a stated period of time by temporary withdrawal of the license, prior to a hearing on the matter, when immediate action is required to protect human health and safety. The emergency suspension is carried out by personal service of an emergency suspension order and notice of a hearing. A hearing must be held within five working days of the effective date of suspension ("five-day hearing"), as noticed in the emergency suspension order and notice of hearing, unless the right to a hearing is waived by the licensee or the right to a five-day hearing is waived and a hearing is requested at a later date by the licensee.

M. "Facility" means any health facility or health agency required to be licensed by the licensing authority pursuant to the authority of the Public Health Act, Sections 24-1-1 to 24-1-21 NMSA 1978, as amended, or required to be certified by the licensing authority in order to be eligible to receive and medicaid reimbursement for services provided to eligible recipients. This does not refer to community providers.

N. "Final decision" means the dispositive written document entered following a request for hearing under this rule, stating the final determination of the secretary made after review of the hearing officer's report and recommendation.

O. "Five-day hearing" means the hearing noticed in the emergency suspension order and notice of hearing. See the definition of "emergency suspension of license" in Subsection E of this section.

P. "Hearing" means a proceeding in which legal rights, duties or privileges of a party are at issue and which shall include an opportunity for the parties to present such testimony and evidence as the hearing officer deems relevant and material to the issues to be adjudicated.

Q. "Hearing officer" means an individual designated to conduct prehearing conferences and hearings and to make reports and recommendations, based on the evidence taken, to the secretary.

R. "Initial applicant" means the individual who signs the initial license application.

S. "License" means the document issued by the licensing authority which authorizes the lawful operation of a facility. The term "license" includes an annual license and a temporary license.

T. "Licensee" means the person in whose name a license for a facility has been issued and who is legally responsible for the facility's compliance with applicable laws and regulations.

U. "Licensing authority" means the division of health improvement of the New Mexico health care authority. The licensing authority is also the state survey agency authorized to perform survey and certification functions for the medicaid and medicare programs.

V. "Official notice" means administrative notice, the act by which the hearing officer, in conducting the hearing or framing their decision, recognizes the existence and truth of certain facts without the production of evidence by the parties.

W. "Party" and "parties" means the original persons, entities, or agencies to a hearing under this rule and such intervenors permitted to intervene by written order of the hearing officer.

X. "Person" means an individual, partnership, proprietorship, agency, corporation, company, association, tribal government or tribal organization, state or local government entity, or similar legal entity and the legal successor thereof.

Y. "Prospective licensee" means the person in whose name a license for operation of a facility is to be issued.

Z. "Recipient" means the individual who receives service of notice and, specifically includes the person who receives a cease and desist order issued by the licensing authority.

AA. "Renewal applicant" means the individual who signs the renewal license application.

BB. "Revocation of license" means the licensing authority's cancellation and withdrawal of a license on a permanent basis.

CC. "Secretary" means the secretary of the New Mexico health care authority and includes their authorized representative.

DD. "Subpoena" means a written command issued by the hearing officer, at the request of a party, directing the appearance by a person, at a designated time and place, to give testimony upon a certain matter. The subpoena may include a command to produce books, papers, documents and other things, in which case it is issued as a subpoena duces tecum.

EE. "Suspension of license" means the licensing authority's temporary cancellation and withdrawal of a license for a stated period of time.

FF. "Taking of appearances" means recording for the record the names of persons appearing at the hearing and their representatives, if any.

GG. "Temporary license" means, with respect to a health facility, an operating license issued for a stated period of time not to exceed 120 days. Not more than two consecutive temporary licenses may be granted by the licensing authority.

HH. "Working days" means, when determining compliance with various deadlines in this rule, Monday through Friday of each calendar week, excluding state observed holidays.
[8.370.2.7 NMAC - N, 7/1/2024]

8.370.2.8 STANDARD OF COMPLIANCE: The degree of compliance required by this rule is designated by the use of the words "shall" or "must" and "may". "Shall" and "must" designate mandatory requirements; "may" is permissive.
[8.370.2.8 NMAC - N, 7/1/2024]

8.370.2.9 USAGE: The singular number includes the plural, and the plural includes the singular.
[8.370.2.9 NMAC - N, 7/1/2024]

8.370.2.10 SEVERABILITY: If any portion of this rule or the application of this rule, is held to be invalid, the validity of the remainder of the regulations, or the application of the regulations to different situations or persons, shall not be affected.
[8.370.2.10 NMAC - N, 7/1/2024]

8.370.2.11 HEARING PROCESS AND PROCEDURES: GROUNDS FOR REQUESTING

HEARING: The actions or proposed actions of the authority which may be contested are:

- A.** denial of an application for initial annual license;
- B.** denial of an application for renewal of an annual license;
- C.** a cease and desist order;
- D.** emergency suspension of license (pre-hearing);
- E.** suspension of license (non-emergency, post-hearing);
- F.** revocation of license;
- G.** intermediate sanctions or civil monetary penalties.

[8.370.2.11 NMAC - N, 7/1/2024]

8.370.2.12 INITIATION OF HEARING PROCESS: The hearing process is begun upon receipt by the licensing authority of a timely request for hearing, or, in the case of a pre-hearing emergency suspension of license, by service upon the licensee of an emergency suspension order and notice of hearing.
[8.370.2.12 NMAC - N, 7/1/2024]

8.370.2.13 REQUEST FOR HEARING:

- A.** Written and signed: the request for hearing shall be made in writing and shall be signed by the person or an authorized representative of the person against whom the action of the authority is taken.
- B.** Delivery: the request for hearing shall be addressed to the director of the division of health improvement or to any other authority employee indicated in the authority's notice, and it shall be hand delivered or mailed, return receipt requested, to such person.

[8.370.2.13 NMAC - N, 7/1/2024]

8.370.2.14 TIME FOR REQUESTING HEARING: The request for hearing must be received by the authority:

- A.** within 10 working days after receipt by the initial applicant, renewal applicant or prospective licensee of notice of the decision denying the application for license;

- B.** within five working days after receipt of a cease and desist order;
 - C.** within 10 working days after receipt by the licensee of a notice of suspension or notice of revocation;
 - D.** within four working days after receipt by the licensee of an emergency suspension order or emergency intermediate sanction and notice of hearing (pre-hearing emergency suspension of license).
- [8.370.2.14 NMAC - N, 7/1/2024]

8.370.2.15 EFFECT OF REQUEST FOR HEARING; STAY:

- A.** Denial of an initial annual license: receipt by the licensing authority of a timely request for hearing upon the denial of an initial annual license does not allow the facility to begin operation. If the facility begins operation without a license, it is operating illegally and is subject to appropriate administrative and judicial sanctions and criminal charges.
 - B.** Denial of renewal of annual license: receipt by the licensing authority of a timely request for hearing upon the denial of renewal of an annual license stays the expiration of the current license until a final decision.
 - C.** Cease and desist order: receipt by the licensing authority of a timely request for hearing following issuance of a cease and desist order does not allow a facility to operate.
 - D.** Emergency suspension of license: if the licensee intends to appear for the five-day hearing noticed in the emergency suspension order and notice of hearing, a request for hearing need not be made. If the licensee timely waives the five-day hearing and requests a hearing to be held at a later date, the effect of such waiver is to allow time for additional prehearing discovery. Such waiver and request for later hearing does not stay the emergency suspension. The facility operates without legal authority if it continues operation after the effective date of the emergency suspension and becomes subject to appropriate administrative and judicial sanctions and criminal charges.
 - E.** Suspension, revocation, intermediate sanctions and civil monetary penalties: receipt by the licensing authority of a timely request for hearing following notice of the suspension or revocation of a current license stays suspension or revocation of the license until a final decision is reached following the hearing.
- [8.370.2.15 NMAC - N, 7/1/2024]

8.370.2.16 SCHEDULING HEARING:

- A.** Scheduling: promptly upon receipt of a timely request for hearing, the authority shall schedule a hearing to be held in Santa Fe, unless the hearing is required to be held elsewhere by applicable regulation.
 - B.** Change of location: upon timely motion, and with a showing of undue hardship and burden, the hearing officer may order the hearing location changed.
- [8.370.2.16 NMAC - N, 7/1/2024]

8.370.2.17 HEARING OFFICER:

- A.** Designation of hearing officer: promptly upon receipt of a timely request for hearing, the secretary or authorized representative of the authority shall designate a hearing officer.
 - B.** Qualifications: the hearing officer shall be impartial and shall have no personal bias or interest in the matter to be heard. He or she may be an officer or employee of the New Mexico health care authority as long as he was not involved in making the challenged administrative decision. The hearing officer need not be a licensed attorney, however, he should have relevant experience with evidentiary, adjudicatory proceedings.
 - C.** Disqualification: a hearing officer designated to preside at the hearing may disqualify himself on their own motion, or upon written request to, and approval of, the secretary of the New Mexico health care authority.
 - D.** Party's request for disqualification: whenever any party deems the hearing officer to be disqualified to preside, such party may file a written request to disqualify with the secretary of the New Mexico health care authority. The request shall be supported by affidavits setting forth the grounds for disqualification. The secretary shall promptly determine the validity of the grounds alleged and take appropriate action.
- [8.370.2.17 NMAC - N, 7/1/2024]

8.370.2.18 DUTIES OF HEARING OFFICER:

- A.** Official file: upon appointment, the hearing officer shall establish an official file which will contain all the filed notices, pleadings, briefs, recommendations, correspondence and decisions. It shall also contain the authority's notice of action as well as the request for hearing. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall turn over to the authority this official file for future custody.

B. Preside at hearing: the hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and any motions or other matters that arise prior to or during the hearing.

C. Evidence file: the hearing officer shall maintain an evidence file with each document or item admitted into evidence. Proffered items not admitted into evidence, at the request of the offering party, shall be so identified and separately maintained by the hearing officer.

D. Subpoenas: the hearing officer, upon request by a party, may issue subpoenas and subpoenas duces tecum.

[8.370.2.18 NMAC - N, 7/1/2024]

8.370.2.19 PARTIES: The principal and original parties to a hearing conducted under this rule shall be the appropriate agency of the authority, and the applicant or prospective licensee, the licensee, licensed medicare provider applicant, or the recipient of a cease and desist order, depending upon the nature of the hearing. Generally, intervenors are not allowed to participate as a party.

[8.370.2.19 NMAC - N, 7/1/2024]

8.370.2.20 LEGAL REPRESENTATION:

A. Natural persons: natural persons may appear on their own behalf or by an attorney licensed to practice in New Mexico.

B. Entities: the authority, corporations and other organizations and entities may appear by a bona fide officer, employee or representative or may be represented by an attorney licensed to practice in New Mexico.

C. Filing: any party filing documents in the appeal shall sign the original and hand deliver or mail it to the hearing officer and shall hand deliver or mail copies to all other parties.

[8.370.2.20 NMAC - N, 7/1/2024]

8.370.2.21 DISCOVERY:

A. Minimum discovery; inspection and copying of documents: each party shall have access to the relevant documents in the possession of the other party, except confidential or privileged documents. Access to the authority's relevant documents may be had during normal business hours at the authority's appropriate business offices. A reasonable copying fee may be charged.

B. Minimum discovery; witnesses: the parties shall each disclose to each other orally or in writing and to the hearing officer, the names of witnesses to be called, together with a brief summary of the testimony of each witness. In situations where statements will be presented to the hearing officer, rather than witnesses examined, the names of the persons making the statements and the summary of the statements, shall be disclosed.

C. Additional discovery: at the hearing officer's discretion, upon a written request by a party which sets out reasons that additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, examinations and premise inspections, interviews or written interrogatories may be ordered. In exercising their authority to determine whether further discovery is necessary or desirable, the hearing officer should consider whether the complexity of fact or law reasonably requires further discovery to ensure a fair opportunity to prepare for the hearing and whether such request will result in unnecessary hardship, cost, or delay in holding the hearing.

D. Costs: cost of document copying, mail or delivery service, interviews or written interrogatories, including mileage and per diem, paid in accordance with the New Mexico Per Diem and Mileage Act (Section 10-8-1, NMSA 1978) shall be paid by the requesting party.

E. Depositions prohibited: oral or written depositions are not permitted.

[8.370.2.21 NMAC - N, 7/1/2024]

8.370.2.22 PREHEARING CONFERENCE:

A. Purpose: at the discretion of the hearing officer, upon request of a party or upon the hearing officer's own motion, a prehearing conference shall be scheduled by the hearing officer at a time and place reasonably convenient to all parties, in order to: limit and define issues; discuss possible prehearing disposition; consider possible stipulations of factual or legal issues, or stipulations concerning the admissibility of evidence; limit the testimony or the number of witnesses, the issues or the evidence; and, discuss such other matters as may aid in the simplification of evidence and disposition of the proceedings.

B. Informal: such a conference shall be informal. No offer of settlement made at the conference shall be admissible in evidence at any later hearing. Stipulations and admissions shall be binding and may be used

as evidence at the hearing. At the hearing officer's discretion, stipulations and admissions may be made in writing and filed with the hearing officer as part of the official record of the proceedings.

C. Notice: the hearing officer will give notice of the time and place of the pre-hearing conference to the parties by telephone, in person or by mail.

D. Costs: each party shall bear its own costs, including transportation costs.

E. Record: a record of the prehearing conference shall not be kept. A prehearing order or other pleadings may be filed as a result of the prehearing conference.

[8.370.2.22 NMAC - N, 7/1/2024]

8.370.2.23 PREHEARING DISPOSITION: The subject matter of any hearing may be disposed of by stipulation, settlement or consent order, unless otherwise precluded by law. Any stipulation, settlement or consent order reached between the parties shall be written, signed by the hearing officer and the parties or their attorneys, and submitted to the secretary of the New Mexico health care authority. Such prehearing disposition shall be effective only if approved by the secretary.

[8.370.2.23 NMAC - N, 7/1/2024]

8.370.2.24 POSTPONEMENT OR CONTINUANCE: The hearing officer in their discretion, may postpone or continue a hearing upon their own motion or upon motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

[8.370.2.24 NMAC - N, 7/1/2024]

8.370.2.25 ADDITIONAL PLEADINGS: Solely at the discretion of the hearing officer, pleadings, motions and briefs allowed in the state district courts of New Mexico may be filed.

[8.370.2.25 NMAC - N, 7/1/2024]

8.370.2.26 CONDUCT OF THE HEARING:

A. Public: all hearings shall be open to the public, unless a closed hearing is asked for by the person requesting the hearing and the hearing officer finds good cause exists for closing the hearing. The authority shall not request a closed hearing.

B. Powers of hearing officer: the hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to: administer oaths or affirmations on the request of any party; schedule continuances; examine witnesses and direct witnesses to testify; limit repetitious and cumulative testimony; and set reasonable limits on the amount of time a witness may testify; decide objections to the admissibility of evidence or receive the evidence subject to later ruling; receive offers of proof for the record; direct parties to appear and confer for the settlement or simplification of issues, and to otherwise conduct prehearing conferences; dispose of procedural requests or similar matters; and, enter findings of fact, conclusions of law, orders, and reports and recommendations.

[8.370.2.26 NMAC - N, 7/1/2024]

8.370.2.27 ORDER OF PRESENTATION; GENERAL RULE: Except as specifically provided in the following section, the order of presentation for hearings in all cases, including but not limited to those arising from suspension, revocation, denial of renewal of license, intermediate sanctions, civil monetary penalties, emergency suspension, emergency intermediate sanctions shall be:

A. appearances: opening of proceeding and taking of appearances by the hearing officer;

B. pending matters: disposition by the hearing officer of preliminary and pending matters;

C. opening statements: the opening statement of the authority; and then the opening statement of the licensee or the party challenging the authority's action;

D. cases: the authority's case-in-chief; and then the case-in-chief of the licensee or the party challenging the authority's action;

E. rebuttal: the authority's case-in-rebuttal;

F. closing argument: the authority's closing statement, which may include legal argument; and then the closing statement, which may include legal argument of the licensee or the party challenging the authority's action; and

G. close: closing of proceedings by the hearing officer.

[8.370.2.27 NMAC - N, 7/1/2024]

8.370.2.28 ORDER OF PRESENTATION; SPECIAL CASES RULE: The order of presentation in denial of an initial annual license and cease and desist order cases is:

- A. appearances: opening of proceeding and taking of appearances by the hearing officer;
- B. pending matters: disposition by the hearing officer of preliminary and pending matters;
- C. opening statements: applicant's or recipient's opening statement; and then the opening statement of the licensing authority;
- D. cases: the applicant's or recipient's case-in-chief; and then the licensing authority's case-in-chief;
- E. rebuttal: the applicant's/prospective licensee's or recipient's case-in-rebuttal;
- F. closing argument: the applicant's/prospective licensee's or recipient's closing statement, which may include legal argument; and then the licensing authority's closing statement, which may include legal argument; and
- G. close: closing of proceedings by the hearing officer.

[8.370.2.28 NMAC - N, 7/1/2024]

8.370.2.29 BURDEN OF PROOF:

A. General rule: except as specifically provided for in the following paragraph, in all cases, including but not limited to those arising from suspension, revocation, denial of renewal of license, intermediate sanctions, civil monetary penalties, emergency suspension, emergency intermediate sanctions, or medicaid provider appeals, the authority shall present evidence supporting its decision. The party challenging the authority's decision shall then present evidence to show that the authority's decision is incorrect. The burden of proving by a preponderance of the evidence the basis for the decision at issue rests with the authority.

B. Special cases: in cases arising from the denial of initial license and cease and desist orders, the applicant for initial license or the recipient of the cease and desist order shall present evidence supporting the license application, or evidence supporting the legality of operating without a license. The licensing authority shall then present evidence supporting the denial of the application, or evidence of the propriety and of cease and desist order. The burden of proving by a preponderance of the evidence:

(1) that the application was improperly denied by the licensing authority and should be approved, or

(2) that operation is proper and in accordance with law, rests with the license applicant or recipient of the cease and desist order.

[8.370.2.29 NMAC - N, 7/1/2024]

8.370.2.30 EVIDENCE:

A. Technical rules not applicable: in general, the technical rules of evidence, such as the New Mexico rules of evidence, shall not apply but may be used as a guide to the principles of evidence and may be considered in determining the weight to be given any item of evidence. Nonprivileged, material and relevant evidence of the type which is relied upon by reasonably prudent persons in the conduct of serious affairs is admissible. The hearing officer may exclude, either with or without formal objection, unreliable, immaterial, irrelevant and unduly repetitious testimony and evidence.

B. Objections: a party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

C. Official notice: official notice may be taken of all facts of which judicial notice may be taken. Any party shall, on timely request, be afforded an opportunity to contest the noticed fact.

[8.370.2.30 NMAC - N, 7/1/2024]

8.370.2.31 EVIDENCE FROM WITNESSES:

A. Statement or examination of witnesses: the hearing officer, at their discretion, may receive evidence in the form of statements where a party is not represented by counsel; otherwise, the normal manner of witness testimony shall be by direct examination, cross examination and redirect examination, and through questioning by the hearing officer.

B. Written form: any part of the evidence may be received by the hearing officer in writing when a hearing will be expedited and the interests of the parties will not be substantially prejudiced.

[8.370.2.31 NMAC - N, 7/1/2024]

8.370.2.32 RECORD:

A. Content: the record of a proceeding under this rule shall include all documents contained in the official files maintained by hearing officer, including findings of fact and conclusions of law, the recommendations of the hearing officer; and the final decision of the secretary.

B. Recording the hearing: proceedings at which evidence is presented orally shall be recorded by means of a mechanical or electronic sound recording device provided by the authority. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription. Any party who seeks judicial review, in conformity with applicable appellate rules, must request leave to file the audio tapes of the administrative proceeding as the transcript of the proceedings together with the necessary copies made and certified as true and correct by an authorized employee of the authority.

[8.370.2.32 NMAC - N, 7/1/2024]

8.370.2.33 REPORT AND RECOMMENDATION OF HEARING OFFICER:

A. Hearing officer's report shall contain: a statement of the issues raised at the hearing; findings of fact and conclusions of law, applying law and regulations to the facts. Findings of fact shall be based on the evidence presented at the hearing or known to all parties, including matters officially noticed; and recommended determination.

B. Submission for final decision: the hearing officer's report together with the full hearing record shall be submitted to the secretary of the New Mexico health care authority for a final determination. The report and recommendation shall be submitted within 30 working days after expiration of the time set for submittal of the last post hearing submission of requested findings and conclusions, arguments or briefs.

C. Optional announcement of decision: at the close of the hearing, the hearing officer may announce their decision and request that the parties prepare appropriate post hearing submissions, including a decision for approval by the hearing officer. The hearing officer's oral and written decision is a recommendation to the secretary of the New Mexico health care authority and is not a final order.

[8.370.2.33 NMAC - N, 7/1/2024]

8.370.2.34 FINAL DECISION: The secretary of the authority shall render a final administrative determination within ten working days of the submission of the hearing officer's report. Parties may be notified personally, by telephone or by mail of the final order. A copy of the final decision shall be mailed to each party or attorney of record.

[8.370.2.34 NMAC - N, 7/1/2024]

8.370.2.35 FAILURE TO APPEAR:

A. Default: failure of the party requesting the hearing to appear on the date and at the time set for hearing, without good cause shown, shall constitute a default and the hearing officer shall so notify all parties in writing.

B. Entry of decision: the hearing officer shall enter such findings, conclusions, decisions, recommendations, rulings and orders as are appropriate.

[8.1.2.35 NMAC - N, 7/1/2024]

8.370.2.36 PERSONAL SERVICE: Whenever this rule requires or allow delivery of notice of administration action or proposed action by way of personal service, such service shall be made by a licensing authority employee or other authority representative, or by any individual over the age of 18 years.

[8.370.2.36 NMAC - N, 7/1/2024]

8.370.2.37 MANNER OF SERVICE:

A. Service on the person or at the place where found: personal delivery of any notice shall be given when the applicant licensee or recipient of a cease and desist order is present, by personal delivery to the individual, applicant, licensee or recipient at the facility or where the person is found; if delivery is refused, service is effected by leaving the notice at the place where such person was found. If the person to be served refuses to accept the notice or to permit the notice to be left, valid service is achieved by the attempts described above to personally deliver or leave the notice.

B. Service on a representative: service shall be complete when the individual, applicant, licensee or recipient is absent, by personal delivery at the facility to an administrative or other employee who reasonably

appears to be capable of delivering the notice to the applicant licensee, recipient; or if no such person is available or willing to accept delivery, service may be made by posting notice on the most public part of the facility and by mailing, by U.S. postal service return receipt requested mail, a copy of the notice to the individual, applicant licensee, or recipient at the facility address or to the known address of the individual.

C. Mail: when notice is given by U.S. postal service certified return receipt requested mail, service shall be deemed to have been made on the date delivered, or if delivery is refused, service shall be deemed to have been made on the date on which delivery is attempted for the purpose of calculating all time requirements in this rule. When notice or service is given by regular first class mail, then receipt shall be deemed to have occurred on the third day following deposit in the U.S. mail, except when the third day falls on a Saturday, Sunday or legal holiday in which case receipt shall be deemed to have occurred on the next working day.
[8.370.2.37 NMAC - N, 7/1/2024]

8.370.2.38 PROOF OF SERVICE: The licensing authority employee, authority representative, or other individual making such service shall prepare and sign a statement indicating upon whom, where and when such personal service was made. If possible, the licensee's or applicant's or other recipient's signed acknowledgment of notice may be obtained. Failure to make proof of service shall not affect the validity of service. Personal service shall be deemed to be made at the time that notice is handed to the recipient of service, left or posted, in accordance with this section.
[8.370.2.38 NMAC - N, 7/1/2024]

8.370.2.39 JUDICIAL REVIEW: District court: to the extent provided by law, a final decision may be reviewed by the district court for the county of Santa Fe.
[8.370.2.39 NMAC - N, 7/1/2024]

8.370.2.40 RULES GOVERNING JUDICIAL REVIEW: The procedural rules for review of a final order are contained in the New Mexico statutes governing procedure for civil cases in the court of appeals and the district courts.
[8.370.2.40 NMAC - N, 7/1/2024]

8.370.2.41 RECORD:

A. The appellant shall make satisfactory arrangements with the authority for the preparation of the record of the proceeding for which judicial review is sought.

B. The record shall consist of the official file maintained by the hearing officer together with exhibits admitted into evidence, and the tapes or other transcript of the hearing.

C. The expense of copying tape recorded testimony and any other expense of preparing the record, including copying costs, shall be borne by the appellant.

D. The appellant shall certify in applicable pleadings filed with the court that arrangements have been made for preparation of a sufficient number of transcripts of the hearing and other items making up the record of the proceedings.

E. Within 30 days after service of notice of judicial appeal, the authority shall file in the appropriate court a certified copy of the original and duplicate copies of the tapes of the hearing under review together with the original and copies of the official file maintained and certified by the hearing officer.
[8.370.2.41 NMAC - N, 7/1/2024]

8.370.2.42 COURT ORDERED STAY: Filing for judicial review does not itself stay enforcement of the final decision. Any party may petition the court whose jurisdiction has been properly invoked for an order staying enforcement.
[8.370.2.42 NMAC - N, 7/1/2024]

8.370.2.43 STANDARD OF REVIEW: The reviewing court shall set aside the final order only if it is found to be:

- A. arbitrary, capricious, or an abuse of discretion;
- B. not supported by substantial evidence in the record;
- C. beyond the authority of the authority; or
- D. otherwise not in accordance with law.

[8.370.2.43 NMAC - N, 7/1/2024]

History of 8.370.2 NMAC: [RESERVED]

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

8.370.3.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.3.1 NMAC - N, 7/1/2024]

8.370.3.2 SCOPE: These regulations apply to any health facility as defined by Subsection D of Section 24-1-2 NMSA 1978, as amended which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding.
[8.370.3.2 NMAC - N, 7/1/2024]

8.370.3.3 STATUTORY AUTHORITY: The regulations set forth herein govern the imposition of intermediate sanctions and civil monetary penalties levied on health facilities licensed by the authority. These regulations have been promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the general authority granted under Subsection E of Section 9-8-6 of the Health Care Authority Act, NMSA 1978, as amended; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.370.3.3 NMAC - N, 7/1/2024]

8.370.3.4 DURATION: Permanent.
[8.370.3.4 NMAC - N, 7/1/2024]

8.370.3.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.3.5 NMAC - N, 7/1/2024]

8.370.3.6 OBJECTIVE: The purpose of these regulations is to:

- A.** comply with Section 24-1-5.2 NMSA 1978 which mandates that the authority adopt and promulgate regulations specifying the criteria for imposition of any intermediate sanction, including the amount of monetary penalties and the type and extent of intermediate sanctions;
- B.** encourage health facilities to maintain compliance with licensing requirements and accelerate compliance when found in violation; intermediate sanctions and civil monetary penalties are intended as alternatives to implementation of more drastic measures such as revocation or suspension of license.
 - (1)** The objective of the base penalty component of the civil monetary penalty is deterrence. The base penalty is imposed without regard to the time required for the correction.
 - (2)** The objective of the daily penalty component of the civil monetary penalty is principally to motivate prompt correction of the deficiency and to protect the health and safety of the residents.

[8.370.3.6 NMAC - N, 7/1/2024]

8.370.3.7 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. "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.

D. "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.

E. "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.

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

G. "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.

H. "Licensing authority" means the New Mexico health care authority.

I. "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.

J. "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.

K. "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.

[8.370.3.7 NMAC - N, 7/1/2024]

8.370.3.8 TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON ANY LICENSED HEALTH CARE FACILITY:

A. A directed plan of correction: The licensing authority may direct a licensee to correct violations in a time specified, detailed plan.

B. Facility monitors: The licensing authority may select a facility monitor for a specified period of time to closely observe a health facility's compliance efforts. The facility monitor shall have authority to review all applicable facility records, policies, procedures and financial records; and the authority to interview facility staff and residents. The facility monitor may also provide consultation to the facility management and staff in the correction of violations. The health facility must pay all reasonable costs of a facility monitor.

C. Temporary management: The licensing authority may appoint temporary management with expertise in the field of health services to oversee the operation of the health facility. The management appointed

will ensure that the health and safety of the facility's patients, residents, or clients is protected. The health facility must pay all reasonable costs of temporary management.

D. Restricted admissions or provision of services: The licensing authority may restrict the health facility from providing designated services and from accepting any new patients, residents, or clients until deficiencies are corrected.

E. Reduction of licensed capacity: The licensing authority may reduce the licensed capacity of a health facility.

F. Civil monetary penalty: The licensing authority may impose on any health facility a civil monetary penalty.

(1) The amount of the civil monetary penalty is based upon the total of:

(a) the initial base penalty;

(b) a daily penalty which is calculated based on the uncorrected deficiencies which exist for each day following the notice to the facility, and;

(c) any penalty doubling for repeat deficiencies. Civil monetary penalties shall not exceed a total of \$5,000 per day.

(2) Limitation: A civil monetary penalty is not intended to force the closure of a licensed facility in lieu of license revocation.

(3) Burden of proof; limitation: Any facility seeking to show that the imposition of a civil monetary penalty will result in the forced closure of the facility must prove the same by clear and convincing evidence.

[8.370.3.8 NMAC - N, 7/1/2024]

8.370.3.9 EMERGENCY APPLICATION: The intermediate sanctions may be imposed on an emergency basis when there exists an immediate threat to human health and safety. An administrative hearing will be schedule within five working days, unless waived by the facility. A request for a hearing does not stay the imposition of the emergency sanction.

[8.370.3.9 NMAC - N, 7/1/2024]

8.370.3.10 ADDITIONAL TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON MEDICAID CERTIFIED NURSING FACILITIES:

A. Denial of payment and a facility monitor: The licensing authority may recommend denial of payment and a facility monitor to the medical assistance division, New Mexico health care authority, when survey findings document non-compliance with federal regulations governing conditions of participation. Substandard quality of care must be documented on three consecutive surveys. The facility monitor shall remain until the facility has demonstrated, to the satisfaction of the licensing authority, that it is in compliance with the conditions of participation and that it will remain in compliance with such requirements.

B. Temporary management or termination of medicaid participation: The licensing authority may impose temporary management or recommend termination of the medicaid provider participation agreement when survey findings document deficiencies which immediately jeopardize the health and safety of the residents. Notice of this sanction must provide that a hearing will be conducted within five working days of the imposition of the sanction.

[8.370.3.10 NMAC - N, 7/1/2024]

8.370.3.11 CONSIDERATIONS FOR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: Before intermediate sanctions or civil monetary penalties are imposed, they will be reviewed and approved by the director of the public health division or their designee. The following factors shall be considered by supervisory personnel of the licensing authority when determining whether to impose one or more intermediate sanctions or civil monetary penalties:

A. death or serious injury to a patient, resident or client;

B. abuse, neglect or exploitation of a patient, resident or client;

C. regulatory violations which immediately jeopardize the health or safety of the patients, residents or clients of a health facility;

D. numerous violations, which combined, jeopardize the health or safety of patients, residents or clients of a health facility;

E. repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a health facility;

F. failure of a health facility to correct violations found during previous surveys or visits;
G. compliance history;
H. intentional deceit regarding condition of the facility;
I. effect of a civil monetary penalty on financial viability of the facility;
J. extenuating circumstances. Extenuating circumstances allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.
[8.370.3.11 NMAC - N, 7/1/2024]

8.370.3.12 CORRECTION OF DEFICIENCIES: When the licensing authority has determined deficiencies exist, the facility must correct the deficiencies according to the following time frames:

A. Immediate response: The risk of injury or harm created or presented by the Class A and B deficiencies must be immediately eliminated. Under no circumstance should a situation that presents a risk of injury or harm to residents be allowed to continue. The facility must immediately stop the risk of injury or harm, even if the Class A or B deficiency is not corrected, by eliminating such risk of injury or harm. The facility, in addition to any other sanction imposed by the licensing authority, shall submit a plan of correction addressing systemic causes of the deficiencies within a determinate period of time approved by the licensing authority.

B. Plan of correction: All deficiencies must be corrected within a fixed period of time approved by the licensing authority.

C. Failure to timely correct: A separate civil monetary penalty may be imposed for each uncorrected Class A, Class B or Class C deficiency for each day that the particular violation continues beyond the date specified for correction.

[8.370.3.12 NMAC - N, 7/1/2024]

8.370.3.13 CIVIL MONETARY PENALTIES; INITIAL BASE PENALTY: The authority shall impose civil monetary penalties in accordance with these regulations on licensed facilities, not to exceed \$5,000 per day.

A. Civil monetary penalty; initial base penalty assessed: An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation. The base penalty amount is usually greater than the daily penalty amount for the same deficiency.

B. Civil monetary penalty; initial base penalty amount: The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

- (1) Class A deficiency: not less than \$500 and not greater than \$5,000.
- (2) Class B deficiency: not less than \$300 and not greater than \$3,000.
- (3) Class C deficiency: not less than \$100 and not greater than \$500.

C. Doubling authorized for repeat violations: Where the facility was assessed a civil monetary penalty for class A or B deficiencies within the previous 24 months, the initial base penalty amount is doubled for each instance of the licensed facility's noncompliance with applicable regulation(s) previously assessed as a class A or B deficiency. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the initial base penalty amount may be doubled for the facility's noncompliance with the applicable regulation(s) previously assessed as a class C deficiency. If such doubling results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day.

[8.370.3.13 NMAC - N, 7/1/2024]

8.370.3.14 CIVIL MONETARY PENALTY; DAILY PENALTY:

A. Accrual: The daily civil monetary penalty amount accrues from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority. The daily civil monetary penalty continues until notice is provided to the licensing authority that all the deficiencies which were originally cited and relied upon in calculating the amount of the daily penalty are corrected. No piecemeal reduction of the daily penalty is available for partial correction of regulatory violations cited as the basis for all or part of the daily penalty.

B. Calculation of amount: For a class A, class B, or class C deficiency, a daily civil monetary penalty is determined by multiplying the facility's licensed capacity times the facility penalty rate, times the severity index. The sum of the civil penalties for each class A, class B and class C deficiency is the total daily civil monetary

penalty amount for all class A, class B and class C deficiencies. For each day that the total daily civil monetary penalty for each class A, class B and repeat class C deficiency exceeds \$5,000, the civil monetary penalty is \$5,000. Expressed as a formula, the calculation of the civil monetary penalty amount per deficiency equals the lesser of either:

- (1) \$5,000; or
- (2) (licensed capacity) x (facility penalty rate) x (severity index).

[8.370.3.14 NMAC - N, 7/1/2024]

8.370.3.15 CALCULATION OF AMOUNT OF CIVIL MONETARY PENALTY - DOUBLING FOR REPEAT DEFICIENCIES:

A. General: In addition to doubling the base penalty, doubling the daily civil monetary penalty is authorized and is intended to eliminate repeat regulatory violations. Doubling occurs in instances where the facility was assessed a base penalty or a daily civil monetary penalty for class A or B deficiencies cited within the previous 24 months, and the facility is cited for noncompliance with one or more of the same regulations on the current survey or investigation for which the previous civil monetary penalty was assessed. The licensing authority has greater discretion to double the civil monetary penalty for class C deficiencies. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the civil monetary penalty may be doubled for the facility’s noncompliance with the same regulation that previously was assessed as a class C deficiency. If such doubling of the civil monetary penalty results in civil monetary penalties in excess of five thousand dollars (\$5,000) per day, then the civil monetary penalty is five thousand dollars (\$5,000) per day.

B. Doubling; repeat class A or B deficiencies: The amount of the daily civil monetary penalty for a deficiency, as calculated above, shall be doubled for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or civil monetary penalties as class A or B deficiencies.

C. Doubling; repeat class C deficiencies: The amount of the daily civil monetary penalty may be doubled, in the discretion of the licensing authority, for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or in civil monetary penalties as a class C deficiency.

[8.370.3.15 NMAC - N, 7/1/2024]

8.370.3.16 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)	\$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

[8.370.3.16 NMAC - N, 7/1/2024]

8.370.3.17 SEVERITY INDEX: Three index ratings, in descending order of severity, are established and applied as follows:

- A. **Class A:** Severity index of five is applied for class A deficiencies.
- B. **Class B:** Severity index of three is applied for class B deficiencies.
- C. **Class C:** Severity index of one is applied for class C deficiencies.

[8.370.3.17 NMAC - N, 7/1/2024]

8.370.3.18 CIVIL MONETARY PENALTIES CUMULATIVE: The civil monetary penalties imposed by the licensing authority are cumulative and are in addition to any other fines or penalties, remedies, or other intermediate sanctions provided by law.

[8.370.3.18 NMAC - N, 7/1/2024]

8.370.3.19 PAYMENT OF MONETARY PENALTIES: The following will govern the payment of monetary penalties:

A. Unless an appeal has been filed, the facility has 30 calendar days to pay the monetary penalty. Calculation begins from the date the facility received the notice of penalty assessment.

B. Payment of monetary penalties must be in the form of a money order, certified check, business or personal check payable to state of New Mexico.

C. The check or money order must clearly indicate the purpose for the payment, i.e. payment of monetary penalty.

D. Payment shall be sent to health facility licensing and certification bureau, public health division, health care authority.

[8.370.3.19 NMAC - N, 7/1/2024]

8.370.3.20 COLLECTION OF CIVIL MONETARY PENALTY: A civil monetary penalty assessed under these regulations shall be paid to the authority within 30 days following such assessment or following the resolution of any appeal. Interest shall accrue at the current judgment interest rate after 30 days of such assessment or following the resolution of any appeal. If the facility fails to submit payment of the civil monetary penalty, then the authority is authorized to take any of the following actions:

A. The authority may add the amount of the civil monetary penalty together with accrued interest to the facility's annual license fee. If the facility fails to pay such civil monetary penalty and accrued interest, the license shall not be renewed.

B. The authority may bring action in a court of competent jurisdiction to recover the amount of the civil monetary penalty and accrued interest.
[8.370.3.20 NMAC - N, 7/1/2024]

8.370.3.21 DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The daily penalty of the civil monetary penalty is imposed for each day that any cited deficiency exists.

A. Begin date: The accrual of the daily civil monetary penalties begins from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority.

B. End date: Daily civil monetary penalties cease accruing on the first full day that all deficiencies are corrected.

C. Retroactive accrual for uncorrected deficiencies: A civil monetary penalty may be assessed for uncorrected deficiencies cited in a revisit or follow up survey, when the facility was cited for such deficiencies, but was not assessed daily civil monetary penalties at the time of the preceding survey. The daily civil monetary penalty may accrue beginning with the date the uncorrected deficiencies were cited at the preceding survey.

[8.370.3.21 NMAC - N, 7/1/2024]

8.370.3.22 CESSATION OF DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The licensing authority will terminate the daily accrual of civil monetary penalties attributable to any class A, B, or C deficiency upon the facility's provision of evidence to the licensing authority that the specific deficiency has been corrected.

[8.370.3.22 NMAC - N, 7/1/2024]

8.370.3.23 SERVICE OF NOTICE: The authority shall provide notification, by certified mail, personal delivery, or by facsimile if the notice is also mailed, of its intent to impose any intermediate sanction or civil monetary penalty. Notice may be given of the intent to impose a civil monetary penalty where the total accrued amount of the civil monetary penalty is not yet determined. Notice setting out the base amount and final total accrued amount of the daily civil monetary penalty shall be provided at the time of the determination. Notification of other actions contemplated under these regulations may be by regular mail, certified mail, or personal delivery or by facsimile if the notice is also mailed. All time periods for response shall be calculated beginning on the date of service, unless otherwise provided.

[8.370.3.23 NMAC - N, 7/1/2024]

8.370.3.24 RIGHT TO APPEAL: The facility may appeal the authority's notice of license suspension, license revocation, imposition of intermediate sanctions, or civil monetary penalties. The administrative appeal hearing shall be conducted by an impartial hearing officer appointed by the secretary of the authority.

[8.370.3.24 NMAC - N, 7/1/2024]

8.370.3.25 TIMELINESS: To obtain an administrative appeal hearing, the facility must make a timely request in writing.

A. Suspensions, revocations, intermediate sanctions, or civil monetary penalties: The authority must receive written request for an appeal hearing within ten working days after the facility receives the authority's final notice of suspension, revocation, intermediate sanction, or civil monetary penalty. In any appeal of the authority's imposition of civil monetary penalties, final notice from which an appeal may be taken is that notice which sets out the total civil monetary penalty, including both the base amount and the daily accrual amount.

B. Emergency suspension and emergency intermediate sanctions: The authority shall provide notice of an administrative appeal hearing concurrently with notice of an emergency suspension or emergency intermediate sanction. The administrative appeal hearing is scheduled within five working days of the date of imposition of the authority's emergency action. The facility may waive this hearing and request a hearing at a later date. The authority must receive such a waiver and written request for a later hearing within four working days after the facility receives notice of the emergency action.

C. Cease and desist order: The authority must receive written request for an appeal hearing within five working days after the facility receives the cease and desist order.

[8.370.3.25 NMAC - N, 7/1/2024]

8.370.3.26 APPEAL PROCEDURES: Adjudicatory Hearings, New Mexico Health care authority, 8.370.2 NMAC shall apply in all administrative appeals provided by these regulations.

[8.370.3.26 NMAC - N, 7/1/2024]

8.370.3.27 RESOLUTION WITHOUT HEARING - PENALTY REDUCTION: The facility may satisfy, in full, the amount of any civil monetary penalty imposed under these regulations if, within ten working days following receipt of the notice:

- A. the authority receives the facility's written waiver of any right to appeal; and
- B. the authority receives the facility's payment of one-half (fifty percent) of the amount of the civil monetary penalty imposed.

[8.370.3.27 NMAC - N, 7/1/2024]

8.370.3.28 STAY OF SANCTION: The authority's receipt of the facility's notice of appeal shall operate as a stay of suspension, revocation, intermediate sanction (except temporary manager or monitor), or civil monetary penalty. In the case of emergency suspension or emergency intermediate sanctions, however, neither the immediate five day hearing nor the facility's request for a later hearing will stay the authority's action.

[8.370.3.28 NMAC - N, 7/1/2024]

8.370.3.29 PREHEARING NEGOTIATIONS; NO TOLLING: Discussions and negotiations between the authority and a facility prior to hearing do not postpone any deadlines for an appeal, unless as a result of negotiations the authority and facility agree to postponement in writing.

[8.370.3.29 NMAC - N, 7/1/2024]

8.370.3.30 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, 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.

[8.370.3.30 NMAC - N, 7/1/2024]

History of 8.370.3 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 4 HEALTH FACILITY SANCTIONS AND CIVIL MONETARY PENALTIES

8.370.4.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.4.1 NMAC - N, 7/1/2024]

8.370.4.2 SCOPE: These regulations apply to any health facility as defined by Subsection D of Section 24-1-2 NMSA 1978, as amended which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding.
[8.370.4.2 NMAC - N, 7/1/2024]

8.370.4.3 STATUTORY AUTHORITY: The regulations set forth herein govern the imposition of intermediate sanctions and civil monetary penalties levied on health facilities licensed by the authority. These regulations have been promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the general authority granted under Subsection E of Section 9-8-6 of the Health Care Authority Act, NMSA 1978, as amended; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.4.3 NMAC - N, 7/1/2024]

8.370.4.4 DURATION: Permanent.
[8.370.4.4 NMAC - N, 7/1/2024]

8.370.4.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.4.5 NMAC - N, 7/1/2024]

8.370.4.6 OBJECTIVE: The purpose of these regulations is to:

A. comply with Section 24-1-5.2 NMSA 1978 which mandates that the authority adopt and promulgate regulations specifying the criteria for imposition of any intermediate sanction, including the amount of monetary penalties and the type and extent of intermediate sanctions;

B. encourage health facilities to maintain compliance with licensing requirements and accelerate compliance when found in violation; intermediate sanctions and civil monetary penalties are intended as alternatives to implementation of more drastic measures such as revocation or suspension of license.

(1) The objective of the base penalty component of the civil monetary penalty is deterrence. The base penalty is imposed without regard to the time required for the correction.

(2) The objective of the daily penalty component of the civil monetary penalty is principally to motivate prompt correction of the deficiency and to protect the health and safety of the residents.
[8.370.4.6 NMAC - N, 7/1/2024]

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.

[8.370.4.7 NMAC - N, 7/1/2024]

8.370.4.8 TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON ANY LICENSED HEALTH CARE FACILITY:

A. A directed plan of correction: The licensing authority may direct a licensee to correct violations in a time specified, detailed plan.

B. Facility monitors: The licensing authority may select a facility monitor for a specified period of time to closely observe a health facility's compliance efforts. The facility monitor shall have authority to review all applicable facility records, policies, procedures and financial records; and the authority to interview facility staff and residents. The facility monitor may also provide consultation to the facility management and staff in the correction of violations. The health facility must pay all reasonable costs of a facility monitor.

C. Temporary management: The licensing authority may appoint temporary management with expertise in the field of health services to oversee the operation of the health facility. The management appointed

will ensure that the health and safety of the facility's patients, residents, or clients is protected. The health facility must pay all reasonable costs of temporary management.

D. Restricted admissions or provision of services: The licensing authority may restrict the health facility from providing designated services and from accepting any new patients, residents, or clients until deficiencies are corrected.

E. Reduction of licensed capacity: The licensing authority may reduce the licensed capacity of a health facility.

F. Civil monetary penalty: The licensing authority may impose on any health facility a civil monetary penalty.

(1) The amount of the civil monetary penalty is based upon the total of:

(a) the initial base penalty;

(b) a daily penalty which is calculated based on the uncorrected deficiencies which exist for each day following the notice to the facility, and;

(c) any penalty doubling for repeat deficiencies. Civil monetary penalties shall not exceed a total of \$5,000 per day.

(2) Limitation: A civil monetary penalty is not intended to force the closure of a licensed facility in lieu of license revocation.

(3) Burden of proof; limitation: Any facility seeking to show that the imposition of a civil monetary penalty will result in the forced closure of the facility must prove the same by clear and convincing evidence.

[8.370.4.8 NMAC - N, 7/1/2024]

8.370.4.9 EMERGENCY APPLICATION: The intermediate sanctions may be imposed on an emergency basis when there exists an immediate threat to human health and safety. An administrative hearing will be schedule within five working days, unless waived by the facility. A request for a hearing does not stay the imposition of the emergency sanction.

[8.370.4.9 NMAC - N, 7/1/2024]

8.370.4.10 ADDITIONAL TYPES OF INTERMEDIATE SANCTIONS AND CIVIL MONETARY PENALTIES THAT MAY BE IMPOSED ON MEDICAID CERTIFIED NURSING FACILITIES:

A. Denial of payment and a facility monitor: The licensing authority may recommend denial of payment and a facility monitor to the medical assistance division, New Mexico health care authority when survey findings document non-compliance with federal regulations governing conditions of participation. Substandard quality of care must be documented on three consecutive surveys. The facility monitor shall remain until the facility has demonstrated, to the satisfaction of the licensing authority, that it is in compliance with the conditions of participation and that it will remain in compliance with such requirements.

B. Temporary management or termination of medicaid participation: The licensing authority may impose temporary management or recommend termination of the medicaid provider participation agreement when survey findings document deficiencies which immediately jeopardize the health and safety of the residents. Notice of this sanction must provide that a hearing will be conducted within five working days of the imposition of the sanction.

[8.370.4.10 NMAC - N, 7/1/2024]

8.370.4.11 CONSIDERATIONS FOR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: Before intermediate sanctions or civil monetary penalties are imposed, they will be reviewed and approved by the director of the public health division or their designee. The following factors shall be considered by supervisory personnel of the licensing authority when determining whether to impose one or more intermediate sanctions or civil monetary penalties:

A. death or serious injury to a patient, resident or client;

B. abuse, neglect or exploitation of a patient, resident or client;

C. regulatory violations which immediately jeopardize the health or safety of the patients, residents or clients of a health facility;

D. numerous violations, which combined, jeopardize the health or safety of patients, residents or clients of a health facility;

E. repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a health facility;

F. failure of a health facility to correct violations found during previous surveys or visits;
G. compliance history;
H. intentional deceit regarding condition of the facility;
I. effect of a civil monetary penalty on financial viability of the facility;
J. extenuating circumstances. Extenuating circumstances allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.
[8.370.4.11 NMAC - N, 7/1/2024]

8.370.4.12 CORRECTION OF DEFICIENCIES: When the licensing authority has determined deficiencies exist, the facility must correct the deficiencies according to the following time frames:

A. Immediate response: The risk of injury or harm created or presented by the Class A and B deficiencies must be immediately eliminated. Under no circumstance should a situation that presents a risk of injury or harm to residents be allowed to continue. The facility must immediately stop the risk of injury or harm, even if the Class A or B deficiency is not corrected, by eliminating such risk of injury or harm. The facility, in addition to any other sanction imposed by the licensing authority, shall submit a plan of correction addressing systemic causes of the deficiencies within a determinate period of time approved by the licensing authority.

B. Plan of correction: All deficiencies must be corrected within a fixed period of time approved by the licensing authority.

C. Failure to timely correct: A separate civil monetary penalty may be imposed for each uncorrected Class A, Class B or Class C deficiency for each day that the particular violation continues beyond the date specified for correction.

[8.370.4.12 NMAC - N, 7/1/2024]

8.370.4.13 CIVIL MONETARY PENALTIES; INITIAL BASE PENALTY: The authority shall impose civil monetary penalties in accordance with these regulations on licensed facilities, not to exceed \$5,000 per day.

A. Civil monetary penalty; initial base penalty assessed: An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation. The base penalty amount is usually greater than the daily penalty amount for the same deficiency.

B. Civil monetary penalty; initial base penalty amount: The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

- (1) Class A deficiency: not less than \$500 and not greater than \$5,000.
- (2) Class B deficiency: not less than \$300 and not greater than \$3,000.
- (3) Class C deficiency: not less than \$100 and not greater than \$500.

C. Doubling authorized for repeat violations: Where the facility was assessed a civil monetary penalty for class A or B deficiencies within the previous 24 months, the initial base penalty amount is doubled for each instance of the licensed facility's noncompliance with applicable regulation(s) previously assessed as a class A or B deficiency. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the initial base penalty amount may be doubled for the facility's noncompliance with the applicable regulation(s) previously assessed as a class C deficiency. If such doubling results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day.

[8.370.4.13 NMAC - N, 7/1/2024]

8.370.4.14 CIVIL MONETARY PENALTY; DAILY PENALTY:

A. Accrual: The daily civil monetary penalty amount accrues from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority. The daily civil monetary penalty continues until notice is provided to the licensing authority that all the deficiencies which were originally cited and relied upon in calculating the amount of the daily penalty are corrected. No piecemeal reduction of the daily penalty is available for partial correction of regulatory violations cited as the basis for all or part of the daily penalty.

B. Calculation of amount: For a class A, class B, or class C deficiency, a daily civil monetary penalty is determined by multiplying the facility's licensed capacity times the facility penalty rate, times the severity index. The sum of the civil penalties for each class A, class B and class C deficiency is the total daily civil monetary

penalty amount for all class A, class B and class C deficiencies. For each day that the total daily civil monetary penalty for each class A, class B and repeat class C deficiency exceeds \$5,000, the civil monetary penalty is \$5,000. Expressed as a formula, the calculation of the civil monetary penalty amount per deficiency equals the lesser of either:

- (1) \$5,000; or
- (2) (licensed capacity) x (facility penalty rate) x (severity index).

[8.370.4.14 NMAC - N, 7/1/2024]

8.370.4.15 CALCULATION OF AMOUNT OF CIVIL MONETARY PENALTY - DOUBLING FOR REPEAT DEFICIENCIES:

A. General: In addition to doubling the base penalty, doubling the daily civil monetary penalty is authorized and is intended to eliminate repeat regulatory violations. Doubling occurs in instances where the facility was assessed a base penalty or a daily civil monetary penalty for class A or B deficiencies cited within the previous 24 months, and the facility is cited for noncompliance with one or more of the same regulations on the current survey or investigation for which the previous civil monetary penalty was assessed. The licensing authority has greater discretion to double the civil monetary penalty for class C deficiencies. Where the facility was assessed a civil monetary penalty for a class C deficiency within the previous 24 months, the civil monetary penalty may be doubled for the facility’s noncompliance with the same regulation that previously was assessed as a class C deficiency. If such doubling of the civil monetary penalty results in civil monetary penalties in excess of \$5,000 per day, then the civil monetary penalty is \$5,000 per day.

B. Doubling; repeat class A or B deficiencies: The amount of the daily civil monetary penalty for a deficiency, as calculated above, shall be doubled for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or civil monetary penalties as class A or B deficiencies.

C. Doubling; repeat class C deficiencies: The amount of the daily civil monetary penalty may be doubled, in the discretion of the licensing authority, for a second or subsequent violation of the same regulatory requirement or provision, the violation of which within the prior 24 month period, resulted in, or was part of a group of violations that resulted in, the imposition of intermediate sanctions or in civil monetary penalties as a class C deficiency.

[8.370.4.15 NMAC - N, 7/1/2024]

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:

	<u>TYPE OF FACILITY</u>	<u>PENALTY RATE</u>
(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)	\$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]

8.370.4.17 SEVERITY INDEX: Three index ratings, in descending order of severity, are established and applied as follows:

- A. **Class A:** Severity index of five is applied for class A deficiencies.
- B. **Class B:** Severity index of three is applied for class B deficiencies.
- C. **Class C:** Severity index of one is applied for class C deficiencies.

[8.370.4.17 NMAC - N, 7/1/2024]

8.370.4.18 CIVIL MONETARY PENALTIES CUMULATIVE: The civil monetary penalties imposed by the licensing authority are cumulative and are in addition to any other fines or penalties, remedies, or other intermediate sanctions provided by law.

[8.370.4.18 NMAC - N, 7/1/2024]

8.370.4.19 PAYMENT OF MONETARY PENALTIES: The following will govern the payment of monetary penalties:

A. Unless an appeal has been filed, the facility has 30 calendar days to pay the monetary penalty. Calculation begins from the date the facility received the notice of penalty assessment.

B. Payment of monetary penalties must be in the form of a money order, certified check, business or personal check payable to state of New Mexico.

C. The check or money order must clearly indicate the purpose for the payment, i.e. payment of monetary penalty.

D. Payment shall be sent to health facility licensing and certification bureau, public health division, health care authority.

[8.370.4.19 NMAC - N, 7/1/2024]

8.370.4.20 COLLECTION OF CIVIL MONETARY PENALTY: A civil monetary penalty assessed under these regulations shall be paid to the authority within 30 days following such assessment or following the resolution of any appeal. Interest shall accrue at the current judgment interest rate after 30 days of such assessment or following the resolution of any appeal. If the facility fails to submit payment of the civil monetary penalty, then the authority is authorized to take any of the following actions:

A. The authority may add the amount of the civil monetary penalty together with accrued interest to the facility's annual license fee. If the facility fails to pay such civil monetary penalty and accrued interest, the license shall not be renewed.

B. The authority may bring action in a court of competent jurisdiction to recover the amount of the civil monetary penalty and accrued interest.
[8.370.4.20 NMAC - N, 7/1/2024]

8.370.4.21 DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The daily penalty of the civil monetary penalty is imposed for each day that any cited deficiency exists.

A. Begin date: The accrual of the daily civil monetary penalties begins from the date of harm or injury, or from the date of the regulatory noncompliance, or from the date of the facility's receipt of notice of the intermediate sanction, at the discretion of the licensing authority.

B. End date: Daily civil monetary penalties cease accruing on the first full day that all deficiencies are corrected.

C. Retroactive accrual for uncorrected deficiencies: A civil monetary penalty may be assessed for uncorrected deficiencies cited in a revisit or follow up survey, when the facility was cited for such deficiencies, but was not assessed daily civil monetary penalties at the time of the preceding survey. The daily civil monetary penalty may accrue beginning with the date the uncorrected deficiencies were cited at the preceding survey.

[8.370.4.21 NMAC - N, 7/1/2024]

8.370.4.22 CESSATION OF DAILY ACCRUAL OF CIVIL MONETARY PENALTIES: The licensing authority will terminate the daily accrual of civil monetary penalties attributable to any class A, B, or C deficiency upon the facility's provision of evidence to the licensing authority that the specific deficiency has been corrected.

[8.370.4.22 NMAC - N, 7/1/2024]

8.370.4.23 SERVICE OF NOTICE: The authority shall provide notification, by certified mail, personal delivery, or by facsimile if the notice is also mailed, of its intent to impose any intermediate sanction or civil monetary penalty. Notice may be given of the intent to impose a civil monetary penalty where the total accrued amount of the civil monetary penalty is not yet determined. Notice setting out the base amount and final total accrued amount of the daily civil monetary penalty shall be provided at the time of the determination. Notification of other actions contemplated under these regulations may be by regular mail, certified mail, or personal delivery or by facsimile if the notice is also mailed. All time periods for response shall be calculated beginning on the date of service, unless otherwise provided.

[8.370.4.23 NMAC - N, 7/1/2024]

8.370.4.24 RIGHT TO APPEAL: The facility may appeal the authority's notice of license suspension, license revocation, imposition of intermediate sanctions, or civil monetary penalties. The administrative appeal hearing shall be conducted by an impartial hearing officer appointed by the secretary of the authority.

[8.370.4.24 NMAC - N, 7/1/2024]

8.370.4.25 TIMELINESS: To obtain an administrative appeal hearing, the facility must make a timely request in writing.

A. Suspensions, revocations, intermediate sanctions, or civil monetary penalties: The authority must receive written request for an appeal hearing within 10 working days after the facility receives the authority's final notice of suspension, revocation, intermediate sanction, or civil monetary penalty. In any appeal of the authority's imposition of civil monetary penalties, final notice from which an appeal may be taken is that notice which sets out the total civil monetary penalty, including both the base amount and the daily accrual amount.

B. Emergency suspension and emergency intermediate sanctions: The authority shall provide notice of an administrative appeal hearing concurrently with notice of an emergency suspension or emergency intermediate sanction. The administrative appeal hearing is scheduled within five working days of the date of imposition of the authority's emergency action. The facility may waive this hearing and request a hearing at a later date. The authority must receive such a waiver and written request for a later hearing within four working days after the facility receives notice of the emergency action.

C. Cease and desist order: The authority must receive written request for an appeal hearing within five working days after the facility receives the cease and desist order.

[8.370.4.25 NMAC - N, 7/1/2024]

8.370.4.26 APPEAL PROCEDURES: Adjudicatory hearings, New Mexico Health care authority, 8.370.2 NMAC shall apply in all administrative appeals provided by these regulations.

[8.370.4.26 NMAC - N, 7/1/2024]

8.370.4.27 RESOLUTION WITHOUT HEARING - PENALTY REDUCTION: The facility may satisfy, in full, the amount of any civil monetary penalty imposed under these regulations if, within 10 working days following receipt of the notice:

- A. the authority receives the facility's written waiver of any right to appeal; and
- B. the authority receives the facility's payment of one-half (fifty percent) of the amount of the civil monetary penalty imposed.

[8.370.4.27 NMAC - N, 7/1/2024]

8.370.4.28 STAY OF SANCTION: The authority's receipt of the facility's notice of appeal shall operate as a stay of suspension, revocation, intermediate sanction (except temporary manager or monitor), or civil monetary penalty. In the case of emergency suspension or emergency intermediate sanctions, however, neither the immediate five day hearing nor the facility's request for a later hearing will stay the authority's action.

[8.370.4.28 NMAC - N, 7/1/2024]

8.370.4.29 PREHEARING NEGOTIATIONS; NO TOLLING: Discussions and negotiations between the authority and a facility prior to hearing do not postpone any deadlines for an appeal, unless as a result of negotiations the authority and facility agree to postponement in writing.

[8.370.4.29 NMAC - N, 7/1/2024]

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, 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]

History of 8.370.4 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 5 CAREGIVERS CRIMINAL HISTORY SCREENING REQUIREMENTS

8.370.5.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.2.1 NMAC - N, 7/1/2024]

8.370.5.2 SCOPE: This rule has general applicability to all applicants, caregivers, hospital caregivers, and care providers in New Mexico as defined in 8.370.5.7 NMAC of this rule. This rule does not apply to caregivers as set forth in Paragraph (2) of Subsection D of 8.370.5.7 NMAC and does not apply to care providers as set forth in Paragraph (2) of Subsection E of 8.370.5.7 NMAC.
[8.370.5.2 NMAC - N, 7/1/2024]

8.370.5.3 STATUTORY AUTHORITY: Sections 29-17-2 through 29-17-5, NMSA 1978 amended. 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 facility licensure and health care purchasing and regulation.
[8.370.5.3 NMAC - N, 7/1/2024]

8.370.5.4 DURATION: Permanent.
[8.370.5.4 NMAC - N, 7/1/2024]

8.370.5.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.5.5 NMAC - N, 7/1/2024]

8.370.5.6 OBJECTIVE: The objective of this part is to establish the requirements for complying with the Caregivers Criminal History Screening Act. Generally included within these rules are the requirements and procedures for submission of applicant, caregiver and hospital caregiver fingerprints, payment of fees and administrative reconsideration for a disqualifying conviction. These rules are intended to have all covered care providers meeting the requirements of the act.
[8.370.5.6 NMAC - N, 7/1/2024]

8.370.5.7 DEFINITIONS: For purposes of this rule, the following definitions shall apply:

- A.** "act" means Sections 29-17-2 to 29-17-5, NMSA 1978 of the Caregivers Criminal History Screening Act;
- B.** "applicant" means a person who applies, and is offered employment or contractual service with a care provider to provide services as a caregiver or hospital caregiver whether as an employee or contractor;
- C.** "care" means the therapy, services, treatment, support, supervision, assistance with the activities of daily living or management of a care recipient;
- D.** "caregiver" means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that provider;
- (1) "caregiver" includes:
- (a) compensated persons such as employees, contractors and employees of contractors;
 - (b) guardianship service providers and case management entities that provide services to people with developmental disabilities; and
 - (c) administrators or operators of facilities who are routinely on site;
- (2) "caregiver" does not include:
- (a) persons who provide natural supports;
 - (b) independent health care professionals, licensed or medicaid certified in good standing, who are not otherwise associated with the care provider as an administrator, operator or employee, and who are involved in the treatment or management of the medical care of a care recipient such as attending or treating physicians or other health care professionals providing consultation or ancillary services; or

(c) a person who has undergone a nationwide or statewide criminal history screening under Sections 32A-15-1 to 32A-15-4, NMSA 1978, of the Children's and Juvenile Facility Criminal Records Screening Act.

E. "care provider" includes:

(1) state owned or operated health care facilities, intermediate care facilities for the mentally retarded, general acute care hospitals, long-term care hospitals, psychiatric hospitals, rehabilitation hospitals, hospice services, guardianship providers, adult residential care facilities, adult community residential facilities, adult limited diagnostic treatment centers, case management entities providing services to persons with developmental disabilities, adult boarding homes, adult day care centers, adult family care homes, adult halfway homes, care providers operating respite, companion or personal care programs funded by the New Mexico aging and long term services department, care providers funded through the New Mexico children youth and families department providing homemaker and adult care services, disabled and elderly residential care providers providing services paid for in whole or in part by state funds, home health agencies, all residential habilitation service or respite service care providers authorized to be reimbursed in whole or in part by state funds or under any medicaid or medicaid waiver program, nursing home facilities, any other care provider entity which is licensed or medicaid certified and which is not specifically identified herein;

(2) "care provider" does not include: outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings, and any care facility located at or performing services exclusively for any correctional facility;

F. "care recipient" means any person under the care of a care provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

G. "conditional employment" means supervised employment pursuant to a bona fide offer of employment by a care provider to an applicant, caregiver or hospital caregiver, which is contingent upon the receipt of notice from the authority that the applicant's, caregiver's or hospital caregiver's nationwide and statewide criminal history screening indicates no existence of a disqualifying conviction, or notice from the authority pending an administrative reconsideration procedure; this includes that period of employment during the time allowed for responding to the authority's request for additional information in cases where the applicant's, caregiver's or hospital caregiver's criminal history record indicates an arrest without a final disposition for a crime listed under 8.370.5.11 NMAC.

H. "consent" means the written acknowledgment of permission to conduct a nationwide or statewide criminal history screening; consent also includes, with respect to the criminal history record, permission for the authority, following an attempt to obtain clarifying information from the applicant, caregiver or hospital caregiver to attribute, as a rebuttable presumption, disqualifying conviction status to any arrest for crimes that would constitute a disqualifying conviction and for which the arrest appearing on the nationwide criminal history record lacks a final disposition;

I. "authority" means the New Mexico health care authority;

J. "disqualifying conviction" means a plea, judgment or verdict of guilty, a plea of nolo contendere, an *alford* plea or any plea or judgment entered in connection with a suspended sentence, in this state or from any other state or jurisdiction to a felony crime listed in 8.370.5.11 NMAC; if a conviction may be considered in or used for sentence enhancement in a subsequent proceeding, then it is a disqualifying conviction under these rules if the conviction is for a crime listed in 8.370.5.11 NMAC;

K. "hospital caregiver" means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that care provider in an inpatient setting who is not a licensed New Mexico health care professional practicing within the scope of a profession's license;

L. "nationwide criminal history screening" means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints reviewed by the authority of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant, caregiver or hospital caregiver;

M. "nationwide criminal history record" means information collected by criminal justice agencies concerning an applicant's, caregiver's or hospital caregiver's arrests, indictments or other formal criminal charges, and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision;

N. “**natural supports**” means those resources, systems and persons that are readily available to the general community, including a care recipient, without regard to the care provider;

O. “**routine**” means in the context of care provision or financial access by an applicant, caregiver or hospital caregiver, that which is non-episodic and regularly scheduled or assigned;

P. “**supervised**” means, in the context of care provision or financial access, the supervisory oversight a care provider employs to ensure the prevention of abuse, neglect or the misappropriation of property of a care recipient by a caregiver or hospital caregiver during the caregiver’s or hospital caregiver’s conditional employment period; supervisory oversight shall include but is not limited to a management program utilized by the care provider, which demonstrates a systematic and routine monitoring of the safety and quality of service provided by the caregiver or hospital caregiver to the care recipient during the caregiver’s or hospital caregiver’s conditional employment period;

Q. “**statewide criminal history screening**” means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints reviewed by the authority of public safety resulting in the generation of a statewide criminal history record of the applicant, caregiver or hospital caregiver;

R. “**unsupervised**” means, in the context of care provision or financial access, that which occurs without the on-site, visual or physical presence of another caregiver or hospital caregiver or a family member of the care recipient or of another individual representing the care provider.

[8.370.5.7 NMAC - N, 7/1/2024]

8.370.5.8 CAREGIVER AND HOSPITAL CAREGIVER EMPLOYMENT REQUIREMENTS:

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

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

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

D. Application: In order for a nationwide criminal history record to be obtained and processed, the following shall be submitted to the authority on forms provided by the authority.

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

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

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

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

(5) If the applicant, caregiver or hospital caregiver must submit another readable set of fingerprint cards upon notice that the fingerprint cards previously submitted were found unreadable, as determined by the federal bureau of investigation or department of public safety, the submission of a second set of fingerprint

cards is required, a separate fee will not be charged. A fee shall be charged for submission of a third and subsequent fingerprint sets.

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

- (a) identification of the applicant, caregiver or hospital caregiver; and
- (b) an explanation of, or a statement describing, the applicant's, caregiver's or hospital caregiver's good faith efforts to supply readable fingerprints; and
- (c) the physical or medical reason that prevents the applicant, caregiver or hospital caregiver from producing readable fingerprints using commonly available fingerprinting techniques;
- (d) an applicant, caregiver or hospital caregiver meeting the conditions of this paragraph and who has resided in the state of New Mexico for less than 10 years must also submit a 10 year work history in addition to the required affidavits.

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

E. Fees: The federal bureau of investigation has a mandatory processing fee with no exceptions. The authority and department of public safety impose a state processing and administrative fee. The fee payment must accompany the fingerprint application, or otherwise be credited to the authority prior to or at the same time with the authority's receipt of the application documents. The manner of payment of the fee is by bank cashier check or money order payable to the New Mexico health care authority or other method of funds transfer acceptable to the authority. Business checks will be accepted unless the business tendering the check has previously tendered a check to the authority unsupported by sufficient funds. Neither cash nor personal checks will be accepted. The fee may be paid by the care provider or by the applicant, caregiver or hospital caregiver. The authority will set a fee in addition to the fees imposed by department of public safety and the federal bureau of investigation that will fully and completely cover costs incurred by the authority to support activities required by the act and these rules. The fees will not be applied to any other activity or expense undertaken by the authority.

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

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

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

(2) Care providers shall maintain documented evidence showing the basis for any determination by the care provider that an employee or contractor performs job functions that do not fall within the scope of the requirement for nationwide or statewide criminal history screening. A memorandum in an employee's file stating "This employee does not provide direct care or have routine unsupervised physical or financial access to care recipients served by (name of care provider)" together with the employee's job description, shall suffice for record keeping purposes.

[8.370.5.8 NMAC - N, 7/1/2024]

8.370.5.9 CAREGIVERS OR HOSPITAL CAREGIVERS AND APPLICANTS WITH DISQUALIFYING CONVICTIONS:

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

(1) In cases where the criminal history record lists an arrest for a crime that would constitute a disqualifying conviction and no final disposition is listed for the arrest, the authority will attempt to notify the applicant, caregiver or hospital caregiver and request information from the applicant, caregiver or hospital caregiver within timelines set forth in the authority's notice regarding the final disposition of the arrest. Information requested

by the authority may be evidence, for example, a certified copy of an acquittal, dismissal or conviction of a lesser included crime.

(2) An applicant's, caregiver's or hospital caregiver's failure to respond within the required timelines regarding the final disposition of the arrest for a crime that would constitute a disqualifying conviction shall result in the applicant's, caregiver's or hospital caregiver's temporary disqualification from employment as a caregiver or hospital caregiver pending written documentation submitted to the authority evidencing the final disposition of the arrest. Information submitted to the authority may be evidence, for example, of the certified copy of an acquittal, dismissal or conviction of a lesser included crime. In instances where the applicant, caregiver or hospital caregiver has failed to respond within the required timelines the authority shall provide notice by certified mail that an employment clearance has not been granted. The care provider shall then follow the procedure of Subsection A of 8.370.5.9 NMAC.

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

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

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

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

(2) notify the authority by letter within 14 calendar days, as determined by the postmark, of the date and type of action taken to satisfy the removal requirements of as set forth in Paragraph (1) of Subsection C of this section via written documentation signed by an authorized agent of the care provider.

[8.370.5.9 NMAC - N, 7/1/2024]

8.370.5.10 ADMINISTRATIVE RECONSIDERATION:

A. Availability: The applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction may request an informal administrative reconsideration from the authority.

B. Procedure for requesting administrative reconsideration:

(1) An applicant, caregiver or hospital caregiver given notice of a disqualifying conviction may submit a written request for an administrative reconsideration. To be effective, the written request shall:

(a) be made within 14 calendar days, as determined by the postmark, from the date of the notice issued by the authority;

(b) be properly addressed to the authority;

(c) state the applicants', caregivers' or hospital caregivers' name, home and work address, and telephone numbers;

(d) state the applicants', caregivers' or hospital caregivers' employer or proposed employer name, address and telephone numbers;

(e) state the date of hire;

(f) state the position title;

(g) describe the duties of the position; and

(h) describe the care recipients.

(2) If the applicant, caregiver or hospital caregiver wishes to submit and have considered additional documentation (as specified in Paragraph (1) of Subsection C of this section) that additional documentation must be included with the request for an administrative reconsideration.

(3) An applicant, caregiver or hospital caregiver requesting reconsideration shall include a signed declaration identifying with specificity any criminal felony convictions.

C. Written documentation: The documentation submitted with the request for an administrative reconsideration may include information on the following.

(1) Credible and reliable evidence of the actual disposition of any arrest for which the nationwide criminal history record was incomplete. This could be evidence, for example, of the certified copies of an acquittal, a dismissal, or conviction of a lesser included crime, submitted to refute or rebut the presumption of a disqualifying conviction created because the nationwide criminal history record was incomplete in not showing the final disposition of an arrest for a crime that constitutes a disqualifying conviction.

(2) The applicant's, caregiver's or hospital caregiver's age at the time of each disqualifying conviction.

(3) Any mitigating circumstances when the offense was committed.

(4) Any court imposed sentence or punishment and, if completed, when completed.

(5) Any successfully completed rehabilitation program since the offense.

(6) The applicant's, caregiver's or hospital caregiver's full employment history since the disqualifying convictions.

(7) And other relevant materials the applicant, caregiver or hospital caregiver may wish to submit.

D. Reconsideration proceeding: The reconsideration proceeding is intended to be an informal non-adversarial administrative review of written documentation. It will be conducted by a reconsideration committee designated for that purpose by the authority. The reconsideration committee will issue an employment clearance determination based upon the completed request for reconsideration and all supporting documents submitted. In cases where the reconsideration committee finds the need for additional or clarifying information, the reconsideration committee may request that the applicant, caregiver or hospital caregiver supply such additional information within the time set forth in the reconsideration committees' request.

E. Factors in determination: In determining whether an applicant's caregiver's or hospital caregiver's nationwide criminal history record reflects a disqualifying conviction may be employed, the reconsideration committee shall take into account the requirements of Section 28-2-1 to 28-2-6, NMSA 1978 of the criminal offender employment act. However, that act is not dispositive. The following factors may be considered:

(1) total number of disqualifying convictions;

(2) time elapsed since last disqualifying conviction or since discharge of sentence;

(3) circumstances of crime including whether violence was involved;

(4) activities evidencing rehabilitation, including but not limited to substance abuse or other rehabilitation programs;

(5) whether conviction was expunged by the court or whether an unconditional pardon was granted;

(6) false or misleading statements about any conviction in the signed declaration;

(7) evidence that applicant, caregiver or hospital caregiver poses no risk of harm to the health and safety of care recipients; and

(8) age of applicant, caregiver or hospital caregiver at time of disqualifying conviction.

F. Grounds for reconsideration employment clearance determination: An applicant, caregiver or hospital caregiver may be issued a reconsideration employment clearance determination by the authority where the request for reconsideration and accompanying documentation clearly demonstrates that the applicant, caregiver or hospital caregiver has satisfied one of the following three grounds for a reconsideration employment clearance determination.

(1) **Inaccuracy:** The nationwide criminal history record inaccurately reflects a disqualifying conviction. This ground for a reconsideration employment clearance determination applies:

(a) in instances of factual error in the nationwide criminal history record, from any source;

(b) in instances of error arising from the authority's application or use of the inappropriate criminal statute or standard to the disqualifying conviction at issue; and

(c) in instances where the authority, pursuant to the applicant's, caregiver's or hospital caregiver's required consent, applies a rebuttable presumption of a disqualifying conviction to an arrest for a felony that lacks a final disposition in the nationwide criminal history record.

(2) **No risk of harm:** The employment or contractual services provided by an applicant, caregiver or hospital caregiver with a disqualifying conviction presents no risk of harm to a care recipient. The reconsideration employment clearance determination issued by the reconsideration committee under this ground may be limited, in certain cases, based upon the evidence in the request for reconsideration and the accompanying documentation. The reconsideration determination of whether the applicant, caregiver or hospital caregiver presents no risk of harm to a care recipient is based upon the risk arising from the disqualifying conviction.

(3) No bearing on fitness: The disqualifying conviction does not directly bear upon the applicant's, caregiver's, or hospital caregiver's fitness for employment.
[8.370.5.10 NMAC - N, 7/1/2024]

8.370.5.11 DISQUALIFYING CONVICTIONS. The following felony convictions disqualify an applicant, caregiver or hospital caregiver from employment or contractual services with a care provider:

- A.** homicide;
- B.** trafficking, or trafficking in controlled substances;
- C.** kidnapping, false imprisonment, aggravated assault or aggravated battery;
- D.** rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
- E.** crimes involving adult abuse, neglect or financial exploitation;
- F.** crimes involving child abuse or neglect;
- G.** crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property; or
- H.** an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.

[8.370.5.11 NMAC - N, 7/1/2024]

History of 8.370.5 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 6 ACCESS TO MEDICAL RECORDS BY DISABILITY APPLICANTS

8.370.6.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.6.1 NMAC - N, 07/01/2024]

8.370.6.2 SCOPE: This regulation applies to requests for copies of medical records by any person, or that person's authorized representative, who is applying for social security disability benefits or appealing a denial of social security disability benefits.
[8.370.6.2 NMAC - N, 07/01/2024]

8.370.6.3 STATUTORY AUTHORITY: This regulation is promulgated pursuant to Section 14-6-3, NMSA 1978 as amended. 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 facility licensure and health care purchasing and regulation.
[8.370.6.3 NMAC - N, 07/01/2024]

8.370.6.4 DURATION: Permanent.
[8.370.6.4 NMAC - N, 07/01/2024]

8.370.6.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.6.5 NMAC - N, 07/01/2024]

8.370.6.6 OBJECTIVE: The purpose of this regulation is to establish the health care provider's duty to furnish medical records within 30 days of the request, and to set and enforce fee schedules for the provision of copies of medical records, when copies of such medical records are requested by persons applying for social security disability or appealing a denial of such benefits.
[8.370.6.6 NMAC - N, 07/01/2024]

8.370.6.7 DEFINITIONS:

A. "Authorized representative" means a person who lawfully may act on behalf of the individual who is applying for social security disability or appealing a denial of such benefits and whose medical records are the subject of a request to furnish copies.

B. "Health care provider" means a person licensed or certified by the state of New Mexico, or otherwise authorized by law to provide health care services in New Mexico in the ordinary course of business or practice of a profession, and includes facilities and entities that employ or contract with such a person, and it includes entities which maintain, process or store, medical records for such persons or facilities.

C. "Medical records" means information in a medical or mental health patient file, including drug or alcohol treatment records, clinical notes, nurses' notes, history of injury, subjective and objective complaints, diagnostic and laboratory test results and interpretations of tests, reports and summaries of interpretations of tests and other reports, diagnoses and prognoses, bills, invoices, referral requests, consultative reports, and reports of any services requested by the medical care provider.

D. "Person" means an individual who has been a patient of a health care provider or health care facility.

[8.370.6.7 NMAC - N, 07/01/2024]

8.370.6.8 REQUIREMENT OF WRITTEN REQUEST:

A. A person applying for social security disability, or appealing denial of such benefits, or the authorized representative, shall be furnished copies of requested medical records by health care providers who are provided a written and dated request for medical records signed by such person or authorized representative.

B. Requests shall be accompanied by a written verification that a person is applying for social security disability benefits, or is appealing a denial of such benefits.

[8.370.6.8 NMAC - N, 07/01/2024]

8.370.6.9 PRODUCTION OF RECORDS: Any records requested pursuant to this regulation or Section 14-6-3, NMSA 1978 as amended, shall be produced within 30 calendar days of receipt of the written request, regardless of prior receipt of the fee for the records.
[8.370.6.9 NMAC - N, 07/01/2024]

8.370.6.10 FEES AUTHORIZED; SCHEDULE: A reasonable fee for copying and furnishing requested medical records may be charged by the health care provider. No health care provider shall charge more than:
A. \$2.00 per page for the first 10 one-sided pages;
B. For each page after the first 10 one-sided pages, not more than twenty cents per page.
[8.370.6.10 NMAC - N, 07/01/2024]

8.370.6.11 COMPLAINTS; ENFORCEMENT:
A. Complaints by any person, or person's authorized representative, that a health care provider has failed to comply with the requirements of this rule, shall be made, in writing, to the New Mexico health care authority, division of health improvement.
B. Complaints shall include a description of manner in which the health care provider failed to follow this rule, and shall include copies of all documents relevant to the alleged violation.
C. Complaints alleging violation of this rule made against health care providers which are substantiated by the authority, or any failure by a health care provider to timely submit payment of any assessed civil monetary penalty, may be referred to the appropriate professional or facility licensure or certification authority for further action.
[8.370.6.11 NMAC - N, 07/01/2024]

8.370.6.12 PENALTIES: If the authority finds that the health care provider has violated these regulations, the authority may impose a civil monetary penalty in an amount not to exceed \$100 per violation.
[8.370.6.12 NMAC - N, 07/01/2024]

History of 8.370.6 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 7 HEALTH FACILITY RECEIVERSHIP REQUIREMENTS

8.370.7.1 ISSUING AGENCY: The New Mexico Health Care Authority.
[8.370.7.1 NMAC - N, 7/01/2024]

8.370.7.2 SCOPE: This rule applies to the New Mexico health care authority (authority) in actions taken pursuant to the Health Facility Receivership Act, Chapter 24, Article 1E, NMSA 1978.
[8.370.7.2 NMAC - N, 7/01/2024]

8.370.7.3 STATUTORY AUTHORITY: Section 24-1E-3.1, NMSA 1978 (2001). Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.370.7.3 NMAC - N, 7/01/2024]

7.1.11.4 DURATION: Permanent.
[8.370.7.4 NMAC - N, 7/01/2024]

8.370.7.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited in a section.
[8.370.7.5 NMAC - N, 7/01/2024]

8.370.7.6 OBJECTIVE: This rule implements provisions of the Health Facility Receivership Act and sets out the conditions for the authority to petition for appointment of a health facility receiver; the duties, authority and responsibility of the health facility receiver; the authority for imposing financial conditions on the facility; the minimum qualifications for the deputy receiver; and the provisions which the secretary will request for inclusion in district court orders.
[8.370.7.5 NMAC - N, 7/01/2024]

8.370.7.7 DEFINITIONS: As used in this rule, unless the context requires otherwise:

A. “Abandonment” means the elimination of, or the failure to provide, one or more essential support services for all or a portion of the residents of a health facility, including but not limited to appropriate personnel, shelter, medical care, sustenance, assistance with the activities of daily living, habilitation or individual treatment plan activities and support.

B. “Closure Plan” means the health facility’s written plan, including any amendments, detailing the manner in which the health facility will satisfy all applicable legal or contractual requirements, including any requirements that the authority may request be included in such written plan, and which at a minimum sets forth the discharge planning and transfer of the residents, and the manner in which the health facility will fully meet the needs of the residents during the period of the facility closure.

C. “Constructive Abandonment” means a situation in which abandonment of the residents of a health facility can be inferred from the totality of circumstances, as, for example, the health facility’s untimely payment or nonpayment of suppliers or staff resulting in the lack of necessary supplies or services.

D. “Facility” means:

(1) a health facility as defined in Subsection D of Section 24-1-2 NMSA 1978 other than a child-care center or facility, whether or not licensed by New Mexico; or,

(2) a community-based program providing services funded, directly or indirectly, in whole or in part, by the home and community-based Medicaid waiver program or by developmental disabilities, traumatic brain injury or other medical disabilities programs.

E. “Imminent danger” means a significant, foreseeable jeopardy, risk or threat existing at the present time or in the immediate future.

F. “Receivership” means, pursuant to a court order, the condition or occurrence of the legal vesting of authority in the Secretary, acting as a receiver, and vesting of authority in the deputy receiver, to exercise management and control over all of, or a portion of, a facility, in derogation of the rights of the facility owner or operator.

G. “Receivership estate” means the totality of the property, accounts, assets, rights and obligations over which the receiver has authority to manage and control in accordance with a court’s order.

H. “Secretary” means the secretary of the New Mexico health care authority.
[8.370.7.7 NMAC - 7/01/2024]

8.370.7.8 CONDITIONS FOR FILING RECEIVERSHIP PETITION: When any of the following situations exist, the secretary may petition the district court seeking appointment as a health facility receiver.

A. Facility closure. The health facility will close, or cease all or part of its operations, within 60 days; and the health facility has failed to provide the secretary with, and obtained written approval from the secretary for, the health facility’s detailed closure plan. The closure plan must demonstrate that the health facility will maintain and safeguard the health and safety of the care recipients. Upon receipt of a facility closure plan, the secretary will respond within 10 days to the facility with written notice of the secretary’s approval or rejection of the closure plan. At a minimum, the closure plan will specify the facility’s:

- (1) Procedures and arrangements to insure that the health facility’s care recipients obtain, or continue to receive, accessible, appropriate and affordable care; and
- (2) The method of protecting all legal rights of the care recipients as such rights are affected by the closure; and
- (3) Staffing; and
- (4) Transfer planning and procedures with respect to the care recipients, including the funds, accounts, and property of the care recipients, medical and financial authorizations, and any other relevant documents executed by or on behalf of the care recipient in the possession of the health facility; and
- (5) Other arrangements which the secretary may specify for inclusion in the closure plan.

B. No license. The health facility is operated without such license as otherwise may be required.

C. Abandonment. The health facility is abandoned, care recipients of the health facility are abandoned or constructively abandoned, or such abandonment is imminent.

D. Imminent danger. The health facility presents an imminent danger of death or significant mental or physical harm to the care recipients of the health facility. Such imminent danger may arise from:

- (1) A single factor, or combination of factors, adversely affecting the health or safety of the facility’s care recipients; or
- (2) A physical condition of a service location for the health facility’s care recipients; or
- (3) A practice or method of operation of the health facility.

[8.370.7.8 NMAC - N, 7/01/2024]

8.370.7.9 QUALIFICATIONS OF THE DEPUTY RECEIVER: Unless otherwise permitted by order of the district court, the secretary will seek appointment of a deputy receiver who possesses the following qualifications:

A. Free of conflicts of interest. The deputy receiver may not have a financial interest which conflicts with:

- (1) Carrying out any of the duties and responsibilities imposed by the district court on the receiver or deputy receiver; or
- (2) Fully protecting the persons receiving care from the health facility; or
- (3) The management and operation of the receivership estate.

B. Experience. The deputy receiver must have relevant experience in health care management appropriate to the health facility. Such experience preferably would reflect successful management experience similar to that reasonably required to manage and operate the facilities within the receivership estate. Experience or licensure as a clinician is discretionary unless otherwise required by law.

C. Education and licensure. The deputy receiver must have achieved such educational level and have such licensure as customarily is held by persons managing and operating health care facilities similar to the facility or facilities within the receivership estate.

[8.370.7.9 NMAC - N, 7/01/2024]

8.370.7.10 DUTIES, AUTHORITY & RESPONSIBILITIES OF THE DEPUTY RECEIVER: Unless otherwise ordered by the district court the deputy receiver generally will carry out the duties of the receiver, as established in the Health Facility Receivership Act, NMSA 1978, Sections 24-1E-1 to 24-1E-7 (2001), including the following.

A. Removal of care recipients from settings or situations within the receivership estate which threaten the care recipients with imminent danger of death or significant mental or physical harm.

B. All necessary actions needed to:

(1) Correct or remedy each condition on which the receiver's appointment was based.

(2) Ensure adequate care and services, in accordance with applicable authority, law, regulations, and accrediting requirements, for each care recipient of the health facility.

(3) Manage and operate the health facility, including, where deemed appropriate in the judgment of the receiver or deputy receiver, any of the following:

(a) Closing the health facility.

(b) Expanding existing and initiating new services and operations.

(c) Hiring and firing officers and employees.

(d) Contracting for necessary services, personnel, supplies, equipment, facilities, and all other appropriate things.

(e) Reasonably expending funds of the health facility.

(f) Paying the health facility's obligations, borrowing money and property and giving security as necessary for such.

(g) Purchasing, selling, marshalling and otherwise managing the health facility's property and assets.

[8.370.7.10 NMAC - N, 7/01/2024]

8.370.7.11 FINANCIAL OBLIGATIONS AND CONDITIONS: The deputy receiver, unless granted prior approval from the district court, will not obligate the health facility to the purchase of real property, the sale of the health facility's real property, or the long-term lease of real property.

[8.370.7.11 NMAC - N, 7/01/2024]

8.370.7.12 PROVISIONS SOUGHT IN AN ORDER GRANTING PETITION FOR HEALTH

FACILITY RECEIVERSHIP: The secretary will seek provisions in the order granting the petition pertaining to:

A. Prior approval from the district court for the sale or purchase of real property;

B. Periodic accounting to the court and the parties;

C. The posting of bond for the deputy receiver and the waiver of any such bonds;

D. Allocation of income and assets of the health facility to the receiver to carry out the purposes of the receivership;

E. Expansion and restrictions on the statutory authority granted to the receiver or deputy receiver;

F. The scope of the receivership estate; and,

G. Any other provisions deemed necessary to carry out the duties, authority and responsibilities of the deputy receiver, including provisions that may limit or expand the duties, authority and responsibilities.

[8.370.7.12 NMAC - N, 7/01/2024]

History of 8.370.7 NMAC: [RESERVED]

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 - N, 07/01/2024]

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 pre-employment 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 - N, 07/01/2024]

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 (HCA) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.8.3 NMAC - N, 07/01/2024]

8.370.8.4 DURATION: Permanent.
[8.370.8.4 NMAC - N, 07/01/2024]

8.370.8.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.8.5 NMAC - N, 07/01/2024]

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 - N, 07/01/2024]

8.370.8.7 DEFINITIONS:

A. "Abuse" means,
(1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or
(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person.

B. "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.

C. "APS" means the adult protective services division of the New Mexico aging and long term services department.

D. "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.

E. “**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 community based services provider is required to report under applicable law.

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

G. “**Direct care**” means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of care or services.

H. “**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.

I. “**Exploitation**” means an unjust or improper use of a person’s money or property for another person’s profit or advantage, pecuniary or otherwise.

J. “**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.

K. “**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 post secondary 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.

L. “**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.

M. “**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. “**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. “**Provider**” means an intermediate care facility for the mentally retarded; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; 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; programs funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based 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 home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly.

P. “**Registry**” means an electronic database operated by the authority that maintains current information on substantiated registry-referred 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.

Q. “**Reporter**” means a person who or an entity that reports possible abuse, neglect or exploitation to the authority’s incident management system.

R. “**Secretary**” means the secretary of the health care authority.

S. “**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.

T. “**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.

U. “**Substantiated registry-referred**” means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

V. “**Unsubstantiated**” means 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.

W. “**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 services.

[8.370.8.7 NMAC - N, 07/01/2024]

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 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 to 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 registry-referred incident of abuse, neglect or exploitation.

E. Documentation 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.

F. Consequences of 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 - N, 07/01/2024]

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, <http://dhi.health.state.nm.us/elibrary/ironline/ir.php>. The toll free telephone line is staffed by the authority during normal business hours and a message system is 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 800-445-6242 or by mailing a request to the incident management bureau, division of health improvement, health care authority.

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, age and 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 hand delivered, mailed, emailed, or, preferably, filed by use of the department's procedure for on-line form completion.

[8.370.8.9 NMAC - N, 07/01/2024]

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.

(2) Referral 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) The 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 face-to-face individualized interviews, telephonic interviews, witness statements and documentation of contacts.

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

(5) In 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;

(4) a description of any actions taken by the provider in a 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 by the authority within 60 calendar days of receipt of the complaint.

(1) The investigation report shall be submitted to the manager no later than 60 calendar days following the receipt of the complaint.

(2) The manager shall review the investigatory findings and recommendations and make a determination within five business days of receipt of the findings as to whether the complaint of abuse, neglect or exploitation is substantiated registry-referred.

(3) 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.

F. Validity of 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 - N, 07/01/2024]

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.

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 significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;
- (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 excruciating pain or pain that endures over a significant time period;
- (5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes;
- (6) the abuse is sexual abuse; or
- (7) the abuse is verbal abuse that causes significant mental anguish, including psychological or emotional damage, and which is evidenced by significant behavioral changes or physical symptoms.

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 significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;
- (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 excruciating pain or pain that endures over a significant time period; or,
- (5) the neglect causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes.

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) a single instance of an objectively quantifiable loss, the value of which exceeds the lesser of either:

- (a) \$25.00; or,
 - (b) twenty five percent the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or
- (2) a 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 - N, 07/01/2024]

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.

C. Interviews. 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 - N, 07/01/2024]

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 and time of the occurrence.

(3) 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.

(5) 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.

(1) The nature of the abuse, neglect, or exploitation.

(2) The date 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.

E. 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 - N, 07/01/2024]

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 registry-referred findings of abuse, neglect, or exploitation the employee will be reported to the registry. The request for 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.

(1) 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.

(2) 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.

B. 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 a hearing is continued it shall be rescheduled at the earliest date and time available to the parties.

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 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.

D. Parties. The 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.

F. Discovery.

(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) No 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.

(3) Production 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 a 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.

(6) 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 - N, 07/01/2024]

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 - N, 07/01/2024]

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 - N, 07/01/2024]

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.

B. 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.

C. Review 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:

(1) the nature 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.

D. Decision on 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 - N, 07/01/2024]

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 - N, 07/01/2024]

History of 8.370.8 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 9 INCIDENT REPORTING, INTAKE, PROCESSING AND TRAINING REQUIREMENTS

8.370.9.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.9.1 NMAC - N, 07/01/2024]

8.370.9.2 SCOPE: This rule is applicable to persons, organizations or legal entities to include each: adult day care center, adult day care home, adult assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded or the intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, and rural health clinic.
[8.370.9.2 NMAC - N, 07/01/2024]

8.370.9.3 STATUTORY AUTHORITY: Section 24-1-3, and 24-1-5 NMSA 1978, of the Public Health Act as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.9.3 NMAC - N, 07/01/2024]

8.370.9.4 DURATION: Permanent.
[8.370.9.4 NMAC - N, 07/01/2024]

8.370.9.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.9.5 NMAC - N, 07/01/2024]

8.370.9.6 OBJECTIVE: This rule establishes standards for licensed health care facilities to institute and maintain an incident management system and employee training program for the reporting of abuse, neglect, exploitation injuries of unknown origin and other reportable incidents.
[8.370.9.6 NMAC - N, 07/01/2024]

8.370.9.7 DEFINITIONS:

- A. "Abuse"** means:
- (1) knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;
 - (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;
 - (3) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration; or
 - (4) verbal abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.
- B. "Bureau"** means the health care authority, division of health improvement, health facility licensing and certification bureau.
- C. "Case manager"** means the staff person designated to coordinate and monitor the individual service plan for persons receiving services.
- D. "Complaint"** means any report, assertion, or allegation of abuse, neglect, or exploitation of, or injuries of unknown origin to, a consumer made by a reporter to the incident management system, and includes any reportable incident that a licensed health care facility is required to report under applicable law.
- E. "CMS"** means the centers for medicare and medicaid services.
- F. "Consumer"** means any person who engages the professional services of a medical or other health professional on an inpatient or outpatient basis, or person requesting services from a hospital.
- G. "Division"** means the health care authority, division of health improvement.
- H. "Employee"** means:
- (1) any person whose employment or contractual service with a licensed health care facility which includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility; or

(2) any compensated persons such as employees, contractors and employees of contractors; or guardianship service providers or case management entities that provide services to people with developmental disabilities; or administrators or operators of facilities who are routinely on site.

I. “Exploitation” means an unjust or improper use of a person's money or property for another person's profit or advantage, financial or otherwise.

J. “Immediate access” means physical or in person direct and unobstructed access, to electronic or other access needed by employees, consumers, family members or legal guardian to the licensed health care facility's incident management reporting procedures or access to the division's incident report form.

K. “Immediate reporting” means reporting that is done as soon as practicable and no later than 24 hours from knowledge of the incident.

L. “Immediate jeopardy” means a provider's noncompliance with one or more requirements of medicaid or medicare participation, which causes or is likely to cause, serious injury, harm, impairment, or death to a consumer.

M. “Incident” means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

N. “Incident management system” means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

O. “Incident report form” means the reporting format issued by the division for the reporting of incidents or complaints.

P. “ISP” means a consumer's individual service plan.

Q. “Licensed health care facilities” means any organization licensed by the authority for the following services: adult day care center, assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded or intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic.

R. “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 is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.

S. “Neglect” means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.

T. “Quality assurance” means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative and clinical practices in meeting the needs of persons served as well as achieving the licensed health care facility's mission, values and goals.

U. “Quality improvement system” means the adopted or developed licensed health care facility's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin, or other reportable incidents for the continuous study and improvement of the efficiency and efficacy of organizational, administrative and preventative practices in employee training and reporting.

V. “Reportable incident” means possible abuse, neglect, exploitation, injuries of unknown origin and other events including but not limited to falls which cause injury, unexpected death, elopement, medication error which causes or is likely to cause harm, failure to follow a doctor's order or an ISP, or any other incident which may evidence abuse, neglect, or exploitation.

W. “Reporter” means any person who or any entity that reports possible abuse, neglect or exploitation to the division.

X. “Restraints” means use of a mechanical device, or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer's freedom of movement, performance of physical activity, or normal access to his body.

Y. “Revocation” means a type of sanction making a license null and void through its cancellation.

Z. “Sanction” means a measure imposed by the authority on a licensed program, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

AA. “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.

BB. “Suspension” means a temporary cancellation of a license pending an appeal, hearing or correction of the deficiency. During a suspension the provider's medicare or medicaid agreement is not in effect.

CC. “Training curriculum” means the instruction manual or pamphlet adopted or developed by the licensed health facility containing policies and procedures for reporting abuse, neglect, misappropriation of consumers' property or other reportable incidents.

DD. “Unsubstantiated” means that the complaint or incident could not be verified based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

EE. “Volunteer” means any person who works without compensation for a licensed health care facility whose services includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility.
[8.370.9.7 NMAC - N, 07/01/2024]

8.370.9.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR LICENSED HEALTH CARE FACILITIES:

A. Duty to report:

(1) All licensed health care facilities shall immediately report abuse, neglect or exploitation to the adult protective services division.

(2) All licensed health care facilities shall report abuse, neglect, exploitation, and injuries of unknown origin or other reportable incidents to the bureau within a 24 hour period, or the next business day when the incident occurs on a weekend or holiday.

(3) All licensed health care facilities shall ensure that the reporter with direct knowledge of an incident has immediate access to the bureau incident report form to allow the reporter to respond to, report, and document incidents in a timely and accurate manner.

B. Notification:

(1) Incident reporting: Any person may report an incident to the bureau by utilizing the DHI toll free complaint hotline at 1-800-752-8649. Any consumer, employee, family member or legal guardian may also report an incident to the bureau directly or through the licensed health care facility by written correspondence or by utilizing the bureau's incident report form. The incident report form and instructions for the completion and filing are available at the division's website or may be obtained from the authority by calling the toll free number at 1-800-752-8649.

(2) Division incident report form and notification by licensed health care facilities: The licensed health care facility shall report incidents utilizing the division's incident report form consistent with the requirements of the division's incident management system guide and CMS regulations as applicable. The licensed health care facility shall ensure that all incident report forms alleging abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents are submitted by a reporter with direct knowledge of an incident, are completed on the bureau's incident report form and received by the division within 24 hours of an incident or allegation of an incident or the next business day if the incident occurs on a weekend or a holiday. The licensed health care facility shall ensure that the reporter with the most direct knowledge of the incident assists with the preparation of the incident report form.

C. Incident policies: All licensed health care facilities shall maintain policies and procedures which describe the licensed health care facility's immediate response to all reported allegations of abuse, neglect, exploitation, injuries of unknown origin, and deaths, as applicable.

D. Retaliation: Any individual who, without false intent, reports an incident or makes an allegation of abuse, neglect or exploitation will be free of any form of retaliation.

E. Quality improvement system for licensed health care facilities: The licensed health care facility shall establish and implement a quality improvement system for reviewing alleged complaints and incidents. The incident management system shall include written documentation of corrective actions taken. The provider shall maintain documented evidence that all alleged violations are thoroughly investigated, and shall take all reasonable steps to prevent further incidents.

[8.370.9.8 NMAC - N, 07/01/2024]

8.370.9.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:

A. General: All licensed health care facilities shall establish and maintain an incident management system, which emphasizes the principles of prevention and staff involvement. The licensed health care facility shall ensure that the incident management system policies and procedures require all employees to be competently trained to respond to, report, and document reportable incidents in a timely and accurate manner.

B. Training curriculum: Prior to working unsupervised with consumers, the licensed health care facility shall provide all employees and volunteers with a written training curriculum and shall train them on incident

policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents. Refresher training shall be provided at annual, not to exceed 12 month, intervals. The training curriculum may include computer-based training. Reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the licensed health care facility. Training shall be conducted in a language that is understood by the employee and volunteer.

C. Incident management system training curriculum requirements:

(1) The licensed health care facility shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum that includes but is not limited to:

- (a) an overview of the potential risk of abuse, neglect, and exploitation;
- (b) informational procedures for properly filing the division's incident management report form;
- (c) specific instructions of the employees' legal responsibility to report an incident of abuse, neglect or exploitation;
- (d) specific instructions on how to respond to abuse, neglect, and exploitation; and
- (e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, or exploitation.

(2) All current employees and volunteers shall receive training within 90 days of the effective date of this rule.

D. Training documentation: All licensed health care facilities shall prepare training documentation for each employee to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The licensed health care facility shall maintain documentation of an employee's or volunteer's training for a period of at least 12 months. Training curricula shall be kept on the premises and made available on request by the authority. Training documentation shall be made available immediately upon a authority representative's request. Failure to provide employee or volunteer training documentation shall subject the licensed health care facility to the penalties provided for in this rule.

E. Consumer and guardian orientation packet: Consumers, family members and legal guardians shall be made aware of and have available immediate accessibility to the licensed health care facility incident reporting processes. The licensed health care facility shall provide consumers, family members or legal guardians an orientation packet to include incident management systems policies and procedural information concerning the reporting of abuse, neglect or exploitation. The licensed health care facility shall include a signed statement indicating the date, time, and place they received their orientation packet to be contained in the consumer's file. The appropriate consumer, family member or legal guardian shall sign this at the time of orientation.

F. Posting of incident management information poster: All licensed health care facilities and shall post two or more posters, to be furnished by the division, in a prominent public location which states all incident management reporting procedures, including contact numbers and internet addresses. All licensed health care facilities operating 60 or more beds shall post at least three or more posters, to be furnished by the division, in a prominent public location which states all incident management reporting procedures, including contact numbers and internet addresses. The posters shall also be posted where employees report each day and from which the employees operate to carry out their activities. Each licensed health care facility shall take steps to ensure that the notices are not altered, defaced, removed, or covered by other material.

[8.370.9.9 NMAC - N, 07/01/2024]

8.370.9.10 ACCESS AND COOPERATION TO FACILITATE AUTHORITY INCIDENT INVESTIGATIONS:

A. The authority will conduct incident investigations and periodic surveys of licensed health care facilities subject to these requirements. These reviews may be either announced or unannounced.

B. All licensed health care facilities shall facilitate immediate physical or in-person access to authority personnel investigating incidents or conducting surveys:

- (1) all records, regardless of media, including but not limited to, financial records, all client records, individual service plans, personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys and agency policy /procedures manuals;
- (2) all necessary employees with direct knowledge of the incident;
- (3) all necessary clients currently receiving services, guardians, representatives and family members with direct knowledge of the incident; and
- (4) all administrative and service delivery sites.

C. All licensed health care facilities shall conduct a complete investigation and report the actions taken and conclusions reached by the facility within five days of discovery of the incident.
[8.370.9.10 NMAC - N, 07/01/2024]

8.370.9.11 CONSEQUENCES OF LICENSED HEALTH CARE FACILITY NONCOMPLIANCE:

A. The authority or other governmental agency having regulatory enforcement authority over a licensed health care facility may sanction a licensed health care facility or in accordance with applicable law if the licensed health care facility fails to report incidents of abuse, neglect or exploitation or fails to provide or fails to maintain evidence of an existing incident management system and employee training documentation as set forth by this rule, fails to take reasonable measures to protect consumers from abuse, neglect or exploitation, or any other violation of this rule.

B. Such sanctions may include revocation or suspension of license, directed plan of correction, intermediate sanctions or civil monetary penalty up to \$5,000 per instance.

C. All confirmed incident investigations conducted by the authority hold the licensed health care facility responsible for the actions of the employee in their employment with the following exception: any employee found to have caused the abuse, neglect or exploitation shall be held accountable independent of the licensed health care facility when the facility has complied with all requirements of this rule and the employee acts outside of the provider's system. The employee shall be subject to the Employee Abuse Registry Act or referred to the appropriate certification or licensing authority and reported to law enforcement agencies when appropriate.

[8.370.9.11 NMAC - N, 07/01/2024]

8.370.9.12 CONFIDENTIALITY: All consumer information reviewed or obtained in the course of a survey or investigation of a licensed health care facility is confidential in accordance with all applicable federal and state law and regulation. If a complaint is unsubstantiated, no information regarding the substance of the complaint or the alleged individual or provider perpetrator may be released publicly. If a complaint is substantiated, confidential information includes, but is not limited to: identity of the incident report form reporter if confidentiality has been requested, personnel records, dates of birth, drivers' license numbers, social security numbers, personal addresses and telephone numbers, the licensed health care facility's internal incident investigations, financial documents and proprietary business information.

[8.370.9.12 NMAC - N, 07/01/2024]

8.370.9.13 SEVERABILITY: If any provision or application of 8.370.9 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[8.370.9.13 NMAC - N, 07/01/2024]

History of 8.370.9 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 10 ABUSE, NEGLECT, EXPLOITATION, AND DEATH REPORTING, TRAINING
AND RELATED REQUIREMENTS FOR COMMUNITY PROVIDERS

8.370.10.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.10.1 NMAC - N, 07/01/2024]

8.370.10.2 SCOPE: This rule is applicable to persons, organizations or legal entities receiving developmental disability waiver funds and developmental disability medically fragile waiver funds acting as community-based service providers as defined in this rule.
[8.370.10.2 NMAC - N, 07/01/2024]

8.370.10.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6, NMSA 1978, Subsection D of Section 24-1-2, Subsections I, L, O, T and U of Sections 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act as amended. 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.
[8.370.10.3 NMAC - N, 07/01/2024]

8.370.10.4 DURATION: Permanent.
[8.370.10.4 NMAC - N, 07/01/2024]

8.370.10.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.10.5 NMAC - N, 07/01/2024]

8.370.10.6 OBJECTIVE: This rule establishes standards for community-based service providers to institute and maintain an incident management system and employee and volunteer training programs for the reporting of abuse, neglect, exploitation, suspicious injuries, environmentally hazardous conditions and death.
[8.370.10.6 NMAC - N, 07/01/2024]

8.370.10.7 DEFINITIONS:

- A. "Abuse"** including verbal abuse, means:
- (1) knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;
 - (2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person; or
 - (3) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration.
- B. "Abuse, neglect, exploitation, or report of death form"** means the reporting format issued by the division for the reporting of incidents which may relate to abuse, neglect, or exploitation of a consumer, including suspicious injuries, or for reporting any death.
- C. "Case manager"** means the staff person designated to coordinate and monitor the individual service plan for persons receiving community-based services.
- D. "Community-based service providers"** means any person, organization, or legal entity, including mi via consultants, providing the following services, and having any provider agreement with the health care authority:
- (1) **"developmental disability waiver services"** means a medicaid funded home or community-based services for persons with intellectual and developmental disabilities; and
 - (2) **"medically fragile waiver services"** means medicaid funded home or community-based services for persons with intellectual and developmental disabilities who are medically fragile.
- E. "Consultant"** means the person or entity supporting the mi via consumer to make informed choices among the services offered through the mi via waiver, develop service and support plans (SSP), and providing on-going assistance with SSP implementation.
- F. "Consumer"** means any recipient of services from a community-based service provider.
- G. "Division"** means the health care authority, division of health improvement, incident management bureau.

H. “**Employee**” means any person whose employment or contractual service with a community-based service provider, or with a consumer, which includes direct care or routine and unsupervised physical or financial access to any care recipient served.

I. “**Environmental hazard**” means a condition in the physical environment which creates an immediate threat to health or safety of the individual.

J. “**Exploitation**” means an unjust or improper use of a person's money or property for another person's profit or advantage, financial, or otherwise.

K. “**Immediate access**” means physical or in-person direct and unobstructed access to electronic or other access needed by employees, consumers, family members, or legal guardians to the community-based service program's incident management reporting procedures or access to the division's abuse, neglect, exploitation or report of death form.

L. “**Immediate jeopardy**” means a provider's non-compliance with one or more requirements of medicaid participation or the provider agreement which causes, or is likely to cause, serious injury, harm, impairment, or death to a consumer.

M. “**Immediate reporting**” means reporting that is done immediately. A report may only be delayed while the provider is taking immediate action to prevent harm to a consumer.

N. “**Incident**” means any known, alleged, or suspected event of abuse, neglect, exploitation, suspicious injury, or any death.

O. “**Incident management system**” means the written policies and procedures adopted or developed by the community-based service provider for reporting abuse, neglect, exploitation, suspicious injuries, or for making a report of death as required in Subsection A of 8.370.10.8 NMAC.

P. “**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 is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.

Q. “**Natural support**” means an uncompensated person such as a family member, friend, or any person in a supportive relationship with the consumer.

R. “**Neglect**” means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision, and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.

S. “**Non-responsible provider**” means any reporter who is reporting an incident of abuse, neglect, exploitation, suspicious injury or death in which they are not the responsible community-based service provider during the time of the incident.

T. “**Quality assurance**” means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative, and clinical practices in meeting the needs of persons served as well as achieving the community-based service provider's mission, values and goals.

U. “**Quality improvement system**” means the community-based service provider's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, suspicious injuries, and all deaths for the continuous study and improvement of the efficiency and efficacy of organizational, administrative, and preventative practices in employee training and reporting.

V. “**Report**” means any assertion or allegation of abuse, neglect, exploitation, suspicious injuries, or report of death made by a reporter to the incident management bureau and includes any incident that a community-based service provider is required to report under applicable law.

W. “**Reporter**” means any person who, or any entity that, reports possible abuse, neglect, exploitation, suspicious injury, or makes a report of death to the authority's incident management bureau.

X. “**Restraints**” means use of a mechanical device or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer's freedom of movement, performance of physical activity, or normal access to his body.

Y. “**Sanction**” means a measure imposed by the authority on a provider, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

Z. “**Sexual abuse**” means the inappropriate touching of a recipient of care or services 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 another for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming, or depiction of acts considered pornographic. Sexual conduct engaged in by an employee with a person for whom they are providing care or services is sexual abuse per se.

AA. “**Substantiated**” means the verification of an allegation of abuse, neglect, or exploitation based upon a preponderance of reliable evidence obtained from an investigation of an allegation of abuse, neglect, or exploitation.

BB. “Training curriculum” means the instruction manual or pamphlet adopted or developed by the community-based service provider containing policies and procedures for reporting abuse, neglect, exploitation, suspicious injury, or any death.

CC. “Unsubstantiated” means that an allegation of abuse, neglect, and exploitation could not be verified based upon a preponderance of reliable evidence obtained from an investigation of a complaint of abuse, neglect, or exploitation.

DD. “Verbal abuse” means profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.

EE. “Volunteer” means any person who is not a natural support who works without compensation for a community-based service provider and whose services includes direct care or routine physical or financial access to any consumer serviced by that community-based service provider.

[8.370.10.7 NMAC - N, 07/01/2024]

8.370.10.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR COMMUNITY-BASED SERVICE PROVIDERS:

A. Duty to report:

(1) All community-based providers shall immediately report alleged crimes to law enforcement or call for emergency medical services as appropriate to ensure the safety of consumers.

(2) All community-based service providers, their employees and volunteers shall immediately call the division of health improvement (DHI) hotline at 1-800-445-6242 to report abuse, neglect, exploitation, suspicious injuries or any death and also to report an environmentally hazardous condition which creates an immediate threat to health or safety.

B. Reporter requirement. All community-based service providers shall ensure that the employee or volunteer with knowledge of the alleged abuse, neglect, exploitation, suspicious injury, or death calls the division’s hotline to report the incident.

C. Initial reports, form of report, immediate action and safety planning, evidence preservation, required initial notifications:

(1) Abuse, neglect, and exploitation, suspicious injury or death reporting: Any person may report an allegation of abuse, neglect, or exploitation, suspicious injury or a death by calling the division’s toll-free hotline number 1-800-445-6242. Any consumer, family member, or legal guardian may call the division’s hotline to report an allegation of abuse, neglect, or exploitation, suspicious injury or death directly, or may report through the community-based service provider who, in addition to calling the hotline, must also utilize the division’s abuse, neglect, and exploitation or report of death form. The abuse, neglect, and exploitation or report of death form and instructions for its completion and filing are available at the division’s website or may be obtained from the authority by calling the division’s toll free hotline number, 1-800-445-6242.

(2) Use of abuse, neglect, and exploitation or report of death form and notification by community-based service providers: In addition to calling the division’s hotline as required in Paragraph (2) of Subsection A of 8.370.10.8 NMAC, the community-based service provider shall also report the incident of abuse, neglect, exploitation, suspicious injury, or death utilizing the division’s abuse, neglect, and exploitation or report of death form consistent with the requirements of the division’s abuse, neglect, and exploitation reporting guide. The community-based service provider shall ensure all abuse, neglect, exploitation or death reports describing the alleged incident are completed on the division’s abuse, neglect, and exploitation or report of death form and received by the division within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division’s website; otherwise it may be submitted via fax to 1-800-584-6057. The community-based service provider shall ensure that the reporter with the most direct knowledge of the incident participates in the preparation of the report form.

(3) Limited provider investigation: No investigation beyond that necessary in order to be able to report the abuse, neglect, or exploitation and ensure the safety of consumers is permitted until the division has completed its investigation.

(4) Immediate action and safety planning: Upon discovery of any alleged incident of abuse, neglect, or exploitation, the community-based service provider shall:

(a) develop and implement an immediate action and safety plan for any potentially endangered consumers, if applicable;

(b) be immediately prepared to report that immediate action and safety plan verbally, and revise the plan according to the division’s direction, if necessary; and

(c) provide the accepted immediate action and safety plan in writing on the immediate action and safety plan form within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division's website; otherwise it may be submitted by faxing it to the division at 1-800-584-6057.

(5) **Evidence preservation:** The community-based service provider shall preserve evidence related to an alleged incident of abuse, neglect, or exploitation, including records, and do nothing to disturb the evidence. If physical evidence must be removed or affected, the provider shall take photographs or do whatever is reasonable to document the location and type of evidence found which appears related to the incident.

(6) **Legal guardian or parental notification:** The responsible community-based service provider shall ensure that the consumer's legal guardian or parent is notified of the alleged incident of abuse, neglect and exploitation within 24 hours of notice of the alleged incident unless the parent or legal guardian is suspected of committing the alleged abuse, neglect, or exploitation, in which case the community-based service provider shall leave notification to the division's investigative representative.

(7) **Case manager or consultant notification by community-based service providers:** The responsible community-based service provider shall notify the consumer's case manager or consultant within 24 hours that an alleged incident involving abuse, neglect, or exploitation has been reported to the division. Names of other consumers and employees may be redacted before any documentation is forwarded to a case manager or consultant.

(8) **Non-responsible reporter:** Providers who are reporting an incident in which they are not the responsible community-based service provider shall notify the responsible community-based service provider within 24 hours of an incident or allegation of an incident of abuse, neglect, and exploitation.

D. Incident policies: All community-based service providers shall maintain policies and procedures which describe the community-based service provider's immediate response, including development of an immediate action and safety plan acceptable to the division where appropriate, to all allegations of incidents involving abuse, neglect, or exploitation, suspicious injury as required in Paragraph (2) of Subsection A of 8.370.10.8 NMAC.

E. Retaliation: Any person, including but not limited to an employee, volunteer, consultant, contractor, consumer, or their family members, guardian, and another provider who, without false intent, reports an incident or makes an allegation of abuse, neglect, or exploitation shall be free of any form of retaliation such as termination of contract or employment, nor may they be disciplined or discriminated against in any manner including, but not limited to, demotion, shift change, pay cuts, reduction in hours, room change, service reduction, or in any other manner without justifiable reason.

F. Quality assurance/quality improvement program for community-based service providers: The community-based service provider shall establish and implement a quality improvement program for reviewing alleged complaints and incidents of abuse, neglect, or exploitation against them as a provider after the division's investigation is complete. The incident management program shall include written documentation of corrective actions taken. The community-based service provider shall take all reasonable steps to prevent further incidents. The community-based service provider shall provide the following internal monitoring and facilitating quality improvement program:

(1) community-based service providers shall have current abuse, neglect, and exploitation management policy and procedures in place that comply with the authority's requirements;

(2) community-based service providers providing intellectual and developmental disabilities services must have a designated incident management coordinator in place; and

(3) community-based service providers providing intellectual and developmental disabilities services must have an incident management committee to identify any deficiencies, trends, patterns, or concerns as well as opportunities for quality improvement, address internal and external incident reports for the purpose of examining internal root causes, and to take action on identified issues.

[8.370.10.8 NMAC - N, 07/01/2024]

8.370.10.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:

A. General: All community-based service providers shall establish and maintain an incident management system, which emphasizes the principles of prevention and staff involvement. The community-based service provider shall ensure that the incident management system policies and procedures requires all employees and volunteers to be competently trained to respond to, report, and preserve evidence related to incidents in a timely and accurate manner.

B. Training curriculum: Prior to an employee or volunteer's initial work with the community-based service provider, all employees and volunteers shall be trained on an applicable written training curriculum including incident policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, suspicious injury, and all deaths as required in Subsection A of 8.370.10.8 NMAC. The trainings shall be reviewed at annual, not to exceed 12-month intervals. The training curriculum as set forth in Subsection C of 8.370.10.9 NMAC may include

computer-based training. Periodic reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the community-based service provider's facility. Training shall be conducted in a language that is understood by the employee or volunteer.

C. Incident management system training curriculum requirements:

(1) The community-based service provider shall conduct training or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum provided electronically by the division that includes but is not limited to:

- (a) an overview of the potential risk of abuse, neglect, or exploitation;
- (b) informational procedures for properly filing the division's abuse, neglect, and exploitation or report of death form;
- (c) specific instructions of the employees' legal responsibility to report an incident of abuse, neglect and exploitation, suspicious injury, and all deaths;
- (d) specific instructions on how to respond to abuse, neglect, or exploitation;
- (e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, exploitation, or suspicious injury.

(2) All current employees and volunteers shall receive training within 90 days of the effective date of this rule.

(3) All new employees and volunteers shall receive training prior to providing services to consumers.

D. Training documentation: All community-based service providers shall prepare training documentation for each employee and volunteer to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The community-based service provider shall maintain documentation of an employee or volunteer's training for a period of at least three years, or six months after termination of an employee's employment or the volunteer's work. Training curricula shall be kept on the provider premises and made available upon request by the authority. Training documentation shall be made available immediately upon a division representative's request. Failure to provide employee and volunteer training documentation shall subject the community-based service provider to the penalties provided for in this rule.

E. Consumer and guardian orientation packet: Consumers, family members, and legal guardians shall be made aware of and have available immediate access to the community-based service provider incident reporting processes. The community-based service provider shall provide consumers, family members, or legal guardians an orientation packet to include incident management systems policies and procedural information concerning the reporting of abuse, neglect, exploitation, suspicious injury, or death. The community-based service provider shall include a signed statement indicating the date, time, and place they received their orientation packet to be contained in the consumer's file. The appropriate consumer, family member, or legal guardian shall sign this at the time of orientation.

F. Availability of incident management and abuse, neglect, exploitation, suspicious injury, or report of death reporting information: All community-based service providers shall provide written information to be furnished by the division at its website, which states all incident management reporting procedures, including contact numbers and internet addresses. The written information shall be on-site and available to staff.

[8.370.10.9 NMAC - N, 07/01/2024]

8.370.10.10 ACCESS AND COOPERATION TO FACILITATE AUTHORITY INCIDENT INVESTIGATIONS:

A. The authority will conduct incident investigations of community-based service providers subject to these requirements. These investigations may be either announced or unannounced.

B. All community-based service providers programs shall facilitate immediate physical or in-person access, and assist with scheduling of interviews, by authority personnel investigating incidents to all of the providers:

(1) formal and informal records, regardless of media, including but not limited to, financial records, all consumer records, individual service plans, volunteer and personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys, and agency policy and procedures manuals;

(2) employees and volunteers with knowledge of the incident;

(3) necessary clients currently receiving services, guardians, representatives, and family members with knowledge of the incident; and

(4) administrative and service delivery sites.

[8.370.10.10 NMAC - N, 07/01/2024]

8.370.10.11 CONSEQUENCES OF COMMUNITY-BASED SERVICE PROVIDER NON-COMPLIANCE:

A. The authority may sanction a community-based service provider in accordance with applicable law if the community-based service provider fails to report incidents of abuse, neglect, exploitation, suspicious injury, or any death; fails to provide or maintain evidence of an existing incident management system and employee and volunteer training documentation as set forth by this rule; for any failure to adequately protect consumers from abuse, neglect or exploitation; or for any other violation of this rule.

B. Such sanctions may include a directed plan of correction, intermediate sanctions, or civil monetary penalty up to \$5,000 per instance, or high level sanctions up to and including termination or non-renewal of any provider agreement with the authority or other governmental agency.

C. All substantiated incident investigations conducted by the authority hold the community-based service provider responsible for the actions of the employee, volunteer, or contractor with the following exception: any employee, volunteer, or contractor found to have caused the abuse, neglect, or exploitation of a consumer shall be found individually responsible independent of the community-based service provider when the community-based service provider has complied with all requirements of this rule, and the employee acts outside of the provider's system. When this occurs, the individual shall be subject to the Employee Abuse Registry Act, Sections 29-27-1 through 29-27-8 NMSA 1978, or referred to the appropriate professional licensing board and law enforcement where appropriate. [8.370.10.11 NMAC - N, 07/01/2024]

8.370.10.12 NOTIFICATION OF INVESTIGATION RESULTS: The division will inform the provider, the guardian, or alleged victim, the case manager or consultant, the developmental disabilities supports division regional office, and the reporter of the conclusion reached by the investigator(s) when the report is final. The responsible provider must notify the alleged perpetrator. [8.370.10.12 NMAC - N, 07/01/2024]

8.370.10.13 INFORMAL RECONSIDERATION OF FINDINGS:

A. An aggrieved person or provider agency may request an informal reconsideration of findings (IRF) of a decision made by the division regarding a substantiation of abuse, neglect, or exploitation in accordance with the provisions set forth in this section.

B. A request for an IRF must be submitted in writing along with all relevant evidence to be considered by the bureau within 10 calendar days of the date of the letter of substantiation. The bureau may reverse the substantiation at any time at or before the IRF review.

C. Informal reconsideration of findings process.

(1) The person conducting the review shall be neutral and have no direct involvement with the investigation or substantiation.

(2) The person conducting the IRF shall issue a written decision within 30 days of the review, giving the reason why the substantiation, by preponderance of evidence, is modified, affirmed, or reversed. The written decision will be mailed to the aggrieved party and placed in the case record no later than the 30th day after receipt of the request for the IRF.

(3) The decision by the person conducting the IRF is final and non-appealable except as otherwise provided for by law.

[8.370.10.13 NMAC - N, 07/01/2024]

8.370.10.14 CONFIDENTIALITY:

A. In the case of substantiated cases of abuse, neglect, or exploitation, the written report may be shared publicly upon request and subject to all other applicable federal and state laws and regulations. Unsubstantiated incident investigation reports shall not be shared publicly in relation to any accused person or provider other than to confirm that an allegation of abuse, neglect, or exploitation was unsubstantiated.

B. All consumer information reviewed or obtained in the course of an investigation of a community-based service provider is confidential in accordance with all applicable federal and state laws and regulations and with all applicable contract provisions. If the consumer's identity may not be sufficiently de-identified even after redaction, then the report may not be released except upon the request of that consumer or their legally authorized representative.

C. Other confidential information includes, but is not limited to: identity of the reporter of the alleged abuse, neglect, and exploitation if confidentiality is requested, personnel records, dates of birth, driver's license numbers, social security numbers, personal addresses, and telephone numbers, the community-based service provider's internal incident investigation, if any is received by the authority, financial documents, and proprietary business information.

[8.370.10.14 NMAC - N, 07/01/2024]

8.370.10.15 SEVERABILITY: If any provision or application of 8.370.10NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[8.370.10.15 NMAC - N, 07/01/2024]

HISTORY OF 8.370.10 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 11 LONG-TERM CARE FACILITY DEMENTIA TRAINING

8.370.11.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.11.1 NMAC - N, 07/01/2024]

8.370.11.2 SCOPE: These regulations apply to any long-term care facility and long-term care facility contractor in the state of New Mexico or licensed by the New Mexico health care authority, division of health improvement.
[8.370.11.2 NMAC - N, 07/01/2024]

8.370.11.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the health care authority by authority of Subsection E of Section 9-8-6 NMSA 1978, Section 24-17B-1 through Section 24-17B-4 NMSA 1978. The division of health improvement of the health care authority (authority) shall administer and enforce these regulations. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care facility licensure and health care purchasing and regulation.
[8.370.11.3 NMAC - N, 07/01/2024]

8.370.11.4 DURATION: Permanent.
[8.370.11.4 NMAC - N, 07/01/2024]

8.370.11.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.11.5 NMAC - N, 07/01/2024]

8.370.11.6 OBJECTIVE: The regulations establish policy, standards, and criteria relating to: the educational and certification requirements, issuing of certifications, and continuing education of persons who provide direct care service to long-term care facility residents in order to maintain or improve the health and quality of life of the residents.
[8.370.11.6 NMAC - N, 07/01/2024]

8.370.11.7 DEFINITIONS:

A. “Act” shall mean the Long-Term Care Facility Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

B. “Certificate” shall mean the training certificate issued by the provider of training pursuant to 8.370.11 NMAC and the Long-Term Care Facility Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

C. “Continuing education” means participation in a formal learning experience of which the course topics have been approved by the authority as set forth in 8.370.11.9 NMAC.

D. “Direct care service” means services provided to long-term care facility residents that maintain or improve the health and quality of life of the residents.

E. “Direct care service staff member” means a person:
(1) employed by or contracted with a long-term care facility, either directly or through a third-party agreement, to provide in-person direct care services to long-term care facility residents; or
(2) contracted with a long-term care facility, either directly or through a third-party agreement, to provide at least 10 hours per week in direct care services by video, audio or telephonic means.

F. “DCSSM” means direct care service staff member.

G. “Division” means the division of health improvement of the health care authority.

H. “In-person instructor” means the in-person dementia training instructor who will conduct dementia training pursuant to the requirements of 8.370.11 NMAC.

I. “Long-term care facility” means every long-term care facility licensed by the state of New Mexico.

J. “Long-term care facility contractor” as used within this regulation means an entity that employs direct care service staff members.

[8.370.11.7 NMAC - N, 07/01/2024]

8.370.11.8 TRAINING REQUIREMENT:

A. Every direct care service staff member shall complete the requirements for and obtain certification as provided in 8.370.11.9 NMAC.

B. Every direct care service staff member is required to complete the training and written examination set forth in 8.370.11.9 NMAC pursuant to the following requirements:

- (1) if hired after January 1, 2022, shall complete the training required within 60 days of the start of employment;
- (2) if hired prior to January 1, 2022, shall complete the training required if the direct care service staff member has not received training in the past 24 months equivalent to the training set forth in 8.370.11.9 NMAC within 60 days of January 1, 2022;
- (3) if the direct care service staff member had successfully obtained a training certificate but has had a lapse of dementia-related direct care service employment for 24 consecutive months or more then the direct care service staff member shall complete the training and examination set forth in 8.370.11.9 NMAC within 60 days of the start of employment.

C. Exception to initial training: A direct care service staff member (DCSSM) hired prior to January 1, 2022, who received equivalent training within the past 24 months equivalent to the requirements set forth in Subsection A of 8.370.11.9 NMAC shall be issued a training certificate by the authority upon receipt from a facility of a written attestation that the DCSSM has received such training within the 24 months prior to January 1, 2022. A direct care service staff member (DCSSM) hired after January 1, 2022, who received equivalent training within the 24 months prior to the hiring date equivalent to the requirements set forth in Subsection A of 8.370.11.9 NMAC shall be issued a training certificate by the authority upon receipt from a facility of a written attestation that the DCSSM has received such training within the 24 months prior to the date of hire. The facility attestation shall be provided to the authority's train division email address for issuance of a training certificate by the authority. [8.370.11.8 NMAC - N, 07/01/2024]

8.370.11.9 COURSE OF EDUCATION: New Mexico requires a state training education process to become a certified direct care staff member. The education program shall provide knowledge on the skills and abilities necessary to perform as a competent direct care service staff member; this is established through training education, provided either on-line or in person, followed by successful completion of a division-approved written examination. The in-person instructor will conduct the course of education for the direct care staff member as set out below. Each long-term facility and long-term care facility contractor shall provide training either on-line or in-person as set forth in this section to each DCSSM that it employs.

A. Instruction: Instruction by the on-line provider or in-person instructor must be at least four hours in length, either in-person or on-line, and include these authority-approved areas of study:

- (1) identify cognitive, functional, and behavioral changes of normal aging and those associated with mild cognitive impairment and dementia;
- (2) identify and understand the various types of dementia;
- (3) identify the prevalence, risk factors, signs and symptoms, and rate of progression of dementia;
- (4) identify and understand the stages of dementia;
- (5) describe and understand when to refer people living with dementia (PLwD) to a neurologist, geriatric psychiatrist, neuropsychologist, or a national Alzheimer's disease center;
- (6) diagnosing dementia & discussing dementia diagnosis;
- (7) patient centered care;
- (8) activities of daily living in people living with dementia and Alzheimer's disease;
- (9) identify common components of an individualized primary care plan for persons with middle stage dementia;
- (10) identify common components of an individualized primary care plan for persons with late stage dementia;
- (11) identify and understand common medical issues related to early-stage dementia,
- (12) identify and understand common medical issues related to middle-stage dementia;
- (13) identify and understand common medical issues related to late-stage dementia;
- (14) effective care transitions to and from acute care hospitals;
- (15) interprofessional team roles and dementia;
- (16) describe how responsibilities may evolve as the disease progresses;

- (17) list legal and financial considerations to discuss with a patient and appropriate care partner(s) upon a diagnosis of dementia;
- (18) identify domains that are included in a capacity assessment for a person living with dementia;
- (19) ethics and capacity issues;
- (20) responding to abuse, neglect & exploitation of people living with dementia and Alzheimer's disease.
- (21) identify signs and symptoms of end-stage dementia;
- (22) identify and understand barriers to optimal care among various ethnic groups;
- (23) identify and understand techniques for effective communications with diverse populations;
- (24) pain assessment in people living with dementia;
- (25) resident rights;
- (26) palliative care & end of life care.

B. Trainer requirements: A person conducting training of the required topics set forth in 8.370.11.9 NMAC shall have:

- (1) at least two years of work experience related to alzheimer's disease, dementia, health care, gerontology or other related field; and
- (2) successfully completed training requirement to the requirements provided in Subsection A of 8.370.11.9 NMAC, including passage of the knowledge test required in Subsection D of 8.370.11.9 NMAC; and

C. Training on-line: Training on-line shall be provided by the authority through the train program at www.train.org/nm or through a authority -approved on-line curriculum and knowledge test which shall include the authority-approved areas of study set forth in Subsection A of 8.370.11.9 NMAC and shall be at least four hours in length. After completion of the on-line training and successful passage of a knowledge test, a certificate shall be issued to the DCSSM.

D. Evaluation of training topics: The authority shall review and evaluate the training areas of study in Subsection A of 8.370.11.9 NMAC every two years or as determined necessary by the authority based upon current research and best practices.

E. Testing: The in-person or on-line training must be followed by successful completion of a division-approved written examination which shall cover the areas of study set forth in Subsection A of 8.370.11.9 NMAC before a training certificate will be issued by the in-person or on-line training program.

F. Training certificates: The provider of on-line or in-person training conducted pursuant to 8.370.11.9 NMAC shall issue a certificate to the DCSSM upon completion of initial training, or the authority shall issue a certificate upon receipt of facility attestation of exemption from training as set forth in Subsection D of 8.370.11.8 NMAC. The certificate shall be valid so long as the certificate holder meets the continuing education requirement set forth in 8.370.11.9 NMAC and the certificate holder has not had a lapse of dementia-related direct care service employment for 24 consecutive months or more. The certificate shall be valid among long-term care facilities.

G. Continuing education: Proof must be maintained by the facility of four hours of training by the DCSSM every two years on topics set forth in 8.370.11.9 NMAC for treatment and care of persons with Alzheimer's disease or dementia, in order to maintain the certificate issued to the individual DCSSM.

H. Maintenance of certification records: Each long-term care facility and long-term care facility contractor subject to 8.370.11 NMAC shall be responsible for maintaining documentation regarding completed long-term care facility dementia training, evaluation and continuing education for each DCSSM. Each long-term care facility contractor subject to 8.370.11 NMAC shall provide a copy of each DCSSM'S dementia training certificate to every long-term care facility where the DCSSM provides direct care service, pursuant to Subsection F of Section 24-17B-3 NMSA 1978.

[8.370.11.9 NMAC - N, 07/01/2024]

8.370.11.10 SEVERABILITY: If any part or application of the long-term care facility dementia training regulation is held invalid, the remainder or its application to other situations or persons shall not be affected.

[8.370.11.10 NMAC - N, 07/01/2024]

HISTORY OF 8.370.11 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 12 REQUIREMENTS FOR ACUTE CARE, LIMITED SERVICES AND SPECIAL
HOSPITALS

8.370.12.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.12.1 NMAC - N, 7/01/2024]

8.370.12.2 SCOPE: These requirements apply to public and private hospitals as defined in Section 8.370.12.7 of these requirements. Facilities that are specifically exempt under Subsection D of Section 24-1-2, NMSA 1978, from being treated as hospitals for purposes of regulation under Section 24-1-5, NMSA 1978, and these requirements, are physicians' clinics and offices, nursing homes, as well as health centers and correctional institutions that are operated by the state.
[8.370.12.2 NMAC - N, 7/01/2024]

8.370.12.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the health care authority, pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978, as amended and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5, NMSA 1978, of the Public Health Act as amended. 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 facility licensure and health care purchasing and regulation.
[8.370.12.3 NMAC - N, 7/01/2024]

8.370.12.4 DURATION: Permanent.
[8.370.12.4 NMAC - N, 7/01/2024]

8.370.12.5 EFFECTIVE DATE: July 1, 2024, unless a later date is specified at the end of a section.
[8.370.12.5 NMAC - N, 7/01/2024]

8.370.12.6 OBJECTIVE:

- A.** Establish standards for licensing hospitals in order to ensure that hospital patients receive adequate care and treatment and that the health and safety of patients and hospital employees are protected.
- B.** Establish standards for the construction, maintenance and operation of hospitals.
- C.** Regulate such hospitals in providing the appropriate level of care for patients.
- D.** Provide for hospital compliance with these requirements through surveys to identify any areas that could be dangerous or harmful to the health, safety, or welfare of the patients and staff.

[8.370.12.6 NMAC - N, 7/01/2024]

8.370.12.7 DEFINITIONS.

- A.** “**Abuse**” means injury, sexual misuse, or neglect resulting in harm of an individual patient.
- B.** “**Acute-care hospital**” means a hospital providing emergency services, in-patient medical and nursing care for acute illness, injury, surgery or obstetrics; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care hospitals.
- C.** “**Allied health personnel**” means persons who are not physicians, podiatrists, psychologists or dentists who may be admitted to practice in the hospital through the medical staff credentialing process, and includes:
 - (1)** “**licensed independent practitioner**” means an advanced practice professional registered nurse permitted by law to provide care without direction or supervision within the scope of the individual’s license and consistent with individually granted privileges; this includes certified nurse midwives, certified nurse practitioners and clinical nurse specialists;
 - (2)** “**certified registered nurse anesthetist**” means an advanced practice professional registered nurse permitted by law to provide anesthesia care; in an interdependent role as a member of a health care team in which medical care of the patient is directed by a medical physician, osteopathic physician, dentist or podiatrist licensed in the state of New Mexico; the certified registered nurse anesthetist shall collaborate with the

medical physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care or the patient; collaboration means the process in which each health care provider contributes their respective expertise;

(3) **“physician assistant”** means a person licensed as a physician assistant by the New Mexico board of medical examiners, pursuant to Section 61-6-6, NMSA 1978.

D. **“Amended license”** means a change of administrator, name, location, capacity, classification of any units as listed in these requirements requires a new license:

- (1) the application shall be on a form provided by the licensing authority;
- (2) the application shall be accompanied by the required fee for an amended license; and
- (3) the application shall be submitted at least 10 working days prior to the change.

E. **“Annual net revenue”** means, as determined from the hospitals governing board’s approved audited financial statement for an annual time period, the hospital’s net patient services revenue; net patient services revenue does not include net operating revenue from other sources, such as medical office rental and cafeteria; annual net revenue is determined after deductions for:

- (1) contractual allowances;
- (2) uncompensated care and bad debt;
- (3) charity care; and
- (4) annual net revenue excludes other non-operating revenues, including but not limited to, income from endowments, investments, gifts and bequests, and net gain on sale of fixed assets.

F. **“Annual cost of care”** means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), the billed charges of providing emergency services and general health care to nonpaying patients and low-income reimbursed patients.

G. **“Annual license”** means a license issued for a one-year period to a hospital that has met all license prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

H. **“Applicant”** means the individual who, or organization which, applies for a license; if the applicant is an organization, then the individual signing the application on behalf of the organization must have the authority to sign for the organization.

I. **“Audiologist”** means a person licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978, to practice audiology.

J. **“Automated medication management system”** means an automatic device that compounds, measures, counts, packages and delivers a specified quantity of dosage units for a designated product and which collects, controls and maintains all transaction information.

K. **“CMS”** means center for medicare & medicaid services.

L. **“Consultant pharmacist”** means a person licensed in New Mexico under the Pharmacy Act, Subsection D of Section 61-11-2, NMSA 1978, as a consultant pharmacist.

M. **“Critical access hospital”** means a hospital with special characteristics, duly certified as such by centers for medicare and medicaid services (CMS) and is in compliance with the conditions of participation for such facilities; such critical access hospitals are deemed as meeting the intent of these requirements and may be licensed accordingly by the licensing authority.

N. **“Dentist”** means a person licensed to practice dentistry under the Dental Act, Sections 61-5-1 to 61-5-22, NMSA 1978.

O. **“Dietician”** means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association, or who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

P. **“Dietetic service supervisor”** means a person who:

- (1) is a qualified dietitian with one year of supervisory experience in the dietetic service of a health care institution; or
- (2) is a graduate of a dietetic technician or dietetic assistant training program, approved by the American dietetic association and has consultation from a qualified dietitian; or
- (3) is a graduate of a state-approved course that provided 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian; if the supervisor is not a qualified dietitian then consultation from a qualified dietician must be provided.

Q. **“Distinct emergency service”** means an emergency distinct department that provides a medical screening examination and treatment of a medical condition manifesting itself by acute symptoms of sufficient

severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) that requires immediate medical attention.

R. “**Drill**” means the practice of a planned activity at full dress intensity.

S. “**Emergency care for sexual assault survivors**” means medical examinations, procedures and services provided by a hospital to a sexual assault survivor following an alleged sexual assault.

T. “**Emergency contraception**” means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse.

U. “**Emotional abuse**” means verbal behavior, harassment, or other actions that result in emotional or behavioral problems, physical manifestations, disordered or delayed development.

V. “**Exercise**” means the practice of a planned activity at less than full-dress intensity.

W. “**Financial interest**” means any equity, security, lease or debt interest in the hospital; financial interest also includes any equity, security, and lease or debt interest in any real property used by the hospital or in any entity that receives compensation arising from the use real property by the hospital.

X. “**Health physicist**” means a person holding a master’s degree or doctorate in an appropriate discipline of radiologic physics or who has equivalent education and experience.

Y. “**Hospital**” means a facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term “hospital” for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury, surgery, and obstetrics; any limited services hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.

Z. “**Long term acute-care hospital**” means a hospital providing long term, in-patient medical care for medically-complex patients whose length of stay averages greater than 25 days; ancillary support services such as pharmacy, clinical laboratory, radiology, and dietary are required for long-term acute-care hospitals.

AA. “**Low-income patient**” means a patient whose family or household income does not exceed two hundred percent of the most current federal poverty level.

BB. “**Rehabilitation hospital**” means a special hospital that primarily provides rehabilitative care to inpatients.

CC. “**Legally authorized person**” means a parent of a minor, a court appointed guardian or a person authorized by the patient in accordance with law to act on the patient’s behalf.

DD. “**Licensed practical nurse**” means a person licensed as a practical nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

EE. “**Licensee**” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospital and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

FF. “**Licensing authority**” means the agency within the authority vested with the authority to enforce these requirements.

GG. “**Limited services hospital**” means a hospital that limits admissions according to medical or surgical specialty, type of disease or medical condition, or a hospital that limits its inpatient hospital services to surgical services or invasive diagnostic treatment procedures; a limited services hospital must have emergency services, inpatient medical and nursing care for acute illness, injury, and surgery, and must offer ancillary services including pharmacy, clinical laboratory, radiology, and dietary; a limited services hospital does not include:

- (1) a hospital licensed by the authority as a special hospital;
- (2) an eleemosynary hospital that does not bill patients for the services provided; and
- (3) a hospital that has been granted a license prior to January 1, 2003.

HH. “**Local community**” means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), the New Mexico standard metropolitan statistical area or county in which a limited services hospital or an acute-care hospital applies to be licensed or becomes initially licensed by the authority at any time after January 1, 2003; if the applicant seeks licensure of a facility within the boundaries of a New Mexico standard metropolitan statistical area, the local community for purposes of that application is that standard metropolitan statistical area; if the applicant seeks licensure of a facility not within the boundaries of a New Mexico standard metropolitan statistical area, the local community for purposed of that application is the New Mexico county.

II. “Local emergency operations plan” means the all-hazard emergency operations plan maintained by a jurisdiction at the local level that coordinates local level functional plans, hazard specific plans, and response specific plans into an effective and efficient whole.

JJ. “Medically and factually accurate and objective” means verified or supported by the weight of research conducted in compliance with accepted scientific methods and standards; published in peer-reviewed journals; and recognized as accurate and objective by leading professional organizations and agencies with relevant expertise in the field of obstetrics and gynecology, such as the American college of obstetricians and gynecologists.

KK. “Medical staff” means the hospital’s organized component of physicians, podiatrists, psychologists, dentists and allied health personnel who have been appointed by the governing body of the hospital and granted specific privileges for the purpose of providing care for the patients of the hospital.

LL. “Misappropriation of property” means the deliberate misplacement, misappropriation of patients’ property, or wrongful, temporary or permanent use of a patient’s belongings or money without the patients’ consent.

MM. “National incident management system” means the core set of doctrine, concepts, principles, terminology, and organizational processes, required by homeland security presidential directive 5, that will be used to manage domestic incidents to enable effective, efficient, and collaborative action at all levels.

NN. “National response plan” means the single all-hazard incident management plan, required by homeland security presidential directive 5, that addresses the five domains of disaster and emergency management: awareness, prevention, preparedness, response, and recovery and that will govern all disaster and emergency management planning beginning in federal fiscal year 2005 (October 1, 2004-September 30, 2005).

OO. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

PP. “New Mexico state all-hazard emergency operations plan” means the all-hazard emergency operations plan maintained by the state of New Mexico that coordinates state level functional plans, hazard specific plans, and response specific plans with local emergency operations plans into an effective an efficient whole.

QQ. “Nonpaying patients” means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), patients whose care is substantially uncompensated, including patients classified as charity care or bad debit.

RR. “Nosocomial” means an infection pertaining to or originating in a hospital not present or incubating prior to admittance to a hospital.

SS. “Occupational therapist” means a person licensed as an occupational therapist under the Occupational Therapy Act, Sections 61-12A-1 to 61-12A-20, NMSA 1978.

TT. “Pharmacist” means a person licensed in New Mexico under the Pharmacy Act, 61-11-1 to 61-11-29, NMSA 1978.

UU. “Pharmacy” means a place where drugs are compounded or dispensed that is licensed by the New Mexico board of pharmacy.

VV. “Physical abuse” means damaging or potentially damaging acts or incidents that result in bodily injury or death.

WW. “Physical therapist” means a person licensed to practice physical therapy under the Physical Therapy Act, Sections 61-12-1 to 61-12-21, NMSA 1978.

XX. “Physician” means a person licensed to practice medicine or osteopathy by the New Mexico board of medical examiners, pursuant to Section 61-6-10, NMSA 1978 or the osteopathic medical examiners board pursuant to Sections 61-10-1 through 61-10-21, NMSA 1978.

YY. “Physician owner” means a physician, podiatrist, dentist licensed by the New Mexico board of dental health care pursuant to Section 61-5A-12NMSA 1978, or any other person licensed in New Mexico as a health care practitioner permitted by the hospital to refer, admit or treat hospital patients, and who has a financial interest in the hospital.

ZZ. “Podiatrist” means a person licensed to practice podiatry or podiatric medicine and surgery under the Podiatry Act, Sections 61-8-1 to 61-8-16, NMSA 1978.

AAA. “Privileges” means the authorization of the medical staff members to provide care to hospital patients in the area in which the person has expertise as a result of education, training and experience.

BBB. “Psychologist” means a person licensed to practice psychology under the Professional Psychologists’ Act, Sections 61-9-1 through 61-9-18, NMSA 1978.

CCC. “Psychiatric hospital” means a special hospital that primarily provides by or under the supervision of a physician, psychological or psychiatric services for the diagnosis and treatment of mentally ill persons.

DDD. “Registered nurse” means a person licensed as a professional registered nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

EEE. “Reporting year” means with respect to the provision of financial, utilization, and services information for the hospital’s last full and audited annual accounting period.

FFF. “Respiratory care practitioner” means a person who is licensed under the Respiratory Care Act, Sections 61-12B-1 to 61-12B-16, NMSA 1978.

GGG. “Sexual assault” means the crime of criminal sexual penetration that may result in pregnancy.

HHH. “Sexual assault survivor” means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient to a hospital.

III. “Special hospital” means a hospital that treats patients that have a diagnosis-related group classifications for two-thirds of all its patients that fall into no more than two major diagnosis categories, or if at least two-thirds of its patients are classified in a specific diagnosis category; an example of a special hospital is a psychiatric or rehabilitation hospital.

JJJ. “Speech pathologist” means a person who is licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978 to practice speech language pathology.

KKK. “Variance” means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a hospital and is at the sole discretion of the licensing authority.

LLL. “Waive/waiver” means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements for a limited period of time less than one year, provided the health, safety, or welfare of patients and staff are not in danger; waivers are issued at the sole discretion of the licensing authority.

[8.370.12.7 NMAC - N, 7/01/2024]

8.370.12.8 REQUIRED LICENSURE BY THE AUTHORITY: Procedures applicable after January 1, 2003: This section addresses the requirements of Section 24-1-5.8 NMSA 1978 (2003) and applies to local communities in which an acute-care hospital or a limited services hospital applies to be licensed or becomes initially licensed by the authority at any time after January 1, 2003.

A. No hospital may operate in New Mexico unless it is licensed in accordance with the requirements of the New Mexico health care authority.

B. The authority shall issue a license to an acute-care hospital or a limited services hospital that meets the requirements of this rule and agrees to:

(1) continuously maintain and operate an emergency department that provides emergency medical services as defined in Section 8.370.12.38 NMAC; and

(2) when applicable, participate in the medicare, medicaid and county indigent care programs; and

(3) require a physician owner to disclose and document in the patient’s medical record a financial interest in the hospital before referring a patient to the hospital.

C. Comply with the same quality standards applied to other hospitals.

D. Provide emergency services and general health care to a number of nonpaying patients and low-income reimbursed patients in the same proportion as the patients that are treated in acute-care hospitals in the local community, as determined by the authority provided that the annual cost of the care required to be provided pursuant to paragraph (5) shall not exceed an amount equal to five percent of the hospital’s annual net revenue for the previous fiscal year from audited financial statements.

E. Require a health care provider to disclose a financial interest before referring a patient to the hospital.

F. Reporting requirements-general. The authority, in accordance with the requirements of Section 24-1-5.8 NMSA 1978 (2003) requires the provision of information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the hospital’s last full and audited accounting period. This period is called the most recent reporting year.

G. Reporting hospitals. After January 1, 2003, an application to the authority for an initial license by an acute-care hospital or limited services hospital in a local community will require the provision of information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the most

current reporting year. The following hospitals must report to the authority within 30 days of notice from the authority of application for an initial license by an acute-care hospital or limited services hospital:

- (1) all limited services hospitals in the local community;
- (2) all acute-care hospitals in the local community;
- (3) the limited services hospital applying for the initial license or the acute-care hospital

applying for the initial license must submit a business plan that provides information necessary to determine the projected annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients.

H. Reporting requirements-specific. The reporting requirement for information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the hospital's last full and audited accounting period, shall be satisfied by the provision of a certified statement by the hospital's chief executive officer and an independent certified public accountant attesting to the accuracy of the above required information, in the format determined by the authority. The authority shall conduct, as determined necessary, an independent audit to validate the information provided in the certified statement.

I. Determination of proportionality by the authority. Based upon the certified statements and business plan(s) submitted, the authority shall determine whether the application for licensure will provide emergency services and general health care to the number of nonpaying patients and low-income reimbursed patients in the same proportion as the proportion of nonpaying and low-income reimbursed patients that are treated in acute-care hospitals in the local community. Upon that determination by the authority that the proportional requirements are met by the applicant and the receipt of a certified statement by the applicant's chief executive officer that the proportions will be maintained, and other rule requirements are met by the applicant, the authority may issue a license consistent with the requirements of Section 24-1.5.8 NMSA 1978 (2003).

J. Limitation on costs to achieve proportionality. The acute-care hospital or limited service hospital applying for licensure after January 1, 2003 shall submit to the authority on an annual basis a certified statement from an independent certified public accountant setting out for that reporting year the hospital's annual cost incurred in the provision of care to low-income reimbursed patients and to nonpaying patients, in order to satisfy the hospital's proportionality requirements. Submission to the authority of such certified statement from an independent certified public accountant shall be made by the hospital within 30 days of its acceptance by the hospital's board of directors of the annual audited financial statement. The cost incurred in the provision of care to low-income reimbursed patients and nonpaying patients to satisfy the hospital's proportionality requirements is limited to five percent of the hospital's annual net revenue.

K. Penalties for non-reporting. Failure to meet the reporting requirements set out in this rule within the proscribed timeliness may result in a civil monetary penalty not to exceed \$500,000, in the suspension or revocation of the hospital's license, the referral to CMS for sanctions under the medicare and medicaid program.

L. Penalties for failure to provide proportional services. Failure by an acute-care hospital or limited service hospital applying for licensure after January 1, 2003 to provide proportional services to nonpaying and low-income reimbursed patients, as required by this section, in any year following licensure, as determined from the information submitted annually by the hospital's chief executive officer and an independent certified public accountant may result in the authority's imposition of one or more of the following penalties:

(1) a authority-directed or authority approved plan of correction in which the hospital's failure to provide proportional services to nonpaying and low-income reimbursed patients is remedied in subsequent years through the additional provision of services to nonpaying and low-income reimbursed patients beyond the proportion established by the authority for such years;

(2) a civil monetary penalty not to exceed \$500,000;

(3) suspension or revocation of the hospital's license; and

(4) referral to CMS for sanctions under the medicare and medicaid programs.

M. Annual reporting. Acute-care hospitals or limited services hospitals licensed after January 1, 2003, and all acute-care hospitals in the local community, shall submit to the authority on an annual basis a certified statement from an independent certified public accountant that sets out:

(1) the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients;

(2) the annual net patient service revenue;

(3) the number of nonpaying and low-income reimbursed patients treated; and

(4) the total number of patients treated.

N. Physician owner disclosure of financial interest requirements, disclosure required. The physician owner of a limited services hospital or an acute-care hospital initially licensed by the authority at any time after January 1, 2003, shall not make a referral of a patient for the provision of health care items or services to such limited services hospital or the acute-care hospital unless, in advance of any such referral, the referring physician owner discloses to the patient the existence and the nature of physician's ownership interest.

O. Disclosure of financial interest by a physician owner. The disclosure of financial interest by a physician owner, as required in this section, shall be made in writing, prior to or at the time of the referral, and shall be furnished to:

(1) the patient, or the patient's authorized representative, and
(2) the acute-care hospital or the limited services hospital licensed by the authority at any time after January 1, 2003, in which the referring physician owner has a financial interest, for inclusion in the hospital's permanent patient's medical record; the acute-care hospital or the limited services hospital licensed by the authority at any time after January 1, 2003, must permit inspection of the patient's medical record by authorized employees of the authority to determine the hospital's compliance with this requirement, regardless of the hospital's deemed status.

P. Written disclosure of financial interest by a physician owner. The written disclosure of financial interest by a physician owner, as required in this section, shall include:

(1) the physician's name, address, and telephone number;
(2) the name and address of the limited services hospital or the acute-care hospital licensed by the authority at any time after January 1, 2003, to which the patient is being referred by the physician;
(3) the nature of the items or services, which the patient is to receive from the hospital to which the patient is being referred;
(4) the existence, nature and extent of the physician's financial interest in the hospital to which the patient is being referred; and
(5) a signed acknowledgement by the patient or the patient's authorized representative that the required disclosure has been furnished.

Q. To be approved by the New Mexico health care authority, a hospital shall comply with these requirements and with all other applicable state laws and local ordinances. Staff of the hospital shall be licensed or registered, as appropriate, in accordance with applicable laws.

R. An application for licensure shall be submitted to the authority on a form prescribed by the authority. All applications must have the following information:

(1) name of administrator or chief executive officer;
(2) type of facility to be operated and types of services that will be offered;
(3) location of the hospital; and
(4) statement of ownership, which must include:
(a) the name and principal business address of each officer and director for the corporation;
(b) the name and business address of each stockholder owning ten percent or more of the stock;
(c) copy of the current organizational chart; and
(d) such other information or documents as may be required by the authority for the proper administration and enforcement of the licensing law and requirements.

S. The authority shall review and make a determination on an application for licensure within 90 working days of receipt of the application.

T. Separate licenses shall be required for hospitals that are maintained on separate premises even though they are under the same management. This does not apply to outpatient departments or clinics of hospitals designated as such which are maintained and operated on separate premises within the same county or, if in another county, not to exceed a one hour drive time from the parent facility. Separate licenses shall not be required for separate buildings on the same grounds or adjacent grounds.

U. Applications submitted for proposed construction of new hospitals or additions to licensed hospitals shall include architectural plans and specifications.

V. Information contained in such applications shall be on file in the authority and available to interested individuals and community agencies.

[8.370.12.8 NMAC - N, 7/01/2024]

8.370.12.9 TYPES OF LICENSE:

A. “Annual license”: an annual license is issued for a one-year period to a hospital that has met all requirements of these requirements.

B. “Temporary license”: the licensing authority may, at its sole discretion, issue a temporary license prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. “Amended license”: a licensee must apply to the licensing authority for an amended license when there is any change of administrator, name, location, capacity, classification of any unit as listed in these requirements:

(1) the application must be on a form provided by the licensing authority;

(2) application must be accompanied by the required fee for an amended license; and

(3) application must be submitted at least 10 working days prior to the change.

[8.370.12.9 NMAC - N, 7/01/2024]

8.370.12.10 LICENSE RENEWAL:

A. The licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee prior to the expiration of the current license.

B. Upon receipt of the renewal application and the required fee prior to expiration of current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these requirements.

[8.370.12.10 NMAC - N, 7/01/2024]

8.370.12.11 POSTING: The license, or a copy thereof, shall be conspicuously posted in a location accessible to public view within the hospital.

[8.370.12.11 NMAC - N, 7/01/2024]

8.370.12.12 NON-TRANSFERABLE REGISTRATION OF LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the hospital changes;

B. the facility changes location;

C. the licensee of the hospital changes; or

D. the hospital discontinues operation.

[8.370.12.12 NMAC - N, 7/01/2024]

8.370.12.13 EXPIRATION OF LICENSE: A license will expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked, or:

A. on the day a facility discontinues operation; or

B. on the day a facility is sold, leased, or otherwise changes ownership or licensee; or

C. on the day a facility changes location.

[8.370.12.13 NMAC - N, 7/01/2024]

8.370.12.14 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if the licensing authority determines immediate action is required to protect human health and safety, the licensing authority may suspend a license. A hearing must be held in accordance with the regulations governing adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

[8.370.12.14 NMAC - N, 7/01/2024]

8.370.12.15 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be denied, revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing for any of the following reasons:

- A. failure to comply with any provisions of these requirements;
 - B. failure to allow survey by authorized representatives of the licensing authority;
 - C. permitting any person while active in the operation of a facility licensed pursuant to these requirements to be impaired by the use of prescribed or non-prescribed drugs, including alcohol;
 - D. misrepresentation or falsification of any information provided to the licensing authority;
 - E. the discovery of repeat violations of these requirements during surveys; or
 - F. the failure to provide the required care and services as outlined by these requirements.
- [8.370.12.15 NMAC - N, 7/01/2024]

8.370.12.16 HEARING PROCEDURES:

- A. An applicant or licensee subject to an adverse action may request an administrative appeal.
 - B. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the hospital as outlined in Section 14 and 15 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
 - C. A copy of the adjudicatory hearing procedures will be furnished to the hospital at the time an adverse action is taken against the licensee by the licensing authority. A copy may be requested at any time by contacting the licensing authority.
- [8.370.12.16 NMAC - N, 7/01/2024]

8.370.12.17 WAIVERS AND VARIANCES:

- A. **Applications.** All applications for the grant of a waiver or variance shall be made in writing to the licensing authority, specifying the following:
 - (1) the rule from which the waiver or variance is requested;
 - (2) the time period for which the waiver or variance is requested;
 - (3) if the request is for a variance, the specific alternative action which the facility proposes;
 - (4) the reasons for request; and
 - (5) an explanation of why the health, safety, and welfare of the residents or staff are not endangered by the condition.
 - B. Requests for a waiver or variance may be made at any time.
 - C. The licensing authority may require additional information from the hospital prior to acting on the request.
 - (1) Grants and denials. The licensing authority shall grant or deny each request for waiver or variance in writing. Notice of a denial shall contain the reasons for denial. The decisions to grant, modify, or deny a request for a waiver or variance is subject to appeal one time only.
 - (2) The terms of a requested variance may be modified upon agreement between the licensing authority and the hospital.
 - D. The licensing authority may impose whatever conditions on the granting of a waiver or variance it considers necessary.
 - E. The licensing authority may limit the duration of any waiver.
- [8.370.12.17 NMAC - N, 7/01/2024]

8.370.12.18 GOVERNING BODY:

- A. **General requirements:** The hospital shall have an effective governing body, which is legally responsible for the management and provision of all hospital services, maintenance of the hospital services and the quality thereof.
- B. **Responsibilities. by-laws:** The governing body shall adopt by-laws. The by-laws shall be in writing and shall be available to all members of the governing body as well as the public. The by-laws shall:
 - (1) stipulate the basis upon which members are selected, their terms of office and their duties and requirements;
 - (2) specify to whom responsibilities for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated, and the methods established by the governing body for holding these individuals responsible;
 - (3) require a physician owner or other provider to disclose to the patient or the patient's representative and document for the patient's medical record a financial interest in the hospital before referring a patient to the hospital;

- (4) provide for the designation of officers, if any, their terms of office and their duties, and for the organization of the governing body;
- (5) specify the frequency with which meetings shall be held;
- (6) allow for the organization of committees, either standing or ad hoc, to assist the board in carrying out their responsibilities;
- (7) provide for the appointment of members of the medical staff; during periods of routine operation, and during disaster and emergency; and
- (8) provide mechanisms for the formal approval of the organization, by-laws and rules of the medical staff.

C. Meetings:

- (1) The governing body shall meet at regular intervals as stated in its by-laws.
- (2) Meetings shall be held frequently enough for the governing body to carry on necessary planning for growth and development and to evaluate the performance of the hospital, including the care utilization of physical and financial assets and the delegation to the CEO/administrator for the hiring and direction of personnel.
- (3) Minutes of meetings shall reflect pertinent business conducted.

D. Committees:

- (1) The governing body shall appoint committees. There shall be an executive committee and others as allowed by bylaws.
- (2) The number and types of committees shall be consistent with the size and scope of activities of the hospital
- (3) The executive committee or the governing body as a whole shall establish operating guidelines for the activities and general policies of the various hospital services and committees established by the governing body.
- (4) Written minutes, or reports, which reflect business conducted by the executive committee shall be maintained for review by the governing body.
- (5) Other committees, which may include finance, joint conference, quality improvement and plant and safety management committees, shall function in a manner consistent with their duties assigned by the governing body and shall maintain written minutes or reports which reflect the performance of these duties. If the governing body does not appoint a committee for a particular area, a member or members of the governing body shall assure the performance of the duties normally assigned to a committee for that area.

E. Medical staff liaison: The governing body shall establish a formal means of liaison with the medical staff by a joint conference committee or by other means as follows:

- (1) a direct and effective method of communication with the medical staff shall be established on a formal, regular basis, and shall be documented in written minutes or reports which are distributed to designated members of the governing body and the active medical staff; and
- (2) liaison shall be a responsibility of the joint conference committee or its equivalent and the executive committee for designated members of the governing body.

F. Medical staff appointments: The governing body shall appoint members of the medical staff in accordance with the approved medical staff by-laws.

- (1) A formal procedure shall be established, governed by written rules covering application for medical staff membership and the method of processing applications during periods of routine operation, and during disaster and emergency.
- (2) The procedure related to the submission and processing of applications shall involve the chief executive officer/administrator, the credentials committee of the medical staff or its equivalent, and the governing body.
- (3) Action taken by the governing body on applications for medical staff appointments shall be in writing; and available to the licensing authority during surveys or complaint investigations.
- (4) Written notification of applicants shall be made by either the governing body or its designated representative.
- (5) Applicants selected for medical staff appointment shall sign an agreement to abide by the medical staff rules and by-laws.
- (6) The governing body shall establish a procedure for appeal and hearing by the governing body or a designated committee if the applicant or the medical staff wishes to contest the decision on an application for medical staff appointments.

G. Appointment of chief executive officer/administrator: The governing body shall appoint an administrator or a chief executive officer/administrator for the hospital. The governing body shall review the performance of the chief executive officer/administrator at least annually.

H. Patient care: The governing body shall establish a policy, which requires that every patient be under the care of a licensed, independent practitioner as determined by the medical staff and governmental body.

I. Physical plant requirements: The governing body shall be responsible for providing a physical plant equipped and staffed to maintain the needed facilities and services for patients.

J. Risk management: The facility shall have a risk management program. State, county or city facilities must have a risk management plan in accordance with the general services department rules.

K. Discharge planning.

(1) The governing body shall assure that the hospital maintains an effective, ongoing program coordinated with community resources to facilitate the provision of appropriate follow-up care to patients who are discharged.

(2) The hospital shall have current information on community resources available for continuing care of discharged patients.

(3) The discharge planning program shall:
(a) have a mechanism to identify patients who require discharge planning to provide continuity of medical care to meet their identified needs;

(b) initiate discharge planning in a timely manner;

(c) identify the role of the patient's provider, nursing staff, social work staff, other appropriate staff, the patient, and the patient's family or representative in the initiation and implementation of the discharge planning process;

(d) assure documentation in the medical record of the discharge plan;

(e) allow for the timely and effective transmittal of all medical, social, economic information concerning the patient to persons responsible for subsequent care of the patient;

(f) provide that every patient, or their legal representatives, receive relevant information concerning their health needs and is involved in his or her own discharge planning; and

(g) be reviewed at least once a year to evaluate effectiveness.

[8.370.12.18 NMAC - N, 7/01/2024]

8.370.12.19 POLICIES: Every hospital shall have written policies approved by the governing board and shall include provisions for implementation, and for access by the patient, on:

A. Patient rights and responsibilities: a list of these patient rights and responsibilities shall be available in languages appropriate to the ethnic needs of the community;

(1) The policies on patient rights and responsibilities shall provide that:

(a) patients may not be denied appropriate hospital care because of the patient's race, creed, color, national origin, religion, sex, sexual orientation, marital status, age, disability or source of payment;

(b) patients shall be treated with consideration, respect, and recognition of their individuality, including the need for privacy in treatment;

(c) the individual patient's medical records, including all computerized medical information, shall be kept confidential in accordance with applicable federal, state and local laws;

(d) the patient or any person authorized by statute or in writing by the patient shall have access to the patient's medical record but access to patient's psychiatric records may be limited by treating professionals when specific hospital policies specify requirements for limiting access;

(e) every patient shall be entitled to know who has overall responsibility for the patient's care;

(f) every patient, legally authorized person or any person authorized in writing by the patient, shall receive, from the appropriate person within the facility, information about his illness, course of treatment and prognosis for recovery in terms the patient can understand;

(g) every patient, or his designate representative, where appropriate, shall have the opportunity to participate to the fullest extent possible in planning for his care and treatment;

(h) every patient, or his designated representative, shall be given, at the time of admission, a copy of the patient's rights and responsibilities;

(i) except in emergencies, the consent of the patient, or their legally authorized representative, shall be obtained before treatment is administered;

(j) any patient may refuse treatment to the extent permitted by law and shall be informed of the medical consequences of the refusal;

(k) the patient, the patient's legally authorized representative, or person granted the power to authorize medical treatment, shall be fully informed and give consent for the patient's participation in any form of research or experimentation;

(l) except in emergencies, the patient may be transferred to another facility only with a full explanation of the reason for the transfer, provision for continuing care; and acceptance by the receiving institution;

(m) every patient may examine and receive an explanation of the patient's hospital bill regardless of source of payment, and may receive upon request, information relating to financial assistance available through the hospital;

(n) every patient shall be informed of his responsibility to comply with hospital rules, cooperate in the patient's own treatment, provide a complete and accurate medical history, be respectful of other patients, staff and property, and provide required information concerning payment of charges;

(o) every patient shall be informed in writing about the hospital's policies and procedures for initiation, review and resolution of patient complaints, including the address where complaints may be filed with the authority;

(p) every patient shall be allowed to designate who may be permitted to visit during the hospital stay in accordance with the hospital policy; and

(q) every patient shall have freedom from physical or verbal abuse, harassment and inappropriate physical and chemical restraints;

(r) hospitals must be in compliance with CMS's patient rights condition of participation.

(2) The policies on patient rights and responsibilities shall also provide that patients who receive treatment for mental illness, or developmental disability, in addition to the rights listed herein, have the rights provided in section 43-1-6 NMSA 1978.

(3) Hospital staff assigned to provide direct patient care shall be informed of, and demonstrate their understanding of, the policies on patient rights and responsibilities through orientation and appropriate in-service training activities.

B. Movement of visitors: The hospital shall develop policies regarding the movement of visitors, which provide for infection control and patient privacy, but also allow the patient appropriate freedom as to the time, nature, and location of visit.

C. Use of Volunteers:

(1) the scope of volunteer activities shall be delineated in hospital policies and procedures and shall cover periods of routine operation and periods of disaster and emergency operation;

(2) volunteers may assist with patient care only under direct supervision of appropriate hospital personnel and after appropriate, documented in-service training; volunteers may not perform procedures permitted only by a licensed health care provider;

(3) no volunteer under 16 years of age may assist with or render direct patient care.

D. Identification: The hospital shall develop a method to identify employees, patients, personnel records and patient files.

E. Cancer reporting: every hospital shall report to the tumor registry all malignant neoplasms that are diagnosed by the hospital and all malignant neoplasm's diagnosed elsewhere if the individual is subsequently admitted to the hospital; the report of each malignant neoplasm shall be made on a form prescribed or approved by the authority and shall be submitted to the UNM tumor registry within six months after the diagnosis is made or within six months after the individual's first admission to the hospital if the neoplasm is diagnosed elsewhere, as appropriate; in this paragraph, "malignant neoplasm" means an in situ or invasive tumor of the human body, but does not include a squamous cell carcinoma or basal cell carcinoma arising in the skin.

F. Post - mortem examinations:

(1) the hospital shall have policies for notifying all personnel of special handling needs during post-mortem procedures;

(2) the hospital shall have policies for the release of a deceased human body to a funeral director or other authorized person.

G. Tagging of bodies: all deceased human bodies to be removed from a hospital shall be tagged by staff of the hospital; a red tag shall be used to indicate the possibility of the presence of the communicable or

infectious disease or radioactive materials. If the body is in a container, a tag shall also be applied to the outside of the container.

H. Autopsy: Reports are to be distributed to the primary provider and become part of the patient's clinical record.

I. Withholding of resuscitative services from patients.

(1) A policy shall be developed in consultation with the medical staff, nursing staff, and other appropriate bodies and shall be adopted by medical staff and approved by the governing body. The policy shall describe:

- (a) a mechanism(s) for reaching decisions about the withholding of resuscitative services from individual patients;
- (b) the mechanism(s) for resolving conflicts in decision making, should they arise;
- (c) the roles of physicians and, when applicable, of nursing personnel, other appropriate staff, and family members in the decision to withhold resuscitative services;
- (d) provisions designed to assure that patients' rights are respected when decisions are made to withhold resuscitative services;
- (e) a requirement that patients, or their legal representative(s), and family members must be afforded the opportunity to make their wishes known about decisions affecting the patient's end of life care;
- (f) a requirement that appropriate orders be written by the physician or other licensed independent practitioners primarily responsible for the patient and that documentation be made in the patient's medical record.

(2) A decision to withhold resuscitative services does not absolve the hospital from providing basic patient care.

J. Anatomical gifts: A policy shall be adopted and implemented for organ and tissue donation in accordance with 370.12.42 NMAC; the policy shall include procedures to assist the medical, surgical and nursing staff in identifying, evaluating and reporting potential organ and tissue donors.

K. Reporting: A policy for compliance with all applicable state and federal reporting requirements must be adopted and updated as necessary; such federal requirements include but are not limited to the New Mexico health policy commission, the national practitioner data bank and the healthcare integrity and protection data bank. [8.370.12.19 NMAC - N, 7/01/2024]

8.370.12.20 CHIEF EXECUTIVE OFFICER/ADMINISTRATOR:

A. Appointment: The hospital shall be directed by a chief executive officer/administrator. The chief executive officer/administrator shall be appointed by the governing body, shall be responsible for the management of the hospital and shall provide liaison among the governing body, medical staff, nursing services and other services of the hospital.

B. QualificationZ: The chief executive officer/administrator shall:

- (1) be a college or university graduate from an accredited college or university, with three years of experience in a health care facility; or
- (2) possess a college or university graduate degree in hospital, health care administration, or an advanced degree such as an MPH or an MBA with a health concentration; or
- (3) have been hired and be acting in the capacity of the facility's chief executive officer/administrator before the effective date of these requirements.

C. Responsibilities: The chief executive officer/administrator shall:

- (1) keep the governing body fully informed about the quality of patient care, the management and financial status of the hospital, survey results and the adequacy of physical plant, equipment and personnel;
- (2) organize the day-to-day functions of the hospital;
- (3) establish formal means of staff evaluation and accountability on the part of subordinates to whom duties have been assigned;
- (4) provide for the maintenance of an accurate, current and complete personnel record for each hospital employee;
- (5) ensure that there is sufficient communication among the governing body, medical staff, nursing services and other services, hold interdepartmental and departmental meetings, where appropriate, attend or be represented at the meetings on a regular basis, and report to the governing body on the pertinent activities of the hospital;

(6) provide the authority with any information required to document compliance with the Public Health Act, Section 24-1-1 et seq., NMSA 1978, and provide reasonable means for examining records and gathering the information;

(7) be responsible for the preparation of policies and procedures on the withholding of resuscitative services from patients.

[8.370.12.20 NMAC - N, 7/01/2024]

8.370.12.21 EMPLOYEE HEALTH: The hospital shall have an employee health program under the direction of a physician, an authorized licensed independent practitioner or professional registered nurse, which shall include.

A. Post hiring health screen: A post hiring health screening shall be required for all employees and persons who will have frequent and direct contact with patients. The assessment shall be completed and the results known prior to the assumption of duties by persons who will have direct contact with patients. The screening shall include:

(1) a health history, including a history of communicable diseases and immunizations;

(2) a PPD tuberculin skin test and, if necessary, a chest roentgenogram to determine whether disease is present, unless medically contra-indicated.

B. Health history for volunteers: A health history of communicable diseases and immunizations shall be obtained prior to any volunteer assuming duties that involve direct patient care.

C. Protection against rubella: Vaccination or confirmed immunity against rubella shall be required for everyone who has direct contact with rubella patients, pediatric patients or female patients of childbearing age. No individual without documented vaccination against or immunity to rubella may be placed in a position in which he or she has direct contact with rubella patients, pediatric patients or female-patients of childbearing age.

[8.370.12.21 NMAC - N, 7/01/2024]

8.370.12.22 INFECTION CONTROL:

A. Program. The hospital shall have an infection control program designed to reduce the number of infections, including nosocomial infections, within the hospital.

B. Program approval:

(1) Purpose: The governing body or medical staff shall approve an infection control program to carry out surveillance and investigation of infections in the hospital and to implement measures designed to reduce these infections to the extent possible.

(2) Responsibilities: The infection control program shall:

(a) establish techniques and systems for discovering and isolating infections occurring in the hospital;

(b) establish written infection control policies and procedures, which govern the use of aseptic technique and procedures in all areas of the hospital;

(c) establish a method of control used in relation to the sterilization of supplies and solutions; there shall be a written policy requiring identification of sterile items and specified time periods in which sterile items shall be reprocessed;

(d) establish policies specifying when employees or persons providing contractual services with infections or contagious conditions, including carriers of infectious organisms, shall be relieved from, or reassigned duties, until there is evidence that the disease or condition poses no significant risk to others;

(e) at least annually assess effectiveness of the infection control process; and

(f) establish effective guidelines for the disposition of infectious materials in accordance with the local, state and federal guidelines.

C. Education: The hospital shall provide training to all appropriate hospital personnel on the epidemiology, etiology, transmission, prevention and elimination of infection, as follows:

(1) aseptic technique: all appropriate personnel shall be educated in the practice of aseptic techniques such as hand-washing and scrubbing practices, standard precautions, personal hygiene, masking and dressing techniques, disinfecting and sterilizing techniques and the handling and storage of patient care equipment and supplies, to include the handling of needles and sharp instruments; and

(2) orientation and in-service: new employees shall receive appropriate orientation and on-the-job training, and all employees shall participate in a continuing in-service program; the participation shall be documented.

D. General infection control provisions:

- (1) There shall be regular inspection and cleaning of air intake sources, screens and filters, with special attention given to high risk areas of the hospital as determined by the infection control committee.
- (2) A sanitary environment shall be maintained to avoid sources and transmission of infection.
- (3) Proper facilities shall be maintained, and techniques used, for disposal of infectious wastes, as well as sanitary disposal of all other wastes.
- (4) Hand-washing facilities shall be provided in patient care areas for the use of hospital personnel.
- (5) Sterilizing services shall be available at all times.
- (6) Soiled linen shall be contained and secured at the point generated. It can be transported to a designated area or cleaning facilities. No special precautions beyond the standard precautions are necessary. Soiled bed linen shall be placed immediately in a container available for this purpose and sent to the laundry promptly.
- (7) Tuberculosis exposure control plan.
 - (a) A program to minimize the risk of infectious tuberculosis among or between health care workers, patients, or visitors and others shall be developed.
 - (b) This program shall include: a comprehensive facility-wide risk assessment, early identification, isolation, and treatment of potentially infectious tuberculosis patients, effective engineering controls to prevent the spread, and reduce the concentration of, infectious droplet nuclei, a written, respiratory protection program to protect health care workers from exposure, education, counseling, and screening processes for health care workers.

E. Reporting disease: Hospitals shall report cases and suspected cases of notifiable conditions as listed in 7.4.3.13 NMAC to the New Mexico health care authority pursuant to New Mexico regulations governing the control of disease and conditions of public health significance, New Mexico health care authority, 7.4.3 NMAC or any superceding regulation.

F. Policies and procedures: There shall be written policies and procedures pertinent to care of patients with communicable diseases that shall include standard precautions.

- (1) These policies and procedures shall be developed by administrative, medical, and nursing staff.
- (2) The policies and procedures shall be applicable within the hospital, designed to ensure safe and adequate care to patients, safety to hospital employees, and consistent with applicable laws and regulations.
- (3) Policies shall be made known to, and readily available to all hospital employees as well as the medical and nursing staff, and shall be followed in the care of patients, and shall be kept current by periodic review and revision.

[8.370.12.22 NMAC - N, 7/01/2024]

8.370.12.23 QUALITY IMPROVEMENT:

A. Responsibility of the governing body: The governing body shall ensure that the hospital has a written quality improvement program for monitoring, evaluating and improving the quality of patient care and the ancillary services in the hospital on an on-going basis. The program shall promote the most effective and efficient use of available health facilities and services consistent with patient needs and professionally recognized standards of health care.

B. Responsibilities of the chief executive officer/administrator and the chief of the medical Staff. As part of the quality improvement program, the chief executive officer/administrator and chief of the medical staff shall ensure that:

- (1) the hospital's quality improvement program is implemented and evaluated for effectiveness for all patient care and all services;
- (2) the findings of the program are incorporated into a well defined method of assessing staff performance in relation to patient care and the provision of services; and
- (3) program findings, actions and results of the hospital's quality improvement program are reported to the chief executive officer/administrator, chief of medical staff and governing body not less than annually.

C. Evaluation of Care to be Problem-Focused.

- (1) Monitoring and evaluation of the quality of care given patients and services provided shall focus on identifying patient care problems and opportunities for improving patient care.

(2) Evaluation of care and services shall be problem-focused whenever serious events occur which have a major impact on patient care and services, or when the hospital receives a quality-of-care concern or complaint.

D. Evaluation of care and services to use variety of sources. The quality of care given patients shall be evaluated using a variety of data sources, including, but not limited to, medical records, hospital information systems, published research, literature comparison, peer review organization data, patient satisfaction findings, and when available, third party information.

E. Activities. Hospitals shall document how each of the monitoring and evaluation activities has produced data used to institute changes to improve quality of care or services and promote more efficient use of facilities and services. Quality improvement activities shall:

(1) emphasize identification and analysis of patterns of patient care and suggest possible changes for maintaining consistently high quality care and effective and efficient use of services;

(2) identify and analyze factors related to the patient care rendered in the facility and, where indicated, make recommendations to the governing body, chief executive officer/administrator and chief of the medical staff for changes that are beneficial to patients, staff, the facility and the community; and

(3) document the monitoring and evaluation activities performed and indicate how the results of these activities have been used to institute changes to improve the quality and appropriateness of the care provided.

F. Evaluation of the program. The chief executive officer/administrator and chief of medical staff shall be involved in evaluation of the effectiveness of the quality improvement program which is evaluated by clinical and administrative staff at least once a year and that the results are communicated to the governing body. [8.370.12.23 NMAC - N, 7/01/2024]

8.370.12.24 UTILIZATION MANAGEMENT:

A. Plan: Every hospital shall have in operation a written utilization management plan designed to ensure that quality patient care is provided in the most appropriate manner. The plan should address potential over and under utilization as well as the efficient use of resources for patients.

(1) Description of plan. The written utilization management plan shall include at a minimum at least the following:

(a) a delineation of the responsibilities and authority of those involved in the performance of utilization management activities, including utilization management personnel, administrative personnel, and, when applicable, any qualified outside organization contracting to perform review activities specified in the plan;

(b) a conflict of interest statement stating that reviews may not be conducted by any person who has a proprietary interest in any hospital or by any person who was professionally involved in the care of the patient whose case is being reviewed;

(c) a confidentiality policy applicable to all utilization management activities, including any findings and recommendations;

(d) a description of the process by which the hospital identifies and resolves utilization related problems, including the appropriateness and medical necessity of admissions, continued stays, and supportive services, as well as delays in the provision of supportive services; and

(e) the following activities shall be incorporated into the process: analysis of profiles and patterns of care, feedback of results of profile analysis to the medical staff, documentation of specific actions taken to correct aberrant practice patterns or other utilization management problems, and evaluation of the effectiveness of action taken.

(2) The plan must include the procedures for conducting review, including the time period within which the review is to be performed following admission and in assigning continued stay review dates.

(3) A mechanism for the provision of discharge planning as set forth under these requirements must be included.

(4) Responsibility for performance. The plan shall be approved by the medical staff, administration and governing body. Hospital administration shall assure the effective implementation of the plan.

B. Conduct of review.

(1) Written measurable criteria that have been approved by the medical staff shall be utilized when performing reviews.

(2) Non-physician health care professionals may participate in the development of review criteria and conduct of review relative to services provided by their peers.

(3) Determinations regarding the medical necessity and appropriateness of care provided shall be based upon information documented in the medical record. The medical staff member primarily responsible for the patient's care shall be notified whenever it is determined that an admission or continued stay is not medically necessary, and shall be afforded the opportunity to present his or her own views before a final determination is made. At least two medical staff members shall make a determination when the medical staff member primarily responsible for the patient's care disagrees.

(4) Different rules may apply to beneficiaries of, or enrollees in, plans which provide medicare or medicaid services. If the hospital is a member of, or has a contractual relationship with, a risk bearing entity, and such risk bearing entity has a contract with CMS or with the New Mexico medicaid authority (single state agency), then the applicable federal or state requirements shall apply to enrollees under such a plan.

(5) Written notice of any decision that an admission or continued stay is not medically necessary shall be given to the appropriate hospital department, the medical staff member primarily responsible for care of the patient and the patient no later than 72 hours after the determination.

C. Records and reporting. Records shall be kept of hospital utilization management recommendations made to the medical staff and to the governing body as necessary. Recommendations relevant to hospital operations or administration shall be reported to administration.

[8.370.12.24 NMAC - N, 7/01/2024]

8.370.12.25 DISASTER AND EMERGENCY MANAGEMENT:

A. Plan: Each hospital shall have in operation a written plan for disaster and emergency management developed with the involvement of the hospital's executive, medical, and nursing staff and designed to ensure that each hospital is prepared to provide effective and efficient response to disasters and emergencies occurring in the community directly served by each hospital and in neighboring communities in New Mexico and adjacent states.

(1) Description of plan: The written plan for disaster and emergency management shall:
(a) identify the responsibilities and authorities of those involved in the conduct of disaster and emergency management activities within the hospital, including the responsibility and authority of chief executive officer of the hospital for the activation of the plan;

(b) be consistent with the concepts, principles, standards, guidelines, and terminology of the national response plan and the national incident management system;

(c) be coordinated with the local emergency operations plan, or the metropolitan medical response system plan, of the community directly served and with the New Mexico state all-hazard emergency operations plan;

(d) address the natural, accidental, negligent, and intentional hazards, identified through a hazard vulnerability analysis, to which the hospitals may be expected to respond;

(e) provide for direction, planning, education, training, exercise, drill, staff qualification and certification, equipment acquisition and certification, resource management, communications and information management, and ongoing management, improvement and maintenance;

(f) describe the direct responses of the hospital to disaster and emergency occurring in the community directly served by the hospital, the overflow and back-up responses of the hospital to disaster and emergency occurring in neighboring communities not directly served, and the efforts of the hospital in support organized and sponsored health professional disaster and emergency volunteer teams.

(2) Exercise and drill of plan: Exercises and drills of the plan, both internally, and in conjunction with local and state disaster and emergency exercises and drills, shall be conducted at least twice a year to practice response and to serve as a basis for plan improvement.

(3) Evaluation and revision of plan: The appropriateness and adequacy of the plan shall be evaluated on an annual basis, and the plan shall be revised as necessary.

B. Communications systems: With the assistance of the New Mexico health care authority each hospital shall establish and maintain connections with the various disaster and emergency management communications systems in New Mexico.

C. Bed polling: Each hospital shall participate in the electronic bed polling system operated by the New Mexico health care authority.

D. Mutual aid agreements and regional response plans: Coordination of hospital disaster and emergency management plans with local emergency operations plans and with the New Mexico state all-hazard

emergency operations plan shall be recognized to serve the purposes of individual mutual aid agreements and of regional response plans.

E. Public health emergency response: In the event that a public health emergency is declared pursuant to the Public Health Response Act, Sections 12-10A- to 12-10A-19, NMSA 1978, the secretary of the health care authority, in coordination with the secretary of public safety and the director of homeland security, may:

- (1) utilize, secure or evacuate health care facilities for public use; and
- (2) inspect, regulate the allocation, sale, dispensing, or distribution of, or ration health care

supplies in short supply within New Mexico.

[8.370.12.25 NMAC - N, 7/01/2024]

8.370.12.26 MEDICAL STAFF:

A. General requirements:

(1) **Organization and Accountability:** The hospital shall have a medical staff organized under by-laws approved by the governing body. The medical staff shall be responsible to the governing body of the hospital for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members.

(2) **Responsibility of members:** Members of the medical staff shall comply with medical staff and hospital policies. The medical staff by-laws shall prescribe disciplinary procedures for infraction of hospital and medical staff policies by members of the medical staff. There shall be evidence that the disciplinary procedures are applied where appropriate.

B. Membership:

(1) **Active staff:** A hospital shall have an active medical staff, which performs all the organizational duties pertaining to the medical staff. Active staff membership shall be limited to individuals, as defined in Subsection LL of 8.370.12.7 NMAC of these requirements, who are currently licensed. Individuals may be granted membership in accordance with the medical staff by-laws and rules, and in accordance with the by-laws of the hospital.

(2) **Other staff:** The medical staff may include one or more categories defined in the medical staff by-laws in addition to the active staff including a category to cover appointment during periods of disaster and emergency.

C. Appointment:

(1) **Governing body responsibilities:**

(a) medical staff appointments shall be made by the governing body, taking into account recommendations made by the active medical staff;

(b) the governing body shall biennially ensure that members of the medical staff are qualified legally and professionally for the position to which they are appointed;

(c) the hospital, through its medical staff, shall require applicants for medical staff membership to provide, in addition to other medical staff requirements, a complete list of all hospital medical staff memberships held within five years prior to application; and

(d) hospital medical staff applications shall require reporting any malpractice action, any previously successful and currently pending challenges to licensure in this or another state, and any loss or pending action affecting medical staff membership or privileges at another hospital.

(2) **Medical staff responsibilities:**

(a) to select its members and delineate their privileges, the hospital medical staff shall have a system, based on specific standards for evaluation of each applicant by a credentials committee, which makes recommendations to the medical staff and to the governing body; and

(b) the medical staff may include one or more categories of medical staff defined in the medical staff by-laws in addition to the active medical staff, including a category to cover appointment during periods of disaster and emergency, but this in no way modifies the duties and responsibilities of the active staff.

D. Criteria for appointment:

(1) Criteria for selection shall include the individual's current licensure, health status, professional performance, judgment and clinical and technical skills.

(2) All qualified candidates shall be considered by the credentials committee or during periods of disaster and emergency by a member of the medical staff or administration who represents the credentials committee.

(3) Re-appointments shall be made at least biennially and recorded in the minutes or files of the governing body. Reappointment policies shall provide for a periodic appraisal of each member of the staff,

including consideration at the time of reappointment of information concerning the individual's current licensure, health status, professional performance, judgment and clinical and technical skills. Recommendations for re-appointments shall be noted in the minutes of the meetings of the appropriate committee.

(4) Temporary staff privileges may be granted for a limited period if the individual is qualified for membership on the medical staff.

(5) Disaster and emergency privileges may be granted to qualified individuals during disasters and emergencies.

(6) A copy of the scope of privileges to be accorded the individual shall be distributed to appropriate hospital staff. The privileges of each staff member shall be specifically stated or the medical staff shall define a classification system. If a system involving classifications is used, the scope of the categories shall be well defined, and the standards that must be met by the applicant, shall be clearly stated for each category.

(7) If other categories of staff membership are to be established for allied health personnel, the necessary qualifications, privileges and rights shall be delineated in accordance with the medical staff by-laws.

E. Consultations:

(1) The medical staff must have established policies concerning the holding of consultations.

(2) Except in an emergency, consultations are required when:

(a) the patient is not a good medical or surgical risk;

(b) the diagnosis is obscure;

(c) there is doubt as to the best therapeutic measures to be utilized; or

(d) when the patient, or legally authorized person, requests such consultation.

(3) Consultations must be included in the medical record. When operative procedures are involved, the consultation note, except in an emergency, shall be recorded prior to the operation.

(4) The patient's physician or authorized licensed independent practitioner is responsible for requesting consultations when indicated. It is the duty of the medical staff to make certain that members of the medical staff contact consultants as needed.

F. By-laws:

(1) Adoption and purpose: By-laws shall be adopted by the medical staff and approved by the governing body to govern and enable the medical staff to carry out its responsibilities. The by-laws of the medical staff shall be a precise and clear statement of the policies under which the medical staff regulates itself.

(2) Content: medical staff by-laws and rules shall include:

(a) a descriptive outline of the medical staff organization;

(b) a statement of the necessary qualifications which each member must possess to be privileged to work in the hospital, during periods of routine operation, as well as during periods of disaster and emergency, and of the duties and privileges of each category of medical staff;

(c) a procedure for granting or withdrawing privileges to each member; and an appeal process for privilege withdrawal or refusal;

(d) a mechanism for appeal of decisions regarding medical staff membership and privileges;

(e) provision for regular meetings of the medical staff;

(f) provision for keeping timely, accurate and complete records;

(g) provisions for routine examination of all patients upon admission and recording of the preoperative diagnosis prior to surgery;

(h) a stipulation that a surgical operation is permitted only with the consent of the patient or legally authorized person except in emergencies;

(i) statements concerning the request for the performance of consultations, and instances where consultations are required; and

(j) a statement specifying categories of personnel duly authorized to accept and implement medical staff orders.

G. Governance:

(1) The medical staff shall have the numbers and kinds of officers necessary for the governance of the staff.

(2) Officers shall be members of the active staff and shall be elected by the active medical staff.

H. Meetings:

(1) Number and frequency: The number and frequency of medical staff meetings shall be determined by the active medical staff and clearly stated in the by-laws of the medical staff. At a minimum the executive committee of the medical staff shall meet at least quarterly.

(2) Attendance: Attendance records shall be kept of medical staff meetings. Attendance requirements for each individual member shall be clearly stated in the by-laws of the medical staff.

(3) Purpose: Full medical staff meetings shall be held to conduct the general business of the medical staff and to review the significant findings identified through the quality improvement program.

(4) Minutes: Minutes of all meetings shall be kept.

I. Committees.

(1) Establishment: The medical staff shall establish committees of the medical staff and is responsible for their performance.

(2) Executive committee: The medical staff shall have an executive committee to coordinate the activities and general policies of the various departments, act for the staff as a whole under limitations that may be imposed by the medical staff bylaws, and receive and act upon the reports of all other medical staff committees.

J. Administrative structure: Hospitals may create services to fulfill medical staff responsibilities. Services are responsible for the quality of care rendered to patients under their care.

[8.370.12.26 NMAC - N, 7/01/2024]

8.370.12.27 NURSING SERVICES:

A. Requirement: The hospital shall provide a 24-hour nursing service, supervised by a professional registered nurse, and have a licensed practical nurse or professional registered nurse on duty at all times.

B. Administration:

(1) The nursing services shall be directed by a professional registered nurse with appropriate education and experience to direct the service. A professional registered nurse with administrative authority shall be designated to act in the absence of the director of the nursing services. Appropriate administrative staffing shall be provided on all shifts.

(2) There shall be a written plan showing the flow of authority throughout the nursing service, with delineation of the responsibilities and duties of each category of nursing staff.

(3) The delineation of responsibilities and duties for each category of the nursing staff shall be in the form of a written job description for each category.

C. Staffing:

(1) An adequate number of professional registered nurses shall be on duty at all times to meet the nursing care needs of the patients. There shall be qualified supervisory personnel for each service or unit to ensure adequate patient care management.

(2) The number of nursing personnel for all patient care services of the hospital shall be consistent with the nursing care needs of the hospital's patients.

(3) The staffing pattern shall ensure the availability of professional registered nurses to assess, plan, implement and direct the nursing care for all patients on a 24-hour basis.

D. Patient Care:

(1) Care planning:

(a) All nursing care shall be planned and directed by professional registered nurses. A professional registered nurse shall be on duty and immediately available to give direct patient care when needed.

(b) A professional registered nurse shall be available at all times to render direct care in the facility.

(2) Care determinants:

(a) A professional registered nurse shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and competence of the available nursing staff.

(b) The ratio of licensed nursing personnel to patients shall be determined by the acuity of patients, the patient census, and complexity of care that must be provided.

(c) A professional registered nurse shall plan, supervise and evaluate the care of all patients, including the care assigned to licensed practical/vocational nurses and non-licensed care givers.

(d) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the services of a professional registered nurse.

(3) Special care units: Areas providing specialized nursing care shall be well defined by policies and procedures specific to the nursing services provided. These areas may include, but shall not be limited to, intensive care, coronary care, obstetrics, nursery, renal units, burn units, and emergency rooms.

(a) Specific policies and procedures shall supplement basic hospital nursing policies and procedures. Nursing policies and procedures of special care units shall keep pace with best practice and new knowledge and shall include but not be limited to: protocols for resuscitation and disaster situations, immediate availability of emergency equipment and drugs, appropriate and safe storage of pharmaceuticals and biologicals, programs for maintenance and safe operation of all equipment, appropriate infection-control measures, control of visitors and non-essential personnel, and documentation of quality improvement.

(b) Special-care unit nursing services shall be integrated with other hospital departments and services.

(c) Supervision of nursing care in the unit shall be provided by a professional registered nurse with relevant education, training, experience, and demonstrated current competence.

(d) All nursing personnel shall be prepared for their responsibilities in the special-care unit through appropriate orientation, ongoing in-service training, and continuing education programs. Each hospital shall have a planned, formal training program for all nurses and shall be of sufficient duration and substance to cover all patient-care responsibilities in the special care unit.

E. Staff qualifications:

(1) Individuals selected for the nursing staff shall be qualified by education, experience, and current competence for the positions to which they are appointed.

(2) The education and experience qualifications of the director of nursing supervisors, and other medical professionals shall be commensurate with the scope and complexity of the services of the hospital.

(3) The functions and qualifications of nursing personnel shall be clearly defined in relation to the duties and responsibilities delegated to them.

(4) Personnel records, including application forms and verifications of current licensure and credentials, shall be on file.

(5) Nursing management shall make decisions about the selection and promotion of nursing personnel based on their qualifications and capabilities and shall recommend the termination of employment when necessary.

(6) Approval: There shall be a policy and procedure to ensure that hospital nursing personnel for whom registration, a license or other approval is required by law shall have valid and current registration, licensure or other approval.

(7) There shall be a policy and procedure governing the qualifications and selection of nursing personnel during periods of disaster and emergency.

F. Evaluation and review of nursing care: There shall be a review and evaluation of the nursing care provided for patients. There shall be written nursing care procedures and plans of care.

(1) Responsible staff: A licensed professional registered nurse shall plan, supervise, and evaluate the nursing care for each patient.

(2) The director of nursing is responsible for the effective use of care plans by the nursing staff.

(3) Nursing care plan: Nursing care plans shall be kept current. Plans shall indicate nursing care needed, how it is to be accomplished, and methods, approaches, and modifications necessary to obtain best results for patients.

(4) Nursing notes: Nursing notes shall be legible, informative and descriptive of the nursing care given and include information and observations of significance so that they contribute to the continuity of patient care.

G. Orientation and in-service:

(1) There shall be a comprehensive and thorough employee orientation program for all nursing services personnel.

(2) The facility shall provide orientation to nursing services personnel before they provide care to patients.

H. Hospital relationships:

(1) General: The nursing service shall have well-established working relationships with the medical staff and with other hospital staff that provide and contribute to patient care.

(2) Policies: Written policies and procedures affecting nursing services shall be developed and reviewed with the participation of the director of nursing or designee, in consultation with other appropriate

health professionals and administration. The governing body shall approve the policies. The nursing service shall be represented on hospital committees that affect patient care policies and practices.

I. Documentation, staff meetings and evaluation:

(1) Nursing care policies and procedures that reflect optimal standards of nursing practice shall be written and approved, and shall be reviewed and revised as necessary to keep pace with current knowledge. Written nursing care policies and procedures shall be available on each nursing unit.

(2) There shall be a written nursing care plan for each patient, which shall include the elements of assessment, planning, intervention and evaluation.

(3) Documentation of nursing care shall be pertinent and concise and shall describe patient status needs, problems, capabilities and limitations. Nursing intervention and patient response shall be noted.

(4) Meetings of the nursing staff shall be held at least once every two months to discuss patient care, nursing services problems and administrative policies. Minutes of all meetings shall be kept and shall be available to all staff members.

(5) The nursing services director shall ensure that there is ongoing review and evaluation of the nursing care provided for patients and shall assure that nursing care standards and objectives are established and met. If the nursing department is decentralized into clinical departmental services or clinical programs are established, there shall be one administrator to whom the nursing directors shall be accountable and who has the responsibility to assure one standard of nursing practice within the organization.

J. Additional patient care requirements:

(1) In this subsection, "circulating nurse" means a professional registered nurse who is present during an operation to provide emotional support to the patient, assist with the anesthesia induction, and throughout the surgical procedure or delivery, coordinate the activities of the room, monitor the traffic in the room, maintain an accurate account of urine and blood loss, and who, before the surgical procedure or delivery is completed, informs the recovery rooms of special needs and ensures that the sponge, needle and instrument counts have been done according to hospital policy.

(2) Obstetrical: Every patient admitted in labor shall be assessed initially by a professional registered nurse or physician.

(3) Surgical:

(a) A professional registered nurse shall supervise the operating room(s).

(b) A qualified professional registered nurse shall function as the circulating nurse in the surgical and obstetrical room whenever general anesthesia is used and on all local anesthesia cases involving a high degree of patient risk. Individual surgical technologists and licensed practical nurses may function as assistants under the direct supervision of a qualified professional registered nurse.

(4) Temporary nursing personnel:

(a) When contract nursing personnel from outside registries or agencies are used by the hospital, the nursing services shall have a means for evaluating the credentials and competence of these personnel. Contract nursing personnel shall function under the direction and supervision of a qualified professional registered nurse from the hospital nursing staff. The temporary nursing personnel shall have an orientation to the facility.

(b) If private duty nursing personnel are employed by the patients, the nursing department shall ensure the private duty nursing agency has a means for evaluating the credentials and competence of these personnel. The hospital shall have policies regarding use of these personnel in the facility.

(5) Medications: Only the following shall be permitted in accordance with the Nurse Practice Act and the requirements of the board of nursing:

(a) a professional registered nurse may pass medications;

(b) a licensed practical nurse or a student nurse in an approved school of nursing under the supervision of a licensed professional registered nurse may pass medications;

(c) medications may not be prepared by nursing personnel on one shift for administration during succeeding shifts;

(d) medication administration may not be delegated to unlicensed personnel.;

(6) Reporting: The hospital shall have effective policies and procedures for reporting transfusion reactions, adverse drug reactions, accidents and medication errors. The medical staff shall review summary reports of these reactions, accidents and errors at least quarterly.

[8.370.12.27 NMAC - N, 7/01/2024]

8.370.12.28 DIETARY SERVICES: The hospital shall provide a 24-hour dietary service or contract for a 24-hour dietary services which meets the requirements of this section, and which shall provide meals and other nutritional care to its patients. The dietary service shall be integrated with other services of the hospital.

A. Administrative.

- (1) There shall be written policies and procedures for food storage, preparation and service and clinical aspects developed by the dietitian.
- (2) There shall be a qualified person serving as full-time director of the service who shall be responsible for the daily management aspects of the service.
- (3) The dietitian shall participate in the nutritional aspects of patient care by means that include assessing the nutritional status of patients, instructing patients, recording diet histories, interpreting and integrating therapeutic principles, participating appropriately in patient rounds and conferences, and recording in medical records and sharing specialized knowledge with others on the medical team.
- (4) There shall be written job descriptions for all dietary employees.
- (5) The dietitian shall be responsible for maintaining a current diet manual for therapeutic diets, approved jointly by the dietitian and a qualified member of the medical staff. The dietetic manual shall be developed on recognized current therapeutic practices. The dietitian shall recommend this manual to a qualified member of the medical staff for approval for use in the facility. All changes must be submitted to a qualified member of the medical staff for approval prior to inclusion in the manual.
- (6) There shall be an in service training program for dietary employees which shall include instruction in proper storage, preparation and serving food, safety, appropriate personal hygiene and infection control.
- (7) A menu cycle shall be available and posted. Substitutions of equal nutritional value are acceptable and shall be noted. The hospital must keep for 30 days a record of each menu as served.
- (8) A hospital that contracts for its dietary services shall be in compliance with this section if the contracted services meets all applicable rules of this section.

B. Facilities:

- (1) Adequate facilities shall be provided to meet the dietary needs of the patients.
- (2) Sanitary conditions shall be maintained for the storage, preparation and distribution of food.
- (3) All dietary areas shall be appropriately located, adequate in size, well-lighted, ventilated and maintained in a clean and orderly condition.
- (4) Equipment and work areas shall be clean and orderly. Effective procedures for cleaning and sanitizing all equipment and work areas shall be followed consistently to safeguard the health of the patients, staff and visitors.
- (5) Lavatories specifically for hand-washing shall include hot and cold running water, soap, and disposable towels or air dryers, and shall be conveniently located throughout the service area for use by dietary staff.
- (6) The dietary service shall have written reports of the most recent environmental or licensing inspection on file at the hospital with notation made by the hospital of action taken to comply with recommendations or citations.
- (7) Dry or staple food items shall be stored off the floor in a ventilated room which is not subject to sewage or waste water back-flow or contamination by condensation, leakage, rodents or vermin.
- (8) All perishable foods shall be refrigerated and the temperature maintained at, or below, 40 degrees fahrenheit.
- (9) Hot food shall be maintained at 140 degrees fahrenheit, or higher.
- (10) Foods being displayed or transported shall be protected from environmental contamination and maintained at proper temperatures in clean containers, cabinets or serving carts.
- (11) Dishwashing procedures and techniques shall be well-developed and understood by the responsible staff, with periodic monitoring of the operation of the detergent dispenser, washing, rinsing, and sanitizing temperatures and the cleanliness of machine and jets, and thermostatic controls.
- (12) A daily log of recorded temperatures for all refrigerators, freezers, steam tables and dishwashers must be maintained and available for inspection for 30 days.
- (13) All garbage and kitchen refuse not disposed of through a garbage disposal unit shall be kept in watertight containers with close-fitting covers and disposed of daily in a safe and sanitary manner.
- (14) Food and non-food supplies shall be clearly labeled and dated and shall be stored in separate areas.

(15) No hazardous non-food items shall be stored in the proximity of materials that could compromise the safety of the food supply.

(16) The dietitian shall be responsible for, and active in, the hospital's quality improvement program.

C. Records:

(1) A systematic record shall be maintained of all diets.

(2) Therapeutic diets shall be prescribed by an authorized individual in written orders on the medical record.

(3) Nutritional needs shall be in accordance with physicians' orders and, to the extent medically possible, in accordance with the "recommended daily dietary allowance" of the food and nutrition board of the national research council, national academy of sciences. A current edition of these standards shall be available in the dietary service.

(4) The qualified staff person who instructs the patient in home diet shall document this in the medical record.

D. Sanitation: All practices shall be in accordance with the standards of the New Mexico environment department.

(1) Kitchen sanitation:

(a) Equipment and work areas shall be clean and orderly. Surfaces with which food or beverages come into contact shall be of smooth, impervious material free of open seams, not readily corrosible and easily accessible for cleaning.

(b) Utensils shall be stored in a clean, dry place protected from contamination.

(c) The walls, ceiling and floors of all rooms in which food or drink is stored, prepared or served shall be kept clean and in good repair.

(2) Washing and sanitizing of kitchenware:

(a) All reusable tableware and kitchenware shall be cleaned in accordance with procedures as outlined by the New Mexico environment department, which shall include separate steps for pre-washing, washing, rinsing and sanitizing.

(b) Dishwashing procedures and techniques shall be well-developed, understood by dishwashing staff and carried out according to policy. To make sure that service ware is sanitized and to prevent recontamination, correct temperature maintenance shall be monitored during cleaning cycles.

(3) Canned or preserved foods:

(a) All processed food shall be procured from sources that process the food under regulated quality and sanitation controls. This does not preclude the use of local fresh produce.

(b) The hospital may not use home-canned foods.

(4) Cooks and food handlers: Cooks and food handlers shall wear clean outer garments and hair nets or caps and gloves as needed and shall keep their hands clean at all times when engaged in handling food, drink, utensils or equipment. Food handlers must obtain a tuberculosis test, prior to employment and as often as required thereafter according to hospital policy.

(5) Milk:

(a) Raw milk shall not be used.

(b) Milk for drinking shall be grade A pasteurized whole milk (three and one-quarter percent milk fat or greater and not less than eight and one-quarter milk solids, not fat) or any other grade A fluid milk product as defined in the New Mexico Restaurant Act (includes skim milk, low-fat milk, and cream products) unless otherwise requested by the patient or as a part of a therapeutic diet.

(c) Condensed, evaporated, or dried milk products which are recognized nationally, may be employed as "additives" in cooked food preparation but shall not be substituted or served to patients (adult, child, or infant) in place of milk as approved for drinking purposes. These products shall be handled and stored in accordance with the requirements of the current dietary practices.

[8.370.12.28 NMAC - N, 7/01/2024]

8.370.12.29 PHARMACY SERVICES:

A. Organization:

(1) Pharmacy: The hospital pharmacy including pharmaceuticals contained in disaster and emergency caches held by the hospital, shall be supervised by a designated pharmacist-in-charge who is employed part-time or full-time. If employed part-time, the pharmacist shall visit the facility at least every 72 hours.

(2) Other storage: If there is no pharmacy, pre-labeled, prepackaged medications shall be stored in, and distributed from, an automated medication management system, which is under the supervision of the pharmacist-in-charge.

(3) Pharmacist accountability: The pharmacist-in-charge shall have appropriate administrative oversight and shall prepare a pharmacy policy and procedure manual that shall be reviewed and updated at least annually.

B. Facility:

(1) Space and Equipment: The pharmacy shall meet the space and equipment requirements specified by the New Mexico board of pharmacy.

(2) Security: The pharmacist shall control access to the pharmacy and any automated medication system devices. Established procedures shall assure accountability for all doses of drugs removed when the pharmacist is not present. Only a designated licensed nurse may remove drugs from the pharmacy when the pharmacist is not present.

(3) Drug preparation areas: All drug storage and preparation areas within the facility shall be the responsibility of the pharmacist and inspected at least monthly.

(4) Pharmacy policies and procedures should address practices to be followed when compounding, reconstituting, and repackaging medications to assure adherence to professional standards of practice for cleanliness and infection control.

(5) Schedule II controlled substance storage: Schedule II controlled substances that are stored in the pharmacy shall be stored in a separate locked storage.

C. Personnel:

(1) The pharmacist shall be assisted by an adequate number of competent and qualified personnel. Job descriptions for all categories shall be prepared and revised as necessary.

(2) A pharmacist shall be on call during all absences of the designated pharmacist from the facility.

D. Records: Hospital pharmacies shall maintain all dangerous drug distribution records that are required by applicable state and federal laws and regulations, including:

(1) floor stock dangerous drug description records; and

(2) inpatient dangerous drug description records:

(a) schedule II controlled substance distribution records must be kept separate;

(b) schedule III-V controlled substance distribution records must be readily

retrievable;

(c) an annual inventory of schedule II-V controlled substances shall be conducted and a record maintained along with the procurement records for these drugs;

(d) when automated drug distribution systems are utilized, they shall produce transaction records that meet the above records keeping requirement;

(e) the pharmacist shall maintain records of quality improvement monitoring of automated drug distribution systems.

E. Other responsibilities of the pharmacist:

(1) When limited doses of a drug are removed from the pharmacy when the pharmacist is not present:

(a) the pharmacist shall verify the withdrawal within 72 hours of the withdrawal;

(b) a drug regimen review, pursuant to a new medication order, will be conducted by a pharmacist, either on-site or by electronic transmission, within 24 hours of the new order.

(2) The pharmacist also shall:

(a) provide drug information to staff and patients of the facility;

(b) maintain current drug use reference manuals;

(c) provide and document in-service education to the facility's professional staff;

(d) in conjunction with the practitioners, nurses, and other professional staff, review significant adverse drug reactions; and

(e) review each medication order for safety and appropriateness and communicate with the prescribers when indicated.

[8.370.12.29 NMAC - N, 7/01/2024]

8.370.12.30 MEDICAL RECORDS SERVICES:

A. Medical Record: A medical record shall be maintained for every patient admitted for care in the hospital. The record shall be kept confidential and released only in accordance with the Sections 14-6-1, 14-6-2 NMSA 1978 and, where appropriate, Section 43-1-19 NMSA 1978.

B. Service: The hospital shall have a medical records service with administrative responsibility for all medical records maintained by the hospital.

(1) Confidentiality:

(a) Written consent of the patient or legally authorized person shall be required for release of medical information to persons not otherwise authorized to receive this information.

(b) Original medical records may not be removed from the hospital except by authorized persons who are acting in accordance with a court order, and where measures are taken to protect the record from loss, defacement, tampering and unauthorized access.

(2) Preservation: There shall be a written policy for the preservation of medical records. The retention period shall be for 10 years following the last treatment date of the patient, except in the case of minor children whose records shall be retained to the age of majority, plus one year.

(a) Laboratory test records and reports may be destroyed one year after the date of the test recorded or reported therein provided that one copy is placed in the patient's record, or stored electronically in the hospital's information system. The hospital is responsible for electronic storage.

(b) X-ray films may be destroyed four years after the date of exposure, if there are in the hospital record written findings of a radiologist who has read such x-ray films. At anytime after the third year after the date of exposure, and upon proper identification, the patient may recover his own x-ray films as may be retained pursuant to this section. The written radiological findings shall be retained as provided by these requirements.

(3) Personnel:

(a) Adequate numbers of personnel who are qualified to supervise and operate the service shall be provided.

(b) A registered medical records administrator or an accredited records technician shall head the services, except that if such a professionally qualified person is not in charge of medical records, a consultant who is a registered records administrator or an accredited records technician shall organize the service, train the medical records personnel and make at least quarterly visits to the hospital to evaluate the records and the operation of the service, and prepare written reports of findings within 30 days.

(c) In this subdivision, "a registered record administrator" or an "accredited record technician" is an individual who has successfully completed the examination requirements of the American medical record association.

(4) Availability:

(a) The system for identifying and filing records shall permit prompt retrieval of each patient's medical records.

(b) A master patient index shall include at least the patient's full name, sex, birth date and medical record number or reference to treatment dates.

(c) Filing equipment and space shall be adequate to maintain the records and facilitate retrieval.

(d) The inpatient, ambulatory care and emergency records of patients shall be kept in such a way that all patient care information can be provided for patient care when the patient is admitted to the hospital, when the patient appears for a pre-scheduled outpatient visit, or as needed for emergency services.

(e) Pertinent medical record information obtained from other providers including patient tracking information for patients admitted during disaster and emergency shall be available to facilitate continuity of the patient's care.

(f) The original or legally reproduced form of all clinical information pertaining to a patient's stay shall be filed in the medical record folder as a unit record. When this is not feasible a system must be in place to provide prompt retrieval of all medical records when a patient is admitted.

(5) Coding and indexing:

(a) Records shall be coded and indexed according to diagnosis, operation and physician. Indexing shall be kept current within six months from the discharge of the patient.

(b) Any recognized system may be used for coding diagnoses, operations and procedures.

(c) The indices shall list all diagnoses for which the patient was treated during the hospitalization and the operations and procedures, which were performed during the hospitalization.

C. Medical record contents: The medical record staff shall ensure that each patient's medical records contain:

- (1) accurate and adequate patient identification data;
- (2) a concise statement of complaints, including the chief complaint, which led the patient to seek medical care and the date of onset and duration of each;
- (3) a health history, containing a description of present illness, past history of illness and pertinent family and social history to be made part of the record within the first 24 hours after admission;
- (4) a statement about the results of the physical examination, including all positive and negative findings resulting from an inventory of systems;
- (5) the provisional diagnosis;
- (6) all diagnostic and therapeutic orders;
- (7) all clinical laboratory, x-ray reports and other diagnostic reports;
- (8) consultation reports containing a written opinion by the consultant that reflects, when appropriate, an actual examination of the patient and the patient's medical records;
- (9) except in an emergency, a current, thorough history and physical work-up shall be recorded in the medical record of every patient prior to surgery;
- (10) an operative report describing techniques and findings written or dictated immediately after surgery; the completed operative report is authenticated by the surgeon and filed in the medical record as soon as possible after surgery or available electronically in the hospital information system; when the operative report is not placed in the medical record immediately after surgery, a progress note is entered immediately;
- (11) a post operative documentation record of the patient's discharge from the post anesthesia care area;
- (12) tissue reports, including a report of microscopic findings if hospital policies require that microscopic examination be done; if only microscopic examination is warranted, a statement that the tissue has been received and a microscopic description of the findings shall be provided by the laboratory and filed in the medical record;
- (13) progress notes providing a chronological picture of the patient's progress sufficient to delineate the course and the results of treatment;
- (14) a definitive final diagnosis including all relevant treatment and operative procedures performed expressed in the terminology of a recognized system of disease nomenclature;
- (15) a discharge summary including the final diagnosis, the reason for hospitalization, the significant findings, the procedures performed, the condition of the patient on discharge and any specific instructions given the patient or family. A final progress note is acceptable when stay is less than 48 hours and in case of normal newborn infants and uncomplicated obstetrical deliveries;
- (16) autopsy findings when an autopsy is performed; and
- (17) for comprehensive inpatient programs the following information shall be present as well: rehabilitation evaluation including medical, psycho-social history and physical exam; rehabilitation plans including goals for treatment; documentation of patient care conferences held minimally every two weeks, or as indicated, by appropriate disciplines involved in the care and treatment of the patient, in which the patient's treatment and response to rehabilitation services shall be evaluated and modified as indicated.

D. Authentication: Only members of the hospital staff or other professional personnel authorized by the hospital shall record and authenticate entries in the medical record. Documentation of medical staff participation in the care of the patient shall be evidenced by at least:

- (1) the signature on the patient's health history as the required by medical staff by-laws and results of his or her physical examination;
- (2) periodic progress notes or countersignatures as defined by the hospital rules and regulations;
- (3) the surgeon's signature on the operative report; and
- (4) the signature as required by medical staff by-laws on the face sheet and discharge summary.

E. Completion:

- (1) Current records and those on discharged patients shall be completed promptly.
- (2) If a patient is readmitted within 30 days for the same or related condition, there shall be a reference to the previous history with an interval note, and any pertinent changes in physical findings shall be recorded.

(3) All records of discharged patients shall be completed within a reasonable period of time specified in the medical staff by-laws, but not to exceed 30 days after discharge, excepting autopsy reports.

F. Maternity patient records:

(1) Prenatal findings: Except in an emergency, before a maternity patient may be admitted to a hospital, a legible copy of the prenatal history shall be submitted to the hospital's obstetrical staff. The prenatal history shall note complication, Rh determination and other matters essential to adequate care.

(2) Maternal medical record: Each obstetric patient shall have a complete hospital record, which shall include:

- (a) patient identification, prenatal history and findings;
- (b) the labor and delivery record, including anesthesia;
- (c) medicine and treatment sheet, including nursing notes;
- (d) any laboratory and x-rays reports;
- (e) any medical consultant's notes; and
- (f) an estimate of blood loss.

G. Newborn medical records: Each newborn patient shall have a complete hospital record which shall include:

- (1) a record of pertinent material data, type of labor and delivery, and the condition of the infant at birth;
- (2) a record of physical examinations;
- (3) progress sheets to include medicine, treatment, weights, feeding and temperatures; and
- (4) the notes of any medical consultant.

H. Fetal death: In the case of a fetal death, the weight and length of the fetus shall be recorded on the delivery record.

I. Authentication of all entries:

(1) Documentation:
(a) All entries in medical records by hospital staff and medical staff shall be legible, permanently recorded, dated and authenticated with the name and title of the person making the entry.

(b) All orders shall be recorded and authenticated. All verbal and telephone orders shall be authenticated by the prescribing practitioner, or a practitioner authorized to sign on behalf of the prescribing physician, in writing within 72 hours.

(c) A rubber stamp reproduction of a person's signature or an electronic signature may be used instead of a handwritten signature, if: the stamp is used only by the person whose signature the stamp replicates, the facility possesses a statement signed by the person, certifying that only that person(s) shall possess and use the stamp.

(2) Symbols and abbreviations: Symbols and abbreviations may be used in medical records if approved by a written facility policy, which defines the symbols and abbreviations and controls their use. There shall be only one meaning per symbol.

[8.370.12.30 NMAC - N, 7/01/2024]

8.370.12.31 LABORATORY SERVICES:

A. Services and facilities:

(1) The extent and complexity of laboratory services shall be commensurate with the size, scope, and nature of the hospital and the needs of the medical staff.

(2) Necessary space, facilities and equipment to perform both the basic minimum and all other services shall be provided by the hospital either on-site or by contracts and services.

(3) All equipment shall be made to carry out adequate clinical laboratory examinations and services, as appropriate for the care of the patients. In the case of work performed, the original report or a legally reproduced copy of the report from the laboratory shall be contained in the medical record.

B. Availability:

(1) Laboratory services shall be available at all times, and there shall be a sufficient number of qualified laboratory testing personnel and support staff to perform promptly and efficiently the tests required of the pathology and medical laboratory services.

(2) Adequate provision shall be made for ensuring the availability of emergency laboratory services, either in the hospital or under arrangements with another laboratory. These services shall be available 24 hours a day, seven days a week, including holidays, and shall include the referral of specimens potentially related to disaster and emergency to the scientific laboratory division of the New Mexico health care authority for

confirmation, or rejection, of that relationship, and the reporting of notifiable conditions to the office of epidemiology of the New Mexico health care authority and to the local public health office.

(3) A hospital that has contracted for laboratory services is in compliance with this paragraph if the contracted services have a current CLIA certificate at the appropriate level of testing.

C. Personnel:

(1) A qualified medical technologist shall be a graduate of a medical technology program approved by a nationally recognized body or has documented equivalent education, training, or experience; a qualified medical lab technician shall be a graduate of a program approved by the federal health care authority and human services.

(2) The laboratory may not perform procedures and tests that are outside the scope of training of laboratory personnel.

D. Records:

(1) Laboratory test records and reports may be destroyed four years after the date of the test with the exception of minor children whose records must be maintained until the age of majority plus one year.

(2) The laboratory director shall be responsible for the laboratory report.

(3) A mechanism by which the clinical laboratory report shall be authenticated by testing personnel shall be delineated in the laboratory services' policies and procedures.

(4) The laboratory shall have procedures for ensuring that all requests for tests are ordered in writing by individuals authorized by the medical staff.

(5) The hospital shall have available a copy of their current CLIA certificate or a verification of current CLIA certificate by contractor.

E. Anatomical Pathology:

(1) Pathologist:

(a) Anatomical pathology services shall be under the direct supervision of a pathologist. If it is on a consultative basis, the hospital shall provide for, at minimum, monthly consultative visits by the pathologist. The pathologist must be available in person or electronically at all times.

(b) The pathologist shall participate in lab quality improvement and department conferences.

(c) The pathologist shall be responsible for establishing qualifications of pathology laboratory staff.

(d) An autopsy may be performed only by a pathologist, other qualified individuals qualified by the office of medical investigator or another qualified physician.

(2) Tissue examination:

(a) The medical staff and a pathologist shall determine which tissue specimens require macroscopic examination and which require both macroscopic and microscopic examinations.

(b) The hospital shall maintain an ongoing file of tissue slides and blocks, for a minimum of ten (10) years. Use of outside laboratory facilities for storage and maintenance of records, slides and blocks is permitted.

(c) If the hospital does not have a pathologist or otherwise qualified physician, there shall be a written plan for sending all tissues requiring examination to a pathologist outside the hospital.

(d) A log of all tissues sent outside the hospital for examination shall be maintained. Arrangements for tissue examinations done outside the hospital shall be made with a certified laboratory, or a laboratory approved for the federal CLIA program.

(e) Specimens shall be considered hazardous waste and shall be disposed of in a safe manner.

(3) Records:

(a) All reports of macroscopic and microscopic tissue examination must be authenticated by the pathologist or other qualified physician.

(b) Provisions shall be made for the prompt filing of examination results in the patient's medical record and for notification of the provider who requested the examination.

(c) The autopsy report shall be distributed to the provider and shall be made a part of the patient's record.

(d) Duplicate records of the examination reports shall be kept in the laboratory and maintained in a manner, which permits ready identification and accessibility for a minimum of two years.

(4) Blood bank:

(a) The blood bank shall be operated according to standards set by the accrediting agency; either the FDA or CLIA, whichever is more stringent.

(b) Records shall be kept on file in the laboratory service and in the patient medical records according to CLIA guidelines to indicate the receipt and disposition of all blood and blood products provided to patients in the hospital.

(5) Laboratory certification: The hospital laboratory shall successfully participate in proficiency testing programs that are offered or approved by CMS in those specialties for which the laboratory offers services. Provisions shall be made for an acceptable quality control program covering all types of analysis performed by the laboratory and any other department performing any other laboratory tests.
[8.370.12.31 NMAC - N, 7/01/2024]

8.370.12.32 RADIOLOGICAL SERVICES:

A. Diagnostic X-Ray services.

(1) Requirement: The hospital shall make diagnostic x-ray services available. These services shall meet professionally approved standards for safety and the qualifications of personnel in addition to the requirements set out in this subsection.

(2) Location: The hospital shall have diagnostic x-ray facilities available in the hospital building proper or clinic or medical facility that is readily accessible to the hospital's patients, physicians and staff.

(3) Policies: Written policies and procedures shall be developed and maintained by the person responsible for the service in consultation with other appropriate health professionals and administration. The governing body shall approve the policies. The administrative and medical staff shall approve the procedures where appropriate.

(4) Safety:

(a) The radiological service shall be free of hazards for patients and personnel.

(b) Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(c) Hospital x-ray facilities shall be inspected by a qualified radiation physicist or by the New Mexico environment department radiation consultant at least once every two years. Hazards identified by inspections shall be properly and promptly corrected.

(d) Radiological equipment and radiation services shall conform with the requirements of the Radiation Protection Act, Sections 74-3-1 through 74-3-16, NMSA 1978.

(e) Attention shall be paid to current safety design and good operating procedures for use of fluoroscopes. Records shall be maintained of the output of all fluoroscopes.

(f) Policies based on medical staff recommendations shall be established for the administration of the application and removal of radium element, its disintegration products and other radioactive isotopes.

(5) Personnel:

(a) A physician shall have overall responsibility for the radiological service. This physician shall be certified or eligible for certification by the American board of radiology. If such a radiologist is not available on a full-time or regular part-time basis, a physician, with training and experience in radiology, may administer the service. In this circumstance, a radiologist, qualified as above, shall provide consultation services at suitable intervals to assure high quality service.

(b) A sufficient number of personnel capable of supervising and carrying out the radiological services shall be provided. Their training must conform to the requirements set out in the Medical Radiation Health and Safety Act, Sections 61-14E-1 through 61-15E-12, NMSA 1978 and regulations promulgated by the New Mexico environment department titled radiologic technology certification, 20.3.20 NMAC.

(c) The interpretation of radiological examinations shall be made by physicians qualified in the field.

(d) The hospital shall have a board-certified radiologist, full-time, part-time or on a consulting basis, who is qualified to interpret films that require specialized knowledge for accurate reading.

(e) A technologist shall be on duty or on call at all times.

(f) Only personnel designated as qualified by the state radiology technologist licensing body may use the x-ray apparatus, and only similarly designated personnel may apply and remove the radium element, its disintegration products and radioactive isotopes. Only properly trained persons authorized by the medical director of the radiological service may operate fluoroscopic equipment.

(6) Records:

- (a) Authenticated radiological reports shall be filed in the patient's medical record.
- (b) Written orders by the attending physician or other individual authorized by medical staff for an x-ray examination shall contain a concise statement of the reason for the examination.
- (c) Interpretations of x-rays shall be written or dictated and signed by a qualified physician or other individual authorized by the medical staff.
- (d) Copies of interpretive findings shall be retained in the medical record for at least 10 years. Scans and other image records shall be retained for at least four years.

B. Therapeutic X-Rays Services: If therapeutic x-ray services are provided, they shall meet professionally approved standards for safety and for qualifications of personnel. The physician in charge shall be appropriately qualified. Only a physician qualified by training and experience may prescribe radiotherapy treatments.

[8.370.12.32 NMAC N, 7/01/2024]

8.370.12.33 NUCLEAR MEDICINE SERVICES:

A. Nuclear medicine service:

(1) Requirement: If a hospital provides nuclear medicine services, the services shall meet the needs of the hospital's patients in accordance with acceptable standards of professional practice.

(2) Organization and staffing:

(a) the organization of the nuclear medicine services shall be appropriate for the scope and complexity of the services offered;

(b) there shall be a physician director who is qualified in nuclear medicine to be responsible for the nuclear medicine service;

(c) the qualifications, education, training, functions and legal responsibilities of nuclear medicine personnel shall be specified by the director of the service and approved by the medical staff and chief executive officer/administrator based upon the assurance that personnel are appropriately licensed by the state radiology technologist licensing body; and

(d) all persons who administer radiopharmaceuticals shall be approved by the medical staff and in accordance with applicable federal, state and local laws; the numbers and types of personnel assigned to nuclear medicine shall be appropriate for the scope and complexity of the services offered.

(3) Location: Nuclear medicine services shall be provided in an area of the hospital that is adequately shielded.

(4) Radioactive: Radioactive materials shall be prepared, labeled, used, transported, stored and disposed of in accordance with applicable regulations, i.e. the Radiation Protection Act 74-1-9, 74-3-5, 74-3-9, NMSA 1974, and all regulations promulgated thereunder.

(5) Equipment and supplies:

(a) Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance.

(b) All equipment shall be maintained in safe operating condition and shall be inspected, tested and calibrated at least annually by a radiation or health physicist.

(6) Records:

(a) Authenticated and dated reports of nuclear medicine interpretations, consultations and therapy shall be made part of the patient's medical record and copies shall be retained by the service.

(b) Records shall note the amount of radiopharmaceuticals administered, the identity of the recipient, the supplier and lot number and the date of therapy.

(c) The hospital shall provide for monitoring the staff's exposure to radiation. The cumulative radiation exposure for each staff member shall be recorded in the service's records at least monthly.

(d) Records of the receipt and disposition of radiopharmaceuticals shall be maintained. Documentation of instrument performance and records of inspection shall be retained in the service.

B. Mobile nuclear medicine services: The use of mobile nuclear medicine services by a facility to meet the diagnostic needs of its patients shall be subject to approval of the medical staff and the chief executive officer/administrator. The services offered by the mobile nuclear medicine unit shall comply with all applicable rules of this section.

[8.370.12.33 NMAC - N, 7/01/2024]

8.370.12.34 CLINICAL SERVICES:

A. Policies and procedures: Hospitals which have surgery, anesthesia, dental, maternity, and other services which may be optional services shall have effective written policies and procedures, in addition to those set forth under these requirements, relating to the staffing and functions of each services in order to protect the health and safety of the patients.

B. Surgery:

(1) Policies:

(a) Surgical privileges shall be delineated for each of the medical staff performing surgery in accordance with the individual's competencies and a copy shall be available to operating room supervisor.

(b) The surgical service shall have a written policy to ensure patient safety if a member of the surgical team becomes non-functional.

(c) The surgical service shall have the ability to retrieve information needed for infection surveillance, identification of personnel who assisted at operative procedures, and the compiling of needed data.

(d) There shall be adequate provision for immediate post-operative care. A patient may be directly discharged from post-anesthetic recovery status, upon direction by an anesthesiologist, another qualified physician or a certified registered nurse anesthetist.

(e) A procedure for the identification, investigation, and elimination of nosocomial infection associated with surgical services. There shall be a written procedure for investigating unusual levels of infection.

(f) Rules and policies relating to the operating rooms shall be available and posted in appropriate locations inside and outside the operating rooms.

(g) The hospital shall have policies which clearly identify the patient, the site, or side of the procedure.

(h) Prior to commencing surgery the person responsible for administering anesthesia, or the surgeon must verify the patient's identity, the site or side of the body to be operated on, and ascertain that a record of the following appears in the patient's medical record: an interval medical history and physical examination performed and recorded according to hospital policy, appropriate screening tests, based on the needs of the patient, accomplished and recorded according to hospital policy, a properly executed informed consent, in writing for the contemplated surgical procedure, except in emergencies.

(2) Supervision: A professional registered nurse who is qualified by training and experience to supervise the operating rooms shall supervise the operating rooms.

(3) Environment: If explosive gases are used, the services shall have appropriate policies, in writing, for safe use of these gases.

C. Anesthesia:

(1) Policies:

(a) The anesthesia service shall have effective written policies and procedures to protect the health and safety of all patients.

(b) If explosive gases are used, the service shall have appropriate policies, in writing, for safe use of these gases.

(2) Anesthesia use requirements:

(a) Every surgical patient shall have a pre-anesthetic assessment, intra-operative monitoring, and post-anesthesia assessment prior to discharge from a post-anesthesia level of care, according to hospital policy.

(b) In hospitals where there is no organized anesthesia service, the surgical service shall assume the responsibility for establishing general policies and supervising the administration of anesthetics.

(c) Anesthesia shall be administered only by a licensed practitioner permitted by the state to administer anesthetics.

(d) If a general or regional anesthetic is used and an MD or DO is not a member of the operating team, an MD or DO shall be immediately available on the hospital premises.

D. Dental service: All dental services shall meet the following requirements.

(1) Dentists performing surgical procedures at the hospital shall be members of the medical staff.

(2) Surgical procedures performed by dentists shall be under the overall supervision of an M.D. or D.O., unless the dentist is a licensed oral surgeon.

(3) There shall be policies for referral of patients in need of dental services. These policies will be readily available to all emergency care staff.

E. Maternity:

(1) Definitions: In this subsection.

(a) "Neonatal" means pertaining to the first 27 days following birth.

(b) "Oxytocics" means any of several drugs that stimulate the smooth muscle of the uterus to contract and that are used to initiate labor at term.

(c) "Perinatal" means pertaining to the mother, fetus or infant, in anticipation of and during delivery, and in the first post partum week.

(d) "Perinatal care center" means an organized hospital-based health care service which includes a high-risk maternity service and a neonatal intensive care unit capable of providing case management for the most serious types of maternal, fetal and neonatal illness and abnormalities.

(2) Reporting numbers of beds and bassinets. The number of beds and bassinets for maternity patients and newborn infants, shall be designated by the hospital and reported to the licensing authority.

(3) Maternity admission requirements. The hospital shall have written policies regarding standards of practice for maternity and non-maternity patients who may be admitted to the maternity unit.

(4) High risk infants. Each maternity service shall have adequate facilities, personnel, equipment and support services for the care of high-risk infants, including premature infants, or a written plan for prompt transfer of these infants to a recognized intensive infant care or perinatal care center.

(5) Institutional transfer of infants.

(a) Written policies and procedures for inter-hospital transfer of perinatal and neonatal patients shall be established by hospitals which are involved in the transfer of these patients.

(b) A perinatal care center or high-risk maternity service and the sending hospital shall jointly develop policies and procedures for the transport of high-risk maternity patients.

(c) Policies, personnel and equipment for the transfer of infants from one hospital to another shall be available to each hospital's maternity service. The proper execution of transfer is a joint responsibility of the sending and receiving hospitals.

(6) Personnel:

(a) The labor, delivery, postpartum and nursery areas of maternity units shall have available the continuous services and supervision of a professional registered nurse for whom there shall be documentation of qualifications to care for women and infants during labor, delivery and in the postpartum period.

(b) When a maternity unit requires additional staff on an emergency basis, the needed personnel may be transferred from another service if they meet the infection control criteria.

(c) The service shall have written policies that state which emergency procedures may be initiated by the professional registered nurse in the maternity service.

(7) Infection control:

(a) The infection surveillance and control program in the maternity service shall be integrated with that of the entire hospital.

(b) Surgery on non-maternity patients may not be performed in the delivery suite, except in emergencies.

(c) Hospitals unable to effectively isolate and care for infants shall have an approved written plan for transferring the infants to hospitals where the necessary isolation and care can be provided.

(8) Labor and delivery:

(a) The hospital shall have written policies and procedures that specify who is responsible for, and what is to be documented for, the care of the patient in labor and delivery, including alternative birthing rooms.

(b) Equipment that is needed for normal delivery and the management of complications and emergencies occurring with either the mother or infant shall be provided and maintained in the labor and delivery unit. The medical staff and the nursing staff shall determine the items needed.

(c) The facility shall have policies for the performing of newborn genetic screening.

(d) Written standing orders shall exist allowing nurses qualified by documented training and experience to discontinue the oxytocic drip should circumstances warrant discontinuance.

(e) The hospital shall be responsible for proper identification of newborns in its care.

- (9) Postpartum careZ: The hospital shall have written policies and procedures for nursing assessments of the postpartum patient during the entire postpartum course.
- (10) Newborn nursery and the care of newborns.
- (a) Oxygen, medical air and suction shall be readily available to every nursery.
- (b) Hospitals that may require special formula preparation shall develop appropriate written policies and procedures.
- (c) Newborn infants shall be screened for hearing sensitivity prior to being discharged.
- (d) In the event that a newborn infant is brought to the hospital after birth and has not received a hearing sensitivity screening, the attending physician, nurse, audiologist or authorized staff shall arrange for a hearing sensitivity screening to be performed by a program approved by children’s medical services of the health care authority.
- (e) The hospital shall have effective written policies and procedures to assure that newborn infants, who are brought to the hospital for emergency services, receive a hearing sensitivity screening.
- (f) Documentation of the hearing sensitivity screening shall be entered into the infant’s medical record as subject to Subsection G of 8.370.12.29 NMAC.
- (g) Parents or the legally authorized person may waive the requirements for the newborn hearing sensitivity screening in writing if they object to the screening on the grounds that it conflicts with their religious beliefs. The waiver for the hearing screening shall be after the parents or legally authorized person have been provided with both written and oral explanations by the infant’s physician so that they may make an informed decision. The document of waiver shall be placed in the newborn infant’s medical record.
- (h) Parent(s) who have lawful custody of the infant screened for hearing sensitivity shall be notified of the test results.
- (i) Hospitals that permit minor siblings to visit the maternity unit shall have written policies and procedures detailing this practice.
- (11) Discharge of infants:
- (a) An infant may be discharged only to a parent who has lawful custody of the infant or to an individual who is legally authorized to receive the infant. If the infant is discharged to a legally authorized individual, that individual shall provide identification and, if applicable, the identification of the agency the individual represents.
- (b) The hospital shall record the identity of the parent or legally authorized individual who received the infant in the infant’s medical record.
[8.370.12.34 NMAC - N, 7/01/2024]

8.370.12.35 REHABILITATION SERVICES:

A. Organization:

- (1) A hospital may have either inclusive rehabilitation services or separate services for physical therapy, occupational therapy, speech language pathology, recreational therapy or audiology.
- (2) Rehabilitation services shall have written policies and procedures governing the management and care of patients.
- (3) The services provided on each service shall be given by or provided under the supervision of a qualified professional therapist.
- (4) Facility space and equipment for rehabilitation services shall be adequate to meet the needs of patients receiving care.

B. Orders: Physical therapy, occupational therapy, speech language pathology therapy, Recreational therapy, or audiology services shall be provided in accordance with orders of practitioners who are authorized.

C. Additional requirements for separate rehabilitation services:

- (1) Definition: A rehabilitation unit or facility is defined as a designated unit, or hospital that primarily provides physiological rehabilitation services to inpatients or outpatients.
- (2) If the facility maintains a separate rehabilitation unit, or hospital, there shall be medical directorship by an individual who has the necessary knowledge, experience and capabilities to direct the rehabilitation services. The medical director shall be a qualified professional physician.
- (3) Additional treatment plan and staffing requirements:
- (a) The rehabilitation unit, or hospital, shall have sufficient staff to provide an optimal program for those who require rehabilitation services. Periodic evaluations of staffing requirements based on patients serviced shall be undertaken to assure rehabilitation needs can be met.

(b) The rehabilitation staff shall plan, implement and modify written individualized treatment plans for patients based on their intake assessment.

(c) Nursing services shall be provided under the direction of a professional registered nurse with background or training in rehabilitation nursing. Professional registered nurses who are qualified in the care of rehabilitation nursing services shall supervise nursing care.

(d) Psychological services shall be provided by or given under the supervision of, an appropriately licensed psychologist or psychiatrist. There shall be a sufficient number of psychologists, consultants and or support personnel to provide optimal patient or family evaluations and treatment.

(e) Social work services shall be provided by a sufficient number of qualified social work staff to provide optimal patient and family consultation related to social work rehabilitation services and indicated community resource planning.

(f) Therapy services staff shall be sufficient in number and have sufficient support personnel to provide optimal assessments and treatment(s) to patients served.

[8.370.12.35 NMAC - N, 7/01/2024]

8.370.12.36 RESPIRATORY CARE SERVICES:

A. Direction: If respiratory care services are offered by the hospital, the service shall be under the medical direction of a qualified physician.

B. Policies and procedures. Respiratory care services shall be provided in accordance with written policies and procedures that shall be approved by the medical staff. The policies and procedures shall address at a minimum:

- (1) assembly and operation of mechanical aids to ventilation;
- (2) management of adverse reactions to respiratory care services;
- (3) administration of medications in accordance with physicians' orders;
- (4) personnel who may perform specific procedures, under what circumstances and under what degree of supervision; and
- (5) procurement, handling, storage and dispensing of therapeutic gases.

C. Personnel. Respiratory care services shall be provided by personnel qualified by education, training, experience and demonstrated competence.

D. Physicians' orders: Respiratory care services shall be provided in accordance with the orders of a physician. The staff person authorized to take orders shall transcribe oral orders given by a physician into the medical record.

E. Oxygen: Oxygen monitoring equipment, including oxygen analyzers, shall be available and shall be checked for proper function prior to use but at least daily. Oxygen concentrations shall be documented. There shall be a written policy, which states how frequently oxygen humidifiers are to be cleaned.

[8.370.12.36 NMAC - N, 7/01/2024]

8.370.12.37 OUTPATIENT SERVICES:

A. Medical direction: If outpatient services are offered by the hospital, the services shall be under the direction of a qualified member of the medical staff.

B. Administration:

- (1) The outpatient service shall be organized into sections or clinics, the number of which shall depend on the size and the degree of departmentalization of the medical staff, the available facilities and the needs of the patients for whom it accepts responsibility.
- (2) Outpatient clinics shall be coordinated with corresponding inpatient services.
- (3) On their initial visit to the service, patients shall receive an appropriate health assessment with follow-up as indicated.

C. Personnel:

- (1) The outpatient services shall have adequate numbers of qualified personnel.
- (2) A professional registered nurse shall be responsible for the nursing care of the outpatient service.

D. Facilities:

- (1) Facilities shall be provided to ensure that the outpatient service is operated efficiently and to protect the health and safety of the patients.
- (2) The number of examination and treatment rooms shall be adequate in relation to the volume and nature of work performed.

(3) Suitable facilities for necessary laboratory and other diagnostic tests shall be available either through the hospital or by arrangement with an independent CLIA certified laboratory. [8.370.12.37 NMAC - N, 7/01/2024]

8.370.12.38 EMERGENCY SERVICES:

A. Minimum care requirements: Acute-care or limited services hospitals must provide an area in the facility with adequate space and emergency equipment needed to treat emergency patients. Written policies for the care of such patients must be readily available to all patient care staff.

B. Distinct emergency service: If the hospital has a distinct emergency service:

- (1) the emergency service shall be directed by personnel who are qualified by training and experience to direct the emergency service and shall be integrated with other services of the hospital;
- (2) the policies and procedures governing medical care provided by the emergency service shall be established by, and are a continuing responsibility of, the medical staff;
- (3) emergency services shall be supervised by a member of the medical staff, and nursing functions shall be the responsibility of a professional registered nurse;
- (4) the hospital's emergency services shall be coordinated with local / state / federal mass casualty plans and
- (5) written policies and procedures shall be established prescribing a course of action, including policies for transferring a patient to an appropriate facility when the patient's medical status indicates the need for emergency care which the hospital cannot provide, to be followed in the care of persons who:
 - (a) manifest severe emotional disturbances;
 - (b) are under the influence of alcohol or other drugs;
 - (c) are victims of suspected abuse or are victims of other suspected criminal acts;
 - (d) have a contagious disease;
 - (e) have been contaminated by hazardous, chemical, biological or radioactive materials;
 - (f) are diagnosed dead on arrival; or
 - (g) present other conditions requiring special directions regarding action to be taken.
- (6) A hospital that provides emergency care for sexual assault survivors shall:
 - (a) provide each sexual assault survivor with medically and factually accurate and
 - (b) objective written and oral information about emergency contraception as described in their policies and procedures;
 - (c) orally and in writing inform each sexual assault survivor for her option to be provided emergency contraception at the hospital; and
 - (d) provide emergency contraception at the hospital to each sexual assault survivor who requests it and document it in the patient's medical record.
- (7) The provision of emergency contraception pills shall include the initial dose that the sexual assault survivor can take at the hospital as well as the subsequent dose that the sexual assault survivor may self-administer 12 hours following the initial dose or in accordance with accepted standards of practice for the administration of emergency contraception.
- (8) A communications system employing telephone, radiotelephone or similar means shall be in use to establish and maintain contact with the police department, emergency medical services, rescue squads and other emergency services of the community.
- (9) A list of emergency referral services shall be available in the basic emergency service. This list shall include the name, address and telephone number of such services as:

- (a) police department;
- (b) rape or domestic crisis center;
- (c) burn center;
- (d) drug abuse center;
- (e) New Mexico poison center;
- (f) suicide prevention center;
- (g) the office of epidemiology of the New Mexico health care authority;
- (h) local public health office;
- (i) clergy;
- (j) emergency psychiatric service;

- (k) chronic dialysis service;
- (l) renal transplant center;
- (m) intensive care newborn nursery;
- (n) radiation accident management service;
- (o) ambulance transport and rescue service, including military resources;
- (p) county coroner or medical examiner;
- (q) hazardous materials management service;
- (r) anti-venom service;
- (s) emergency and dental service;
- (t) local emergency operations center.

(10) The hospital shall have the following service capabilities:

- (a) adequate monitoring and therapeutic equipment;
- (b) laboratory service shall be capable of providing the necessary support for the emergency service;
- (c) radiological service shall be capable of providing the necessary support of the emergency service;
- (d) services shall be available for life threatening situations adequate for the size and scope of the facility and staff;
- (e) the hospital shall have readily available the services of a blood bank containing common types of blood and blood derivatives.

C. Physical environment:

- (1) The emergency service shall be provided with the facilities, equipment, drugs, supplies and space needed for prompt diagnosis and emergency treatment.
- (2) Facilities for the emergency service shall be separate and independent of the operating room.
- (3) The location of the emergency service shall be in close proximity to an exterior entrance of the hospital.

D. Personnel:

- (1) There shall be sufficient medical and nursing personnel available for the emergency service at all times. All medical and nursing personnel assigned to emergency services shall be trained in cardiopulmonary resuscitation.
- (2) The medical staff shall ensure that qualified members of the medical staff are available at all times for the emergency service, either on duty or on call, and that an authorized medical staff member is responsible for all patients who arrive for treatment in the emergency service.
- (3) If unable to reach the patient within 15 minutes, the physician or a licensed independent practitioner shall provide specific instructions to the emergency staff on duty if emergency measures are necessary. These instructions may take the form of written protocols approved by the medical staff.

E. A sufficient number of professional registered nurses qualified by training or experience to work in emergency services shall be available to deal with the number and severity of emergency service cases.

F. The hospital shall ensure that all personnel who provide care to sexual assault survivors have documented training in the provision of medically and factually accurate and objective information about emergency contraception within 60 days of employment.

G. Complaints:

- (1) Complaints of failure to provide services required by the Sexual Assault Survivors Emergency Care Act may be filed with the authority.
- (2) The authority shall investigate every complaint it receives regarding failure of a hospital to provide services required by the Sexual Assault Survivors Emergency Care Act to determine the action to be taken to satisfy the complaint.
- (3) If the authority determines that a hospital has failed to provide the services required in the Sexual Assault Survivors Emergency Care Act, the authority shall:
 - (a) issue a written warning to the hospital upon receipt of a complaint that the hospital is not providing the services required by the Sexual Assault Survivors Emergency Care Act; and
 - (b) based on the authority's investigation of the first complaint, require the hospital to correct the deficiency leading to the complaint.
- (4) If after the issuance of a written warning to the hospital pursuant to Subsection D of this section, the authority finds that the hospital has failed to provide services required by the Sexual Assault Survivors

Emergency Care Act, the authority shall, for a second through fifth complaint, impose on the hospital a fine of \$1,000:

(a) per sexual assault survivor who is found by the authority to have been denied medically and factually accurate and objective information about emergency contraception or who is not offered or provided emergency contraception; or

(b) per month from the date of the complaint alleging noncompliance until the hospital provides training pursuant to the rules of the authority.

(5) For the sixth and subsequent complaint against the same hospital if the authority finds the hospital has failed to provide services required by the Sexual Assault Survivors Emergency Care Act, the authority shall impose an intermediate sanction pursuant to Section 24-1-5.2 NMSA 1978 or suspend or revoke the license of the hospital issued pursuant to the Public Health Act.

H. Medical records:

(1) Adequate medical records to permit continuity or care after provision of emergency services shall be maintained on all patients. The emergency room patient record shall contain:

(a) patient identification;

(b) history of disease or injury;

(c) physical findings;

(d) laboratory and x-ray reports, if any;

(e) diagnosis;

(f) record of treatment;

(g) disposition of the case;

(h) appropriate time notations, including time of the patient's arrival, time of physician notification, time of treatment, including administration of medications, time of patient discharge or transfer from the service or time of death.

(2) Where appropriate, medical records of emergency services shall be integrated with those of the inpatient and outpatient services.

I. Emergency committee: An emergency services committee composed of physician, professional registered nurses and other appropriate hospital staff shall review emergency services and medical records for appropriateness of patient care on at least a quarterly basis. The committee shall make appropriate recommendations to the medical staff and hospital administrative staff based on its findings. This review may be part of a hospital's overall quality improvement program. Minutes of these meetings shall be maintained for a one year period.

J. Equipment and supplies: All equipment and supplies necessary for life support shall be available, including but not limited to, airway control and ventilation equipment, suction devices, cardiac monitor, defibrillator, pacemaker capability, apparatus to establish central venous pressure monitoring, intravenous fluids and administration devices.

[8.370.12.38 NMAC - N, 7/01/2024]

8.370.12.39 SOCIAL WORK SERVICES:

A. Organized service. If the healthcare system provides social work services there should be corresponding written policies and procedures governing the scope and provision of services. If the system does not have employed providers for social work services, then they must be obtained via consultation with outside sources.

B. Personnel.

(1) Direction: Social work services shall be directed by personnel who have:

(a) a master's degree in social work from a graduate school of social work accredited by the council on social work education, and has one year of social work experience in a health care setting; or

(b) a bachelor's degree in social work, sociology or psychology; meets the national association of social workers standards of membership; and has one year of social work experience in a health care setting.

(2) Staff: The social work services staff, in addition to the service director, may include social workers, caseworkers and social work assistants at various levels of social work training and experience.

(3) Number of staff: There shall be a sufficient number of social work services staff to carry out the purpose and functions of the service.

C. Service: The social work services shall be integrated with other services of the hospital. Staff shall participate, as appropriate, in patient rounds, medical staff seminars, nursing staff conferences, and in

conferences with individual physicians, nurses, and other personnel concerned with the care of a patient and the patient's family.

D. Functions: Social work services shall address the psychosocial needs of the patients, their families and others designated by the patient as these relate to health care. Services shall be clearly documented in the record.

E. Environment: The facilities or social work services staff shall provide privacy interviews with patients, their family members and others designated by the patients.

F. Quality improvement: The service shall be part of the hospital's performance improvement program.

[8.370.12.39 NMAC - N, 7/01/2024]

8.370.12.40 ADDITIONAL REQUIREMENTS FOR PSYCHIATRIC HOSPITALS:

A. Additional medical record requirements: The medical records maintained by a psychiatric hospital shall document the degree and intensity of the treatment provided to individuals who are furnished services by the facility. A patient's medical record shall contain:

(1) identification data, including the patient's legal status;

(2) the reason for treatment or chief complaint in the words of the patient, when possible, as well as observations or concerns expressed by others;

(3) the psychiatric evaluation, including medical history containing a record of mental status and noting the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functions, memory functioning, orientation and an inventory of the patient's personality assets recorded in descriptive fashion;

(4) social services records, including reports of interviews with patients, family members and others and an assessment of home plans, family attitudes and community resource contacts as well as social history;

(5) a comprehensive treatment plan based on an inventory of the patient's strengths and disabilities, which shall include:

- (a) at least one diagnosis;
- (b) short-term and long-range goals;
- (c) the specific treatment modalities used; and
- (d) the responsibilities of each member of the treatment team.

(6) staff shall plan, implement and revise, as indicated, a written, individualized treatment program for each patient based on:

(a) the degree of psychological impairment and appropriate measures to be taken to relieve treatable distress and to compensate for nonreversible impairments;

(b) the patient's capacity for social interaction;

(c) environmental and physical limitations such as seclusion room or restraints, required to safeguard the individual's health and safety with an appropriate plan of care; and

(d) the individual's potential for discharge and successful care management on an outpatient basis.

(7) the documentation of all active therapeutic efforts and interventions;

(8) progress notes related to treatment needs and the treatment plan are reviewed, revised and recorded at least weekly as the status of the patient requires by the physician, nurse, social worker and staff from other appropriate disciplines involved in active treatment modalities, as indicated by the patient's condition; and

(9) discharge information, including:

- (a) recommendations from appropriate services concerning follow-up care; and
- (b) at least one diagnosis.

B. Additional treatment plan and staffing requirements:

(1) The hospital shall have enough staff with appropriate qualifications to carry out an active plan of psychiatric treatment for individuals who are furnished services in the facility.

(2) The treatment of psychiatric inpatients shall be under the supervision of a qualified physician who shall provide for taking an active role in an intensive treatment program.

(3) If non-psychiatric medical and surgical diagnostic and treatment services are not available within the facility, qualified consultants or attending physicians shall be immediately available if a patient should need this attention, or an adequate arrangement shall be in place for immediate transfer of the patient to an acute-care hospital.

(4) Nursing services shall be under the supervision of a professional registered nurse qualified to care for psychiatric patients and, by demonstrated competence, to participate in interdisciplinary formulation of individual treatment plans, to give skilled nursing care and therapy, and to direct, supervise and educate others who assist in implementing the nursing component of each patient's treatment plan.

(5) Professional registered nurses and other nursing personnel shall participate in interdisciplinary meetings affecting the planning and implementation of treatment plans for patients, including diagnostic conferences, treatment planning sessions and meetings held to consider alternative facilities and community resources.

(6) Psychological services shall be under the supervision of a psychologist licensed under the Professional Psychologists Act, Section 61-9-1 through 61-9-18 NMSA 1978. There shall be enough psychologists, consultants and support personnel qualified to carry out their duties to:

(a) assist in essential diagnostic formulations;

(b) participate in program development and evaluation;

(c) participate in therapeutic interventions and in interdisciplinary conferences and meetings held to establish diagnoses, goals and treatment programs.

(7) The number of social work staff qualified to carry out their duties shall be adequate for the hospital to meet the specific needs of individuals patients and their families and develop community resources and for consultation to other staff and community agencies. The social work staff shall:

(a) provide psychosocial data for diagnosis and treatment planning;

(b) provide direct therapeutic services; and

(c) participate in interdisciplinary conferences and meetings on diagnostic formulation and treatment planning, including identification and use of alternative facilities and community resources.

(8) The number of qualified therapists and therapist assistants shall be sufficient to provide needed therapeutic activities, including, when appropriate, occupational, recreational, and physical therapy, to ensure that appropriate treatment is provided to each patient.

(9) The total number of rehabilitation personnel, including consultants, shall be sufficient to permit appropriate representation and participation in inter-disciplinary conferences and meetings, including diagnostic conferences, which affect the planning and implementation of activity and rehabilitation programs. [8.370.12.40 NMAC - N, 7/01/2024]

8.370.12.41 PHYSICAL ENVIRONMENT:

A. General: The buildings of the hospital shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery of the hospital services appropriate to the needs of the community and with due regard for protecting the life, health and safety of the patients and staff. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted.

B. Definitions in 8.370.12.41 NMAC.

(1) "Building, existing" means a building erected prior to the adoption of this requirement, or one for which a legal building permit has been issued.

(2) "Existing construction" means a building, which is in place or is being constructed with plans approved by the authority prior to the effective date of this chapter.

(3) "Full-term nursery" means an area in the hospital designated for the care of infants who are born following a full-term pregnancy and without complications, until discharged to a parent or other legally authorized person.

(4) "Intermediate nursery" means an area in the hospital designated for the care of infants immediately following birth who require observation due to complications, and for the care of infants who require observation following placement in the critical care nursery, until discharged to a parent or other legally authorized person.

(5) "Life safety code" means the standard adopted by the national fire protection association (NFPA) known as NFPA 101 life safety code.

(6) "New construction" means construction for the first time of any building or addition or remodeling to an existing building, the plans for which are approved after the effective date of this chapter.

(7) "Remodeling" means to make over or rebuild any portion of an existing building or structure and thereby modify its structure, structural strength, fire hazard character, exits, heating and ventilation systems, electrical system or internal circulation, as previously approved by the authority. Where exterior walls are in place but interior walls are not in place at the time of the effective date of this chapter, construction of interior

walls shall be considered remodeling. "Remodeling" does not include repairs necessary for the maintenance of a building or structure.

(8) "Special care unit" means an organized health care service that combines specialized facilities and staff for the intensive care and management of patients in a crisis or potential crisis state. "Special care units" include psychiatric special care, coronary care, surgical intensive care, medical intensive care and burn units, but do not include post-obstetrical or post-surgical recovery units or neonatal intensive care units.

C. Approvals: The hospital shall keep all documentation of inspections on file in the hospital following any inspections by state and local authorities for a period of five years.

D. Fire Protection:

(1) Basic responsibility: The hospital shall provide fire protection adequate to ensure the safety of patients, staff and others on the hospital's premises. Necessary safeguards such as extinguishers, sprinkling and detection devices, fire and smoke barriers, and ventilation control barriers shall be installed and maintained to ensure rapid and effective fire and smoke control.

(2) New construction: Any new construction or remodeling shall meet the applicable provisions of the current edition of the building code, fire code, life safety code, and AIA guidelines for hospitals and health care facilities.

(3) Existing facilities: Any existing hospital shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the hospital complied with and continues to comply with the applicable provisions of the 1967, 1973 or the current edition of the life safety code, with or without waivers.

(4) Equivalent compliance: Any existing facility that does not meet all requirements of the applicable life safety code may be considered in compliance with life safety code if the facility achieves a passing score on the fire safety evaluation system (FSES) developed by the U.S. department of commerce, national bureau of standards, to establish safety equivalencies under the life safety code.

E. General construction:

(1) Prior to any construction, one copy of schematic plans shall be submitted to the licensing authority for review and preliminary approval.

(2) Before construction is started, one copy of final plans and specifications which, are used for bidding purposes shall be submitted to the licensing authority for review and approval. Plans must be prepared, sealed, signed and dated by an architect registered in the state of New Mexico.

(3) If on-site construction above the foundation is not started within 12 months of the date of approval of the final plans and specifications, the approval under these requirements shall be void and the plans and specifications must be resubmitted for reconsideration of approval.

(4) Before any construction change(s) is undertaken affecting the approved final plans, modified plans shall be submitted to the licensing authority for review and approval. The licensing authority shall notify the hospital in writing of any conflict with this subchapter found in its review of modified plans and specifications.

(5) General: Projects involving alterations of, and additions to, existing buildings shall be programmed and phased so that on-site construction will comply with all codes and minimize disruptions of existing functions. Access, exit ways, and fire protection shall be so maintained that the safety of the occupants will not be jeopardized during construction.

(6) Minimum requirements: All requirements listed in Subsection G of 8.370.12.41 NMAC new construction, relating to new construction projects, are applicable to renovation projects involving additions or alterations. When existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted with the approval of the licensing authority if the intent of the requirements is met and if the care and safety of patients will not be jeopardized.

(7) Nonconforming condition: When doing renovation work, if it is found to be infeasible to correct all of the non-conforming conditions in the existing facility in accordance with these standards, acceptable compliance status may be recognized by the licensing agency if the operation of the facility, necessary access by the handicapped, and safety of the patients, are not jeopardized by the remaining non-conforming conditions.

(a) Plan approval and building permit by the construction industries division or local building department, are also required for any new construction or remodeling.

(b) Copies of the life safety codes and related codes can be obtained from the national fire protection association, 11 Tracy Drive, Avon, MA 02322.

F. Construction and inspections. Construction shall not commence until plan-review deficiencies have been satisfactorily resolved.

(1) The completed construction shall be in compliance with the approved drawings and specifications, including all addenda or modifications approved for the project.

(2) A final inspection of the facility will be scheduled for the purpose of verifying compliance with the licensing standards, and approved plans and specifications.

(3) The facility shall not occupy any new structure or major addition or renovation space until the appropriate permission has been received from the local building and fire authorities and the licensing authority.

G. New Construction:

(1) General: Every hospital building hereafter constructed, every building hereafter converted for use as a hospital, and every addition or alteration hereafter made to a hospital shall comply with the requirements of these standards.

(a) Compliance with these standards does not constitute release from the requirements of other applicable state and local codes and ordinances. These standards must be followed where they exceed other codes and ordinances.

(b) No building may be converted for use as a licensed hospital, which because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patients who would be housed in such a building. Any hospital or related institution that has been vacated in excess of one year or used for occupancy other than health care will be classified as a new facility.

(c) All new construction, remodeling and additions must meet requirements set forth by these standards, the building and fire codes and by the Americans with Disabilities Act (ADA), for accessibility for persons with disabilities.

(2) Codes and standards: In addition to compliance with these standards, all other applicable building codes, ordinances, and regulations under city, county or other state agency jurisdiction shall be observed.

(a) Compliance with local codes shall be pre-requisite for licensing. In areas not subject to local building codes, the state building codes shall be pre-requisite for licensing, as adopted.

(b) New construction for acute-care hospitals, limited services hospitals and special hospitals are governed by the current editions of the following codes and standards: uniform building code (UBC), uniform plumbing code (UPC), uniform mechanical code (UMC), national electric code (NEC), national fire protection association standards (NFPA), American national standards institute (ANSI), American society of heating, refrigerating, and air conditioning engineers (ASHREA), American institute of architects (AIA), academy of architecture for health guidelines for design and construction of hospital and health care facilities, NFPA101, and New Mexico building code (NMBC).

H. Patient rooms-general:

(1) Bed capacity: Each hospital's bed capacity may not exceed the capacity approved by the licensing authority.

(2) Privacy: Visual privacy shall be provided for each patient in multi-bed patient rooms. In new or remodeled construction, cubicle curtains shall be provided.

(3) Toilet room:

(a) In new construction, each patient room shall have access to one toilet without entering the general corridor area. One toilet room shall serve no more than four beds and no more than two patient rooms. Where the toilet room serves more than two beds an additional hand washing shall be placed in the patient room.

(b) In new and remodeled construction, the door to the patient toilet room shall swing into the patient room, or two-way hardware shall be provided.

(c) The minimum door width to the patient toilet room shall be 36 inches (91.4 cm) for new construction. The door shall swing outward or be double acting.

(4) Minimum floor area: The minimum floor area per bed shall be 100 square feet of clear floor area in multi-bed patient rooms, and 120 square feet of clear floor area in single-bed patient rooms, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves or vestibules.

(5) Minimum furnishing:

(a) A hospital-type bed with suitable mattress, pillow and the necessary coverings shall be provided for each patient.

(b) There shall be a bedside table or stand and chair for each patient.

(c) Each patient shall have within their room adequate storage space suitable for hanging full-length garments and for storing personal effects.

I. Isolation room(s)Z: Rooms shall be provided for isolation of patients whose condition require isolation for physical health reasons.

(1) Each isolation room shall have a separate toilet, bathtub (or shower), and a hand washing sink. These shall be arranged to permit access from the bed area without passing through the work area of the vestibule or anteroom.

(2) Each room shall have an area for hand washing, gowning, and storage of soiled materials located directly outside or immediately inside the entry door to the room.

(3) Each room shall have self-closing devices on all room exit doors. All wall, ceiling and floor penetrations in the room shall be sealed tightly.

J. Patient care:

(1) Nursing station or administrative center: Nursing stations or administrative centers in patient care areas of the hospital may be located to serve more than one nursing unit, but at least one of these service areas shall be provided on each nursing floor or wing. The station or center shall contain:

(a) storage for records, manuals and administrative supplies;

(b) an area for charting when the charts of patients are not maintained at patient rooms;

(c) hand washing sink conveniently accessible to the nurse station;

(d) staff toilet room: in new construction, a staff toilet room and hand washing sink shall be provided on each nursing unit; and

(e) securable closet or cabinet for the personal articles of nursing personnel, located in or near the nursing station.

(2) Utility areas: A utility area room for soiled linen and other clean articles shall be readily accessible to each nursing utility area. Each room shall have:

(a) storage facilities for supplies;

(b) a hand washing sink;

(c) work counters; and

(d) a waste receptacle.

(3) Bathing facilities: Showers and bathtubs. When individual bathing facilities are not provided in patient rooms, there shall be at least one shower or one bathtub for each 12 beds without such facilities. Each bathtub or shower shall be in an individual room or enclosure that provides privacy for bathing, drying, and dressing. One special bathing facility, including space for attendants, shall be provided for patients on stretchers, carts and wheelchairs for each 100 beds or fraction thereof.

(4) Equipment and supply storage: An equipment and supply storage room or alcove shall be provided for storage of equipment necessary for patient care. Its location shall not interfere with the flow of traffic.

(5) Corridors and passageways: Corridors and passageways in patient care areas shall be free of obstacles.

(6) Housekeeping closet: A housekeeping closet shall be provided on the nursing unit or sufficient cleaning supplies and equipment shall be readily accessible to the nursing unit.

(7) Patient call system: A reliable call mechanism shall be provided in locations where patients may be left unattended, including patients' rooms, toilet and bathing areas and designed high risk treatment areas where individuals may need to summon assistance.

K. Additional requirements for particular patient care areas:

(1) Special care units:

(a) In new construction, sufficient viewing panels shall be provided in doors and walls for observation of patients. Curtains or other means shall be provided to cover the viewing panels when privacy is desired.

(b) In new construction, a sink equipped for hand-washing and a toilet shall be provided in each private patient room. In multi-bed rooms at least one sink and one toilet for each six beds shall be provided. Individual wall-hung toilet facilities with private curtains or another means of safeguarding privacy may be substituted for a toilet room.

(c) In new construction, all beds shall be arranged to permit visual observation of the patient by the nursing staff from the nursing station. In existing facilities, if visual observation is not possible from the nursing station, sufficient staffing or television monitoring shall permit continuous visual observation of the patient.

(d) In new construction, the dimensions and clearances in special care unit patient rooms shall be as follows: single bed rooms shall have minimum dimensions of 10 feet by 12 feet, multi-bed rooms

shall have minimum side clearances between beds of at least seven feet, and in all rooms the clearance at each side of each bed shall be not less than three feet six inches and the clearance at the foot of each bed shall be not less than four feet.

(2) Psychiatric units: The requirements for patient room under Paragraph (8) of Subsection B of 8.370.12.41 NMAC apply to patient rooms in psychiatric nursing units and psychiatric hospital except as follows:

(a) in new construction or remodeling, a staff emergency call system shall be included. When justified by psychiatric program requirements and with the approval of the licensing authority, call cords from wall-mounted stations of individual patients rooms may be removed;

(b) doors to patient rooms and patient toilet room doors may not be lockable from the inside;

(c) patients' clothing and personal items may be stored in a separate designated area which is locked;

(d) moveable hospital beds are not required for ambulatory patients.

(3) Surgical and recovery facilities must:

(a) have at least one room equipped for surgery and used exclusively for this purpose;

(b) have a scrub room or scrub area adjacent to the surgery room used exclusively for this purpose;

(c) have a clean-up or utility room;

(d) have a storage space for sterile supplies;

(e) have means for calling for assistance in an emergency in each operating room;

(f) have housekeeping facilities adequate to maintain the operating room or rooms;

(g) have a flash sterilizer, unless sterilization facilities are accessible from the surgery area;

(h) be located and arranged to prevent unrelated traffic through the suite;

(i) ensure the room or rooms for post-anesthesia recovery of surgical patients shall at a minimum contain a medications storage area, hand-washing facilities and sufficient storage space for needed supplies and equipment; and

(j) have available oxygen and suctioning equipment in the operating suite and recovery rooms.

(4) Labor and delivery:

(a) The labor and delivery unit shall be located and arranged to prevent unrelated traffic through the unit.

(b) Facilities within the labor and delivery unit shall include: at least one room equipped as a delivery room and used exclusively for obstetrical purposes, a scrub-up room adjacent to the operative delivery unit if operative deliveries are performed, a clean-up or utility room with a flush-rim clinical sink, and a separate janitor's closet with room for housekeeping supplies for the unit.

(c) In new construction, in addition to lightning for general room illumination, adjustable examination and treatment lights shall be provided for each labor bed.

(d) The following equipment shall be available: sleeping unit for each infant, and a clock.

(e) Space for necessary housekeeping equipment in or near the nursery is required.

(f) An examination area and workspace for each nursery shall be provided.

(5) Isolation nursery:

(a) If an isolation nursery is provided in new construction: the isolation nursery shall be within the general nursery area and may not open directly to another nursery, and access to the isolation nursery shall be through an anteroom which shall have at least a sink equipped for hand-washing, gowning facilities, an enclosed storage space for clean linen and equipment and a closed hamper for disposal of refuse.

(b) A private patient room with hand-washing facilities may be used as an isolation nursery.

(6) Postpartum lounge area: The lounge and dining room when provided for maternity patients shall be separate from other areas.

L. Other physical environment:

- (1) Thresholds and expansion joint: Thresholds and expansion joint covers shall be flush with the floor surface to facilitate the use of wheelchairs and carts, and as may be required by OSHA. Expansion and seismic joints shall be constructed to restrict the passage of smoke.
- (2) Emergency fuel and water: The hospital shall make provisions for obtaining emergency fuel and water supplies.
- (3) Emergency lighting system: The emergency lighting system and equipment shall be tested at least monthly.
- (4) Diagnostic and therapeutic facilities, supplies and equipment: Diagnostic and therapeutic facilities supplies and equipment shall be sufficient in number and in good repair to permit medical and nursing staffs to provide an acceptable level of patient care.
- (5) Walls and ceilings: The walls and ceilings shall be kept in good repair. Loose, cracked or peeling wallpaper and paint of walls and ceilings shall be replaced or repaired. Washable ceilings shall be provided in surgery rooms, delivery rooms, janitor closets and utility rooms.
- (6) Floors: All floor materials shall be easy to clean and have wear and moisture resistance appropriate for the location. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof and shall be kept clean and in good repair.
- (7) Cords: Electrical cords shall be maintained in good repair.
- (8) Carpeting:
 - (a) Carpeting may not be installed in rooms used primarily for food preparation and storage, dish and utensil washing, cleaning of linen and utensils, storage of janitor supplies, laundry processing, hydrotherapy, toiling and bathing, patient isolation or patient examination.
 - (b) Carpeting, including any underlying padding, shall have a flame spread rating permitted by the national fire protection association's national fire codes. Certified proof by the manufacturer of this test for the specific product shall be available in the facility. Certification by the installer that the material installed is the product referred to in the test shall be obtained by the facility. Carpeting may not in any case be applied to walls except where flame spread rating can be shown to be 25 or less.
- (9) Acoustical tile: Acoustical tile shall be non-combustible and non-asbestos.
- (10) Wastebaskets: Wastebaskets shall be made of non-combustible materials.
- (11) Fire report: All incidents of fire in a facility shall be reported in writing to the licensing authority within 72 hours of the incident.

M. Maintenance: The hospital must maintain written evidence of routine maintenance performed for the facility, supplies and equipment to ensure an acceptable level of safety and quality.
[8.370.12.41 NMAC - N, 7/01/2024]

8.370.12.42 OTHER REQUIREMENTS:

A. Anatomical Gifts: The hospital will adopt and implement organ and tissue donation policies and procedures to assist the medical, surgical and nursing staff in identifying and evaluating potential organ or tissue donors.

- (1) Organ bank: Means a facility certified by CMS for storage of human body parts.
- (2) Decedent: Means a deceased individual who made a gift of all or part of his body.
- (3) Donor: Means an individual who makes a gift of all or part of his body.
- (4) Eye bank: Means any non-profit agency which is organized to procure eye tissue for the purpose of transplantation or research and which meets the medical standards set by the eye bank association of America.
- (5) Organ procurement agency: Means any non-profit agency designated by the health care financing administration to procure and place human organs and tissues for transplantation, therapy, or research.
- (6) Part: Includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of human body.
- (7) Person: Means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.
- (8) State: Includes any state, district, commonwealth territory, insular possession and any other area subject to the legislative authority of the United States of America.

B. Procedures:

(1) The organ and tissue donation policy and procedure shall conform to the CMS conditions of participation for organ and tissue donations.

(2) All physician and hospital personnel shall make every reasonable effort to carry out the organ and tissue donation policy and procedure adopted by the hospital so that the wishes of a donor may be conveyed to an appropriate local organ procurement agency or eye bank and the necessary donation documents may be properly executed.

(3) Consent from next of kin. Persons authorized to donate anatomical gifts on behalf of the decedent shall conform with the Uniform Anatomical Gift Act, N.M. Laws 2000, Chapter 54, or applicable subsequent statutes.

(4) Every hospital shall develop and implement a policy and procedure for the determination of brain death pursuant to Section 12-2.4 NMSA 1978.

(5) Laws pertaining to notification of the office of the medical investigator shall be complied with in all cases of reportable deaths.

(6) The requirements of this section apply only to acute-care hospitals and limited services hospitals in New Mexico.

[8.370.12.42 NMAC - N, 7/01/2024]

8.370.12.43 RELATED REGULATIONS AND CODES: Hospitals subject to these requirements are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

D. Building, fire, electrical, plumbing and mechanical codes; the most current edition, adaptation by the state of New Mexico.

E. The current edition of the *AIA guidelines for construction and design of hospitals and healthcare facilities*, adopted in the state of New Mexico.

[8.370.12.43 NMAC - N, 7/01/2024]

History of 8.370.12 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 13 REQUIREMENTS FOR RURAL EMERGENCY HOSPITALS

8.370.13.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.13.1 NMAC - N, 7/1/2024]

8.370.13.2 SCOPE: These requirements apply to private and public hospitals that as of December 27, 2020 was designated as a critical access hospital (CAH) by the centers for medicare and medicaid services (CMS), or was licensed as a hospital with not more than 50 licensed beds and located in a county in a rural area as defined in Section 1886(d)(2)(D) or Section 1886 (d)(8)(E) of the federal Social Security Act, and provides rural emergency hospital (REH) services in the facility 24 hours per day seven days a week by a physician, nurse practitioner, clinical nurse specialist or physician assistant with a transfer agreement in effect with a level I or II trauma center, which does not have an annual average patient length of stay over 24 hours and satisfies all CMS requirements for reimbursement as a rural emergency hospital (REH). Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020, and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in medicare and meet all the conditions of participation (COP) and requirements for REH.
[8.370.13.2 NMAC - N, 7/1/2024]

8.370.13.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the health care authority pursuant to the authority granted under Subsection E of Section 9-8-6 NMSA 1978, Subsection D of Section 24-1-2, Subsection J of Section 24-1-3 NMSA, and Section 24-1-5 NMSA of the Public Health Act as amended, and S.B. 245, 56th Leg., 1st Sess. (N.M.2023). 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.
[8.370.13.3 NMAC - N, 7/1/2024]

8.370.13.4 DURATION: Permanent.
[8.370.13.4 NMAC - N, 7/1/2024]

8.370.13.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.13.5 NMAC - N, 7/1/2024]

8.370.13.6 OBJECTIVE: Establish standards for licensing REHs in order to ensure the provision of emergency department services, observation care, and additional outpatient medical and health services, if elected by the REH, that promote equity in health care for those living in rural communities by facilitating access to needed services.
[8.370.13.6 NMAC - N, 7/1/2024]

8.370.13.7 DEFINITIONS:

A. Definitions beginning with “A”:

(1) **“Action plan”** means the eligible facility’s plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH, submitted to the authority for recommended approval or denial pursuant to CMS COPs.

(2) **“Amended license”** means a change of administrator, name, location, capacity, classification of any units as listed in these requirements requires a new license:

(a) the application shall be on a form provided by the licensing authority;

(b) the application shall be accompanied by the required fee for an amended license;

and

(c) the application shall be submitted at least 10 working days prior to the change.

(3) **“Annual license”** means a license issued for a one-year period to a hospital that has met all license prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

B. Definitions beginning with “B”: [RESERVED]

C. Definitions beginning with “C”: “Critical access hospital” means a hospital with special characteristics, duly certified as such by centers for medicare and medicaid services (CMS) and is in compliance with the conditions of participation for such facilities; such critical access hospitals are deemed as meeting the intent of these requirements and may be licensed accordingly by the licensing authority.

D. Definitions beginning with “D”: [RESERVED]

E. Definitions beginning with “E”: [RESERVED]

F. Definitions beginning with “F”:

(1) “Facility” means:

(a) was a critical access hospital; or

(b) was a hospital as defined in 42 U.S.C. 1395ww(d)(1)(B) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in 42 U.S.C. 1395ww(d)(2)(D) or was a hospital as so defined in 42 U.S.C. 1395ww(d)(8)(E) with not more than 50 beds that was treated as being located in a rural area.

(2) “Financial interest” means any equity, security, lease or debt interest in the hospital; financial interest also includes any equity, security, and lease or debt interest in any real property used by the hospital or in any entity that receives compensation arising from the use real property by the hospital.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: “Hospital” means a facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term “hospital” for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury, surgery, and obstetrics; any limited services hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.

I. Definitions beginning with “I”: [RESERVED]

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) “Licensee” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospital and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

(2) “Licensing authority” means the agency within the authority vested with the authority to enforce these requirements.

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

N. Definitions beginning with “N”: [RESERVED]

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

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

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

R. Definitions beginning with “R”:

(1) “Rural emergency hospital” or “REH” means a facility, as defined above, that:

(a) is enrolled under as defined in 42 U.S.C. 1395cc(j), which relates to the enrollment process for providers of services and suppliers, submits the additional information described in paragraph as defined in 42 U.S.C. 1395x(kkk)(4)(A) related to providing an action plan, describing any outpatient services offered and the proposed use of the additional facility payment to REHs, for purposes of such enrollment, and makes the detailed transition plan described in clause (i) of such paragraph available to the public, in a form and manner determined appropriate by the U.S. secretary of health & human services (“secretary”);

(b) does not provide any acute care inpatient services, other than those as defined in 42 U. S. C. 1395x(kkk)(6)(A), related to a skilled nursing facility to furnish post-hospital extended care services;

(c) has in effect a transfer agreement with a level I or level II trauma center;

(d) meets:

(i) licensure requirements as described in 42 U.S.C. 1395x(kkk)(5);

(ii) the requirements of a staffed emergency department as described in 42 U.S.C. 1395x(kkk)(1)(B);

(iii) such staff training and certification requirements as the secretary may require;

(iv) conditions of participation applicable to critical access hospitals, with respect to emergency services under section as defined in 42 CFR 485.618 (or any successor regulation) and hospital emergency departments under this subchapter, as determined applicable by the secretary; as defined in 42 U.S.C. 1395x(kkk).

(e) is an entity that operates for the purpose of providing emergency department services, observation care, and other outpatient medical and health services specified by the Secretary in which the annual per patient average length of stay does not exceed 24 hours. 42 CFR Part 485, 485.502.

(2) "Rural emergency hospital services" means the following services furnished by a rural emergency hospital that do not exceed an annual per patient average of 24 hours in such rural emergency hospital:

(a) emergency department services and observation care; and

(b) At the election of the rural emergency hospital, with respect to services furnished on an outpatient basis, other medical and health services as specified by the secretary through rulemaking. 42 U.S.C. 1395x (kkk)(1).

S. **Definitions beginning with "S": "Secretary"** means the secretary of the New Mexico health care authority.

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

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

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

W. **Definitions beginning with "W": "Waive/waiver"** means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time where the granting of a waiver will not create a danger to the health, safety, or welfare of patients or staff of a facility, and is at the sole discretion of the licensing authority.

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

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

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

[8.370.13.7 NMAC - N, 7/1/2024]

8.370.13.8 GENERAL REQUIREMENTS:

A. **Eligibility:** The following facilities that were enrolled and certified to participate in Medicare as of December 27, 2020 are eligible to be an REH:

(1) CAHs;

(2) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (the Act) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D) of the Act) (referred to as rural hospital);

(3) A subsection (d) hospital (as so defined) with not more than 50 beds that was treated as being located in a rural area pursuant to section 1886(d)(8)(E) of the Act (referred to as rural hospital);

(4) Facilities that were enrolled as CAHs or rural hospitals with not more than 50 beds as of December 27, 2020 and then subsequently closed after that date, would also be eligible to seek REH designation if they re-enroll in Medicare and meet all the COPs and requirements for REHs.

B. **Action plan:** An action plan must be submitted to the authority by the applicant facility to initiate REH services. The action plan outlines the facility's plan for conversion to an REH and the initiation of REH specific services including the provision of emergency department services, observation care and other medical and health services elected by the REH. This should include details regarding staffing provisions and the number and type of qualified staff for the provision of REH services, as set forth in the CMS COPs.

(1) The action plan must include a detailed transition plan that lists the following:

(a) specific services the facility will retain;

(b) specific services the facility will modify;

(c) specific services the facility will add; and

(d) specific services the facility will discontinue.

(2) The facility must include a description of services that the facility intends to furnish on an outpatient basis if elected by the REH.

(3) The facility must also include information regarding how the facility intends to use the additional facility payment. This includes a description of the services that the additional facility payment would be supporting such as the operation and maintenance of the facility and furnishing of services (i.e., telehealth services, ambulance services etc.).

(4) Eligible facilities may submit the action plan and additional information on letterhead or use the model template available on the CMS website. The submission should be signed by the facility's legal representative/administrator.

(5) The authority will forward the action plan and information along with its recommendation for approval or denial to the designated CMS location for review and approval of the action plan components. The CMS location will make a final determination and notify the MAC once the enrollment package is complete and has been reviewed and approved.

(6) The action plan and information must include all the required elements as specified in Paragraph (1)-(3) of Subsection B of Section 8.370.13.9 NMAC. Missing or incomplete information may delay the conversion and enrollment process for eligible facilities applying to become an REH.

(7) In accordance with section 1861(kkk)(2)(A) of the Act, action plans will be available to the public and will eventually be posted on the CMS website.

C. Transfer Agreement: Pursuant to section 1861(kkk)(2) of the Act and 42 CFR 485.538 Condition of participation: Agreements, the REH is required to have a transfer agreement with at least one medicare-certified hospital that is designated as a level I or level II trauma center. The agreement is intended to ensure an appropriate referral and transfer process is in place for patients requiring emergency care and continued care services beyond the capabilities of the REH. In order to document compliance, a copy of the transfer agreement should be submitted to the authority along with the action plan.

D. Attestation:

(1) An REH is required to meet the COPs for rural emergency hospitals set forth at Subpart E of 42 CFR Part 485 (485.500 - 485.546). Other than the requirement that the REH submit its agreement with a nearby trauma center, eligible facilities converting to an REH may self-attest to meeting the REH COPs and will not require an automatic on-site initial survey as eligible facilities are expected to be in full compliance with the existing CAH and hospital requirements at the time of the request for conversion.

(2) Facilities may submit the attestation for compliance with the REH COPs along with the action plan and copy of the transfer agreement to the SA. The attestation may be completed on facility letterhead or the model template provided on the CMS website may be used. The attestation should be signed by the facility's legal representative or administrator.

(3) The authority will review the additional information for completeness and confirm compliance with any applicable state licensure requirements. Once complete, the authority will forward the additional information to the CMS location, along with a recommendation for certification or denial.

(4) The CMS location is responsible for making the final determination for certification of the REH. The effective date will be based upon the date the application package was determined to be complete and approved by the CMS location for meeting all REH requirements. For facilities that require an on-site initial survey, the effective date will be based on current CMS policy, which is the exit day of survey if no deficiencies are cited, or in the alternative, if deficiencies are noted, the date an acceptable plan of correction was approved (see 42 CFR 489.13).

E. Types of licenses:

(1) **"Annual license"**: an annual license is issued for a one-year period to a hospital that has met all requirements of these requirements.

(2) **"Temporary license"**: the licensing authority may, at its sole discretion, issue a temporary license prior to the initial state survey, or when the licensing authority finds partial compliance with these requirements. Facilities that were eligible as of December 27, 2020, which subsequently closed and re-enrolled in Medicare would require an initial on-site survey by the authority. These facilities do not have to submit an attestation, as required in Subsection D of 8.370.13.9 NMAC, as an on-site initial survey will be performed to determine the facility is operational and in compliance with the REH requirements.

(a) a temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies;

(b) in accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

(3) “Amended license”: a licensee must apply to the licensing authority for an amended license when there is any change of administrator, name, location, capacity, classification of any unit as listed in these requirements:

- (a)** the application must be on a form provided by the licensing authority;
- (b)** application must be accompanied by the required fee for an amended license;

and

- (c)** application must be submitted at least 30 calendar days prior to the change.

[8.370.13.8 NMAC - N, 7/1/2024]

8.370.13.9 LICENSE RENEWAL:

A. The licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee prior to the expiration of the current license.

B. Upon receipt of the renewal application and the required fee prior to expiration of current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these requirements.

[8.370.13.9 NMAC - N, 7/1/2024]

8.370.13.10 POSTING: The license, or a copy thereof, shall be conspicuously posted in a location accessible to public view within the hospital.

[8.370.13.10 NMAC - N, 7/1/2024]

8.370.13.11 NON-TRANSFERABLE REGISTRATION OF LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

- A.** ownership of the hospital changes;
- B.** the facility changes location;
- C.** the licensee of the hospital changes; or
- D.** the hospital discontinues operation.

[8.370.13.11 NMAC - N, 7/1/2024]

8.370.13.12 EXPIRATION OF LICENSE: A license will expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked, or:

- A.** on the day a facility discontinues operation; or
- B.** on the day a facility is sold, leased, otherwise changes ownership or licensee; or
- C.** on the day a facility changes location.

[8.370.13.12 NMAC - N, 7/1/2024]

8.370.13.13 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if the licensing authority determines immediate action is required to protect human health and safety, the licensing authority may suspend a license. A hearing must be held in accordance with the regulations governing adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

[8.370.13.13 NMAC - N, 7/1/2024]

8.370.13.14 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

A. A license may be denied, revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing for any of the following reasons:

- (1)** failure to comply with any provisions of these requirements;
- (2)** failure to allow survey by authorized representatives of the licensing authority;
- (3)** permitting any person while active in the operation of a facility licensed pursuant to these requirements to be impaired by the use of prescribed or non-prescribed drugs, including alcohol;
- (4)** misrepresentation or falsification of any information provided to the licensing authority;
- (5)** the discovery of repeat violations of these requirements during surveys; or
- (6)** the failure to provide the required care and services as outlined by these requirements.

B. for the purposes of calculating civil monetary penalties, penalty rates will be applied as set forth in Subparagraph (d) of Paragraph (3) of Subsection B of 8.370.4 NMAC.
[8.370.13.14 NMAC - N, 7/1/2024]

8.370.13.15 HEARING PROCEDURES:

- A.** An applicant or licensee subject to an adverse action may request an administrative appeal.
- B.** Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the hospital as outlined in Section 14 and 15 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- C.** A copy of the adjudicatory hearing procedures will be furnished to the hospital at the time an adverse action is taken against the licensee by the licensing authority. A copy may be requested at any time by contacting the licensing authority.
[8.370.13.15 NMAC – N, 7/1/2024]

8.370.13.16 WAIVERS AND VARIANCES:

- A.** Applications: All applications for the grant of a waiver or variance shall be made in writing to the licensing authority, specifying the following:
 - (1) the rule, regulation, or code from which the waiver or variance is requested;
 - (2) the time period for which the waiver or variance is requested;
 - (3) if the request is for a variance, the specific alternative action which the facility proposes;
 - (4) the reasons for request; and
 - (5) an explanation of why the health, safety, and welfare of the residents or staff are not endangered by the condition.
- B.** Requests for a waiver or variance may be made at any time.
- C.** The licensing authority may require additional information from the hospital prior to acting on the request.
 - (1) Grants and denials. The licensing authority shall grant or deny each request for waiver or variance in writing.
 - (a) Notice of a denial shall contain the reasons for denial.
 - (b) The decisions to grant, modify, or deny a request for a waiver or variance is subject to appeal one time only.
 - (2) The terms of a requested waiver or variance may be modified upon agreement between the licensing authority and the hospital.
- D.** The licensing authority may impose whatever conditions on the granting of a waiver or variance it considers necessary.
- E.** The licensing authority may limit the duration of any waiver.
[8.370.13.16 NMAC – N, 7/1/2024]

8.370.13.17 Compliance with existing requirements: An REH shall comply with the following:

- A.** 42 CFR Part 485, Subpart E (relating to conditions of participation: Rural Emergency Hospitals (REHs));
- B.** In addition to the conditions of participation at 42 CFR Part 485, Subpart E, the hospital shall comply with 8.370.12 NMAC to the extent it does not conflict with the conditions of participation.
[8.370.13.17 NMAC - N, 7/1/2024]

8.370.13.18 INCORPORATED AND RELATED CODES: The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes but not limited to the following:

- A.** Health facility licensure fees and procedures, health care authority, 8.370.3 NMAC.
- B.** Health facility sanctions and civil monetary penalties, health care authority, 8.370.4 NMAC.
- C.** Adjudicatory hearings for licensed facilities, health care authority, 8.370.2 NMAC.
- D.** Caregiver’s criminal history screening requirements, 8.370.5 NMAC.
- E.** Employee abuse registry, 8.370.8 NMAC.
- F.** Incident reporting, intake processing and training requirements, 8.370.9 NMAC.
- G.** New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.
[8.370.13.18 NMAC – N, 7/1/2024]

8.370.13 NMAC History: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 14 ASSISTED LIVING FACILITIES FOR ADULTS

8.370.14.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.14.1 NMAC - N, 7/1/2024]

8.370.14.2 SCOPE: This rule applies to all assisted living facilities, any facility which is operated for the maintenance or care of two or more adults who need or desire assistance with one or more activities of daily living. This rule does not apply to the residence of an individual who maintains or cares for a maximum of two relatives.
[8.370.14.2 NMAC - N, 7/1/2024]

8.370.14.3 STATUTORY AUTHORITY: The requirements forth herein are promulgated by the secretary of the health care authority by authority of Subsection E of Section 9-8-6 NMSA 1978, and Sections 24-1-2, 24-1-3, 24-1-5 and 24-1-5.2 of the Public Health Act, NMSA 1978, as amended. 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 health care purchasing and regulation.
[8.370.14.3 NMAC - N, 7/1/2024]

8.370.14.4 DURATION: Permanent.
[8.370.14.4 NMAC - N, 7/1/2024]

8.370.14.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.14.5 NMAC - N, 7/1/2024]

8.370.14.6 OBJECTIVE:

A. Establish standards for licensing assisted living facilities in order to ensure that residents receive appropriate care and services, and regulate to ensure that the health, safety, and welfare of individuals residing and working in such facilities are protected.

B. Establish requirements for the construction, maintenance and operation of licensed assisted living facilities that will provide a safe, humane and homelike environment for adults who need assistance or supervision with activities of daily living but who do not need acute care, continuous nursing care, skilled nursing care or care in an intermediate care facility for the mentally retarded.

C. Regulate facilities in providing care for residents and utilizing available supportive services in the community to meet the needs of the residents.

D. Ensure facility compliance with these rules through established protocols to identify circumstances which could be harmful or dangerous to the health, safety, or welfare of the resident.
[8.370.14.6 NMAC - N, 7/1/2024]

8.370.14.7 DEFINITIONS:

A. “**Abuse**” means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.

B. “**Activities of daily living**” (ADLs) means the personal functional activities required by a resident for continued well-being, which include, but are not limited to:

- (1) eating;
- (2) dressing;
- (3) oral hygiene;
- (4) bathing;
- (5) grooming;
- (6) mobility; and
- (7) toileting.

C. “**Adult**” means a person who has a chronological age of 18 years or older.

D. “**Assisted living facility**” means any licensed facility that meets the requirements and provides services defined by this rule.

- E. “Administrator, director, or operator”** means the individual who is in charge of the day-to-day operation of the facility and who has the responsibility to ensure facility compliance with this rule.
- F. “Advance directives”** means the written document signed by a competent person granting someone authority in a power of attorney to make health care decisions for the resident when they are unable to.
- G. “Agent”** means the resident's surrogate decision maker as applicable to individual resident needs.
- H. “Ambulatory”** means able to walk without assistance.
- I. “Administration of medication”** means delivery of medication by a licensed or certified healthcare professional.
- J. “Assistance”** means prompting, encouragement, or hands-on help with the activities of daily living by another person.
- K. “Assistance with medication”** means support provided to residents to assist them with medication delivery by non-licensed or non-certified paid staff and does not allow for the assessment of the effects of the medication.
- L. “Bathing unit”** means a tub and shower or combination unit.
- M. “Bed hold”** means the facility's policy for retaining a bed or room for a resident during the time that the resident is temporarily absent from the facility; the policy shall include time frames for the bed hold, acceptable conditions for the bed hold and any associated charges.
- N. “Capacity”** means the maximum number of persons that a facility has been licensed to accommodate.
- O. “Census”** means the total number of individual residents residing in the facility each day, including relatives who are residents. The facility census shall never exceed the licensed capacity.
- P. “Certified medication aide” (CMA)** means a person who receives specialized training by the New Mexico board of nursing pursuant to "the Nursing Practice Act," Section 61-3-1 through 61-3-30 NMSA 1978.
- Q. “Chemical restraint”** means any drug administered for discipline or the convenience of the facility and not required to treat the resident's medical symptoms.
- R. “Choice of hospice provider”** means a resident and their family or the resident's surrogate decision maker shall be given a list of hospice providers and have the right to choose a hospice provider; the referring party shall disclose any ownership interest in a recommended or listed hospice provider if applicable.
- S. “Cognitive status”** means the thinking and reasoning ability of the resident to manage his or her own affairs and direct his or her own care.
- T. “Consulting pharmacist”** means an independent pharmacist hired by a facility to review medications in use, patient records and possible medication errors on a quarterly basis.
- U. “Continuous nursing care”** means services which are provided to a resident whose medical needs are of such complexity that the services of a nurse are required to assess, regularly reevaluate, care plan and intervene as ordered by a physician.
- (1)** This includes services which are provided to a resident whose condition requires 24 hour monitoring of vital signs and the assessment of cognitive or physical status on a daily basis.
- (2)** These services are provided by health care professionals, as ordered by a physician or physician extender.
- (3)** The required services shall be medically complex enough to require ongoing assessment, planning and intervention by licensed personnel for safe and effective care on a daily basis and consistent with the nature and the severity of the resident's condition.
- V. “Convenience”** means any action taken by a facility to control resident behavior or maintain residents with less effort by the facility and that is not in the resident's best interest or wishes.
- W. “Current written consent”** means an informed, written consent which identifies the type of medication delivery and the assistance or administration that the resident requires and is signed by the resident or surrogate decision maker or other legally appointed decision maker. All informed consents shall be signed annually or when there is any change in either the resident's functional ability or the designation of a new surrogate decision maker.
- X. “Crisis prevention/intervention plan”** means a documented procedure that provides guidance to staff when a resident has a medical condition or challenging behavior that has the potential to escalate to a severity level which poses great risk of harm to the resident or others (e.g., diabetic, seizure disorder, aggression, or combativeness).
- Y. “Decision making capacity”** means the ability of the resident to understand and comprehend the nature and consequences of a proposed decision, including the benefits and risks of and alternatives to any such proposed decision and to reach an informed decision.

- Z.** “**Designee**” means an individual appointed to assume responsibility for specific assigned duties.
- AA.** “**Direct care staff**” means any and all employees or volunteers who work directly with the residents in daily living activities at the facility.
- AB.** “**Discipline**” means any action taken by the facility for the purpose of punishing or penalizing any resident.
- AC.** “**Facility**” means an assisted living facility.
- AD.** “**Facility license**” means the document issued by the licensing authority which authorizes the operation of a facility.
- AE.** “**General supervision**” means the availability of direct care staff in the facility, on a 24 hour basis, to respond to the needs of the residents and to perform periodic checks on the residents.
- AF.** “**Health care professional**” means a New Mexico licensed health care professional such as a physician, chiropractor, pharmacist, nurse practitioner, physician assistant, registered nurse, licensed practical nurse, physical therapist, speech therapist, occupational therapist, psychologist, social worker, dietitian or dentist.
- AG.** “**Independent**” means the ability to perform activities of daily living without assistance.
- AH.** “**Individual service plan**” or “**ISP**” means a comprehensive plan, developed by the interdisciplinary team that identifies all treatment, habilitation and services for a resident.
- AI.** “**Intramuscular injection**” or “**IM**” means the insertion of a needle into a muscle to administer medication.
- AJ.** “**Intravenous**” or “**IV**” means the insertion of a needle into a vein to administer medication.
- AK.** “**Licensee**” means the person who, or the organization that has ownership, leasehold or similar interest in the facility and in whose name a license for an assisted living facility has been issued and who is legally responsible for compliance with this rule.
- AL.** “**Licensing authority**” means the New Mexico health care authority, health facility licensing and certification bureau.
- AM.** “**Licensed or certified personnel**” means New Mexico licensed registered nurses (RNs), licensed practical nurses (LPNs) and certified medication aides (CMAs), licensed or certified by the New Mexico board of nursing pursuant to "the Nursing Practice Act", 61-3-1 through 61-3-31 NMSA 1978.
- AN.** “**Licensed practical nurse (LPN)**” means a person who has specialized training and is licensed by the New Mexico board of nursing pursuant to the "Nursing Practice Act," 61-3-1 through 61-3-31 NMSA 1978.
- AO.** “**Medication assistance record**” (**MAR**) means the document that is used to record the details of medication. The MAR shall include all of the information pursuant to Subsection G of 8.370.14.35 NMAC of this rule.
- AP.** “**Medication delivery method**” means the method by which a resident takes or receives medication (i.e., pills, eye drops, intramuscular injection, other).
- AQ.** “**Medication error**” means the administration of any medication incorrectly (i.e., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication or the administration of a medication without a valid order).
- AR.** “**Medication route**” means the method of medication entry into a resident’s body (e.g., oral, ocular, rectal, topical, nasal, injection and intravenous).
- AS.** “**Misappropriation /exploitation**” means the deliberate misplacement of a resident’s property, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.
- AT.** “**Mobile**” means able to walk with assistance, or the ability to move from place to place with the use of a device such as a walker, cane, crutches, or a wheelchair and the capability of making independent bed-to-chair transfers.
- AU.** “**Nebulizer**” means an atomizer equipped to produce a fine mist for deep inhalation into the lungs.
- AV.** “**Neglect**” means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness and is defined in the incident reporting intake, processing & training requirements, 8.370.9 NMAC.
- AW.** “**New facility**” means any building not previously or currently licensed as an assisted living facility.
- AX.** “**Non-mobile**” means a person who is capable of achieving mobility only with the assistance of another person plus devices such as a wheel chair.
- AY.** “**Nurse monitoring**” means a higher level of monitoring by a registered nurse (RN) for a specified length of time based on the resident’s need(s) related to a specific condition.

AZ. “Physician extender” means the term used to refer to physician assistants (working in conjunction with a physician) and nurse practitioners.

BA. “Physical restraint” means any manual, physical or mechanical device, any material or equipment attached to or adjacent to the resident's body that the resident cannot easily remove which restricts freedom of movement or is used for discipline or for the convenience of the facility (e.g., full bed rails).

BB. “Primary care practitioner” (PCP) means a physician, nurse practitioner or physician’s assistant (licensed in the state of New Mexico) who oversees the health care of the resident.

BC. “Private duty attendant” means an individual that provides direct care under the definitions of the nm caregivers criminal history screening program, 8.370.5 NMAC. The individual is hired by the resident or family through a licensed agency, hired directly or works through a separate arrangement with the family.

BD. “Pro re nada medication (PRN)” means prescribed or over-the-counter medications, including comfort medications, that are administered or taken only on an as needed basis when symptoms warrant or as directed by the primary care practitioner (PCP).

BE. “Policy” means a statement of principle that guides and determines present and future decisions and actions.

BF. “Procedure” means the action(s) that shall be taken in order to implement a policy.

BG. “Protocols” are the specific means by which a procedure or treatment is to take place.

BH. “Programmatic services” means services provided to residents as defined by the facilities program narrative.

BI. “Program narrative” is a written statement identifying the primary population to be served and the services that will be provided to meet these needs.

BJ. “Registered nurse” (RN) means a person that has specialized training and is licensed by the New Mexico board of nursing pursuant to the “Nursing Practice Act,” 61-3-1 through 61-3-31 NMSA 1978.

BK. “Relative” means husband, wife, significant other, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, grandfather, grandmother, half-brother or half-sister.

BL. “Resident” means an individual receiving services and residing in the licensed facility; including the relatives of a licensee.

BM. “Resident evaluation form” means a written document of the information acquired during the assessment of a resident's functional capacities and limitations. This form is to be utilized for pre-admission and ongoing evaluation of a resident.

BN. “Resident preference” means the resident’s choice or preferred choice among the available options.

BO. “Restraints” means anything which restricts freedom of movement or is used for discipline or for the convenience of the facility. This includes both chemical and physical restraints (e.g., full bed rails, over medicated, etc.).

BP. “Room and board” means living/sleeping space, meals and snacks appropriate to meet the needs of the residents.

BQ. “Sanctions” means a measure imposed on a licensee for a violation(s) of applicable licensing requirements other than license revocation, suspension, or denial of renewal of license as provided for by health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

BR. “Self care” means the performance of ADLs, activities or tasks by the residents themselves rather than performed by or assisted with the facility staff.

BS. “Self medication” means administration of PCP prescribed medication by the resident to whom it was prescribed.

BT. “Side effect” means a result of a drug or other form of therapy in addition to or in extension of the desired therapeutic effect.

BU. “Significant change in health status” means the resident has experienced one or more of the following:

- (1) a decline or improvement in physical ability;
- (2) a decline or improvement in cognitive or functional ability;
- (3) a new diagnosis or event that requires a change in medication, or treatment or that requires a revision to an individual service plan; or
- (4) a change in medication or the medication route that would permanently alter the level of assistance with medication delivery.

BV. “Surrogate decision maker” means the resident’s agent, guardian or surrogate as defined in the “Uniform Health-Care Decisions Act,” 24-7A-1 through 24-7A-186 NMSA 1978 or other legally appointed decision maker.

BW. “Survey” means a monitoring visit by the licensing authority to examine the facility premises and records and to interview the residents and staff.

BX. “Stable” means the resident’s condition is unchanged; signs or symptoms are within established ranges, frequencies or patterns. The resident’s condition does not require frequent monitoring by a licensed nurse to determine the resident’s status or the resident’s response to medication or treatment.

BY. “Staff or employee” means the individuals hired or subcontracted by the facility to implement the individual service plan for the residents.

BZ. “Subcutaneous injection” means the insertion of a needle under the skin but above the muscle layer to administer medication.

CA. “Therapeutic diet” means a diet other than a regular diet, ordered by a physician to manage a health condition.

CB. “Volunteers” means unpaid individuals who provide care or services for the residents.

CC. “Variance” means a decision that is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

CD. “Visit notes” means the documentation of services provided by outside agencies for ongoing care coordination of the resident.

CE. “Waive or waiver” means a decision that is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

[8.370.14.7 NMAC - N, 7/1/2024]

8.370.14.8 GENERAL LICENSING REQUIREMENTS:

A. Licensure is required. No person or entity shall establish, maintain or operate an assisted living facility without first obtaining a license.

B. Application for licensure. An initial or renewal application shall be made on the forms prescribed by and available from the licensing authority. The issuance of an application form is not a guarantee that the completed application will be accepted, or that the authority will issue a license. Information provided by the facility and used by the licensing authority for the licensing process shall be accurate and truthful. The licensing authority will not issue a new license if the applicant has had a health facility license revoked or renewal denied or has surrendered a license under threat of revocation or denial of renewal. The licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of applicable rules found to be class A or class B deficiencies as defined in health facility sanctions and civil monetary penalties, 8.370.4 NMAC or has been non-compliant with plans of correction. The licensing authority will not issue a license until the applicant has supplied all of the information that is required by this rule. Any facility that fails to participate in good faith by falsifying information presented in the licensing process shall be denied licensure by the authority. The following information shall be submitted to the licensing authority for approval:

(1) a letter of intent that includes the proposed physical address, the primary population of the facility and a summary of the proposed services; after the letter of intent has been received, an application packet including; the application form, fee schedule and the licensing rule will be issued to the applicant by the licensing authority;

(2) the completed and notarized application and the appropriate non-refundable fee(s);

(3) a program narrative identifying and detailing the geographic service area, the primary population including any special needs requirements, along with a full description of the services that the applicant proposes to provide including:

(a) a description of the characteristics of the proposed population of the facility;

(b) a description of the services and care that will be provided to the residents;

(c) a description of the anticipated professional services to be offered to the

residents; and

(d) a description of the facility’s relationship to other services and related programs in the service area and how the applicant will collaborate with them to achieve a system of care for the residents.

(4) policies and procedures annotated to this rule;

- (5) evidence to establish that the applicant has sufficient financial assets to permit operation of the facility for a period of six months; the evidence shall include a credit report from one of the three recognized credit bureaus with a minimum credit score of 650 or above;
- (6) copies of organizational documents to include the following list of items:
 - (a) the names of all persons or business entities that have at least five percent ownership interest in the facility, whether direct or indirect and whether in profits, land or building; this includes the owners of any business entity which owns all or part of the land or building;
 - (b) the identities of all creditors that hold a security interest in the premises, whether land or building;
 - (c) any changes in ownership or management shall be reported to the authority within thirty (30) days;
- (7) building plans as required at 8.370.14.41 NMAC of this rule;
- (8) fire authority approval as required at 8.370.14.60 NMAC of this rule;
- (9) a letter of approval or exemption from the local health authority having jurisdiction for the food service and the kitchen facility;
- (10) a copy of liquid waste disposal and treatment system permit from local health authority having jurisdiction;
- (11) approval from local zoning authority;
- (12) building approval (certificate of occupancy); and
- (13) any other information that the applicant wishes to provide or that the licensing authority may request.

C. Application for amended license. A licensee shall submit an application for an amended license and the required non-refundable fee to the licensing authority prior to a change with the facility. An amended license is required for a change of: location, administrator, facility name, capacity or any modification or addition to the building.

- (1) An application for a change of the facility administrator or change of the administrator's name shall be submitted to the licensing authority within 10 business days of the change.
- (2) An application for increase in capacity shall be accompanied by a building plan pursuant to 8.370.14.41 NMAC of this rule. A facility shall not increase census until the licensing authority has reviewed and approved the increase and has issued a new license that reflects the approved increase in capacity.

D. Application for license renewal. Each facility shall apply for a renewal of the annual license within thirty (30) business days prior to the license expiration date by submitting the following items:

- (1) an application and the required fee;
- (2) an updated program narrative, if the facility has changed the program or the focus of services;
- (3) the annual fire inspection report; and
- (4) the licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of this rule or has been noncompliant with plans of correction or payment of civil monetary penalties.

E. License. Any person or entity that establishes, maintains or operates an assisted living facility shall obtain a license as required in this rule before accepting residents for care or providing services.

- (1) Each facility that provides care or treatment shall obtain a separate license. The license is non-transferable and is only valid for the facility to which it is originally issued and for the owner or operator to whom it is issued. It shall not be sold, reassigned or transferred.
- (2) The maximum capacity specified on the license shall not be exceeded.
- (3) If the facility is closed and the residents are removed from the facility, the license shall be returned to the licensing authority. Written notification shall be issued to all residents or the residents' surrogate decision maker and the licensing authority at least 30 calendar days prior to the closure.

F. Temporary license.

- (1) A temporary license may be issued to a new facility before residents are admitted provided that the facility has met all of the life safety code requirements as stated in this rule and policies and procedures for the facility have been reviewed and approved.
- (2) Upon receipt of a temporary license, the facility may begin to admit up to three residents.
- (3) After the facility has admitted up to three residents, the facility operator or owner shall request an initial health survey from the licensing authority.

(4) Following a determination of compliance with this rule by the licensing authority, an annual license will be issued. The renewal date of the annual license is based on the initial date of the first temporary license.

(5) The licensing authority has the right to determine compliance or noncompliance.

(6) A temporary license shall cover a period of time, not to exceed 120 calendar days.

(7) No more than two consecutive temporary licenses shall be issued. If a second temporary license is issued, an additional non-refundable fee is required. If all requirements are not met within the 240 day time frame, the applicant shall repeat the application process.

G. Annual license. An annual license is issued for one year for a facility that has met all the requirements of this rule.

H. Display of license. The facility shall display the license in a conspicuous public place that is visible to residents, staff and visitors.

I. Unlicensed facilities. Any person or entity that opens or maintains an assisted living facility without a license is subject to the imposition of civil monetary penalties by the licensing authority. Failure to comply with the licensure requirements of this rule within 10 days of notice by the licensing authority may result in the following penalties pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

(1) A civil monetary penalty not to exceed \$5,000 per day.

(2) A base civil monetary penalty, plus a per-day civil monetary penalty, plus the doubling of penalties as applicable, that continues until the facility is in compliance with the licensing requirements in this rule.

(3) A cease and desist order to discontinue operation of a facility that is operating without a license.

(4) Additional criminal penalties may apply and shall be imposed as necessary.

[8.370.14.8 NMAC - N, 7/1/2024]

8.370.14.9 WAIVERS AND VARIANCES. The licensing authority may vary or waive certain licensure requirements for facilities, provided that it would not adversely affect the health, safety or welfare of the residents or staff.

A. Requests for a variance or waiver may be made at any time, shall be made in writing to the licensing authority and shall specify the following:

(1) the section of the rule for which the variance or waiver is requested;

(2) the time period for which the waiver is requested;

(3) if the request is for a variance; the specific alternative action that the facility proposes;

(4) the reason(s) for the request and an explanation of why and how the health, safety and welfare of the residents or staff are not endangered by the requested variance or waiver; and

(5) justification that the goal or purpose of the rule would be satisfied.

B. The licensing authority may require additional information from the facility prior to acting on the request.

C. The licensing authority may impose conditions on the variance or waiver.

D. The licensing authority shall limit the duration of any waiver.

E. Variances and waivers are nontransferable and shall be kept on file and readily available at the facility.

F. Variances and waivers are granted at the discretion of the licensing authority.

[8.370.14.9 NMAC - N, 7/1/2024]

8.370.14.10 AUTOMATIC EXPIRATION OF A LICENSE: A license shall automatically expire:

A. at midnight on the day indicated as the expiration date on the license;

B. when the operation of a facility is discontinued;

C. when a facility is sold or leased or the licensee changes; or

D. when there is a change of location for a facility.

[8.370.14.10 NMAC - N, 7/1/2024]

8.370.14.11 SURVEY OR MONITORING VISITS:

A. The licensing authority shall perform on-site survey or monitoring visits at all assisted living facilities to determine compliance with this rule.

B. The facility shall provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility.

C. The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the facility.

D. Failure by the facility to provide the licensing authority access to the premises or information, including resident records, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, as deemed appropriate by the licensing authority.
[8.370.14.11 NMAC - N, 7/1/2024]

8.370.14.12 CORRECTIVE ACTION: If violations of this rule are cited, the facility will be provided with an official statement of deficiencies within 10 business days following the survey.

A. **Informal dispute review (IDR).** The facility may request an informal review of survey deficiencies by providing a written request to the licensing authority within 10 calendar days of receipt of the written survey findings. With the request, the facility shall include information or evidence that justifies the disagreement with a cited deficiency.

- (1) The licensing authority will review the submitted information and make a determination.
- (2) If the deficiency is removed, a new statement of deficiencies will be issued to the facility.
- (3) The facility shall provide a new plan of correction for all remaining deficiencies upon receipt of the new statement of deficiencies.

(4) A copy of the “IDR operating rules” is available upon request.

B. **Plan of correction (POC).** The facility shall submit a plan of correction within 10 calendar days of receipt of the statement of deficiencies and after receipt of a revised statement of deficiencies, when the findings are changed pursuant to an IDR.

(1) If the first plan of correction (POC) is rejected by the licensing authority, the facility will be sent a second (2nd) copy of the statement of deficiencies. The facility shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The process will repeat until an acceptable plan of correction is received by the authority.

(2) Failure to provide an acceptable plan of correction (POC) within a reasonable period of time, may lead to civil monetary penalties or other sanctions.

(3) The plan of correction shall:

(a) address how all violations identified in the official statement of deficiencies will be corrected;

(b) address how the facility will monitor the corrective action and ensure ongoing compliance; and

(c) specify the date that the corrective action will be completed.

(4) All cited violations shall be corrected within 30 calendar days from the date of the survey; unless the licensing authority approves an extended date.

(5) Failure to submit an acceptable plan of correction may result in sanctions, including but not limited to civil monetary penalties, suspension or non-renewal of the facility license.

(6) The licensing authority may accept, reject, or direct the plan of correction.

[8.370.14.12 NMAC - N, 7/1/2024]

8.370.14.13 GROUNDS FOR REVOCATION, SUSPENSION OR DENIAL OF INITIAL OR RENEWAL OF LICENSE, OR THE IMPOSITION OF SANCTIONS OR CIVIL MONETARY PENALTIES:

A. When the licensing authority determines that an application for the renewal of a license will be denied or that a license will be revoked, the licensing authority shall provide written notification to the facility, the residents and the surrogate decision makers for the residents.

B. After notice to the facility and an opportunity for a hearing, the authority may deny an initial or renewal application, revoke or suspend the license of a facility or may impose an intermediate sanction and a civil monetary penalty as provided in accordance with the Public Health Act, Section 24-1-5.2 NMSA 1978.

C. Grounds for implementing these penalties may be based on the following:

(1) failure to comply with any provision of this rule;

(2) failure to allow a survey by authorized representatives of the licensing authority;

(3) the hiring or retaining of any staff or permitting any private duty attendant or volunteer to work with residents that has a disqualifying conviction under the requirements of the caregiver’s criminal history screening program, 8.370.5 NMAC;

- (4) the misrepresentation or falsification of any information on the application forms or other documents provided to the licensing authority;
 - (5) repeat violations of this rule;
 - (6) failure to maintain or provide services as required by this rule;
 - (7) exceeding licensed capacity;
 - (8) failure to provide an acceptable plan of correction within the time period established by the licensing authority;
 - (9) failure to correct deficiencies within the time period established by the licensing authority;
 - (10) failure to comply with the incident reporting requirements pursuant to incident reporting, intake processing and training requirements, 8.370.9 NMAC; and
 - (11) failure to pay civil monetary penalties pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC.
- [8.370.14.13 NMAC - N, 7/1/2024]

8.370.14.14 HEARING PROCEDURES:

- A. Hearing procedures for an adverse action taken against a facility by the authority will be conducted in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.
 - B. The facility will receive a copy of the hearing procedures at the time that an adverse action is taken or may request a copy by contacting the licensing authority.
 - C. If immediate action is required to protect human health and safety, the licensing authority may suspend a license or impose an intermediate sanction pending a hearing, provided that the hearing is held within five working days of the suspension or the sanction, unless waived by the facility, in accordance with the Public Health Act, Subsection H of Section 24-1-5 NMSA.
- [8.370.14.14 NMAC - N, 7/1/2024]

8.370.14.15 APPEALS:

- A. A licensee that is subject to an adverse action may request an administrative appeal. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the facility is in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.
 - B. A copy of the adjudicatory hearing procedures will be forwarded to the facility when an adverse action is taken against the licensee by the licensing authority.
 - C. All notices, orders or decisions which the licensing authority issues to a facility prior to a transfer of ownership shall be in effect against both the former owner and the new owner, unless the transfer of penalties to the new owner is rescinded in writing by the authority.
- [8.370.14.15 NMAC - N, 7/1/2024]

8.370.14.16 STAFF QUALIFICATIONS: A facility shall employ staff with the following qualifications.

- A. **Administrator, director, operator:** an assisted living facility shall be supervised by a full-time administrator. Multiple facilities that are located within a 40-mile radius may have one full-time administrator. The administrator shall:
 - (1) be at least 21 years of age;
 - (2) have a high school diploma or its equivalent;
 - (3) comply with the requirements of the New Mexico caregivers criminal history screening act, 8.370.5 NMAC;
 - (4) complete a state approved certification program for assisted living administrators;
 - (5) be able to communicate with the residents in the language spoken by the majority of the residents;
 - (6) not work while under the influence of alcohol or illegal drugs;
 - (7) have evidence of education and experience to prove the ability to administer, direct and operate an assisted living facility; the evidence of education and experience shall be directly related to the services that are provided at the facility;
 - (8) provide three notarized letters of reference from persons unrelated to the applicant; and
 - (9) comply with the pre-employment requirements pursuant to the employee abuse registry, 8.370.8 NMAC.

B. Direct care staff:

- (1) shall be at least 16 years of age;
 - (2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;
 - (3) shall comply with the pre-employment requirements pursuant to the Employee Abuse Registry, 8.370.8 NMAC; and
 - (4) shall comply with the current requirements of reporting and investigating incidents pursuant to incident reporting, intake processing and training requirements, 8.370.9 NMAC;
 - (5) if a facility provides transportation for residents, the employees of the facility who drive vehicles and transport residents shall have copies of the following documents on file at the facility:
 - (a) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;
 - (b) documentation of training in transportation safety for the elderly and disabled, including safe vehicle operation;
 - (c) proof of insurance; and
 - (d) documentation of a clean driving record;
 - (6) any person who provides direct care who is not employed by an agency that is covered by the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC, shall provide current (within the last 6 months) proof of the caregiver's criminal history screening to the facility; the facility shall maintain and have proof of such screening readily available; and
 - (7) employers shall comply with the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC.
- [8.370.14.16 NMAC - N, 7/1/2024]

8.370.14.17 STAFF TRAINING:

- A.** Training and orientation for each new employee and volunteer that provides direct care shall include a minimum of 16 hours of supervised training prior to providing unsupervised care for residents.
 - B.** Documentation of orientation and subsequent trainings shall be kept in the personnel file at the facility.
 - C.** Training shall be provided at orientation and at least 12 hours annually, the orientation, training and proof of competency shall include:
 - (1) fire safety and evacuation training;
 - (2) first aid;
 - (3) safe food handling practices (for persons involved in food preparation), to include:
 - (a) instructions in proper storage;
 - (b) preparation and serving of food;
 - (c) safety in food handling;
 - (d) appropriate personal hygiene; and
 - (e) infectious and communicable disease control;
 - (4) confidentiality of records and resident information;
 - (5) infection control;
 - (6) resident rights;
 - (7) reporting requirements for abuse, neglect or exploitation in accordance with 8.370.9 NMAC;
 - (8) smoking policy for staff, residents and visitors;
 - (9) methods to provide quality resident care;
 - (10) emergency procedures;
 - (11) medication assistance, including the certificate of training for staff that assist with medication delivery; and
 - (12) the proper way to implement a resident ISP for staff that assist with ISPs.
 - D.** If a facility provides transportation to residents, employees of the facility who drive vehicles and transport residents shall have training in transportation safety for the elderly and disabled, including safe vehicle operation.
- [8.370.14.17 NMAC - N, 7/1/2024]

8.370.14.18 POLICIES: The facility shall have and implement written personnel policies for the following:

- A. staff, private duty attendant and volunteer qualifications;
- B. staff, private duty attendant and volunteer conduct;
- C. staff, private duty attendant and volunteer training policies;
- D. staff and private duty attendant and volunteer criminal history screening;
- E. emergency procedures;
- F. medication administration;
- G. the retention and maintenance of current and past personnel records; and
- H. facilities shall maintain records and files that reflect compliance with NM and federal employment

rules.

[8.370.14.18 NMAC - N, 7/1/2024]

8.370.14.19 STAFFING RATIOS: The following staffing levels are the minimum requirements.

A. The facility shall employ the sufficient number of staff to provide the basic care, resident assistance and the required supervision based on the assessment of the residents' needs.

(1) During resident waking hours, facilities shall have at least one direct care staff person on duty and awake at all times for each 15 residents.

(2) During resident sleeping hours, facilities with 15 or fewer residents shall have at least one direct care staff person on duty, awake and responsible for the care and supervision of the residents.

(3) During resident sleeping hours, facilities with 16 to 30 residents shall have at least one direct care staff person on duty and awake at all times and at least one additional staff person available on the premises.

(4) During resident sleeping hours, facilities with 31 to 60 residents shall have at least two direct care staff persons on duty and awake at all times and at least one additional staff person immediately available on the premises.

(5) During resident sleeping hours, facilities with more than 61 residents shall have at least three direct care staff persons on duty and awake at all times and one additional staff person immediately available on the premises for each additional 30 residents or fraction thereof in the facility.

B. Upon request of the authority, the facility shall provide the staffing ratios per each 24 hour day for the past 30 days.

[8.370.14.19 NMAC - N, 7/1/2024]

8.370.14.20 ADMISSIONS AND DISCHARGE: The facility shall complete an admission agreement for each resident. The administrator of the facility or a designee responsible for admission decisions shall meet with the resident or the resident's surrogate decision maker prior to admission. No resident shall be admitted who is below the age of eighteen (18) or for whom the facility is unable to provide appropriate care.

A. Admission agreement: The admission agreement shall include the following information:

- (1) the parties to the agreement;
- (2) the program narrative;
- (3) the facility's rules;
- (4) the cost of services and the method of payment;
- (5) the refund provision in case of death, transfer, voluntary or involuntary discharge;
- (6) information to formulate advance directives;
- (7) a written description of the legal rights of the residents translated into another language,

if necessary;

- (8) the facility's staffing ratio;
- (9) written authorization for staff to assist with medications;
- (10) notification of rights and responsibilities pursuant to the incident reporting intake,

processing and training requirements, 8.370.9 NMAC;

(11) the facility's bed hold policy; and

(12) the admission agreement may be terminated if an appropriate placement is found for the resident, under the following circumstances:

(a) there shall be a 15 day written notice of termination given to the resident or his or her surrogate decision maker, unless the resident requests the termination;

(b) the resident has failed to pay for a stay at the facility as defined in the admission agreement;

resident;
the services of the facility;
following reasons:
welfare;
endangered;

- (c) the facility ceases to operate or is no longer able to provide services to the
- (d) the resident's health has improved sufficiently and therefore no longer requires
- (e) termination without prior notice is permitted in emergency situations for the
 - (i) the transfer or discharge is necessary for the resident's safety and
 - (ii) the resident's needs cannot safely be met in the facility; or
 - (iii) the safety and health of other residents and staff in the facility are

(13) the facility shall provide a 30 day written notice to residents regarding any changes in the cost or the material services provided; a new or amended admission agreement must be executed whenever services, costs or other material terms are changed; and

(14) facilities representing their services as "specialized" must disclose evidence of staff specialty training to prospective residents.

B. Restrictions in admission: The facility shall not admit or retain individuals that require 24 hour continuous nursing care, refer to Subsection U of 8.370.14.7 NMAC definitions. This rule does not apply to hospice residents who have elected to receive the hospice benefit. Conditions or circumstances that usually require continuous nursing care may include but are not limited to the following:

- (1) ventilator dependency;
- (2) pressure sores and decubitus ulcers (stage III or IV);
- (3) intravenous therapy or injections;
- (4) any condition requiring either physical or chemical restraints;
- (5) nasogastric tubes;
- (6) tracheostomy care;
- (7) residents that present an imminent physical threat or danger to self or others;
- (8) residents whose psychological or physical condition has declined and placement in the current facility is no longer appropriate as determined by the PCP;
- (9) residents with a diagnosis that requires isolation techniques;
- (10) residents that require the use of a hooyer lift; and
- (11) ostomy (unless resident is able to provide self-care).

C. Exceptions to admission, readmission and retention: If a resident requires a greater degree of care than the facility would normally provide or is permitted to provide and the resident wishes to be re-admitted or remain in the facility and the facility wishes to re-admit or retain the resident. The facility shall comply with the following requirements.

- (1) Convene a team, comprised of:
 - (a) the facility administrator and a facility health care professional if desired;
 - (b) the resident or resident's surrogate decision maker; and
 - (c) the hospice or home health clinician.
- (2) The team shall jointly determine if the resident should be admitted, readmitted or allowed to remain in the facility. Team approval shall be in writing, signed and dated by all team members and the approval shall be maintained in the resident's record and shall:
 - (a) be based upon an individual service plan (ISP) which identifies the resident's specific needs and addresses the manner that such needs will be met;
 - (b) ensure that if the facility is licensed for more than eight residents and does not have complete fire sprinkler coverage, the facility shall maintain an evacuation rating score of prompt as determined by the fire safety equivalency system (FSSES);
 - (c) evaluate and outline how meeting the specific needs of the resident will impact the staff and the other residents; and
 - (d) include an independent advocate such as a certified ombudsman if requested by the resident, the family or the facility.
- (3) The team recommendation shall be maintained on site in the resident's file.
- (4) When a resident is discharged, the facility shall record where the resident was discharged to and what medications were released with the resident.

D. Coordination of care:

(1) Assisted living facilities shall have evidence of care coordination on an ISP for all services that are provided in the facility by an outside health care provider, such as hospice or home health providers.

(2) Residents shall be given a list of providers, including hospice and home health if applicable, and have the right to choose their provider. If applicable, the referring party shall disclose any ownership interest in a recommended or listed provider.

[8.370.14.20 NMAC - N, 7/1/2024]

8.370.14.21 RESIDENT RECORDS:

A. Record contents: A record for each resident shall be maintained in accordance with the specific requirements of this section. Entries in each resident's record shall be legible, dated and authenticated by the signature of the person making the entry. Resident records shall be readily available on site and organized utilizing a table of contents. Each resident record shall include:

- (1) the admission agreement records, as set forth in 8.370.14.20 NMAC;
- (2) the resident evaluation form, that is to be completed within 15 days prior to admission and updated at a minimum of every six months;
- (3) the current ISP, that is to be completed within 10 calendar days of admission and updated at a minimum of every six months;
- (4) the physical examination report; the physical examination report shall have been completed within the past six months, by a primary care physician, a nurse practitioner or a physician's assistant and shall be on file in the resident's record within 10 days of admission;
- (5) personal and demographic information for the resident, to include:
 - (a) current names, addresses, relationship and phone numbers of family members, or surrogate decision makers updated as necessary;
 - (b) resident's name;
 - (c) age;
 - (d) recent photograph;
 - (e) marital status;
 - (f) date of birth;
 - (g) sex;
 - (h) address prior to admission;
 - (i) religion (optional);
 - (j) personal physician;
 - (k) dentist;
 - (l) social history;
 - (m) surrogate decision maker or other emergency contact person;
 - (n) language spoken and understood;
 - (o) legal documentation relevant to commitment or guardianship status;
 - (p) current medications list; and
 - (q) required diet;
- (6) unless included in the admission agreement, a separate written agreement between the facility and the resident relating to the resident's funds, in accordance with the facility's policy and procedures;
- (7) entries by direct care staff, appropriate health care professionals and others authorized to care for the resident; entries shall be dated and signed by the person making the entry and shall include significant information related to the ISP;
- (8) entries that provide a written account of all accidents, injuries, illnesses, medical and dental appointments, any problems or improvements observed in the resident, any condition that would indicate a need for alternative placement or medical attention and entries reflecting appropriate follow-up; the maintenance of such written documentation in the resident record may be by copy of an incident or accident report, if the original incident or accident report is maintained elsewhere by the facility;
- (9) the medication assistance record (MAR); the MAR is the document that details the resident's medication; the MAR shall include all of the information pursuant to Subsection G of 8.370.14.35 NMAC of this rule;
- (10) progress notes completed by any contract agency (e.g., hospice, home health); the progress notes shall include the date, time and type of health services provided;

(11) copies of all completed and signed transfer forms from the accepting facility when a resident is transferred to a hospital or another health care facility and when the resident is transferred back to the facility; and

(12) upon the death or transfer of a resident, documentation of the disposition of the resident's personal effects and money or valuables that are deposited with the assisted living facility.

B. Resident records maintenance:

(1) Current resident records shall be maintained on-site and stored in an organized, accessible and permanent manner.

(2) The facility shall establish a policy to maintain and ensure the confidentiality of resident records, including the authorized release of information from the resident records.

(3) Non-current resident records shall be maintained by the facility against loss, destruction and unauthorized use for a period of not less than five years from the date of discharge and readily available within 24 hours of request.

(4) There shall be a policy and procedure in place for record retention in the event of facility closure.

(5) Failure to follow facility policies is grounds for sanctions.

[8.370.14.21 NMAC - N, 7/1/2024]

8.370.14.22 FACILITY REPORTS, RECORDS, RULES, POLICIES AND PROCEDURES:

A. Reports and records: Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority, residents, potential residents or their surrogate decision makers:

(1) fire inspection report;

(2) zoning approval;

(3) building official approval (certificate of occupancy);

(4) a copy of the approved building plans;

(5) a copy of the most recent survey conducted by the licensing authority, to include adverse actions or appeals and complaints;

(6) for facilities with food establishments/kitchens that require a permit from the local health authority that has jurisdiction, a copy of the current inspection report in accordance with the applicable, municipal, or federal laws and regulations and pursuant to Subsection B of 7.6.2.8 NMAC, regarding kitchen and food management; if a facility is considered a licensed private home and not required to meet specific requirements by the local health authority, a copy of that determination must also be maintained;

(7) where necessary, a copy of the liquid waste disposal and treatment system permit from the local health authority that has jurisdiction;

(8) 30 days of menus as planned, including snacks and 30 days of menus as served, including snacks;

(9) record of monthly fire drills conducted at the facility and the fire safety evaluation system (FSES) rating, if applicable;

(10) written emergency plans, policies and procedures for medical emergencies, power failure, fire or natural disaster; plans shall include evacuation, persons to be notified, emergency equipment, evacuation routes, refuge areas and the responsibilities of personnel during emergencies; plans shall also include a list of transportation resources that are immediately available to transport the residents to another location in an emergency; the emergency preparedness plan shall address two types of emergencies:

(a) an emergency that affects just the facility; and

(b) a region/area wide emergency;

(11) a copy of this rule, requirements for assisted living facilities for adults, 8.370.14 NMAC;

(12) for facilities with two or more residents (that are not related to the owner), a valid custodial drug permit issued by the NM board of pharmacy, that supervise administration and self-administration of medications or safeguards with regard to medications for the residents; and

(13) vaccination records for pets in the facility.

B. Reports and records: Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority:

(1) a copy of the facility license;

(2) employee personnel records, including an application for employment, training records and personnel actions:

- (a) caregiver criminal history screening documentation pursuant to 8.370.5 NMAC;
- (b) employee abuse registry documentation pursuant to 8.370.8 NMAC; and
- (3) a copy of all waivers or variances granted by the licensing authority.

C. Rules: Prior to admission to a facility a prospective resident or his or her representative shall be given a copy of the facility rules. Each facility shall have written rules pertaining to resident's rights and shall include the following:

- (1) resident use of tobacco and alcohol;
- (2) resident use of facility telephone or personal cell phone;
- (3) resident use of television, radio, stereo and cd;
- (4) the use and safekeeping of residents' personal property;
- (5) meal availability and times;
- (6) resident use of common areas;
- (7) accommodation of resident's pets; and
- (8) resident use of electric blankets and appliances.

D. Policies and procedures: All facilities shall have written policies and procedures covering the following areas:

- (1) actions to be taken in case of accidents or emergencies;
- (2) policy and procedure for updating and consolidating the resident's current physician or PCP orders, treatments and diet plans every six months or when a significant change occurs, such as a hospital admission;
- (3) policy for medication errors;
- (4) method of staying informed when residents are away from the facility (e.g., sign-out sheets or other record indicating where the resident will be, cell phone contact, etc.);
- (5) the handling of resident's funds, if the facility provides such services;
- (6) reporting of incidents, including abuse, neglect and misappropriation of property, injuries of unknown cause, environmental hazards and law enforcement interventions in accordance with 8.370.9 NMAC;
- (7) reporting and investigating internal complaints;
- (8) reporting and investigating complaints to the incident management bureau;
- (9) staff and resident fire and safety training;
- (10) smoking policy for staff, residents and visitors;
- (11) the facility's bed hold policy;
- (12) admission agreement;
- (13) admission records;
- (14) resident records including maintenance and record retention if the facility closes;
- (15) program narrative;
- (16) resident's rights with regard to making health care decisions and the formulation of advance directives;
- (17) personnel policies;
- (18) identifying and safeguarding resident possessions;
- (19) securing medical assistance if a resident's own physician is not available;
- (20) staff training appropriate to staff responsibilities;
- (21) staff training for employees who provide assistance to residents with boarding or alighting from motor vehicles and safe operation of motor vehicles to transport residents;
- (22) witnessed destruction of unused, outdated or recalled medication by the facility administrator with the consulting pharmacist present; and
- (23) mealtimes, daily snacks, menus, special diets, resident's personal preference for eating alone or in the dining room setting.

[8.370.14.22 NMAC - N, 7/1/2024]

8.370.14.23 PETS: Pets are permitted in a licensed facility, in accordance with the facility's rules.

A. Prohibited areas: Animals are not permitted in food processing, preparation, storage, display and serving areas, or in equipment or utensil washing areas. Guide dogs for the blind and deaf and service animals for the handicapped shall be permitted in dining areas pursuant to Subsection K of 7.6.2.9 NMAC.

B. Vaccination: Pets shall be vaccinated in accordance with all state and local requirements and records of such vaccination shall be kept on file in the facility.

[8.370.14.23 NMAC - N, 7/1/2024]

8.370.14.24 ASSISTANCE WITH DAILY LIVING: The facility shall supervise and assist the residents, as necessary, with health, hygiene and grooming needs, to include but not limited to the following:

- A. eating;
- B. dressing;
- C. oral hygiene;
- D. bathing;
- E. grooming;
- F. mobility; and
- G. toileting.

[8.370.14.24 NMAC - N, 7/1/2024]

8.370.14.25 RESIDENT EVALUATION:

A. A resident evaluation shall be completed by an appropriate staff member within 15 days prior to admission to determine the level of assistance that is needed and if the level of services required by the resident can be met by the facility.

B. The initial resident evaluation shall establish a baseline in the resident's functional status and thereafter assist with identifying resident changes. The resident evaluation shall be reviewed and updated at a minimum of every six months or when there is a significant change in the resident's health status.

C. The resident's evaluation shall be documented on a resident evaluation form and at a minimum include the following abilities, behaviors or status:

- (1) activities of daily living;
- (2) cognitive abilities; reasoning and perception; the ability to articulate thoughts, memory function or impairment, etc.;
- (3) communication and hearing; ability to communicate needs and understand instructions, etc.;

- (4) vision;
- (5) physical functioning and skeletal problems;
- (6) incontinence of bowel/bladder;
- (7) psychosocial well-being;
- (8) mood and behavior;
- (9) activity interests;
- (10) diagnoses;
- (11) health conditions;
- (12) nutritional status;
- (13) oral or dental status;
- (14) skin conditions;
- (15) medication use and level of assistance needed with medications;
- (16) special treatments and procedures or special medical needs such as hospice; and
- (17) safety needs/high risk behaviors; history of falls agitation, wandering, fire safety issues, etc.

D. The resident evaluation shall include a history and physical examination and an evaluation report by a physician or a physician extender within six months of admission. A resident shall have a medical evaluation by a physician or a physician extender at least annually.

E. The resident evaluation shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or physician extender at the time the individual service plan is reviewed, at a minimum of every six months or when a significant change in health status occurs.

[8.370.14.25 NMAC - N, 7/1/2024]

8.370.14.26 INDIVIDUAL SERVICE PLAN (ISP): An ISP shall be developed and implemented within 10 calendar days of admission for each resident residing in the facility.

A. The ISP shall address those areas of need as identified in the resident evaluation and through staff observation.

(1) The ISP shall detail the services that are provided by the facility as well as the services to be provided by other agencies.

(2) The resident evaluation and the ISP shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or a physician extender.

(3) The ISP shall be reviewed and or revised at a minimum of every six months or when there is a significant change in the resident's health status.

B. The ISP shall include the following:

(1) a description of identified needs as noted in the resident evaluation;

(2) a written description of all services to be provided;

(3) who will provide the services;

(4) when or how often the services will be provided;

(5) how the services will be provided;

(6) where the services will be provided;

(7) expected goals and outcomes of the services;

(8) documentation of the facility's determination that it is able to meet the needs of the

resident;

(9) the level of assistance that the resident will require with activities of daily living and with

medications;

(10) a crisis prevention/intervention plan when indicated by diagnosis or behavior; and

(11) current orders for all medications, including those authorized for PRN usage.

[8.370.14.26 NMAC - N, 7/1/2024]

8.370.14.27 RESIDENT ACTIVITIES: Each facility shall provide or make available recreational and social activities appropriate to the residents' abilities that meet their psychosocial needs and are relevant to their social history; including a balance of cognitive, reminiscence, physical and social activities. The facility shall post the activities and encourage residents to participate.

[8.370.14.27 NMAC – N, 7/1/2024]

8.370.14.28 PERSONAL POSSESSIONS:

A. Each resident shall be permitted to keep personal property in their possession at the facility, if it is not detrimental to the health and safety of anyone in the facility. These possessions may include, but are not limited to the following items:

(1) clothing; the facility shall ensure that each resident has his or her own clothing; residents shall be allowed and encouraged to select their daily clothing and change their clothing to suit their activities and the weather conditions;

(2) personal care items; each resident shall have his or her own personal care items such as, but not limited to, a comb, razor, hairbrush, toothbrush, toothpaste and like items.

B. The facility shall have policies and procedures for identifying and safeguarding resident possessions.

[8.370.14.28 NMAC - N, 7/1/2024]

8.370.14.29 TRANSPORTATION: The facility shall either provide transportation or assist the resident in using public transportation.

A. The facility's motor vehicle transportation assistance program shall include the following elements:

(1) resident evaluation;

(2) staff training in hazardous driving conditions;

(3) safe passenger transport and assistance;

(4) emergency procedures and use of equipment;

(5) supervised practice in the safe operation of motor vehicles, maintenance and safety

record keeping; and

(6) copies of employee training certificates that give evidence of successful completion of any applicable course(s) shall be kept on site in the employee files.

B. To assist residents in using public transportation, the facility shall provide information on bus schedules, location of bus stops and telephone numbers of taxi cab companies.

[8.370.14.29 NMAC - N, 7/1/2024]

8.370.14.30 HANDLING OF RESIDENT FUNDS:

- A. Each resident has the right to manage their personal funds in accordance with state or federal laws.
- B. If the facility agrees, the resident may entrust his or her personal funds to the facility for safekeeping and management. In such cases, the facility shall:
 - (1) have written authorization from the resident or his or her surrogate decision maker;
 - (2) maintain a written record of all financial transactions and arrangements involving the resident's funds and make this written record available upon request, to the resident, his or her surrogate decision maker and the licensing authority;
 - (3) safeguard any and all funds received from the resident in an account separate from all other funds of, or held by, the facility;
 - (4) upon written or verbal request by the resident or his or her surrogate decision maker, return to the resident all or any part of the resident's funds given to the facility for safekeeping and management, including all accrued interest if applicable; and
 - (5) upon the resident's death, will transfer all personal funds held by the facility to the resident's estate in accordance with Section 45-3-709 NMSA 1978.
- C. The facility shall not commingle the resident's funds, valuables or property with that of the licensee. Resident's funds, valuables or property shall be maintained separate, intact and free from any liability of the licensee, staff and management.
[8.370.14.30 NMAC - N, 7/1/2024]

8.370.14.31 HANDLING OF EMERGENCIES:

- A. Upon admission, each resident or surrogate decision maker shall designate a primary care practitioner (PCP) to be called in case of a medical necessity. Each resident or representative shall also designate a concerned person to be called in case of an emergency. The facility shall establish a policy to secure medical assistance if the resident's own physician is not available. In the event of an illness or an injury to the resident, the PCP or a physician extender shall be notified by the facility.
- B. The facility shall have a first aid kit that contains at a minimum, gauze, adhesive tape, antiseptic ointment and bandages for emergencies. The first aid kit shall be kept in a designated, easily accessible place within the facility.
- C. An easily accessible and functional telephone shall be available in each facility for summoning help in case of an emergency. A pay telephone does not fulfill this requirement.
- D. A list of emergency numbers including: fire department, police department, ambulance services and poison control shall be posted near each public telephone in the facility.
[8.370.14.31 NMAC - N, 7/1/2024]

8.370.14.32 REPORTING OF INCIDENTS:

- A. The facility shall insure that all suspected cases or known incidents of resident abuse, neglect or exploitation are reported in accordance with 8.370.9 NMAC.
 - (1) The facility shall also report any incident or unusual occurrence which has or could threaten the health, safety, or welfare of the residents and staff to the licensing authority complaint hotline within 24 hours or by the next business day, if it is a weekend or a holiday.
 - (2) The facility shall not delay a report to the complaint hotline while an internal investigation is conducted.
- B. The facility is responsible for conducting and documenting the investigation of all incidents within five business days and shall submit a copy of the investigation report to the licensing authority. A copy of the report and the documentation, including the date and time that it was submitted to the licensing authority, shall be maintained on file at the facility. The investigation shall include the following:
 - (1) a narrative description of the incident;
 - (2) the result of the facility's investigation shall be recorded on the state approved incident report form for the current year, pursuant to 8.370.9 NMAC; and
 - (3) plans for further actions in response to the incident.
[8.370.14.32 NMAC - N, 7/1/2024]

8.370.14.33 RESIDENT RIGHTS: All licensed facilities shall understand, protect and respect the rights of all residents.

A. Prior to admission to a facility, a resident and legal representative shall be given a written description of the legal rights of the resident, translated into another language, if necessary, to meet the resident's understanding.

B. If the resident has no legal representative and is incapable of understanding his or her legal rights, a written copy of the resident's legal rights shall be provided to the most significant responsible party in the following order:

- (1) the resident's spouse;
- (2) significant other;
- (3) any of the resident's adult children;
- (4) the resident's parents;
- (5) any relative the resident has lived with for six or more months before admission;
- (6) a person who has been caring for, or paying benefits on behalf of the resident;
- (7) a placing agency;
- (8) resident advocate; or
- (9) the ombudsman.

C. The resident rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers for the incident management hotline and for the state ombudsman program.

D. To protect resident rights, the facility shall:

- (1) treat all residents with courtesy, respect, dignity and compassion;
- (2) not discriminate in admission or services based on gender, sexual orientation, resident's age, race, religion, physical or mental disability, or nationality;
- (3) provide residents written information about all services provided by the facility and their costs and give advance written notice of any changes;
- (4) provide residents with a safe and sanitary living environment;
- (5) provide humane care for all residents;
- (6) provide the right to privacy, including privacy during medical examinations, consultations and treatment;
- (7) protect the confidentiality of the resident's medical record;
- (8) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; and privacy in the resident's own room;
- (9) protect the right to communicate privately and freely with any person, including private telephone conversations and private correspondence; and the right to receive visits from family, friends, lawyers, ombudsmen and community organizations;
- (10) prohibit the use of any and all physical and chemical restraints;
- (11) ensure that residents:
 - (a) are free from physical and emotional abuse neglect and misappropriation/or exploitation;
 - (b) are free from financial abuse and misappropriation by facility staff or management;
 - (c) are free to participate in religious, social, community and other activities and freely associate with persons in and out of the facility;
 - (d) are free to leave the facility and return without unreasonable restriction;
 - (e) are given a 15 calendar day, written notice before room transfers or discharge from the facility unless there is immediate danger to self or others in the facility;
 - (f) have an environment that fosters social interaction and avoids social isolation;
 - (g) or their surrogate decision makers, are informed of and consent to the services provided by the facility;
 - (h) have the right to voice grievances to the facility staff, public officials, the ombudsmen, any state agency, or any other person, without fear of reprisal or retaliation;
 - (i) have the right to have their complaints addressed within 14 calendar days or sooner;
 - (j) have the right to participate in the development of their care plan/ISP;
 - (k) have the right to choose a doctor, pharmacist and other health care provider(s);
 - (l) have the right to participate in medical treatment decisions and formulate advance directives such as living wills and powers of attorney;
 - (m) have the right to keep and use personal possessions without loss or damage;

- (n) have the right to manage and control their personal finances;
- (o) have the right to freely organize and participate in a resident association that may recommend changes in the facility's policies, services and management;
- (p) shall not be required to work for the facility; and
- (q) are protected from unjustified room transfers or discharge.

E. The resident's rights shall not be restricted unless this restriction is for the health and safety of the resident, agreed to by the resident or the resident's surrogate decision maker and outlined in the resident's individual service plan.

[8.370.14.33 NMAC - N, 7/1/2024]

8.370.14.34 CUSTODIAL DRUG PERMITS: A facility with two or more residents that is licensed pursuant to this rule and that assists with self-administration or safeguards medications for residents shall have a current custodial drug permit issued by the state board of pharmacy.

A. Procurement, labeling and storage: The facility shall provide assistance to the resident in obtaining the necessary medications, treatment and medical supplies as identified in the ISP. The facility shall procure, label and store medications for residents who require assistance with self-administration of medication in compliance with state and federal laws.

(1) All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as approved by the board of pharmacy and the key shall be in the care of the administrator or designee.

(2) Internal medication shall be kept separate from external medications. Drugs to be taken by mouth shall be separated from all other delivery forms.

(3) A separate, locked refrigerator shall be provided by the facility for medications. The refrigerator temperature shall be kept in compliance with the state board of pharmacy requirements for medications.

(4) All medications, including non-prescription medications, shall be stored in separate compartments for each resident and all medications shall be labeled with the resident's name.

(5) A resident may be permitted to keep his or her own medication in a locked compartment in his or her room for self-administration, if the physician's order deems it appropriate.

(6) The facility shall not require the residents to purchase medications from any pharmacy.

(7) Medical gases (oxygen) and equipment used for the administration of inhalation therapy and for resuscitative purposes shall comply with the national fire protection association (NFPA) 99.

(8) A proof of use record shall be maintained separately for each schedule II through IV drug (controlled substances). The proof of use sheet shall document:

(a) the type and strength of the schedule II through IV drugs;

(b) the date and time staff assisted with self-administration;

(c) the resident's name;

(d) the prescriber's name;

(e) the dose;

(f) the signature of the person assisting with delivery of the medication; and

(g) the balance of medication remaining.

(9) Any remaining medication discontinued by a physician's order, or upon discharge or death of the resident shall be inventoried and moved to a separate locked storage container. Such discontinued medications shall be destroyed upon the next quarterly visit by the consulting pharmacist in accordance with 16.19.11.10 NMAC.

(10) The record of medication destruction shall be signed by the administrator or designee and the pharmacist and shall be kept on file at the facility.

B. Consulting pharmacist: The facility shall maintain records demonstrating that the consulting pharmacist provides the following oversight and guidance.

(1) Reviews the medication regimen as needed, but at least quarterly/every three months, to determine that all medications and records are accurate and current. All irregularities shall be reported to the administrator of the facility and these irregularities shall be resolved by the administrator within 72 hours.

(2) A system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation.

(3) Consultation shall be provided on all aspects of pharmacy services in the facility, including reference information regarding side effects and, when needed, physician consultation in cases involving the use of psychotropic medications.

(4) The consulting pharmacist will be responsible for assuring that the facility meets all requirements for storage, labeling, destruction and documentation of medications as required by the state board of pharmacy, 16.19.11.10 NMAC and 8.370.14 NMAC.
[8.370.14.34 NMAC - N, 7/1/2024]

8.370.14.35 MEDICATIONS: Administration of medications or staff assistance with self-administration of medications shall be in accordance with state and federal laws. No medications, including over-the-counter medications, PRN (when needed) medications, or treatment shall be started, changed or discontinued by the facility without an order from the physician, physician assistant or nurse practitioner and with entry into the resident's record.

A. State board of nursing licensed or certified health care professionals are responsible for the administration of medications. Administration may only be performed by these individuals.

B. Facility staff may assist a resident with the self-administration of medications if written consent by the resident is given to the administrator of the facility or the administrator's designee. If the resident is incapable of giving consent, the surrogate decision maker named in accordance with New Mexico law may give written consent for assistance with self-administration of medications. All staff that assist with self-administration of medications shall have successfully completed a state approved assistance with self-administration of medication training program or be licensed or certified by the state board of nursing.

C. PRN (pro re nada) medication:

(1) Physician or physician extender's orders for PRN medications shall clearly indicate the circumstances in which they are to be used, the number of doses that may be given in a 24-hour period and indicate under what circumstances the primary care practitioner (PCP) is to be notified.

(2) The utilization of PRN medications shall be reviewed routinely. Frequent or escalating use of PRN medications shall be reported to the PCP.

D. Only a licensed nurse (RN or LPN) shall administer any medications or conduct any invasive procedures provided by the following routes: intravenous (IV), subcutaneous (SQ), intramuscular (IM), vaginal or rectal. Only a licensed nurse shall administer non-premixed nebulizer treatments.

E. The facility shall have medication reference material that contains information relating to drug interactions and side effects on the premises. Staff that assist in the self-administration of medications shall know interactions or possible side effects that might occur.

F. Medications prescribed for one resident shall not be used for another resident.

G. Medication assistance record (MAR): For residents who are not independent and require assistance with self-administration, the facility shall have a MAR that documents the details of the residents' medication, including PRN and over-the-counter medication that is assisted with self-administration by qualified staff or administered to the resident by licensed or certified staff. The information in the MAR shall include:

- (1) the resident's name;
- (2) any known allergies to medication that the resident has;
- (3) the name of the resident's PCP or the prescriber of the medication;
- (4) the diagnosis or reason for the medication;
- (5) the name of the medication, including the drug product brand name and the generic name;
- (6) notation if the medication is a schedule II-IV drug;
- (7) the dosage of the medication;
- (8) the strength of the medication;
- (9) the frequency or how often the medication is to be taken or given;
- (10) the route of delivery for the medication (mouth, eye, ear, other);
- (11) the method of delivery for the medication (pills, drops, IM injection, other);
- (12) the date that the medication was started or discontinued;
- (13) any change in the medication order;
- (14) pre-medication information (i.e., pulse, respiration, blood pressure, blood sugar) as required by the medication order;
- (15) the date and time that the medication is self-administered, administered with assistance or is administered;
- (16) the initials and signature of the person assisting with or administering the medication;
- (17) the desired results obtained from or problems encountered with the medication (pain relieved, allergic reaction, etc.);

- (18) any refused dose of medication;
- (19) any missed dose of medication; and
- (20) any medication error.

H. No medication shall be stopped or started without specific orders from the primary care physician.

I. If a resident refuses to take a prescribed medication, it shall be documented and the facility shall report it to the prescriber.

J. A suspected adverse reaction to a medication shall be documented on the MAR and reported immediately to the PCP and the resident's surrogate decision maker. If applicable, emergency medical treatment shall be arranged. Documentation of the event shall be kept in the resident's record.

K. Prescription medication, other than blister packs and unit dose containers, shall be kept in the original container with a pharmacy label that includes the following:

- (1) the resident's name;
- (2) the name of the medication;
- (3) the date that the prescription was issued;
- (4) the prescribed dosage and the instructions for administration of the medication; and
- (5) the name and title of the prescriber.

L. Any medication that is removed from the pharmacy container or blister pack shall be given immediately and documented by the staff that assisted with the medication delivery.

M. The facility shall report all medication errors to the physician, documentation of medication errors and the prescriber's response shall be kept in the resident's record.

N. The facility shall develop and follow a written policy for unused, outdated, or recalled medications kept in the facility in accordance with 16.19.11.10 NMAC.
[8.370.14.35 NMAC - N, 7/1/2024]

8.370.14.36 NUTRITION: The facility shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the "recommended daily dietary allowance" of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the "2005 USDA dietary guidelines for Americans." Vending machines shall not be considered a source of snacks.

A. Dietary services policies and procedures: The facility will develop and implement written policies and procedures that are maintained on the premises and that govern the following requirements.

(1) **Meal service:** The facility shall:

- (a) serve at least three meals or their equivalent each day at regular times with no more than 16 hours between the evening meal and morning meal with snacks freely available;
- (b) provide snacks of nourishing quality and post on the daily menu;
- (c) develop menus enjoyed by the residents and served at normal intervals appropriate to the residents' preferences;
- (d) post the weekly menu, including snacks where residents and families are able to view it; posted menus shall be followed and any substitution shall be of equivalent nutritional value and recorded on the posted menu; identical menus shall not be used within a one week cycle;
- (e) have special menus or meal items following guidelines from the resident's physician for residents who have medically prescribed special diets;
- (f) serve all residents in a dining room except for residents with a temporary illness, or with documented specific personal preference to have meals in their room;
- (g) allow sufficient time for meals to enable residents to eat at a leisurely pace and to socialize; and
- (h) contact the resident's PCP within 48 hours if a resident consistently refuses to eat.

(2) **Staff in-service training:** The facility shall provide an in-service training program for staff that are involved in food preparation at orientation and at least annually and that includes:

- (a) instruction in proper food storage;
- (b) preparation and serving food;
- (c) safety in food handling;
- (d) appropriate personal hygiene; and
- (e) infectious and communicable disease control.

B. Dietary records: The facility shall maintain the following documentation onsite:

- (1) a systematic record of all menus and revisions, including snacks, for a minimum of thirty (30) calendar days;
- (2) a systematic record of therapeutic diets as prescribed by a PCP;
- (3) a copy of the most recent licensing inspection and for facilities with 10 or more residents, a copy of the New Mexico environment department inspection with notations made by the facility of action taken to comply with recommendations or citations; and
- (4) a daily log of the recorded temperatures for all facility refrigerators, freezers and steam tables maintained and available for inspection for 30 calendar days.

C. Clean and sanitary conditions: All practices shall be in accordance with the standards of the state environment department, pursuant to 7.6.2 NMAC.

(1) Kitchen sanitation:

(a) Equipment and work areas shall be clean and in good repair. Surfaces with which food or beverages come into contact shall be of smooth, impervious material free of open seams, not readily corrodible and easily accessible for cleaning.

(b) Utensils shall be stored in a clean, dry place protected from contamination.

(c) The walls, ceiling and floors of all rooms that food or drink is stored, prepared or served shall be kept clean and in good repair.

(2) Washing and sanitizing kitchenware:

(a) All reusable tableware and kitchenware shall be cleaned in accordance with procedures that include separate steps for prewashing, washing, rinsing and sanitizing.

(b) Proper dishwashing procedures and techniques shall be utilized and understood by the dishwashing staff.

(c) Periodic monitoring of the operation of the detergent dispenser, washing, rinsing and sanitizing temperatures shall be performed and documented.

(d) When a dishwashing machine is utilized, the cleanliness of the machine, its jets and its thermostatic controls shall be monitored and documented by the facility. A monthly log of the recorded temperature of the dishwasher shall be maintained in the facility and available for inspection.

(3) Sinks for hand washing shall include hot and cold running water, hand-washing soap and disposable towels.

(4) All garbage and kitchen refuse that is not disposed of through a garbage disposal unit shall be kept in watertight containers with close-fitting covers and disposed of daily in a safe and sanitary manner.

(5) Cooks and food handlers shall wear clean outer garments and hair nets or caps and shall keep their hands clean at all times when engaged in handling food, drink, utensils or equipment in accordance with the local health authority. Disposable gloves shall be used in accordance with the local health authority.

D. Food management: The facility shall store, prepare, distribute and serve food under sanitary conditions and in accordance with the regulations governing food establishments of local health authority having jurisdiction.

(1) The facility shall ensure that a minimum of a three calendar day supply of perishables and a five calendar day supply of non-perishables or canned foods is available for the residents.

(2) The facility refrigerator and freezer shall have an accurate thermometer which reads within or not more than plus or minus three degrees fahrenheit of the required temperature, located in the warmest section of the refrigerator and freezer and shall be accessible and easily read.

(a) The temperature of the refrigerator shall be 35 - 41 degrees fahrenheit.

(b) Freezer temperatures shall be maintained at zero degrees fahrenheit or below.

(3) Refrigerators and freezers shall be kept clean and sanitary at all times. Food stored in refrigerators and freezers shall be covered, dated and labeled. Unused leftover food shall be discarded after three calendar days.

(4) Steam tables, hot food tables, slow cookers, crock pots and other hot food holding devices shall not be used in heating or reheating food. Hot food temperatures shall be checked periodically to insure that a minimum of 140 degrees fahrenheit is maintained.

(5) Medication, biological specimens, poisons, detergents and cleaning supplies shall not be kept in the same storage areas used for storage of foods. Medications shall not be stored in the refrigerator with food; an alternate refrigerator for medication shall be used.

(6) Canned or preserved foods shall be procured from sources that process the food under regulated quality and sanitation controls. This does not preclude the use of local fresh produce. The facility shall not use home-canned foods.

(7) Dry or staple food items shall be stored at least six inches off the floor in a ventilated room that is not subject to sewage, waste water back-flow or contamination by condensation, leakage, rodents or vermin.

(8) The facility shall ensure the following:

(a) all perishable food is refrigerated and the temperature is maintained no higher than 41 degrees fahrenheit;

(b) the temperature for all hot foods is maintained at 140 degrees fahrenheit; and

(c) all displayed or transported food is protected from environmental contamination and maintained at proper temperatures in clean containers, cabinets or serving carts.

E. Milk:

(1) Raw milk shall not be used.

(2) Condensed, evaporated, or dried milk products that are nationally recognized may be employed as “additives” in cooked food preparation but shall not be substituted or served to residents in place of milk.

F. Collateral requirements: Compliance with this rule does not relieve a facility from the responsibility of meeting more stringent municipal regulations, ordinances or other requirements of state or federal laws governing food service establishments. Local health authority having jurisdiction means municipal, county, state or federal agency(s) that have laws and regulations governing food establishments, liquid waste disposal, treatment facilities and private wells.

[8.370.14.36 NMAC - N, 7/1/2024]

8.370.14.37 LAUNDRY SERVICES:

A. General requirements: The facility shall provide laundry services for the residents, either on the premises or through a commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Staff shall handle, store, process and transport linens with care to prevent the spread of infectious and communicable disease.

(4) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas. An exterior route to the laundry room is not an acceptable alternative, unless it is completely enclosed.

(5) In new construction or newly licensed facilities with more than 15 residents, washers shall be in separate rooms from dryers. The rooms with washers shall have negative air pressure from the other facility rooms.

(6) All linens shall be changed as needed and at least weekly or when a new resident is to occupy the bed.

(7) The mattress pad, blankets and bedspread shall be laundered as needed and at least once per month or when a new resident is to occupy the bed.

(8) Bath linens consisting of hand towel, bath towel and washcloth shall be changed as needed and at least weekly.

(9) There shall be a clean, dry, well ventilated storage area provided for clean linen.

(10) Facility laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage and shall be kept in a secured room or cabinet.

B. Residents may do their own laundry, if it is their preference and they are capable of doing so, or if it is part of their skill-building for independent living and is documented as part of their ISP.

[8.370.14.37 NMAC - N, 7/1/2024]

8.370.14.38 HOUSEKEEPING SERVICES: The facility shall maintain the interior and exterior of the facility in a safe, clean, orderly and attractive manner. The facility shall be free from offensive odors, safety hazards, insects and rodents and accumulations of dirt, rubbish and dust.

A. All common living areas and all bathrooms shall be cleaned as often as necessary to maintain a clean and sanitary environment.

B. Combustibles such as cleaning rags or flammable substances shall be stored in closed metal containers in approved areas that provide adequate ventilation. Combustibles shall be stored away from the food preparation areas and away from the resident rooms.

C. Poisonous or flammable substances shall not be stored in residential areas, food preparation areas or food storage areas. If hazardous chemicals are stored on the property, material safety data sheets shall be maintained and stored in the same area as the chemicals, pursuant to state environment department requirements, 11.5.2.9 NMAC.

[8.370.14.38 NMAC - N, 7/1/2024]

8.370.14.39 SITE REQUIREMENTS: The facility shall be located and maintained free from environmental and other factors that are detrimental to the residents and staff's health, safety or welfare. The facility site shall be designed and maintained to encourage outdoor activities by the residents.

[8.370.14.39 NMAC - N, 7/1/2024]

8.370.14.40 CAPACITY OF BUILDING(S): No facility shall house more residents than the maximum bed capacity for which it is licensed.

A. Each individual building containing resident activities, services or sleeping rooms on the premises shall be separately licensed.

B. Buildings on the grounds of the licensed facility and all rooms within the licensed buildings that are used by the residents of the facility shall be subject to inspection for health and safety standards.

C. All facilities shall comply with the state building code and fire codes, pursuant to 14.7 NMAC.

(1) Facilities with 16 residents or fewer are classified as "group R."

(2) Facilities with more than 16 residents are classified as "group I-1."

(3) Facilities with more than five residents who are not capable of self-preservation are classified as "group I-2."

D. Facilities shall provide separate sleeping quarters for male and female residents unless they are married or the arrangement is consensual.

[8.370.14.40 NMAC - N, 7/1/2024]

8.370.14.41 BUILDING CONSTRUCTION: All building construction shall be based upon the facility occupancy in accordance with the state building code and fire codes, pursuant to 14.7 NMAC.

A. New facilities: All new facilities, relocated into existing building(s) or remodeled facilities shall conform to the current edition of the state building code, accessibility code, mechanical code, plumbing code, fire code and the electrical code.

(1) With regard to building height, allowable area or construction type, the state building code shall prevail.

(2) Minimum construction requirements shall comply with all applicable state building codes.

(3) A facility may share a building with another health care facility licensed by the authority or other suitable facility with prior approval from the licensing authority.

(4) Where there are conflicts between the requirements in the codes and the provisions of this rule, the most restrictive condition shall apply.

B. Access for persons with disabilities; Facilities with four or more residents shall provide accessibility to residents with disabilities in accordance with the state building code and the American Disabilities Act. Areas of specific concern are as follows:

(1) the main entry into the facility and all required exits shall provide access to persons with disabilities;

(2) the building shall allow access to persons with disabilities to all common areas;

(3) at least one bedroom, for every eight residents, shall have a door clearance of 36 inches for access by persons with disabilities;

(4) at least one toilet and bathing facility, for every eight residents, shall have a minimum door clearance of 36 inches for access by persons with disabilities; this toilet and bathing room shall provide a minimum 60 inch diameter clear space to accommodate the turning radius of a wheelchair;

(5) when ramps are used, each ramp shall have a minimum slope of 12 inches horizontal run for each one inch of vertical rise; ramps exceeding a six inch rise shall be provided with handrails on both sides of the ramp;

- (6) landings at doorways shall have a level area, at a minimum of five feet by five feet, to provide clear space for wheelchair maneuvering;
- (7) parking spaces shall provide access aisles with a minimum width of 60 inches and 96 inches for van parking; a minimum of one van-accessible parking space with a minimum width of 96 inches shall be provided;
- (8) an accessible route for persons with disabilities from the parking area to the main entrance(s) shall be provided; and
- (9) changes in elevation of one half inch or greater shall be sloped to a minimum of 12 inches horizontal run for each one inch of vertical rise.

C. Construction drawings: Prior to commencement of all new construction, remodeling, relocations, additions or renovations to existing buildings; the facility shall submit preliminary plans and final construction drawings with specifications to the licensing authority for review and approval.

- (1) Building plans and specifications shall be submitted and approved by the authority when:
 - (a) construction for a new facility is proposed;
 - (b) a building that has not previously licensed as a facility is proposed as a location for a facility;
 - (c) any renovation that increases the number of beds is proposed;
 - (d) any addition to an existing structure is proposed; or
 - (e) any renovation to the existing structure is proposed, regardless of the size of the facility.

- (2) The codes that are in effect at the time of the submittal of building plans shall be the codes used through the end of the project.

- (3) Drawings and specifications shall be prepared for the architectural, structural, mechanical and electrical branches of work for each construction project and shall include the following:

- (a) **the site plan(s)** showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;
- (b) **the floor plan(s)** showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;
- (c) **the separate life safety plans** showing the fire and smoke compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units, all fire and smoke walls shall be graphically coded;
- (d) the exterior elevation of each facade;
- (e) the typical sections throughout the building;
- (f) the schedule of finishes;
- (g) the schedule of doors and windows;
- (h) the roof plans; and
- (i) the building code analysis.

- (4) **For facilities with more than 15 residents:** architectural drawings shall be stamped, signed and dated by a licensed architect registered in New Mexico. In addition to items listed in section (3) above, the drawings shall include the following:

- (a) the building code analysis; and
 - (b) when an elevator is required, the details and dimensions of the elevator.
- (5) **Structural drawings** shall include the following:
 - (a) a certification that all structural design and work are in compliance with all applicable local codes;
 - (b) the plans of foundations, floors, roofs and intermediate levels that show a complete design with sizes, sections and the relative location of the various members; and
 - (c) the schedules of beams, girders and columns.

- (6) **Mechanical drawings** shall include the following:
 - (a) a certification that all mechanical work and equipment are in compliance with all applicable local codes and laws and that all materials are listed by recognized testing laboratories;
 - (b) the water supply, sewage and heating, ventilation and air conditioning piping systems;
 - (c) the heating, ventilating, HVAC piping and air conditioning systems with all related piping and auxiliaries, if any, to provide a satisfactory installation;

(d) the water supply, sewage and drainage with all lines, risers, catch-basins, manholes and cleanouts clearly indicated as to location, size, capacities and location and dimensions of septic tank and disposal field;

(e) the sprinkler head layout; and

(f) the graphic coding (with a legend) to show supply, return and exhaust systems.

(7) **Electrical drawings** shall include the following:

(a) a certification that all electrical work and equipment are in compliance with all applicable local codes and laws and that all materials are currently listed by recognized testing laboratories;

(b) all electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current and transformers when located within the building;

(c) a fixture legend; and

(d) a graphic coding (with a legend) to show all items on emergency power.

(8) Include additional information as needed and requested by the licensing authority.

(9) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules, legends and have all rooms labeled. The working drawings and specifications shall be complete and adequate for contract purposes.

(10) One set of final plans shall be submitted to the licensing authority for review and approval prior to the commencing of construction. All construction shall be executed in accordance with the approved final plans and specifications.

(11) Review and approval of building plans by the licensing authority does not eliminate responsibility of the applicant to comply with all applicable laws, rules and ordinances.

(12) The final approval of building plans and specifications shall be acknowledged in writing by the licensing authority.

(13) The approved building plans shall be kept at the facility and readily available at all times.

D. Fire resistance: Required building construction and fire resistance shall be in accordance with the state building code and the fire code. Facilities with nine or more residents shall be protected throughout by an approved automatic fire protection (sprinkler) system.

E. Prohibition of mobile homes: For facilities with four or more residents, trailers and mobile homes shall not be used.

F. Construction: Construction shall commence within 180 calendar days of the date of receipt of approval (unless a written extension is requested by the facility and approved by authority). This approval shall in no way permit or authorize any omission or deviation from the requirements of any restrictions, laws, ordinances, codes or standards of any regulatory agency.

[8.370.14.41 NMAC - N, 7/1/2024]

8.370.14.42 MAINTENANCE OF BUILDING AND GROUNDS: The building(s) shall be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following areas:

A. Storage areas/grounds: Storage areas and grounds shall be maintained in a safe, sanitary and presentable condition at all times. Storage areas and grounds shall be kept free from accumulation of refuse, weeds, discarded furniture, old newspapers or other items that create a fire hazard.

B. Floors: Floors shall be maintained stable, firm and free of tripping hazards.
[8.370.14.42 NMAC - N, 7/1/2024]

8.370.14.43 HAZARDOUS AREAS: Hazardous areas include: Fuel fired equipment rooms (not a typical residential kitchen), bulk laundries or laundry rooms with more than 100 sq. ft., storage rooms more than 50 sq. ft. but less than 100 sq. ft. not storing combustibles, storage rooms with more than 100 sq. ft. storing combustibles, chemical storage rooms with more than 50 sq. ft., garages and maintenance shops/rooms.

A. Hazardous areas on the same floor as, and in or abutting, a primary means of escape or a sleeping room shall be protected by either:

(1) an enclosure of at least one hour fire rating with self-closing or automatic closing on smoke detection fire doors having a three-quarter of an hour rating; or

(2) an automatic fire protection (sprinkler) and separation of hazardous area with self-closing doors or doors with automatic-closing on smoke detection; or

(3) other hazardous areas shall be enclosed with walls with at least a 20 minute fire rating and doors equivalent to one and three-quarter inches solid bonded wood core, operated by self-closures or automatic closing on smoke detection.

B. Boiler, furnace or fuel fired water heater rooms: For facilities with four or more residents: all boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be one and three-quarter inches solid core.

[8.370.14.43 NMAC - N, 7/1/2024]

8.370.14.44 HEATING, AIR-CONDITIONING AND VENTILATION:

A. Heating, air-conditioning, piping, boilers and ventilation equipment shall be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes. All facilities shall have documentation that fuel-fire heating systems have been checked, tested and maintained annually by qualified personnel.

B. The heating method used by the facility shall provide a minimum temperature of 70 degrees fahrenheit, measured at three feet above the floor, in all rooms used by the residents.

C. No open-face gas or electric heater nor unprotected single shell gas or electric heating device shall be used for heating the facility. Portable heating units shall not be used for heating the facility. All heating appliances shall be permanently anchored and kept away from flammables such as curtains, bedcovering, trash containers, or clothing. No heating appliance shall be located where the unit or wiring is a tripping hazard or presents danger from electrical shock.

D. Fireplaces and open flame heating shall not be utilized in sleeping rooms.

E. Gas fired water heaters shall not be located in sleeping rooms, bathrooms, or rooms opening into sleeping rooms.

F. The facility shall be adequately ventilated at all times to provide fresh air and the control of unpleasant odors by either mechanical or natural means.

G. All openings to the outside air used for ventilation shall be screened for the control of insects and rodents. Screen doors shall be equipped with self-closing devices.

H. The facility shall have a system for maintaining the residents comfort during periods of hot weather. Fans shall not be located where the unit or wiring is a tripping hazard. Fans shall be provided with protective shields when there is a potential for contact by any individual.

[8.370.14.44 NMAC - N, 7/1/2024]

8.370.14.45 WATER: Pursuant to the current New Mexico drinking water requirements:

A. The water supply system shall be constructed, protected, operated and maintained in conformance with applicable local, state and federal laws, ordinances and regulations.

B. Where a facility is supplied by its own water system, the system shall meet the sampling and construction requirement of a non-community water system as defined by the current New Mexico drinking water requirements.

C. All water that is not piped into the facility directly from a public water supply system shall be from an approved source, disinfected, transported, handled, stored and dispensed in a sanitary manner. Such water shall be prevented from entering potable water systems by appropriate cross connection and backflow prevention devices.

D. Hot and cold running water, under pressure shall be provided in all areas where food is prepared and where equipment and utensils are washed, sinks, lavatories, washrooms and laundries.

E. The hot water temperature that is accessible to residents shall be maintained at a minimum of 95 degrees fahrenheit and a maximum of 110 degrees fahrenheit. Hot water in excess of 110 degrees fahrenheit is permitted in kitchen and laundry areas, provided that residents are supervised in order to prevent injury.

[8.370.14.45 NMAC - N, 7/1/2024]

8.370.14.46 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes shall be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the system that is used shall be inspected and approved by the state environmental authority, pursuant to 20.7.3 NMAC, prior to licensure.

C. Where municipal or community garbage collection and disposal service are not available, the method of collection, storage and disposal of garbage used by the facility shall be environmentally safe and sound and not create an objectionable environment and be in accordance with state environmental authority, pursuant to 20.9.2 NMAC.

[8.370.14.46 NMAC - N, 7/1/2024]

8.370.14.47 LIGHTING AND LIGHTING FIXTURES:

A. All areas of the facility, including storerooms, stairways, hallways, and interior and exterior entrances shall be lighted to make the area clearly visible.

B. Exits, exit-access ways and other areas used at night by residents and staff shall be illuminated by night lights or other continuous lighting.

C. Lighting fixtures shall be selected and located to accommodate the needs and activities of the residents, with the comfort and convenience of the residents in mind.

D. Lamps and lighting fixtures shall be shaded to prevent glare to the eyes of residents and staff, and protected from accidental breakage or shattering.

E. Facilities with four or more residents shall have emergency lighting to light exit passageways and the exterior area near the exits that activates automatically upon disruption of electrical service.

F. Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.

[8.370.14.47 NMAC - N, 7/1/2024]

8.370.14.48 ELECTRICAL SYSTEM:

A. All fuse and breaker boxes shall be labeled to indicate the area of the facility to which each fuse or circuit breaker provides service.

B. All staff personnel of the facility shall know the location of the electrical disconnect switch and how to operate it in case of emergency.

C. Electrical cords and appliances shall be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Extension cords shall not be used. The use of a multi-socket united laboratories approved

(U/L APPROVED) surge protector with integrated circuit breaker no greater than six feet in length is permitted for the intended purpose and not as an extension cord.

[8.370.14.48 NMAC - N, 7/1/2024]

8.370.14.49 DOORS:

A. No door in any means of egress shall be locked against egress when the building is occupied.

(1) Exit doors may be provided with a night latch, dead bolt, or security chain, provided these devices are operable from the inside, by any occupant, without the use of a key, tool, or any special knowledge and are mounted at a height not to exceed 48 inches above the finished floor.

(2) If locks are not readily operable by all occupants within the building, the locks must:

(a) unlock upon activation of the fire detection or sprinkler system; and

(b) unlock upon loss of power in the facility. Prior to installing such locking

devices, the facility shall have written approval from the building, fire and licensing authorities having jurisdiction.

B. All exit doors shall have a minimum width of 36 inches.

(1) Facilities with a capacity of 10 or more residents shall have exit doors leading to the outside of the facility that open outward.

(2) Facilities with a capacity of 50 or more residents must provide panic hardware at the exit doors.

(3) No door or path of travel to a means of egress shall be less than 28 inches wide.

C. All resident sleeping room doors must be at least one and three-quarters inches solid core construction.

D. Bathroom doors may be 24 inches wide. Facilities with four or more residents shall have at least one bathroom for every eight residents with a door clearance of 36 inches for access by persons with disabilities.

E. Locks on doors to toilet rooms and bathrooms shall be capable of release from the outside.

F. All doors shall readily open from the inside.

G. Doors shall be provided for all resident sleeping rooms, all restrooms and all bathrooms.

[8.370.14.49 NMAC - N, 7/1/2024]

8.370.14.50 EXITS:

- A. The facility shall have at least two approved exits, that do not involve windows and which are remote from each other.
 - B. Facilities with 10 or more residents shall have each exit clearly marked with lighted signs having letters at least six inches high and at least three-quarters of an inch wide. Exit signs shall be visible at all times.
 - C. Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.
 - D. Exits shall be clear of obstructions at all times.
 - E. Exits, exit paths, or means of egress shall not pass through hazardous areas, garages, storerooms, closets, utility rooms, laundry rooms, bedrooms, or spaces subject to locking.
 - F. For facilities with four or more residents, sliding doors are not acceptable as a required exit.
- EXCEPTION: Assisted living facilities with three or fewer residents may have sliding doors as required exits.
- G. When the yard gate(s) is part of the exit access and is locked, the gate shall be connected to the fire protection system and release upon activation of the fire/smoke system or shall have the ability to be unlocked at the gate site.

[8.370.14.50 NMAC - N, 7/1/2024]

8.370.14.51 SEPARATION OF SLEEPING ROOMS:

- A. All sleeping rooms shall be separated from escape route corridors by walls and doors that are smoke resistant. There shall be no passages, louvers, or transfer grills penetrating the wall to other spaces in the building.
- B. All sleeping rooms shall be provided latches suitable for keeping the doors closed.
- C. Every sleeping room shall have access to a primary means of escape that provides a path to the exterior, without exposure to unprotected vertical openings. Where sleeping rooms are above or below the level of exit discharge, the primary means of escape shall be:
 - (1) an enclosed interior stair; or
 - (2) an exterior stair; or
 - (3) a horizontal exit; or
 - (4) an existing approved fire escape stair.
- D. Every sleeping room shall provide a secondary means of escape which may be any one of the following:
 - (1) a door leading directly to the outside, at or to grade level;
 - (2) a door, stairway, passage or hall remote from the primary escape and to the exterior; or
 - (3) an outside window or door, operable without tools from the inside with a minimum clear opening measured 20 inches wide, measured 24 inches high; the distance of the bottom of the opening from the floor is a maximum of 44 inches; this means of escape is acceptable if the bottom of the window is no more than 20 feet above grade or is accessible by fire department rescue apparatus, approved by the authority having jurisdiction, or it opens onto an exterior balcony; and
 - (4) bars, grills, grates or similar devices that are installed on emergency escape or rescue windows or doors shall be equipped with release mechanisms which are operable from the inside without the use of a key or special knowledge or effort.
- E. Stairways and other vertical openings between floors shall be enclosed with construction to provide a smoke and fire resistance rating of not less than 20 minutes. Open stairways between floors shall not be permitted.

[8.370.14.51 NMAC - N, 7/1/2024]

8.370.14.52 CORRIDORS:

- A. Corridors in an existing building shall have a minimum width of 36 inches. Corridors in newly constructed facilities shall have a minimum width of 44 inches.
- B. Corridors shall have a clear ceiling height of not less than seven feet measured to the lowest projection from the ceiling.
- C. Corridors shall be maintained clear and free of obstructions at all times.
- D. The floors of corridors and hallways shall be waterproof, greaseproof, smooth, slip-resistant and durable.

[8.370.14.52 NMAC - N, 7/1/2024]

8.370.14.53 MINIMUM ROOM DIMENSIONS:

A. All habitable rooms in a facility shall have a ceiling height of not less than seven feet six inches. Kitchens, halls, bathrooms and toilet compartments shall have a ceiling height of not less than seven feet.

B. Any room with sloped ceiling where any portion of the room is less than seven feet in height is subject to review and approval or disapproval by the licensing authority.

[8.370.14.53 NMAC - N, 7/1/2024]

8.370.14.54 RESIDENT ROOMS:

A. The facility's bed capacity shall not exceed the capacity approved by the licensing authority.

B. Each resident room shall have an outside room with a window. The area of the outdoor window shall be at least one tenth of the floor area of the room.

C. Resident rooms shall not be less than seven feet wide in any horizontal dimension.

D. There must be no through traffic in resident rooms. Resident rooms must connect directly to other internal common areas of the facility.

E. The window shades, drapes, curtains, or blinds in the resident rooms shall be in good repair and of flame-retardant materials.

F. Resident rooms may be private or semi-private. Semi-private rooms may not house more than two residents.

(1) Private rooms shall have a minimum of 100 square feet of floor area. The closet and locker area shall not be counted as part of the available floor space.

(2) Semi-private rooms shall have a minimum of 80 square feet of floor area for each bed and shall be furnished in such a manner that the room is not crowded and passage out of the room is not obstructed. A separate closet for each resident shall be provided. The closet and locker area shall not be counted as part of the available floor space. The beds shall be spaced at least three feet apart.

G. If a resident chooses not to bring their own furnishings to the facility; each resident room shall be provided with, as a minimum, the following furnishings per resident:

(1) a bed that shall be at least 36 inches wide, of sturdy construction and in good repair;

(2) each bed shall be provided with a clean, comfortable mattress of at least four inches in thickness, which is waterproof, or protected with a waterproof covering and a mattress pad;

(3) each bed shall be provided with a clean, comfortable pillow;

(4) each bed shall be provided with a pillow case, two clean sheets, blankets and a bedspread appropriate for the weather and the climate;

(5) an individual closet or closet area with a clothes rack for hanging clothes and shelves or drawers that are accessible to the resident;

(6) a dresser with drawers;

(7) a bedside table or desk;

(8) a chair;

(9) a reading lamp; and

(10) a mirror.

[8.370.14.54 NMAC - N, 7/1/2024]

8.370.14.55 TOILET AND BATHING FACILITIES: Toilet and bathing facilities shall be located appropriately to meet the needs of residents.

A. A minimum of one toilet, one sink and one bathing unit shall be provided for every eight residents or fraction thereof.

(1) The facility shall provide at least one tub and one shower or combination unit to allow for residents bathing preference.

(2) Facilities with four or more residents shall provide a handicap accessible bathroom for every thirty (30) residents that allows for a bathing preference.

B. Facilities with four or more residents must comply with accessibility requirements for the disabled.

C. Toilet, sink and bathing facilities shall be readily available to the residents. No passage through a resident room by another resident to reach a toilet, bathing unit or sink facility shall be permitted.

D. The combination type tub and shower shall be permitted.

- E.** A facility with four or more residents that has live-in staff shall provide a separate toilet, sink and bathing facility for staff.
 - F.** Toilets, tubs and showers shall be provided with grab bars.
 - G.** Tub and showers shall have a slip resistant surface.
 - H.** The floors of bathrooms and bathing facilities shall have smooth, waterproof and slip-resistant surfaces.
 - I.** Toilet paper and soap shall be provided in each toilet room.
 - J.** The use of a common towel shall be prohibited.
 - K.** Bathrooms and lavatories shall be cleaned as often as necessary to maintain a clean and sanitary condition.
- [8.370.14.55 NMAC - N, 7/1/2024]

8.370.14.56 LIVING OR MULTIPURPOSE ROOM: The facility shall provide a minimum of 40 square feet per resident for common living, dining and social spaces.

A. The facility shall have a living or multipurpose room for the use of the residents. Such rooms shall be provided with reading lamps, tables and chairs or couches. These furnishings shall be well constructed, comfortable and in good repair.

B. The living room or multipurpose rooms shall be provided with supplies to meet the varied interests and needs of the residents.

C. Each activity room shall have a window area of at least one tenth of the floor area with a minimum of at least ten square feet.

[8.370.14.56 NMAC - N, 7/1/2024]

8.370.14.57 MEETING ROOM: The facility shall have adequate meeting rooms and office space for use by staff and the interdisciplinary care team. Other rooms may serve as meeting rooms, provided resident confidentiality is maintained.

[8.370.14.57 NMAC - N, 7/1/2024]

8.370.14.58 DINING AREA:

A. A dining area shall be provided for meals. Each dining area shall be designed and have furnishings to meet the individual needs of the residents.

(1) Facilities with 60 or fewer residents shall have tables and chairs in the dining area to accommodate the total number of residents in one sitting.

(2) Facilities with more than 60 residents shall provide seating for at least 60 residents at one time, but may serve meals in shifts to accommodate the total capacity of the facility.

(a) No more than three shifts are permitted for each meal.

(b) Facilities with more than 60 residents and serving meals in shifts must have other social areas for residents to congregate during the meal service.

(c) All seating arrangements during meals shall allow clear access to the exits.

B. The living or multi-purpose room may be used as a dining area if the dining area portion does not exceed fifty percent of the available floor space and still allows a comfortable arrangement of the necessary furnishings for a living area.

[8.370.14.58 NMAC - N, 7/1/2024]

8.370.14.59 WINDOWS:

A. Each sleeping room shall be provided with an exterior window.

(1) The window shall be operable, screened and have a clear operable area of 5.7 square feet minimum; measured 20 inches wide minimum and measured 24 inches high minimum.

(2) The top of the window sill shall not be more than 44 inches above the finished floor.

B. Screens shall be provided on all operable windows.

C. The proposed use of bars, grilles, grates or similar devices shall be reviewed and approved by the licensing authority prior to installation.

D. Sleeping rooms, living rooms, activity room areas and dining room areas shall have a window area of at least one tenth of the floor area with a minimum of 10 square feet.

[8.370.14.59 NMAC - N, 7/1/2024]

8.370.14.60 FIRE CLEARANCE AND INSPECTIONS:

A. Written documentation of a facility's compliance with applicable fire prevention codes shall be obtained from the state fire marshal's office or the fire prevention authority with jurisdiction and shall be submitted to the licensing authority prior to the issuance of an initial license.

B. The facility shall request an annual fire inspection from the local fire prevention authorities. If the policy of the local fire department does not provide an annual inspection of the facility, the facility will document the date the request was made and to whom and then contact licensing authorities. If the local fire prevention authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.

[8.370.14.60 NMAC - N, 7/1/2024]

8.370.14.61 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:

A. Fire alarm system. Facilities with four or more residents shall have a manual fire alarm system. The manual fire alarm shall be inspected and approved in writing by the fire authority with jurisdiction.

B. Smoke and heat detection. Approved smoke detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas. Areas of assembly, such as the dining and living room(s) must also be provided with smoke detectors.

(1) Detectors shall be powered by the house electrical service and have battery backup.

(2) Construction of new facilities or facilities remodeling or replacing existing smoke detectors shall provide detectors in common living areas and in each sleeping room.

(3) Smoke detectors shall be installed in corridors at no more than 30 foot spacing.

(4) Heat detectors shall be installed in all kitchens and also powered by the house electrical service.

[8.370.14.61 NMAC - N, 7/1/2024]

8.370.14.62 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM: Facilities with nine or more residents shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable.

[8.370.14.62 NMAC - N, 7/1/2024]

8.370.14.63 FIRE EXTINGUISHERS: Fire extinguisher(s) must be located in the facility, as approved by the state fire marshal or the fire prevention authority with jurisdiction.

A. Facilities must as a minimum have two 2A10BC fire extinguishers:

(1) one extinguisher located in the kitchen or food preparation area;

(2) one extinguisher centrally located in the facility;

(3) all fire extinguishers shall be inspected yearly and recharged as needed; all fire extinguishers must be tagged noting the date of the inspection;

(4) the maximum distance between fire extinguishers shall be 50 feet.

B. Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

[8.370.14.63 NMAC - N, 7/1/2024]

8.370.14.64 FIRE SAFETY EQUIVALENCY SYSTEM RATING: In facilities without a sprinkler system; the fire safety equivalency system shall be conducted at least annually. The facility shall maintain an evacuation rating score of prompt when a fire safety equivalency system is required.

[8.370.14.64 NMAC - N, 7/1/2024]

8.370.14.65 FIRE DRILLS: All facilities shall conduct monthly fire drills which are to be documented.

A. There shall be at least one documented fire drill per month and at a minimum, one documented fire drill each eight hours (day, evening, night) per quarter that employs the use of the fire alarm system or the detector system in the facility.

B. A record of the monthly fire drills shall be maintained on file in the facility and readily available. Fire drill records shall show:

(1) the date of the drill;

(2) the time of the drill;

(3) the number of staff participating in the drill;

- (4) any problem noted during the drill; and
- (5) the evacuation time in total minutes.

C. If applicable, the local fire department may be requested to supervise and participate in fire drills.
[8.370.14.65 NMAC - N, 7/1/2024]

8.370.14.66 STAFF AND RESIDENT FIRE AND SAFETY TRAINING:

A. All staff of the facility shall know the location and the proper use of fire extinguishers and the other procedures to be followed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instructions in the use of fire prevention and techniques of evacuation.

B. Facility staff shall be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit-ways and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

C. Each new resident admitted to the facility shall be given an orientation tour of the facility to include the location of the exits, fire extinguishers and telephones and shall be instructed in the actions to be taken in case of fire or other emergencies.

D. **Fire drill procedures:** The facility must conduct at least one fire drill each month.

(1) Fire drills shall be held at different times of the day, evening and night.

(2) The fire alarm system or detector system in the facility shall be used in the fire drills. During the night, the fire drill alarm may be silenced.

(3) During the fire drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of the conducted fire drills shall be maintained on file in the facility. The record shall show the date and time of the drill, the number of personnel participating in the drill, any problem(s) noted during the drill and the evacuation time in total minutes.

(5) The local fire department may be requested to supervise and participate in the fire drills.

[8.370.14.66 NMAC - N, 7/1/2024]

8.370.14.67 SMOKING:

A. Smoking by residents and staff shall take place only in supervised areas designated by the facility and approved by the state fire marshal or local fire prevention authorities. Smoking shall not be allowed in a kitchen or food preparation area.

B. All designated smoking areas shall be provided with suitable ashtrays that are not made of combustible material.

C. Residents shall not be permitted to smoke in bed.

D. Smoking shall not be permitted where oxygen is in use, is present or is stored.

[8.370.14.67 NMAC - N, 7/1/2024]

8.370.14.68 HOSPICE: An assisted living facility that provides or coordinates hospice care and services shall meet the requirements in this section, in addition to the rules applicable to all assisted living facilities, 8.370.14 NMAC.

A. **Definitions:** in addition to the requirements for all assisted living facilities pursuant to “definitions,” 8.370.14.7 NMAC, the following definitions shall also apply.

(1) **“Hospice agency”** means an organization, company, for-profit or non-profit corporation or any other entity which provides a coordinated program of palliative and supportive services for physical, psychological, social and the option of spiritual care of terminally ill people and their families. The services are provided by a medically directed interdisciplinary team in the person's home and the agency is required to be licensed pursuant to 8.370.19 NMAC.

(2) **“Hospice care”** means a focus on palliative, rather than curative care. The goal of the plan of care is to help the patient live as comfortably as possible, with emphasis on eliminating or decreasing pain and other uncomfortable symptoms.

(3) **“Licensed assisted living provider”** means a facility that provides 24 hour assisted living and is licensed by the health care authority.

(4) **“Hospice services”** means a program of palliative and supportive services which provides physical, psychological, social and spiritual care for terminally ill patients and their family members.

(5) **“Care coordination requirements”** means a written document that outlines the care and services to be provided by the hospice agency for assisted living residents that require hospice services.

(6) **“Palliative care”** means a form of medical care or treatment that is intended to reduce the severity of disease symptoms, rather than to reverse progression of the disease itself or provide a cure.

(7) **“Terminally ill”** means a diagnosis by a physician for a patient with a prognosis of six (6) months or less to live.

(8) **“Visit notes”** means the documentation of the services provided for hospice residents and includes ongoing care coordination.

B. Employee training and support: A facility that provides hospice services shall provide the following education and training for employees who assist with providing these services:

(1) provide a minimum of six hours per year of palliative/hospice care training, which includes one hour specific to the hospice resident’s ISP, in addition to the basic staff education requirements pursuant to 8.370.14.17 NMAC; and

(2) offer an ongoing employee psychological support program for end of life care issues.

C. Individual service plan (ISP) requirements:

(1) Each resident who receives hospice services shall be provided the necessary palliative care to meet the individual resident’s needs as outlined in the ISP and shall include one hour of training specific to the resident for all direct care staff.

(2) The assisted living facility, in coordination with the hospice provider, shall create an ISP that identifies how the resident’s needs are met and includes the following:

(a) the requirements set forth in the “individual service plan,” 8.370.14.26 NMAC, and “Exceptions to admission, readmission and retention,” Subsection C of 8.370.14.20 NMAC;

(b) what services are to be provided;

(c) who will provide the services;

(d) how the services will be provided;

(e) a delineation of the role(s) of the hospice provider and the assisted living facility in the ISP process;

(f) documentation (visit notes) of the care and services that are provided with the signature of the person who provided the care and services; and

(g) a list of the current medications or biologicals that the resident receives and who is authorized to administer them.

(3) Medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance or administered by the following individuals:

(a) a physician;

(b) a physician extender (PA or NP);

(c) a licensed nurse (RN or LPN);

(d) the resident if their PCP has approved it;

(e) family or family designee; and

(f) any other individual in accordance with applicable state and local laws.

D. Care coordination.

(1) The assisted living facility shall be knowledgeable with regard to the hospice requirements pursuant to 8.370.19 NMAC and ensure that the hospice agency is well informed with regard to the assisted living provisions pursuant to Subsection C of 8.370.14.20 NMAC.

(2) The assisted living facility shall hold a team meeting prior to accepting or retaining a hospice resident in accordance with “exceptions to admission, readmission and retention,” Subsection C of 8.370.14.20 NMAC.

(3) Upon admission of a resident into hospice care, the assisted living facility shall designate a section of the resident’s record for hospice documentation.

(a) The facility shall provide individual records for each resident.

(b) The hospice agency shall leave documentation at the facility in the designated section of the resident’s record.

(4) The assisted living facility shall provide the resident and family or surrogate decision maker with information on palliative care and shall support the resident’s freedom of choice with regard to decisions.

(5) Hospice services shall be available 24 hours a day, seven days a week for hospice residents, families and facility staff and may include continuous nursing care for hospice residents as needed. These services shall be delivered in accordance with the resident’s individual service plan (ISP) and pursuant to 8.370.14.26 NMAC.

- (6) The assisted living facility shall ensure the coordination of services with the hospice agency.
 - (a) The resident's individual service plan (ISP) shall be updated with significant changes in the resident's condition and care needs.
 - (b) The assisted living facility shall receive information and communication from the hospice staff at each visit.
 - (i) The information shall include the resident status and any changes in the ISP (i.e., medication changes, etc.).
 - (ii) The information shall be in the form of a verbal report to the assisted living facility staff and also in the form of written documentation.
 - (c) The assisted living facility or the family/resident shall reserve the right to schedule care conferences as the needs of the resident and family dictate. The care conferences shall include all care team members.
 - (d) Concerns that arise with regard to the delivery of services from either the assisted living facility or the hospice agency shall first be addressed with the facility administrator and the hospice agency administrator.
 - (i) The process may be informal or formal depending on the nature of the issue.
 - (ii) If an issue cannot be resolved or if there is an immediate danger to the resident the appropriate authority shall be notified.

E. Additional provisions: An assisted living facility that provides or coordinates hospice care and services shall make additional provisions for the following requirements:

- (1) **individual services and care:** each resident receiving hospice services shall be provided the necessary palliative procedures to meet individual needs as defined in the ISP;
- (2) **private visiting space:**
 - (a) physical space for private family visits;
 - (b) accommodations for family members to remain with the patient throughout the night; and
 - (c) accommodations for family privacy after a resident's death.

F. Medicare and Medicaid restrictions: Assisted living facilities shall not accept a resident considered "hospice general inpatient" which would be billable to medicare or medicaid because the facility will not qualify for payment by medicare or medicaid.

[8.370.14.68 NMAC - N, 7/1/2024]

8.370.14.69 MEMORY CARE UNITS: An assisted living facility that provides a memory care unit to serve residents with dementia shall comply with the provisions of subsection A-J below in addition to the rules applicable to all assisted living facilities, 8.370.14 NMAC.

A. Additional definitions: The following definitions, in addition to those in 8.370.14.7 NMAC, shall apply.

- (1) **"Alzheimer's"** means a brain disorder that destroys brain cells, causing problems with memory, thinking and behavior that are severe enough to affect work, lifelong hobbies or social life. Alzheimer's gets progressively worse and is fatal.
- (2) **"Care coordination agreement requirement"** means a written document that outlines the care and services that are provided by other outside agencies for assisted living residents that require additional care and services.
- (3) **"Dementia"** means loss of memory and other mental abilities severe enough to interfere with daily life. It is caused by changes in the brain.
- (4) **"Memory care unit"** means an assisted living facility or part of or an assisted living facility that provides added security, enhanced programming and staffing appropriate for residents with a diagnosis of dementia, Alzheimer's disease or other related disorders causing memory impairments and for residents whose functional needs require a specialized program.
- (5) **"Secured environment"** means locked (secured/monitored) doors/fences that restrict access to the public way for residents who require a secure unit.

B. Care coordination requirement. An assisted living facility that accepts residents with memory issues shall determine which additional services and care requirements are relevant to the resident and disease process.

(1) The medical diagnosis and ISP shall be utilized in the determination of the need for additional services.

(2) The assisted living facility shall ensure the coordination of services and shall have evidence of an agreement of care coordination for all services provided in the facility by an outside health care provider.

C. Employee training: In addition to the training requirements for all assisted living facilities, pursuant to 8.370.14.17 NMAC, all employees assisting in providing care for memory unit residents shall have a minimum of 12 hours of training per year related to dementia, Alzheimer's disease, or other pertinent information.

D. Individual service plan (ISP): An assisted living facility that admits memory care unit residents shall create an ISP in coordination with the resident's primary care practitioner, in compliance with the requirements outlined in "individual service plan," 8.370.14.26 NMAC, pursuant to a team meeting as described in "exceptions to admission, readmission and retention," Subsection C of 8.370.14.20 NMAC, and which ensures the following criteria:

(1) identification of the resident's needs specific to the memory care unit and the services that are provided; each memory unit resident shall receive the services necessary to meet the individual resident's needs;

(2) medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance or administered by the following individuals:

(a) a physician;

(b) a physician extender (PA or NP);

(c) a licensed nurse (RN or LPN);

(d) the resident if their PCP has approved it;

(e) family or family designee; and

(f) any other individual in accordance with applicable state and local laws.

E. Assessments and reevaluations:

(1) An assessment shall be completed by a registered nurse or a physician extender within 15 days prior to admission. When emergency placement is warranted the 15 day assessment shall be waived and the assessment shall be completed within five days after admission.

(a) The resident shall have a medical evaluation and documentation by a physician, physician's assistant or a nurse practitioner within six months of admission.

(b) The pre-admission assessment shall include written findings, an evaluation of less restrictive alternatives and the basis for the admission to the secured environment. The written documentation shall include a diagnosis from the resident's PCP of Alzheimer's disease or other dementia and the need for the resident to reside in a memory care unit.

(c) Only those residents who require a secured environment placement or whose needs can be met by the facility, as determined by the assessment prior to admission or on review of the individual service plan (ISP), shall be admitted.

(2) A re-evaluation must be completed every six months and when there is a significant change in the medical or physical condition of the resident that warrants intervention or different care needs, or when the resident becomes a danger to self or others, to determine whether the resident's stay in the assisted living facility memory care unit is still appropriate.

F. Documentation in the resident's record: In addition to the required documentation pursuant to 8.370.14.21 NMAC, the following information shall be documented in the resident's record:

(1) the physician's diagnosis for admission to a secure environment or a memory care unit;

(2) the pre-admission assessment; and

(3) the re-evaluation(s).

G. Secured environment:

(1) Memory care unit residents may require a secure environment for their safety. A secured environment is any locked (secured/monitored) area in which doors and fences restrict access to the public way. These include but are not limited to:

(a) double alarm systems;

(b) gates connected to the fire alarm; and

(c) tab alarms for residents at risk for elopement.

(2) In addition to the interior common areas required by this rule, the facility shall provide a safe and secure outdoor area for the year round use by the residents.

(a) Fencing or other enclosures shall prevent elopement and protect the safety and security of the residents.

(b) Residents shall be able to independently access the outdoor areas.

(3) Locked areas shall have an access code or key which facility employees shall have available on their person or on the locking unit itself at all times.

H. Resident rights: In addition to the requirements pursuant to 8.370.14.32 NMAC, the following shall apply:

(1) the resident's rights may be limited as required by their condition and as identified in the ISP;

(2) the resident who believes that he or she has been inappropriately admitted to the secured environment may request the facility in contact the resident's legal guardian, or an advocate such as the ombudsman or the primary care practitioner; upon request, the facility shall assist the resident in making such contact.

I. Disclosure to residents: A facility that operates a secured environment shall disclose to the resident and the resident's legal representative, if applicable and prior to the resident's admission to the facility, that the facility operates a secured environment.

(1) The disclosure shall include information about the types of resident diagnosis or behaviors that the facility provides services for and for which the staff are trained to provide care for.

(2) The disclosure shall include information about the care, services and the type of secured environment that the facility and trained staff provide.

J. Staffing: The facility shall provide the sufficient number of trained staff members to meet the additional needs of the residents in the secured environment. There must be at least one trained staff member awake and in attendance in the secured environment at all times.

[8.370.14.69 NMAC - N, 7/1/2024]

8.370.14.70 INCORPORATED AND RELATED RULES AND CODES: The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes the following:

A. Health facility licensure fees and procedures, New Mexico Health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico Health care authority, 8.370.3 NMAC.

C. Adjudicatory hearings for licensed facilities, New Mexico health care authority, 8.370.2 NMAC.

D. Caregiver's criminal history screening requirements, 8.370.5 NMAC.

E. Employee abuse registry 8.370.8 NMAC.

F. Incident reporting, intake processing and training requirements 8.370.9 NMAC.

[8.370.14.70 NMAC - N, 7/1/2024]

History of 8.370.14 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 15 GENERAL REQUIREMENTS FOR BOARDING HOMES

8.370.15.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.15.1 NMAC - N, 7/1/2024]

8.370.15.2 SCOPE: These requirements apply to public or private boarding homes which come within the statutory definition of “health facilities” as set out in Subsection F of Section 24-1-2 NMSA 1978 Public Health Act and that are required to be licensed by the state licensing authority. This rule applies to all boarding homes facilities which receive lodging for compensation and are operated to provide assistance with one or more instrumental activities of daily living or with the coordination of community services to residents who do not need the level of services and supervision provided in a skilled nursing facility, intermediate care facility, assisted living facility, nor a general or special hospital or other institution. This rule does not apply to boarding homes under the control of an institution of higher learning, any facility which is otherwise licensed and regulated by the authority, any hotel, other landlord-tenant relationship or homeless shelter.
[8.370.15.2 NMAC - N, 7/1/2024]

8.370.15.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated under Subsection E of Section 9-8-6, NMSA 1978, as amended and the authority granted under Subsections F and J of Sections 24-1-2 and 24-1-3 respectively and 24-1-5, NMSA 1978, of the Public Health Act as amended. 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.
[8.370.15.3 NMAC - N, 7/1/2024]

8.370.15.4 DURATION: Permanent.
[8.370.15.4 NMAC - N, 7/1/2024]

8.370.15.5 EFFECTIVE DATE: July 1, 2024, unless a later date is specified at the end of a section.
[8.370.15.5 NMAC - N, 7/1/2024]

8.370.15.6 OBJECTIVE:

- A.** Establish standards for licensing boarding home facilities for adults in order to ensure the health, safety, and welfare of individuals in need of such services.
 - B.** Encourage the establishment and maintenance of boarding home facilities for adults that provide a humane, safe and homelike environment for elderly, disabled, or other persons who need personal care services and supervision, but who do not need institutional residential care or assistance with activities of daily living.
 - C.** Establish standards for the construction, maintenance and operation of boarding home facilities.
 - D.** Regulate such facilities in providing the appropriate level of care for residents and using supportive services in the surrounding community to meet the needs of residents.
 - E.** Provide for boarding home compliance with these requirements through surveys to identify any areas that could be dangerous or harmful to the health, safety, or welfare of the residents and staff.
- [8.370.15.6 NMAC - N, 7/1/2024]

8.370.15.7 DEFINITIONS:

- A.** “Abuse” means:
 - (1)** knowingly, intentionally and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or
 - (2)** the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person, or injury, sexual abuse, or neglect resulting in harm of an individual resident.
- B.** “Amended license” means an amended license issued due to a change of manager name, location, capacity, or classification of any units.

C. “Activities of daily living (ADLs)” as per 42 CFR Section 441.505 2016 “means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring”.

D. “Annual license” means a license issued for a one-year period to a boarding home that has met all license requirements prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

E. “Applicant” means the individual who, or organization which, applies for a license.

F. “Assisted living facility” as per 8.370.14 NMAC means, a health facility operated for the care of two or more adults who need or desire assistance with one or more activities of daily living.

G. “Bed” means a piece of furniture which is used as a place to sleep. A bed is a cushioned mattress on a bed frame, the mattress resting on a solid base of wood slats or a box spring inner sprung base.

H. “Boarding home” means any facility that is required to be licensed by the health care authority, that provides assistance with one or more instrumental activities of daily living or assistance with the coordination of community services, for two or more adults age 18 or older, not related to the owner, that admits residents discharged from any mental or behavioral health care institution.

I. “Care and supervision” means any one or more of the following activities provided by a person or boarding home to meet the needs of the residents:

- (1) Limited assistance with self-administered medication.
- (2) Central storing or distribution of medications, as specified in 16.19.11 NMAC as per the requirements for a boarding and residential care home defined as a licensed custodial care facility by the board of pharmacy.
- (3) Arrangement of and assistance with obtaining medical and dental care.
- (4) Maintenance of house rules for the protection of residents.
- (5) Supervision of resident schedules and activities.
- (6) Maintenance or supervision of resident’s cash resources or property, money management.
- (7) Monitoring food intake or special diets.
- (8) Providing basic services, such as, preparing meals, shopping, housework, using a phone or other technology, or assisting with filling out a job application.

J. “Dormitory” means a space in a building where group sleeping accommodations are provided in one room, or in a series of closely associated rooms, for persons not members of the same family group, under joint occupancy and single management, as in college dormitories or fraternity houses.

K. “Instrumental activities of daily living (IADLs)” as per 42 CFR Section 441.505, “means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community”.

L. “Legally authorized person” means a parent of a minor, a court appointed guardian, or a person authorized by the resident in accordance with law to act on the resident’s behalf.

M. “Licensee” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the boarding home and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

N. “Licensing authority” means the agency within the authority vested with the authority to enforce these requirements.

O. “Limited assistance with self-administered medication” means the individual is capable to self-administer their medication or treatment, but may need cues, reminders or prompts or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other assistance not involving medication administration. Limited assistance with self-administered medication is not the same as medication administration, which requires a registered nurse (RN) to perform or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations Section 16.12.5.10 NMAC.

P. “Manufactured home” means any home factory-built pursuant to the 24 CFR part 3280 manufactured home construction and safety standards (commonly known as ‘the HUD-code’) and built on a permanent chassis to ensure transportability.

Q. “Medication administration” means a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board (board of nursing) to administer medications; as set forth in Paragraph (2) of Subsection A of 16.12.2.7 NMAC.

R. “Misappropriation of property” means the deliberate misplacement, misappropriation of residents’ property, or wrongful, temporary or permanent use of a resident’s belongings or money without the resident’s consent.

S. “Modular home” means any home factory-built pursuant to the New Mexico regulation and licensing department construction industries regulations, 14.12.1 through 14.12.11 NMAC.

T. “Mobile home” means a prefabricated residential structure, built in a factory on a permanently attached chassis before being transported to site (either by being towed or on a trailer), and used permanently or semi-permanently in one place in accordance with 14.12.1 through 14.12.11 NMAC.

U. “Needs and services plan” means a written comprehensive plan, that identifies all needs and services for a resident.

V. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness, 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.

W. “Nontransient” means occupancy of a dwelling unit or sleeping unit for more than 30 days. See also; resident.

X. “Owner” means the individual who, or organization which, applies for a license. If the owner is an organization, then the individual signing the application on behalf of the organization, must have authority to submit the application from the organization. The owner is also known as the applicant.

Y. “Personal care services” means assistance with instrumental activities of daily living.

Z. “Pharmacist” means a person licensed under the pharmacy act, Sections 61-11-1 to 61-11-29, NMSA 1978.

AA. “Pharmacy” means a place where drugs are compounded or dispensed that is licensed by the New Mexico board of pharmacy.

BB. “Physical abuse” means damaging or potentially damaging acts or incidents that result in bodily injury or death.

CC. “Registered nurse” means a person licensed as a professional registered nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

DD. “Resident” means an individual receiving services and residing in the licensed boarding home.

EE. “Resident safety plan” means the required plan of action to be taken by a boarding home to ensure resident health and safety in case of accidents or emergencies involving environmental hazards, behavioral incidents involving residents, and third-party acts of violence.

FF. “Restraint” means any physical or chemical restraints which restrict freedom of movement or is used for discipline or for the convenience of the boarding home. This includes any article, device, or garment which is used primarily to modify resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room or chemical restraint, which means a medication used primarily to modify behavior by interfering with the resident’s freedom of movement or mental alertness. Mechanical supports shall not be considered physical restraints when used pursuant to the residents needs and supports care plan.

GG. “Transient” means occupancy of a dwelling unit or sleeping unit for not more than 30 days.

HH. “Variance” means a decision that is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

II. “Waive or waiver” means a decision that is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

[8.370.15.7 NMAC - N, 7/1/2024]

8.370.15.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory compliance. “May” means permissive compliance. The words “adequate”, “proper”, and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide services to the public in facilities.

8.370.15.9 SCOPE OF SERVICES:

A. General scope of services: These regulations apply to non-medical boarding homes that are required to be licensed under the public health act by the authority to provide residential placement to individuals seeking assistance with instrumental activities of daily living or assistance with accessing or the coordination of community services who may have been discharged from any mental or behavioral health care institution. Individuals who need assistance with one or more activities of daily living or who need a higher level of services and supervision provided in a skilled nursing facility, intermediate care facility, assisted living facility, a general or special hospital or other institution, shall not be placed in a boarding home.

B. Licensure is required:

(1) No boarding home as defined in Subsection H of 8.370.15.7 NMAC may operate in New Mexico unless it is licensed in accordance with the requirements of the authority.

(2) Any boarding home providing services described in these regulations that is in operation on the effective date of these regulations must apply for licensure within 30 days of the effective date.

(3) If an unlicensed boarding home is found to be providing services for which a license is required under these regulations or other health facility regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare.

C. Exemption from licensure:

(1) The boarding home regulations contained in this rule shall not apply to any of the following:

(a) Any other licensed health facility, as defined by the public health act Subsection F of Section 24-1-2, NMSA 1978 licensed by the authority.

(b) Any clinic, as defined by the public health act Subsection F of Section 24-1-2 NMSA 1978 licensed by the authority.

(c) Any home operated by a home and community-based medicaid waiver service provider, under contract with the authority to provide waiver services.

(d) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, which provides no element of care and supervision.

(e) Any school dormitory or similar facility where all of the following conditions exist:

(i) The school is a public school as defined by Subsection L of Section 22-1-2 NMSA 1978 or a nonpublic school accredited by a generally accepted accreditation agency.

(ii) The school and the school dormitory are on the same grounds.

(iii) The program operates only during normal school terms unless the academic program runs year-around.

(iv) The school's function is educational only.

(v) The school program is not designated as providing rehabilitative or treatment services.

(f) Any care and supervision of persons by a relative, guardian or conservator.

(g) Any care and supervision of persons from only one family by a close friend of the family, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week. The provision of longer hours of care shall not be precluded when provided for a brief period of time for reasons, including but not limited to family emergencies, vacation, and military leave.

(h) Any arrangement for the care and supervision of an adult or adults from only one close friend, who is not a licensee or current employee of a residential care facility for the elderly or of an adult residential facility, and whose friendship pre-existed a provider/recipient relationship, and all of the following are met:

(i) The care and supervision are provided in a home or residence chosen by the recipient, regardless of who owns the home or residence.

(ii) The arrangement is not of a business nature, in that the provider does not represent himself or herself as being in the business of provision of care, and any compensation that may be paid to the provider is only for the value of the services rendered.

(iii) The arrangement occurs and continues only with the one resident.

(i) Any housing project for elderly or disabled individuals that meets other federal requirements.

D. Other operations not affected: Boarding homes that also rent rooms solely on an owner-resident basis, to individuals who do not require assistance with one or more instrumental activities of daily living or assistance with the coordination of community services, are not required to comply with this rule in respect to those individuals only.

[8.370.15.9 NMAC - N, 7/1/2024]

8.370.15.10 GENERAL LICENSING REQUIREMENTS:

A. Application and requirements for licensure:

- (1) All applications shall be made on forms provided by the licensing authority.
 - (a) All information requested on the application must be provided.
 - (b) The application must be dated and signed by the person who shall be the licensee or, if the applicant is an organization, then the individual signing the application on behalf of the organization must have the authority to sign for the organization.
 - (c) The application must be notarized.
- (2) In every application, the applicant shall provide the following information:
 - (a) the identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the boarding home; and
 - (b) the identities of all persons or business entities having five percent ownership interest whatsoever in the boarding home, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building, and
 - (c) the identities of all creditors holding a security interest in the premises, whether land or building; and
 - (d) in the case of a change of ownership, disclosure of any relationship or connection, including familial or direct or indirect business relationship, between the old licensee and the new licensee, and between any owner or operator of the new licensee, whether direct or indirect.
- (3) A license shall not be granted to an owner/applicant who does not clear the caregiver criminal history screening process as set forth in 8.370.5 NMAC. The applicant shall also provide to the authority information including, but not limited to, felony convictions, a civil judgement against the applicant for fraud, embezzlement or misappropriation of property, and any state or federal adverse action resulting in suspension or revocation of license or permit. All criminal history records obtained pursuant to this section by the authority are confidential pursuant to Section 29-17-5 NMSA 1978.
- (4) The new applicant shall submit evidence of sufficient resources to permit operation of the boarding home for a period of six months. The evidence shall include a credit report from a recognized credit bureau, and with a minimum credit score of 650 or above for applicants that are individuals.
- (5) No license may be issued unless and until the applicant has supplied all information requested by the authority.
- (6) Fees: All applications for initial licensure must be accompanied by the required fee.
 - (a) Current fee schedules will be provided by the licensing authority.
 - (b) Fees must be in the form of a certified check, money order, personal or business check made payable to the state.
 - (c) Fees are non-refundable.

B. Notification and letter of intent: The license applicant shall advise the licensing authority of its intent to open a boarding home pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the license applicant and the boarding home and at a minimum, include the following:

- (1) the name of boarding home;
- (2) the name of the owner and licensee and the type of legal entity under which the boarding home shall be owned;
- (3) the name of the management company, if any;
- (4) the type of boarding home license requested;
- (5) the name and resume of the proposed manager;
- (6) the anticipated number of residents to be served;
- (7) the number of beds in the proposed boarding home;
- (8) the physical address of the boarding home including building name or suite number;
- (9) the mailing address, if different from physical address;
- (10) the applicant's contact name(s), address, e-mail address, and telephone number(s);

- (11) the anticipated payers and sources of reimbursement; and
- (12) a list of all services to be provided at the boarding home location which is requesting the

license.

C. License application and fees: After review by the authority of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall submit a fully completed, printed or typed, dated, signed and notarized license application. The owner shall submit the application prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the authority, the applicant must submit to the licensing authority an application form provided by the authority, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. The licensing authority will provide current fee schedules. The authority reserves the right to require additional documentation to verify the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees are non-refundable. The applicant must also attach to the application and submit to the authority, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning compliance by the applicable zoning authority.

D. Program description: The applicant must submit with its license application a program outline consistent with these regulations which includes at a minimum, the following information:

- (1) a list and description of all services and the scope of those services to be provided by the proposed boarding home;
- (2) projected number of residents to be served monthly;
- (3) a list of staffing and personnel requirements and duties to be performed;
- (4) proposed staffing plans;
- (5) admission and discharge criteria; and
- (6) an organizational structure diagram or chart including the manager, governing body, direct care staff, and other staff.

E. Policies and procedures: The applicant must submit with its license application a copy of the boarding home's policies and procedures with a crosswalk to these regulations to show compliance.

F. Building plans: the application for licensure must also include building plans as set forth in this rule. Boarding homes licensed for three or fewer residents are not required to submit building plans.

G. Additional documents required for license application: The following additional documents are required to be provided as part of the initial licensure process prior to the issuance of a temporary license, include, but are not limited to:

- (1) Building approvals: The applicant must submit all building approvals required for the boarding home to operate in the jurisdiction in which it is located, including but not limited to:
 - (a) written zoning approval or proof of zoning compliance;
 - (b) building permit final approval, or certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and
 - (c) approvals from the fire safety authority having jurisdiction.
- (2) Environment department approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:
 - (a) private water supply;
 - (b) private waste or sewage disposal;
 - (c) kitchen/food service.

(3) Custodial pharmacy permit: Any boarding home licensed pursuant to these regulations that supervises self-administration of medication for the residents or safeguards medication for residents must have an appropriate custodial drug permit from the state board of pharmacy.

[8.370.15.10 NMAC - N, 7/1/2024]

8.370.15.11 ACTION BY THE AUTHORITY:

A. After receiving a complete application, the authority shall investigate the applicant to determine the applicant's ability to comply with these regulations.

B. Within 60 days after receiving a complete application for a license, the authority shall either approve the application and issue a license or deny the application. If the application for a license is denied, the authority shall give the applicant reasons, in writing, for the denial.

C. The licensing authority shall not issue a new license if the applicant has had a health facility license revoked or denied renewal or has surrendered a license under threat of revocation or denial of renewal, or has lost certification as a medicaid provider as a result of violations of applicable medicaid requirements. The licensing authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be class “A” or class “B” deficiencies as defined in health facility sanctions and civil monetary penalties, 8.370.4 NMAC, or has been noncompliant with plans of correction.
[8.370.15.11 NMAC - N, 7/1/2024]

8.370.15.12 TYPES OF LICENSE:

A. Annual license: An annual license is issued for a one-year period to a boarding home which has met all requirements of these regulations. If a temporary license is issued, once the authority has issued a written determination of full compliance with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

(3) a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations and the following:

(a) submitted a license application, with required supporting documents;

(b) has met all of the applicable life safety code requirements; and

(c) its program description has been reviewed for compliance with these

regulations;

(d) a statement from the applicant that they are qualified, in full compliance with these regulations and has requested an initial health survey from the licensing authority.

(4) a temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(a) a finding that the applicant is qualified and in full compliance with these

requirements;

(b) the boarding home being allowed to accept residents and provide care services, subject to any requirements and restrictions attached to the temporary license.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of manager or when there is a change of name for the boarding home, but an amended license shall only be issued if the manager is not an owner. If the manager is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

(1) be on a form, or filed electronically if available, as required by the licensing authority;

(2) be accompanied by the required fee for the amended license; and

(3) be submitted within 10 working days of the change.

[8.370.15.12 NMAC - N, 7/1/2024]

8.370.15.13 SCOPE OF LICENSE:

A. The license is issued only for the premises and the persons named in the license application and may not be transferred or assigned by the licensee.

B. The license shall state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the authority considers appropriate and necessary taking all facts and circumstances into account.

C. A licensee shall fully comply with all requirements and restrictions of the license.

[8.370.15.13 NMAC - N, 7/1/2024]

8.370.15.14 SEPARATE LICENSES: Separate licenses shall be required for boarding homes which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same legal lot of record, multiple buildings on contiguous legal lots of record, or contiguous campus or condominium units within the same ownership.

[8.370.15.14 NMAC - N, 7/1/2024]

8.370.15.15 LICENSE RENEWAL:

A. A licensee must submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the boarding home complies with all applicable state and federal regulations in force at the time of renewal. The authority reserves the right to require that a renewal applicant provide all additional documents, including any necessary proof of current compliance by licensee with these regulations and all applicable state and federal statutes and regulations, as part of its license renewal application for the authority to determine whether the applicant and the boarding home are in full compliance with these regulations.

B. Upon receipt of the renewal application and the required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the boarding home is in substantial compliance with these regulations and all other applicable state and federal regulations.

C. If the existing license expires and the licensee has failed to submit a renewal application, the authority may charge the applicant a civil monetary penalty of \$200, in accordance with Section 24-1-5.2 NMSA 1978, as amended, providing that during such time the boarding home remains in full compliance with these regulations. If the boarding home does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the boarding home shall cease operations until it obtains a new license through the initial licensure procedures and shall still be required to pay civil monetary penalties. Under Section 24-1-5 NMSA 1978, as amended, no boarding home shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be responsible to notify the boarding home of the renewal date or the expiration date of the boarding home's license.

E. After issuance of the initial license, if the boarding home is in substantial compliance with these regulations and provides an application and fee the boarding home may be issued a license renewal.

[8.370.15.15 NMAC - N, 7/1/2024]

8.370.15.16 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location accessible to public view within the boarding home.

[8.370.15.16 NMAC - N, 7/1/2024]

8.370.15.17 REPORT OF CHANGES:

A. The licensee shall notify the authority in writing of any changes in the information provided, within 10 days of such changes. This notification shall include information and documentation regarding such changes.

B. When a change of manager occurs, the authority shall be notified within 10 days in writing by the licensee. Such writing shall include the name and license number of the new manager.

C. Each licensee shall notify the authority within 10 days in writing of any change of the mailing address of the licensee. Such writing shall include the new mailing address of the licensee.

D. When a change in the principal officer of a corporate license (chairman, president, general manager) occurs the authority shall be notified within 10 days in writing by the licensee. Such writing shall include the name and business address of such officer.

E. Any decrease or increase in licensed bed capacity of the boarding home shall require notification by letter to the authority and shall result in the issuance of a corrected license.

[8.370.15.17 NMAC - N, 7/1/2024]

8.370.15.18 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A. A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The authority shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

- (1) any ownership interest of the boarding home changes;
- (2) the boarding home changes location;
- (3) the licensee of the boarding home changes;
- (4) the boarding home discontinues operation; or.

B. A boarding home wishing to continue operation as a boarding home under the conditions described in Paragraphs (1) through (4) above must submit an application for initial licensure in accordance with Paragraph (2) of Subsection B of 8.370.15.9 NMAC of these regulations, at least 30 days prior to the anticipated change.

[8.370.15.18 NMAC - N, 7/1/2024]

8.370.15.19 CHANGE OF OWNERSHIP: An individual or entity wishing to purchase and continue operation of an already licensed boarding home shall:

A. Submit a new application for an initial license in accordance with these regulations at least 60 days prior to the anticipated change. The authority has the sole discretion to determine if it will issue a license under the same terms and conditions of the existing license.

B. The current owners will submit a letter citing the intended termination of current ownership, a closure plan and a request for a change of ownership to the licensing authority no later than 60 days prior to the date of sale.

C. The new owners shall complete and submit a new license application and transition plan. The license application and transition plan must be submitted to the licensing authority no later than 60 days prior to the date of sale. The new owners must provide a letter agreeing to assume all liabilities to the state and provide the following as described in the initial licensure procedures section of these regulations:

- (1) letter of intent;
- (2) license application and fee;
- (3) program description;
- (4) transition plan; and
- (5) policies and procedures or a statement that the new owners are utilizing previously approved policies and procedures.

(6) Transition plan with timelines, that must include the following:

- (a) process for the reassessment of residents;
- (b) process for hiring boarding home staff and staffing plan identifying staff that

will cover all duties upon transition; and

(c) execution of transfer agreements between the buyer and seller.

(7) Failure by any individual or entity to apply for and obtain a new license while continuing to operate under these regulations, shall be considered in violation of these regulations and the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed boarding home may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

[8.370.15.19 NMAC - N, 7/1/2024]

8.370.15.20 AUTOMATIC EXPIRATION OF LICENSE: A existing license will automatically expire at midnight on the day indicated on the license as the expiration date, unless it is renewed sooner, or it has been suspended or revoked.

A. If a boarding home discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action.

B. Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and subject to the imposition of civil monetary penalties, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[8.370.15.20 NMAC - N, 7/1/2024]

8.370.15.21 PROGRAM FLEXIBILITY:

A. All facilities shall maintain compliance with the licensee requirements. If the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects conflicts with requirements, then prior written approval from the authority shall be obtained in order to ensure provisions for safe and adequate care. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the authority.

B. Any approval of the authority granted under this section, or a certified copy thereof shall be posted immediately adjacent to the boarding home's license.

[8.370.15.21 NMAC - N, 7/1/2024]

8.370.15.22 WAIVERS AND VARIANCES:

A. Variances and waivers: At the licensing authority's sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the boarding home's residents and staff and is not in violation of other applicable state and federal statutes and regulations. Variances and waivers are non-transferrable. Waivers and variances may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of residents.

(1) All variances shall be in writing, attached to the license. A variance is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, unless otherwise limited, and provided that the health, safety, or welfare of the residents and staff are not in danger. All variances shall expire upon remodel of the facility or change of ownership.

(2) All waivers shall be in writing, attached to the license, is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, and shall be limited to the term of the license. Upon renewal of a license, waivers shall only be extended or continued at the sole discretion of the licensing authority.

B. Waiver/variance applications:

(1) All applications for waiver or variance from the requirements of these regulations shall be made in writing to the authority, specifying the following:

- (a) the rule from which the waiver or variance is requested;
- (b) the time period for which the waiver or variance is requested;
- (c) if the request is for a variance, the specific alternative action which the boarding home proposes;
- (d) the reasons for the request; and
- (e) justification that the goal or purpose of the rule or regulations would be satisfied.

(2) Requests for a waiver or variance may be made at any time.

(3) The authority may require additional information from the boarding home prior to acting on the request.

C. Grants and denials:

(1) The authority at its discretion shall grant or deny each request for waiver or variance in writing. A notice of denial shall contain the reasons for denial.

(2) The terms of a requested variance may be modified upon agreement between the authority and a boarding home.

(3) The authority may impose such conditions on the granting of a waiver or variance which it deems necessary.

(4) The authority may limit the duration of any waiver or variance.

(5) The authority's action on a request for a waiver is not subject to administrative appeal.

D. Revocation: The authority may revoke a waiver or variance if:

(1) it is determined that the waiver or variance is adversely affecting the health, safety or welfare of the resident's; or

(2) the boarding home has failed to comply with the variance as granted; or

(3) the licensee notifies the authority in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied;

(4) required by a change in law.

[8.370.15.22 NMAC - N, 7/1/2024]

8.370.15.23 UNLICENSED FACILITIES: Any person or entity that opens or maintains a non-medical boarding home without a license is subject to the imposition of civil monetary penalties by the licensing authority. Failure to comply with the licensure requirements of this rule within 10 days of notice by the licensing authority may result in the following actions pursuant to health facility sanctions and civil monetary penalties, 8.370.4 NMAC:

A. A civil monetary penalty not to exceed \$5,000 per day.

B. A base civil monetary penalty, plus a per-day civil monetary penalty, plus the doubling of penalties as applicable, that continues until the facility is in compliance with the licensing requirements in this rule.

C. A cease and desist order to discontinue operation of a boarding home that is operating without a license.

- D. Criminal penalties that may apply and shall be imposed as necessary.
- E. If it is determined that the boarding home is operating outside the scope of this license it will be deemed operating as an unlicensed boarding home and will be required to obtain the required applicable boarding home licensure.

[8.370.15.23 NMAC - N, 7/1/2024]

8.370.15.24 SURVEY OR MONITORING VISITS:

A. Application for licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a boarding home by authorized licensing authority representatives during the pendency of the license application, and if licensed, during the licensure period.

B. The licensing authority shall perform on-site survey or monitoring visits at all boarding homes to determine compliance with this rule.

C. The boarding home shall provide the licensing authority full access to all boarding home operations, buildings and information related to the operation of the boarding home. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

D. The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the boarding home.

E. Failure by the boarding home to provide the licensing authority access to the premises or information, including resident records, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, as deemed appropriate by the licensing authority.

[8.370.15.24 NMAC - N, 7/1/2024]

8.370.15.25 CORRECTIVE ACTION: If violations of this rule are cited, the boarding home will be provided with an official statement of deficiencies within 10 business days following the survey.

A. Plan of correction (POC). Upon receipt of a report of deficiency from the licensing authority, and after receipt of a revised statement of deficiencies, when the findings are changed pursuant to an IDR, the licensee or their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the boarding home intends to correct each violation noted and the expected date of completion. All plans of correction for deficiencies, if any, shall be disclosed in compliance with applicable statutes and regulations. A plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a boarding home license, including to prove licensee compliance violations. The plan of correction must contain the following:

- (1) what measures will be put into place or what systematic changes will be made to ensure the deficient practice does not recur;
- (2) the anticipated implementation date (a reasonable time-frame is allowed);
- (3) how the corrective action will be monitored to ensure compliance;
- (4) what quality assurance indicators will be put into place;
- (5) who will be responsible to oversee their monitoring; and
- (6) the date and signature of the manager or authorized representative.

B. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

(1) If the first plan of correction (POC) is rejected by the licensing authority, the boarding home will be sent a second copy of the statement of deficiencies. The boarding home shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The authority may at its option repeat the process until an acceptable plan of correction is received by the authority.

(2) Failure to provide an acceptable plan of correction (POC) within a reasonable period of time, may lead to civil monetary penalties or other sanctions.

(3) All cited violations shall be corrected within 30 calendar days from the date of the survey; unless the licensing authority approves an extended date.

(4) Failure to submit an acceptable plan of correction may result in sanctions, including but not limited to civil monetary penalties, suspension or non-renewal of the boarding home license.

(5) The licensing authority may accept, reject, or direct the plan of correction.

C. Informal dispute review (IDR). The boarding home may request an informal review of survey deficiencies by providing a written request to the licensing authority within 10 calendar days of receipt of the written

survey findings. With the request, the boarding home shall include information or evidence that justifies the disagreement with a cited deficiency.

(1) The licensing authority will review the submitted information and make a determination.

(2) If the deficiency is removed, a new statement of deficiencies will be issued to the boarding home.

(3) The boarding home shall provide a new plan of correction for all remaining deficiencies upon receipt of the new statement of deficiencies.

(4) A copy of the “IDR operating rules” is available upon request.

[8.370.15.25 NMAC - N, 7/1/2024]

8.370.15.26 ENFORCEMENT:

A. Suspension of license without prior hearing: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

B. Grounds for revocation or suspension of license, denial of initial or renewal application for license, or imposition of intermediate sanctions or civil monetary penalties: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

(1) Failure to comply with any provision of these regulations.

(2) Failure to allow access to the boarding home and survey by authorized representatives of the licensing authority.

(3) Any person working at the boarding home under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the residents, staff or visitors.

(4) Misrepresentation or falsification of any information or application forms or other documents provided to the licensing authority.

(5) Discovery of repeat violations of these regulations during surveys.

(6) Failure to provide the required care and services as outlined by these regulations for the residents receiving care at the boarding home.

(7) Abuse, neglect or exploitation of any resident by boarding home operator, staff, or relatives of operator/staff.

(8) Allowing any person, subject to all applicable statutes and regulations, to work at the boarding home if that person is listed on the employee abuse registry, nurse aid registry, or considered an unemployable caregiver or has a disqualifying conviction under the caregivers criminal history screening requirements, 8.370.5 NMAC, as amended, and related regulations as amended.

C The list above shall not limit the authority from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[8.370.15.26 NMAC - N, 7/1/2024]

8.370.15.27 HEARING PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the authority against a boarding home's license will be held in accordance with applicable rules relating to adjudicatory hearings, including but not limited to, 8.370.2 NMAC, as amended. A copy of the above regulations will be furnished at the time an adverse action is taken against a boarding home's license by the licensing authority, if the regulations cannot be obtained from a public website.

[8.370.15.27 NMAC - N, 7/1/2024]

8.370.15.28 APPEALS:

A. A licensee that is subject to an adverse action may request an administrative appeal. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the boarding home are in accordance with adjudicatory hearings for licensed facilities, 8.370.2 NMAC.

B. All notices, orders or decisions which the licensing authority issues to a boarding home prior to a transfer of ownership shall be in effect against both the former owner and the new owner, unless the transfer of penalties to the new owner is rescinded in writing by the authority.

[8.370.15.28 NMAC - N, 7/1/2024]

8.370.15.29 POLICIES AND PROCEDURES: The boarding home shall establish written policies and procedures that are reviewed and approved annually by the governing body. The manager shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment. At a minimum, the boarding home's written policies and procedures shall include how the boarding home intends to comply with all requirements of these regulations and address:

- A. incident management system;
- B. the maintenance of the boarding home, equipment and supplies; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures;
- C. quality of care and services including appropriate and inappropriate admission and discharge criteria; and resident risk assessment;
- D. referral of residents for services; transfer of residents to a hospital or other facility or program; ambulance transfer services; and emergency procedures and resuscitative techniques;
- E. infectious waste and biohazard disposal in accordance with all applicable statutes and regulations;
- F. infection control and prevention;
- G. staffing plan, personnel records, and minimum staffing;
- H. maintenance of the resident's confidential records including protection of resident confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of resident records including appropriate document destruction procedures;
- I. the retention, maintenance, security and destruction of resident, personnel and boarding home records;
- J. dietary services including meal service; staff in-service training; dietary records; clean and sanitary conditions; and food management;
- K. housekeeping services to keep the boarding home safe, clean, and free of hazards and clutter;
- L. If applicable, laundry services for the boarding home's laundry and resident's laundry including handling, process and storage of clean and dirty laundry;
- M. pharmacy practices including the storage, administration, and disposal of medications; medication management; and documentation;
- N. resident's personal belongings including locked storage and contraband;
- O. resident rights;
- P. smoking policy;
- Q. grievance policy;
- R. house rules, to include freedom permitted and limitations necessary to protect the rights of others;
- S. Visiting hours.

[8.370.15.29 NMAC - N, 7/1/2024]

8.370.15.30 STAFFING REQUIREMENTS:

- A. Operator or manager: A boarding home shall be supervised by a full-time manager. Multiple facilities that are located within a 40-mile radius may have one full-time manager. The manager shall:
- (1) be at least 21 years of age;
 - (2) have a high school diploma or its equivalent;
 - (3) pass the background check and screening process pursuant to 8.370.5 NMAC;
 - (4) be able to communicate with the residents in the language understood by the residents;
 - (5) not work while under the influence of alcohol or illegal drugs;
 - (6) have evidence of education and experience directly related to the services that are provided at the boarding home;
 - (7) provide three notarized letters of reference from persons unrelated to the applicant, and
 - (8) comply with the pre-employment requirements pursuant to the employee abuse registry, 8.370.8 NMAC;
 - (9) be responsible for the daily operation of the boarding home and for the safety and well-being of the residents. In the manager's absence, there shall be a responsible designee at least 21 years of age (who is not a resident of the boarding home) to assume the responsibility of the boarding home;
 - (10) provide orientation to all new employees which shall include resident rights, evacuation and emergency procedures, training in policies and procedures, and competent supervision designed to improve resident care;
 - (11) not act as, or become, the legal guardian of or have power of attorney for any resident.

- B.** Direct care staff:
- (1) shall be at least 18 years of age;
 - (2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;
 - (3) shall comply with the pre-employment requirements pursuant to the employee abuse registry, 8.370.8 NMAC;
 - (4) shall comply with the current requirements of reporting and investigating incidents pursuant to incident reporting, intake processing and training requirements, 8.370.9 NMAC;
- C.** if a boarding home provides transportation for residents, the employees of the boarding home who drive vehicles and transport residents shall have copies of the following documents on file at the boarding home:
- (1) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;
 - (2) proof of insurance;
 - (3) documentation of a clean driving record; and
 - (4) shall comply with the requirements of the caregivers criminal history screening requirements, 8.370.5 NMAC.
- [8.370.15.30 NMAC - N, 7/1/2024]

8.370.15.31 STAFF TRAINING:

- A.** Training and orientation for each new employee and volunteer that provides direct care shall include a minimum of the following training prior to providing unsupervised care for residents.
- B.** On-going training shall be provided to staff that provides direct care as needed; the training and proof of competency shall include at a minimum:
- (1) fire safety and evacuation training;
 - (2) first aid and CPR;
 - (3) safe food handling practices (for persons involved in food preparation and service), to include:
 - (a) instructions in proper storage;
 - (b) preparation and serving of food;
 - (c) safety in food handling;
 - (d) appropriate personal hygiene; and
 - (e) infectious and communicable disease control;
 - (4) confidentiality of records and resident's information;
 - (5) residents' rights;
 - (6) reporting requirements for abuse, neglect or exploitation in accordance with 8.370.9 NMAC;
 - (7) smoking policy for staff, residents and visitors;
 - (8) emergency procedures;
 - (9) staff are familiar with each resident's needs and services plan;
- C.** Documentation of orientation and subsequent trainings shall be kept in the personnel records at the boarding home.
- [8.370.15.31 NMAC - N, 7/1/2024]

8.370.15.32 PERSONNEL POLICIES: The boarding home shall have and implement written personnel policies for the following:

- A.** staff, private duty attendant and volunteer qualifications;
 - B.** staff, private duty attendant and volunteer conduct;
 - C.** staff, private duty attendant and volunteer training policies;
 - D.** staff and private duty attendant and volunteer criminal history screening;
 - E.** emergency procedures;
 - F.** medication administration restrictions;
 - G.** the retention and maintenance of current and past personnel records; and
 - H.** facilities shall maintain records and files that reflect compliance with state and federal employment rules.
- [8.370.15.32 NMAC - N, 7/1/2024]

8.370.15.33 PERSONNEL RECORDS:

- A. The boarding home shall have policies and procedures for managing personnel information and records.
- B. Staff scheduling records shall be maintained for at least three years.
- C. Employee records shall be kept at the boarding home and include:
 - (1) employment application;
 - (2) training records;
 - (3) licenses and certifications, if applicable, and
 - (4) caregiver criminal history screening documentation pursuant to 8.370.5 NMAC.

[8.370.15.33 NMAC - N, 7/1/2024]

8.370.15.34 STAFFING REQUIREMENTS AND RATIOS: Minimum staffing requirements.

A. There shall be an adequate number of personnel on duty to provide the basic care, resident assistance and the required supervision based on the assessment of the residents' needs. There shall be at least one staff member on duty or available to be on the premises within 30 minutes, and responsible for care and supervision of residents in case of accidents or emergencies, when residents are present in the boarding home.

B. During resident sleeping hours, boarding home facilities shall have at least one direct care staff person available on the premises or available to be on the premises within 30 minutes in case of emergency.

C. Facilities that care for more than 15 residents must have an adequate number of personnel on duty to meet the needs of the residents with a minimum of at least one staff member available at all times and a second staff member on call and capable of being on the premises of the boarding home within 30 minutes.

[8.370.15.34 NMAC - N, 7/1/2024]

8.370.15.35 RESIDENT ACCEPTANCE, ADMISSIONS AND DISCHARGE: The boarding home shall complete an admission agreement for each resident. The manager of the boarding home or a designee responsible for admission decisions shall meet with the resident or the resident's legally authorized person prior to admission. No resident shall be admitted who is below the age of 18 or for whom the boarding home is unable to provide appropriate care as set forth in this regulation.

A. The boarding home shall develop admission and discharge criteria and agreements.

B. Admission and discharge criteria must be available in writing to all residents and visitors to the boarding home.

C. Materials describing services offered, eligibility requirements, resident rights and responsibilities and fees charged must be provided in a form understandable to the resident and legal guardian(s) with consideration of the resident's and guardian's primary language, and the mode of communication best understood by persons with visual or hearing impairments, as applicable.

D. The admission agreement shall meet these criteria:

(1) The services that are provided by the boarding home and the charges for such services must be explained in full.

(2) The method of payment by the resident must be clearly stated.

(3) The terms and notification process for termination of the admission agreement must be explained and included in the admission agreement.

(4) A new admission agreement must be made whenever services to be provided or other terms are changed.

(5) The admission agreement shall also contain the responsibilities of the representative payee or other individuals who are assisting the resident, if any.

[8.370.15.35 NMAC - N, 7/1/2024]

8.370.15.36 RESIDENT ACCEPTANCE AND RETENTION LIMITATIONS:

A. Acceptable criteria for admission:

(1) Residents are accepted who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence and choose to arrange for food, shelter, oversight and limited services such as laundry and transportation from a boarding home.

(2) Although unable to live independently and in need of some protective living accommodations, residents of a boarding home must be able to perform activities of daily living without assistance.

(3) Individuals seeking assistance with instrumental activities of daily living or assistance with accessing or the coordination of community services who may have been discharged from any mental or behavioral health care institution.

(4) Individuals who may have a primary diagnosis of developmental disability and receive home and community-based medicaid waiver services, may be accepted when the interdisciplinary team (IDT) and guardian and individual agree that the boarding home is an appropriate placement in the community.

B. Individuals who meet the following criteria shall not be admitted to or retained in boarding homes:

- (1) Persons who require more care and supervision than is provided by the boarding home.
- (2) Persons who require nursing care, or who are not ambulatory.
- (3) Persons with dementia or related disorders causing memory impairment.
- (4) Persons whose physician has prescribed a therapeutic diet if those dietary requirements

cannot be met.

(5) Persons who have needs that are in conflict with the needs of other residents or the program of services offered.

(6) Persons who currently require acute inpatient psychiatric care due to a mental disorder.

(7) Persons who require inpatient care in a health facility.

(8) Persons who are unable to care for themselves and would be at risk if left alone.

(9) Persons who require services that the boarding home does not provide or make available.

(10) Persons who are actively being destructive of property, self-destructive, disturbing or abusive to others, or suicidal or in need of acute inpatient psychiatric services.

C. Resident retention limitations: Residents whose behavior exceed their resident safety plan and are referred to a higher level of care may be retained and return to their residency at the boarding home upon medical or behavioral stabilization according to their discharge plan and in accordance with their admission agreement.

[8.370.15.36 NMAC - N, 7/1/2024]

8.370.15.37 PROGRAM SERVICES:

A. The boarding home must be able to provide oversight to the residents, such as reminding them of meals, medications and appointments and monitoring activities while on the premises of the boarding home.

B. Each resident shall designate a personal physician and dentist to be called in case of emergency. In the event that the resident does not have a personal physician or dentist, the boarding home may assist the resident to make necessary arrangements to secure the services of a licensed physician or dentist as needed.

C. Boarding homes shall provide assistance with certain instrumental activities of daily living and assistance with accessing or the coordination of community services, including but not limited to:

- (1) coordinating travel to and from appointments;
- (2) assistance with communication or technology devices;
- (3) assistance with applying for services or employment;
- (4) limited assistance with self-administered medication for the individual who is capable to

self-administer their medication or treatment, but may need cues, reminders or prompts or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other assistance not involving medication administration. If limited assistance with self-administered medication is being provided, the resident retains all responsibility for taking their medications.

Limited assistance with self-administered medication is not the same as "assistance with taking medication" or "medication administration" which require a registered nurse or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations to perform. 16.12.5.10 NMAC.

[8.370.15.37 NMAC - N, 7/1/2024]

8.370.15.38 NEEDS AND SERVICES PLAN: Prior to admission, the licensee shall determine whether the boarding home's program can meet the prospective resident's service needs.

A. If the resident is to be admitted, then prior to admission, the licensee shall complete a written needs and services plan.

B. The following individuals shall be included in developing the plan:

(1) the resident, and the resident's legally authorized person or their authorized representative, if any;

(2) any relative participating in the placement;

(3) the boarding home manager or designee responsible for boarding home admissions;

(4) the placement or referral entity, if any;

- (5) optional: a health care professional who knows the resident, such as a community support worker, social worker, or therapist;
- (6) optional: the hospice or home health clinician, if resident is receiving services from a hospice or home health provider respectively;
- (7) any individual the resident believes would be beneficial to inform the needs and services plan.

C. The needs and services plan shall include:

- (1) The resident's desires and background, obtained from the resident, the resident's family or their authorized representative, if any, and licensed professional, where appropriate, regarding the following:
 - (a) medical conditions;
 - (b) dietary restrictions;
 - (c) prescribed medications;
 - (d) physical/mental and social function.
- (2) Specific service needs, if any.
- (3) Boarding home plans for providing services to meet the individual needs identified above.
 - (a) Objectives, within a time frame, that relate to the resident's problems or needs.
 - (b) Plans for meeting the objectives.
 - (c) Identification of any individuals or agencies responsible for implementing each part of the plan.

- (d) Method of evaluating progress.

D. The written needs and services plan shall be updated as frequently as necessary to ensure its accuracy, and to document significant occurrences that result in changes in the resident's physical, mental or social functioning. If modifications to the plan identify an individual resident service need which is not being met by the general program of boarding home services, the following requirements shall be met:

- (1) Consultation shall be secured from a dietitian, physician, social worker, psychologist, or other consultant as necessary to assist in determining if such needs can be met by the boarding home within the boarding home's program of services.
- (2) If it is determined that the resident's needs cannot be met, the licensee shall inform the resident and their authorized representative, if any, or responsible person, if there is no authorized representative, of this fact and shall request that the resident relocate.
- (3) If the resident refuses to relocate, the licensee may evict the resident in accordance with admission and discharge agreement.

[8.370.15.38 NMAC - N, 7/1/2024]

8.370.15.39 RESIDENT RECORDS: The licensee shall ensure that a separate, complete, and current record is maintained in the boarding home for each resident.

A. Each record must contain information including but not limited to the following:

- (1) Name of resident, social security number, phone number.
- (2) Birthdate.
- (3) Gender.
- (4) Date of admission.
- (5) The source of referral and relevant referral information.
- (6) Names, addresses, and telephone numbers of the authorized representative and emergency contact.
- (7) A signed and dated copy of the admission agreement and resident's rights document.
- (8) Name, address, and telephone number of the resident's physician and dentist, and any other medical and mental health providers.
- (9) Medical assessments and diagnosis, if applicable.
- (10) Record of any illness or injury requiring treatment by a physician or dentist and for which the boarding home will provide assistance to the resident in meeting their necessary medical and dental needs.
- (11) An original or original copy of all physician medication and treatment orders signed by the physician.
- (12) Record of current medications, including frequency and dosage; the name of the prescribing physician, and instructions, if any, regarding control and custody of medications.
- (13) A record of all contacts with medical and other services.

- (14) Needs and services plan.
- (15) Modified diet requirements.
- (16) Advanced directives, or any preference for life saving measures if appropriate.
- (17) Signed consent for the release of information, if information is released.
- (18) Documentation of guardianship, agent or other legal decision maker other than resident.
- (19) A written account of all personal possessions and funds deposited with the boarding

home and accounting for all funds spent and deposited subsequently by the resident.

B. Resident records should also include but are not limited to the following:

- (1) Medical and dental appointments.
- (2) Accidents or injuries.
- (3) Any problems or improvements observed in the resident.
- (4) Any change in the resident's condition which would indicate a need for higher level of

care.

(5) Date, time, and services provided by a visiting nurse service.

C. All information and records obtained from or regarding residents shall be confidential.

(1) The licensee shall be responsible for safeguarding the confidentiality of record contents.

(2) Except as specified in (a) below, or as otherwise authorized by law, the licensee and all employees shall not reveal or make available confidential information.

(a) All resident records shall be available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying.

(b) Removal of records shall be subject to the following requirements:

(i) Licensing representatives shall not remove current records for current residents unless the same information is otherwise readily available in another document or format.

(ii) Original resident records or digital reproductions shall be retained for at least three years following termination of service to the resident.

[8.370.15.39 NMAC - N, 7/1/2024]

8.370.15.40 RESIDENT RIGHTS:

A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a boarding home, a resident, parent, legal guardian and legal representative shall be given the applicable written description of the resident's legal rights, translated into resident's preferred language, if necessary, to ensure the resident's understanding.

B. A written copy of the resident's legal rights shall be provided to the resident and to the resident's legal guardian or agent, if applicable, and to the most significant responsible party in the following order:

- (1) the resident;
- (2) the resident's spouse or significant other;
- (3) any of the resident's adult children;
- (4) the resident's parents;
- (5) the resident's advocate.

C. The resident rights shall be posted in a conspicuous public place in the boarding home and shall include the telephone numbers to contact the authority to file a complaint which shall include the licensing authority and the state ombudsman's office.

D. To protect resident rights, the boarding home shall:

- (1) treat all residents with courtesy, respect, dignity and compassion;
- (2) not discriminate in admission or services based on gender, gender identity, sex, sexual orientation, resident's age, race, color, religion, physical or mental disability, or national origin;
- (3) provide residents written information about all services provided by the boarding home and their costs and give advance written notice of any changes;
- (4) provide residents with a clean, safe and sanitary living environment;
- (5) provide a humane psychological and physical environment of care for all residents;
- (6) protect the confidentiality of the resident's records;
- (7) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; privacy during medical examinations, consultations and treatment; and reasonable privacy in the residents' own rooms;
- (8) protect the resident's right to receive visitors;

- (9) protect the resident's right to receive visits from their attorney, physician, psychologist, clergyman, social worker, long term care ombudsman or representatives of the authority in private;
- (10) provide residents the ability to send and receive unopened mail;
- (11) provide access to telephones in order to make and receive confidential calls, provided that such calls do not infringe upon the rights of other residents and do not restrict availability of the telephone during emergencies.
 - (a) The licensee shall be permitted to require reimbursement from the resident or their authorized representative for long distance calls.
 - (b) The licensee shall be permitted to prohibit the making of long distance calls upon documentation that requested reimbursement for previous calls has not been received.
- (12) ensure that residents:
 - (a) are free from physical abuse and emotional abuse, neglect, and exploitation and restraint;
 - (b) are free to participate or abstain from the practice of religion and shall be afforded reasonable accommodations to worship;
 - (c) have the right to reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment if available;
 - (d) wear their own clothes;
 - (e) possess and use their own personal items, including their own toilet articles;
 - (f) have access to individual storage space for their private use;
 - (g) have the right to voice grievances to the boarding home staff, public officials, any state agency, or any other person, without fear of reprisal or retaliation;
 - (h) have the right to have their grievance addressed within five days;
 - (i) have the right to prompt and adequate medical attention for physical ailments;
 - (j) have the right to social interaction, including the right to associate freely with persons in and out of the boarding home, to participate in community groups and organizations, and to leave the boarding home and return to it without restriction;
 - (k) have the right to participate in treatment decisions and formulate advance directives such as living wills and powers of attorney;
 - (l) have the right to manage and control their personal finances;
 - (m) receive assistance in exercising the right to vote; and
 - (n) move from the boarding home in accordance with the terms of the admission agreement.

[8.370.15.40 NMAC - N, 7/1/2024]

8.370.15.41 NUTRITION: Boarding homes shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the “recommended daily dietary allowance” of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the current USDA dietary guidelines for Americans. Vending machines shall not be considered a source of snacks.

A. Dietary services: The boarding home will develop and implement written policies and procedures that are maintained on the premises.

B. All food service operations for residents shall comply with current federal and state laws and rules concerning food service and shall include:

- (1) at least three nutritious meals per day shall be served;
- (2) no more than 14 hours may elapse between the end of an evening meal and the beginning of a morning meal;
- (3) therapeutic diets shall be provided when ordered by the physician, and where indicated food shall be cut, chopped, or ground to meet individual needs;
- (4) under no circumstances may food be withheld for disciplinary reasons;
- (5) between meals, nourishment or snacks shall be available for all residents unless limited by dietary restrictions prescribed by a physician;
- (6) a weekly menu is posted conspicuously for the residents; and
- (7) copies of the menus of meals as served shall be dated and kept on file for at least 30 days.

Menus shall be made available for review by the residents or their authorized representatives and the licensing agency upon request.

C. Each facility shall have a policy establishing dining times and hours that accommodate all residents' needs.
[8.370.15.41 NMAC - N, 7/1/2024]

8.370.15.42 FOOD SERVICE: Requirements for boarding homes:

- A. The boarding home shall have either contracted food preparation or prepare food on site.
- B. A boarding home that provides onsite food preparation shall comply with the New Mexico environment department (NMED) food preparation regulations.
- C. The boarding home shall have the equipment and staff necessary to receive and serve the food.
- D. The boarding home shall maintain the equipment necessary for in-house preparation, or have an alternate source for food preparation, and service of food in emergencies. In case of emergency, (weather, power outage or other conditions) the boarding home shall maintain a minimum of three days' supply of drinking water and nonperishable food.
- E. Individuals with food preparation responsibilities shall practice safe food handling techniques in accordance with the current edition of food code published by the U.S. public health service, food and drug administration. Food handling techniques include:
- (1) preparing, holding and storing food at safe temperatures;
 - (2) reheating potentially hazardous leftover foods shall meet hazard analysis critical control point (HACCP) temperature guidelines for safety.
- F. If a resident requires a special diet, a copy of the diet shall be obtained from the resident's physician. A copy of the diet order shall be kept in the resident's file and a copy of the diet shall be kept in the kitchen.
- G. Dining: Meals served on the premises shall be served in dining rooms or similar areas in which the furniture, fixtures and equipment necessary for meal service are provided.
- (1) Such dining areas shall be located near the kitchen so that food may be served quickly and easily.
 - (2) Facilities shall have tables and chairs in the dining area to accommodate the total number of residents.
 - (3) Residents shall be encouraged to have meals with other residents.
 - (4) Tray service shall be provided in case of temporary need to allow resident to eat in their room.
- H. The licensee shall meet the following food supply and storage requirements:
- (1) There should be adequate amount of food available on the premises to prepare for the next scheduled meal and snack.
 - (2) Freezers shall be large enough to accommodate required perishables and shall be maintained at a maximum temperature of zero degrees F (-17.7 degrees C).
 - (3) Refrigerators shall be large enough to accommodate required perishables and shall maintain a maximum temperature of 45 degrees F (7.2 degrees C).
- [8.370.15.42 NMAC - N, 7/1/2024]

8.370.15.43 PHARMACEUTICAL SERVICES:

- A. Any boarding home licensed pursuant to these regulations that supervises self-administration of medication for the residents or safeguards medication for residents must have an appropriate custodial drug permit from the state board of pharmacy.
- (1) Only medications which can be self-administered by the resident, unless they will be administered by a licensed physician, dentist or registered nurse, can be kept by a boarding home.
 - (2) Medications prescribed for one resident must not be given to any other resident.
 - (3) Drugs and medications shall neither be supplied nor given to residents unless ordered or prescribed by a licensed physician, dentist or advanced practice registered nurse.
 - (4) Over the counter medications may be given to a resident by the boarding home if the boarding home has a written procedure for giving such medications reviewed and approved by a licensed physician or advanced practice registered nurse.
 - (5) Medications must be separated by individual in the storage area.
 - (6) The key for the medication storage area must be made available only to personnel duly authorized by the manager of the boarding home.

- (7) Medication which requires refrigeration must be kept in a separate locked box within a refrigerator, a locked refrigerator or a refrigerator in a locked room.
- (8) All medications must be kept in their original labeled containers.
- (9) Medications labeled “for external use only” must not be accessible to residents and must be kept separate from other medications.
- (10) All outdated medications shall be disposed of in a manner approved by the state board of pharmacy.
- (11) No boarding home will prepare dosages of medications in advance to be given to residents for self-administration. The medications must be in their original container. The staff member assisting may hold the container and assist the resident in opening the container.

B. Board of pharmacy permits: A copy of the boarding home’s custodial drug permit issued by the state board of pharmacy must be displayed, if any medications are kept by the boarding home on behalf of any residents.

[8.370.15.43 NMAC - N, 7/1/2024]

8.370.15.44 INFECTION CONTROL:

A. The boarding home shall develop and implement policies and procedures for infection control and prevention. Policies shall address the following:

- (1) proper hand washing techniques;
- (2) prevention and treatment of needle stick or sharp injuries;
- (3) proper disposal of sharps, if applicable, in accordance with OSHA and the New Mexico environment department standards;
- (4) universal precautions when handling blood, body substances, excretions, secretions shall be used;
- (5) the management of common illness and specific procedures to manage infectious diseases;
- (6) ensure garbage containers are in good and sanitary condition to prevent the harborage and feeding of pests.

B. Staff shall be trained in and shall adhere to infection control practices, the release of confidential information and reporting requirements related to infectious diseases.

C. Each boarding home shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

[8.370.15.44. NMAC - N, 7/1/2024]

8.370.15.45 RESIDENT SAFETY: The boarding home shall ensure the safety or residents within the home and that staff are trained and able to respond in emergencies.

A. Staff responsible for providing direct care and supervision shall receive training in first aid and cardiopulmonary resuscitation (CPR) from persons qualified by agencies including but not limited to the American red cross.

- (1) If the boarding home has no medical unit on the grounds, first aid supplies shall be maintained and be readily available in a central location in the boarding home.
- (2) The supplies shall include at least the following:
 - (a) A current edition of a first aid manual approved by the American red cross, the American medical association or a state or federal health agency.
 - (b) Sterile first aid dressings.
 - (c) Bandages or roller bandages.
 - (d) Adhesive tape.
 - (e) Scissors.
 - (f) Tweezers.
 - (g) Thermometers.
 - (h) Antiseptic solution.

B. If resident experiences a medical emergency, boarding home staff should immediately contact emergency services. There shall be at least one person capable of and responsible for communicating with emergency personnel.

- (1) The following information shall be readily available:

(a) The name, address and telephone number of each resident's physician and dentist, and other medical and mental health providers, if any.

(b) The name, address and telephone number of each emergency agency, including but not limited to the fire department, crisis center or paramedical unit. There shall be at least one medical resource available to be called at all times.

(c) The name and telephone number of an ambulance service.

(d) An advance directive or request regarding resuscitative measures.

(2) For residents with an advance directive or request regarding resuscitative measures, during a medical emergency, the boarding home staff shall present the advance directive or request regarding resuscitative measures to emergency personnel.

(3) When a resident requires prosthetic devices, or vision or hearing aids, the staff shall be familiar with the use of these devices and aids and shall assist the resident with their utilization as needed.

C. If a resident or visitor is engaging in behavior which is a threat to their mental or physical health or safety, or to the health and safety of others in the boarding home, the boarding home staff must immediately contact emergency services.

D. The boarding home must ensure that the following conditions are met if oxygen equipment is in use:

(1) The licensee makes a written report to the local fire jurisdiction that oxygen is in use at the boarding home.

(2) "No Smoking - oxygen in use" signs shall be posted in appropriate areas.

(3) Smoking is prohibited where oxygen is in use.

(4) All electrical equipment is checked for defects that may cause sparks.

(5) Oxygen tanks that are not portable are secured either in a stand or to the wall.

(6) Plastic tubing from the nasal canula (mask) to the oxygen source is long enough to allow the resident movement within their room but does not constitute a hazard to the resident or others.

(7) Residents use oxygen from a portable source when they are outside of their rooms or when walking in a day care setting.

(8) Equipment is operable.

(9) Equipment is removed from the boarding home when no longer in use by the resident.

E. The boarding home must have a valid custodial drug permit issued by the state board of pharmacy, that supervise the self-administration of medications or safeguards with regard to medications for the residents. All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as approved by the board of pharmacy and the key shall be in the care of the manager or designee.

(1) Internal medication shall be kept separate from external medications. Drugs to be taken by mouth shall be separated from all other delivery forms.

(2) A separate, locked refrigerator, a separate locked box within a refrigerator or a refrigerator in a locked room, shall be provided by the boarding home for medications. The refrigerator temperature shall be kept in compliance with the state board of pharmacy requirements for medications.

(3) All medications, including non-prescription medications, shall be stored in separate compartments for each resident and all medications shall be labeled with the resident's name and in compliance with label instructions and state and federal laws.

(4) No person other than the dispensing pharmacist shall alter a prescription label.

(5) Each resident's medication shall be stored in its originally received container.

(6) No medications shall be transferred between containers.

(7) A resident may be permitted to keep their own medication in a locked compartment in their room for self-administration, if the physician's order deems it appropriate.

(8) The boarding home shall not require the residents to purchase medications from any particular pharmacy.

[8.370.15.45 NMAC - N, 7/1/2024]

8.370.15.46 COMPLAINTS: The boarding home must investigate complaints made by a resident, caregiver or guardian regarding treatment or care, or regarding the lack of respect for the resident's property and must document both the existence of the complaint and the resolution of the complaint. The boarding home's investigation of a complaint(s) must be initiated within three working days of receipt of the complaint.

[8.370.15.46 NMAC - N, 7/1/2024]

8.370.15.47 REPORTING OF INCIDENTS: All facilities licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with all other applicable statutes and regulations.

A. All facilities shall report to the licensing authority any serious incidents or unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the residents or staff, including but not limited to:

- (1) any serious incident or unusual occurrence, including any incident or occurrence which has threatened, or could have threatened the health, safety and welfare of the residents or staff;
- (2) injuries of unknown origin or known, suspected or alleged incidents of resident abuse, neglect, exploitation or mistreatment by staff or other person(s), or death;
- (3) fire, flood or other man-made or natural disasters including any damage to the boarding home caused by such disasters and any incident which poses or creates any life safety or health hazards;
- (4) any outbreak of contagious diseases and diseases dangerous to the public health, suspected diseases reportable by law shall be reported to the local public health agency and the authority's bureau of community health and prevention within time frames specified by these agencies;
- (5) any human errors by staff and employees which may or has resulted in the death, serious illness, hospitalization, or physical impairment of a resident or staff; and
- (6) abuse, neglect, exploitation, and injuries of unknown origin and other reportable incidents in accordance with 8.370.9 NMAC, as may be amended from time to time.

B. Documentation: The boarding home is responsible for documenting all incidents, within five days of the incident, and having on file the following:

- (1) a narrative description of the incident;
- (2) evidence contact was made to the licensing authority;
- (3) results of the boarding home's investigation, and
- (4) the boarding home action, if any.

[8.370.15.47 NMAC - N, 7/1/2024]

8.370.15.48 PHYSICAL ENVIRONMENT AND GENERAL BUILDING PLAN REQUIREMENTS:

A. Building plans: Boarding homes licensed for four or more residents must submit building plans. The building plans must be of professional quality, prepared and stamped by an architect registered pursuant to NMSA 61-15-9 NMSA 1978. One printed copy of the complete set of building plans must be submitted, drawn to an accurate scale of at least one-eighth of an inch to one foot, submitted in size format required by the licensing bureau. The building plans for renovations or building additions to an existing building must include sufficient information to clearly distinguish between new and existing construction, for the authority to make a compliance determination. The building plan(s), information required is noted below:

- (1) site plan: showing the location of the building on a site/plot plan to determine surrounding conditions, driveways, all walks and steps, ramps, parking areas, handicapped and emergency vehicle spaces, accessible route to the main entrance, secure yard for residents, any permanent structures, including notes on construction materials used;
- (2) code compliance plan and life safety plan: noting applicable code requirements and compliance data, locations of rated fire walls, smoke partitions (if any), exit paths & distances, fire extinguishers locations;
- (3) floor plans: showing location use of each room, (e.g., waiting room, dining room, living/common rooms, office, resident rooms, kitchen, common elements, door locations (swings), window locations, restrooms, locations of all restrooms, plumbing fixtures (sinks, toilets, tubs-showers; location a of all level changes within and outside the building (e.g. steps or ramps, etc.); and all other pertinent explanatory information addressing the requirements in applicable regulations;
- (4) exterior building elevations: noting all building heights, locations of exterior doors, and any operable and fixed windows (sill heights);
- (5) building and wall sections: showing at least one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, walls, and ceiling/roof construction;
- (6) schedule sheets: room finish, noting all room finishes, (e.g., carpet, tile, gypsum board with paint, etc.); door schedule, noting door sizes/thickness, door types & ratings; window schedule, noting sizes, type and operation; skylight schedule, noting size, type;

- (7) special systems plan: location of heat and smoke detectors, nurse call systems, and operational elements of alarm system;
- (8) mechanical plans: noting location of heating units, furnaces, hot water heaters, and fuel type and source, all heating, ventilating and air conditioning/cooling systems including locations of fire dampers;
- (9) plumbing plan: noting all plumbing fixture locations, fixture types;
- (10) electrical plan: noting power and lighting layouts, exit lighting, emergency lighting fixtures, emergency power systems (if any), electrical panel information, and
- (11) other plans: As necessary (i.e.; phasing plan) to describe compliance with the other requirements in applicable regulations.

B. Existing or renovated construction: If the proposed boarding home includes any remodeling, renovations or additions or new construction of any type, the building plans and specifications covering all portions of the proposed work delineating all existing construction and all new or proposed construction shall be submitted to the authority for review and approval. Submit phasing plan if project construction will be phased. New boarding homes proposed for licensure in existing buildings must comply with all building requirements as if they were completely new construction.

C. New construction: Building plans must be submitted and will be reviewed by the authority for compliance with these licensing regulations, and applicable building and fire safety codes. If the authority approves the boarding home's building plans and local building officials have issued a construction permit, construction may begin.

D. This provision is an ongoing requirement and applies to, and includes all construction at the facility, which occurs before and after issuance of the initial license. This provision does not generally apply to maintenance and repair. However, if the maintenance or repair impacts or alters any of the facility requirements under these regulations, the applicant or licensee must notify the authority and verify ongoing compliance with these regulations.

E. The authority shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and proposed construction, the applicant or licensee must submit for building plan approval by the authority before construction begins.

F. Completed construction: All new or renovated construction completed shall comply with the building plans approved by the authority in the plan review process and prior to construction, these rules, and all other applicable rules and codes; and any of the authority's approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities having jurisdiction, in addition to New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12. Applicant must receive initial life safety code approval and a temporary license from this authority prior to accepting or admitting any residents into the facility.

[8.370.15.48 NMAC - N, 7/1/2024]

8.370.15.49 PHYSICAL ENVIRONMENT AND GENERAL BUILDING REQUIREMENTS:

A. Facilities licensed pursuant to these regulations must be accessible to and useable by disabled employees, staff, visitors, and residents shall comply with the Americans with Disabilities act (ADA), current edition.

B. All buildings of the premises providing resident use and services will be considered part of the boarding home and must meet all requirements of these regulations. Where a part of the boarding home services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

C. A boarding home applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may stipulate these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and in New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.

D. Use of manufactured homes, modular homes, mobile homes and recreational vehicles:

(1) Use of a manufactured home, modular home or mobile home may be allowed if the structure meets all physical, environment and general building requirements in this rule and all other applicable state, county and municipal building codes.

(2) For facilities with four or more residents, mobile homes shall not be allowed.

(3) The use of recreational vehicles, travel or camper trailers which are designed to drive or be towed behind a vehicle is prohibited.

E. Facilities with a licensed capacity of 16 or more residents shall also meet the following requirements:

(1) There shall be space available in the boarding home to serve as an office for business, administration and admission activities, and a private office to conduct private interviews.

(2) There shall be a reception area and a restroom facility designated for use by visitors.
[8.370.15.49 NMAC - N, 7/1/2024]

8.370.15.50 MAINTENANCE OF BUILDING AND GROUNDS: The boarding home's buildings and systems shall be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following:

A. all electrical, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems;

B. all equipment and materials needed for resident use shall be maintained clean and in good repair;

C. all furniture and furnishings must be kept clean and in good repair; and

D. the grounds of the boarding home must be maintained in a safe and sanitary condition at all times.
[8.370.15.50 NMAC - N, 7/1/2024]

8.370.15.51 HAZARDOUS AREAS:

A. Hazardous areas include the following:

(1) fuel fired equipment rooms;

(2) bulk laundries or laundry rooms with more than 100 square feet;

(3) storage rooms with more than 50 square feet but less than 100 square feet not storing combustibles;

(4) storage rooms with more than 100 square feet storing combustibles;

(5) chemical storage rooms with more than 50 square feet; and

(6) garages in which fuel-fired equipment is located or in which tools, paints, solvents or construction materials are stored, maintenance shops, or maintenance rooms.

B. Hazardous areas on the same floor or abutting a primary means of escape or a sleeping room shall be protected as required by New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

C. All boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour.
[8.370.15.51 NMAC - N, 7/1/2024]

8.370.15.52 EXITS:

A. Each floor of a boarding home shall have exits as required by as required by New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

B. Each exit must be marked by illuminated exit signs having letters at least six inches high whose principle strokes are at least three-quarters of an inch wide.

C. Illuminated exit signs, if required by the authority having jurisdiction, must be maintained in operable condition at all times.

D. Exit ways must be kept free from obstructions at all times.
[8.370.15.52 NMAC - N, 7/1/2024]

8.370.15.53 HALLWAYS AND CORRIDORS: For facilities contained within existing commercial or residential buildings, corridor widths must conform with the New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division, as applied by the authority having jurisdiction.

[8.370.15.53 NMAC - N, 7/1/2024]

8.370.15.54 HOUSEKEEPING:

- A. The boarding home must be kept free from accumulations of refuse, discarded equipment, furniture, paper, dirt, rubbish, dust, and safety hazards and offensive odors.
 - B. Common rooms, kitchen, waiting areas, restrooms and other areas of daily usage must be cleaned as needed to maintain a clean and safe environment for the residents.
 - C. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.
 - D. Janitorial cleaning supplies must be kept in a secure closet or cabinet.
- [8.370.15.54 NMAC - N, 7/1/2024]

8.370.15.55 PROVISIONS FOR EMERGENCY CALLS:

- A. An easily accessible hard-wired telephone for summoning help, in case of emergency, must be available in the boarding home.
 - B. A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital, poison control center, and the authority's division of health improvement's complaint hotline must be prominently posted by the telephone(s).
- [8.370.15.55 NMAC - N, 7/1/2024]

8.370.15.56 MEDICATIONS STORAGE: All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as required and approved by the New Mexico board of pharmacy, and the key shall be in the care of the manager or designee.

[8.370.15.56 NMAC - N, 7/1/2024]

8.370.15.57 OUTDOOR ACTIVITY SPACE:

- A. An easily accessible outdoor activity area shall be available for use by residents.
 - B. A smoking area, if provided, must be located 25 feet away from any exit door and be provided with noncombustible metal ash urns.
- [8.370.15.57 NMAC - N, 7/1/2024]

8.370.15.58 KITCHEN AND DINING:

- A. The boarding home shall prepare food on site or have contracted food preparation. A boarding home that provides onsite food preparation shall comply with the current standards and regulations of the New Mexico environment department (NMED), and other local government authorities.
 - B. A boarding home with a kitchen area, whether used for on-site food preparation or not, must adhere to the following requirements:
 - (1) toilet facilities may not open directly into the kitchen;
 - (2) filters, exhaust hoods, ranges, deep fat fryers, ovens and all other similar items shall be operable and clean;
 - (3) kitchen exhaust hood shall be vented to exterior and provided with a fire-suppression system if required by NMED or local authority;
 - (4) the kitchen, prep areas, and dining area shall be kept clean, and sanitary, and
 - (5) all dishes and utensils used for eating and drinking and in the preparation of food and drink, shall be cleaned and sanitized after each usage.
- [8.370.15.58 NMAC - N, 7/1/2024]

8.370.15.59 DINING, RECREATION AND INDOOR ACTIVITY OR MULTIPURPOSE ROOMS: A boarding home shall have common rooms, including a living room, dining room, den or other recreation/activity rooms for the resident's use. The furnishings shall be well constructed, comfortable and in good repair.

- A. At least one such room shall be available to residents for relaxation and visitation with friends or relatives, and which can be closed for private visits.
- B. A dining area shall be provided for meals and shall have tables and chairs to accommodate the residents.
- C. Each activity area or common room shall have a minimum net glazed area (window) not less than eight percent of the floor area of the room served. Boarding homes in existence as of the date of adoption of this section must have at least one activity area that complies with this requirement, but are not required to make structural changes to all activity areas.

D. Total Area: The combined floor space of common rooms shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space. [8.370.15.59 NMAC - N, 7/1/2024]

8.370.15.60 RESIDENT ROOMS: Resident bedrooms must meet, at a minimum, the following requirements:

A. A boarding home shall not exceed the resident (bed) capacity approved by the licensing authority. Any beds or bedrooms provided for boarding home staff are not included in the approved bed capacity.

B. No resident bedroom shall be used as a public or general passageway to another room, bath or toilet. Resident rooms must connect directly to a hallway or other common area of the boarding home.

C. No room commonly used for other purposes shall be used as a bedroom for any resident. Such rooms shall include but not be limited to halls, stairways, unfinished attics or basements, garages, storage areas, and sheds, or similar detached buildings.

D. Resident rooms may be private (single), semi-private or dormitory style sleeping room. Required square footage excludes any closets or fixed cabinetry.

(1) Private (single) rooms must be of a minimum room size of 70 square feet or as otherwise required by the authority having jurisdiction.

(2) Semi-private rooms may not house more than two residents and shall provide 60 square feet per resident or as otherwise required by the authority having jurisdiction.

(3) Dormitory rooms shall be of a minimum room size of 150 square feet and must provide 50 square feet per occupant with a maximum occupancy of eight or as otherwise required by the authority having jurisdiction.

E. Resident rooms shall not be less than seven feet in any horizontal direction or as otherwise required by the authority having jurisdiction.

F. Each resident room shall have operable window(s) with screens. The area of the outdoor windows shall be at least one tenth of the floor area of the room. At least one window in each resident room must allow for emergency egress and comply with the New Mexico building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

G. Each resident room shall be furnished with well-constructed, comfortable furniture in good repair, unless the resident chooses to bring their own furniture:

(1) An individual bedframe with a clean, fire-retardant mattress and pillow, with firm support.

(2) Cots and bunk beds are not allowed. The bed must be at a minimum a standard size “twin” or larger bed.

(3) In addition to the bed, each resident shall be furnished with a chair, a night stand, and light(s) necessary for reading.

(4) Two residents sharing a semi-private bedroom shall be permitted to share one-night stand.

(5) Lockers, portable or permanent closets and drawer space in each bedroom to accommodate the resident’s clothing and personal belongings. A minimum of two drawers, or eight cubic feet of drawer space, whichever is greater, shall be provided for each resident.

(6) Consenting couples may be allowed to share one double or larger sized bed in a semi-private room.

H. Each resident shall be provided with the following items:

(1) Clean linen in good repair, including lightweight, warm blankets and bedspreads; top and bottom bed sheets; pillowcases; mattress pads; rubber or plastic sheeting, when necessary; and bath towels, hand towels and wash cloths.

(2) The quantity of linen provided shall permit changing the linen at least once each week or more often when necessary to ensure that clean linen is in use by residents at all times.

(3) The use of common towels and washcloths shall be prohibited.

(4) The boarding home shall ensure provision to each resident, the necessary items for personal care and maintenance of personal hygiene, including but not limited to the following items: toilet paper, feminine napkins, nonmedicated soap, toothbrush, toothpaste, and comb.

[8.370.15.60 NMAC - N, 7/1/2024]

8.370.15.61 TOILETS, LAVATORIES AND BATHING FACILITIES:

A. General requirements: The number of and location of toilets, lavatories and bathing facilities shall be provided and installed in accordance with the New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.

- (1) All toilet rooms must be provided with a lavatory for hand washing.
- (2) All toilets must be kept supplied with toilet paper.
- (3) All lavatories for hand washing must be kept supplied with disposable towels for hand drying, a mechanical blower or individual hand towel hooks or bars for each resident's hand towel.
- (4) A minimum of one toilet, one lavatory and one bathing unit (tub, shower, or combo unit) shall be provided for every eight residents or fraction thereof.
- (5) If a boarding home has live-in staff, a separate toilet, hand washing, and bathing facility for staff must be provided.
- (6) Facilities with four or more residents shall provide one handicap accessible bathroom or as required by the New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.
- (7) Toilets and bathrooms shall be located near resident bedrooms.
- (8) Individual privacy shall be provided in all toilet, bath and shower areas.
- (9) Lavatories and bathing units shall have hot and cold water available. Hot water shall not exceed 110 degrees.

[8.370.15.61 NMAC - N, 7/1/2024]

8.370.15.62 LAUNDRY SERVICES:

A. General requirements: A boarding home shall provide laundry services, either on the premises or through a laundromat or commercial laundry and linen service.

- (1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.
- (2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.
- (3) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas.
- (4) Boarding home laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage.
- (5) All linens and bedding shall be changed as needed or when a new resident is to occupy the bed.

B. Personal laundry: Residents who are able, and who so desire, may be allowed to use at least one washing machine, dryer, iron and ironing board for their personal laundry, provided that the equipment is of a type and in a location, which can be safely used by the residents. If that washing machine is coin operated, residents on SSI/SSP shall be provided with coins or tokens and laundry supplies.

[8.370.15.62 NMAC - N, 7/1/2024]

8.370.15.63 PLUMBING SYSTEMS; WATER AND WASTE DISPOSAL: All plumbing systems including water supply and sewer systems shall be in accordance with latest adopted editions of the New Mexico commercial building code, international building code (IBC), New Mexico plumbing code, New Mexico mechanical code current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction and local building codes.

A. Water: A boarding home licensed pursuant to these regulations must be provided with an adequate supply of water that is of a safe and sanitary quality suitable for domestic use.

- (1) If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.
- (2) Hot and cold running water under pressure must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

- (3) Water distribution systems are arranged to provide hot water at each hot water outlet at all times.
 - (4) Hot water for hand washing and bathing facilities must not exceed 120 degrees F.
 - B. Water heaters:** Must be able to supply hot water to all hot water taps within the boarding home at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees F.
 - (1) Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.
 - (2) All water heaters must be equipped with a pressure relief valve (pop-off valve).
 - C. Sewage and waste disposal:** All sewage and liquid wastes must be disposed of into a municipal or public sewage system where such facilities are available.
 - (1) Where a municipal sewage system is not available, the system used must be inspected and approved by the New Mexico environment department or recognized local authority.
 - (2) Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid waste generated by the boarding home must be inspected and approved by the New Mexico environment department or recognized local authority.
 - (3) All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids. Receptacles must be kept closed and clean.
- [8.370.15.63 NMAC - N, 7/1/2024]

8.370.15.64 ELECTRICAL POWER & LIGHTING STANDARDS:

- A.** All electrical equipment and installation shall comply with the New Mexico commercial building code, international building code (IBC), New Mexico electrical code, current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.
 - B.** Lighting shall be provided at all spaces occupied by people, machinery, or equipment within buildings, approaches to buildings, and parking lots.
 - C.** Emergency lighting shall be provided which will activate automatically upon disruption of electrical services.
 - (1) Facilities with four or more residents shall have emergency lighting to light exit passageways and the exterior area near the exits that activates automatically upon disruption of electrical service.
 - (2) Facilities with three or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.
 - D.** Electrical cords and extension cords shall:
 - (1) be U/L approved;
 - (2) be replaced as soon as they show wear;
 - (3) be plugged into an electrical receptacle within the room where used;
 - (4) not be used as a general wiring method; and
 - (5) not be used in series.
 - E.** Electrical receptacles shall:
 - (1) be duplex-grounded type electrical receptacles (convenience outlets) and installed in all areas in sufficient quantities for tasks to be performed as needed;
 - (2) be a ground fault circuit interrupter if located within six feet of a water source.
 - F.** The use of multiple receptacle adapters (gang plugs) in electrical receptacles is strictly prohibited.
- [8.370.15.64 NMAC - N, 7/1/2024]

8.370.15.65 HEATING, VENTILATION, AND AIR-CONDITIONING:

- A.** Heating, ventilation, air-conditioning, piping, boilers, and furnaces must be installed and maintained to meet all requirements of the New Mexico commercial building code, international building code (IBC), New Mexico plumbing, mechanical and electrical codes, current edition as adopted by the New Mexico construction industries division and local building codes, as applied by the authority having jurisdiction.
 - (1) The heating, ventilation and air-conditioning system must be able to maintain interior temperatures in all rooms used by residents, staff or visitors with interior temperatures between 65 degrees Fahrenheit and 78 degrees Fahrenheit year-round.
 - (2) The use of non-vented heaters, open flame heaters or portable heaters is prohibited.
 - (3) An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.

(4) All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.

(5) All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

B. A boarding home must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.

(1) All restrooms, bathroom, and laundry rooms shall be provided with exhaust fans vented to the exterior.

(2) Kitchen hoods must be vented to the exterior.

C. All building code requirements must be met regarding emergency egress for an outside window or door. A window unit air conditioner or fan shall not be installed in the required emergency egress window.

D. Fireplaces and wood burning stoves must be properly vented, have exterior combustion air, and be securely screened or have tempered glass doors. Fireplaces or wood burning stoves are not allowed in resident rooms.

[8.370.15.65 NMAC - N, 7/1/2024]

8.370.15.66 FIRE SAFETY SYSTEMS AND COMPLIANCE: All Boarding homes shall comply with the current applicable requirements of the state fire marshal, or local fire authority having jurisdiction, for fire prevention, safety, and fire safety systems. All equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

A. Fire clearance and inspections: Each boarding home must request from the state fire marshal, or local fire authority having jurisdiction, an annual fire inspection. Records of inspection shall be kept on file in the boarding home.

(1) Copies of the fire inspection records must be kept on file at the boarding home for the following:

- (a) fire extinguishers;
- (b) smoke and fire alarm systems;
- (c) automatic detection equipment, including carbon monoxide detectors;
- (d) kitchen hoods with fire suppression;
- (e) automatic fire suppression systems, and
- (f) other fire safety equipment.

(2) If the policy of the fire authority having jurisdiction does not provide for annual inspection of the boarding home, the boarding home must document the date the request was made and to whom. If the fire authorities conduct annual inspections, a copy of the latest inspection must be kept on file in the boarding home.

B. Staff fire and safety training: All staff of the boarding home must know the location of, and be instructed in proper use of fire extinguishers, fire safety systems, and other procedures to be observed in case of fire or other emergencies.

(1) Boarding home staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

(2) The boarding home should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

C. Evacuation plan: Each boarding home must have a fire evacuation plan conspicuously posted in each separate area of the building for residents in case of fire or other emergencies, showing routes of evacuation and designated areas to meet. Staff shall be trained to direct and assist residents during an emergency evacuation.

D. Fire drills: All facilities shall conduct monthly fire drills which are to be documented. A record of the monthly fire drills shall be maintained on file in the boarding home and readily available. There shall be at least one documented fire drill per month. There shall be one documented fire drill for each daily work shift (i.e.: day, night or graveyard) per quarter, that employs the use of the fire alarm system or the detector system in the boarding home. Fire drill records shall show:

- (1) the date and time of the drill;
- (2) the number of staff participating in the drill;
- (3) any problem noted during the drill;
- (4) the evacuation time in total minutes, and

(5) if applicable, the local fire department may be requested to supervise and participate in fire drills.

E. Fire alarms, smoke detectors and other equipment: The system shall comply with the current applicable requirements of the state fire marshal, or local fire authority having jurisdiction.

(1) Facilities shall have an automatic fire alarm system, if required by the authority having jurisdiction. The fire alarm system(s) shall be inspected and approved in writing by the fire authority with jurisdiction.

(2) Approved smoke detectors that when activated provides an alarm which is audible in all sleeping areas shall be installed on each floor. Areas of assembly, such as the dining, living or activity room(s) must also be provided with smoke detectors.

(3) Approved carbon monoxide detectors that when activated provides an alarm which is audible in all sleeping areas shall be installed on each floor.

F. Fire extinguishers: Fire extinguisher(s) shall be installed in the boarding home, as approved by the state fire marshal or the local fire prevention authority with jurisdiction.

(1) Facilities must as a minimum have two 2A10BC fire extinguishers:

(a) One extinguisher located in the kitchen or food preparation area.

(b) One extinguisher centrally located in the boarding home.

(c) The maximum distance between fire extinguishers shall be 50 feet.

(d) All fire extinguishers shall be inspected yearly, recharged as needed and tagged noting the date of the inspection.

(2) Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

G. Automatic fire protection (fire sprinkler) system: Facilities shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with the New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes as applied by the state fire marshal, or local fire authority having jurisdiction.

(1) Exception: Boarding homes designated as "R-3" in the New Mexico commercial building codes, with 10 transient residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress (as referenced in section 310.5 Residential Group R-3).

(2) Exception: Boarding homes designated as "R-3" in the New Mexico commercial building code, with 16 nontransient residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress (as referenced in section 310.5 Residential Group R-3).
[8.370.15.66 NMAC - N, 7/1/2024]

8.370.15.67 INCORPORATED AND RELATED CODES: The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes but not limited to the following:

A. Health facility licensure fees and procedures, health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings for licensed facilities, health care authority, 8.370.2 NMAC.

D. Caregiver's criminal history screening requirements, 8.370.5 NMAC.

E. Employee abuse registry, 8.370.8 NMAC.

F. Incident reporting, intake processing and training requirements, 8.370.9 NMAC.

G. New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.

[8.370.15.67 NMAC - N, 7/1/2024]

HISTORY of 8.370.15 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 16 REQUIREMENTS FOR LONG TERM CARE FACILITIES

8.370.16.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.16.1 NMAC - N, 7/1/2024]

8.370.16.2 SCOPE:

A. Services for residents shall be provided on a continuing 24 hour basis and shall maintain or improve physical, mental and psychosocial well-being under plan of care developed by a physician or other licensed health professional and shall be reviewed and revised based on assessment.

B. All facilities licensed as nursing homes pursuant to Subsection A of Section 24-1-5 NMSA 1978, are subject to all provisions of these regulations.
[8.370.16.2 NMAC - N, 7/1/2024]

8.370.16.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and 24-1-5 NMSA 1978 of the Public Health Act, as amended. 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.
[8.370.16.3 NMAC - N, 7/1/2024]

8.370.16.4 DURATION: Permanent.
[8.370.16.4 NMAC - N, 7/1/2024]

8.370.16.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.16.5 NMAC - N, 7/1/2024]

8.370.16.6 OBJECTIVE:

- A.** Establish minimum standards for long term care facilities in the state of New Mexico.
- B.** Monitor long term care facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the residents or staff.
- C.** Encourage the maintenance of long term care facilities that will provide quality services which maintain or improve the health and quality of life to the residents.
[8.370.16.6 NMAC - N, 7/1/2024]

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

- A. Definitions beginning with “A”:**
- (1) “Abuse”** means any act or failure to act performed intentionally, knowingly, or recklessly that causes or is likely to cause harm to a resident, including but not limited to:
- (a)** Physical contact that harms or is likely to harm a resident of a care facility.
 - (b)** Inappropriate use of physical restraint, isolation, or medication that harms or is likely to harm a resident.
 - (c)** Inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician’s order.
 - (d)** Medically inappropriate conduct that causes or is likely to cause physical harm to a resident.
 - (e)** Medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident.
 - (f)** An unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.
- (2) “Ambulatory”** means able to walk without assistance.
- (3) “Applicant”** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have

authority from the organization. The applicant must be the owner.

B. Definitions beginning with “B”: [RESERVED]

C. Definitions beginning with “C”: [RESERVED]

D. Definitions beginning with “D”:

(1) **“Developmental disability”** means mental retardation or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

- (a) manifested before the individual reaches age 22;
- (b) likely to continue indefinitely; and
- (c) results in substantial functional limitations in three or more of the following

areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction;
- (vi) capacity for independent living; and
- (vii) economic self-sufficiency.

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

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

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

(1) **Exploitation** includes but is not limited to:

- (a) manipulating the patient/client resident by whatever mechanism to give money or property to any facility staff or management member;
- (b) misappropriation or misuse of monies belonging to a resident or the unauthorized sale, or transfer or use of a patient/client/residents property;
- (c) loans of any kind from a patient/client/resident to family, operator or families of staff or operator;
- (d) accepting monetary or other gifts from a patient /client/resident or their family with a value in excess of \$25 and not to exceed a total value of \$300 in one year.
- (e) All gifts received by facility operators, their families or staff of the facility must be documented and acknowledged by person giving the gift and the recipient.

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

F. Definitions beginning with “F”:

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

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

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”: [RESERVED]

I. Definitions beginning with “I”:

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

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

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

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

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

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

N. Definitions beginning with “N”:

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

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

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

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

O. Definitions beginning with “O”:

P. Definitions beginning with “P”:

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

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

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

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

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

(3) **“Physical therapist”** means a person licensed to practice physical therapy under Sections 61-12D-1 to Section 61-12D-19 NMSA 1978, the Physical Therapy Act.

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

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

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

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

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

R. Definitions beginning with “R”:

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

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

S. Definitions beginning with “S”:

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

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

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

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

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

(i) the service would constitute a skilled service where the inherent

complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of professional personnel;

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

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

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

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

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

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

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

W. Definitions beginning with “W”: **“Waive/waivers”** means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of residents and staff are not in danger. Waivers are issued at the sole discretion of the licensing. [8.370.16.7 NMAC - N, 7/1/2024]

8.370.16.8 LICENSURE:

A. Application/requirements for licensure:

- (1) All initial applications shall be made on forms provided by the licensing authority.
 - (a) all information requested on the application must be provided;
 - (b) The application must be dated and signed by the person who shall be the licensee;
 - (c) the application must be notarized.
- (2) In every application, the applicant shall provide the following information:
 - (a) the identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;
 - (b) the identities of all persons or business entities having five percent ownership interest whatsoever in the facility, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building, and
 - (c) the identities of all creditors holding a security interest in the premises, whether land or building; and
 - (d) in the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, and between any owner or operator of the new licensee, whether direct or indirect.
- (3) The applicant shall provide to the authority, information including, but not limited to, information regarding felony convictions, civil actions involving fraud, embezzlement or misappropriation of property, any state or federal adverse action resulting in suspension or revocation of license or permit.
- (4) The new licensee shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of six months.
- (5) No license may be issued unless and until the applicant has supplied all information requested by the authority.
- (6) Fees: All applications for initial licensure must be accompanied by the required fee.
 - (a) Current fee schedules may be requested from the licensing authority.
 - (b) Fees must be in the form of a certified check, money order, personal or business

check made payable to the state of New Mexico.

(c) Fees are non-refundable.

B. Action by the authority:

(1) After receiving complete application, the authority shall investigate the applicant to determine the applicant's ability to comply with these regulations.

(2) Within 60 days after receiving a complete application for a license, the authority shall either approve the application and issue a license or deny the application. If the application for a license is denied, the authority shall give the applicant reasons, in writing, for the denial.

(3) The licensing authority shall not issue a new license if the applicant has had a health facility license revoked or denied renewal, or has surrendered a license under threat of revocation or denial of renewal, or has lost certification as a Medicaid provider as a result of violations of applicable medicaid requirements. The licensing authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be Class A or Class B deficiencies as defined in health facility sanctions and civil monetary penalties, 8.370.4 NMAC, or has been noncompliant with plans of correction. [8.370.16.8 NMAC - N, 7/1/2024]

8.370.16.9 TYPES OF LICENSE:

A. Annual license: An annual license is issued for a one year period to a long term care facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A license must apply to the licensing authority for an amended license when there is a change of administrator/director, when there is a change of name for the facility, when a change in capacity is sought, a change in bed classification is sought, or an addition or deletion of any special or operation unit(s) as listed in these regulations is sought.

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for amended license.

(3) Application must be submitted within 10 working days of the change.

[8.370.16.9 NMAC - N, 7/1/2024]

8.370.16.10 SCOPE OF LICENSE:

A. The licensed is issued only for the premises and the persons named in the license application and may not be transferred or assigned by the licensee.

B. The license shall state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the authority considers appropriate and necessary taking all facts and circumstances into account.

C. A licensee shall fully comply with all requirements and restrictions of the license.

[8.370.16.10 NMAC - N, 7/1/2024]

8.370.16.11 SEPARATE LICENSES: Separate licenses shall be required for facilities which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same ground or adjacent ground.

[8.370.16.11 NMAC - N, 7/1/2024]

8.370.16.12 LICENSE RENEWAL:

A. Licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application and required fee prior to expiration of current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these regulations.

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the long term care facility shall cease operation until it obtains a new license through the initial licensure

procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.
[8.370.16.12 NMAC - N, 7/1/2024]

8.370.16.13 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location or accessible to public view within the facility.
[8.370.16.13 NMAC - N, 7/1/2024]

8.370.16.14 REPORT OF CHANGES:

A. The licensee shall notify the authority in writing of any changes in the information provided, within 10 days of such changes. This notification shall include information and documentation regarding such changes.

B. When a change of administrator occurs, the authority shall be notified within 10 days in writing by the licensee. Such writing shall include the name and license number of the new administrator.

C. Each licensee shall notify the authority within 10 days in writing of any change of the mailing address of the licensee. Such writing shall include the new mailing address of the licensee.

D. When a change in the principal officer of a corporate license (chairman, president, general manager) occurs the authority shall be notified within 30 days in writing by the licensee. Such writing shall include the name and business address of such officer.

E. Any decrease or increase in licensed bed capacity of the facility shall require notification by letter to the authority and shall result in the issuance of a corrected license.

[8.370.16.14 NMAC - N, 7/1/2024]

8.370.16.15 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. Ownership of the facility changes.

B. The facility changes location.

C. Licensee of the facility changes.

D. The facility discontinues operation.

E. A facility wishing to continue operation as a licensed long term care facility under circumstances listed in 8.370.16.15 NMAC must submit an application for initial licensure in accordance with 8.370.16.8 NMAC of these regulations, at least 30 days prior to the anticipated change.

[8.370.16.15 NMAC - N, 7/1/2024]

8.370.16.16 AUTOMATIC EXPIRATION OF LICENSE: a license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked, or:

A. On the day a facility discontinues operation.

B. On the day a facility is sold, leased, or otherwise changes ownership or licensee.

C. On the day a facility changes location.

[8.370.16.16 NMAC - N, 7/1/2024]

8.370.16.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.16.17 NMAC - N, 7/1/2024]

8.370.16.18 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

A. Failure to comply with any provision of these regulations.

B. Failure to allow survey by authorized representatives of the licensing authority.

C. Any person active in the operation of a facility licensed pursuant to these regulations shall not be

under the influence of alcohol or narcotics or convicted of a felony.

D. Misrepresentation of falsification of any information or application forms or other documents provided to the licensing authority.

E. Discovery of repeat violations of these regulations during surveys.

F. Failure to provide the required care and services as outlined by these regulations for the patients receiving care at the long term care facility.

G. Abuse, neglect or exploitation of any patient/client/resident by facility operator, staff, or relatives or operator/staff.

[8.370.16.18 NMAC - N, 7/1/2024]

8.370.16.19 HEARING PROCEDURES:

A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the long term care facility as outlined in 8.370.16.17 NMAC and 8.370.16.18 NMAC will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the adjudicatory hearing procedures will be furnished to the long term care facility or agency at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.

[8.370.16.19 NMAC - N, 7/1/2024]

8.370.16.20 PROGRAM FLEXIBILITY:

A. All facilities shall maintain compliance with the licensee requirements. If the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects conflicts with requirements, then prior written approval from the authority shall be obtained in order to ensure provisions for safe and adequate care. Such approval shall provide for the terms and conditions under which the exception is granted. A written request and substantiating evidence supporting the request shall be submitted by the applicant or licensee to the authority.

B. Any approval of the authority granted under this section, or a certified copy thereof shall be posted immediately adjacent to the facility's license.

[8.370.16.20 NMAC - N, 7/1/2024]

8.370.16.21 WAIVERS AND VARIANCES:

A. Definitions: As used in this section:

(1) waiver: means the grant of an exemption from a requirement of these regulations;

(2) variance: means the granting of an alternate requirement in place of a requirement of these regulations.

B. Requirements for waivers and variances: A waiver or variance may be granted if the authority finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that:

(1) strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident;

(2) an alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interest of better care or management.

C. Applications:

(1) All applications for waiver or variance from the requirements of these regulations shall be made in writing to the authority, specifying the following:

(a) the rule from which the waiver or variance is requested;

(b) the time period for which the waiver or variance is requested;

(c) if the request is for a variance, the specific alternative action which the facility proposes;

(d) the reasons for the request; and

(e) justification that the goal or purpose of the rule or regulations would be satisfied.

(2) Requests for a waiver or variance may be made at any time.

(3) The authority may require additional information from the facility prior to acting on the request.

D. Grants and denials:

(1) The authority at its discretion shall grant or deny each request for waiver or variance in

writing. A notice of denials shall contain the reasons for denial.

- (2) The terms of a requested variance may be modified upon agreement between the authority and a facility.
 - (3) The authority may impose such conditions on the granting of a waiver or variance which it deems necessary.
 - (4) The authority may limit the duration of any waiver or variance.
 - (5) The authority's action on a request for a waiver is not subject to administrative appeal.
- E. Revocation: The authority may revoke a waiver or variance if:
- (1) it is determined that the waiver or variance is adversely affecting the health, safety or welfare of the resident's; or
 - (2) the facility has failed to comply with the variance as granted; or
 - (3) the licensee notifies the authority in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied;
 - (4) required by a change in law.

[8.370.16.21 NMAC - N, 7/1/2024]

8.370.16.22 RIGHTS OF RESIDENTS: Every resident shall have the right to:

- A. Communications: Have private and unrestricted communications with the resident's family, physician, attorney and any other person, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:
- (1) Receive, send, and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held, or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed, or held.
 - (2) Use a telephone for private communications during reasonable hours.
 - (3) Have private visiting pursuant to a reasonable written visitation policy.
- B. Access: Immediate access by representatives of health care authority, health and environment department, ombudsman, personal physician and, subject to resident's consent, immediate family or other relatives or visitors following notification of staff person in charge and presentation of valid identification. Reasonable access by providers of health, social, legal or other services must be assured.
- C. Grievances: Present grievances on one's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and join with other residents or individuals within or outside of the facility to work for improvements in resident care.
- D. Finances: Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:
- (1) A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorize this action in writing. The facility shall obtain separate authorization for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed the designated spending limit require a separate authorization for each individual occurrence.
 - (2) Any resident funds held or controlled by the facility, and any earnings from them, shall be credited to the resident and may not be comingled with other funds or property except that of other residents.
 - (3) The facility shall furnish a resident, the resident's guardian, or a representative designated by the resident with at least a quarterly statement of all funds held by the facility for the resident and all expenditures made from the resident's account, and a similar statement at the time of the resident's permanent discharge.
 - (4) The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident.
- E. Admission information: Be fully informed in writing prior to or at the time of admission, of all services and the charges for these services, and be informed in writing, during the resident's stay, of any changes in services available or in charges for services, as follows:
- (1) No person may be admitted to a facility without that person or that person's guardian or designated representative signing an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to be admitted for short-term care, the information required under these regulations.
 - (a) an accurate description of the basic services provided by the facility, the rate

charged for those services, and the method of payment for them;

(b) information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x-ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;

(c) the method for notifying residents of a change in rates or fees;

(d) terms for refunding advance payments in case of transfer, death or voluntary or involuntary discharge.

(e) terms of holding and charging for a bed during a resident's temporary absence.

(f) conditions for involuntary discharge or transfer, including transfers within the facility;

(g) information about the availability of storage space for personal effects; and

(h) a summary of residents' rights recognized and protected by this section and all facility policies and regulations governing resident conduct and responsibilities.

(2) No statement of admission information may be in conflict with any part of these regulations.

F. Treatment: Be treated with courtesy, respect, and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified, and registered providers under contract with the facility.

G. Privacy: Have physical and emotional privacy in treatment, living arrangements, and in caring for personal needs, including, but not limited to:

(1) Privacy for visits by spouse. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

(2) Privacy concerning health care. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to authorize their presence.

(3) Confidentiality of health and personnel records, and the right to approve or refuse their release to any individual outside the facility, except in the case of the resident's transfer to another facility or as required by law or third-party payment contracts.

H. Work: Not be required to perform work for the facility, but may work for the facility if:

(1) the work is included by the physician for therapeutic purposes in the resident's plan of care; and

(2) the work is ordered by the resident's physician and does not threaten the health, safety, or welfare of the resident or others.

(3) the resident volunteers for work and such activities is not contra-indicated by physician.

I. Outside activities: Meet with and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

J. Personal possessions: Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably, secure manner.

K. Transfer, discharge and bedhold: Involuntary transfer shall be conducted only for resident's welfare, health and safety of others, or failure to pay. Reasons other than failure to pay must be documented by a physician in resident's record. Prior to transfer the facility must notify resident and next of kin or responsible party of right to appeal and name and address of ombudsman.

L. Abuse and restraints: Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraint" includes, but is not limited to, any article, device, or garment which interferes with the free movement of the resident and which the resident is unable to remove easily.

M. Care: Receive adequate and appropriate care within the capacity of the facility.

N. Choice of provider: Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice. The pharmacist of choice must be able to supply drugs and biologicals in such a manner as is consistent with the facility's medication delivery system.

O. Care planning: Be fully informed of one's treatment and care and participate in the planning of that treatment and care, unless contra-indicated by physician order.

P. Religious activity: Participate in religious activities and services, of resident's choice and meet privately with clergy.

Q. Non-discriminatory treatment: Be free from discrimination based on the source from which the facility's charges for the resident's care are paid, as follows:

(1) No facility may assign a resident to a particular wing or other distinct area of the facility, whether for sleeping, dining or any other purpose, on the basis of the source or amount of payment. A facility only part of which is certified for medicare or medicaid reimbursement under Title XVIII/XIX of the Social Security Act is not prohibited from assigning a resident to the certified part of the facility because of the source of payment for the resident's care is medicare or medicaid.

(2) Facilities shall offer and provide an identical package of basic services meeting the requirements of these regulations to all individuals regardless of the sources of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, provided that these enhanced services are made available at an identical cost to all residents regardless of the source of a resident's payment. A facility which elects to offer enhancements to basic services to its residents must provide all residents with a detailed explanation of enhanced services and the additional charges for these services.

(3) If a facility offers at extra charge additional services which are not covered by the facility's provider agreement under which it provides medicaid and medicare services, it shall provide them to any resident willing and able to pay for them, regardless of the source from which the resident pays the facility's charges.

(4) No facility may require, offer or provide an identification tag for a resident that publicly identifies the source from which the facility's charges for that resident's care are paid.

R. Incompetence: If a resident is found incompetent by a court under New Mexico's Probate Code, (Sections 45-5-101 through 45-5-432 NMSA 1978), and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon the resident's guardian or conservator.

S. Corrections clients: Rights established under this section do not, except as determined by the authority, apply to residents in a facility who are in the legal custody of the authority for correctional purposes.

T. Notification:

(1) Serving notice: Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each prospective resident and his or her guardian, if any, and to each member of the facility's staff. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.

(2) Amendments: All amendments to the rights provided under this section and all amendments to the facility regulations and policies governing resident conduct and responsibilities require notification of each resident and guardian, if any, at the time the amendment is put into effect. The facility shall provide the resident, guardian, if any, and each member of the facility's staff with a copy of all amendments.

(3) Posting: Copies of the resident's rights provided under these regulations and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility.

U. Encouragement and assistance: Each facility shall encourage and assist residents to exercise their rights as residents and citizens and shall provide appropriate training for staff awareness so that staff are encouraged to respect the rights of residents established under this section.

[8.370.16.22 NMAC - N, 7/1/2024]

8.370.16.23 COMPLAINTS:

A. Filing complaints: Any person may file a complaint with a licensee or the authority regarding the operation of a facility. Complaints may be made orally or in writing.

B. Reviewing complaints: Each facility shall establish a system of reviewing complaints and allegations of violations of resident's rights established under this section. The facility shall designate a specific individual who, for the purpose of effectuating this section, shall report to the administrator.

C. Reporting complaints: Allegations that residents' rights have been violated by persons licensed, certified or registered by any professional licensing board or designated authority shall be promptly reported by the facility to the appropriate licensing or examining board or authority and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified, or registered by any professional

licensing board or authority, may also report such allegations to the board.
[8.370.16.23 NMAC - N, 7/1/2024]

8.370.16.24 COMMUNITY ORGANIZATION ACCESS:

A. In this section, “access” means the right to:
(1) enter any facility;
(2) seek a resident's agreement to communicate privately and without restriction with the resident;
(3) communicate privately and without restriction with any resident who does not object to communication.

B. Any employee, agent, or designated representative of a community legal services program or community service organization shall be permitted access to any facility whenever visitors are permitted by the written visitation policy referred to in these regulations, but not before 8:00 am., nor after 5:00 p.m. The facility visitation policy shall include provisions for scheduling visits after 5:00 p.m.

C. Conditions:
(1) The employee, agent, or designated representative shall, upon request of the facility's administrator or administrator's designee, present valid and current identification signed by the principal officer of the agency, program or organization represented.

(2) Access shall be granted for visits which are consistent with an express purpose of an organization the purpose of which is to:

(a) Visit, talk with, or offer personal, social, and legal services to any resident, or obtain information from the resident about the facility and its operations.

(b) Inform residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational materials and discussions in groups or with individual residents.

(c) Assist any residents in asserting legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which a resident may be aggrieved.

(d) Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.

[8.370.16.24 NMAC - N, 7/1/2024]

8.370.16.25 HOUSING RESIDENTS IN LOCKED UNITS: Definitions as used in this section:

A. Locked unit: means a ward, wing or room which is designated as a protected environment and is secured in a manner that prevents a resident from leaving the unit at will. A physical restraint applied to the body is not a locked unit. A facility locked for purposes of security is not a locked unit, provided that residents may exit at will. An alarmed unit does not constitute a locked unit.

B. Consent: means a written, signed request given without duress by a resident capable of understanding the nature of the locked unit, the circumstances of one's condition, and the meaning of the consent to be given.

(1) A resident or responsible party may give consent to reside in a locked unit.

(2) The consent shall be effective only for 90 days from the date of the consent, unless revoked. Consent may be renewed for 90 day periods pursuant to this subsection.

(3) The consent may be revoked by the resident if competent or by legal guardian at any time. The resident shall be transferred to an unlocked unit promptly following revocation.

C. Emergencies: In an emergency, a resident may be confined in a locked unit if necessary to protect the resident or others from injury or to protect property, providing the facility immediately attempts to notify the physician for instructions. A physician's orders for the confinement must be obtained within 12 hours. No resident may be confined for more than an additional hours under order of the physician.

[8.370.16.25 NMAC - N, 7/1/2024]

8.370.16.26 ADMINISTRATOR/STATUTORY REFERENCE: A nursing home shall be supervised by an administrator licensed under the Nursing Home Administrators Act, Sections 61-13-16 through 61-13-16 NMSA 1978. Supervision shall include, but not be limited to, taking all reasonable steps to provide qualified personnel to assure the health, safety, and rights of the residents.

A. Full-time administrator: Every nursing home shall be supervised full-time by an administrator

licensed under the Nursing Home Administrators Act, except multiple facilities. If more than one nursing home or other licensed health care facility is located on the same or contiguous property, one full-time administrator may serve all the facilities.

B. Absence of administrator: A person present in and competent to supervise the facility shall be designated to be in charge whenever there is not an administrator in the facility, and shall be identified to all staff.

C. Change of administrator:

(1) Replacement of administrator: If it is necessary immediately to terminate an administrator, or if the licensee loses an administrator for other reasons, a replacement shall be employed or designated as soon as possible within days of vacancy.

(2) Temporary replacement: During any vacancy in the position of administrator, the licensee shall employ or designate a person competent to fulfill the functions of an administrator immediately.

(3) Notice of change of administrator: When the licensee loses an administrator, the licensee shall notify the authority within two authority working days of such loss and provide written notification to the authority of the name and qualifications of the person in charge of the facility during the vacancy; and the name and qualifications of the replacement administrator, when known.

[8.370.16.26 NMAC - N, 7/1/2024]

8.370.16.27 EMPLOYEES: In this section, “employee” means anyone directly employed by the facility on other than a consulting or contractual basis.

A. Qualifications and restrictions: No person under 16 years of age shall be employed to provide direct care to residents.

B. Physical health certifications: Every new employee shall be certified in writing by a physician as having been screened for tuberculosis infection and provide a statement of medical evidence that they are currently free from communicable disease prior to beginning work.

C. Disease surveillance and control: Facilities shall develop and implement written policies for control of communicable diseases which ensure that employees and volunteers with systems or signs of communicable disease or infected skin lesions are not permitted to work unless authorized to do so by a physician or physician extender.

D. Volunteers: Facilities may use volunteers provided that the volunteers receive the orientation, training, and supervision necessary to assure resident health, safety and welfare.

E. Abuse of residents:

(1) Orientation for all employees: Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. All employees shall be oriented to resident's rights and to their position and duties by the time they have worked 30 days.

(2) Training: Except for nurses, all employees who provide direct care to residents shall be trained through a program approved by the authority.

(3) Assignments: Employees shall be assigned only to resident care duties consistent with their training.

(4) Reporting: All employees will be instructed in the reporting requirements of Section 27-7-14 NMSA 1978, the Adult Protective Services Act, of abuse, neglect or exploitation of any resident.

F. Continuing education:

(1) Nursing in-service: The facility shall require employees who provide direct care to residents to attend educational programs desired to develop and improve the skill and knowledge of the employees with respect to the needs of the facility's residents, including rehabilitative therapy, oral health care, wheelchair safety and transportation and special programming for developmentally disabled residents if the facility admits developmentally disabled person. These programs shall be conducted quarterly to enable staff to acquire the skills and techniques necessary to implement the individual program plans for each resident under their care.

(2) Dietary in-service: Educational programs shall be held quarterly for dietary staff and shall include instruction in the proper handling of food, personal hygiene and grooming, and nutrition and modified diet patterns served by the facility.

(3) All other staff in-service: The facility shall provide in-service designed to improve the skills and knowledge of all other employees.

[8.370.16.27 NMAC - N, 7/1/2024]

8.370.16.28 RECORDS - GENERAL: The administrator or administrator's designee shall provide the authority with any information required to document compliance with these regulations and shall provide reasonable means for examining records and gathering the information.
[8.370.16.28 NMAC - N, 7/1/2024]

8.370.16.29 PERSONNEL RECORDS: A separate record of each employee shall be maintained, be kept current, and contain sufficient information to support assignment to the employee's current position and duties.
[8.370.16.29 NMAC - N, 7/1/2024]

8.370.16.30 MEDICAL RECORDS - STAFF:

- A.** Timeliness: Duties relating to medical records shall be completed in a timely manner.
 - B.** Each facility shall designate an employee of the facility as the person responsible for the medical record service, who:
 - (1)** is a graduate of a school of medical record science that is accredited jointly by the council on medical education of the American medical association; or
 - (2)** receives regular consultation but not less than four hours quarterly as appropriate from a person who meets the requirements of Paragraph (1) of Subsection B of 8.370.16.30 NMAC. Such consultation shall not be substituted for the routine duties of staff maintaining records. The records consultant shall evaluate the records and records service, identify problem areas, and submit written recommendations for change to the administrator.
 - (3)** Sufficient time will be allocated to the person who is designated responsible for medical record service to insure that accurate records are maintained.
- [8.370.16.30 NMAC - N, 7/1/2024]

8.370.16.31 MEDICAL RECORDS - GENERAL:

- A.** Availability of records: Medical records of current residents shall be stored in the facility and shall be easily accessible, at all times, to persons authorized by the resident to obtain the release of the medical records.
- B.** Organization: The facility shall maintain a systematically organized records system appropriate to the nature and size of the facility for the collection and release of resident information.
- C.** Unit record: A unit record shall be maintained for each resident and day care client.
- D.** Indexes: A master resident index shall be maintained.
- E.** Maintenance: The facility shall safeguard medical records against loss, destruction, or unauthorized use, and shall provide adequate space and equipment to efficiently review, index, file and promptly retrieve the medical records.
- F.** Retention and destruction:
 - (1)** The medical record shall be completed and stored within 60 days following a resident's discharge or death.
 - (2)** An original medical record and legible copy or copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of this resident shall be retained for a period of at least 10 years following a resident's discharge or death. All other records required by these regulations shall be retained for the period for which the facility is under review.
 - (3)** Medical records no longer required to be retained under this section may be destroyed, provided:
 - (a)** the confidentiality of the information is maintained; and
 - (b)** the facility permanently retains at least identification of the resident, final diagnosis, physician, and dates of admission and discharge.
 - (4)** A facility shall arrange for the storage and safekeeping of records for the periods and under the conditions required by this paragraph in the event the facility closes.
 - (5)** If the ownership of a facility changes, the medical records and indexes shall remain with the facility.
- G.** Records documentation:
 - (1)** All entries in medical records shall be legible, permanently recorded, dated, and authenticated with the name and title of the person making the entry.
 - (2)** Symbols and abbreviations may be used in medical records if approved by a written facility policy which defines the symbols and abbreviations and which controls their use.

8.370.16.32 MEDICAL RECORDS - CONTENT: Except for persons admitted for short-term care, each resident's medical record shall contain:

- A.** Identification and summary sheet:
- B.** Physician's documentation:
 - (1) An admission medical evaluation by a physician, including:
 - (a) a summary of prior treatment;
 - (b) current medical findings;
 - (c) diagnosis at the time of admission to the facility;
 - (d) the resident's rehabilitation potential;
 - (e) the results of the required physical examination;
 - (f) level of care.
 - (2) All physician's orders including:
 - (a) admission to the facility;
 - (b) medications and treatments;
 - (c) diets;
 - (d) rehabilitative services;
 - (e) limitations on activities;
 - (f) restraint orders;
 - (g) discharge or transfer orders.
 - (3) Physician progress notes following each visit.
 - (4) Annual physical examination.
 - (5) Alternate visit schedule, and justification for such alternate visits, not to exceed 90 days.
- C.** Nursing service documentation:
 - (1) An assessment of the resident's nursing needs.
 - (2) Initial nursing care plan and any revisions.
 - (3) Nursing notes are required as follows:
 - (a) for residents requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least weekly; and
 - (b) for residents not requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least monthly.
 - (4) In addition to the nursing care plan, nursing documentation describing:
 - (a) the general physical and mental condition of the resident, including any unusual symptoms or actions;
 - (b) all incidents or accidents including time, place, injuries or potential complications from injury or accident, details of incident or accident, action taken, and follow-up care;
 - (c) the administration of all medications, the need for PRN medications and the resident's response, refusal to take medication, omission of medications, errors in the administration of medications, and drug reactions;
 - (d) food intake, when the monitoring of intake is necessary;
 - (e) fluid Intake when monitoring of intake is necessary;
 - (f) any unusual occurrences of appetite or refusal or reluctance to accept diets;
 - (g) summary of restorative nursing measures which are provided;
 - (h) summary of the use of physical and chemical restraints;
 - (i) other non-routine nursing care given;
 - (j) the condition of a resident upon discharge; and
 - (k) the time of death, the physician called, and the person to whom the body was released.
- D.** Social services records:
 - (1) a social history of the resident; and
 - (2) notes regarding pertinent social data and action taken.
- E.** Activities records: Documentation of activities programming, a history and assessment, a summary of attendance, and quarterly progress notes.
- F.** Rehabilitative services:
 - (1) An evaluation of the rehabilitative needs of the resident.

- (2) Plan of treatment.
- (3) Progress notes detailing treatment given, evaluation, and progress.
- G. Dietary assessment: Record of the dietary assessment.
- H. Dental services: Summary of all dental services resident has received.
- I. Diagnostic services: Records of all diagnostic tests performed during the resident's stay in the facility.
- J. Plan of care: Plan of care which includes integrated program activities, therapies and treatments designed to help each resident achieve specific goals as developed by an interdisciplinary team.
- K. Authorization or consent: A photocopy of any court order, power of attorney or living will authorizing another person to speak or act on behalf of the resident and any resident consent forms.
- L. Discharge or transfer information: Documents, prepared upon a resident's discharge or transfer from the facility, summarizing, when appropriate:
 - (1) current medical finding and condition;
 - (2) final diagnosis;
 - (3) rehabilitation potential;
 - (4) a summary of the course of treatment;
 - (5) nursing and dietary information;
 - (6) ambulation status;
 - (7) administrative and social information; and
 - (8) needed continued care and instructions.

[8.370.16.32 NMAC - N, 7/1/2024]

8.370.16.33 OTHER RECORDS: The facility shall retain:

- A. Dietary records: All menus and therapeutic diets for one year.
- B. Staffing records: Records of staff work schedules and time worked for one year.
- C. Safety tests: Records of tests of fire detection, alarm, and extinguishment equipment.
- D. Resident census: At least a daily census of all residents, indicating number of residents requiring each level of care.
- E. Professional consultations: Documentation of professional consultations by:
 - (1) A dietician.
 - (2) A registered nurse.
 - (3) Others, as may be used by the facility.
- F. In-service and orientation programs: Subject matter, instructors and attendance records of all in-service and orientation programs.
- G. Transfer agreements: Transfer agreements.
- H. Funds and property statement: The statement prepared upon a resident's discharge or transfer from the facility that accounts for all funds and receipted property held by the facility for the resident.
- I. Court orders and consent forms: Copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of the resident.

[8.370.16.33 NMAC - N, 7/1/2024]

8.370.16.34 LICENSE LIMITATIONS:

- A. Bed capacity: No facility may house more residents than the maximum bed capacity for which it is licensed. Persons participating in a day care program are not residents for purposes of these regulations.
- B. Care levels: No person who requires care greater than that which the facility is licensed to provide may be admitted to or retained in the facility, unless under waiver according to state guidelines.
- C. Other conditions: The facility shall comply with all other conditions of the license.

[8.370.16.34 NMAC - N, 7/1/2024]

8.370.16.35 OTHER LIMITATIONS ON ADMISSION:

- A. Persons requiring unavailable services: Persons who require services which the facility does not provide or make available shall not be admitted or retained.
- B. Communicable diseases:
 - (1) Restriction: No person suspected of having a disease in a communicable state shall be admitted or retained unless the facility has the means to manage the condition.
 - (2) Isolation techniques: Persons suspected of having a disease in a communicable state

shall be managed according to isolation techniques for use in hospitals, published by the U.S. department of health and human services, public health services, center for disease control, or with comparable methods as developed by facility policies.

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

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

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

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

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

[8.370.16.35 NMAC - N, 7/1/2024]

8.370.16.36 PROGRAM STATEMENT FOR DEVELOPMENTALLY DISABLED RESIDENTS:

A. Approval: Each facility serving residents who have a developmental disability and require active treatment shall submit a written program statement to the authority for approval.

B. Contents: The program statement shall detail the following:

- (1)** services to be provided;
- (2)** admission policies for developmentally disabled persons;
- (3)** program goals for developmentally disabled residents;
- (4)** description of program elements, including relationships, contracted services and

arrangements with other health and social services agencies and programs.

(5) a designation of staff assigned to the care of developmentally disabled residents. Staff scheduling shall demonstrate consistency of staff involvement. Staff members shall have demonstrated skill in the management of these residents; and

(6) a description of care evaluation procedures for developmentally disabled residents.

These procedures shall require that case evaluation results be incorporated into the individual resident's care plan and that individual plans of care be reviewed and revised as indicated by resident need.

[8.370.16.36 NMAC - N, 7/1/2024]

8.370.16.37 PROCEDURES FOR ADMISSION OF RESIDENTS:

A. "Applicability": The procedures in this section apply to all persons admitted to facilities except persons admitted for short-term care.

B. "Physicians orders": No person may be admitted as a resident except upon:

- (1)** order of a physician;
- (2)** receipt of information from a physician, before or on the day of admission, about the person's current medical condition and diagnosis, and receipt of a physician's initial plan of care and orders from a physician for immediate care of the resident; and

(3) receipt of certification in writing from a physician that the person is free of active tuberculosis and clinically apparent communicable disease the person may be found to have.

C. "Medical examination and evaluation":

(1) Examination: Each resident shall have a physical examination by a physician or physician extender within 48 hours following admission unless an examination was performed within 15 days before admission.

(2) Evaluation: Within 48 hours after admission the physician or physician extender shall complete the resident's medical history and physical examination record. If copies of previous evaluations are used, the physician must authenticate such findings within 48 hours of admission.

D. “Resident assessment”: A comprehensive accurate assessment of each resident's functional capacity and impairment, as basis for care delivery, shall be conducted by designated qualified staff. A preliminary assessment shall be completed within 48 hours of admission, a comprehensive assessment within 30 days of admission, after significant change and repeated at least annually.
[8.370.16.37 NMAC - N, 7/1/2024]

8.370.16.38 REMOVALS FROM THE FACILITY: The provisions of this section shall apply to all resident removals.

A. Conditions: No resident may be temporarily or permanently removed from this facility except:

- (1) Voluntary removal: Upon the request or with the informed consent of the resident or guardian.
- (2) Involuntary removal:
 - (a) for nonpayment of charges, following seven days notice and opportunity to pay any deficiency;
 - (b) if the resident requires care other than that which the facility is licensed to provide;
 - (c) for medical reasons as ordered by a physician;
 - (d) in case of a medical emergency or disaster;
 - (e) for the resident's welfare or the welfare of other residents;
 - (f) if the resident does not need nursing home care, and alternate placement is identified and arrangements for transfer have been completed;
 - (g) if the short-term care period for which the resident was admitted has expired; and
 - (h) as otherwise permitted by law.
- (3) Alternate placement: Except for removal under the preceding section, no resident may be involuntarily removed unless an alternate placement is arranged for the resident.

B. Permanent removals:

- (1) Notice: The facility shall provide a resident, the resident's physician and guardian, relative, or other responsible person, at least 30 days notice of removal under Subsection A of 8.370.16.38 NMAC, except Subparagraph (a) of Paragraph (2) of Subsection A of 8.370.16.38 NMAC, unless the continued presence of the resident endangers the health, safety, or welfare of the resident or other residents.
- (2) Removal procedures:
 - (a) The resident, shall be given a notice containing the time and place of a planning conference; a statement informing the resident that any persons of the resident's choice may attend the conference; and the -procedure for submitting a complaint to the authority.
 - (b) Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to involuntary removal under Subsection A of 8.370.16.38 NMAC a planning conference shall be held at least three days before removal with the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements, and develop a relocation plan which includes at least those activities listed below.
 - (c) Removal activities shall include: counseling regarding the impending removal; arrangements for the resident to visit the potential alternative placement or meeting with that facility's admissions staff, unless medically contra-indicated or waived by the resident; assistance to the resident in planning the moving of belongings and funds to the new facility or quarters; and provisions for needed medications and treatments during relocation.
 - (d) Discharge records: Upon removal of a resident, all relevant documents shall be prepared and provided to the facility admitting the resident.
[8.370.16.38 NMAC - Rp, 8.370.16.38 NMAC, 7/1/2024]

8.370.16.39 TRANSFER AGREEMENTS:

A. Requirement: Each facility shall have in effect a transfer agreement with one or more hospitals under which in-patient hospital care or other hospital services are available promptly to the facility's resident's when needed. Facilities under same management having identified distinct parts are exempt from transfer agreements.

B. Transfer of residents: A hospital and a facility shall be considered to have a transfer agreement in effect if there is a written agreement between them or, when the two Institutions are under common control, if there

is a written statement by the person or body which controls them, which gives reasonable assurance that:

(1) transfer of residents will take place between the hospital and the facility ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there shall be interchange of medical and other information necessary for the care and treatment of individuals transferred between the institutions or for determining, whether such individuals can be adequately cared for somewhere other than in either of the institutions.

C. Exemption: A facility which does not have a resident transfer agreement in effect, but which is found by the authority to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between the two facilities and the information referred to in Subsection B of 8.370.16.39 NMAC above, shall be considered to have such an agreement in effect if and for so long as the authority finds that to do so is in the public interest and essential to ensuring nursing facility services in the community.

[8.370.16.39 NMAC - N, 7/1/2024]

8.370.16.40 BEDHOLD:

A. Bedhold: A resident who is on leave or temporarily discharged has expressed an intention to return to the facility under the terms of the admission policy for bedhold, shall not be denied readmission, if level of care remains the same.

B. Limitation: The facility shall hold a resident's bed until the resident returns, until the resident waives their right to have the bed held or until the maximum time allowable as defined by facility policies expires. The facility is responsible for notifying resident or family of their bedhold policy.

[8.370.16.40 NMAC - N, 7/1/2024]

8.370.16.41 TRANSFER WITHIN THE FACILITY: Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if any, and any other person designated by the resident shall be given a reasonable notice and explanation of the reasons for transfer. Transfer of a resident between rooms or beds within a facility may be made only for medical reasons or for the resident's welfare or the welfare of other residents, or voluntarily with the residents' approval.

[8.370.16.41 NMAC - N, 7/1/2024]

8.370.16.42 INDIVIDUAL CARE: Each resident shall receive care based upon individual needs.

A. Hygiene:

(1) Each resident shall be kept comfortably clean and well groomed.

(2) Beds shall be made daily, with a complete change of linen to be provided as often as necessary, but at least once a week.

(3) Residents shall have clean clothing as needed to present a neat appearance and to be free of odors. Residents who are not bedfast shall be dressed each day, in their own clothing, as appropriate to their activities, preferences, and comforts.

B. Decubiti prevention: Nursing personnel shall employ appropriate nursing management techniques to promote the maintenance of skin integrity and to prevent development of decubiti filed in the resident's clinical record, except as provided in this section.

(1) Verbal orders: Verbal orders from physicians or dentists may be accepted by a nurse or pharmacist, or, in the case of verbal orders for rehabilitative therapy, by a therapist. Verbal orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a requirement may be waived if:

(a) facility has made unsuccessful good faith effort; and

(b) the health and environment department determines residents will not be endangered; or

(c) staffing is sufficient to meet residents' needs.

(2) Nursing personnel shall provide care, including proper hydration, designated to maintain current functioning and to improve the resident's ability to carry out activities of daily living, including assistance with maintaining good body alignment and proper positioning to prevent deformities.

(3) Each resident shall be encouraged to be up and out of bed as possible, unless otherwise ordered by a physician.

(4) Any significant changes in the condition of any resident shall be reported to the nurse in charge or on call, who shall take appropriate action.

C. Rehabilitative measures: Residents shall be assisted in carrying out rehabilitative measures

initiated by a rehabilitative therapist ordered by a physician, including assistance with adjusting to any disabilities and using any prosthetic devices.

D. Tuberculosis retesting: Resident's shall be retested for tuberculosis infection based on the prevalence of tuberculosis in the community and the likelihood of exposure to tuberculosis in the facility.

E. Nourishment:

(1) Diets: Residents shall be served diets as prescribed by a physician.

(2) Adaptive devices: Adaptive self-help devices shall be available to residents assessed as capable of using such devices and these residents shall be trained in their use to contribute to independence in eating.

(3) Assistance: Residents who require assistance with food or fluid intake shall be helped as necessary.

(4) Food and fluid intake and diet acceptance: A resident's food and fluid intake and acceptance of diet shall be monitored and documented, and significant deviations from normal eating patterns shall be reported to the nurse and either the resident's physician or dietician as appropriate.

[8.370.16.42 NMAC - N, 7/1/2024]

8.370.16.43 NOTIFICATION OF CHANGES IN CONDITION OR STATUS OF RESIDENT:

A. Changes in condition: A resident's physician, guardian, if any, and any other responsible person designated in writing by the resident or guardian to be notified shall be notified promptly of any significant accident, injury, or adverse change in the resident's condition.

B. Changes in status: A resident's guardian and other person designated in writing by the resident or guardian shall be notified promptly of any significant nonmedical change in the resident's status, including financial situation, any plan to discharge the resident, or any plan to transfer the resident within the facility or to another facility.

[8.370.16.43 NMAC - N, 7/1/2024]

8.370.16.44 TREATMENT AND ORDERS:

A. Orders:

(1) Restriction: Medications, treatments and rehabilitative therapies shall be administered as ordered by a physician or dentist subject to the resident's rights to refuse them. No medication, treatment or changes in medication or treatment may be administered to a resident without a physician's or dentists written order which shall be filed in the resident's clinical record, except as provided in this section.

(2) Verbal orders: Verbal orders from physicians or dentists may be accepted by a nurse or pharmacist, or, in the case of verbal orders for rehabilitative therapy, by a therapist. Verbal orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a not specifically limited as to time or number of doses when ordered shall be automatically stopped in accordance with the stop order policy required by Subsection A of 8.370.16.57 NMAC of these regulations.

(3) Notice to physicians or dentists: Each resident's attending physician or dentist shall be notified of stop order policies and contacted promptly for renewal of orders which are subject to automatic termination.

B. Stop orders: Medications shall be in accordance with the stop order policy required by Subsection E of 8.370.16.57 NMAC of these regulations.

(1) Notice to physicians or dentists: Each resident's attending physician or dentist shall be notified of stop order policies and contacted promptly for renewal of orders which are subject to automatic termination.

C. Release of medications to residents: Medications shall be released to residents who are on leave or have been discharged only on order of the physician.

D. Administration of medications:

(1) Personnel who may administer medications: In a nursing home, medications may be administered only by a nurse or other licensed medical professional whose, licensed scope of practice permits administration of medication.

(2) Responsibility for administration: Policies and procedures designed to provide safe and accurate administration of medications shall be developed by the facility and shall be followed by personnel assigned to prepare and administer medication except when a single unit dose package distribution system is used. Person administering medication will immediately record in the resident's clinical records.

(3) Omitted doses: If, for any reason, a medication is not administered as ordered the

omission shall be noted in the resident's medication record with explanation of the omission.

(4) Self-administration: Self-administration of medications by residents shall be permitted on order of the resident's physician.

(5) Errors and reactions: Medication errors and suspected or apparent drug reactions shall be reported to the nurse in charge or on call as soon as discovered and any entry made in the resident's clinical record. The nurse shall take appropriate action, including notifying the physician.

(6) Day care: The handling and administration of medications for day care clients shall comply with the requirements of this subsection.

[8.370.16.44 NMAC - N, 7/1/2024]

8.370.16.45 PHYSICAL AND CHEMICAL RESTRAINTS:

A. Definitions: As used in this subsection, the following definitions apply:

(1) Physical restraint: means any article, device, or garment which is used primarily to modify, resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room. Mechanical supports shall not be considered physical restraints.

(2) Mechanical support: means any article, device, or garment which is used only to achieve the proper position or balance of the resident, which may include but is not limited to a geriatric chair, posey belt, or jacket, waist belt, pillows, or wedges. Necessity for mechanical support use must be documented in the resident's record and such use must be outlined in the resident's care plan.

(3) Chemical restraint: means a medication used primarily to modify behavior by interfering with the resident's freedom of movement or mental alertness.

B. Orders required: Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident's name, the type of restraint(s), the reason for restraint, the type of restraint authorized, and the period during which the restraint(s) is (are) to be applied.

C. Emergencies: A physical restraint may be applied temporarily without an order if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that the physician is notified immediately and authorization for continued use is obtained from the physician within 12 hours.

D. Restriction: If the mobility of a resident is required to be restrained and can be appropriately restrained either by a physical or chemical restraint or by a locked unit, the provisions of this section shall apply.

E. Type of restraints: Physical restraints shall be of a type which can be removed promptly in an emergency, and shall be the least restrictive type appropriate to the resident.

F. Periodic care: Nursing personnel shall check a physically restrained resident as necessary, but at least every 30 minutes to see that the resident's personal needs are met and to change the resident's position if necessary. The restrained resident shall have restraints released and shall have opportunity for toileting, hydration, and exercise at least every two hours. Checks and releases will be documented.

G. Records: Any use of restraints shall be noted, dated, and documented in the resident's clinical record on each tour of duty during which the restraints are in use.

[8.370.16.45 NMAC - N, 7/1/2024]

8.370.16.46 USE OF OXYGEN:

A. Orders of oxygen: Except in an emergency, oxygen shall be administered only on order of a physician.

B. Person administering: Oxygen shall be administered to residents only by a capable person trained in its administration and use.

C. Signs: "No smoking" signs shall be posted at the entrance of the room in which oxygen is in use.

D. Flammable goods: Prior to administering oxygen, all matches and other smoking material shall be removed from the room.

[8.370.16.46 NMAC - N, 7/1/2024]

8.370.16.47 RESIDENT CARE PLANNING:

A. Developmental and content of care plans: Except In the case of a person admitted for short-term care, within two weeks following admission a written care plan shall be developed, based on the resident's history and assessments from all appropriate disciplines and the physician's evaluations and orders, which shall include:

(1) Measurable goals with specific time limits for attainment.

(2) The specific approaches for delivery needed care, and indication of which professional

disciplines are responsible for delivering the care.

B. Evaluations and updates: The care of each resident shall be reviewed by each of the services involved in the resident's care and the care plan evaluated and updated no less than quarterly or more often as needed.

C. Implementation: The care plans shall be substantially followed.
[8.370.16.47 NMAC - N, 7/1/2024]

8.370.16.48 MEDICAL DIRECTION IN SKILLED CARE FACILITIES:

A. Medical director: Every skilled care facility shall retain, pursuant to a written agreement, a physician to serve as medical director on a part-time or full-time basis as is appropriate for the needs of the residents and the facility. If the facility has an organized medical staff, the medical director shall be designated by the medical staff with approval of the licensee.

B. Coordination of medical care: Medical direction and coordination of medical care in the facility shall be provided by the medical director. The medical director shall be responsible for development of written rules and regulations which shall be approved by the licensee and include delineation of the responsibilities of attending physicians. If there is an organized medical staff, by-laws also shall be developed by the medical director and approved by the licensee. Coordination of medical care shall include liaison with attending physician to provide that physicians' orders are written promptly upon admission of a resident, that periodic evaluations of the adequacy and appropriateness of health professional and supportive staff and services are conducted, and that the medical needs of the residents are met.

C. Responsibilities to the facility: The medical director shall monitor the health status of the facility's employees. Incidents and accidents that occur on the premises shall be reviewed by the medical director to identify hazards to health and safety.
[8.370.16.48 NMAC - N, 7/1/2024]

8.370.16.49 PHYSICIAN SERVICES IN ALL FACILITIES: The facility shall assure that the following services are provided:

A. Attending physicians: Each resident shall be under the supervision of a physician of the resident's or guardian's choice who evaluates and monitors the resident's immediate and long-term needs and prescribes measures necessary for the health, safety and welfare of the resident. Each attending physician shall make arrangements for the medical care of the physician's residents in the physician's absence.

B. Physician's visit:

- (1) Each resident who requires skilled nursing care shall be seen by a physician at least every 30 days and an intermediate care resident at least every 60 days unless the physician specifies and justifies in writing an alternate schedule of visits.
- (2) The physician shall review the plan of care required at the time of each visit.
- (3) The physician shall review the resident's medications and other orders at least at the time of each visit.
- (4) The physician shall review the resident's medications and orders at least at the time of each visit.

C. Availability of physicians for emergency patient care: The facility shall have written procedures, available at each nurse's station, for procuring a physician to furnish necessary medical care in emergencies and for providing care pending arrival of a physician. The names and telephone numbers of the physicians or medical service personnel available for emergency care shall be posted at each nursing station.
[8.370.16.49 NMAC - N, 7/1/2024]

8.370.16.50 NURSING SERVICES:

A. Definitions:

- (1) Nursing personnel: means nurses, nurse aides, nursing assistants, and orderlies.
- (2) Ward clerk: means an employee who performs clerical duties of the nursing personnel.

B. Director of nursing services in skilled care and intermediate care facilities:

- (1) Staffing requirement: Every skilled care facility and every intermediate care facility shall employ a full-time director of nursing services who may also serve as a charge nurse. The director of nursing services shall work only on the day shift except as in an emergency or required for the proper supervision of nursing personnel.
- (2) Qualifications: The director of nursing services shall:

- (a) be a registered or licensed practical nurse; and
- (b) be trained or experienced in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.
- (3) Duties: The director of nursing services shall be responsible for:
 - (a) supervising the functions, activities and training of the nursing personnel;
 - (b) developing and maintaining standard nursing practice, nursing policy and procedure manuals, and written job descriptions for each level of nursing personnel;
 - (c) coordinating nursing services with other resident services;
 - (d) designating the charge nurses provided for by this section;
 - (e) ensuring that the duties of nursing personnel shall be clearly defined and assigned to staff members consistent with the level of education, preparation, experience, and licensing of each.
- C. Charge nurses in skilled care facilities and intermediate care facilities:
 - (1) Staffing requirement:
 - (a) A skilled nursing facility shall have at least one charge nurse on duty at all times.
 - (b) An intermediate care facility shall have a charge nurse during every tour of duty.
 - (2) Qualifications: Unless otherwise required under this paragraph, the charge nurses shall be registered nurses or licensed practical nurses, and shall have had training, or be acquiring training, or have had experience in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.
 - (3) Duties:
 - (a) The charge nurse, if a registered nurse, shall supervise the nursing care of all assigned residents, and delegate the duty to provide for the direct care of specific residents, including administration of medications by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.
 - (b) The charge nurse, if a licensed practical nurse, shall manage and direct the nursing and other activities of other licensed practical nurse and less skilled assistants and shall arrange for the provision of direct care to specific residents, including administration of medications, by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.

[8.370.16.50 NMAC - N, 7/1/2024]

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

- A. Assignments: There shall be sufficient nursing service personnel assigned to care for the specific needs of each resident on each tour of duty. Those personnel shall be briefed on the condition and appropriate care of each resident prior to beginning hands-on care of residents.
- B. Relief personnel: Facilities shall obtain qualified relief personnel.
- C. Records, weekly schedules: Weekly time schedules shall be planned at least one week in advance, shall be posted and dated, shall indicate the names and classifications of nursing personnel and relief personnel assigned on each nursing unit for each tour of duty, and shall be updated as changes occur.
- D. Staff meetings: Meetings shall be held at least quarterly for the nursing personnel to brief them on new developments, raise issues relevant to the service, and for such other purposes as are pertinent.
- E. Twenty-four (24) hour coverage: All facilities shall have at least one nursing staff person on duty at all times.
- F. Staffing patterns: The assignment of the nursing personnel required by this subsection to each tour of duty shall be sufficient to meet each resident's needs and implement each resident's comprehensive care plan.
 - (1) Nursing department personnel means, the director of nursing, the assistant director of nursing, nursing department directors, licensed nursing personnel, certified nursing assistants, nursing assistants who have completed 16 hours or more of orientation and demonstrated competency and restorative nursing assistants.
 - (2) The director of nursing, the assistant director of nursing, and nursing department directors may be counted towards the minimum staffing requirements only for the time spent on the shift providing direct resident care services.
 - (a) A skilled nursing facility or facility that offers intermediate and skilled nursing shall maintain a nursing department minimum staffing level of two and a half hours per patient day calculated on a seven day average.

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

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

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

[8.370.16.51 NMAC - N, 7/1/2024]

8.370.16.52 DIETARY SERVICE: The facility shall provide a dietary service or contract for a dietary service which meets the requirements of this section.

A. Staff:

(1) Full or part-time supervisor: The dietary service shall be supervised by a full-time supervisor, except that an intermediate care facility with fewer than 50 residents may employ a person to work as supervisor part-time.

(2) Qualifications: The dietary service supervisor shall be either:

(a) a dietitian; or

(b) shall receive necessary consultation from a dietitian and shall have completed a course of study of not less than 90 hours credit in food service supervision at a vocational, technical, or adult education school or equivalent, or presently be enrolled in such a course of study; or hold an associate degree as a dietetic technician.

(3) Staff: There shall be dietary service personnel on duty at least 12 hours daily who may include the supervisor.

B. Hygiene of staff: Dietary staff and other personnel who participate in dietary service shall be in good health and practice hygienic food handling techniques.

C. Menus:

(1) Menus shall be planned and written at least two weeks in advance of their use, and shall be adjusted for seasonal availability of foods.

(2) Menus shall be planned, to the extent medically possible, in accordance with the "recommended daily dietary allowances", of the food and nutrition board of the national research council, national academy of sciences.

(3) Food sufficient to meet the needs of each resident shall be planned, prepared and served for each meal. When changes in the menu are necessary, substitutions shall provide equal nutritive value. Record of menus as served, including substitutions shall be retained for one year.

(4) The facility shall make reasonable adjustments to accommodate each resident's preferences, habits, customs, appetite, and physical condition.

(5) A file of tested recipes shall be maintained.

(6) A variety of protein food, fruits, vegetables, dairy products, breads, and cereals shall be provided.

D. Therapeutic diets:

(1) Therapeutic diets shall be served only on order of the physician and shall be consistent with such orders.

(2) Therapeutic menus shall be planned with supervision or consultation from a qualified dietitian.

(3) Vitamin and mineral supplements shall be given only on order of the physician.

E. Meal service: All diets shall be prescribed by the attending physician.

(1) Schedule: At least three meals or their equivalent shall be offered to each resident daily, not more than six hours apart, with not more than a 14 hour span between a substantial evening meal and the following breakfast.

- type diet.
- (2) Identification to trays: Trays, if used, shall be identified with the resident's name and
 - at a table.
 - (3) Table service: Table service shall be provided for all residents who can and want to eat
 - (4) Re-service: Food served to a resident in an unopened manufacturer's package may not be re-served unless the package remains unopened and maintained at the proper temperature.
 - (5) Temperature: Food shall be served and maintained at proper temperatures, according to standards established by environmental improvement division.
 - (6) Snacks: If not prohibited by the resident's diet or condition, nourishments shall be offered routinely to all residents between the evening meal and bedtime.
 - (7) Drinking water: When a resident is confined to bed, a covered pitcher of drinking water and a glass shall be provided on a beside stand. The water shall be changed frequently during the day, and pitchers and glasses shall be sanitized daily. Single-service disposable pitchers and glasses may be used. Common drinking utensils shall not be used.
 - (8) Food transportation: Food transported into public areas other than the dining room shall be protected from environmental contamination.
- [8.370.16.52 NMAC - N, 7/1/2024]

8.370.16.53 FOOD SUPPLIES AND PREPARATION:

- A. Supplies: Food shall be purchased or procured from approved sources or sources meeting federal, state, and local standards or laws.
 - B. Preparation: Food shall be cleaned and prepared by methods that conserve nutritive value, flavor and appearance. Food shall be cut, chopped, or ground as needed for individual residents.
 - C. Milk: Only pasteurized fluid milk which is certified Grade A shall be used for beverages. Powdered milk may be used for cooking if it meets Grade A standards or is heated to a temperature of 165 degrees fahrenheit during cooking
- [8.370.16.53 NMAC - N, 7/1/2024]

8.370.16.54 SANITATION:

- A. Equipment and utensils:
 - (1) All equipment, appliances and utensils used in preparation or serving of food shall be maintained in a functional, sanitary, and safe condition. Replacement equipment shall meet criteria established in "listing of food service equipment" by the national sanitation foundation.
 - (2) The floors, walls, and ceilings of all rooms in which food or drink is stored or prepared or In which utensils are washed shall be kept clean, smooth, and in good repair.
 - (3) All furnishings, table linens, drapes, and furniture shall be maintained in a clean and sanitary condition.
 - (4) Single-service, individually packaged, utensils shall be stored in the original, unopened wrapper until used, may not be made of toxic material and may not be re-used or re-distributed if the original wrapper has been opened.
 - B. Storage and handling of food:
 - (1) Food shall be stored, prepared, distributed, and served under sanitary conditions which prevent contamination.
 - (2) All readily perishable food and drink, except when being prepared or served, shall be kept in a refrigerator which shall have a temperature maintained at or below 40 degrees fahrenheit.
 - C. Animals: Animals shall not be allowed where food is prepared, served or stored, or where utensils are washed or stored except in eating areas when food is not being served.
 - D. Dishwashing: Whether washed by hand or mechanical means, all dishes, plates, cups, glasses, pots, pans, and utensils shall be cleaned in accordance with accepted procedures which shall include separate steps for prewashing, washing, rinsing, and sanitizing by means of hot water or chemicals or a combination approved by the authority.
- [8.370.16.54 NMAC - N, 7/1/2024]

8.370.16.55 REHABILITATIVE SERVICES: Each facility shall either provide or arrange for, under written agreement, specialized rehabilitative services as needed by residents to improve and maintain functioning.

- A. Conformity with orders and plan: Rehabilitative services shall be administered under a written

plan of care that is developed in consultation with the attending physician and the therapist(s). The plan of care will be based on physician orders and assessment by the therapist(s).

B. Report to physician: Within two weeks of the initiation of rehabilitative treatment, a report of the resident's progress shall be made to the physician.

C. Review of plan: Rehabilitative services shall be reevaluated at least quarterly by the physician and therapists, and the plan of care updated as necessary.

[8.370.16.55 NMAC - N, 7/1/2024]

8.370.16.56 SPECIALIZED SERVICES-QUALIFICATIONS:

A. Physical therapy: Physical therapy shall be given or supervised only by a licensed physical therapist.

B. Speech and hearing therapy:

(1) Speech and hearing therapy shall be given or supervised only by a therapist who is licensed under the New Mexico Speech-Language and Pathology and Audiology Act, (Sections 61-14B-1 through 61-14B-16 NMSA 1978).

(2) Meets the educational standards and is in the process of acquiring the supervised experience required for the certification of speech-language pathologists.

C. Occupational therapy: Occupational therapy shall be given or supervised only by a therapist who meets the standard for registration as an occupational therapist of the American occupational therapy association.

D. Equipment: Equipment necessary for the provision of therapies required by the residents shall be available and used as needed.

[8.370.16.56 NMAC - N, 7/1/2024]

8.370.16.57 PHARMACEUTICAL SERVICES:

A. Definitions: As used in this section:

(1) Medication: has the same meaning as the term "drug".

(2) Prescription medication: has the same meaning as the term "prescription drug".

B. Services: Each facility shall provide for obtaining medications for the residents from licensed pharmacies.

C. Supervision:

(1) Medication consultant: Each facility shall retain a registered pharmacist who shall visit the facility at least monthly to review the drug regimen of each resident and medication practices.

(2) The pharmacist shall submit a written report of findings at least monthly to the facility's administrator.

D. Emergency medication kit:

(1) A facility may have one or more emergency medication kits available to each charge nurse. All emergency kits shall be under the control of a pharmacist.

(2) The emergency kit shall be sealed and stored in a locked area. The facility shall have a policy and procedures for access by staff to the emergency kit in case of need.

E. Requirements for all medication systems:

(1) Obtaining new medications: When medications are needed which are not stocked, a licensed nurse shall telephone an order to the pharmacist who shall fill the order.

(2) Storing and labeling medications: All medications shall be handled in accordance with the following provisions:

(a) The storage and labeling of medications shall be based on currently acceptable professional practices.

(b) The consulting pharmacist shall be responsible to develop policies and procedures governing all aspects of storage and labeling of medications.

(c) The consulting pharmacist shall be responsible for assuring the facility meets all requirements for storage and labeling as required by New Mexico board of pharmacy.

(3) Destruction of medications:

(a) Time limit: Unless otherwise ordered by a physician, a resident's medication not returned to the pharmacy for credit shall be removed to a locked storage area when discontinued by a physician's order. Such discontinued medications will be destroyed within 30 days of the physician's discontinuance of use.

(b) Procedure: Records shall be kept of all medication returned for credit or disposal.

(c) Remaining controlled substances: Any controlled substances remaining after the discontinuance of physician's orders or the discharge or death of the resident shall be inventoried on the appropriate U.S. drug enforcement agency form and one copy shall be kept on file in the facility.

(4) Control of medication:

(a) Receipt of medications: The administrator or a physician, nurse, or pharmacist, may be an agent of the resident for the receipt of medications.

(b) Signatures: When the medication is received by the facility, the person completing the control record shall sign the record indicating the amount received.

(c) Discontinuance of medications: The consulting pharmacist shall assist the facility to develop policies for the automatic discontinuance of medications.

(5) Proof-of-use record:

(a) For schedule II drugs, a proof-of-use record shall be maintained which lists, on separate proof-of-use sheets for each type and strength of schedule II drug, the date and time administered, resident's name, physician's name, dose, signature of the person administering dose, and balance.

(b) Proof-of-use records shall be audited daily by the registered nurse or licensed practical nurse.

(6) Resident control and use of medications:

(a) Residents may have medications in their possession or stored at their bedside on the order of a physician.

(b) Medications which, if ingested or brought into contact with the nasal or eye mucosa, would produce toxic or irritant effects shall be stored and used only in accordance with the health, safety, and welfare of all residents.

[8.370.16.57 NMAC - N, 7/1/2024]

8.370.16.58 DIAGNOSTIC SERVICES:

A. Requirement of services: The facility shall provide for promptly obtaining required laboratory, x-ray, and other diagnostic services.

B. Facility-provided services: Any laboratory and x-ray services provided by the facility shall meet the applicable requirements for hospitals.

C. Outside services: If the facility does not provide these services, arrangements shall be made for obtaining the services from a physician's office, hospital, nursing facility, portable x-ray supplier, or independent laboratory.

D. Physician's order: No services under the subsection may be provided without an order of a physician.

E. Notice of findings: The attending physician shall be notified promptly of the findings of all tests provided under this subsection.

F. Transportation: The facility shall assist the resident, if necessary, in arranging for transportation to and from the provider of service.

(1) Any employee or agent of a regulated facility or agency who is responsible for assisting a resident in boarding or alighting from a motor vehicle must complete a state-approved training program in passenger transportation assistance before assisting any resident.

(a) the passenger transportation assistance program shall be comprised of but not limited to the following elements:

(i) resident assessment;

(ii) emergency procedures;

(iii) supervised practice in the safe operation of equipment;

(iv) familiarity with state regulations governing the transportation of

persons with disabilities;

(v) and a method for determining and documenting successful completion

of the course.

(b) the course requirements above are examples and may be modified as needed.

(2) Any employee or agent of a regulated facility or agency who drives a motor vehicle provided by the facility or agency for use in the transportation of clients must complete:

(a) a state approved training program in passenger assistance; and

(b) a state approved training program in the operation of a motor vehicle to transport clients of a regulated facility or agency.

(c) the motor vehicle transportation assistance program shall be comprised of but not limited to the following elements:

(i) resident assessment, emergency procedures, supervised practice in the safe operation of motor vehicles, familiarity with state regulations governing the transportation of persons with disabilities, maintenance and safety record keeping, training on hazardous driving conditions and a method for determining and documenting successful completion of the course;

(ii) the course requirements above are examples and may be modified as needed.

(d) a valid New Mexico drivers license for the type of vehicle being operated consistent with state of New Mexico requirements.

(3) Each regulated facility and agency shall establish and enforce written policies (including training) and procedures for employees who provide assistance to clients with boarding or alighting from motor vehicles.

(4) Each regulated facility and agency shall establish and enforce written policies (including training and procedures for employees who operate motor vehicles to transport clients.

[8.370.16.58 NMAC - N, 7/1/2024]

8.370.16.59 BLOOD AND BLOOD PRODUCTS: Any blood-handling and storage facilities shall be safe, adequate, and properly supervised. If the facility provides for maintaining and transferring blood and blood products, it shall meet the appropriate requirements for licensed hospitals. If the facility only provides transfusion services, it shall meet the requirements of applicable regulations.

[8.370.16.59 NMAC - N, 7/1/2024]

8.370.16.60 DENTAL SERVICES:

A. Advisory dentist: The facility shall retain an advisory dentist to participate in the staff development program for nursing and other appropriate personnel to recommend oral hygiene policies and practices for the care of residents.

B. Attending dentists:

(1) Arrangements for dental care: The facility shall make arrangements for dental care for residents who do not have a private dentist.

(2) Transportation: The facility shall assist the resident, if necessary, in arranging for transportation to and from the dentist's office.

C. Dental examination of residents: Dental health care shall be provided or arranged for the resident as needed.

D. Emergency dental care: The facility shall arrange for emergency dental care when a resident's attending dentist is unavailable.

[8.370.16.60 NMAC - N, 7/1/2024]

8.370.16.61 SOCIAL SERVICES:

A. Provision of services: Each facility shall provide for social services in conformance with this section.

B. Staff:

(1) Social worker: Each facility shall employ or retain a person full-time or part-time to coordinate the social services, to review the social needs of residents, and to make referrals.

(2) Qualifications: The person shall:

(a) have a bachelor's degree in social work, sociology, or psychology; and have one year of social work experience in a health care setting; or

(b) have a master's degree in social work from a graduate school of social work accredited by the council on social work education; or

(c) if the designated person is not a qualified social worker, the facility shall receive at least monthly consultation from a social worker who meets the required standards.

C. Admission:

(1) Interviews: Before or at a time of admission, each resident and guardian, if any, and any other person designated by the resident or guardian, shall be interviewed by the social service designee to assist the patient in adjusting to the social and emotional aspects of illness, treatment, and stay in the facility.

(2) Admission history: A social history of each resident shall be prepared.

- D. Care planning:**
- (1) Within two weeks after admission, an evaluation of social needs and potential for discharge shall be completed for each resident.
 - (2) A social component of the plan of care, including preparation for discharge, if appropriate, shall be developed and included in the plan of care; required by these regulations.
 - (3) Social services care and plan shall be evaluated every 90 days.
- E. Services:** Social services staff shall provide the following:
- (1) Referrals: If necessary, referrals for legal services, or to appropriate agencies in cases of legal, financial, psychiatric, rehabilitative or social problems which the facility cannot serve.
 - (2) Adjustment assistance: Assistance with adjustment to the facility, and continuing assistance to and communication with the resident, guardian, family, or other responsible persons.
 - (3) Discharge planning: Assistance to other facility staff and the resident in discharge planning at the time of admission and prior to removal under this chapter.
 - (4) Training: Participation in in-service training for direct care staff on the emotional and social problems and needs of the aged and ill and on methods for fulfilling these needs.
- [8.370.16.61 NMAC - N, 7/1/2024]

8.370.16.62 ACTIVITIES:

- A. Program:**
- (1) Every facility shall provide an activities program which meets the requirements of this section. The program may consist of any combination of activities provided by the facility and those provided by other community resources.
 - (2) The activities program shall be planned for group and individual activities, and shall be designed to meet the needs and interests of each resident and to be consistent with each resident's plan of care.
- B. Staff:**
- (1) Definition: "Qualified activities coordinator" means, in a skilled nursing facility, a person who:
- (a) has a bachelor's degree in recreation therapy and is eligible for registration as a therapeutic recreation specialist with the National therapeutic recreation society; or
 - (b) is an occupational therapist or occupational therapy assistant who meets the requirements for certification by the American occupational therapy association; or
 - (c) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a patient activities program in a health care setting; or
 - (d) has completed a state approved program.
 - (e) in an intermediate care facility, a staff member who is qualified by experience or training in directing group activity.
- (2) Supervision: The activity program shall be supervised by:
- (a) a qualified activities coordinator; or
 - (b) an employee who receives at least monthly consultation from a qualified activities coordinator.
- [8.370.16.62 NMAC - N, 7/1/2024]

8.370.16.63 EQUIPMENT AND SUPPLIES:

- A. Beds:**
- (1) Each resident shall be provided a bed which is at least 36 inches wide, is equipped with a headboard of sturdy construction and is in good repair. Roll-away beds, day beds, cots, or double or folding beds shall not be used.
 - (2) Each bed shall be in good repair and provided with a clean, firm mattress of appropriate size for the bed.
 - (3) Side rails shall be installed for both sides of the bed when required by the resident's condition.
- B. Bedding:**
- (1) Each resident shall be provided at least one clean, comfortable pillow. Additional pillows shall be provided if requested by the resident or required by the resident's condition.
 - (2) Each bed shall have a mattress pad unless contraindicated by special use equipment.
 - (3) If mattress is not moisture-proof, a moisture-proof mattress cover shall be provided. A

moisture-proof pillow cover shall be provided to keep each mattress and pillow clean and dry.

(a) A supply of sheets and pillow cases sufficient to keep beds clean, dry and odor-free shall be stocked. At least two sheets and two pillow cases shall be furnished to each resident each week.

(b) Beds occupied by bedfast or incontinent residents shall be provided drawsheets or appropriate pads.

(4) A sufficient number of blankets shall be provided to keep each resident warm. Blankets shall be changed and laundered as often as necessary to maintain cleanliness and freedom from odors.

(5) Each bed shall have a clean, washable bedspread.

C. Other furnishings:

(1) Each resident who is confined to bed shall be provided with a bedside storage unit containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment. All other residents shall be provided with a storage unit in the resident's room, containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment.

(2) At least one arm chair shall be available for each room for each bed. A folding chair shall not be used.

(3) A properly shaded reading light in working condition shall be installed over or at each bed.

(4) Adequate compartment or drawer space shall be provided in each room for each resident to store personal clothing and effects and to store, as space permits, other personal possessions in a reasonably secure manner.

(5) A sturdy and stable table that can be placed over the bed or armchair shall be provided to every resident who does not eat in the dining room.

D. Towels, washcloths, and soap:

(1) Clean towels and washcloths shall be provided to each resident as needed. Towels shall not be used by more than one resident between launderings.

(2) An individual towel rack shall be installed at each resident's bedside or at the lavatory.

(3) Single service towels and soap shall be provided at each lavatory for use by staff.

E. Window coverings: Every window in patient care area shall be supplied with flame retardant shades, draw drapes or other covering material or devices which, when properly used and maintained, shall afford privacy and light control for the resident.

[8.370.16.63 NMAC - N, 7/1/2024]

8.370.16.64 RESIDENT CARE EQUIPMENT:

A. Personal need items: When a resident because of their conditions needs a mouthwash cup, a wash basin, a soap dish, a bedpan, an emesis basin, or a standard urinal and cover, that item shall be provided to the resident. This equipment may not be interchanged between residents until it is effectively washed and sanitized.

B. Thermometers: If reusable oral and rectal thermometers are used, they shall be cleaned and disinfected between use.

C. First aid supplies: Each nursing unit shall be supplied with first aid supplies, including bandages, sterile gauze dressings, bandage scissors, tape, and a sling tourniquet.

D. Other equipment: Other equipment, such as wheelchairs with brakes, footstools, commodes, foot cradles, footboards, under-the-mattress bedboards, walkers, trapeze frames, transfer boards, parallel bars, reciprocal pulleys, suction machines, patient lifts and stryker or froster frames, shall be used as needed for the care of the residents.

[8.370.16.64 NMAC - N, 7/1/2024]

8.370.16.65 MAINTENANCE: All facility furnishings and equipment shall be maintained in a usable, safe and sanitary condition.

[8.370.16.65 NMAC - N, 7/1/2024]

8.370.16.66 STERILIZATION OF SUPPLIES AND EQUIPMENT: Each facility shall provide sterilized supplies and equipment by one or more of the following methods:

A. use of an autoclave;

B. use of disposable, individually wrapped, sterile supplies such as dressings, syringes, needles, catheters, and gloves;

C. sterilization services under a written agreement with another facility; or

D. other sterilization procedures when approved in writing by the authority.
[8.370.16.66 NMAC - N, 7/1/2024]

8.370.16.67 SANITIZATION OF UTENSILS: Utensils such as individual bedpans, urinals and wash basins which are in use shall be sanitized in accordance with acceptable sanitization procedures on a routine schedule. These procedures shall be done in an appropriate area.
[8.370.16.67 NMAC - N, 7/1/2024]

8.370.16.68 DISINFECTION OF RESIDENT GROOMING UTENSILS: Hair care tools such as combs, brushes, metal instruments, and shaving equipment which are used for more than one resident shall be disinfected before each use.
[8.370.16.68 NMAC - N, 7/1/2024]

8.370.16.69 OXYGEN:

- A.** No oil or grease shall be used on oxygen equipment.
 - B.** When placed at the resident's bedside, oxygen tanks shall be securely fastened to a tip-proof carrier or base.
 - C.** Oxygen regulators shall not be stored with solution left in the attached humidifier bottle.
 - D.** When in use at the resident's bedside, cannulas, hoses, and humidifier bottles shall be changed at least every 30 days.
 - E.** Disposable inhalation equipment shall be pre-sterilized and kept in contamination-proof containers until used, and shall be replaced at least every 30 days when in use.
 - F.** With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days.
- [8.370.16.69 NMAC - N, 7/1/2024]

8.370.16.70 HOUSEKEEPING SERVICES:

- A.** Requirement: Facilities shall develop and implement written policies that ensure a safe and sanitary environment for personnel and residents at all times.
- B.** Cleaning:
 - (1)** General: The facility shall be kept clean and free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards.
 - (2)** Floors: Floors and carpeting shall be kept clean. Polishes on floors shall provide a non-slip finish. Carpeting or any other material covering the floors that is worn, damaged, contaminated or badly soiled shall be replaced, repaired or cleaned.
 - (3)** Other surfaces: Ceiling and walls shall be kept clean and in good repair at all times. The interior and exterior of the buildings shall be painted or stained as needed to protect the surfaces. Loose, cracked, or peeling wallpaper or paint shall be replaced or repaired.
 - (4)** Furnishings: All furniture and other furnishings shall be kept clean and in good repair at all times.
 - (5)** Combustibles in storage areas: Attics, cellars and other storage areas shall be kept safe and free from dangerous accumulations of combustible materials. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.
 - (6)** Grounds: The grounds shall be kept free from refuse, litter, and wastewater. Areas around buildings, sidewalks, gardens, and patios shall be kept clear of dense undergrowth.
- C.** Poisons: All poisonous compounds shall be clearly labeled as poisonous and, when not in use, shall be stored in a locked area separate from food, kitchenware, and medications.
- D.** Garbage:
 - (1)** Storage containers: All garbage and rubbish shall be stored in leak-proof, non-absorbent containers with close-fitting covers, and in areas separate from those used for the preparation and storage of food. Containers shall be cleaned regularly. Paperboard containers shall not be used.
 - (2)** Disposal: Garbage and rubbish shall be disposed of promptly in a safe and sanitary manner.
- E.** Linen and towels: Linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection. Soiled linen shall not be sorted, rinsed, or stored in bathrooms, residents' rooms, kitchens, food storage areas, nursing units, common hallways.

F. Pest control:

(1) Requirement: The facility shall be maintained reasonably free from insects and rodents, with harborage and entrances of insects and rodents eliminated.

(2) Provision of service: Pest control shall be provided when required for the control of insects and rodents.

(3) Screening of windows and doors: All windows and doors used for ventilation purposes shall be provided with wire screening of not less than number 16 mesh or its equivalent, and shall be properly installed and maintained to prevent entry of insects. Hinged screen days when in use.

(4) With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days.

[8.370.16.70 NMAC - N, 7/1/2024]

8.370.16.71 PHYSICAL ENVIRONMENT:

A. General: The buildings of the nursing facility shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery services appropriate to the needs of the community and with due for protecting the health and safety of the patients. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted. Existing waivers at the time these regulations are enacted would continue to be accepted unless it is determined that the facility is unable to protect the health and safety of the resident.

B. Definitions: The definitions in the applicable Life Safety Code required under these regulations apply to this subchapter. In addition, in this subchapter:

(1) Existing construction: means a building which is in place or is being constructed with plans approved by the authority prior to the effective date of this chapter.

(2) Life Safety Code: means the National Fire Protection Association's standard 101.

(3) 1981 Code: means facilities with construction plans first approved by the authority on or after November 26, 1982, shall be free from dangerous accumulations of combustible materials. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

(4) Fire safety evaluation system: means a proposed or existing facility not meeting all requirements of the applicable Life Safety Code shall be considered in compliance if it achieves a passing score on the Fire Safety Evaluation System (FSES), developed by the United State department of commerce, National bureau of standards, to establish safety equivalencies under the Life Safety Code.

(5) New construction: means construction for the first time of any building or addition to an existing building, the plans for which are approved after the effective date of this chapter.

(6) Remodeling: means to make over or rebuild any portion of a building or structure and thereby modify its structural strength, fire hazard character, exists, heating and ventilating system, electrical system or internal circulation, as previously approved by the authority. Where exterior walls are in place but interior walls are not in place at the time of the effective date of this chapter, construction of interior walls shall be considered remodeling. "Remodeling" does not include repairs necessary for the maintenance of a building structure.

C. Approvals: The facility shall keep documentation of approvals on file in the facility following all inspections by state and local authorities.

D. Fire protection:

(1) Basic responsibility: The facility shall provide fire protection adequate to ensure the safety of patients, staff and others on the premises. Necessary safeguards such as extinguishers, sprinkling and detection devices, fire and smoke barriers, and ventilation control barriers shall be installed to ensure rapid and effective fire and smoke control.

(2) New construction: Any new construction or remodeling shall meet the applicable provisions of the 1981 edition of the Life Safety Code.

(3) Existing facilities: Any existing facility shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the facility complied with and continues to comply with the applicable provisions of the 1967, 1973, or 1981 edition of the Life Safety Code, with or without waivers.

(4) Equivalent compliance: An existing facility that does not meet all requirements of the applicable Life Safety Code may be considered in compliance with it if it achieves a passing score on the fire safety evaluation system (FSES) developed by the U.S. department of commerce National bureau of standard, to establish safety equivalencies under the Life Safety Code.

(5) Note: See Appendix C of the 1981 Life Safety Code.

E. General construction: All capital investment plans subject to these regulations, shall be submitted to the authority for review and approval.

(1) One copy of preliminary or schematic plans shall be submitted to the authority for review and approval.

(2) One copy of final plans and specifications which are used for bidding purposes shall be submitted to the authority for review and approval before construction is started. Plans must be prepared and stamped by an architect registered in the state of New Mexico.

(3) If on-site construction above the foundation is not started within 12 months of the date of approval of the final plans and specifications, the approval under these regulations shall be void and the plans and specifications shall be resubmitted for reconsideration of approval.

(4) Any changes in the approved final plans affecting the application of the requirements of this subchapter shall be shown on the approved final plans and shall be submitted to the authority for approval before construction is undertaken. The authority shall notify the facility in writing of any conflict with this subchapter found in its review of modified plans and specifications.

(5) General: Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exit ways, and fire protection shall be so maintained that the safety of the occupants will not jeopardized during construction.

(6) Minimum requirements: All requirements listed in new construction, relating to new construction projects, are applicable to renovation projects involving additions or alterations, except that when existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted if the intent of the requirements is met and if the care and safety of patients will not be jeopardized.

(7) Non-conforming conditions: When doing renovation work, if it is found to be unfeasible to correct all of the nonconforming conditions in the existing facility in accordance with these standards, acceptable compliance status may be recognized by the licensing agency if the operation of the facility, necessary access by the handicapped, and safety of the patients, are not jeopardized by the remaining non-conforming conditions.

(8) Note #1: Plan approval by construction industries division, labor and human relations under these regulations is also required for any new construction or remodeling.

(9) Note #2: Copies of the 1967, 1973, and 1981 Life Safety Codes and related codes can be obtained from the National Fire Protection Association, Battery March Park, Quincy, PA 02269.

F. Constructions and inspections:

(1) General: Construction, of other than minor alterations, shall not be commenced until plan-review deficiencies have been satisfactorily resolved.

(a) The completed construction shall be in compliance with the approved drawings and specifications, including all addenda or modifications approved for the project.

(b) A final inspection of the facility will be scheduled for the purpose of verifying compliance with the approved drawings and specifications including all addenda or modifications approved for the project.

(2) In addition to compliance with these standards, all other applicable building codes, ordinances, and regulations under city, county, or other state agency jurisdiction shall be observed. Compliance with local codes shall be prerequisite for licensing. In areas not subject to local building codes, the state building codes, as adopted, shall apply insofar as such codes are not in conflict with these standards.

(a) New construction is governed by the current editions of the following Codes Standards:

(b) Uniform Building Code (UBC), Uniform Plumbing Code (UPC), Uniform Mechanical Code (UMC), National Electrical Code (NEC), National fire protection association standards (NFPA), American National standard institute (ANSI), American society of heating, refrigerating, and air conditioning engineers (ASHRAE), department of health and human services (DHHS) guidelines for construction and equipment of hospital and medical facilities.

G. Resident safety and disaster plan:

(1) Disaster plan:

(a) Each facility shall have a written procedure which shall be followed in case of fire or other disasters, and which shall specify persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating helpless residents, frequency of fire drills and assignment of specific tasks and responsibilities to the personnel of each shift and each discipline.

(b) The plan developed by the facility shall be submitted to qualified fire and safety

experts, including the local fire authority, for review and approval. The facility shall maintain documentation of approval by the reviewing authority.

(c) All employees shall be oriented to this plan and trained to perform assigned tasks.

(d) The plan shall be available at each nursing station.

(e) The plans shall include a diagram of the immediate floor area showing the exits, fire alarm stations, evacuation routes and location of fire extinguishers. The diagram shall be posted in conspicuous locations in the corridor throughout the facility.

(2) Drills: Fire drills shall be held at irregular intervals at least four times a year on each shift and the plan shall be reviewed and modified as necessary. Records of drills and dates of drills shall be maintained.

(3) Fire inspections: The administrator of the facility shall arrange for fire protection as follows:

(a) At least annual inspection of the facility shall be made by the local fire inspection authorities. Signed certificates of such inspections shall be kept on file in the facility.

(b) Certification by the local fire authority as to the fire safety of the facility and to the adequacy of a written fire plan for orderly evacuation of residents shall be obtained and kept on file in the facility.

(c) Where the facility is located in a city, village, or township that does not have an official established fire department, the licensee shall obtain and maintain a continuing contract for fire protection service with the nearest municipality providing such service. A certification of the existence of such contract shall be kept on file in the facility.

(4) Fire equipment: All fire protection equipment shall be maintained in readily usable condition and inspected annually. In addition to any other equipment, a fire extinguisher suitable for grease fires shall be provided in or adjacent to the kitchen. Each extinguisher shall be provided with a tag for the date of inspection.

(5) Fire Report: All incidents of fire in a facility shall be reported to the authority within 72 hours.

(6) Smoking: Smoking by residents shall be permitted only in designated areas supervised in accordance with the conditions, needs, and safety of residents.

(7) Prevention of ignition: Heating devices and piping shall be designed or enclosed to prevent the ignition of clothing or furniture.

(8) Floor coverings: Scatter rugs and highly polished, slippery floors are prohibited, except for non-slip entrance mats. All floor coverings and edging shall be securely fastened to the floor or so constructed that they are free of hazards such as curled and broken edges.

(9) Roads and sidewalks: The ambulatory and vehicular access to the facility shall be kept passable and open at all times of the year. Sidewalks, drives, fire escapes, and entrances shall be kept free of ice, snow, and other obstructions.

H. Safety and systems:

(1) Maintenance: The building shall be maintained in good repair and kept free of hazards such as those created by any damaged or defective building equipment.

(2) Corridors:

(a) Handrails: Corridors used by residents shall be equipped with handrails firmly secured on each side of the corridor.

(b) Size: All corridors in resident use areas shall be at least eight feet wide.

(3) Doors:

(a) Size: Doors to residents' rooms shall not be less than three feet eight inches wide and six feet eight inches in height, and shall be at least one and three-quarter inches solid core wood or equivalent construction.

(b) Latches: Each designated fire exit door shall have such latches or hardware that the door can be opened from the inside by pushing against a single bar or plate or by turning a single knob or handle.

(c) Locks on exit doors from the building and from nursing areas and wards may not be hooked or locked to prevent exit from the inside, shall be installed on the door of the resident's room, unless the lock is operable from inside the room with a simple one-hand, one-motion operation without the use of a key unless the resident is confined; a master-key is available to emergency personnel such as the fire department.

(4) Toilet room doors: Resident toilet room doors shall be not less than three feet zero inches

by six feet eight inches, and shall not swing into the toilet room unless they are provided with two way hardware.

(5) Thresholds: Raised thresholds which cannot be traversed easily by a bed on wheels, a wheelchair, a drug cart, or other equipment on wheels shall not be used.

I. Emergency power: Emergency electrical service with an independent power source which covers lighting as nursing stations, telephone switchboards, exit and corridor lights, boiler room, and fire alarm systems, shall be provided. The service may be battery operated if effective for at least four hours.

J. Fire protection:

(1) Carpeting: Carpeting shall not be installed in rooms used primarily for the following purposes: food preparation and storage, dish and utensil washing, soiled utility workroom, janitor closet, laundry processing, hydro-therapy, toilet and bathing, resident isolation, and resident examination.

(2) Carpet fireproofing: Carpeting, including underlying padding, if any, shall have a flamespread rating of 75 or less when tested in accordance with standard 255 of the National Fire Protection Association (NFPA), or a critical radiant flux of more than 0.45 watts per square centimeter when tested in accordance with NFPA standard 253, 1978 edition. Certified proof by the manufacturer of the aforementioned test for the specific product shall be available in the facility. Certification by the installer that the material installed is the product referred to in the test shall be obtained by the facility. Carpeting shall not be applied to walls in any case except where the flamespread rating can be shown to 25 or less.

(3) Acoustical tile: Acoustical tile shall be non-combustible.

(4) Wastebaskets: Wastebaskets shall be of non-combustible materials.

(5) Vertical exit stairways: At least one interior exit stairway shall be provided to that an enclosed protected path of at least one-hour fire resistive construction is available for occupants to proceed with safety to the exterior of the facility.

(6) Housing blind, non-ambulatory, or handicapped residents: In an existing facility of two or more stories which is not of at least two-hour fire resistive construction, blind, non-ambulatory, or physically handicapped residents shall not be housed above the street level floor unless the facility is either of one-hour protected non-combustible construction (as defined in national fire protection standard 200), fully sprinklered one-hour protected ordinary construction, or fully sprinklered one-hour protected wood frame construction.

(7) Storage of oxygen: Oxygen tanks, when not in use, shall be stored in a ventilated closet designated for that purpose only or stored outside the building of the home in an enclosed secured area. Oxygen storage areas must comply with NFPA 99.

K. Sprinklers for fire protection: Facilities shall have automatic sprinkler protection throughout buildings. In the event of an addition to, or remodeling of a facility, the entire facility shall have automatic sprinkler protection throughout unless there is a two hour fire rated partition wall between the old and new construction, in which case only the new or remodeled area shall be sprinklered.

L. Mechanical systems:

(1) Water supply:

(a) A portable water supply shall be available at all times. If a public water supply is available, it shall be used. If a public water supply is not available, the well or wells shall comply with applicable regulations.

(b) An adequate supply of hot water shall be available at all times. The temperature of hot water at plumbing fixtures used by residents may not exceed 110 degrees fahrenheit (43 degrees celsius) and shall be automatically regulated by control valves or by another approved device.

(2) Sewage disposal: All sewage shall be discharged into a municipal sewage system if available. Otherwise, the sewage shall be collected, treated, and disposed of by means of an independent sewage system approved under applicable state law and local authority.

(3) Plumbing: The plumbing for potable water and drainage for the disposal of excreta, infectious discharge, and wastes shall comply with applicable state plumbing standards.

(4) Heating and air conditioning:

(a) The heating and air conditioning systems shall be capable of maintaining adequate temperatures and providing freedom from drafts.

(b) A minimum temperature of at least 70 degrees fahrenheit (21 degrees celsius) in all bedrooms and in all other areas used by residents, unless resident preference is documented for deviations.

(5) Incineration:

(a) Facilities for the incineration of soiled dressings and similar wastes, as well as garbage and refuse, shall be provided when other methods of disposal are not available.

(b) An incinerator shall not be flue fed nor shall any upper floor charging chute be

connected with the combustion chamber.

(6) Telephone: There shall be at least one operational non-pay telephone on the premises and as many additional telephones as are deemed necessary in an emergency.

(7) General lighting:

(a) Adequate lighting shall be provided in all areas of the facility. Lighting shall be of a type that does not produce discomfort due to high brightness, glare or reflecting surface. No candles, oil lanterns, or other open flame method of illumination may be used.

(b) Facilities shall have lighting during the evening and night hours that is commensurate with staff needs.

(8) Ventilation:

(a) The facility shall be well-ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air on a basis commensurate with the type of occupancy.

(b) All inside bathrooms and toilet rooms shall have mechanical ventilation to the outside.

(c) Mechanical ventilation shall be provided to the resident area corridors, solarium, dining, living and recreation areas, and nursing stations. These areas shall be under positive pressure;

(d) All rooms in which food is stored, prepared or served, or in which utensils are washed shall be well-ventilated. Refrigerated storage rooms need not be ventilated.

(e) Kitchens, bathrooms, utility rooms, janitor closets, and soiled linen rooms shall be ventilated.

(9) Elevators: At least one elevator shall be provided in the facility if resident beds or activities are located on more than one floor. The platform size of the elevator shall be large enough to hold a resident bed and an attendant.

(10) Electrical:

(a) In all facilities, non-conductive wall plates shall be provided where the system is not properly grounded.

(b) In new construction begun after the effective date of these regulations, at least two duplex-type outlets shall be provided for each bed.

[8.370.16.71 NMAC - N, 7/1/2024]

8.370.16.72 RESIDENTS' ROOMS:

A. Assignment of residents: Residents co-habiting a double occupancy room or a ward shall be of the same sex unless residents are married, related, or are consenting adults.

B. Location: No bedroom housing or resident shall:

(1) Open directly to a kitchen or laundry.

(2) Be located so that a person must pass through a resident's bedroom, toilet room, or bathroom to gain access to any other part of the facility.

(3) Be located so that a person must pass through a kitchen or laundry to gain access to the resident's room or other part of the facility.

C. Access to corridor and outside: Each bedroom shall have direct access to a corridor and outside exposure with the floor at or above grade level.

D. Size:

(1) The minimum floor area per bed shall be 100 square feet in single rooms and 80 square feet per bed in multiple bedrooms, exclusive of vestibule, closets, built-in vanity and wardrobe, toilet rooms and built-in lockers. The authority may waive this requirement in individual cases where the facility has demonstrated in writing that such variations are in accordance with the particular needs of the residents and will not adversely affect their health and safety.

(2) Resident rooms shall be large enough to permit the sides and feet of all beds to be not less than two feet from the nearest walls.

(3) Ceilings shall be at least eight feet in height.

E. Windows: The bottom sill of windows in bedrooms shall be no more than three feet from the floor.

F. Bed Capacity: No rooms shall house more than four beds.

G. Bed arrangements: The beds shall be arranged so that the beds shall be at least three feet apart and

clear aisle space of at least three feet from the entrance to the room to each bed shall be provided.

H. Closet space: A closet or locker shall be provided for each resident in each bedroom. Closets or lockers shall afford a space of not less than 15 inches wide by 18 inches deep by five feet in height for each resident bed.

I. Cubicle curtains: Each bed in a multiple-bed room shall have a flame retardant or flameproof cubicle curtain or an equivalent divider that will assure resident privacy.

J. Room identification: Each bedroom shall be identified with a unique number placed on or near the door.

K. Design and proximity to baths: Residents' bedrooms shall be designed and equipped for adequate nursing care and the comfort and privacy of residents. Each bedroom shall have or shall be conveniently located near adequate toilet and bathing facilities.

[8.370.16.72 NMAC - N, 7/1/2024]

8.370.16.73 TOILET AND BATHING FACILITIES:

A. General: All lavatories required by this subsection shall have hot and cold running water. Toilets shall be water flushed and equipped with open front seats without lids.

(1) Toilet facilities shall be provided in conjunction with each resident's rooms, with not more than two residents' rooms, and not more than four beds per toilet room.

(2) One toilet and one lavatory for not more than four residents shall be provided and separate facilities shall be provided for each sex.

(3) One tub or shower for every 20 residents shall be provided. The bath or shower shall be located on the same floor as the residents served. Facilities for showering with a wheeled shower chair shall be provided.

(4) Every tub, shower, or toilet shall be separated in such a manner that it can be used independently and afford privacy.

(5) On floors where wheelchair residents are cared for, there shall be a toilet room large enough to accommodate a wheelchair and attendant.

B. Employee and family facilities: Toilets, baths, and lavatories for use by employees or family members shall be separate from those used by residents.

C. Grab bars: Firmly secured grab bars shall be installed in every toilet and bathing compartment used by residents.

D. Wheelchair facilities:

(1) On floors housing residents who use wheelchairs, there shall be at least one toilet room large enough to accommodate wheelchairs.

(2) In all facilities licensed for skilled care, a bathtub or shower room large enough to accommodate a wheelchair and attendant shall be provided.

E. The requirement of separate facilities for male and female residents is not applicable to facilities used by married couples sharing a room, or those referenced in Subsection A of 8.370.16.72 NMAC if the facilities are not used by other residents.

[8.370.16.73 NMAC - N, 7/1/2024]

8.370.16.74 NURSING FACILITIES:

A. All facilities: Each facility shall have:

(1) A medicine storage area.

(2) Space for storage of linen, equipment, and supplies.

(3) Utility rooms, which shall be located, designed and equipped to provide areas for the separate handling of clean and soiled linen, equipment, and supplies.

B. Each resident care area on each floor shall have:

(1) A centrally located nurse station located to provide visual control of all resident room corridors; equipped with storage for records and charts, a desk or work counter, operational telephone, and nurse call system as required in 8.370.16.75 NMAC.

(2) A medicine preparation room immediately adjacent to the nurse station with a work counter, refrigerator, sink, and a well-lighted medicine cabinet with lock and space for medicine cart. The room shall be mechanically ventilated.

(3) A soiled utility room with a flush-rim siphon jet service sink cabinet counter, and sink with hot and cold running water. The utility shall be mechanically ventilated and under negative pressure.

- (4) A cleaning area or room with a sink with hot and cold running water, counter, and cabinets.
 - (5) Staff toilet and lavatory facilities separate from those of residents, near nursing station.
 - (6) If a kitchen is not open at all times, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving between meal nourishment. Each station may service more than one nursing area.
- [8.370.16.74 NMAC – N, 7/1/2024]

8.370.16.75 NURSE CALL SYSTEM: A nurse call station shall be installed at each resident's bed, in each resident's toilet room, and at each bathtub and shower. The nurse call at the toilet, bath, and shower rooms shall be an emergency call equipped with pull cords of sufficient length to extend to within 18 inches off the floor. All calls shall register at the nurse station and shall actuate a visible signal in the corridor where visibility to corridors is obstructed at the room door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. An emergency call station shall also be provided in any enclosed room used by residents.

[8.370.16.75 NMAC - N, 7/1/2024]

8.370.16.76 DINING, RECREATION AND ACTIVITY AREAS:

- A. Multi-purpose space: The facility shall provide one or more furnished multi-purpose areas of adequate size for dining, diversional, and social activities of residents.
 - B. Lounge: At least one dayroom or lounge, shall be provided for use of the residents.
 - C. Size of dining rooms: Dining rooms shall be of sufficient size to seat all residents at no more than two shifts. Dining tables and chairs shall be provided. TV trays or portable card tables shall not be used as dining tables.
 - D. Space: If a multi-purpose room is used for dining and diversional and social activities of residents, there shall be sufficient space to accommodate all activities and minimize their interference with each other.
 - E. Total area: The combined floor space of dining, recreation, and activity areas shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space.
- [8.370.16.76 NMAC - N, 7/1/2024]

8.370.16.77 FOOD SERVICE - GENERAL:

- A. The facility shall have a kitchen or dietary area which shall be adequate to meet food service needs and shall be arranged and equipped for the refrigeration, storage and preparation, and serving of food, as well as for dish and utensil cleaning and refuse storage and removal.
- B. Dietary areas shall comply with the local health or food handling codes. Food preparation space shall be arranged for the separation of functions and shall be located to permit efficient services to residents and shall not be used for non-dietary functions.
 - (1) Kitchen and dietary: Kitchen and dietary facilities shall be provided to meet food service needs and arranged and equipped for proper refrigeration, heating, storage, preparation, and serving of food. Adequate space shall be provided for proper refuse handling and washing of waste receptacles, and for storage of cleaning components.
 - (2) Traffic: Only traffic incidental to the receiving, preparation and serving of food and drink shall be permitted.
 - (3) Toilets: No toilet facilities may open directly into the kitchen.
 - (4) Food storage: Food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside.
 - (5) Handwashing: A separate handwashing sink with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen.
 - (6) Dishwashing: A separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided.
 - (7) Sink: At least a three-compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drainboards, at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drainboard shall be available for prewashing. The additional sink may also be used for liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least fifty percent of the largest utensil used. In lieu of the additional sink for prewashing, a well type garbage disposal with overhead

spray wash may be provided.

(8) Mechanical dishwashers: Mechanical dishwashers and utensil washers, where provided, shall meet the requirements of the current approved list from the national sanitation foundation or equivalent with approval of the authority.

(9) Temperature: Temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of in immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus two degrees fahrenheit or one degree celsius.

(10) Fire extinguishers: Approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment.

(11) Walls: The walls shall be of plaster or equivalent material with smooth, light - colored, non-absorbent, and washable surface.

(12) Ceiling: The ceiling shall be of plaster or equivalent material with smooth, light-colored, non-absorbent, washable, and seamless surface.

(13) Floors: The floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be non-absorbent and easily cleaned.

(14) Screens: All room openings to the out - of-doors shall be effectively screened. Screen doors shall be self-closing.

(15) Lighting: All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted.

(16) Sewage contamination: Rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or wastelines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

[8.370.16.77 NMAC - N, 7/1/2024]

8.370.16.78 STORAGE:

A. General storage: A general storage area shall be provided for supplies, equipment, and wheelchairs.

B. Linen: Facilities shall provide a linen storage space or cabinet for each nursing unit.

[8.370.16.78 NMAC - N, 7/1/2024]

8.370.16.79 FAMILY AND EMPLOYEE LIVING QUARTERS: Any family and employee living quarters shall be separate from the residents' area.

[8.370.16.79 NMAC - N, 7/1/2024]

8.370.16.80 EMPLOYEE FACILITIES: The following shall be provided for employees, and shall not be located in food preparation, food storage, utensil washing area or in resident's rooms:

A. An area, room, or rooms for employee wraps, with lockers for purses and other personal belongings when on duty.

B. Handwashing lavatories with soap dispenser, single service towel dispenser, or other approved hand drying equipment.

C. Toilet facilities separate from those used by residents.

[8.370.16.80 NMAC - N, 7/1/2024]

8.370.16.81 JANITOR FACILITIES: Facilities shall have a mechanically ventilated janitor closet of adequate size on each floor and in the food service area, equipped with hot and cold running water and a service sink or receptor.

[8.370.16.81 NMAC - N, 7/1/2024]

8.370.16.82 LAUNDRY FACILITIES:

A. Facilities: A laundry room shall be provided unless commercial laundry facilities are used. Laundry facilities shall be located in areas separate from resident units and shall be provided with necessary washing and drying equipment.

B. Work room: When commercial laundries are used, a room for sorting, processing, and storing soiled linen shall be provided and shall have mechanical exhaust ventilation.

C. In addition to the requirements of Subsection A of 8.370.16.82 NMAC and Subsection B of 8.370.16.82 NMAC, facilities shall have:

(1) A soiled linen sorting room separate from the laundry, which shall be mechanically ventilated and under negative pressure.

(2) A lavatory with both hot and cold running water, soap, and individual towels in the laundry area.

[8.370.16.82 NMAC - N, 7/1/2024]

8.370.16.83 ISOLATION: For every 100 beds or fraction thereof, facilities shall have available one separate room, equipped with separate toilet, handwashing, and bathing facilities, for the temporary isolation of a resident. The isolation room bed shall be considered part of the licensed bed capacity of the facility.

[8.370.16.83 NMAC - N, 7/1/2024]

8.370.16.84 ADMINISTRATION AND ACTIVITY AREAS:

A. **Administration and resident activity areas:** Administration and resident activities areas shall be provided. The sizes of the various areas will depend upon the requirements of the facility. Some functions allotted separate spaces or rooms under Subsection B of 8.370.16.84 NMAC may be combined, provided that the resulting plan will not compromise acceptable standards of safety, medical and nursing practices, and the social needs of residents.

B. Administration department areas shall include:

- (1) business office;
- (2) lobby and information center;
- (3) office of administrator;
- (4) admitting and medical records area;
- (5) public and staff toilet room;
- (6) office of director of nurses; and
- (7) in-service training area.

C. Resident activities areas shall include:

- (1) occupational therapy;
- (2) physical therapy;
- (3) activity area; and
- (4) beauty and barber shop.

[8.370.16.84 NMAC - N, 7/1/2024]

8.370.16.85 MIXED OCCUPANCY: Rooms or areas within the facility may be used for occupancy by individuals other than residents and facility staff if the following conditions are met:

A. the use of these rooms does not interfere with the services provided to the residents; and

B. the administrator takes reasonable steps to ensure that the health and safety and rights of the residents are protected.

[8.370.16.85 NMAC - N, 7/1/2024]

8.370.16.86 LOCATION AND SITE:

A. Zoning: The site shall adhere to local zoning regulations.

B. Outdoor areas: Areas shall be provided for outdoor recreation area, exclusive of driveways and parking area.

C. Parking: Space for off-street parking for staff and visitors shall be provided.

[8.370.16.86 NMAC - N, 7/1/2024]

8.370.16.87 SUBMISSION OF PLANS AND SPECIFICATIONS: For all new construction:

A. One copy of schematic and preliminary plans shall be submitted to the authority for review and approval of the functional layout.

B. One copy of working plans and specifications shall be submitted to and approved by the authority before construction is begun. The authority shall notify the facility in writing of any divergence in the plans and specifications, as submitted, from the prevailing rules.

C. The plans specified in Subsection B of 8.370.16.87 NMAC shall show the general arrangement of the buildings, including a room schedule and fixed equipment for each room and a listing of room numbers, together

with other pertinent information. Plans submitted shall be drawn to scale.

D. Any changes in the approved working plans affecting the application of the requirements herein established shall be shown on the approved working plans and shall be submitted to the authority for approval before construction is undertaken. The authority shall notify the facility in writing of any divergence in the plans and specifications as submitted, from the prevailing rules.

E. If on-site construction above the foundation is not started within six months of the date of approval of the working plans and specifications under Subsection B of 8.370.16.87 NMAC, the approval shall be void and the plans and specifications shall be resubmitted for reconsideration of approval.

F. If there are no divergences from the prevailing rules, the authority shall provide the facility with written approval of the plans as submitted.

[8.370.16.87 NMAC - N, 7/1/2024]

8.370.16.88 RELATED REGULATIONS AND CODES: Long term care 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. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

[8.370.16.88 NMAC - N, 7/1/2024]

History of 8.370.16 NMAC: RESERVED

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 17 REQUIREMENTS FOR FREESTANDING BIRTH CENTERS

8.370.17.1 ISSUING AGENCY: New Mexico Health Care Authority, Division of Health Improvement.
[8.370.17.1 NMAC - N, 7/1/2024]

8.370.17.2 SCOPE:

A. These regulations apply to public, for profit and non-profit freestanding birth centers providing the services specified in these regulations. Any freestanding birth center providing services specified in these regulations must be licensed under these regulations prior to obtaining federal certification.

B. These regulations do not apply to:
(1) hospitals that provide labor and delivery services under their hospital license;
(2) births performed in a private residence by licensed midwives or certified nurse midwives acting within the scope of their license; and
(3) offices and treatment rooms of a licensed private practitioners.

[8.370.17.2 NMAC - N, 7/1/2024]

8.370.17.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, Subsection R of Section 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act, as amended. 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.

[8.370.17.3 NMAC - N, 7/1/2024]

8.370.17.4 DURATION: Permanent.

[8.370.17.4 NMAC - N, 7/1/2024]

8.370.17.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.370.17.5 NMAC - N, 7/1/2024]

8.370.17.6 OBJECTIVE:

A. To encourage the establishment and maintenance of freestanding birth centers which provide quality care within a safe home like environment for mothers and infants.

B. To establish minimum standards for licensing of freestanding birth centers that provide birthing services different from, and outside the acute care hospital setting, while promoting safety and quality care for mothers and infants.

C. To monitor freestanding birth center compliance under these regulations through surveys and to identify any facility areas in which could be dangerous or harmful.

[8.370.17.6 NMAC - N, 7/1/2024]

8.370.17.7 DEFINITIONS:

A. “AABC” means American association of birth centers.

B. “Administrator” means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the birth center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the facility and all of the services provided at the facility, including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.

C. “Applicant” means the individual or legal entity that applies for a license. If the applicant is a legal entity, then the individual signing the license application on behalf of the legal entity must have written legal authority from the legal entity to act on its behalf and execute the application. The license applicant must be the legal owner of the facility.

D. “Apprentice midwife” means an individual as defined in and licensed under 16.11.3 NMAC, as amended, and currently in good standing.

- E.** “ACNM” means the American college of nurse midwives.
- F.** “Basic life support” (BLS) means training and current certification in adult cardiopulmonary resuscitation equivalent to American heart association class C basic life support and in emergency treatment of a victim of cardiac or respiratory arrest through cardiopulmonary resuscitation and emergency cardiac care.
- G.** “Birth assistant” means a staff person over the age of 18 who is capable of recognizing complications and who can care for the mother and infant by performing normal postpartum and newborn care. At a minimum, a birth assistant must be trained and have current certifications in BLS and neonatal resuscitation program (NRP) and can only function under the direct supervision of a licensed provider immediately available on site.
- H.** “Birth center” (BC) means a freestanding birth center licensed by the state for the primary purpose of performing low-risk deliveries that is not a hospital, attached to a hospital or in a hospital, and where births are planned to occur away from the mother’s residence following a low-risk pregnancy.
- I.** “Birth room” or “birthing room” means a private room of sufficient size to accommodate a client in active labor with the equipment and personnel necessary to assist the mother in a safe birth and in full compliance with the minimum standards in these regulations. Any facility with four or more birthing rooms must also comply with the birthing room and center requirements in the current edition of the facility guidelines institute, guidelines for design and construction, specific requirements for freestanding birth centers.
- J.** “CABC” means the commission for the accreditation of birth centers.
- K.** “Certified nurse midwife” means a licensed individual educated in the two disciplines of nursing and midwifery as defined and licensed under 16.11.2 NMAC, as amended, and currently in good standing.
- L.** “Certified nurse practitioner” means a registered nurse as defined and licensed under the Nursing Practice Act, Section 61-3-23.2 NMSA 1978, as amended, and related regulations and is currently in good standing.
- M.** “CLIA” means Clinical laboratory improvement amendments of 1988 as amended.
- N.** “Client” means any person who receives care, including a mother, infant or newborn, at a freestanding birth center.
- O.** “Compliance” means the facility’s adherence to these regulations, as well as any and all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the facility license.
- P.** “Deficiency” means a violation of or failure to comply with any provision(s) of these regulations.
- Q.** “Employee” means any person who works at the facility and is a direct hire of the owner or management company, if applicable.
- R.** “External quality committee” means the members of the internal quality committee and an external peer reviewer or a clinical consultant and any other facility healthcare partners, as available.
- S.** “Facility” means the physical premises, building(s) and equipment where the freestanding birth center services are provided, whether owned or leased and which is licensed pursuant to these regulations.
- T.** “Incident” means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.
- U.** “Incident management system” means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.
- V.** “Incident report form” means the reporting format issued by the authority for the reporting of incidents or complaints.
- W.** “Internal quality committee” means and includes the administrator and clinical director at a minimum. If the administrator and clinical director are the same person, another staff person with clinical experience must serve on the internal quality committee. Other staff at the facility may also serve on this committee as deemed appropriate.
- X.** “License” means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate a birth center for a specified period of time, at the physical premises, not to exceed one year.
- Y.** “Licensee” means the person(s) or legal entity that operates the physical premises and facility and in whose name the facility license has been issued and who is legally responsible for compliance with these regulations.
- Z.** “Licensed midwife” means a licensed individual as defined and licensed under 16.11.3 NMAC, as amended, currently in good standing.
- AA.** “Licensed practical nurse” means a licensed individual as defined and licensed under the Nursing Practice Act, Section 61-3-19 NMSA 1978, as amended, currently in good standing.

- BB.** “**Licensing authority**” means the New Mexico health care authority.
- CC.** “**Low risk pregnancy**” means a pregnancy that is determined by documented medical history, risk assessment, and prenatal care that reasonably predicts an outcome of a normal and uncomplicated labor and birth.
- DD.** “**Management company**” means the legal entity that manages the facility, if different from the legal owner of the facility.
- EE.** “**Midwife**” means a licensed individual authorized to practice midwifery in New Mexico as defined and licensed under 16.11.2 NMAC, as amended, or 16.11.3 NMAC, as amended, currently in good standing.
- FF.** “**NFPA**” means the national fire protection association which sets codes and standards for building fire safety.
- GG.** “**NMSA**” means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.
- HH.** “**Neonatal resuscitation program**” (NRP) means training and current certification in both the NRP module on medications and the module on intubation using an endotracheal tube (ET) or laryngeal mask airway (LMA) or both, endorsed by American academy of pediatrics or the American heart association.
- II.** “**Quality assurance**” means the licensed health care facility’s on-going comprehensive self-assessment of compliance with these regulations and any and all other applicable statutes and regulations including, but not limited to, the facility’s own policies and procedures and incident investigations, documentation, reporting and reviewing of all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents for study and improvement of the facility’s organizational, administrative and preventative practices in employee training and reporting.
- JJ.** “**Quality improvement system**” means a systematic approach to the continuous study and improvement of the efficacy of organizational, administrative and clinical practices to meet the needs of persons served, address any changing regulatory requirements and achieve the facility’s mission, values and goals.
- KK.** “**Physician**” means a licensed individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Sections 61-6-1 to 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Sections 61-10-1 to 61-10-22 NMSA 1978, as amended, and related regulations.
- LL.** “**Physician's assistant**” means an individual, currently in good standing, who is licensed and authorized to provide services to patients under the supervision and direction of a licensed physician under the Physician Assistant Act, Sections 61-6-7 to 61-6-10 NMSA 1978, as amended and related regulations, or is authorized and licensed to provide services to patients under the supervision and direction of a licensed osteopathic physician under the Osteopathic Physicians' Assistants Act, Sections 61-10A-1 to 61-10-7 NMSA 1978 as amended, and related regulations.
- MM.** “**Plan of correction**” (POC) means the plan submitted by the licensee or its representative(s) addressing how and when deficiencies identified through a survey or investigation will be corrected. A plan of correction is a public record once it has been approved by the regulatory authority and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a facility license, including to prove licensee compliance violations or failures.
- NN.** “**Policy**” means a written statement that guides and determines present and future facility decisions and actions.
- OO.** “**Premises**” means all of the facility including buildings, grounds and equipment.
- PP.** “**Procedure**” means the action(s) that must be taken in order to implement a written policy.
- QQ.** “**Registered nurse**” means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Sections 61-3-1 to 61-3-30 NMSA 1978, as amended, and related regulations.
- RR.** “**Scope of practice**” means the procedures, actions, and processes that a healthcare practitioner is permitted to undertake under the terms of their professional license. The scope of practice is limited to that which the applicable law allows for specific education, training, experience and demonstrated competency.
- SS.** “**Staff**” means any person who works at the facility, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the facility.
- TT.** “**U/L approved**” means approved for safety by the national underwriters laboratory.
- UU.** “**Variance**” means a written decision, made at the licensing authority’s sole discretion, allowing a licensee and facility to deviate from a portion(s) or provision of these regulations for a specified time period not exceeding a year, providing the variance does not jeopardize the health, safety or welfare of the facility’s clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations.

VV. “Violation” means any and all actions or procedures by the facility or licensee that are not in compliance with these regulations and any and all other applicable state and federal statutes and regulations.

WW. “Waive” or “waiver” means a written decision, made at the licensing authority’s sole discretion, to allow a birth center to refrain from complying with a portion(s) or provision of these regulations for a limited and specified time period not exceeding a year, providing the waiver does not jeopardize the health, safety or welfare of the facility’s clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations.

[8.370.17.7 NMAC - N, 7/1/2024]

8.370.17.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory compliance. “May” means permissive compliance. The words “adequate”, “proper”, and other similar words mean the degree of compliance that is generally accepted throughout the professional field by those who provide birthing services to the public in facilities governed by these regulations. However, if any other applicable statute or regulation requires mandatory or stricter compliance for birth center services than these regulations, the licensee and facility must comply with the more strict compliance requirements.

[8.370.17.8 NMAC - N, 7/1/2024]

8.370.17.9 FREESTANDING BIRTH CENTER SCOPE OF SERVICES:

A. General scope of services. Freestanding birth centers endorse the wellness care model by providing supportive care and using interventions only when medically necessary. Birth centers may provide women’s health services including annual exams, contraception counseling, pre-conception counseling, sexually transmitted infection testing and treatment, prenatal care, birth services, and postpartum and newborn care following a normal, low risk pregnancy. The facility may offer other health services by licensed professionals working within the scope of their license providing the physical space used by the other services is clearly delineated and separate from the birth center services, the other services do not interfere with any birth center requirements, the facility complies with any applicable licensing regulations for the other services, and the authority is capable of determining the physical boundaries between the birth center facilities licensed under these regulations and other facilities, if licensed under other regulations.

B. Limitations on scope of services. Except in the event of an emergency, surgical procedures shall be limited to those normally performed during birth, but may include episiotomy and repair, other procedures for newborns, and well women’s care but only if such procedures are performed by a licensed practitioner acting within the scope of the practitioner’s license. Trials of labor after cesarean section (TOLAC) and vaginal birth after cesarean (VBAC) services shall only be performed at a freestanding birth center by a practitioner whose license authorizes this scope of practice.

C. Services not allowed and not to be performed at freestanding birth center. The following services shall not be performed in a freestanding birth center:

- (1) general, regional or epidural anesthesia services;
- (2) medications for cervical ripening, induction or augmentation of labor;
- (3) operative vaginal forceps or vacuum or abdominal births; and
- (4) abortions.

D. Geographic requirements:

(1) Freestanding birth centers shall be located within a maximum of 30 minutes normal driving time from a referral hospital. Reliable evidence of normal driving time must be provided.

(2) The authority may, at its sole discretion, approve a variance for a freestanding birth center that is located more than 30 minutes normal driving time from a referring hospital, if the authority finds that the health and safety of the birth center clients will not be adversely affected.

E. Additional requirements applicable to facilities with four or more birthing rooms. Any and all facilities with four or more birthing rooms shall comply with all of these regulations and also with all applicable requirements in the current edition of the facility guidelines institute’s guidelines for design and construction, specific requirements for freestanding birth centers.

[8.370.17.9 NMAC - N, 7/1/2024]

8.370.17.10 LICENSE REQUIRED: A freestanding birth center facility shall not be operated without a license issued by the authority. Any freestanding birth center or facility operating after the effective date of these regulations, must be licensed under these regulations. Any facility providing the services described in these

regulations after the effective date of these regulations, shall apply for a freestanding birth center license within 180 days. Any unlicensed freestanding birth center that has not applied for a license, may only continue to operate without a license for 180 days from the effective date of these regulations. A freestanding birth center licensed under these regulations shall not assert, represent, offer, provide or imply that the facility is or may render care or services other than the services it is permitted to render under these regulations and within the scope of all applicable professional license(s). If an unlicensed freestanding birth center is found to be providing services for which a license is required under these regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The licensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.
[8.370.17.10 NMAC - N, 7/1/2024]

8.370.17.11 INITIAL LICENSURE PROCEDURES: These regulations should be thoroughly understood and used by the applicant, when applying for the initial freestanding birth center license. The applicant for an initial facility license under these regulations must follow these procedures when applying for a license.

A. Notification and letter of intent: The owner shall advise the licensing authority of its intent to open a freestanding birth center pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the owner and the facility and at a minimum, include the following:

- (1) the name of facility;
- (2) the name of the legal owner and licensee and the type of legal entity under which the facility shall be owned;
- (3) the name of the management company, if any;
- (4) the type of facility license requested;
- (5) the anticipated number of clients to be served;
- (6) the number of birthing rooms in the proposed facility;
- (7) the physical address of facility including building name or suite number;
- (8) the mailing address, if different from physical address;
- (9) the contact name(s), address, e-mail address, and telephone number(s);
- (10) the anticipated payers and sources of reimbursement; and
- (11) a list of all services, medical and non-medical, to be provided at the facility location

which is requesting the license.

B. License application and fees: After review by the authority of the letter of intent for general compliance with these regulations and verification that an application is appropriate under these regulations, the owner shall be required to complete a license application on a form provided by the authority. Prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the authority, the applicant must submit to the licensing authority an application form provided by the authority, fully completed, printed or typed, dated, signed, and notarized accompanied by the required fee. If electronic filing of license applications is available at the time of application, the applicant will be required to follow all electronic filing requirements, and may forgo any notary requirements, if specifically allowed under the applicable electronic filing statutes, regulations and requirements. Current fee schedules will be provided by the licensing authority. The authority reserves the right to require additional documentation to verify the identity of the applicant in order to verify whether any federal or state exclusions may apply to the applicant. Fees must be paid in the form of a certified check, money order, personal, or business check, or electronic transfer (if available), made payable to the state of New Mexico, and are non-refundable.

C. Existing facility and building plans: As part of the initial license application, the applicant must also attach to the application and submit to the authority, a set of building plans which includes all of the information required by these rules, accompanied by proof of zoning approvals by the applicable building authority. The existing facility building plans must be of professional quality, on substantial paper measuring at least 24" x 36", and drawn to an accurate scale of one-eighth inch to one foot. The plans for existing construction must include sufficient information for the authority to make a compliance determination and at a minimum:

- (1) floor plans showing proposed use of each room, (e.g., waiting room, examination room, office, etc.);
- (2) interior dimensions of all rooms;
- (3) one building or wall section showing an exterior and interior wall construction section including the material composition of the floor, wall, and ceiling/roof, and the finishes, (e.g., carpet, tile, gypsum board with paint, or wood paneling);

- thickness;
- (4) door locations and types (swing) and sizes of all doors, including width, height and
 - (5) location of all sinks, tubs and showers;
 - (6) location and operation of windows including size and type;
 - (7) location and dimension of all level changes within and outside the building, (e.g., steps or ramps);
 - (8) location of fire extinguishers, heat and smoke detectors, and operational elements of alarm systems;
 - (9) location of heating units, furnaces, hot water heaters, and fuel type and source;
 - (10) all heating, ventilating and air conditioning/cooling systems;
 - (11) location of the building on a site/plot plan to determine surrounding conditions, include all steps, ramps, parking areas, handicapped spaces, walks and any permanent structures, including construction materials; and
 - (12) all existing construction, new construction, remodeled portions, and proposed additions, must be delineated on the plans, clearly indicating where existing construction ends and proposed remodeling and new construction begins.

D. Remodeling, new and proposed construction: If the proposed facility includes any remodeling, renovations or additions to an existing building or new construction of any type, building plans and specifications covering all portions of the proposed work delineating all existing construction and all new and proposed construction shall be attached to the application and submitted to the authority for review and approval as part of the application. Building plans will be reviewed by the authority for compliance with current licensing regulations, building and fire safety codes. If the facility's building plans are approved by the authority and local building officials have issued a construction permit, construction may begin. This provision is an ongoing requirement and applies to, and includes any and all construction at the facility, which occurs before and after issuance of the initial license. This provision does not generally apply to maintenance and repair. However, if the maintenance or repair impacts or alters any of the facility requirements under these regulations, the applicant or licensee must notify the authority and verify ongoing compliance with these regulations. The authority shall not be liable for any costs or damages incurred by the applicant relating to construction in the event the applicant incurs costs or damages in order to comply with these regulations or to obtain a license under these regulations. For all new and proposed construction, the applicant or licensee must submit for approval by the authority before construction begins, the following:

- (1) one copy of building plans and specifications, including a site plan, that are of professional quality, on substantial paper measuring at least 24" x 36" and drawn to an accurate scale of one-eighth inch to one foot;
- (2) the building plans must be drawn to scale and show the general arrangement of the buildings, and include a room schedule, show fixed equipment for each room, and list room numbers, together with all other pertinent explanatory information addressing the requirements in applicable regulations;
- (3) any changes in the approved building plans affecting compliance with these rules shall be shown on the approved plans and shall be submitted to the authority for approval before construction is undertaken;
- (4) any and all completed new construction shall comply with the plans and specifications approved by the authority prior to construction, these rules, and any and all other applicable rules and codes; and
- (5) any of the authority's approval(s) shall not waive any other rules or other applicable building and code requirements enforceable by other authorities.

E. Initial survey phase: Upon receipt of a properly completed application with all necessary supporting documentation, an initial life safety survey of the proposed facility will be scheduled by the licensing authority. Upon completion of the initial life safety survey and determination that the facility is in compliance with all life safety and building requirements, the licensing authority may issue a temporary license pending completion of its initial health survey or an annual license if allowed or applicable under these regulations.

[8.370.17.11 NMAC - N, 7/1/2024]

8.370.17.12 ADDITIONAL DOCUMENTS REQUIRED WITH LICENSE APPLICATION: The authority reserves the right to require an applicant to provide any and all additional documents, as part of its license application, in order for the authority to determine whether the applicant and the facility are in full compliance with these regulations, as well as any and all other applicable statutes and regulations. At a minimum, additional documents required to be attached to the initial license application, include, but are not limited to:

A. Building approvals: The applicant must submit all building approvals required for the facility to operate in the jurisdiction in which it is located, including, but not limited to:

- (1) written building approvals and certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and
- (2) written fire safety approvals from the fire safety authority having jurisdiction.

B. Environment approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:

- (1) private water supply;
- (2) private waste or sewage disposal; and
- (3) ultrasound equipment.

C. Board of pharmacy approvals: A copy of facility's drug permit issued by the state board of pharmacy must be provided.

D. Program outline: The applicant must submit with its license application a program outline consistent with these regulations which includes at a minimum, the following information:

- (1) a list of all services and the scope of those services to be provided by the proposed facility;
- (2) projected number of clients to be served monthly;
- (3) a list of staffing and personnel requirements and duties to be performed;
- (4) a list of all services that will be contracted or arranged with any other health providers including ambulance services, admitting hospitals, consultation with medical practitioners, laboratory work and equipment providers;
- (5) the number of examination rooms, birth rooms, family rooms and other rooms for diagnostic or other use including, but not limited to, ultrasound, laboratory, clean linen storage and waste disposal;
- (6) an organizational structure diagram or chart including the administrator, advisory body or board of directors, if any, staff, clinical director, internal quality committee and external quality committee; and
- (7) quality improvement systems and quality assurance processes.

E. Policies and procedures: The applicant must submit with its license application a copy of the facility's policies and procedures which must comply with these regulations.

[8.370.17.12 NMAC - N, 7/1/2024]

8.370.17.13 LICENSE TYPES, VARIANCES & WAIVERS:

A. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license to a new freestanding birth center before clients are admitted or for facilities that existed prior to enactment of these regulations, provided that the freestanding birth center has submitted a license application, supporting documents, has met all of the applicable life safety code requirements, and its program, policies, and procedures have been reviewed for compliance with these regulations. A temporary license is not guaranteed under these regulations and shall be limited and restricted to:

- (1) a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies;
- (2) no more than two consecutive temporary licenses shall be issued in accordance with applicable statutes and regulations;
- (3) the facility being allowed to accept clients and provide care services, subject to any requirements and restrictions attached to the temporary license;
- (4) a finding that the applicant is qualified and in full compliance with applicable life safety code requirements; and
- (5) any determination of compliance or noncompliance for a temporary license or initial license shall be made at the licensing authority's sole discretion based upon the health, safety, or welfare of the facility's clients, patients and staff and proof by the applicant that it is not in violation of other applicable state and federal statutes and regulations.

B. Annual license: An annual license is issued for a one-year period to a freestanding birth center facility which has met all requirements of these regulations. If a temporary license is issued, once the authority has issued a written determination of full compliance with these regulations, an annual license will be issued with the renewal date of the annual license based upon the initial date of the first temporary license.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator or when there is a change of name for the facility, but an amended license shall

only be issued if the administrator is not an owner. If the administrator is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

- (1) be on a form, or filed electronically if available, as required by the licensing authority;
- (2) be accompanied by the required fee for the amended license; and
- (3) be submitted within 10 working days of the change.

D. Variances and waivers: At the licensing authority's sole discretion, an applicant or licensee may be granted variances and waivers of these regulations, provided the granting of such variance or waiver shall not jeopardize the health, safety or welfare of the facility's clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations. All variances and waivers shall be in writing attached to the license and shall be limited to the term of the license. Upon renewal of a license, any variances and waivers shall only be extended or continued at the sole discretion of the licensing authority providing such variance or waiver shall not jeopardize the health, safety or welfare of the facility's clients, patients and staff and is not in violation of other applicable state and federal statutes and regulations at the time of renewal. Variances and waivers are non-transferrable and shall not be granted indefinitely.

[8.370.17.13 NMAC - N, 7/1/2024]

8.370.17.14 LICENSE RENEWAL:

A. Licensee must submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the facility complies with all applicable state and federal regulations in force at the time of renewal and that there has been no new construction or remodeling or additions which differ from the plans provided and reviewed with the prior license application. If there has been any construction or remodeling or additions to the facility since issuance of the last license, and the construction has not been previously approved, the license renewal applicant shall be required to comply with all construction documentation requirements under these regulations when applying for the license renewal. The authority reserves the right to require that a renewal applicant provide any and all additional documents, including any necessary proof of current compliance, as part of its license renewal application in order for the authority to determine whether the applicant and the facility are in full compliance with these regulations.

B. Upon receipt of the renewal application and the required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the facility is in substantial compliance with these regulations and any and all other applicable state and federal regulations.

C. If the existing license expires and the licensee has failed to submit a renewal application, the authority may charge the applicant a late fee of \$100 for each month or portion of a month that the facility continues to operate without a license providing that during such time the facility remains in full compliance with these regulations. If the facility does not renew its license and continues to operate without paying late fees and without being in full compliance with these regulations, the facility shall cease operations until it obtains a new license through the initial licensure procedures, and shall still be required to pay late fees. Under Section 24-1-5 NMSA 1978, as amended, no freestanding birth center shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

D. It shall be the sole responsibility and liability of the licensee to be aware of the status, term and renewal date of its license. The licensing authority shall not be responsible to notify the facility of the renewal date or the expiration date of the facility's license.

E. After issuance of the initial license, if there has been no construction or remodeling or additions to the facility and the facility is in substantially the same condition as the plans on file with the authority, the facility may be issued a license renewal based upon its accreditation status if it has been fully accredited by an approved national accrediting organization such as, the commission for the accreditation of birth centers or its successor, and the facility maintains its accreditation status throughout the course of the license term. The licensee shall be responsible for providing verifiable evidence of accreditation status with its license renewal application and any time during the term of its license upon request. The authority, at its sole discretion, reserves the right to require additional documentation of compliance with these regulations and all applicable state and federal statutes and regulations by the licensee at the time of license renewal, even if the facility is accredited by an approved national accrediting organization.

[8.370.17.14 NMAC - N, 7/1/2024]

8.370.17.15 POSTING OF LICENSE: The facility's license must be posted in a conspicuous place on the licensed premises in an area visible to the public.
[8.370.17.15 NMAC - N, 7/1/2024]

8.370.17.16 NON-TRANSFERABLE RESTRICTION ON LICENSE:

A. A license granted under these regulations is not transferable to any other owner, whether an individual or legal entity, or to another location. The authority shall not guarantee or be liable for or responsible for guaranteeing the transfer of the license to any other owner or other location. The existing license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

- (1) any ownership interest in the facility changes;
- (2) the facility changes location;
- (3) the licensee of the facility changes; or
- (4) the facility discontinues operation.

B. Any owner or applicant wishing to continue operation of an already licensed facility must submit a new application for an initial license in accordance with these regulations at least 30 days prior to the anticipated change and shall not be guaranteed issuance of a license under the same terms and conditions of an existing license. Failure by any owner or new owner to apply for a new license under these conditions, while continuing to operate under these regulations, shall be considered a violation of these regulations and consent to the imposition of late fees, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[8.370.17.16 NMAC - N, 7/1/2024]

8.370.17.17 AUTOMATIC EXPIRATION OR TERMINATION OF LICENSE: An existing license shall automatically expire at midnight on the day indicated on the license, unless it is renewed sooner or it has been suspended or revoked. If a facility discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action. Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and consent to the imposition of late fees, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[8.370.17.17 NMAC - N, 7/1/2024]

8.370.17.18 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: If immediate action is required to protect human health and safety, the licensing authority may act in accordance with Section 24-1-5 NMSA 1978, as amended, and suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.17.18 NMAC - N, 7/1/2024]

8.370.17.19 GROUNDS FOR DENIAL OF INITIAL OR RENEWAL LICENSE APPLICATION, SUSPENSION OR REVOCATION OF LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

An initial license application or a renewal license application may be denied, or an existing license may be revoked or suspended, or intermediate sanctions or civil monetary penalties may be imposed, after notice and opportunity for a hearing, for any of the following:

- A.** failure to comply with any provision of these regulations;
- B.** failure to allow access to the facility and survey(s) by authorized representatives of the licensing authority;
- C.** allowing any person to work at the facility while impaired physically or mentally or under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the clients, newborns, staff or visitors;
- D.** allowing any person, subject to all applicable statutes and regulations, to work at the facility if that person is listed on the employee abuse registry or considered an unemployable caregiver under the Caregivers Criminal History Screen Act, as amended, and related regulations, as amended or has a felony conviction for:

- (1) homicide;
- (2) trafficking controlled substances;
- (3) kidnapping, false imprisonment, aggravated assault or aggravated battery;
- (4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses;

- (5) crimes involving adult abuse, neglect or financial exploitation;
 - (6) crimes involving child abuse or neglect;
 - (7) robbery, larceny, burglary, fraud, extortion, forgery, embezzlement, credit card fraud or receiving stolen property; or
 - (8) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.
- E. misrepresentation or falsification of any information on application forms or on other documents provided to the licensing authority or used by the licensing authority in granting or renewing a license;
- F. repeat violations of these regulations or discovery of repeat violations during survey(s); or
- G. failure to provide the required care and services specified in these regulations or providing care and services beyond the scope of the facility's license at the facility;
- H. the list above shall not limit the authority from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.
- [8.370.17.19 NMAC - N, 7/1/2024]

8.370.17.20 HEARING PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the authority against a facility's license will be held in accordance with applicable rules relating to adjudicatory hearings, including, but not limited to, 8.370.2 NMAC. A copy of the above regulations will be furnished at the time an adverse action is taken against a facility's license by the licensing authority, if the regulations cannot be obtained from a public website.

[8.370.17.20 NMAC - N, 7/1/2024]

8.370.17.21 FACILITY SURVEYS:

- A. Application for licensure, whether initial or renewal, shall constitute permission for unrestricted entry into and survey of a facility by authorized licensing authority representatives at times of operation during the pendency of the license application, and if licensed, during the licensure period.
- B. Surveys may be announced or unannounced at the sole discretion of the licensing authority. If, at the time of a facility survey, a client is in labor, birthing, or immediately postpartum, the survey may be rescheduled at the sole discretion of the licensing authority without penalty to the facility.
- C. Upon receipt of a notice of deficiency from the licensing authority, the licensee or their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion. All plans of correction for state or federal deficiencies, if any, shall be disclosed in compliance with applicable state or federal statutes and regulations. A state plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a facility license, including to prove licensee compliance violations.
- D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.
- [8.370.17.21 NMAC - N, 7/1/2024]

8.370.17.22 REPORTING OF INCIDENTS: All facilities licensed under these regulations must comply with all incident intake, processing, training and reporting requirements under these regulations, as well as with any and all other applicable statutes and regulations. All facilities shall report to the licensing authority any serious incidents or unusual occurrences which have threatened, or could have threatened the health, safety and welfare of the clients, including, but not limited to:

- A. fire, flood or other man-made or natural disasters including any damage to the facility caused by such disasters and any incident which poses or creates any life safety or health hazards;
 - B. any outbreak of contagious diseases and diseases dangerous to the public health;
 - C. any human errors by staff and employees which may or has resulted in the death, serious illness, or physical impairment of a client or newborn or staff; and
 - D. abuse, neglect, exploitation, injuries of unknown origin and other reportable incidents in accordance with 8.370.9 NMAC, as may be amended from time to time.
- [8.370.17.22 NMAC - N, 7/1/2024]

8.370.17.23 QUALITY ASSURANCE, QUALITY IMPROVEMENT SYSTEM, INTERNAL QUALITY COMMITTEE, EXTERNAL QUALITY COMMITTEE AND POLICIES AND PROCEDURES: Each

facility shall establish and maintain policies and procedures for quality assurance and quality improvement systems, as well as an internal quality committee and an external quality committee.

A. Policies and procedures: The administrator shall establish written policies and procedures which govern the facility's complete operation. The facility shall ensure that these policies are adopted, administered and enforced to provide quality health services in a safe environment. At a minimum, the facility's written policies and procedures shall include how the facility intends to comply with all requirements of these regulations and address:

(1) the facility organization including the legal entity or organization which owns the facility, any management companies or managers which manage the facility, the identity and credentials of the administrator responsible for establishing lines of responsibility and accountability for both licensed and non-licensed staff, and the administrator's responsibility to direct employees or contractually retain qualified individuals providing fiscal management and all operations in the facility, as well as maintaining records of disclosure of conflicts of interest and all ownership interests and controlling parties;

(2) the facility administration including designation of an administrator with authority, responsibility, and accountability for overall administration and operation, including plans for the administrator's absence;

(3) the maintenance of the facility, equipment and supplies including sterilization and disinfection of supplies, equipment and instruments; cleaning of birthing room after each use; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures; and proper disposal of waste liquids used for cleaning contaminated areas;

(4) quality of care and services including appropriate and inappropriate admission criteria; client rights; client risk assessment; administration and preparation of drugs; quality assurance and performance improvement programs; referral of clients for additional services including, but not limited to, laboratory and sonography; transfer of clients to a hospital; ambulance transfer services; emergency procedures and resuscitative techniques; aseptic techniques; infectious waste and biohazard disposal in accordance with all applicable statutes and regulations; and safe handling of the placenta for families requesting to keep the placenta;

(5) staffing and personnel including written job descriptions for all staff with necessary qualifications consistent with these rules; minimum staffing and staff qualifications; and staff development and evaluation;

(6) maintenance of the client health record including protection of client confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of client records including appropriate document destruction procedures; and

(7) research procedures for any research being conducted at the facility in compliance with these regulations.

B. Internal quality committee: The internal quality committee is comprised at a minimum of the administrator and clinical director. If the administrator and the clinical director are the same person, another staff person with clinical experience shall be made a member of this committee. This committee shall establish and implement quality assurance and quality improvement systems monitoring and promoting quality care to clients through reviews that include chart review, data collection, client satisfaction surveys, and other program monitoring processes; data analyses; identification of areas for improvement; intervention plans, including action steps, responsible parties, and response time; and, evaluation of the effectiveness of interventions. The internal quality committee shall at a minimum, implement a thorough chart review process, as defined in these regulations, which considers and reviews outcome data analysis, targeted concern and improvement areas, client satisfaction surveys, and evidence based research to identify necessary quality improvement areas and processes. When areas of concern or potential problems are identified by the committee, the facility shall act as soon as possible to avoid and prevent risks to clients. The internal quality committee shall take and maintain meeting minutes. The internal quality committee shall, at a minimum, meet or convene:

(1) within 72 hours of every emergent or sentinel event to conduct an initial review and follow-up; if the internal quality committee consists of less than three people, the external quality committee shall convene to review emergent and sentinel events;

(2) monthly to document any significant events and any necessary quality care improvement steps to be applied to future events;

(3) quarterly for a detailed chart review, as provided in these regulations, of a minimum of five charts consisting of a minimum of one chart for each midwife and physician practicing at the facility; charts of all labor, postpartum, and newborn transfers; Apgar scores less than seven at five minutes; hemorrhage greater than 1000 ml; and any other significant problems encountered within the quarter;

- (4) annually for review of policies and procedures, including, but not limited to:
 - (a) environment of care;
 - (b) testing and maintenance of equipment according to manufacturer's recommendations;
 - (c) housekeeping procedures;
 - (d) infection control procedures;
 - (e) privacy and security processes;
 - (f) compliance with policies and procedures for all emergency drills, including, but not limited to, fire, maternal/newborn emergencies, power failures, and natural disasters;
 - (g) evaluation of maintenance policies and procedures for heat, ventilation, emergency lighting, waste disposal, water supply, laundry, and nourishment station;
 - (h) annual employee performance evaluations;
 - (i) clinical practice guidelines; and
- (5) submission of an annual quality report to the external quality committee.

C. External quality committee: The facility shall establish an external quality committee which includes the members of the internal quality committee, an external peer reviewer or a clinical consultant and other healthcare partners, if available. The external quality committee shall meet at least quarterly and perform an in-depth peer review case study on a minimum of five charts which include at a minimum one case for each midwife and physician practicing at the facility. The external quality committee shall also review the care of individual clients, targeted types of clients, and appropriateness of the clinical practitioner's judgment and management of the case under the facility's standards of care and policies, and make recommendations for care improvements. The external quality committee shall also discuss relevant evidence based research and make recommendations relating to clinical practice guidelines to improve quality of care.
[8.370.17.23 NMAC - N, 7/1/2024]

8.370.17.24 RISK ASSESSMENT, CLIENT ACCEPTANCE AND LABOR ADMISSION CRITERIA:

All licensed facilities shall follow and maintain written clinical practice guidelines which address, at a minimum, eligibility for care, on-going eligibility, medical consultation, and transfer criteria in accordance with the scope of practice authorized under each practitioner's individual license(s) to be reviewed and updated by the internal quality committee at least annually.

A. Risk assessment: A licensed practitioner shall make risk assessments of all clients that at a minimum include:

- (1) an initial assessment which documents the general health and eligibility of a potential client and which includes a detailed medical, social and family history, a physical examination, and routine prenatal labs; the assessment may also include ultrasounds to determine whether the client meets the criteria for the facility's scope of care;
- (2) completing, maintaining, and documenting an initial risk assessment and an on-going risk assessment in the client record which include compliance with admission criteria prior to client acceptance and throughout the pregnancy with the clinical director making the final determination of each client's risk;
- (3) if a client before 32 weeks gestation has failed to register for freestanding birth center care and has not received prenatal care, the client shall not be accepted for care at the facility unless the client obtains a medical consultation outside of the facility, meets all other eligibility criteria, and a written, signed exception is made by the clinical director on a case-by-case basis;
- (4) clear documentation of referrals, consultations and transfers to other providers for ineligible clients or medical transfers;
- (5) assessing each client's risk status on admission in labor and throughout labor for continuation of services;
- (6) whether the facility will have adequate space and sufficient staff to support the client newborn during labor, birth and postpartum;
- (7) written criteria for antepartum, intrapartum, postpartum and newborn acceptance and transfer to a hospital which delineates the transfer process from the facility to an accepting hospital; and
- (8) limitations on the number of active labor clients at the facility to the number of birth rooms available at the facility.

B. Ineligibility for admission: If any of the following conditions exist, birth at the facility shall be considered inappropriate or improper:

- (1) breech or non-vertex presentation at labor and delivery;

- (2) gestation less than 37 weeks or greater than 42 weeks;
- (3) multiple gestation;
- (4) medication controlled gestational diabetes mellitus; or
- (5) vaginal birth after cesarean (VBAC) candidates with more than one previous cesarean

section, previous incision that is not low transverse, placenta location, anterior and low-lying over the old scar.
[8.370.17.24 NMAC - N, 7/1/2024]

8.370.17.25 CLIENT RIGHTS: All facilities licensed pursuant to these regulations shall support, protect, and respect clients' rights. Facility staff shall receive training on client rights and demonstrate understanding and competence in the policies and procedures regarding client rights. Client rights will be posted or made available to facility clients in English or their preferred language. The method by which a client may register a complaint against the facility will be posted or otherwise made available to clients. The facility shall have and enforce policies and procedures which guarantee:

- A. the right to equal service, regardless of race, gender, gender identity, religion, ethnic background, sexual orientation, education, social class, physical or mental handicap, or economic status;
- B. the right to considerate, courteous and respectful care from all staff;
- C. the right to complete information using terms the average client can reasonably be expected to understand;
- D. the right to informed consent, full discussion of risks and benefits prior to any invasive procedure, except in an emergency, and advice regarding alternatives to the proposed procedure(s);
- E. the right to receive a written list of all services available, service costs and advanced notice of any changes;
- F. the right to receive care that is consistent with current scientific evidence about benefits and risks;
- G. the right for non-English speaking clients to obtain assistance in interpretation;
- H. the right to know the names, titles, professions and specific types and licenses held by the facility staff to whom the client speaks to and from whom services or information are received;
- I. the right to refuse examinations and procedures to the extent permitted by law and to be informed of the health and legal consequences of any refusal;
- J. the right of access to the client's personal health records;
- K. the right of respect for the client's privacy;
- L. the right of confidentiality of the client's personal health records as provided by law;
- M. the right to expect reasonable continuity of care within the scope of services and staffing;
- N. the right to have the client's civil rights, cultural background and religious opinions respected;
- O. the right to present complaints to the management of the facility without fear of reprisal; and
- P. the right to examine and receive a full explanation of any charges made by the facility regardless of source of payment.

[8.370.17.25 NMAC - N, 7/1/2024]

8.370.17.26 CLIENT HEALTH RECORD: The facility shall maintain client health records in a legible, uniform, complete and accurate format that provides continuity and documentation of maternal and newborn information which is readily accessible to health care practitioners, while protecting confidentiality, using a system that allows for reliable and safe storage, retrieval and loss prevention. The facility must use a record form appropriate for use by the practitioners in the facility which contains the required information necessary for transfer to an acute care maternal and newborn hospital.

A. Record contents: Each licensed facility must maintain a medical record for each client which may be in a paper or electronic format but which can be easily accessible, copied, provided, reviewed and transported in the event of any emergency or transfer. Every record must be accurate, legible and promptly completed. At a minimum, facility health records for each client must include written documentation of the following:

- (1) client demographics;
- (2) client consent forms;
- (3) pertinent medical, social, family, reproductive and nutritional history;
- (4) a list of medications that are currently prescribed for the client, including any self-administered over-the-counter medication or neutraceuticals, including dose of medication, route of administration, and frequency of use;
- (5) allergy list;
- (6) initial physical exam;

- (7) initial and on-going risk assessment and status;
- (8) laboratory, radiology and other diagnostic reports;
- (9) assessment of the health status and health care needs of the client;
- (10) evidence of continuous prenatal care including progress notes;
- (11) evidence of prenatal educational resources;
- (12) labor and birth summary;
- (13) postpartum care with evidence of follow-up within 48 hours of birth;
- (14) newborn care and follow-up;
- (15) appropriate referral of ineligible clients and documentation of transfer of care;
- (16) documentation of any consultations, special examinations and procedures;
- (17) discharge summary and applicable instructions to the client;
- (18) list of staff present during labor, birth and postpartum;
- (19) evidence that client rights have been provided to each client; and
- (20) consent form for participation in research signed by the client, if applicable.

B. Client records maintenance:

- (1) current client records shall be maintained on-site and stored in an organized, accessible and permanent manner, with copies easily accessible for review, transfers or in an emergency;
- (2) the facility shall have in place policies and procedures in compliance with applicable law, for maintaining and ensuring the confidentiality of client records, which include the authorized release of information from the client records; and the retention and transfer of client records at closure or ownership changes;
- (3) non-current client records shall be maintained by the facility against loss, destruction and unauthorized use for a period of not less than five years from the date of discharge and be readily available within 24 hours of request; if, any other applicable statutes or regulations require a longer term of record retention than five years, the longer term shall apply to the facility.

C. Chart review: At a minimum, a chart review performed by the internal quality committee shall consider written documentation of:

- (1) appropriateness of admissions and continuation of services;
- (2) complete client demographic information;
- (3) signed informed consent(s);
- (4) appropriate referral of ineligible clients;
- (5) continuous prenatal visits, beginning no later than 32 weeks;
- (6) continuous risk assessment throughout prenatal care and for admission in labor;
- (7) appropriate maternal and newborn follow-up after birth;
- (8) appropriateness of diagnostic and screening procedures;
- (9) complete initial history;
- (10) complete initial physical exam;
- (11) complete prenatal labs and screenings;
- (12) appropriateness of medications prescribed, dispensed or administered;
- (13) documentation of medical consultation, if indicated;
- (14) appropriate identification and management of complications;
- (15) appropriate transfer of care for maternal/fetal/newborn indications;
- (16) compliance with these rules;
- (17) compliance with policies, procedures and clinical practice guidelines for maternal and fetal assessment during labor and postpartum;
- (18) compliance with evidence based standards of practice;
- (19) effectiveness of staff utilization and training;
- (20) completeness of client records;
- (21) review of the management of care of individual clients or targeted types of clients or cases for the appropriateness of the clinical judgment of the practitioner(s) in obtaining consultation and managing the case relative to standards of care and policies; and make recommendations for any improvements of care; and
- (22) review and analyze outcome data and trends, and client satisfaction survey results.

[8.370.17.26 NMAC - N, 7/1/2024]

8.370.17.27 MINIMUM STAFFING REQUIREMENTS: Qualified and properly licensed professional and clinical staff shall provide quality family centered maternal and newborn care consistent with the scope of practice authorized under each individual practitioner's license(s). Direct care staff shall have access to consulting clinical

specialists and support by administrative and ancillary personnel consistent with the volume of clients enrolled for care and the scope of services offered. The facility shall maintain adequate numbers of professional and support staff on duty, present on premises, and on-call to meet routine service demands, as well as high service demands and emergencies in order to assure client safety, satisfaction, and that no mother in active labor is unattended. The facility shall have on staff at a minimum:

- A. a midwife or physician on duty whenever there is a client in the facility in active labor or immediately postpartum;
- B. a midwife or physician on immediate call whenever clients are in the facility receiving clinical services;
- C. personnel trained in the use of emergency equipment and in BLS and NRP must be on duty whenever a client is within the freestanding birth center receiving clinical services; this includes nighttime hours when clients are within the freestanding birth center in labor or postpartum;
- D. an on-site administrator managing the daily operations and implementing the policies and procedures;
- E. a clinical director responsible for implementing facility clinical policies;
- F. an internal quality committee that ensures the effectiveness of the quality assurance and performance improvement process at the facility; and
- G. an external quality committee that provides in-depth peer review.

[8.370.17.27 NMAC - N, 7/1/2024]

8.370.17.28 MINIMUM STAFF QUALIFICATIONS: The facility staff minimum qualifications shall be:

- A. Administrator qualifications: The administrator must:
 - (1) be at least age 21;
 - (2) have a high school diploma or general educational development (GED) certificate and two years of administrative or management experience;
 - (3) be a licensed healthcare professional; and
 - (4) if not a licensed healthcare professional, be a forty percent or greater owner in the facility with relevant business experience.
- B. Clinical director qualifications: The clinical director shall be at least 21 years of age and must have the following qualifications:
 - (1) must be professionally licensed in a health care field;
 - (2) must have two years of birthing and labor experience; and
 - (3) must have two years of experience performing risk assessments to determine low risk pregnancy eligibility.
- C. Other clinical staff qualifications: All other clinical staff must have the following qualifications:
 - (1) must be at least 18 years of age;
 - (2) must be licensed, certified or trained appropriately for the care provided; prior to providing direct client care, the clinical director shall verify qualifications and competence;
 - (3) must comply with any and all caregiver criminal history screening requirements and not be currently shown on any federal or state caregiver disqualification lists or certified nursing assistant (CNA) disqualification lists or the employee abuse registry.
- D. Staff at birth: In addition to any and all other requirements for licensed professionals, each birth shall be attended by two persons currently trained in:
 - (1) adult cardiopulmonary resuscitation equivalent to American heart association class C BLS; and
 - (2) neonatal resuscitation endorsed by American academy of pediatrics/American heart association.
- E. Direct service staff: Each staff member who provides direct medical services to clients, such as physicians, midwives, nurses, nurse practitioners and physician's assistants, who are required to be licensed, registered or certified by the state of New Mexico, must have a current license, registration or certificate from the state of New Mexico at the time they provide the services.

[8.370.17.28 NMAC - N, 7/1/2024]

8.370.17.29 STAFF RECORDS: At a minimum, staff records shall include:

- A. Personnel records: Each facility licensed pursuant to these regulations must maintain complete written records for each staff member, employee, contractor and volunteer working at the facility, that are available

for review upon request by the licensing authority. At a minimum, each person's records must contain the following:

- (1) personal identification and demographic information;
- (2) all qualifications;
- (3) all current license(s) and training certification(s), including inoculations, if applicable;
- (4) annual performance evaluations;
- (5) documentation that the employee has read and received the personnel policies;
- (6) documentation of required occupational safety and health administration (OSHA) and Health Insurance Portability and Accountability Act (HIPAA) training; and
- (7) copy of caregiver criminal history screening clearance letter for all applicable caregivers including any volunteers acting as caregivers and documentation that the employee abuse registry has been reviewed to verify the staff person or caregiver is not a risk to client or newborn health, safety and welfare.

B. Staff scheduling records: The facility must:

- (1) keep weekly or monthly schedules covering all services;
- (2) document in each client record all staff present at labor, birth and postpartum through discharge; and
- (3) keep all schedules on file for a minimum of six months.

C. Staff evaluation and development: The facility must have written documented policies and procedures for staff orientation, on-going staff development, staff supervision and staff evaluation, which include but are not limited to the following:

- (1) client and facility emergency and safety procedures;
- (2) quality assurance and performance improvement programs; and
- (3) documentation of staff compliance with current licensure, certification, training and position requirements, including initial and annual training requirements.

[8.370.17.29 NMAC - N, 7/1/2024]

8.370.17.30 RESEARCH:

A. If a facility is conducting research activities, the facility must have written policies and procedures for conducting the research being done, documentation that the study has received institutional review board (IRB) approval and a consent form for each client involved in the research in the client's record.

B. When research is conducted by the facility or by the employees or by affiliates of the freestanding birth center or when the facility is used as a research site, such that the facility's clients and staff are involved in or the subjects of research; the research must be conducted by qualified researchers, having evidence in formal training and experience in the conduct of clinical, epidemiologic or sociologic research, in accordance with the written, approved research policies and procedures, by staff trained to conduct such research and in a manner that protects the client's health, safety and right to privacy and the facility and its clients from unsafe practices.

[8.370.17.30 NMAC - N, 7/1/2024]

8.370.17.31 PHARMACEUTICAL SERVICES:

A. One individual shall be designated responsibility for pharmaceutical services to include accountability and safeguarding.

B. Keys to the drug room or pharmacy must only be made available to authorized personnel by the individual having responsibility for pharmaceutical services.

C. Drugs and biologicals must be stored, prepared and administered in accordance with acceptable standards of practice, in compliance with all New Mexico state board of pharmacy requirements and in compliance with any and all other applicable federal and state statutes and regulations.

D. Outdated drugs and biologicals must be disposed of in accordance with methods required by the New Mexico state board of pharmacy.

E. Adverse reactions and allergies to medications must be reported to the licensed provider responsible for the client and must be documented in the client's record.

F. Blood products are limited to those used to prevent isoimmunization during and after pregnancy and shall only be administered by a properly licensed personnel acting within the scope of their license.

G. Medication administration shall only be performed by a licensed provider acting within the scope of their license.

H. Blood, including whole blood, packed red cells, plasma, cryoprecipitate, or other blood factors may not be administered in a freestanding birth center facility.

[8.370.17.31 NMAC - N, 7/1/2024]

8.370.17.32 LABORATORY SERVICES:

- A. A facility that provides on-site laboratory services shall meet all current CLIA regulations and must have a CLIA certificate appropriate to the level of testing (e.g., certificate of waiver, provider performed microscopy (PPM) or certification for moderately complex testing or waiver).
- B. A facility that contracts out its laboratory services shall only contract with a laboratory that meets all current CLIA regulations and has CLIA certificates appropriate for all testing requested by the facility.
- C. All lab test results performed either at the facility, or by contract, or by other arrangement must be entered into the client record(s).
- D. All laboratory procedures shall be conducted in accordance with acceptable standards of practice.
- E. Facilities that provide laboratory services or collect specimens for testing by outside CLIA laboratories must provide the following:
 - (1) laboratory work counter(s) with a sink and electrical outlets;
 - (2) lavatory or counter sink(s) equipped for hand washing, or alcohol-based hand sanitizer to decontaminate hands;
 - (3) adequate storage for lab supplies;
 - (4) specimen collection facilities with a toilet and lavatory;
 - (5) blood collection facilities shall have seating space, a work counter and hand washing facilities;
 - (6) appropriate storage facilities to ensure specimens are maintained at correct temperatures and to prevent any deterioration or contamination.

[8.370.17.32 NMAC - N, 7/1/2024]

8.370.17.33 INFECTION CONTROL:

- A. The facility shall develop, implement and enforce written infection control policies and procedures to minimize the transmission of infection. Policies shall include educational course requirements; decontamination, disinfection, sterilization, and storage of sterile supplies; and cleaning and laundry requirements.
- B. The facility shall provide sterilization equipment adequate to meet the requirements for sterilization of critical items. Equipment shall be maintained in accordance with the manufacturers' specifications, and operated to perform with accuracy, the sterilization of critical items. Live spore testing for the effectiveness of sterilization will be performed as defined by facility policy. Devices such as steri-gauges or sterilization tape will not be sufficient to assess the effectiveness of the sterilizers. The facility shall have a methodology to permit the backtracking of equipment use in case a sterilizer or any other medical equipment fails.
- C. Where cleaning, preparation and sterilization functions are performed in the same room or unit, soiled or contaminated supplies and equipment shall be physically separated from the clean or sterilized supplies and equipment.
- D. Each facility shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.
- E. All special waste including blood, body fluids, placentas, sharps and biological indicators, shall be disposed of in accordance with OSHA and the New Mexico environment department standards for bio hazardous waste.
- F. Each facility shall have written policies and procedures on terminal cleaning of birthing rooms to ensure infection control and client safety.

[8.370.17.33 NMAC - N, 7/1/2024]

8.370.17.34 EMERGENCY MEDICAL SERVICES: All freestanding birth centers shall have a written policy regarding emergency transfer for clients or newborns including emergency response personnel and accepting hospital facility which shall be followed in the event of an emergency.

- A. Each facility must maintain and have easily accessible an emergency response cart(s) or emergency response tray(s) to provide emergency lifesaving procedures for an adult and newborn and comply with the following:
 - (1) emergency response carts or trays shall be supplied with the drugs and biologicals commonly used in life saving procedures, along with supplies and equipment determined by the clinical director of the facility;

- (2) each emergency response cart or tray shall have lists of equipment and supplies to be maintained and ready and for use as an inventory guide;
- (3) emergency response carts or trays must be replenished as supplies or equipment are used;
- (4) emergency response carts or trays shall be checked on a monthly basis for completeness and a log maintained with date and by whom the check was made; and
- (5) all clinical staff must know the location of and be trained in the use of the emergency response.

B. Provisions for emergency calls:

- (1) an easily accessible hard wired telephone for summoning help, in case of emergency, must be available in the facility and in the birthing room during a labor; and
- (2) a list of emergency numbers including, but not limited to, fire department, police department, ambulance services, local hospital and poison control center must be prominently posted by the telephone(s).

[8.370.17.34 NMAC - N, 7/1/2024]

8.370.17.35 BUSINESS HOURS AND OPERATIONAL RECORDS: The facility shall post its hours of operation in a public location that can be seen by clients and visitors both inside and outside the facility. The facility shall keep all operational reports and records on file at the facility and make them available for review to document compliance with these regulations upon request of the licensing authority. Business and operational records shall include, but are not limited to:

- A.** names and addresses of all license owners, controlling parties, management company, if applicable, administrator, clinical director and all of the members of the internal and external quality committees;
- B.** a copy of the most recent version of the licensing regulations;
- C.** any and all agreements and contracts with other health care providers to provide services;
- D.** the most recent life safety and health surveys conducted by the licensing authority and any variances or waivers granted;
- E.** the most recent fire inspection report by the fire authority having jurisdiction;
- F.** a log of fire and emergency evacuation drills conducted by the freestanding birth center;
- G.** a valid and current state board of pharmacy drug permit;
- H.** the most recent state board of pharmacy inspection of the drug room;
- I.** the most recent CLIA certificate applicable for the type of specimens tested or waiver(s) for any specimen testing;
- J.** a log tracking infection control and sterilization processes demonstrating compliance with these regulations and all other applicable statutes and regulations;
- K.** if applicable, New Mexico environment department approval of private water system;
- L.** if applicable, New Mexico environment department approval of private waste and sewage disposal.

[8.370.17.35 NMAC - N, 7/1/2024]

8.370.17.36 BUILDING STANDARDS FOR FREESTANDING BIRTH CENTERS: The purpose of a freestanding birth centers is to establish a safe, homelike environment for healthy women anticipating a low risk birth so long as there is sufficient space, furnishings, equipment and supplies to comfortably accommodate the number of families, mothers, newborns and infants served by the facility and the staff necessary for providing the services.

- A.** The facilities may be in a house or residential structure adapted or renovated for birth center use, if allowed and approved by the local zoning authority.
- B.** If the facility is based in an office building, consultation and examining rooms must be separate from the dedicated birth room(s).
- C.** Freestanding birth centers must comply with life safety code requirements in accordance with the applicable national fire protection association (NFPA) 101 life safety code edition. Birth centers may be classified as business occupancies if their capacity is restricted to occupancy by fewer than four active births at any one time and the physical layout shall not render clients, not including infants, incapable of self-preservation.
- D.** All freestanding birth center facilities licensed under these regulations must be accessible to and useable by handicapped clients, employees, staff and visitors.

[8.370.17.36 NMAC - N, 7/1/2024]

8.370.17.37 MINIMUM FACILITY SPACE REQUIREMENTS: Each facility shall include and provide sufficient space for the following areas:

- A. Public areas:** The facility shall provide in the public areas:
- (1) sufficient parking space(s) for the public, each birthing room and each employee present on any single shift;
 - (2) a reception and information counter or desk;
 - (3) a waiting area for visitors;
 - (4) convenient and accessible wheelchair storage;
 - (5) convenient and accessible drinking fountain or bottled water.
- B. Administrative and work areas:** The facility shall provide administration and work areas including:
- (1) general or individual office(s) for business transactions, records, administrative and professional staff;
 - (2) storage for staff personal effects which can be locked in drawers or cabinets.
- C. Toilets, lavatories and bathing facilities:** All fixtures and plumbing in the facility shall be installed in compliance with applicable state and local building codes and shall include:
- (1) a toilet and sink in each birth room, and a tub or shower available for use by the laboring mother within the facility;
 - (2) a separate toilet and sink for staff use;
 - (3) at least one public and visitor restroom conveniently located and accessible to the handicapped which includes a toilet and sink;
 - (4) a hand washing sink in all toilet rooms which shall be kept supplied with single use or individual use towels for hand drying or provided with mechanical blower;
 - (5) automatic hand sanitizer units may be used instead of a sink.
- D. Nourishment station:** A facility nourishment center shall be provided and include the following:
- (1) work counter;
 - (2) sink;
 - (3) refrigerator;
 - (4) storage cabinets; and
 - (5) equipment for hot and cold nourishment; the nourishment area may be available for staff use, and may within space limited facilities also function as the staff lounge.
- E. Examination rooms:** If prenatal or other health care is provided at the facility, exam rooms shall be separated from the dedicated birth room(s) and shall have:
- (1) sufficient size to accommodate the necessary equipment and personnel consistent with the purpose of the room;
 - (2) all walls in an exam room shall be a minimum of eight feet long; and
 - (3) a hand washing sink shall be located in each exam room or immediately adjacent to the exam room.
- F. Birth rooms:** The facility shall have one birth room available for each client in active labor which is and includes:
- (1) sufficient size to accommodate necessary equipment and personnel consistent with the purpose of the room;
 - (2) all walls constructed to a minimum length of 10 feet long;
 - (3) birth rooms and bathrooms located to provide for complete privacy during use;
 - (4) clear floor space to permit unimpeded egress and access for emergency transportation equipment;
 - (5) located to provide unimpeded rapid access to a facility exit which accommodates emergency transportation vehicles and equipment; and
 - (6) furniture arrangement in the birth room that permits a minimum clear dimension of 36 inches on at least one side for the full length of the bed where birthing can occur.
- G. Equipment and supplies:**
- (1) **Equipment:** The facility shall be equipped with all necessary items and equipment needed to provide low-risk maternity delivery and care, as well as all equipment available and ready to provide emergency medical services, including emergency carts or emergency trays, in life threatening events to mother and baby including, but not limited to,:

(a) cardiopulmonary resuscitation (CPR) equipment, oxygen, positive pressure mask, suction, intravenous (IV) equipment, equipment for maintaining infant temperature and ventilation, blood expanders, and medications identified in professional staff protocols to meet emergency needs of mother and baby at the facility and during transport to an acute care setting;

(b) equipment for performing standard screening, laboratory tests, and for sterilizing instruments and other materials, including programs for regular inspection and training in the use of resuscitation and other equipment as outlined in the policies and procedures manual which shall be available on site at all times; and

(c) maintenance of all equipment in accordance with manufacturer's specifications.

(2) Supplies: The facility's supply inventory shall be sufficient to care for the number of childbearing women and families registered for care at any one time.

H. Housekeeping and support areas: The facility shall provide housekeeping and support areas, including:

(1) general storage facilities for supplies and equipment;

(2) drug storage and administration areas which comply with New Mexico board of pharmacy regulations;

(3) clean storage consisting of a separate room, space or closet for storing clean and sterile supplies;

(4) soiled holding with separate collection, storage and disposal for all soiled materials used and stored at the facility.

I. Laundry services: The facility shall provide laundry services for both facility use and client care, on the premises or through laundry and linen services:

(1) on-site laundry facilities shall be provided with necessary washing and drying equipment;

(2) soiled laundry shall be kept in a separate storage area from the clean laundry storage area;

(3) soiled laundry shall not be stored in the nourishment, kitchen or dining areas;

(4) in facilities with four or more birthing rooms, washers shall be located in separate rooms from the dryers and shall have negative air pressure from the other rooms in the facility.

[8.370.17.37 NMAC - N, 7/1/2024]

8.370.17.38 MINIMUM SAFETY REQUIREMENTS: Each facility shall comply with the following minimum safety requirements:

A. Exits:

(1) Each facility and each floor of the facility shall have exits as required and permitted by current fire protection and life safety codes adopted by the state.

(2) Exit ways must be kept free from obstructions at all times.

(3) All exit and exit access doors must be at least 36 inches wide and accommodate wheelchairs.

B. Corridors:

(1) Minimum corridor width shall be three feet where the occupancy load is less than 50, or three feet eight inches, if the occupant load is greater than 50.

(2) Narrower corridor widths may be allowed in staff areas not in the exit pathway if not in conflict with applicable building or fire codes and approved by the licensing authority prior to occupying the facility.

C. Doors and windows:

(1) All doors in spaces occupied or used by clients shall be solid core and have a minimum width of 32 inches wide and be a minimum of one and three-quarter inches thick.

(2) Each birthing room must have an operable window or alternate means to provide adequate ventilation and emergency egress.

D. Emergency lighting: The facility shall provide emergency lighting which:

(1) activates automatically upon any disruption of electrical service;

(2) is sufficient to illuminate paths of egress and exits in the facility; and

(3) for facilities with four or more birth rooms, is located in each birth room.

[8.370.17.38 NMAC - N, 7/1/2024]

8.370.17.39 MINIMUM ENVIRONMENTAL REQUIREMENTS: Each facility shall comply with the following minimum environmental requirements:

A. Floors and walls: All finishes shall be kept clean and shall be of the type that is appropriate for the cleaning methods and solutions used to maintain a clean and safe environment.

(1) Floor material shall be readily cleanable and wear resistant.

(2) In all areas subject to wet cleaning, floor materials shall not be physically affected by liquid germicidal or cleaning solution.

(3) Floors subject to traffic while wet including showers and bath areas shall have a slip resistant surface.

(4) Wall finishes shall be washable and in the proximity of plumbing fixtures, shall be smooth and moisture resistant.

(5) In areas subject to wet cleaning, the intersection of the floor and wall shall be sealed with a coved base or a wood bases tightly sealed connection without voids.

(6) Floor and wall areas penetrated by pipes, ducts and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(7) Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

B. Water: The facility shall provide water in sufficient quantity to support all services provided and shall:

(1) insure that if the water is obtained from a private water system and not a publicly approved system, the water supply is inspected, tested and approved by the New Mexico environment department or appropriate authority prior to licensure; the facility shall be responsible for insuring that subsequent periodic testing and inspection of any private water systems is made at intervals prescribed by the New Mexico environment department or the legally responsible authority which oversees or inspects, tests, and approves the specific system;

(2) provide hot water at each hot water outlet at all times with hot water for hand washing facilities, tubs and showers not exceeding 120 degrees Fahrenheit at the delivery point.

C. Water heaters:

(1) Must be able to supply hot water to all hot water taps within the facility at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees Fahrenheit.

(2) Must be enclosed and separated from other parts of the building premises by construction as required by applicable state and local building codes, if using fired fuel.

(3) Must be equipped with an operable pressure relief valve (pop-off-valve) which is tested on a schedule recommended by the manufacturer.

D. Sewage and waste disposal: The facility shall provide for proper sewage and waste disposal at all times including:

(1) If the facility sewage and liquid waste system is not part of an approved public system, the private sewage system must be inspected, tested and approved by the New Mexico environment department prior to licensure. The facility shall be responsible to insure that periodic testing or inspection of its private sewage disposal systems is made as required by the New Mexico environment department or the legally responsible authority which oversee or inspects the specific system.

(2) If municipal or community garbage collection and disposal services are not available, the method of collection and disposal of the facility's solid waste must be inspected and approved by the New Mexico environment department or the legally responsible authority which oversee or inspects the specific system.

(3) All external garbage and refuse receptacles must be kept clean, durable, have tight fitting lids, must be insect, rodent and animal proof, washable, leak proof, and constructed of materials which will not absorb liquids.

E. Environmental services: The facility shall provide:

(1) A separate lockable storage area or closet for environmental cleaning supplies.

(2) Proper disposal of all liquids and waste resulting from cleaning contaminated areas.

(3) Proper procedures shall be maintained, and techniques used, consistent with the facility's policies and procedures and applicable regulations for disposal of bio-waste and sanitary disposal of all other wastes.

F. Cleaning:

(1) The facility must be kept clean and free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.

(2) Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

(3) Safe and effective procedures for cleaning and sanitizing all facility areas and equipment shall be followed consistently to safeguard the health of the clients, staff, and visitors.

8.370.17.40 MINIMUM LIGHTING AND ELECTRICAL STANDARDS:

- A.** Electrical standards: The facility shall provide that:
- (1) all facility electrical sources, supplies, and equipment comply with all applicable national, state and local electrical codes;
 - (2) all circuit breakers or fused switches provide electrical disconnection and over current protection and are:
 - (a) readily accessible for use and maintenance;
 - (b) set apart from traffic lanes; and
 - (c) located in a dry, ventilated space.
 - (3) all panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as the circuits they serve; and
 - (4) each panel board shall be marked showing the service area of each circuit breaker or fused switch.
- B.** Lighting: The facility shall insure that:
- (1) all spaces occupied by people, machinery or equipment within buildings, at outside building approaches and at parking areas have adequate lighting to prevent injury;
 - (2) lighting shall be sufficient to make all parts of an area clearly visible;
 - (3) lighting fixtures shall be shielded as required by code;
 - (4) lighting fixtures shall be selected and located for the comfort and convenience of the clients, staff and public; and
 - (5) a fixed or portable examination light shall be provided for all examination and birth rooms.
- C.** Electrical cords and electrical receptacles: Power strips may not be used as a substitute for adequate electrical outlets in a facility. Power strips may be used for a computer, monitor and printer. Power strips shall not be used with medical devices. The facility shall take precautions if power strips are used, including: installing internal ground fault and over-current protection devices, preventing cords from becoming tripping hazards, and using power strips that are adequate for the number and types of devices used. The facility shall take all necessary precautions to insure power overloads and excessive power demands on any circuit do not cause overheating or fire. Ground fault circuit interrupter (GFCI) shall be installed in locations near water sources to prevent electrocution of persons.
- (1) All electrical cords and extension cords must be:
 - (a) U/L approved;
 - (b) replaced as soon as they show wear;
 - (c) not used under any circumstances as a general wiring method;
 - (d) plugged into an electrical receptacle within the room where used and not be connected in one room and extended to anything outside the room; and
 - (e) not be used in series.
 - (2) Electrical receptacles must be:
 - (a) installed as required by applicable codes;
 - (b) appropriately rated for each use and function; and
 - (c) any use of wall mounted outlets to expand the receptacle capacity or to be used as a surge protector and connected to any medical equipment is prohibited.

8.370.17.41 MINIMUM HEATING, VENTILATION AND AIR CONDITIONING STANDARDS: The facility shall provide and maintain heating, ventilating and air conditioning or air cooling systems sufficient to keep all facility occupants comfortable which include but are not limited to:

- A.** Heating, air-conditioning or air cooling, piping, boilers and ventilation equipment furnished, installed and maintained to meet all requirements of applicable state and local mechanical, electrical and construction codes.
- B.** Use of a heating method that consistently provides a minimum indoor winter design capacity of 75 degrees fahrenheit with accessible temperature adjustment controls appropriate for all occupants' comfort.
- C.** A prohibition against the use of unvented heaters, open flame heaters or portable heaters.

D. An ample supply of outside air shall be provided in all spaces where fuel fired boilers, furnaces or heaters are located to assure proper combustion.

E. All fuel fired boilers, furnaces or heaters shall be connected to an approved venting system which takes all combustion products directly to the outside air.

F. Adequate ventilation at all times to provide fresh air and the control of unpleasant odors inside the facility.

G. A one hundred percent automatic cutoff control valve in event of pilot failure for all gas-fired heating equipment.

H. A system for maintaining all occupants' comfort during periods of hot weather.

I. Protection of all boiler, furnace or heater rooms from other parts of the building by construction having a fire resistance rating of not less than one hour with doors that open to the interior being self-closing with a three-quarter hour fire resistance rating.

J. Filters having efficiencies as required by state codes for all central ventilation and air conditioning systems.

[8.370.17.41 NMAC - N, 7/1/2024]

8.370.17.42 FIRE SAFETY: All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility including, but not limited to:

A. Fire clearance and inspections: Each facility must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the freestanding birth center, the facility must document the date the request was made and to whom. If the fire authorities make annual inspections, a copy of the latest inspection must be kept on file in the facility.

B. Staff fire safety training:

(1) All facility staff must know the location of and be instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility shall request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

(2) Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways and any other condition which could cause burns, fall, or other personal injury.

(3) Fire and evacuation drills: The facility must conduct at a minimum on a quarterly basis at least one fire drill and evacuation drill. A log must be maintained by the facility showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill.

C. Evacuation plan and preparedness plans: Each facility must have a fire and disaster evacuation plan conspicuously posted in each separate area of the building showing routes of evacuation in case of fire or disaster or other emergency, as well as a disaster preparedness plan in the event of man-made or natural disaster.

D. Provisions for emergency calls: An easily accessible hard wired telephone for summoning help, in case of emergency, must be available in the facility and a list of emergency numbers, including, but not limited to, fire department, police department, ambulance services and poison control center must be prominently posted by the telephone(s).

E. Fire extinguishers:

(1) fire extinguishers as approved by the state fire marshal or fire prevention authority having jurisdiction must be located in the freestanding birth center;

(2) fire extinguishers must be properly maintained as recommended by the manufacturer, state fire marshal or fire authority having jurisdiction; and

(3) all fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal or fire authority having jurisdiction; all fire extinguishers must be tagged, noting the date of inspection.

F. Alarm system: A manually operated, electrically supervised fire alarm system shall be installed in each facility as required by applicable national fire protection association (life safety code) 101 (NFPA 101). Facilities located in multi-story buildings must have a fire alarm system as required by NFPA 101.

G. Fire detection system: The facility must be equipped with smoke detectors as required by the NFPA 101 (life safety code) and approved as to number, type and placement in writing by the fire authority having jurisdiction.

[8.370.17.42 NMAC - N, 7/1/2024]

8.370.17.43 INCORPORATED AND RELATED STATUTES, RULES AND CODES: The facilities that are subject to this rule are also subject to other statutes, rules, codes and standards that may, from time to time, be amended, including all authorizing statutes under which any applicable regulations have been promulgated.

Applicable regulations include, but are not limited to the following:

- A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
- B. Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.
- C. Adjudicatory hearings for licensed facilities, New Mexico health care authority, 8.370.2 NMAC.
- D. Caregiver's criminal history screening requirements, 8.370.5 NMAC.
- E. Employee abuse registry, 8.370.8 NMAC.
- F. Incident reporting, intake processing and training requirements, 8.370.9 NMAC.

[8.370.17.43 NMAC - N, 7/1/2024]

8.370.17.44 SEVERABILITY: If any section or provision or application of these regulations is held to be invalid, the remainder and its application to other situations or persons shall not be affected or interfere with the remaining requirements provided by these regulations.

[8.370.17.44 NMAC - N, 7/1/2024]

HISTORY OF 8.370.17 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 18 REQUIREMENTS FOR FACILITIES PROVIDING OUTPATIENT MEDICAL SERVICES AND INFIRMARIES

8.370.18.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.18.1 NMAC - N, 7/1/2024]

8.370.18.2 SCOPE:

A. These regulations apply to the following:
(1) public, profit or nonprofit outpatient facilities, ambulatory surgical centers, diagnostic and treatment centers, or infirmaries, providing services as outlined by these regulations; or
(2) any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.

B. These regulations do not apply to the following: offices and treatment rooms of licensed private practitioners.

[8.370.18.2 NMAC - N, 7/1/2024]

8.370.18.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. 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.

[8.370.18.3 NMAC - N, 7/1/2024]

8.370.18.4 DURATION: Permanent.

[8.370.18.4 NMAC - N, 7/1/2024]

8.370.18.5 EFFECTIVE DATE: July 1, 2024, unless a later date is specified at the end of a section.

[8.370.18.5 NMAC - N, 7/1/2024]

8.370.18.6 OBJECTIVE:

A. Establish minimum standards for licensing of health facilities who provide outpatient medical services and infirmaries.

B. Monitor health facilities providing outpatient medical services and infirmaries with these regulations through surveys to identify any areas which could be dangerous or harmful to the patients or staff.

C. Encourage the establishment and maintenance of health facilities to provide outpatient medical services and infirmaries to the citizens of New Mexico that provide quality services that maintains or improves the health and quality of life to the patients.

[8.370.18.6 NMAC - N, 7/1/2024]

8.370.18.7 DEFINITIONS:

A. "**Applicant**" means the individual who, or organization which, applies for a license; if the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization; the applicant must be the owner.

B. "**Certified registered nurse anesthetist**" means an advanced practice professional registered nurse permitted by law to provide anesthesia care; in an interdependent role as a member of a health care team in which medical care of the patient is directed by a medical physician, osteopathic physician, dentist or podiatrist licensed in the state of New Mexico; the certified registered nurse anesthetist shall collaborate with the medical physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care or the patient; collaboration means the process in which each health care provider contributes their respective expertise.

C. "**Deficiency**" means a violation of or failure to comply with a provision(s) of these regulations.

D. "**Dentist**" means a person licensed to practice dentistry in the state of New Mexico under the Dental Act, Sections 61-5-1 to 61-5-22 NMSA 1978.

- E. "Facility"** means a building or buildings in which outpatient medical services are provided to the public and which is licensed pursuant to this rule.
- F. "Governing body"** means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a facility licensed pursuant to these regulations.
- G. "License"** means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.
- H. "Licensed practical nurse"** means a person licensed as a trained practical nurse under the Nursing Practice Act, Section 61-3-19 NMSA 1978.
- I. "Licensee"** means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the facility and in whose name a license for a facility has been issued and who is legally responsible for compliance with these regulations.
- J. "Licensing authority"** means the New Mexico health care authority.
- K. "NMSA"** means the New Mexico Statutes Annotated, 1978 compilation, and all the revisions and compilations thereof.
- L. "Physician"** means a person licensed to practice medicine or osteopathy by the New Mexico board of medical examiners, pursuant to Section 61-6-10 NMSA 1978 or the osteopathic medical examiners board pursuant to Sections 61-10-1 through 61-10-21, NMSA 1978.
- M. "Physician's assistant"** means a person licensed as a physician's assistant by the New Mexico board of medical examiners, in accordance with Section 61-6-6 NMSA 1978.
- N. "Plan of correction"** means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.
- O. "Policy"** means a statement of principle that guides and determines present and future decisions and actions.
- P. "Premises"** means all parts of buildings, grounds, and equipment of a facility.
- Q. "Procedure"** means the action(s) that must be taken in order to implement a policy.
- R. "Registered nurse"** means a person who holds a certificate of registration as a registered nurse under the Nursing Practice Act, Sections 61-3-1 to 61-3-30 NMSA 1978.
- S. "Resident"** as defined in Section 3 (I) of the Resident Abuse and Neglect Act means any person who receives treatment from a health facility.
- T. "U/L approved"** means approved for safety by the national underwriters laboratory.
- U. "Variance"** means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a facility, and is at the sole discretion of the licensing authority.
- V. "Waive or waiver"** means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the patients and staff are not in danger; waivers are issued at the sole discretion of the licensing authority.
[8.370.18.7 NMAC - N, 7/1/2024]

8.370.18.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words "shall" or "must" or "may". "Shall" or "must" means mandatory. "May" means permissive. The use of the words "adequate", "proper", and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide out-patient services to the public in facilities governed by these regulations.
[8.370.18.8 NMAC - N, 7/1/2024]

8.370.18.9 TYPES OF FACILITIES AND SCOPE OF SERVICES:

- A. Ambulatory surgical center:** means any distinct entity that operates exclusively for the purpose of providing surgical services without anticipation of overnight stay of patients. This type of facility may be integrated with the surgical department of an existing hospital and its outpatient department utilizing many of their services and resources. Those facilities which are freestanding may provide some services such as specialized diagnostic and laboratory by agreement or contract with another health care provider.
- B. Diagnostic and treatment center:** means a facility which provides a service to the public on an outpatient basis for the diagnosis and treatment of medical conditions not requiring hospitalization. Services provided are those diagnostic and therapeutic services commonly furnished in a physician's office or at the entry

point into the health care delivery system. These include medical history, physical examination, assessment of health status and treatment for a variety of medical conditions.

C. Limited diagnostic and treatment center: means a facility which provides on an outpatient basis a limited scope of services. This type of facility provides services usually in only one or two areas of preventive health, such as family planning, hypertension, child health, prenatal, dental health etc; their services rely heavily on consultation, referral and counseling. Because of their limited scope of services and amounts of medical supplies and equipment less stringent standards in building and fire codes are permitted.

D. Rural health clinic: means a facility which provides services to the public in a rural area where there is a limited population and a shortage of physicians and other health care providers. Services are the same as those of a diagnostic and treatment center which are normally provided by a physician, but in a rural health clinic may be provided by a nurse practitioner or a physician's assistant. Facilities licensed as a rural health clinic must be located in a geographic area in which it has been determined by the New Mexico health care authority or federal government, through the use of indices and other standards set by them, that a shortage of physicians and health care personnel exist to provide primary health care to the citizens of that area.

E. Infirmary: is a short term emergency medical and nursing care facility of an educational institution which in conjunction with providing diagnostic and treatment services to the members, has on a continuing 24-hour basis, inpatient facilities and resources for short-term emergency medical and nursing care.

F. New or innovative clinic: When a professional organization has shown a need for a new or innovative type of outpatient service which does not fit into one of the categories of Subsections A through E of 8.370.18.9 NMAC of these regulations, it may be licensed at the sole discretion of the licensing authority, if all requirements outlined in 8.370.18.10 NMAC below have been met.

[8.370.18.9 NMAC - N, 7/1/2024]

8.370.18.10 INITIAL LICENSURE PROCEDURES: To obtain an initial license for a facility pursuant to these regulations the following procedures must be followed by the applicant.

A. Initial Phase: These regulations should be thoroughly understood by the applicant and used as a reference for design of a new building or renovation or addition to an existing building for licensure as a facility pursuant to these regulations. Prior to starting construction, renovations or additions to an existing building the applicant of the proposed facility shall:

(1) advise the licensing authority of intention to open a facility pursuant to these regulations and depending on the type of facility submit the following:

(a) ambulatory surgical centers, diagnostic and treatment centers, rural health clinics and infirmaries will submit a complete set of construction documents (blueprints) for the total building;

(b) limited diagnostic and treatment centers will submit a set of floor plans for the building which must be of professional quality, be on substantial paper of at least 18" x 24", and be drawn to an accurate scale of 1/4" to 1"; these plans must include:

(i) proposed use of each room e.g., waiting room, examination room, office, etc.;

(ii) interior dimensions of all rooms;

(iii) one building or wall section showing exterior and interior wall construction; section must include floor, wall, ceiling, and the finishes, e.g., carpet, tile, gyp board with paint, wood paneling;

(iv) door types, swing, and sizes of all doors, e.g. solid core, hollow core, 3'0" x 6'8", 1 3/4" thick;

(v) if building is air conditioned;

(vi) indicate all sinks, tubs, showers;

(vii) indicate furnaces, and hot water heaters and if fuel fired, or electric;

(viii) indicate windows to include size and type;

(ix) indicate any level changes within the building e.g. steps or ramps;

(x) indicate fire extinguishers, heat and smoke detectors and alarm systems;

(xi) locate the building on a site/plot plan to determine surrounding conditions, include all steps, ramps, parking areas, walks, and any permanent structures;

(xii) indicate on plans if building is new construction, remodeled or alteration, or an addition; if remodeled or an addition indicate existing and new construction on the plans;

- (2) the proposed facility must also submit to the licensing authority a functional program outline that provides the following information:
- (a) scope of services to be provided by the proposed facility;
 - (b) projected number of patients to be served daily;
 - (c) number of staff and duties to be performed;
 - (d) services that will be contracted or arranged with another health provider i.e.; x-ray, laboratory, etc.;
 - (e) number of examination rooms, operating rooms, treatment rooms, and other rooms for diagnostic use such as x-ray, laboratory, etc.;
- (3) new or innovative outpatient services will also submit a proposal to the licensing authority for review and approval; the proposal must include at least the following:
- (a) information supporting the need for a special type of outpatient service;
 - (b) explanation of the special problems and needs of the patients who will be receiving services;
 - (c) specify portions of these regulations with which the new or innovative outpatient services would be in conflict;
 - (d) information on how the proposed facility would resolve these conflicts with alternative measures which would meet the intent of these regulations, e.g., increased staffing or fire and safety precautions;
 - (4) if at its sole discretion the licensing authority approves the proposal for the new or innovative outpatient services, a license may be granted with variances for those portions of the regulations with which the program would be in conflict;
 - (5) blueprints or floor plans will be reviewed by the licensing authority for compliance with current licensing regulations building and fire codes;
 - (6) if blueprints or plans are approved the licensing authority will advise the applicant that construction may begin.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building the applicant will submit to the licensing authority the following:

- (1) Application form:
 - (a) will be provided by the licensing authority;
 - (b) all information requested on the application must be provided;
 - (c) will be printed or typed;
 - (d) will be dated and signed;
 - (e) will be notarized.
- (2) Fees: all applications for licensure must be accompanied by the required fee.
 - (a) Current fee schedules will be provided by the licensing authority.
 - (b) Fees must be in the form of a certified check, money order, personal, or business check made payable to the state of New Mexico.
 - (c) Fees are non refundable.
- (3) Zoning and building approval:
 - (a) All initial applications must be accompanied with written zoning approval from the appropriate authority (city, county or municipality).
 - (b) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).
- (4) Fire authority approval: all initial applications must be accompanied with written approval of the fire authority having jurisdiction.
- (5) New Mexico environment department approval: all initial applications must be accompanied by written approval of the New Mexico environment department for the following:
 - (a) private water supply, if applicable;
 - (b) private waste or sewage disposal, if applicable;
 - (c) kitchen approval for infirmaries if meals are prepared on site;
 - (d) x-ray installation, if applicable.
- (6) Copy of appropriate drug permit issued by the state board of pharmacy.

D. Initial survey: Upon receipt of a properly completed application with all supporting documentation as outlined above an initial survey of the proposed facility will be scheduled by the licensing authority.

E. Issuance of license: Upon completion of the initial survey and determination that the facility is in compliance with these regulations the licensing authority will issue a license.
[8.370.18.10 NMAC - N, 7/1/2024]

8.370.18.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to a facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when it finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director or when there is a change of name for the facility.

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for amended license.

(3) Application must be submitted within 10 working days of the change.

[8.370.18.11 NMAC - N, 7/1/2024]

8.370.18.12 LICENSE RENEWAL:

A. Licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application and required fee prior to expiration of their current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these regulations.

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[8.370.18.12 NMAC - N, 7/1/2024]

8.370.18.13 POSTING OF LICENSE: The facility's license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

[8.370.18.13 NMAC - N, 7/1/2024]

8.370.18.14 NONTRANSFERABLE RESTRICTION ON LICENSE:

A. A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occurs:

(1) ownership of the facility changes;

(2) the facility changes location;

(3) licensee of the facility changes;

(4) the facility discontinues operation.

B. A facility wishing to continue operation as a licensed facility under circumstances Paragraphs (1) - (4) of Subsection A of 8.370.18.14 NMAC above must submit an application for initial licensure in accordance with 8.370.18.10 NMAC of these regulations at least 30 days prior to the anticipated change.

[8.370.18.14 NMAC - N, 7/1/2024]

8.370.18.15 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked: or

A. on the day a facility discontinues operation; or

B. on the day a facility is sold, leased, or otherwise changes ownership or license; or

C. on the day a facility changes location.

[8.370.18.15 NMAC - N, 7/1/2024]

8.370.18.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING. In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.18.16 NMAC - N, 7/1/2024]

8.370.18.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following:

- A. failure to comply with any provision of these regulations;
- B. failure to allow survey by authorized representatives of the licensing authority;
- C. any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. discovery of repeat violations of these regulations during surveys; or
- F. failure to provide the required care and services as outlined by these regulations for the patients receiving care at the facility.

[8.370.18.17 NMAC - N, 7/1/2024]

8.370.18.18 HEARING PROCEDURES:

- A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against a facility's license as outlined in 8.370.18.16 and 8.370.18.17 NMAC above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- B. A copy of the above regulations will be furnished to a facility at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.

[8.370.18.18 NMAC - N, 7/1/2024]

8.370.18.19 CURRENTLY LICENSED FACILITIES: Any facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements, may continue to be licensed under the appropriate type of outpatient facility.

- A. Variance may be granted for those building requirements the facility cannot meet provided the variances granted will not create a hazard to the health, safety and welfare of the patients and staff; and
- B. the building requirements for which variances are granted cannot be corrected without an unreasonable expense to the facility; and
- C. variances granted will be recorded and made a permanent part of the facility file.

[8.370.18.19 NMAC - N, 7/1/2024]

8.370.18.20 NEW FACILITY:

- A. A new facility may be opened in an existing building or a newly constructed building. If opened in an existing building a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in Subsections A, B and C of 8.370.18.19 NMAC of these regulations, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.
- B. A new facility opened in a newly constructed building must meet all requirements of these regulations.

[8.370.18.20 NMAC - N, 7/1/2024]

8.370.18.21 FACILITY SURVEYS:

- A. Application for licensure, whether initial or renewal, shall constitute permission for entry into and survey of a facility by authorized licensing authority representatives at reasonable times during the pendency of the application and, if licensed, during the licensure period.

- B. Surveys may be announced or unannounced at the sole discretion of the licensing authority.
 - C. Upon receipt of a notice of deficiency from the licensing authority the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion.
 - D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.
- [8.370.18.21 NMAC - N, 7/1/2024]

8.370.18.22 REPORTING OF INCIDENTS: All facilities licensed pursuant to these regulations must report to the licensing authority any serious incident or unusual occurrence which has, or could threaten the health, safety, and welfare of the patients or staff, such as but not limited to:

- A. fire, flood, or other natural disaster which creates structural damages to the facility or poses health hazards;
 - B. any serious outbreak of contagious diseases dangerous to the public health;
 - C. any serious human errors by staff members of the facility which has resulted in the death, serious illness, or physical impairment of a patient; or
 - D. in accordance with Section 8A of the “Resident, Abuse, and Neglect Act”.
- [8.370.18.22 NMAC - N, 7/1/2024]

8.370.18.23 QUALITY ASSURANCE: All facilities licensed pursuant to these regulations must have an ongoing, comprehensive self-assessment of the services provided by the facility. The assessment must include the total operation of the facility.

- A. To be considered comprehensive the assessment for quality assurance must include, but is not limited to the following:
 - (1) condition of patients and services rendered;
 - (2) completeness of patient records;
 - (3) organization of the facility;
 - (4) administration;
 - (5) staff utilization and training; and
 - (6) policies and procedures.
 - B. Where problems (or potential problems) are identified, the facility must act as soon as possible to avoid any risks to patients such as, but not limited to the following:
 - (1) changes in policies and procedures;
 - (2) staffing and assignment changes;
 - (3) additional education and training for the staff;
 - (4) changes in equipment or physical plant; or
 - (5) deletion or addition of services.
 - C. The governing body of the facility shall ensure that the effectiveness of the quality assurance program is evaluated by medical and administrative staff at least once a year. If the evaluation is not done all at once, no more than a year must lapse between evaluations of the same parts.
 - D. Documentation of the quality assurance program must be maintained by the facility.
- [8.370.18.23 NMAC - N, 7/1/2024]

8.370.18.24 PATIENT RECORDS: Each facility licensed pursuant to these regulations must maintain a medical record for each patient. Every record must be accurate, legible and promptly completed. Medical records must include at least the following:

- A. Ambulatory surgical centers:
 - (1) patient identification;
 - (2) significant medical history and results of physical examination;
 - (3) pre-operative diagnostic studies (entered before surgery), if performed;
 - (4) findings and techniques of the operation, including a pathologist's report on all tissues removed during surgery, except those exempted by the governing body;
 - (5) any allergies and abnormal drug reactions;
 - (6) entries related to anesthesia administration;
 - (7) documentation of properly executed informed patient consent; and
 - (8) discharge diagnosis;

- B. Diagnostic and treatment centers, rural health clinics, limited diagnostic and treatment centers:
 - (1) patient identification;
 - (2) patient consent forms (if applicable);
 - (3) pertinent medical history;
 - (4) assessment of the health status and health care needs of the patient;
 - (5) brief summary of the episode for which the patient is requiring care;
 - (6) disposition, and instructions to the patient;
 - (7) reports of physical examinations, diagnostic and laboratory test results, and consultative findings; and
 - (8) all physician's orders, reports of treatments and medication and other pertinent information necessary to monitor the patient's progress;
 - C. Infirmaries:
 - (1) same as Paragraphs (1) through (8) of Subsection B of 8.370.18.24 NMAC above;
 - (2) nursing notes (for those patients requiring overnight care or observation); and
 - (3) medication chart (if applicable);
 - D. New or innovative outpatient service:
 - (1) same as Paragraphs (1) through (8) of Subsection B of 8.370.18.24 NMAC] above;
 - (2) any other information deemed necessary by the licensing authority after review and approval of the new or innovative service.
- [8.370.18.24 NMAC - N, 7/1/2024]

8.370.18.25 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE FACILITY: Each facility licensed pursuant to these regulations must keep the following reports and records on file and make them available for review upon request of the licensing authority.

- A. A copy of the latest fire inspection report by the fire authority having jurisdiction.
 - B. A copy of the last survey conducted by the licensing authority and any variances granted.
 - C. Record of fire and emergency evacuation drills conducted by the facility.
 - D. Licensing regulations: A copy of these regulations: Requirements For Facilities Providing Outpatient Medical Services and Infirmaries, New Mexico health care authority, 8.370.18 NMAC.
 - E. Health certificates of staff.
 - F. A copy of the current license, registration or certificate, of each staff member for which a license, registration, or certification is required by the state of New Mexico.
 - G. Latest inspection by New Mexico environment department of radiological equipment, if applicable.
 - H. Valid drug permit as required by the state board of pharmacy.
 - I. Agreements or contracts with other health care providers to provide services not available in the facility, if applicable.
 - J. Latest inspection of drug room by state board of pharmacy.
 - K. New Mexico environment department approval of private water system, if applicable.
 - L. New Mexico environment department approval of private waste or sewage disposal, if applicable.
- [8.370.18.25 NMAC - N, 7/1/2024]

8.370.18.26 PATIENT RIGHTS:

- A. All facilities licensed pursuant to these regulations shall support, protect and enhance the rights of patients as shown below:
 - (1) the right to efficient and equal service, regardless of their race, sex, religion, ethnic background, education, social class, physical or mental handicap, or economic status;
 - (2) the right of considerate, courteous and respectful care from all staff of the facility;
 - (3) the right of complete information in terms the average patient can reasonably be expected to understand;
 - (4) the right to informed consent and full discussion of risks and benefits prior to any invasive procedure, except in an emergency; alternatives to the proposed procedure must be discussed with the patient;
 - (5) the right to obtain assistance in interpretation for non-English speaking patients;
 - (6) the right to know the names, titles, and professions of the facility staff to whom the patient's speaks and from whom services or information are received;

- (7) the right to refuse examination, discussion and procedures to the extent permitted by law and to be informed of the health and legal consequences of this refusal;
 - (8) the right of access to patient's personal health records;
 - (9) the right of respect for the patient's privacy;
 - (10) the right of confidentiality of the patient's personal health records as provided by law;
 - (11) the right to expect reasonable continuity of care within the scope of services and staffing of the facility;
 - (12) the right to respect for the patient's civil rights and religious opinions;
 - (13) the right to present complaints to the management of the facility without fear of reprisal;
 - (14) the right to examine and receive a full explanation of any charges made by the facility regardless of source of payment.
- B.** Facility staff shall be informed of and demonstrate their understanding of the policies on patient rights and responsibilities through orientation and in-service training activities.
 - C.** Patient rights will be posted in the facility both in English and Spanish where they may be readily seen by the public.
 - D.** The method by which a patient may register a complaint will be posted in the facility where it may be readily seen by the public.

[8.370.18.26 NMAC - N, 7/1/2024]

8.370.18.27 STAFF RECORDS: Each facility licensed pursuant to these regulations must maintain a complete record on file for each staff member or volunteer working more than half-time. Staff records will be made available for review upon request of the licensing authority.

- A.** Staff records will contain at least the following:
 - (1) name;
 - (2) address and telephone number;
 - (3) position for which employed;
 - (4) date of employment;
 - (5) health certificate stating that the employee is free from tuberculosis in a transmissible form as required by New Mexico health care authority regulations, control of communicable disease in health facility personnel, 7.4.4 NMAC.
- B.** A daily attendance record of all staff must be kept in the facility.
- C.** The facility must keep weekly or monthly schedules of all staff. These schedules must be kept on file for at least six months.

[8.370.18.27 NMAC - N, 7/1/2024]

8.370.18.28 POLICIES AND PROCEDURES:

- A.** All facilities licensed pursuant to these regulations must have written policies and procedures for the following:
 - (1) quality assurance program;
 - (2) maintenance of building and equipment;
 - (3) fire and evacuation;
 - (4) staff development and evaluation;
 - (5) administration and preparation of drugs;
 - (6) referral of patients.
- B.** Ambulatory surgical center: In addition to those policies and procedures listed in Subsection A of 8.370.18.28 NMAC of these regulations, ambulatory surgical centers must have the following policies and procedures:
 - (1) transfer of patients to hospital for patients requiring emergency care;
 - (2) for ambulance services if applicable;
 - (3) transfer of medical information;
 - (4) resuscitative techniques;
 - (5) aseptic techniques and scrub procedures;
 - (6) care of surgical specimens;
 - (7) protocols of surgical procedures;
 - (8) cleaning of operating room after each use;
 - (9) sterilization and disinfection;

- (10) operating room attire;
- (11) care of anesthesia equipment;
- (12) special provision for infected or contaminated patients; and
- (13) inspection and maintenance of emergency equipment in operating room.

C. Infirmaries: In addition to those policies and procedures listed in Subsection A of 8.370.18.28 NMAC of these regulations, infirmaries must have the following policies and procedures:

- (1) inpatient care;
- (2) transfer of patients to hospital.

D. New or innovative outpatient services: In addition to those policies and procedures listed in Subsection A of 8.370.18.28 NMAC of these regulations, may have others required by the licensing authority after review of program and approval of the new or innovative service.

[8.370.18.28 NMAC - N, 7/1/2024]

8.370.18.29 GENERAL BUILDING REQUIREMENTS:

A. New construction, additions and alterations: When construction of new buildings, additions, or alterations to existing buildings are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire facility must be submitted.

B. Access to the handicapped: All outpatient facilities licensed pursuant to these regulations must be accessible to and useable by handicapped employees, staff, visitors, and patients.

C. Extent of a facility: All buildings of the premises providing patient care and services will be considered part of the facility and must meet all requirements of these regulations. Where a part of the facility services are contained in another facility, separation and access shall be maintained as described in current building and fire codes.

D. Additional requirements: A facility applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may require these additional requirements. Any additional requirements will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review, consultation and on-site surveys during the licensing process.

[8.370.18.29 NMAC - N, 7/1/2024]

8.370.18.30 MAINTENANCE OF BUILDING AND GROUNDS: Facilities must maintain the building(s) in good repair at all times. Such maintenance shall include, but is not limited to, the following.

A. All electrical, signaling, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition, including regular inspections of these systems.

B. All equipment used for patient care shall be maintained clean and in good repair.

C. All furniture and furnishings must be kept clean and in good repair.

D. The grounds of the facility must be maintained in a safe and sanitary condition at all times.

[8.370.18.30 NMAC - N, 7/1/2024]

8.370.18.31 HOUSEKEEPING:

A. The facility must be kept free from offensive odors and accumulations of dirt, rubbish, dust, and safety hazards.

B. Examination rooms, operating rooms, patient rooms, waiting areas and other areas of daily usage must be cleaned daily.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a slip resistant finish.

D. Bathrooms, lavatories, and drinking fountains must be cleaned as often as necessary to maintain a clean and sanitary condition.

E. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

F. Storage areas must be kept free from accumulation of refuse, discarded equipment, furniture, paper, and the like.

[8.370.18.31 NMAC - N, 7/1/2024]

8.370.18.32 WATER:

- A. A facility licensed pursuant to these regulations must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use.
 - B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to insure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department or recognized authority.
 - C. Hot and cold running water under pressure must be distributed at sufficient pressure to operate all fixtures and equipment during maximum demand periods.
 - D. Backflow preventors (vacuum breakers) must be installed on hose bibs, laboratory sinks, janitor's sinks, and on all other water fixtures to which hoses or tubing can be attached.
 - E. Water distribution systems are arranged to provide hot water at each hot water outlet at all times. Hot water to hand washing facilities must not exceed 120 degrees fahrenheit.
- [8.370.18.32 NMAC - N, 7/1/2024]

8.370.18.33 SEWAGE AND WASTE DISPOSAL:

- A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.
 - B. Where a municipal sewage system is not available, the system used must be inspected and approved by the New Mexico environment department or recognized local authority.
 - C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of solid wastes generated by the facility must be inspected and approved by the New Mexico environment department or recognized local authority.
 - D. Infectious waste: Facilities licensed pursuant to these regulations which generate infectious waste must insure that the method of disposal of such wastes meets the requirements of the New Mexico environment department or recognized local authority.
 - E. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof and constructed of materials which will not absorb liquids. Receptacles must be kept clean.
- [8.370.18.33 NMAC - N, 7/1/2024]

8.370.18.34 FIRE SAFETY COMPLIANCE: All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility.

[8.370.18.34 NMAC - N, 7/1/2024]

8.370.18.35 FIRE CLEARANCE AND INSPECTIONS: Each facility must request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the facility, the facility must document the date the request was made and to whom. If the fire authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.

[8.370.18.35 NMAC - N, 7/1/2024]

8.370.18.36 STAFF FIRE AND SAFETY TRAINING:

- A. All staff of the facility must know the location of and instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.
 - B. Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, faulty equipment, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the patients or staff.
 - C. Fire and evacuation drills: The facility must conduct at least one fire and evacuation drill each month. A log must be maintained by the facility showing the date, time, number of staff participating and outlining any problems noted in the conduct of the drill.
- [8.370.18.36 NMAC - N, 7/1/2024]

8.370.18.37 EVACUATION PLAN: Each facility must have a fire evacuation plan conspicuously posted in each separate area of the building showing routes of evacuation in case of fire or other emergency.

[8.370.18.37 NMAC - N, 7/1/2024]

8.370.18.38 PROVISIONS FOR EMERGENCY CALLS:

- A.** An easily accessible telephone for summoning help, in case of emergency, must be available in the facility.
 - B.** A list of emergency numbers, including, but not limited to, fire department, police department, ambulance services, and poison control center must be prominently posted by the telephone(s).
- [8.370.18.38 NMAC - N, 7/1/2024]

8.370.18.39 FIRE EXTINGUISHERS:

- A.** Fire extinguishers as approved by the state fire marshal or fire prevention authority having jurisdiction must be located in the facility.
 - B.** Fire extinguishers must be properly maintained as recommended by the manufacturer, state fire marshal or fire authority having jurisdiction.
 - C.** All fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal, or fire authority having jurisdiction. All fire extinguishers must be tagged, noting the date of inspection.
- [8.370.18.39 NMAC - N, 7/1/2024]

8.370.18.40 ALARM SYSTEM: A manually operated, electrically supervised fire alarm system shall be installed in each facility as required by national fire protection association 101 (life safety code). Infirmaries, ambulatory surgical centers, and multiple story facilities require manual alarm systems.

[8.370.18.40 NMAC - N, 7/1/2024]

8.370.18.41 FIRE DETECTION SYSTEM: The facility must be equipped with smoke detectors as required by the NFPA 101 (life safety code) and approved in writing by the fire authority having jurisdiction as to number type and placement.

[8.370.18.41 NMAC - N, 7/1/2024]

8.370.18.42 JANITORS CLOSET(S):

- A.** Each facility shall have at least one janitor's closet. If a facility is more than one story there must be a janitor's closet on each floor.
 - B.** Each janitor's closet shall contain:
 - (1) a service sink;
 - (2) storage for housekeeping supplies and equipment.
 - C.** Each janitor's closet must be vented.
 - D.** Janitor's closet is a hazardous area and must be provided with one-hour fire separation and 1 3/4" solid core door.
- [8.370.18.42 NMAC - N, 7/1/2024]

8.370.18.43 EMERGENCY LIGHTING:

- A.** A facility must be provided with emergency lighting which will activate automatically upon disruption of electrical service.
 - B.** The emergency lighting must be sufficient to illuminate paths of egress and exits of the facility.
 - C.** Facilities utilizing general anesthesia or life support equipment shall be provided essential electrical services in accordance with national fire protection association 99. Standard for health care facilities.
- [8.370.18.43 NMAC - N, 7/1/2024]

8.370.18.44 ELECTRICAL STANDARDS:

- A.** All electrical installation and equipment must comply with all current state and local codes.
- B.** Circuit breakers or fused switches that provide electrical disconnection and over current protection shall be:
 - (1) enclosed or guarded to provide a dead front assembly;
 - (2) readily accessible for use and maintenance;
 - (3) set apart from traffic lanes;
 - (4) located in a dry, ventilated space, free of corrosive fumes or gases;
 - (5) able to operate properly in all temperature conditions;

- (6) panel boards servicing lighting and appliance circuits shall be on the same floor and in the same facility area as the circuits they serve;
 - (7) each panel board will be marked showing the area each circuit breaker or fused switch services;
 - (8) the use of jumpers or devices to bypass circuit breakers or fused switches is prohibited.
- [8.370.18.44 NMAC - N, 7/1/2024]

8.370.18.45 LIGHTING: The facility must meet the following requirements for lighting:

- A. all spaces occupied by people, machinery, or equipment within buildings, approaches to buildings, and parking lots shall have lighting;
 - B. lighting will be sufficient to make all parts of the area clearly visible;
 - C. all lighting fixtures must be shielded;
 - D. lighting fixtures must be selected and located with the comfort and convenience of the staff and patients in mind;
 - E. a fixed or portable examination light must be provided for all examination and treatment rooms.
- [8.370.18.45 NMAC - N, 7/1/2024]

8.370.18.46 ELECTRICAL CORDS AND ELECTRICAL RECEPTACLES:

- A. Electrical cords and extension cords:
 - (1) Electrical cords and extension cords must be U/L approved.
 - (2) Electrical cords and extension cords must be replaced as soon as they show wear.
 - (3) Under no circumstances shall extension cords be used as a general wiring method.
 - (4) Extension cords must be plugged into an electrical receptacle within the room where used and must not be connected in one room and extended to some other room.
 - (5) Extension cords must not be used in series.
 - B. Electrical receptacles:
 - (1) Duplex grounded type electrical receptacles (convenience outlets) must be installed in all areas in sufficient quantities for tasks to be performed as needed. Each examination or work table must have access to a minimum of two duplex receptacles. Exception: Limited diagnostic and treatment centers are only required to have access to one duplex receptacle for examination or work tables.
 - (2) The use of multiple sockets (gang plugs) in electrical receptacles is strictly prohibited.
- [8.370.18.46 NMAC - N, 7/1/2024]

8.370.18.47 HEATING, VENTILATION AND AIR CONDITIONING:

- A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes.
- B. The heating method used by the facility must have a minimum indoor-winter-design-capacity of 75 degrees fahrenheit with controls provided for adjusting temperature as appropriate for patient and staff comfort.
- C. The use of unvented heaters, open flame heaters or portable heaters is prohibited.
- D. An ample supply of outside air must be provided in all spaces where fuel fired boilers, furnaces, or heaters are located to assure proper combustion.
- E. All fuel fired boilers, furnaces, or heaters must be connected to an approved venting system to take the products of combustion directly to the outside air.
- F. A facility must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors.
- G. All gas-fired heating equipment must be provided with a one-hundred percent automatic cutoff control valve in event of pilot failure.
- H. The facility must be provided with a system for maintaining patients and staff's comfort during periods of hot weather.
- I. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Door must be self-closing with 3/4 hour fire resistance.
- J. Operating room supply air shall be provided from ceiling outlets near the center of the work area. Return air from floor level with at least two return inlets located as remote as possible shall be provided.
- K. All central ventilation and air condition systems shall be provided filters having efficiencies greater than twenty-five percent. Operating rooms shall have ninety percent filter efficiencies.

[8.370.18.47 NMAC - N, 7/1/2024]

8.370.18.48 WATER HEATERS:

- A. Must be able to supply hot water to all hot water taps within the facility at full pressure during peak demand periods and maintain a maximum temperature of 120 degrees fahrenheit.
- B. Fuel fired hot water heaters must be enclosed and separated from other parts of the building by construction as required by current state and local building codes.
- C. All water heaters must be equipped with a pressure relief valve (pop-off-valve).

[8.370.18.48 NMAC - N, 7/1/2024]

8.370.18.49 RADIOLOGY:

- A. All facilities licensed pursuant to these regulations which provide radiological services to include portable and dental units must meet the requirements of the New Mexico environment department for installation and use of the radiological equipment.
- B. For those facilities providing radiological services the following is required:
 - (1) radiographic room meeting the requirements as stated in Subsection A of 8.370.18.49 NMAC above;
 - (2) film processing facilities;
 - (3) storage facilities for exposed film;
 - (4) toilet room with hand washing facilities accessible to fluoroscopy room(s), if fluoroscopic procedures are part of the services; and
 - (5) dressing rooms or booths, as required by services provided with convenient toilet access.

[8.370.18.49 NMAC - N, 7/1/2024]

8.370.18.50 TOILETS, LAVATORIES AND BATHING FACILITIES:

- A. All fixtures and plumbing must be installed in accordance with current state and local plumbing codes.
- B. All toilets must be enclosed and vented.
- C. All toilet rooms must be provided with a lavatory for hand washing.
- D. All toilets must be kept supplied with toilet paper.
- E. All lavatories for hand washing, except those for scrub purposes in ambulatory surgical centers, must be kept supplied with disposable towels for hand drying or provided with mechanical blower.
- F. Hand washing lavatories for staff in patient care areas shall be trimmed with valves that can be operated without hands (single-level devices may be used if they meet this requirement).
- G. Where blade handles are used, they shall not exceed four and a half inches, except that handles on clinical sinks shall not be less than six inches.
- H. The number of and location of toilets, lavatories and bathing facilities will be mandated by requirements for each type facility. Such factors as extent of services provided and size of facility will also dictate requirements.

[8.370.18.50 NMAC - N, 7/1/2024]

8.370.18.51 EXITS:

- A. Each facility and each floor of a facility shall have exits as required/permitted by national fire protection association 101 (life safety code).
- B. Each exit must be marked by illuminated signs having letters at least six inches high whose principle strokes are at least three-fourths of an inch wide. Exception: Limited diagnostic and treatment centers may in some cases not be required to have the illuminated exit signs but may use non-illuminated signs meeting the requirements as shown above.
- C. Illuminated exit signs must be maintained in operable condition at all times.
- D. Exit ways must be kept free from obstructions at all times.
- E. Exit doors:
 - (1) Exit doors to all exit or exit access doors must be at least 36" wide.
 - (2) Ambulatory surgical centers that use general anesthesia or have patients on life support equipment must have exit doors 44" in width.

[8.370.18.51 NMAC - N, 7/1/2024]

8.370.18.52 CORRIDORS:

A. Ambulatory surgical centers:

(1) Minimum corridor width shall be six feet.

(2) In operating room and surgical suites where patients are transported on stretchers or beds,

corridors will have a width of eight feet.

B. All other facilities: minimum corridor width shall be five feet except work corridors less than six feet in length may be four feet in width.

C. Facilities will often be contained within existing commercial or residential buildings and less stringent corridor widths may be allowed other than those contained in Subsection B of 8.370.18.52 NMAC above if not in conflict with building or fire codes and approved by the licensing authority prior to occupying the facility. [8.370.18.52 NMAC - N, 7/1/2024]

8.370.18.53 DOORS:

A. The minimum door width for patient's use shall be 34" in width.

B. Patient room doors in infirmaries shall be 44" in width 1 3/4" solid core.

C. Operating rooms and recovery rooms shall have a minimum door width of 44".

D. Examination and treatment rooms shall have a minimum door width of 36".

[8.370.18.53 NMAC - N, 7/1/2024]

8.370.18.54 COMMON ELEMENTS FOR OUTPATIENTS FACILITIES: The following shall apply to each outpatient facility, with additions or modifications as noted for each specific type of outpatient facility in other sections of these regulations or not applicable based on scope of services provided by the facility. Administration and public areas:

A. Entrance shall be able to accommodate wheelchairs.

B. Public services shall include:

(1) conveniently accessible wheelchair storage;

(2) a reception and information counter or desk;

(3) waiting areas: where an organized pediatric service is provided by the outpatient facility, provisions shall be made for separating pediatric and adult patients;

(4) conveniently accessible public toilets;

(5) conveniently accessible drinking fountain(s).

C. Interview space(s) for private interviews related to social service, medical information, etc., shall be provided.

D. General or individual office(s) for business transactions, records, administrative, and professional staff shall be provided.

E. Clerical space or rooms for typing, clerical work, and filing, separated from public areas for confidentiality, shall be provided.

F. Special storage for staff personal effects with locking drawers or cabinets (may be individual desks or cabinets) shall be provided. Such storage shall be near individual work stations and staff controlled.

G. General storage facilities for supplies and equipment shall be provided.

H. Nurses station(s) shall have a work counter, communication system, space for supplies, and provisions for charting.

I. Drug distribution station which may be part of the nurses station and shall include a work counter, sink, refrigerator, and locked storage for biologicals and drugs.

J. Clean storage consisting of a separate room or closet for storing clean and sterile supplies shall be provided and shall be in addition to that of cabinets and shelves.

K. Soiled holding which provides for separate collection, storage, and disposal of soiled materials.

L. Sterilizing procedures may be done on or off site, or disposables may be used to satisfy functional needs.

[8.370.18.54 NMAC - N, 7/1/2024]

8.370.18.55 LABORATORY: Facilities licensed pursuant to these regulations that provide laboratory services must provide the following:

A. laboratory work counter(s) with sink, and electric services;

B. lavatory(ies) or counter sink(s) equipped for hand washing;

C. storage cabinet(s) or closet(s);

- D. specimen collection facilities with a toilet and lavatory;
 - E. blood collection facilities shall have seating space, a work counter, and hand washing facilities.
- [8.370.18.55 NMAC - N, 7/1/2024]

8.370.18.56 FLOORS AND WALLS:

- A. Floor material shall be readily cleanable and wear resistant.
- B. In all areas subject to wet cleaning, floor materials shall not be physically affected by liquid germicidal or cleaning solution.
- C. Floors subject to traffic while wet including showers and bath areas shall have a slip resistant surface.
- D. Wall finishes shall be washable and, in the proximity of plumbing fixtures, shall be smooth and moisture resistant.
- E. Wall bases in areas subject to wet cleaning shall be covered with the floor, tightly sealed within the wall and constructed without voids.
- F. Floor and wall areas penetrated by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.
- G. Threshold and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.
- H. Floor drains are not permitted in operating rooms.

[8.370.18.56 NMAC - N, 7/1/2024]

8.370.18.57 EXAMINATION ROOMS:

- A. General purpose examination rooms: For medical, obstetrical, and similar examinations shall meet the following requirements:
 - (1) minimum floor area of 80 square feet, excluding vestibules, toilets, and closets;
 - (2) room arrangement shall permit at least two feet, eight inches clearance at each side and at the foot of the examination table;
 - (3) a lavatory or sink for hand washing; and
 - (4) a counter or shelf space for writing.
- B. Special purpose examination rooms: For special examination such as eye, ear, nose, throat, and dental (if provided), shall meet the following requirements:
 - (1) floor area sufficient to accommodate procedures and equipment used but in no case less than 80 square feet, excluding vestibules, toilets, and closets;
 - (2) a lavatory or sink for hand washing;
 - (3) a counter or shelf space for writing.

[8.370.18.57 NMAC - N, 7/1/2024]

8.370.18.58 TREATMENT ROOMS:

- A. Rooms for minor surgical and cast procedures (if these services are provided) shall have a minimum floor area of 120 square feet, excluding vestibule, toilet, and closets.
- B. The minimum room dimension shall be 10 feet.
- C. A lavatory or sink for hand washing shall be provided.
- D. A counter or shelf for writing shall be provided.

[8.370.18.58 NMAC - N, 7/1/2024]

8.370.18.59 OBSERVATION ROOMS: Those facilities licensed pursuant to these regulations which require an observation room for the isolation of suspect or disturbed patients must meet the following requirements:

- A. The minimum floor area must be 80 square feet.
- B. The observation room must be convenient to a nurse or control station to permit close observation of patients.
- C. A toilet room with lavatory must be immediately accessible.
- D. An examination room may be modified to use as an observation room.

[8.370.18.59 NMAC - N, 7/1/2024]

8.370.18.60 SPECIAL REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS: In addition to all other requirements contained in these regulations ambulatory surgical centers will provide the following.

- A.** A covered entrance for pickup of patients after surgery.
- B.** A medical records room equipped for recording, and retrieval of medical records.
- C.** At least one examination or treatment room meeting the requirements outlined in Sections 57 and 58 of 8.370.18 NMAC shall be provided for examination and testing of patients prior to surgery.
- D.** Operating rooms or surgical suites:
 - (1)** Each operating room will have a minimum clear area of at least 250 square feet.
 - (2)** An emergency communication system connected with the surgical control station shall be provided.
 - (3)** At least one x-ray film illuminator shall be provided in each operating room.
 - (4)** Closed storage space for splints and traction equipment shall be provided for orthopedic surgery.
 - (5)** Room(s) for post-anesthesia recovery of outpatient surgical patients shall be provided meeting the following requirements:
 - (a)** at least three feet shall be provided at each side and at the foot of each bed as needed for work or circulation;
 - (b)** if pediatric surgery is part of the services, separation from the adult section and space for parents shall be provided.
 - (6)** A designated supervised recovery lounge shall be provided for patients who do not require post-anesthesia recovery but need additional time for their vital signs to stabilize before safely leaving the facility. This lounge shall contain:
 - (a)** control station;
 - (b)** space for family members;
 - (c)** provisions for privacy; and
 - (d)** convenient patient access to toilets large enough to accommodate patient, wheelchair, and an assistant.
 - (7)** The following shall be provided in the surgical service areas:
 - (a)** a control station located to permit visual surveillance of all traffic entering the operating suite;
 - (b)** a drug distribution station; provision shall be made for storage and preparation of medications administered to patients;
 - (c)** scrub facilities shall be provided near the entrance to each operating room which is arranged to minimize incidental splatter on nearby personnel or supply carts;
 - (d)** a soiled workroom which shall contain a clinical sink or equivalent flushing type fixture, a work counter, a sink for hand washing, and waste receptacle(s);
 - (e)** fluid waste disposal facilities which shall be convenient to the general operating rooms; a clinical sink or equivalent equipment in a soiled workroom shall meet this requirement;
 - (f)** a clean workroom or a clean supply room:
 - (i)** a clean workroom is required when clean materials are assembled within the facility prior to use and shall contain: work counter; sink equipped for hand washing; and, space for clean and sterile supplies;
 - (ii)** a clean supply room may be used when the facility does not assemble the material and has procedures for the storage of sterile and clean supplies;
 - (g)** anesthesia storage facilities which meet the standards as outlined in national fire protection association life safety code pamphlet 99; anesthesia may be stored inside or outside as long as the standards are met;
 - (h)** anesthesia workroom for cleaning, testing, and storing anesthesia equipment which shall contain: work counter and sink;
 - (i)** equipment storage room(s) for equipment and supplies used in the surgical area;
 - (j)** staff clothing change area which shall contain: lockers; showers; toilets; lavatories for hand washing; and, space for donning scrub attire;
 - (k)** outpatient surgery change areas for patients to change from street clothing into hospital gowns and to prepare for surgery which shall have the following: waiting room(s); lockers; clothing change or gowning areas; space for administering medications; and, provisions for securing patients' personal effects;
 - (l)** stretcher storage area which shall be convenient for use and out of the direct line of traffic;

(m) for facilities having three or more operating rooms, a lounge and toilet facilities will be provided for the surgical staff;

(n) a nurse's toilet room shall be provided near the recovery room(s);

(o) a janitor's closet exclusively for the surgical suite which shall have: a floor receptor or service sink, and storage space exclusively for house keeping supplies and equipment for the surgical suite;

(p) space for the temporary storage of wheelchairs; and

(q) provisions for convenient access to and use of emergency crash carts at both the surgical and recovery areas.

E. Toilet rooms in surgery and recovery areas for patient use shall be equipped with doors and hardware that permit access from the outside in emergencies. When such rooms have only one opening or are small, the doors shall open outward.

F. Flammable anesthetics shall not be used in ambulatory surgical centers.

G. Ambulatory surgical centers in the same building as another provider such as hospital or clinic must meet the following:

(1) the ambulatory surgical center is not required to be in a building separate from other health care activities (e.g., hospital, clinic, etc.); it must however, be separated physically by at least semi-permanent walls and doors;

(2) the ambulatory surgical center and another entity must not mix functions and operations in a common space during concurrent or overlapping hours of operation;

(3) sharing of a common space at non-overlapping times is acceptable if the ambulatory surgical center is able to fully function without interruption during its scheduled hours of operation;

(4) use of the ambulatory surgical center space by another entity, or host entity if the ambulatory surgical center is on the premises of another health facility, during the ambulatory surgical center's hours of operation is prohibited.

[8.370.18.60 NMAC - N, 7/1/2024]

8.370.18.61 SPECIAL REQUIREMENTS FOR INFIRMARIES: In addition to all other requirements contained in these regulations Infirmaries will provide the following:

A. patient rooms which have a minimum of 100 square feet for single occupancy or 160 square feet for double occupancy;

B. patient rooms must have a call system to summon help in case of emergency.

[8.370.18.61 NMAC - N, 7/1/2024]

8.370.18.62 GOVERNING BODY: All facilities licensed pursuant to these regulations must have a governing body that assumes full legal responsibility for determining, implementing, and monitoring policies governing the total operation of the facility and for ensuring that these policies are administered so as to provide quality health care in a safe environment. When services are provided through a contract with an outside resource, the facility assures that these services are provided in a safe and effective manner.

[8.370.18.62 NMAC - N, 7/1/2024]

8.370.18.63 ADMINISTRATOR, DIRECTOR OR MANAGER: Each facility must have an administrator/director/manager hired or appointed by the governing body to whom authority has been delegated to manage the daily operation of a facility and implement the policies and procedures adopted by the governing body.

[8.370.18.63 NMAC - N, 7/1/2024]

8.370.18.64 STAFF EVALUATION AND DEVELOPMENT: A facility licensed pursuant to these regulations must have a written plan for the orientation, ongoing staff development, supervision and evaluation of all staff members, including but not limited to the following:

A. facility's emergency and safety procedures;

B. policies and procedures of the facility;

C. quality assurance program; and

D. staff training.

[8.370.18.64 NMAC - N, 7/1/2024]

8.370.18.65 DIRECT SERVICE STAFF: Each staff member who provides direct medical services to patients, such as physicians, dentists, certified registered nurse anesthetists, nurses, physicians assistants, etc., who are required to be licensed, registered or certified by the state of New Mexico must have a current license, registration, or certificate from the state of New Mexico.
[8.370.18.65 NMAC - N, 7/1/2024]

8.370.18.66 MINIMUM STAFFING REQUIREMENTS:

- A. Ambulatory surgical centers:**
- (1) Personnel trained in the use of emergency equipment and in cardiopulmonary resuscitation must be available whenever there is a patient in the facility.
 - (2) Surgical staff of qualified physicians who have been granted clinical privileges by the governing body of the facility must perform all surgical procedures. A physician must be on duty whenever there is a patient in the facility.
 - (3) A certified registered nurse anesthetist or registered nurse must be available for emergency treatment whenever there is a patient in the facility.
- B. Diagnostic and treatment centers:**
- (1) A physician must be on duty or on immediate call whenever primary medical services are being provided to patients.
 - (2) A certified registered nurse anesthetist, registered nurse, licensed practical nurse, nurse practitioner or physician assistant must be on duty whenever patients are in the facility.
 - (3) Personnel trained in the use of emergency equipment and cardiopulmonary resuscitation must be on duty whenever a patient is in the facility.
- C. Limited diagnostic and treatment centers:**
- (1) A physician must be on call whenever medical services are being given to patients.
 - (2) A registered nurse, licensed practical nurse, nurse practitioner or physician assistant must be on duty whenever patients are in the facility receiving medical services.
 - (3) Personnel trained in the use of emergency equipment and cardiopulmonary resuscitation must be on duty whenever a patient is in the facility.
- D. Rural health clinic:**
- (1) The physician responsible for the medical direction of the facility must be available through direct telecommunication for consultation, assistance with medical emergencies, or patient referral.
 - (2) A physician, nurse practitioner, physician's assistant, registered nurse, or licensed practical nurse must be available to furnish patient care services at all times during the facility's regular hours of operation.
- E. Infirmaries:**
- (1) A physician is on duty or on immediate call whenever primary medical services are being provided to patients.
 - (2) A registered nurse, licensed practical nurse, nurse practitioner, or physician assistant must be on duty whenever patients are in the facility. This includes nighttime hours when patients are being kept overnight for observation or treatment.
 - (3) Personnel trained in the use of emergency equipment and cardiopulmonary resuscitation must be on duty whenever a patient is in the facility.
- F. New or innovative clinic:**
- (1) Will meet the staffing requirements of Subsection B of 8.370.18.66 NMAC of these regulations.
 - (2) Additional staffing or modification of staffing may be determined by the licensing authority during the initial phase of the licensing process as outlined in Paragraph (3) of Subsection A of 8.370.18.10 NMAC.
- [8.370.18.66 NMAC - N, 7/1/2024]

8.370.18.67 EMERGENCY MEDICAL SERVICES:

- A.** Each facility licensed pursuant to these regulations must maintain a crash cart or emergency medical tray to provide emergency life saving procedures which may be needed in the facility.
- B.** Crash carts or emergency trays will be supplied with the drugs and biologicals commonly used in life saving procedures such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics,

serums and toxoids. Supplies and equipment for the crash carts or emergency trays will be determined by the medical director of the facility.

C. Each crash cart or emergency tray will have an equipment and supply list to be used as an inventory guide. Crash carts or emergency trays must be replenished as supplies or equipment are used.

D. Crash carts or emergency trays will be checked on a weekly basis for completeness and a log maintained with date and by whom the check was made.

E. All direct service medical staff must know the location of and be trained in the use of the crash carts or emergency trays.

F. Operating rooms of ambulatory surgical centers must include at least the following:

- (1) emergency call system;
- (2) oxygen;
- (3) mechanical ventilatory assistance equipment including airways, manual breathing bag, and ventilator;
- (4) cardiac defibrillator;
- (5) cardiac monitoring equipment;
- (6) thoracotomy set;
- (7) tracheostomy set;
- (8) laryngoscopes and endotracheal tubes;
- (9) suction equipment;
- (10) emergency drugs and supplies specified by the medical staff.

[8.370.18.67 NMAC - N, 7/1/2024]

8.370.18.68 HOURS OF OPERATION: Each facility licensed pursuant to these regulations must post its hours of operation where they can be clearly seen by patients.

[8.370.18.68 NMAC - N, 7/1/2024]

8.370.18.69 NURSING SERVICES: Patient care responsibilities must be delineated for all nursing personnel. Nursing services must be provided in accordance with standards of nursing practice as outlined in the current rules and regulations of the New Mexico board of nursing.

[8.370.18.69 NMAC - N, 7/1/2024]

8.370.18.70 ANESTHESIA SERVICES FOR AMBULATORY SURGICAL CENTERS:

A. A physician must examine the patient immediately before surgery to evaluate the risk of anesthesia and of the procedure to be performed.

B. Before discharge from the facility each patient must be evaluated by a physician or a certified registered nurse anesthetist for proper anesthesia recovery.

C. All patients will be discharged in the company of a responsible adult, except those exempted by the attending physician.

D. Anesthetics must be administered by only:

- (1) a qualified anesthesiologist;
- (2) a physician qualified to administer anesthesia, a supervised trainee in an approved

educational program or an anesthesia assistant. In those cases where a trainee or an anesthesia assistant administers the anesthesia, the anesthetist must be under the supervision of the operating physician; anesthesia assistants must have successfully completed four year education program for physician assistants that include two years of specialized academic and clinical training in anesthesia;

(3) a certified registered nurse anesthetist; certified registered nurse anesthetists shall function in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to Chapter 61, Article 5A, 6, 8 or 10 NMSA 1978; the certified registered nurse anesthetist shall collaborate with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient; as used in this subsection, "collaboration" means the process in which each health care provider contributes their respective expertise; collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

[8.370.18.70 NMAC - N, 7/1/2024]

8.370.18.71 PHARMACEUTICAL SERVICES:

A. Drugs and biologicals must be stored, prepared and administered in accordance to acceptable standards of practice and in compliance with the New Mexico state board of pharmacy.

B. Outdated drugs and biologicals must be disposed of in accordance with methods outlined by the New Mexico state board of pharmacy.

C. One individual shall be designated responsibility for pharmaceutical services to include accountability and safeguarding.

D. Keys to the drug room or pharmacy must be made available only to personnel authorized by the individual having responsibility for pharmaceutical services.

E. Adverse reactions to medications must be reported to the physician responsible for the patient and must be documented in the patient's record.

F. Blood and blood products must be administered by only physicians, certified registered nurse anesthetists, registered nurses, nurse practitioners, or physician's assistants.

[8.370.18.71 NMAC - N, 7/1/2024]

8.370.18.72 LABORATORY SERVICES:

A. All lab test results performed either at the facility or by contract or arrangement with another entity must be entered into the patients record.

B. All laboratory procedures will be conducted in accordance with acceptable standards of practice.

C. Special requirements for rural health clinics: Rural health clinics must provide basic laboratory services essential to the immediate diagnosis and treatment of the patient including:

(1) chemical examinations of urine by stick or tablet methods or both (including urine ketones).

(2) microscopic examination of urine sediment;

(3) hemoglobin or hematocrit;

(4) blood sugar;

(5) gram stain;

(6) examination of stool specimens for occult blood;

(7) pregnancy tests;

(8) primary culturing for transmittal to a certified laboratory;

(9) test for pinworms.

[8.370.18.72 NMAC - N, 7/1/2024]

8.370.18.73 RADIOLOGICAL SERVICES:

A. All authenticated radiological reports shall be filed in the patient's medical record.

B. Interpretations of x-rays shall be written or dictated and signed by qualified physician or other individual authorized by the medical director.

[8.370.18.73 NMAC - N, 7/1/2024]

8.370.18.74 PATIENT CARE FOR INFIRMARIES:

A. Each patient will have a hospital type bed complete with:

(1) mattress and water proof mattress cover with pad;

(2) pillow with pillow case;

(3) two sheets and blankets adequate for comfort.

B. Each bed will be provided with a bedside table.

C. Locker or closet will be provided for storage of patient's personal clothing.

D. Unless otherwise ordered by the patient's physician, each patient shall be provided with three nutritionally adequate meals each day and snacks as appropriate or ordered by the physician.

[8.370.18.74 NMAC - N, 7/1/2024]

8.370.18.75 RELATED REGULATIONS AND CODES: Facilities or agencies 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. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

[8.370.18.75 NMAC - N, 7/1/2024]

HISTORY OF 8.370.18 NMAC: RESERVED

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 19 REQUIREMENTS FOR INHOME AND INPATIENT HOSPICE CARE

8.370.19.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.19.1 NMAC - N, 7/1/2024]

8.370.19.2 SCOPE:

A. These regulations apply to any hospice facility licensed or required to be licensed pursuant to these regulations which provides inpatient hospice services on a 24 hour basis.

B. These regulations apply to any hospital, skilled nursing facility, or intermediate care facility which also provides hospice services and is licensed or required to be licensed to provide these services pursuant to these regulations.

C. These regulations apply to any agency licensed or required to be licensed which provides hospice services in the patient's own home.

[8.370.19.2 NMAC - N, 7/1/2024]

8.370.19.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978, as amended; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. 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.

[8.370.19.3 NMAC - N, 7/1/2024]

8.370.19.4 DURATION: Permanent.

[8.370.19.4 NMAC - N, 7/1/2024]

8.370.19.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.

[8.370.19.5 NMAC - N, 7/1/2024]

8.370.19.6 OBJECTIVE: The purpose of these regulations is:

A. Establish minimum standards for licensing of hospice facilities and agencies that provide inhome and inpatient hospice care.

B. To monitor hospice facilities and agencies providing inhome and inpatient hospice services with these regulations through surveys to identify any area which could be dangerous or harmful to the patients, family, or staff.

[8.370.19.6 NMAC - N, 7/1/2024]

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

A. "Administrator" means the person appointed by the governing body to be in charge of the day-to-day operation of a facility or agency providing hospice services.

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

C. "Bereavement" means a period of mourning following the death of a loved one.

D. "Certified" means that a determination has been made by the New Mexico health care authority that a health facility such as a hospital, skilled nursing facility or intermediate care facility is in compliance with Conditions of Participation and Conditions of Coverage under Title XVIII (Medicare) or Title XIX (Medicaid) of the United States federal Social Security Act.

E. "Dietitian" means a person eligible or required to be licensed under the New Mexico Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978.

F. "Exploitation" of a patient/client consists of the act or process, performed intentionally, knowingly, or recklessly, of using any patient/client/residents money or property, for another person's profit, advantage, or benefit. Exploitation includes but is not limited to:

- (1) manipulating the patient/client/ resident by whatever mechanism to give money or property to any agency staff or management member;
- (2) misappropriation or misuse of monies belonging to a patient/client/ resident or the unauthorized sale, transfer or use of a patient/client/residents property;
- (3) loans of any kind from patient/clients/resident to agency staff or management;
- (4) accepting monetary or other gifts from a patient/client/resident or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year; all gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient. Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.
- G. "Governing body"** means the person, persons, board of trustees, directors, or other body in which the final authority and responsibility is vested in determining, implementing, and monitoring policies governing the total operation of the hospice facility or agency providing hospice services.
- H. "Health certificate"** means a completed New Mexico health care authority approved health certificate form signed by a physician licensed in New Mexico or a public health nurse in one of the public health division health offices who is acting for the state tuberculosis control officer.
- I. "Hospice agency"** means an organization, company, profit or non-profit corporation or any other entity which provides hospice services in the patient's own home and is required to be licensed pursuant to these regulations.
- J. "Hospice facility"** means a building equipped and staffed to provide hospice services to patients and family on a 24 hour basis and is required to be licensed pursuant to these regulations.
- K. "Hospice services"** means a program of palliative and supportive services which provides physical, psychological, social and spiritual care for terminally ill patients and their family members.
- L. "Inhome care"** means hospice services delivered in a private home or alternative home site to a single patient on an intermittent basis.
- M. "Inpatient care"** means hospice services delivered to a patient who has been admitted to a hospice facility on a continuous 24 hour period.
- N. "License"** means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.
- O. "Licensee"** means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospice facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.
- P. "Licensing authority"** means the New Mexico health care authority.
- Q. "Medical director"** means a doctor of medicine or osteopathy who assumes overall responsibility for the medical component of a hospice facility or agency.
- R. "NMSA"** means the New Mexico Statutes Annotated 1978 compilation, and all the revisions and compilations thereof.
- S. "Physician"** means a person licensed to practice medicine or osteopathy by the New Mexico board of medical examiners, or the osteopathic medical examiners board.
- T. "Plan of correction"** means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.
- U. "Policy"** means a statement of principle that guides and determines present and future decisions and actions.
- V. "Procedure"** means the action(s) that must be taken in order to implement a policy.
- W. "Registered nurse"** means a person who holds a certificate of registration as a registered nurse under the Nursing Practice Act, Sections 61-3-1 to 61-3-30 NMSA 1978.
- X. "Short term inpatient care"** is care provided to a hospice patient on a short term basis, either in a hospital or skilled nursing facility for acute symptom control or in a skilled or intermediate care facility for respite for the usual caregiver.
- Y. "Social worker"** means a person required to be licensed under the Social Work Practice Act, Sections 61-31-1 through 61-31-25 NMSA 1978.
- Z. "Staff"** means the paid and volunteer workers supervised by the hospice facility or hospice agency administration.
- AA. "Terminally ill"** means a diagnosis by a physician with a prognosis that a patient has six months or less to live.
- BB. "Variance"** means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the

granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a hospice facility and is at the sole discretion of the licensing authority.

CC. "Waive/waivers" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of patients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
[8.370.19.7 NMAC - N, 7/1/2024]

8.370.19.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words "*shall*" or "*must*" or "*may*". "*Shall*" or "*must*" means mandatory. "*May*" means permissive. The use of the words "*adequate*", "*proper*", "*appropriate*" and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide hospice services to the public and are governed by these regulations.
[8.370.19.8 NMAC - N, 7/1/2024]

8.370.19.9 INITIAL APPLICATIONS:

- A. All initial applications shall be made on forms provided by the licensing authority.
 - B. Shall be fully completed.
 - C. Signed by the person who shall be the licensee.
 - D. And shall be notarized.
 - E. All initial applications shall be accompanied by a resume and three character references for the person in charge of the day-to-day operation of the hospice.
 - (1) References shall not be from a relative or employee.
 - (2) License fees are authorized by law, and will be payable to the extent, if any, set out by other licensing authority regulations.
- [8.370.19.9 NMAC - N, 7/1/2024]

8.370.19.10 INITIAL LICENSURE PROCEDURES: No license shall be issued without the following:

- A. Receipt of the application with all attachments listed in Section 9 of these regulations.
 - B. Survey conducted by the licensing authority.
- [8.370.19.10 NMAC - N, 7/1/2024]

8.370.19.11 INITIAL SURVEY: Upon receipt of a properly completed application and all required documentation an initial survey of the proposed hospice facility or agency will be scheduled by the licensing authority.
[8.370.19.11 NMAC - N, 7/1/2024]

8.370.19.12 ISSUANCE OF LICENSE: Upon completion of the initial survey and determination that the hospice facility or agency is in compliance with these regulations the licensing authority will issue a license.
[8.370.19.12 NMAC - N, 7/1/2024]

8.370.19.13 LICENSES:

- A. Annual license: An annual license is issued for a one year period to a hospice facility which has met all requirements of these regulations.
 - B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.
 - (1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.
 - (2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.
 - C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.
 - (1) Application must be on a form provided by the licensing authority.
 - (2) Application must be accompanied by the required fee for amended license.
 - (3) Application must be submitted within 10 working days of the change.
- [8.370.19.13 NMAC - N, 7/1/2024]

8.370.19.14 LICENSE RENEWAL:

A. Licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application and required fee prior to expiration of current license, the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these regulations.

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the hospice facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[8.370.19.14 NMAC - N, 7/1/2024]

8.370.19.15 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. the facility discontinues operation;

E. a facility wishing to continue operation as a licensed hospice facility under circumstances found in

Subsections A through D of 8.370.19.15 NMAC above must submit an application for initial licensure in accordance with 8.370.19.10 NMAC of these regulations, at least 30 days prior to the anticipated change.

[8.370.19.15 NMAC - N, 7/1/2024]

8.370.19.16 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, or revoked, or:

A. on the day a facility discontinues operation;

B. on the day a facility is sold, leased, or otherwise changes ownership or licensee;

C. on the day a facility changes location.

[8.370.19.16 NMAC - N, 7/1/2024]

8.370.19.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.19.17 NMAC - N, 7/1/2024]

8.370.19.18 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

A. failure to comply with any provision of these regulations;

B. failure to allow survey by authorized representatives of the licensing authority;

C. any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;

D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;

E. discovery of repeat violations of these regulations during surveys;

F. failure to provide the required care and services as outlined by these regulations for the patients receiving care at the hospice facility or from the hospice agency.

[8.370.19.18 NMAC - N, 7/1/2024]

8.370.19.19 HEARING PROCEDURES:

A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against a hospice facility as outlined in Section 17 and 18 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the adjudicatory hearing procedures will be furnished to a hospice facility or agency at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.
[8.370.19.19 NMAC - N, 7/1/2024]

8.370.19.20 GOVERNING BODY: A hospice must have a governing body or individual who assumes full legal responsibility for determining, implementing and monitoring policies governing the hospice's total operations. The governing body must also ensure that all services provided are consistent with accepted standards of practice. The governing body shall appoint an administrator to implement its policies and procedures.
[8.370.19.20 NMAC - N, 7/1/2024]

8.370.19.21 INTERDISCIPLINARY TEAM: The hospice shall establish an interdisciplinary team to provide or supervise the care and services offered by the hospice.

A. The hospice must have an interdisciplinary team that includes at least the following disciplines:
(1) a doctor of medicine or osteopathy;
(2) a registered nurse;
(3) a social worker;
(4) a pastoral or other counselor.

B. The interdisciplinary team is responsible for:
(1) establishment of the plan of care;
(2) provision or supervision of hospice care and services;
(3) review and revision, at least every two weeks (see 29.2) [now Subsection B of 8.370.19.29 NMAC], of the plan of care for each individual receiving hospice care;
(4) establishment of written policies governing the day-to-day provision of hospice care and services.

C. The hospice must designate a registered nurse to coordinate the overall plan of care for each patient.
[8.370.19.21 NMAC - N, 7/1/2024]

8.370.19.22 CARE SERVICES: A hospice must ensure that all services described below are provided directly by hospice staff, or under arrangements made by the hospice as specified in Section 23 of these regulations:

A. Nursing care provided by or under the supervision of a registered nurse. Nursing care must be available on call 24 hours a day, seven days each week;

B. Medical social services provided by a social worker;

C. Physician's services performed by a doctor of medicine or osteopathy;

D. Counseling services provided to the terminally ill individual and the family members or other persons caring for the individual. Bereavement counseling must be available for a 12 month period following the death of the patient.

E. Short term inpatient care provided to patients of a hospice agency in a facility licensed as a hospital or long term care facility. Services provided in an inpatient setting must conform to the written plan of care.

F. Volunteer services. The hospice facility or agency must have an ongoing program to recruit, train, utilize, and retain volunteer staff.

(1) Volunteers may be used in administration or direct patient care roles.

(2) Volunteers must work under the supervision of a designated hospice facility or agency

employee.

[8.370.19.22 NMAC - N, 7/1/2024]

8.370.19.23 ARRANGEMENTS FOR SERVICES: A hospice may arrange for another individual or entity to furnish services to the hospice's patients. Services provided under arrangement must meet the following standards:

A. The hospice shall have a written agreement for the provision of such services.

B. The hospice ensures that inpatient care is furnished only in a facility licensed as a hospital, skilled nursing facility (nursing home), or intermediate care facility. For inpatient care furnished under arrangements, the hospice must have an arrangement under which:

- (1) The hospice furnished to the inpatient provider, a copy of the individual's plan of care that specified the care that has been furnished.
- (2) The regimen described in the established plan of care is continued while the individual receives care from the inpatient provider.
- (3) All inpatient services and events (e.g. treatments, tests, consultations, evaluations, etc.) furnished by the inpatient provider are entered in the hospice's medical record.
- (4) The interdisciplinary team reviews the medical record to ensure conformance with the established plan of care.
- (5) A copy of the inpatient medical record and discharge summary is retained as part of the hospice medical record.

[8.370.19.23 NMAC - N, 7/1/2024]

8.370.19.24 ANNUAL REVIEW: A hospice must conduct an annual comprehensive self-assessment of the quality and appropriateness of care provided, including inpatient care. The findings are to be used by the hospice to correct identified problems and to revise hospice policies, if necessary. A mechanism must be established in writing for the collection of pertinent data to assist in the evaluation process. The data to be considered shall include, but are not limited to:

- A. the number of patients receiving each service offered;
- B. the number of patient visits;
- C. reasons for discharge;
- D. a breakdown by diagnoses;
- E. any sources of referral;
- F. the number of patients not accepted and the reasons therefor;
- G. the total staff days, hours, or visits for each service offered.

[8.370.19.24 NMAC - N, 7/1/2024]

8.370.19.25 MEDICAL RECORDS: In accordance with accepted principles of practice, the hospice must establish and maintain a clinical record for every individual receiving care and services. The record must be complete, promptly and accurately documented, readily accessible to staff, and systematically organized to facilitate retrieval.

A. Each clinical record is a comprehensive and chronological compilation of information. Entries are made for all services provided. Entries are made and signed by the staff providing the services. The record includes all services whether furnished directly or under arrangements made by the hospice. Each individual's record shall contain:

- (1) the initial and subsequent assessments;
- (2) the plan of care;
- (3) identification data;
- (4) consent, authorization and election forms;
- (5) pertinent medical history;
- (6) complete documentation of all services and events (including evaluations, treatments, progress notes, etc.).

B. The hospice must safeguard the clinical record against loss, destruction, and unauthorized use.

C. Clinical records shall be retained on each patient for at least ten (10) years after hospice services have ceased. Clinical records shall be maintained for the requisite period even if the hospice discontinues operations. If the patient is transferred to another health facility, a copy of the record must be made available to the receiving facility. Consultation shall be provided to the receiving facility prior to transfer.

[8.370.19.25 NMAC - N, 7/1/2024]

8.370.19.26 STAFF TRAINING: A hospice must provide an ongoing program of employee psychological support, and continuing education of its staff in hospice care. At least 12 clock hours of training per year in hospice care shall be provided.

[8.370.19.26 NMAC - N, 7/1/2024]

8.370.19.27 HEALTH CERTIFICATE: Prior to employment, any paid volunteer staff working with patients shall present a certificate from a licensed physician that the person is free from tuberculosis. All certificates shall be filed in the hospice office and be available for inspection.

[8.370.19.27 NMAC - N, 7/1/2024]

8.370.19.28 STAFF SUPERVISION: A hospice shall ensure that licensed professional staff are supervised as required under the relevant professional licensing act. All other staff including volunteers must be adequately supervised.

[8.370.19.28 NMAC - N, 7/1/2024]

8.370.19.29 PLAN OF CARE: A written plan of care must be established and maintained for each individual admitted to a hospice program, and the care provided to an individual must be in accordance with the plan.

A. A plan must be established by the attending physician and interdisciplinary team within five days of admission to the program. The signed orders, and the plan, shall be incorporated within the hospice medical record within 14 days of admission.

B. The plan must be reviewed and updated, at least every two weeks, by the interdisciplinary team. These reviews must be documented, and plan changes signed by the attending physician or the medical director as the attending physician's designee.

C. The plan must be based upon assessment of the individual's and family's needs and identification of the services including the management of discomfort and symptom relief and describing any isolation techniques for routine or specialized treatments.

[8.370.19.29 NMAC - N, 7/1/2024]

8.370.19.30 PATIENT RIGHTS: All hospice facilities and agencies licensed pursuant to these regulations shall support, protect and enhance the rights of patients.

[8.370.19.30 NMAC - N, 7/1/2024]

8.370.19.31 INFORMED CONSENT: Each hospice facility or agency must obtain from each patient a signed informed consent form. The informed consent form shall specify the type of hospice care and services that will be provided during the course of illness.

[8.370.19.31 NMAC - N, 7/1/2024]

8.370.19.32 AVAILABILITY OF SUPPLIES AND APPLIANCES: Medical supplies and appliances, including drugs and biologicals, must be available as needed for the palliation and management of the terminal illness, although the hospice need not supply these directly.

[8.370.19.32 NMAC - N, 7/1/2024]

8.370.19.33 SERVICES/INDIVIDUAL CARE:

A. Nursing services: The hospice facility shall provide 24 hour nursing services which are sufficient to meet the total nursing needs of the patient and which are in accordance with each patient's plan of care.

B. Treatments: Each patient shall receive treatments, including medications and diet, as prescribed, and shall be kept clean, well-groomed, comfortable and protected from accident, injury and infection.

C. Palliative care: Each patient shall be provided necessary palliative procedures to meet individual needs as defined in the plan of care.

[8.370.19.33 NMAC - N, 7/1/2024]

8.370.19.34 PHARMACEUTICAL SERVICES: Each hospice facility shall maintain a pharmaceutical service that is conducted in accordance with current standards of practice and all applicable laws and regulations:

A. A pharmaceutical service shall be directed by a licensed pharmacist.

B. The scope of pharmaceutical services shall be consistent with the drug therapy needs of the patients as determined by the physician.

C. The pharmacist must develop policies and procedures for ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals.

[8.370.19.34 NMAC - N, 7/1/2024]

8.370.19.35 MEDICATION ADMINISTRATION: Medications can only be administered by the following individuals:

- A. a licensed nurse or physician; or
- B. a patient on order of the physician; or
- C. a licensed respiratory therapist for drug administration during respiratory therapy.

[8.370.19.35 NMAC - N, 7/1/2024]

8.370.19.36 DIETARY SERVICES: The hospice facility shall provide or contract for a dietary service which meets the nutritional needs of each client.

- A. Supervision of the dietary services shall be provided by:
 - (1) a dietitian; or
 - (2) a staff person experienced in food service who shall receive consultation from a dietitian.
- B. Other staff requirements: There shall be sufficient staff on duty to meet the nutritional needs of the patients.
- C. Meal services: The hospice facility must:
 - (1) Serve at least three meals or their equivalent each day at regular times with no more than 14 hours between supper and breakfast.
 - (2) Snacks of nourishing quality shall be available as needed by patients.
 - (3) To the extent medically possible, menus will be planned in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.

(a) For patients experiencing difficulties in eating, every effort will be made to develop menus tolerated by the patient and served at intervals tolerated by the patient.

(b) All medically prescribed special diets shall be ordered by a physician and shall have menus developed by a professional dietitian.

[8.370.19.36 NMAC - N, 7/1/2024]

8.370.19.37 SANITATION:

- A. Storage and handling of food: All food shall be purchased, stored, prepared, distributed and served under sanitary conditions which prevent contamination.
- B. All equipment, appliances and utensils used in preparation or serving of food shall be maintained in a functional, sanitary and safe condition.
- C. The hospice facility will ensure that requirements of the environmental health authority having jurisdiction are met. The dietary area will be inspected by the environmental health authority and the inspection results will be posted in the dietary area. Exception: Hospice facilities with four or less patients will be exempt from this requirement if the environmental health authority waives this requirement and a letter of the exemption is on file with the health facility licensing and certification bureau.

[8.370.19.37 NMAC - N, 7/1/2024]

8.370.19.38 INFECTION CONTROL: The hospice facility shall develop and implement an infection control program which shall have as its purpose the protection of the patient, family, and facility personnel from infections associated with patients admitted to home care, inpatient respite, or day care programs.

- A. The hospice facility shall develop policies and procedures governing the infection control program.
 - (1) The hospice facility shall develop a procedure to assure the infection control program is monitored on a monthly basis.
 - (2) The hospice facility shall isolate only those patients with diseases that are considered to be at a high risk for transmission. Where applicable, isolation rooms shall have access to private bathing, toileting, and handwashing facilities. The room shall be ventilated directly to the outside (there shall be no recirculation of the air from any isolation room to any other room).
- B. All biohazardous waste or infectious material must be disposed of in accordance with:
 - (1) center for disease control currently accepted guidelines for universal precautions.
 - (2) occupational safety and health administration requirements in 29 Code of Federal Regulations 1910.
 - (3) state Environment Improvement Act requirements.

(4) center of disease control currently accepted recommended procedures for body substance isolation.
[8.370.19.38 NMAC - N, 7/1/2024]

8.370.19.39 GENERAL BUILDING REQUIREMENTS: The building of the hospice facility shall be constructed and maintained so that it is functional for the delivery of services appropriate to the needs of the hospice patient.

- A. The hospice facility shall meet all state and local laws, regulations and zoning requirements.
 - B. The hospice facility shall meet the requirements of the latest edition of the *national fire protection association, life safety code handbook* adopted by the New Mexico state fire marshal.
 - C. The hospice facility must meet the requirements of the latest edition of the Uniform Building Code enacted by the international conference of building officials, adopted by the New Mexico construction industries division. Exception: Hospice facilities housing four or fewer patients will be required to meet residential occupancy building requirements.
- [8.370.19.39 NMAC - N, 7/1/2024]

8.370.19.40 PATIENT LIVING AREA:

- A. Rooms:
 - (1) Each patient room shall be directly accessible from a corridor, activity room, or common area.
 - (2) Each sleeping room shall have a clear window or relite area of approximately one-tenth of the usable floor area providing for patient visibility of the out-of-doors.
 - (a) Windows shall be at least 24 feet from other buildings or the opposite wall of a court or at least 10 feet from a property line, except on the street side.
 - (b) Outside window walls shall be at least eight feet from an outside public walkway.
 - (c) Operable windows or openings that serve for ventilation shall be provided with proper screening.
 - (3) No room more than two feet, six inches below grade shall be used for the housing of patients. Private patient rooms have at least 100 square feet of usable floor space. Multi-patient rooms shall provide not less than 80 square feet of usable floor area per bed. There shall not be less than seven and one-half foot ceiling height over the usable floor area.
 - (4) Each patient shall be provided an enclosed space suitable for hanging garments and storage of personal belongings within their room or in an area nearby patient rooms. There shall be a provision for secure storage of patient valuables.
 - (5) Each patient shall be provided a bed appropriate to the special needs and size of the patient with a cleanable mattress which is in good repair and a cleanable or disposable pillow.
 - (6) Room furnishing shall be provided and maintained in a clean and safe condition.
 - (7) Patient beds shall be spaced so that they do not interfere with entrance, exit or traffic flow within the room. Patient rooms shall be of a dimension and conformation allowing not less than three feet between beds.
 - B. The hospice facility shall endeavor to provide decor which is homelike in design and function.
- [8.370.19.40 NMAC - N, 7/1/2024]

8.370.19.41 TOILET AND BATHING AREAS:

- A. There shall be, minimally, one bathing facility for each six patients within the inpatient hospice facility, or major fraction thereof (tub, shower, portable shower, portable tub or equivalent).
 - B. Toilets shall be in a ratio of at least one toilet for every four patients, or major fraction thereof.
 - C. Lavatories shall be provided in a ratio of at least one lavatory for each toilet located in toilet rooms(s). Lavatories shall be provided in a ratio of at least one per four patients. Lavatories shall be located at the entry of patient rooms used for isolation.
 - D. At least one toilet and lavatory shall be provided on each floor for use by those who are not patients.
- [8.370.19.41 NMAC - N, 7/1/2024]

8.370.19.42 CARPETING: Carpets may be used in patient and non-patient occupied areas with the following exceptions: toilet rooms, bathing facilities, isolation rooms, laundry rooms, utility rooms, examination or treatment rooms, housekeeping closets:

- A. Specifications for acceptable carpeting include:
 - (1) carpet material which meets the standards of the state fire marshal and is easily cleanable;
 - (2) pile tufts shall be a minimum of 64 per square inch or equivalent density;
 - (3) rows shall be a minimum of eight per square inch or equivalent density.
- B. Installation of carpet material:
 - (1) Pad and carpet shall be installed according to manufacturer recommendations;
 - (2) Edges of carpet shall be covered and cove or base shoe used at all wall junctures. Seams

shall be sewn or bonded together with manufacturer recommended cement.

[8.370.19.42 NMAC - N, 7/1/2024]

8.370.19.43 SPECIAL AREAS:

- A. There shall be provision for adequate personal privacy for personal and private activities such as toileting, bathing, dressing, sleeping, communicating with family and time alone.
- B. There shall be adequate visiting and lounge areas. A ratio of 15 square feet per patient bed and not less than 180 square feet per facility is required, excluding hallways and corridors.
- C. There shall be adequate meeting rooms and office areas for use by the interdisciplinary care team. Other rooms or areas may serve as meeting rooms provided confidentiality is maintained.
- D. The hospice facility must have:
 - (1) Physical space for private patient/family visits;
 - (2) Accommodations for family members to remain with the patient throughout the night;
 - (3) Accommodations for family privacy after a patient's death.
- E. A hospice facility will designate a room exclusively for a nebulizer treatment room (if applicable). The room will have a minimum usable floor area of 100 square feet. The nebulizer room will be ventilated directly to the outside of the building. (There shall be no recirculation of the air from the nebulizer treatment room to other rooms of the facility.)

[8.370.19.43 NMAC - N, 7/1/2024]

8.370.19.44 LINEN AND LAUNDRY: The hospice facility shall have available at all times a quantity of linen essential for proper care and comfort of patients. Linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection.

- A. A safe and adequate clean linen storage area shall be provided with a supply of clean linen available for patient use.
- B. Any laundry done in the facility shall be done in a laundry room separate from the kitchen, dining area, clean and soiled storage and handling areas.
- C. The soiled laundry storage and sorting area shall be in a well ventilated area separate from the clean linen handling area, clean storage area, and food preparation areas. If linen or laundry is washed on the premises, an adequate supply of hot water shall be available to provide water at a minimum of 160 degrees fahrenheit in the washing machine.

[8.370.19.44 NMAC - N, 7/1/2024]

8.370.19.45 UTILITY AND STORAGE FACILITIES:

- A. Sufficient clean storage and handling room(s) shall provide closed storage for clean and sterile supplies and equipment.
- B. Washing, disinfection, storage and other handling of medical and nursing supplies and equipment shall be accomplished in a manner which ensures segregation of clean and sterile supplies and equipment from those that are contaminated.
- C. Soiled utility room(s) shall provide:
 - (1) clinic service sink, siphon jet or equivalent;
 - (2) space for soiled linen or laundry containers;
 - (3) counter top, double compartment sink, and goose-neck spout or equivalent;
 - (4) storage for cleaning supplies and equipment.

[8.370.19.45 NMAC - N, 7/1/2024]

8.370.19.46 HOUSEKEEPING:

- A.** Adequate and clean housekeeping equipment shall be maintained.
 - B.** At least one service sink and housekeeping closet or enclosed cabinet equipped with shelving shall be provided in a suitable setting within the facility or combined with a soiled utility room. A clinic service sink may be considered equivalent to a service sink.
- [8.370.19.46 NMAC - N, 7/1/2024]

8.370.19.47 COMMUNICATIONS:

- A.** There shall be a telephone readily available for patients to make and receive confidential calls.
 - B.** There shall be at least one "non-pay" telephone per floor readily accessible in event of fire and other emergencies.
 - C.** A nurse call system shall be provided at each bed and in each toilet room and bathing facility.
- [8.370.19.47 NMAC - N, 7/1/2024]

8.370.19.48 WATER SUPPLY AND PLUMBING:

The water supply and the waste and drainage system of the hospice shall be maintained to avoid unsanitary conditions.

- A.** There shall be an adequate supply of hot and cold running water under pressure.
 - B.** Hot water shall be of a safe temperature at all fixtures used by patients. Hot water temperatures at bathing fixtures used by patients shall be automatically regulated so as not to exceed 110 degrees fahrenheit.
 - C.** There shall be devices to prevent backflow into the water supply system.
- [8.370.19.48 NMAC - N, 7/1/2024]

8.370.19.49 HEATING: The heating system in all patient areas shall be operated and maintained to provide a comfortable temperature of between 70 degrees and 75 degrees fahrenheit.

[8.370.19.49 NMAC - N, 7/1/2024]

8.370.19.50 VENTILATION: There shall be ventilation for all rooms used by patients and personnel sufficient to remove any objectionable odors, excess heat, and condensation. Inside rooms, including toilets, bath rooms, smoking rooms, and other rooms in which excessive moisture, odors or contaminants originate shall be provided with mechanical exhaust ventilation.

[8.370.19.50 NMAC - N, 7/1/2024]

8.370.19.51 LIGHTING: Adequate lighting appropriate to the function shall be provided in all usable areas of the hospice.

- A.** Appropriate, adequate, and safe electrical service shall be provided.
 - B.** Adequate emergency lighting for means of egress, (battery operated acceptable) shall be provided.
 - C.** Adequate emergency power shall be available, (battery operated acceptable).
- [8.370.19.51 NMAC - N, 7/1/2024]

8.370.19.52 HANDICAP ACCESS: The hospice facility shall be accessible and equipped to accommodate physically handicapped individuals.

[8.370.19.52 NMAC - N, 7/1/2024]

8.370.19.53 DISASTER PREPAREDNESS: The hospice facility shall have an acceptable plan, periodically rehearsed with staff, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (patients and personnel) arising from such disaster.

[8.370.19.53 NMAC - N, 7/1/2024]

8.370.19.54 RELATED REGULATIONS AND CODES: Hospice facilities providing inhome and inpatient hospice services 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.** Health Facility Licensure Fees and Procedures, New Mexico health care authority, 8.370.3 NMAC.
- B.** Health Facility Sanctions and Civil Monetary Penalties, New Mexico health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
[8.370.19.54 NMAC - N, 7/1/2024]

HISTORY OF 8.370.19 NMAC: RESERVED

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 20 REQUIREMENTS FOR ADULT DAY CARE FACILITIES

8.370.20.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.20.1 NMAC - N, 7/01/2024]

8.370.20.2 SCOPE: These regulations apply to public or private facilities that provide care, services, and supervision for three or more non-resident adults for less than 24 hours of any day, and come within the statutory definition of "health facilities" set out in Subsection D of Section 24-1-2 of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority.
[8.370.20.2 NMAC - N, 7/01/2024]

8.370.20.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of adult day care facilities have been promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. 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.
[8.370.20.3 NMAC - N, 7/01/2024]

8.370.20.4 DURATION: Permanent.
[8.370.20.4 NMAC - N, 7/01/2024]

8.370.20.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.20.5 NMAC - N, 7/01/2024]

8.370.20.6 OBJECTIVE: The purpose of these regulations is to:

- A.** establish minimum standards for licensing facilities providing day care to adults, in order to ensure that participants receive safe and adequate services and that the health, safety and welfare of participants and employees are protected;
- B.** direct such facilities to provide and organize program of services in the community group setting for the purpose of supporting adult's personal independence, and promoting their social, physical, and emotional well-being;
- C.** establish standards for the construction, maintenance and operation of such facilities;
- D.** monitor facility compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to the health, safety, and welfare of the participants and staff.

[8.370.20.6 NMAC - N, 7/01/2024]

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

- A.** "**Abuse**" means any single or repeated act of force, violence, harassment, deprivation, neglect or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.
- B.** "**Adult**" means an individual eighteen years of age or older, and or who otherwise qualifies as an adult under New Mexico law, and who is elderly, disabled or handicapped person having impairments which prevents the person from living independently without supportive services.
- C.** "**Adult day care center**" means a commercial building licensed pursuant to these regulations, where care, services, and supervision are provided to adults.
- D.** "**Adult day care home**" means a private residence licensed pursuant to these regulations where care, services and supervision are provided to adults.
- E.** "**Ambulatory**" means a person who is fully mobile and does not need the continuing help of a person or object for support (except a walking cane).
- F.** "**Applicant**" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

- G.** "**Capacity**" means the maximum number of participants allowed to be cared for at any one time in the facility.
- H.** "**Deficiencies**" means violations of, or failure to comply with, these regulations.
- I.** "**Director**" means the person who is in charge of the day to day operation and program of an adult day care center.
- J.** "**Dropin**" means an adult who attends the facility on an occasional or unscheduled basis.
- K.** "**Facility**" means an private residence or a commercial building licensed pursuant to these regulations where care, services, and supervision are provided to adults.
- L.** "**Governing body**" means the individual, agency, group or corporation appointed, elected or otherwise designated in which the ultimate responsibility and authority for the conduct of the facility is vested.
- M.** "**Guardian**" means one who has the legal responsibility for the care of a person.
- N.** "**Imminent danger**" means a danger which could reasonably be expected to cause death or serious physical harm or illness to participants or staff.
- O.** "**License**" means the document issued by the authority which constitutes the authority to provide services included within the scope of this rule.
- P.** "**Licensee**" means the person(s) who, or organization which, has an ownership leasehold, or similar interest in the adult day care facility and in whose name a license for a home health agency has been issued and who is legally responsible for compliance with these regulations.
- Q.** "**Maintenance**" means the care of building(s) by keeping them in a repaired and safe condition and the grounds in a safe, sanitary and presentable condition.
- R.** "**Mobile non-ambulatory**" means unable to walk without assistance, but able to move from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.
- S.** "**NMSA**" means the New Mexico Statutes Annotated, 1978 compilation and all the revisions and compilations thereof.
- T.** "**Participant**" means a person enrolled in an adult day care facility.
- U.** "**Plan of correction**" means the plan submitted by the licensee, applicant, or operator addressing how and when deficiencies identified at time of a survey will be corrected.
- V.** "**Policy**" means a statement of principle that guides and determines present and future decisions and actions.
- W.** "**Premises**" means all parts of the buildings, grounds, equipment and vehicles of a facility licensed pursuant to these regulations.
- X.** "**Private residence**" means the dwelling, where the operator resides on a 24 hour basis, to include provisions for sleeping, eating, bathing, cooking, etc.
- Y.** "**Relative**" means husband, wife, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, mother-in-law, grandfather, grandmother, half-brothers, includes adoptive, natural and foster parents, grandparents or adult children.
- Z.** "**Respite care**" accommodates the family or guardian by providing an alternate place for the participant to stay when the family or guardian needs a rest from the everyday physical and emotional strain of caring for the participant.
- AA.** "**Staff member**" means any person who provides direct care, services and supervision to the participants in a facility licensed pursuant to these regulations.
- BB.** "**Supervision**" means the direct observation and guidance of adults at all times and requires being physically present with them.
- CC.** "**Survey**" means an entry into, and examination of, the facility's premises, records and staff interviews.
- DD.** "**U/L approved**" means approved for safety by the national underwriters laboratory.
- EE.** "**Unattended**" means a caregiver is not physically present with an adult under care.
- FF.** "**Variance**" means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time for facilities which were in existence at the time these regulations were promulgated, new facilities in existing construction, or for a new or innovative service where the granting of a variance will not create a danger to the health, safety and welfare of adults or staff of a facility, and is at the sole discretion of the licensing authority.
- GG.** "**Waive/waiver**" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety or welfare of the adults and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
- [8.370.20.7 NMAC - N, 7/01/2024]

8.370.20.8 TYPES OF FACILITIES AND SCOPE OF SERVICES:

A. Adult day care center is a facility required to be licensed pursuant to these regulations which provides care, services and supervision to three or more adults, who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day. An adult day care center may be located in any building which meets the applicable state and local building and safety codes.

B. Adult day care home is private residence required to be licensed pursuant to these regulations which provides care, services and supervision to at least three adults but not more than five adults who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day.

C. New or innovative programs for providing adult day care: Professional organizations which have demonstrated a need for new or innovative services for day care for three or more adults with special needs which do not fit into one of the types of facilities outlined in Subsections A and B of 8.370.20.8 NMAC above may be licensed at the sole discretion of the licensing authority, if all requirements outlined in section nine are met.

D. These facilities must be able to provide oversight to the participants such as reminding them of medications and appointments, providing meals and monitoring their activities while on the premises of the facility. Hours of operation are limited from 6 a.m. to 9 p.m.

E. Participants must be able to ambulate on their own or in a wheelchair with minimal assistance. They must be ambulatory or mobile non-ambulatory.

F. In the event federal regulations are promulgated to govern health-related adult day care ("the medical model"), these regulations shall continue to apply except to the extent a provision of these regulations is in conflict with the federal, in which case the federal regulation shall control.

[8.370.20.8 NMAC - N, 7/01/2024]

8.370.20.9 INITIAL LICENSURE PROCEDURES: To obtain an initial license for an adult day care facility pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations must be thoroughly understood by the applicant and used as reference prior to applying for licensure.

B. Application form: Will be provided by the licensing authority.

- (1) All information requested on the application must be provided and complete.
- (2) Must be printed or typed.
- (3) Must be dated and signed.
- (4) Must be notarized.

C. Fees: All applications for license must be accompanied by the required fee.

- (1) Current fee schedules will be provided by the licensing authority.
- (2) Fees must be in the form of a check or money order made payable to the state of New Mexico.
- (3) Fees are not refundable.

D. Floor plans: All applications for initial licensure must be accompanied by a set of floor plans for the facility.

(1) Floor plans must be of professional quality, be on substantial paper of at least 18 inches by 24 inches, and be drawn to an accurate scale of one-quarter of an inch to one inch.

(2) Floor plans must include at least the following information:

- (a) proposed use of each room i.e., staff office, toilets, activity room(s), kitchen, etc.;
- (b) interior dimensions of all rooms must be included on floor plans;
- (c) floor plans must include one building or wall section showing exterior and interior wall construction; section must include floor, wall, ceiling and the finishes, i.e., carpet, tile, gyp board with paint, wood paneling, etc.;
- (d) door types, swing, and sized of all doors, i.e., solid core, hollow core, three feet by six feet eight inches;
- (e) if building is air conditioned;
- (f) all sinks, tubs, showers, and toilets;
- (g) size, type, sill height, and openable area of windows indicated;
- (h) any level changes within the building i.e., sunken activity room, ramps, steps, etc.;

(i) the location of the building on a site/plot plan to determine surrounding conditions, including all steps, ramps, parking, walks, and any permanent structures;

(j) if building is new construction, renovated, or an addition, indicate both the existing and new construction on the floor plans.

(3) Floor plans will be reviewed by the licensing authority for compliance with current building and fire codes, and comments will be sent to the applicant specifying any needed changes or requesting any additional information. Exception: Adult day care homes are not required to submit floor plans.

E. Zoning and building approvals:

(1) All initial applications must be accompanied with original written zoning approval from the appropriate authority, city, county, or municipality.

(2) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority, city, county, or municipality. Exception: Adult day care homes are not required to submit building approval.

F. Fire authority approval: All initial applications must be accompanied by original written approval of the appropriate fire prevention authority having jurisdiction: i.e., city, county, or state fire marshal's office. Exception: Adult day care homes are not required to submit fire authority approval.

G. New Mexico environment department approval: All initial applications must be accompanied by original written approval of the New Mexico environment department for the following:

(1) kitchen approval if meals are prepared or served in the facility;

(2) private water supply, if applicable;

(3) private waste or sewage disposal, if applicable;

(4) exception: adult day care homes are not required to submit New Mexico environment department approval.

H. Health certificates: Copies of health certificates of the licensee, caregivers, and staff must accompany all initial application.

I. Custodial drug permit: Any facility licensed pursuant to these regulations which supervises self-administration of medication for the participants or safeguards medication for participants, must have an appropriate custodial drug permit as determined by the state board of pharmacy.

J. A list of equipment for adult activities that the facility will provide on the first day of operation must accompany all initial applications.

K. A description of the facility's proposed activities and daily schedule must accompany all initial applications.

L. Initial survey: An initial survey of the proposed facility will be scheduled by the licensing authority upon receipt of a properly completed application with all supporting documentation, as outlined in these regulations.

M. Issuance of license: A license will be issued by the licensing authority if the initial survey determines that the facility is in compliance with these regulations.

[8.370.20.9 NMAC - N, 7/01/2024]

8.370.20.10 SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE ADULT DAY CARE SERVICES:

A. Applicants for new or innovative adult day care services which do not fit into any one of the types of facilities as outlined in Subsections A and B of 8.370.20.8 NMAC must submit a proposal to the licensing authority for review and approval. The proposal must include the following:

(1) statistical data supporting the need for a special type of adult day care service;

(2) explanation of the special problems and needs of the adults who will be receiving these services;

(3) identify portions of these regulations which would be in conflict with the proposed facility;

(4) how the proposed facility would resolve these conflicts with alternative measures which would meet the intent of these regulations, i.e., increased staffing or fire and safety precautions.

B. If, at its sole discretion, the licensing authority approves the proposal a license may be granted with variances for those portions of the regulations where the program would be in conflict.

[8.370.20.10 NMAC - N, 7/01/2024]

8.370.20.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to a facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5, NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, when there is a change of name of the facility, or if a change of capacity is sought.

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for an amended license.

(3) Application must be submitted within 10 working days of the change.

(4) Application for increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine if the facility meets all applicable codes and regulations. A facility must not accept additional participants or change the layout of the facility until the licensing authority has approved and issued the amended license.

[8.370.20.11 NMAC - N, 7/01/2024]

8.370.20.12 LICENSE RENEWAL:

A. Licensee must submit a notarized renewal application on forms provided by the licensing authority, along with the required fee, at least 30 days prior to expiration of the current license.

B. Upon receipt of a notarized renewal application, required fee, and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the facility is in compliance with these regulations.

C. If a licensee fails to submit a notarized renewal application, with the required fee, before the current license expires, the licensee must submit an initial license application, and the facility shall cease operations until initial licensure procedures are completed.

[8.370.20.12 NMAC - N, 7/01/2024]

8.370.20.13 POSTING OF LICENSE: The facility license shall be posted in a conspicuous place on the licensed premises, in an area visible to staff and visitors.

[8.370.20.13 NMAC - N, 7/01/2024]

8.370.20.14 NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A license shall not be transferred by assignment or otherwise to other persons or location. The license shall be void and must be returned to the Licensing Authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. the facility discontinues operations;

E. a facility wishing to continue operation as a licensed facility under circumstances Subsections A through D of 8.370.20.14 NMAC above shall submit an application for initial licensure in accordance with Section 8 of these regulations at least 30 days prior to the anticipated change.

[8.370.20.14 NMAC - N, 7/01/2024]

8.370.20.15 AUTOMATIC EXPIRATION OF LICENSE: A license shall automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended or revoked, or:

A. on the day a facility discontinues operation.

B. on the day a facility is sold, leased, or otherwise changes ownership or licensee.

C. on the day a facility changes location.

[8.370.20.15 NMAC - N, 7/01/2024]

8.370.20.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may

suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.20.16 NMAC - N, 7/01/2024]

8.370.20.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A. failure to comply with any provision of these regulations.
- B. failure to allow survey by authorized representatives of the licensing authority.
- C. any person active in the operation of a facility licensed pursuant to these regulations, to include all adults and teenaged children living in an adult day care home shall not be under the influence of alcohol or narcotics or convicted of a felony.
- D. misrepresentation or falsification of any information on application forms or other documents provided by the licensing authority.
- E. discovery of repeat violations of these regulations during surveys.
- F. hiring of or continuing to employ any person whose health or conduct impairs their ability to properly protect the health, safety, and welfare of the participants.
- G. exceeding licensed capacity.

[8.370.20.17 NMAC - N, 7/01/2024]

8.370.20.18 HEARING PROCEDURES:

A. Hearing procedures for adverse action initiated by the licensing authority against a facility license as outlined in Sections 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations will be furnished to a facility at the time an adverse action is initiated against its license by the licensing authority, or a copy may be requested at any time by contacting the licensing authority.

[8.370.20.18 NMAC - N, 7/01/2024]

8.370.20.19 NEW FACILITY: A new facility may be located in an existing building or a newly constructed building:

A. If opened in an existing building, a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in these regulations, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

B. A new facility opened in a newly constructed building shall meet all of the requirements of these regulations.

[8.370.20.19 NMAC - N, 7/01/2024]

8.370.20.20 FACILITY SURVEYS:

A. Surveys are meant to be constructive and informative to the licensee and staff of a facility, to insure that the facility meets the requirements of these regulations, and to identify any area which could be dangerous or harmful to the health, safety, and welfare of the participants and staff.

B. A survey will be conducted at least once annually in each facility licensed pursuant to these regulations by personnel of the licensing authority using these regulations as criteria. Additional surveys or visits may be made to assist the facility with technical advice, to check on progress in correction of violations found on previous survey, or to investigate complaints.

C. At the completion of a survey, the findings shall be discussed with the licensee or representative and a plan of correction will be requested. If a plan of correction is not given at the time of survey the licensee, director or operator must submit within 10 working days after receiving the official written report of survey, a plan of correction to the licensing authority for violations found during the survey. The plan of correction must give specifics as to how the violation will be corrected and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.

E. Application for licensure, whether initial or renewal, shall constitute permission for entry into and survey of a facility by authorized licensing authority representative during the pendency of the application and, if licensed, during the licensure period.

F. Surveyors have the right to enter upon and into the premises of any facility which is licensed or required to be licensed, whether or not an application for licensure has been made, at any reasonable time for the purpose of determining the state of compliance with these regulations.

G. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility.

H. At all times, there must be a person present in the facility who can represent the licensee or director for survey purposes. This person must be able to provide access to all records and keys to any locked area. [8.370.20.20 NMAC - N, 7/01/2024]

8.370.20.21 COMPLAINT PROCEDURES:

A. Submission of complaints: Complaints regarding any facility licensed or required to be licensed pursuant to these regulations should be submitted to the licensing authority.

(1) Complaints should be submitted in writing and signed by the complainant.

(2) Complainants telephoning the licensing authority should identify themselves and be able to provide necessary information needed by the licensing authority in order to document the complaint.

B. Written acknowledgement: The licensing authority shall, whenever possible acknowledge in writing, within 10 working days, receipt of all complaints.

C. Initiation of investigation: If it is probable that the health, safety, and welfare of an adult or adults is in jeopardy, the complaint will be investigated promptly. Otherwise the licensing authority shall initiate an investigation within 20 working days from receipt of a complaint.

D. Results of investigation: Both the licensee of the facility against whom a complaint is lodged, and the complainant, shall be notified in writing of the results of the investigation.

E. Anonymity may be requested by the complainant but cannot be assured.

F. Action by the licensing authority:

(1) Complaint unsubstantiated: A complaint which is unsubstantiated by the licensing authority is not made part of the facility file and the licensing authority takes no further action.

(2) Substantiated complaint: The licensing authority may take the following actions if a complaint is substantiated:

(a) Require the facility to submit a written plan of correction to the licensing authority if violations of these regulations are found.

(b) Other administrative sanctions such as the suspension or revocation of a license, or the filing of criminal charges, or a civil action may be instituted by the licensing authority if deemed appropriate. [8.370.20.21 NMAC - N, 7/01/2024]

8.370.20.22 CAPACITY OF A FACILITY: The capacity of a facility licensed pursuant to these regulations is determined by the following:

A. By the type of facility:

(1) An adult day care center may be licensed for at least three adults but is not limited as to maximum number of participants. Adult relatives of staff and volunteers receiving care in the facility must be counted in the licensed capacity.

(2) An adult day care home may be licensed for at least three adults but not more than five (5) participants. The licensee's own adult relatives under the care of the facility must be counted in the licensed capacity when present in the facility.

B. By useable space for activities:

(1) Adult day care centers and adult day care homes are required to have 40 square feet of activity area for each adult included in the licensed capacity.

(2) The capacity as reflected on the license issued to a facility licensed pursuant to these regulations must not be exceeded at any time.

[8.370.20.22 NMAC - N, 7/01/2024]

8.370.20.23 REPORTING OF INCIDENTS: All facilities licensed pursuant to these regulations shall report to the licensing authority any incident or unusual occurrence which has, or could threaten the health, safety, and welfare of the participants or staff, such as, but not limited to:

- A. lost or missing participant;
- B. sexual or physical abuse of a participant;
- C. accidents or injuries requiring medical care;
- D. fire, flood or other natural disaster which creates structural damages to the facility or poses health hazards.
- E. notifiable diseases.

[8.370.20.23 NMAC - N, 7/01/2024]

8.370.20.24 GENERAL RECORDS: The following records must be kept on file in the facility and available for inspection by the licensing authority during survey:

- A. a copy of the report of the latest survey conducted by the licensing authority and a copy of any variances granted by it.
- B. record of fire drills held.
- C. a copy of the latest fire prevention inspection by the authority having jurisdiction. Exception: Adult day care homes are not required to have fire authority inspections.
- D. a copy of the latest environmental improvement division inspection of the kitchen if meals are served in the facility. Exception: Adult day care homes are not required to have environmental improvement division approvals of kitchen.
- E. initial and periodic inspection reports from environmental improvement division for those facilities which have private water, sewage, or waste disposal systems, when applicable.
- F. documentation of staff training as required by Section 58 of these regulations.
- G. documentation of current first aid certificates as required by these regulations.

[8.370.20.24 NMAC - N, 7/01/2024]

8.370.20.25 PARTICIPANT RECORDS: There must be maintained a complete record on file for each adult receiving care within a facility licensed pursuant to these regulations, which must contain at least the following:

- A. Personal information:
 - (1) name of participant;
 - (2) date of birth;
 - (3) sex;
 - (4) home address (mailing address and location of residence) and telephone number;
 - (5) name of responsible party;
 - (6) current place of employment, address and work telephone number of responsible party.
- B. Emergency information.
 - (1) record of any allergies or medical conditions the participant may have;
 - (2) name and telephone number of two persons to be called in case of emergency when the responsible party cannot be reached;
 - (3) name and telephone number of physician or emergency medical facility authorized by guardian to be called in case of illness or emergency;
 - (4) permission for emergency medical transportation and guardian's consent for treatment.
- C. Date of enrollment.
- D. Date of disenrollment.
- E. The following must be recorded in each participant's file when applicable:
 - (1) accidents and illnesses which require first aid or medical attention;
 - (2) observation of recent bruises, injuries or signs of abuse or neglect;
 - (3) use of physical restraints.
- F. Medications prescribed for the resident, including time and dosage.
- G. Written authorization from the participant, responsible party or guardian, must be in the participants record for the removal of the participant's from the grounds of the facility to participate in field trips, nature walks, or other activities whether or not the activity includes transportation by vehicle.
- H. Daily attendance of the participant.
- I. Enrollment agreement signed by the participant, responsible party or guardian which clearly outlines the following:

(1) services to be provided by the facility and costs for the same;
(2) acknowledgement by the participant, responsible party or guardian that they clearly understand the policies of the facility and agree to them.

J. General:

(1) each participant's record must be kept on file in the facility at least six months after disenrollment.
(2) participant's records must be made available to those persons authorized by law or regulation to review or inspect such records, such as guardians, staff, or representatives of the licensing authority.
(3) participant's records must be complete with all documentation at the time of admission, to include drop ins.

[8.370.20.25 NMAC - N, 7/01/2024]

8.370.20.26 STAFF RECORDS:

A. There must be maintained a complete record on file for each staff member or volunteer working more than eight hours of any week and having direct contact with the participants which must contain at least the following:

(1) name.
(2) address and telephone number.
(3) position for which employed.
(4) date of employment and termination, when applicable.
(5) certificate signed by a physician or recognized health facility stating that the staff member, or volunteer is free from tuberculosis in a transmissible form as required by the New Mexico health care authority regulations, Control of Communicable Disease in Health Facility Personnel, 7.4.4 NMAC.

B. A daily attendance record of all employed staff must be kept by the facility.

C. The facility must maintain weekly work schedules of all employed staff and caregivers. These schedules must be kept on file for at least six months.

D. Staff records must be available for review by representatives of the licensing authority at all times.

[8.370.20.26 NMAC - N, 7/01/2024]

8.370.20.27 FACILITY RULES: Each facility must have written rules pertaining to the following:

A. admission and disenrollment of participants.

B. duties and responsibilities of all employed staff and volunteers regarding the care, services, and supervision of the participants, which must be updated when staff duties change.

[8.370.20.27 NMAC - N, 7/01/2024]

8.370.20.28 POLICIES AND PROCEDURES: All facilities licensed pursuant to these regulations must have written policies and procedures covering the following areas:

A. actions to be taken in case of accidents or emergencies involving a participant;

B. policies and procedures on reporting suspected adult abuse or neglect;

C. policies and procedures for admission and disenrollment of participants;

D. policies and procedures for action to be taken in the event a participant is found missing from the facility;

E. policies and procedures for handling of medications;

F. policies and procedures for handling of complaints received from guardians or any other person;

G. the facility must have policies and procedures prohibiting the following:

(1) abusing or neglecting a participant (e.g., slapping, hitting, striking, withholding food as a punishment, verbally threatening, or failing to provide a participant with the level of services and degree of supervision;

(2) retaliation against a participant because of complaints or suggestions regarding the management of the facility;

(3) social isolation;

(4) the use of chemical restraint.

H. If at any time a participant's rights are restricted in order to protect the health, safety, and welfare of the participant the reasons for the restriction of the rights must be clearly documented in the participant's record.

I. Policies and procedures for the use of restraints.

J. These policies and procedures may be adopted from other sources.

[8.370.20.28 NMAC - N, 7/01/2024]

8.370.20.29 GENERAL BUILDING(S), GROUNDS, AND SAFETY REQUIREMENTS:

A. New construction, additions and alternation: When construction of building, additions, or alterations to existing building are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire facility must be submitted.

B. Number of stories: All building requirements contained in these regulations are based on building of one (1) story in which care for adults is not being provided above or below ground level. Facilities housed in multi-storied buildings and wishing to provide services to adults above or below ground level will have additional requirements due to the complexities of the building and fire codes. These additional requirements will be outlined by the appropriate building and fire authorities and by the licensing authority through plan review and on site surveys during the licensing process.

C. Energy conservation: New buildings for a facility must be constructed to provide energy conservation as required by applicable building codes.

D. Access to the handicapped: All facilities must provide access to the handicapped as required in current building codes and other state and federal regulations. Exception: Adult day care homes are not required to comply with Subsections A through D of 8.370.20.29 NMAC above.

E. Prohibition on mobile homes: Trailers and mobile homes shall not be used for adult day care.

F. Extent of a facility: All buildings on the premises used for the care of adults will be considered part of the facility and must meet all requirements of these regulations. Adults being cared for in any building on the premises will be counted in the capacity of the facility.

[8.370.20.29 NMAC - N, 7/01/2024]

8.370.20.30 SPACE REQUIREMENTS: Facilities licensed pursuant to these regulations must meet the following space requirements for capacity and service:

A. Adult day care centers and adult day care homes are required to have 40 square feet of activity area for each adult for which the facility is licensed to provide care.

B. Indoor activity area is computed by measuring the activity areas used for the participants, excluding kitchens, corridors, bathrooms, storage areas and closets. Measurements are taken from wall to wall in each room, deducting offsets and built in fixtures.

C. An outside activity area must be provided.

[8.370.20.30 NMAC - N, 7/01/2024]

8.370.20.31 MAINTENANCE OF BUILDING(S) AND GROUNDS:

A. All electrical, signaling, mechanical, water supply, heating, fire protection and sewage systems must be maintained in a safe and functioning condition, including regular inspections of these systems.

B. All furniture and furnishing must be kept clean and in good repair. Furnishings or decorations of an explosive or highly flammable character shall not be used.

C. The buildings and grounds of the facility must be maintained in a safe, sanitary, and presentable condition at all times.

[8.370.20.31 NMAC - N, 7/01/2024]

8.370.20.32 HOUSEKEEPING:

A. The facility must be kept free from offensive odors and accumulations of dirt, rubbish, dust and safety hazards.

B. Activity areas for participants must be cleaned and tidied daily.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a non-slip finish.

D. Bathrooms and lavatories shall be cleaned as often as necessary to maintain a clean and sanitary condition.

E. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

F. Storage areas must be kept free from accumulations of refuse, discarded furniture, old newspapers, and the like.

G. Combustibles, such as cleaning rags and compounds, must be kept in closed metal containers in areas providing adequate ventilation and away from participant activity and sleeping areas.

H. Poisonous or flammable substances must not be stored in participant's activity areas, or food storage areas.

[8.370.20.32 NMAC - N, 7/01/2024]

8.370.20.33 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes.

B. The heating method used by the facility must provide a minimum temperature of 68 degrees fahrenheit in all rooms used by the participants.

C. The use of unvented heaters, open flame heaters or portable heaters, is prohibited.

D. An ample supply of outside air must be provided in all spaces where fuel fired boilers or heaters are located to assure proper combustion.

E. All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

F. Each building where gas is used must have the outside gas shutoff valve conspicuously painted red. The facility must have a tool readily available which will operate the shut-off valve. The tool will also be painted red. All staff of the facility must be instructed as to location of the gas shut-off valve and must know how to shut off the gas supply in case of fire or gas leakage. Exception: Adult day care homes are not required to comply with Subsection F of 8.370.20.33 NMAC above.

G. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be at least one and three-quarters inches solid core. Exception: Adult day care homes are permitted to have the normal residential type heating system.

H. A facility must be adequately ventilated at all times by either mechanical or natural means to provide fresh air and the control of unpleasant odors.

I. All gas burning heating and cooking equipment must be connected to an approved venting system to take the products of combustion directly to the outside air. Exception: Adult day care homes are not required to vent cooking stoves.

J. All openings to the outer air used for ventilation must be screened with screening material of not less than sixteen (16) meshes per lineal inch.

K. The facility must be provided with a system for maintaining participant's comfort during periods of hot weather.

[8.370.20.33 NMAC - N, 7/01/2024]

8.370.20.34 WATER:

A. A facility must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department.

C. Hot and cold running water, under pressure, must be distributed to all food preparation areas, lavatories, washrooms, laundries and bathrooms.

[8.370.20.34 NMAC - N, 7/01/2024]

8.370.20.35 WATER HEATERS:

A. All fuel-fired water heaters must be separated from other parts of the facility by partitions having a fire-resistive rating of one hour. Doors to the enclosure must be 1 3/4" solid core. Exception: Adult day care homes.

B. All water heaters must be equipped with a pressure relief valve (pop-off-valve) complete with relief drain line to the outside of the facility.

C. Water heaters must not be located in participant areas used for activity or sleeping.

D. Temperature of hot water for lavatories must not be above 110 degrees fahrenheit.

[8.370.20.35 NMAC - N, 7/01/2024]

8.370.20.36 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the systems used must be inspected and approved by the New Mexico environment department, and the construction industries division. **Exception: Adult day care homes.**

C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of garbage used by the facility must be inspected and approved by the New Mexico environment department. **Exception: Adult day care homes.**

D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof, and constructed of materials which will not absorb liquids. Receptacles must be kept clean.

[8.370.20.36 NMAC - N, 7/01/2024]

8.370.20.37 LIGHTING AND LIGHTING FIXTURES:

A. All areas of the facility, including storerooms, stairways, hallways, and entrances must be lighted sufficiently to make all parts of the area clearly visible.

B. All lighting fixtures must be shielded in participant activity areas and food preparation areas.

C. Adult day care centers must be provided with emergency lighting which will activate automatically upon disruption of electrical service.

D. Adult day care homes must have at least a flashlight readily available and in operable condition for use as emergency lighting.

[8.370.20.37 NMAC - N, 7/01/2024]

8.370.20.38 ELEMENTS OF FACILITY ELECTRICAL SYSTEM:

A. Electrical installations and electrical equipment must comply with all current state and local codes.

B. All fuse and breaker boxes must be labeled to indicate the area of the facility to which each fuse or circuit breaker provides services.

C. The main electrical service line must have a readily available disconnect switch. All staff and caregivers must know the location of the electrical disconnect switch and how to operate it in case of emergency.

D. The use of jumpers or devices to bypass circuit breakers or fuses is prohibited.

[8.370.20.38 NMAC - N, 7/01/2024]

8.370.20.39 ELECTRICAL CORDS, APPLIANCES, AND OUTLETS:

A. Electrical cords and appliances must be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Under no circumstances shall extension cords be used as a general wiring method.

(3) Extension cords must be plugged into an electrical outlet within the room where used and must not be connected in one room and extended to another room.

B. The use of multiple sockets (gang plugs) in electrical outlets is strictly prohibited.

[8.370.20.39 NMAC - N, 7/01/2024]

8.370.20.40 WINDOWS: All activity areas for participants must have a least one (1) window or skylight area of at least 1/20 of the floor area.

[8.370.20.40 NMAC - N, 7/01/2024]

8.370.20.41 EXITS:

A. There must be at least two exits remote from each other from each floor of the facility.

B. Exit ways must be kept free from obstructions at all times.

C. All exits must be marked by signs having letters at least six inches high whose principal strokes are at least three-fourths of an inch wide.

D. Exit signs, when applicable, must be visible at all times. **Exception: Adult day care homes are not required to have exit signs.**

[8.370.20.41 NMAC - N, 7/01/2024]

8.370.20.42

DOORS:

- A. Required exit doors must be openable from the inside at all times the facility is in operation.
- B. All required exit doors must have a minimum width of 36 inches. Exception: Adult day care homes.
- C. Required exit doors in facilities having a capacity of 50 or more must open outward.
- D. Locks and latches on closets and bathrooms must be of the type that the lock can be released from the outside.

[8.370.20.42 NMAC - N, 7/01/2024]

8.370.20.43

OUTDOOR AREAS:

- A. Outdoor area must be located on the premises of the facility.
- B. If required by the agency, the outdoor area must be fenced and have at least one latched gate available for emergency exit.
- C. Outdoor areas must be kept free of sharp objects, trash, weeds, or other hazardous items.
- D. Outdoor areas must be designed to permit direct supervision of the participants at all times.

[8.370.20.43 NMAC - N, 7/01/2024]

8.370.20.44

TOILET AND BATHING FACILITIES:

- A. Bathrooms must be completely enclosed. A window or mechanical system for ventilation must be provided.
- B. Toilets and lavatories (hand washing sinks) must be provided for each sex in the following ratios in adult day care centers:
 - (1) One toilet for one to 15 participants.
 - (2) One toilet for each additional 15 participants or fraction thereof.
 - (3) Lavatories must be provided within each toilet room at a ratio of one to 40 participants.
 - (4) Toilet paper, soap, and disposable towels must be provided in all toilet rooms.
 - (5) The use of a common towel or wash cloth is prohibited.
 - (6) Bathrooms and lavatories must be cleaned as often as necessary to maintain a clean and sanitary condition.
- C. Adult day care homes are required to have at least one toilet and one lavatory.
- D. Facilities accepting participants with special bathing needs, or provide bathing as a service, will provide approved bathing facilities.

[8.370.20.44 NMAC - N, 7/01/2024]

8.370.20.45

FIRE SAFETY COMPLIANCE: All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility.

[8.370.20.45 NMAC - N, 7/01/2024]

8.370.20.46

FIRE CLEARANCE AND INSPECTIONS:

- A. Written documentation from the state fire marshal's office or fire authority having jurisdiction evidencing a facility's compliance with applicable fire prevention codes must be submitted to the licensing authority prior to issuance of an initial license. Exception: Adult day care homes are not required to have fire authority inspections.
- B. Each facility shall request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the facility, the facility must document the date the request was made and to whom. If the fire authority having jurisdiction does make annual inspections, a copy of the latest inspection must be kept on file in the facility. Exception: Adult day care homes are not required to have annual fire inspections.

[8.370.20.46 NMAC - N, 7/01/2024]

8.370.20.47

FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:

- A. The facility must be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction. Exception: Adult day care homes are not required to have manually operated alarm systems.

B. The facility must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement. Exception: Adult day care homes are only required to have one smoke detector in the participants activity rooms which may be battery operated.

C. Fire extinguishers as approved by the state fire marshal or fire authority having jurisdiction must be located in the facility. Facilities must as a minimum have two 2A10BC fire extinguishers, one centrally located in the facility activity areas. Exception: Adult day care homes are only required to have one 2A10BC fire extinguisher located in the kitchen or food preparation area.

D. Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting equipment must be properly maintained and inspected at least yearly, and more often if recommended by the manufacturer, state fire marshal, or fire authority having jurisdiction. Fire extinguishers must be tagged noting the date of inspection.

E. All fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal or local fire prevention authorities. All fire extinguishers must be tagged noting the date of inspection.

[8.370.20.47 NMAC - N, 7/01/2024]

8.370.20.48 STAFF FIRE AND SAFETY TRAINING:

A. All staff of a facility must know the location of and be instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instruction in fire prevention and techniques of evacuation.

B. The staff of a facility must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the participants or staff.

C. Fire drills: The facility must conduct at least one fire drill each month.

(1) Fire drills must be held at different times of the day.

(2) The fire alarm system or detector system in the facility shall be used in the conduct of fire drills.

(3) In the conduct of fire drills, emphasis must be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of fire drills held must be maintained on file in the facility. Such record must show date and time of the drill, number of personnel participating in the drill, and any problem noted during the drill.

(5) The local fire department should be requested to supervise and participate in fire drills.

D. Each facility must have a fire evacuation plan conspicuously posted in the facility, and all staff must be familiar with the evacuation plan. Exception: Adult day care homes are not required to have evacuation.

[8.370.20.48 NMAC - N, 7/01/2024]

8.370.20.49 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible telephone for summoning help in case of emergency must be available in each facility. A pay telephone will not fulfill this requirement.

B. A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, and poison control center shall be posted by each telephone in the facility.

[8.370.20.49 NMAC - N, 7/01/2024]

8.370.20.50 SMOKING:

A. Smoking in the kitchen or food preparation areas is strictly prohibited.

B. Separate smoking areas must be designated and provided with suitable ashtrays.

C. Smoking must never be permitted in any area where oxygen is in use.

[8.370.20.50 NMAC - N, 7/01/2024]

8.370.20.51 CARPETS:

A. Carpeting, if used in new facilities, must be of at least class II rating. Existing facilities, as they replace carpeting, must replace with carpet having at least a class II rating.

B. Carpets must be of a stable and regular surface to prevent tripping or slipping hazards and allow wheelchair mobility.

[8.370.20.51 NMAC - N, 7/01/2024]

8.370.20.52 ACCESS REQUIREMENTS FOR THE HANDICAPPED:

A. Accessibility to the handicapped must be provided in all facilities and shall include the following:
Exception: Adult day care homes are not required to have access for the handicapped.

(1) Main entry into the facility must be ground level or ramped to allow wheelchair access.
(2) Building must allow access to participant's activity areas.
(3) Access to at least one toilet is required to have a minimum door clearance of 32 inches, 36 inches is recommended. Toilet room must also provide a 60 inch diameter clear space (turning radius for a wheelchair).

(4) If ramps are provided to the building, the slope must be at least 12 inches horizontal run for each one inch of vertical rise.

(5) Ramps leading to doorways must have a five foot by five foot level area at the doorway.

(6) Ramps exceeding a six inch rise shall be provided with handrails.

B. Requirements contained herein are minimum and additional handicap requirements may apply depending on size and complexity of the facility.

C. Consultation will be given to new facilities on handicap requirements upon submission of floor plans during the initial licensing process.

[8.370.20.52 NMAC - N, 7/01/2024]

8.370.20.53 ADULT DAY CARE CENTERS IN MULTI-USE FACILITIES:

A. An adult day care program must be self-contained with its own staff and separate area.

B. Depending on the nature of other activities in the building, it may or may not be appropriate for day care participants to share in them on a planned basis. Such involvement must be as part of the day care program plan and must be supervised by a day care staff member, i.e., senior center crafts and social events and lunch at a congregate meal site.

C. It is not appropriate for persons from other activity groups in the building to move through the day care area at will or to attend day care activities on an informal basis. The day care program is in a sense a "closed" program in that participation is open only to persons enrolled in the program and to visitors on a planned basis.

[8.370.20.53 NMAC - N, 7/01/2024]

8.370.20.54 GENERAL PERSONNEL AND STAFFING REQUIREMENTS:

A. All persons involved with the care of participants shall be of good character and physically, mentally and emotionally equipped to provide good care and maintain responsible supervision for the participants.

B. All involved with the care of participants must be screened by the licensee. Their qualifications, references and employment history must be verified prior to employment.

C. A person who has been convicted of a felony or of a misdemeanor involving moral turpitude shall not be allowed to work as an administrator/director/operator, direct service staff, or support staff member in a facility licensed pursuant to these regulations. This includes family members who work or reside in an adult day care home.

D. All persons volunteering with the facility, are deemed to be staff and are subject to these regulations.

E. Staff members who work directly with participants and who are counted in the staff/participant ratio must be 18 years of age or older.

F. Persons under the age of 18 shall at all times work directly under the supervision of a staff member who is physically present.

G. Persons employed solely for clerical, cooking and maintenance shall not be included in the staff/participant ratio.

H. Substitutes and part-time staff members, who are counted in the staff/participant ratios, shall meet the same requirement as regular staff.

[8.370.20.54 NMAC - N, 7/01/2024]

8.370.20.55 QUALIFICATIONS FOR DIRECTORS OF CENTERS:

A. The adult day care center shall have a full-time program director.

B. The program director shall have the authority and responsibility for the management of activities and direction of staff to insure that activities and services are provided appropriately and in accordance with established policies.

C. The program director shall meet all of the minimum qualifications and personal characteristics stated below.

- (1) 18 years of age or older;
- (2) shall have completed at least a baccalaureate degree from a nationally accredited institution of education in the field of geriatrics, or a health related course of study which includes the care of the elderly, or be a registered nurse;
- (3) shall have a minimum of two years experience and training in services to elderly or handicapped adults;
- (4) shall have demonstrated ability in supervision and administration.

D. Meet the requirements of Section 53.
[8.370.20.55 NMAC - N, 7/01/2024]

8.370.20.56 QUALIFICATIONS OF OPERATORS OF ADULT DAY CARE HOMES: Licensees of adult day care homes must have the following minimum qualifications:

- A. 18 years of age or older;
- B. be competent and have a demonstrated ability to manage all aspects of a day care program;
- C. have a minimum of a high school education or the equivalent;
- D. have at least two years of full-time work experience in services to elderly or handicapped adults;
- E. provide a written statement from a physician or a recognized health facility stating that the operator is free from communicable disease;
- F. have the ability to work with people;
- G. provide references, including former employer(s);
- H. meet the requirements of Section 53.

[8.370.20.56 NMAC - N, 7/01/2024]

8.370.20.57 VOLUNTEERS:

A. When volunteers are used in an adult day care program, adequate planning prior to the placement of the volunteers will take place in order to provide the volunteer with a written description of their duties and responsibilities. This written description shall outline in detail the tasks to be performed, qualifications for performing the tasks, and specifics about hours, days and length of commitment needed from the volunteer.

B. The volunteer shall take part in a formal or informal orientation and training session to inform him/her of the goals of the program, the operation and daily schedule of the program, specific needs of the adults being served and any necessary , specialized approaches the volunteer will be expected to use.

C. Employees of the program shall be properly informed of the use of a volunteer prior to their working in the program, staff's responsibility and role and the volunteer's responsibility and role. Employees shall be involved in planning for the volunteer and shall assist in writing the duties the volunteer will perform.

D. Volunteers working more than half-time and having direct contact with participants shall have a certificate from a physician or medical facility stating that they are free from tuberculosis in a transmissible form.
[8.370.20.57 NMAC - N, 7/01/2024]

8.370.20.58 STAFF TRAINING:

A. All facilities shall provide training for each staff member.
B. Documentation for training shall be kept on file at each facility and available for inspection by representatives of the licensing authority.

C. Documentation may take the form of certificates or a training log with the date, name of staff member or caregiver, hours spent in training, subject and source of training.

D. Before beginning work all facilities shall provide for each staff member an orientation which includes the following as a minimum:

- (1) scope of services, activities, and program offered by the facility;
 - (2) emergency first aid procedures, recognition of illness and indicators of abuse;
 - (3) fire prevention measures and emergency evacuation plans;
 - (4) review of licensing regulations;
 - (5) special problems of the elderly and disabled;
 - (6) participant rights;
 - (7) sanitation procedures.
- E. Emergency staff and substitutes are not required to participate in training.

- F. Adult day care centers:
 - (1) All staff members, including the director, shall participate in at least 40 documented clock hours of training during each year of employment.
 - (2) Of the 40 hours of required training, 20 hours shall be in areas covering the physical, emotional, intellectual, and social needs of adults.
 - (3) Other training may include, but is not limited to the following: nutrition, sanitation procedures, first aid, and cardiovascular resuscitation techniques.
- G. Adult day care homes:
 - (1) All staff members shall participate in at least 24 documented clock hours of training during each year of licensure.
 - (2) The required 24 hours of training shall be in the subjects specified in these regulations.
- H. Training may be obtained from, but not limited to, the following resources:
 - (1) public health division, health care authority.
 - (2) social services division, health care authority.
 - (3) adult day care associations and information and referral services.
 - (4) university related programs.
 - (5) vocational/technical schools.
 - (6) county extension offices.
 - (7) local fire department.
 - (8) red cross.
 - (9) self-study as approved by the licensing authority.
 - (10) In service training by a qualified staff member whose qualifications are approved by the licensing authority.

[8.370.20.58 NMAC - N, 7/01/2024]

8.370.20.59 STAFFING REQUIREMENTS:

- A. General:
 - (1) Staff/participant ratios must be maintained at all times.
 - (2) The responsibility of staff members included in the staff/participant ratio shall be direct care of the participants.
 - (3) Each facility must keep a list on file of two readily available persons who can be called to the facility to substitute for any staff member in case of an emergency or illness. These persons names telephone numbers, and health certificates must be on file.
- B. Staff/participant ratios:
 - (1) Adult day care centers - One full time equivalent staff position with responsibility for direct participant care for each five participants.
 - (2) Adult day care homes - One full time equivalent staff position with responsibility for direct care for no more than five participants.

[8.370.20.59 NMAC - N, 7/01/2024]

8.370.20.60 GENERAL:

- A. The health, safety, and welfare of the participants must be the primary concern in all activities and services provided by facilities licensed pursuant to these regulations.
- B. Participants must never be left unattended. Staff members must be physically present with the participants at all times.

[8.370.20.60 NMAC - N, 7/01/2024]

8.370.20.61 CARE AND SERVICES FOR ADULTS WITH SPECIAL NEEDS: In addition to all other requirements contained in these regulations, facilities providing care and services to adults with special needs including respite care, must comply with the following:

- A. Facilities which are able to appropriately mainstream special needs adults may do so at their own discretion.
- B. An adult with a severe diagnosed mental or physical handicap may be admitted to a facility upon the written recommendation of a licensed physician or therapist.
- C. The facility must make appropriate provisions to meet the needs of adults who require special services such as additional space, wide doors, halls, ramps and specially equipped toilet rooms.

D. The licensing authority may require higher staff/adult ratios and staff qualifications to properly care for the adults with special needs, if deemed necessary.
[8.370.20.61 NMAC - N, 7/01/2024]

8.370.20.62 ACTIVITIES:

A. Adult day care activities shall be designed to meet the specific needs and interests of the participants, as determined by individual plans of care, and shall be consistent with the program's goals.

B. Activities shall be planned by staff, participants, family/caregivers, volunteers and other interested individuals and groups.

C. The day care center shall assure safe and healthy conditions for activities in and outside the facility.

D. The plan for, and conduct of, activities must be an ongoing process and shall be reviewed, revised and evaluated as necessary.

E. The adult day care program shall provide for a balance of activities to meet the interrelated needs and interest (social, intellectual, cultural, economic, emotional and physical) of participants.

F. Activities shall be designed to promote personal growth and improve the self-image of participants by providing opportunities to:

- (1) learn new skills and gain knowledge;
- (2) challenge and tap the potential of participants;
- (3) participate in activities of interest;
- (4) improve capacity for independent functioning;
- (5) develop satisfying and interpersonal relationships;
- (6) be exposed to, and involved in, activities and events within the greater community;
- (7) develop cultural enrichment;
- (8) have fun and enjoyment.

G. Activities shall respond to individual differences in health status, lifestyle, ethnicity, values, experiences, needs, interests, abilities, skills and age by providing opportunities for a variety of types and levels of involvement, including:

- (1) small and large group activities;
- (2) individualized activities;
- (3) active and spectator participation;
- (4) inter-generational experience;
- (5) involvement in the greater community;
- (6) services to individuals and to the program

H. Activities shall be flexible and responsive to changes in:

- (1) the needs and interests of individual participants;
- (2) functional capacities of participants;
- (3) the characteristics of the adult population in the service area.

I. Activities shall emphasize individual participant's strengths and abilities rather than impairments, and shall contribute to participant's feeling of competence and accomplishment.

J. All program activities shall be supervised by program staff.

K. Participants shall have the choice of refusing to participate in any given activity, and time shall be allowed for rest and relaxation.

[8.370.20.62 NMAC - N, 7/01/2024]

8.370.20.63 SCHEDULE:

A. A monthly calendar of activities shall be prepared and distributed to participants and family/caregivers.

B. Daily activities (and services) shall be posted in a visible location within the center.

C. The participant and family caregivers shall be encouraged to evaluate activities and plan future activities on a six month basis.

[8.370.20.63 NMAC - N, 7/01/2024]

8.370.20.64 EQUIPMENT:

A. Each facility shall have a living or multi-purpose room for the use of participants. Such rooms shall be provided with reading lamps, tables, chairs, and couches. These furnishings shall be well constructed, comfortable, and in good repair.

B. The living room or multi-purpose rooms shall be provided with supplies to meet the varied interests and needs of the participants, including, but not limited to games, current magazines, books, radio and television.

C. The interest areas shall be arranged so that quiet and noisy activities can occur concurrently without disturbing each other.

D. Equipment, furniture and materials shall be kept in good condition and present no safety hazards.
[8.370.20.64 NMAC - N, 7/01/2024]

8.370.20.65 LINENS: Linens and bedding shall be kept clean at all times.

A. There shall be separate handling and storage of clean and soiled linens.

B. Clean linen shall be stored in clean storage area.

C. Linens shall be laundered and disinfected prior to re-use by another participant.

D. Any linen which has been used by a sick participant, or which has been dirtied by urine or defecation shall be collected, laundered and disinfected separately from other items.

E. New linens must be laundered before use.

[8.370.20.65 NMAC - N, 7/01/2024]

8.370.20.66 FIRST AID REQUIREMENTS: At all times there shall be one staff member on duty who holds current first aid certificate and has completed an approved cardiopulmonary resuscitation course.

A. A first-aid, accessible to all personnel, shall be kept in the facility.

B. The first aid kit shall contain as a minimum: band aids, gauze pads, adhesive tape, scissors, soap, and syrup of ipecac.

C. In case of accidental poisoning, the facility shall immediately contact the poison control center and their directions shall be followed.

D. Syrup of Ipecac must not be given to any participant without first contacting the poison control center.

E. All facilities are strongly encouraged to send all of their personnel to an approved cardiopulmonary resuscitation course.

F. All facilities shall have a first aid manual available to the staff or caregivers.

[8.370.20.66 NMAC - N, 7/01/2024]

8.370.20.67 PETS: The facility shall inform participants and guardians of the presence of pets in the facility.

A. There shall be no pets in the kitchen or food serving areas.

B. Pets shall be inoculated as prescribed by a veterinarian.

C. Proof of inoculation shall be kept on file in the facility.

D. Pets must be kept well groomed and healthy.

[8.370.20.67 NMAC - N, 7/01/2024]

8.370.20.68 FOOD SERVICE AND PREPARATION: Each facility that serves meals shall meet all state and local regulations governing food services establishments. **Exception: Adult day care homes.**

A. There shall be no smoking in food service and food preparation areas.

B. Refrigerators, work tables, cupboards, and stoves shall be maintained in clean condition.

C. All food and drink shall be protected from spoiling by proper storage and by putting it in air-tight containers or wrapping it.

D. All raw fruits and vegetables shall be washed thoroughly before being cooked or served.

E. All foods shall be protected from insects, rodents and other vermin.

F. Foods shall be served promptly and refrigerated immediately after use.

G. Utensils that can be re-used shall be washed and sanitized.

[8.370.20.68 NMAC - N, 7/01/2024]

8.370.20.69 KITCHENS:

A. There shall be no through traffic in the kitchen during food preparation or service. **Exception:** Adult day care homes.

B. Facilities may allow participants to prepare food as a program activity under careful supervision.
[8.370.20.69 NMAC - N, 7/01/2024]

8.370.20.70 FOOD PREPARATION:

A. Outer clothing of persons preparing or serving food shall be maintained with the highest degree of cleanliness.

B. When staff members are involved in food preparation or service, these persons shall thoroughly scrub their hands and wear clean fresh outer clothing before preparing or serving formula or food.

C. In facilities not under the jurisdiction of the New Mexico environment department, only snacks which require no cooking shall be served. Exception: Adult day care homes.

[8.370.20.70 NMAC - N, 7/01/2024]

8.370.20.71 FOOD TEMPERATURE REQUIREMENTS:

A. All perishable food shall, except when being prepared, be kept at 45 degrees fahrenheit or below, or 140 degrees fahrenheit or above.

B. Foods requiring refrigeration shall be kept at 45 degrees fahrenheit or below. Frozen foods shall be kept at zero degrees fahrenheit or below.

C. Refrigerators and separate freezers shall have thermometers. Metal stem thermometers shall be available to measure proper internal cooking and holding temperatures.

[8.370.20.71 NMAC - N, 7/01/2024]

8.370.20.72 MENUS:

A. The same menu must not be served twice in one week.

B. A copy of the current week's menu, including snacks, shall be posted in the kitchen and the entrance of the facility where it can be readily seen.

C. Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.

D. The weekly menu plans must be dated and kept on file for 30 days.

[8.370.20.72 NMAC - N, 7/01/2024]

8.370.20.73 MEAL TIMES AND NUTRITION:

A. Staff/participant ratios must be maintained at meal times.

B. Time allowed for meals shall enable the participants to eat at a leisurely rate.

C. Meals may be served in areas of main activity.

D. Dining areas shall be equipped with tables, chairs, eating utensils and dishes.

E. Nutrition:

(1) A meal shall be provided to each participant in attendance at the program during standard mealtimes. Each meal shall provide at least one-third of an adult's daily nutritional requirement.

(2) A nutritious mid-morning and mid-afternoon snack shall be offered daily to participants. Snacks shall be planned to keep sugar, salt and cholesterol intake to a minimum.

(3) Participants shall not go for more than three hours without being offered a meal or a snack.

(4) A therapeutic diet shall be provided, if prescribed in writing by a physician, for any participant. If therapeutic diets are prepared by program staff, such staff shall have training in planning and preparing therapeutic diets or shall provide documentation of previous training and education sufficient to assure ability to prepare meals in accordance with a physician's prescription.

(5) A registered dietitian/nutritionist must be consulted by the staff on basic and special nutritional needs and proper food handling techniques. Instruction in nutrition, weight control and safe food handling techniques may be provided as an ongoing part of program activities.

[8.370.20.73 NMAC - N, 7/01/2024]

8.370.20.74 NOTIFIABLE DISEASES: Facilities shall report any notifiable disease occurring to the participants to the local public health field office:

A. Each facility shall secure the current list of notifiable diseases published by the New Mexico health care authority and post it conspicuously in the facility.

B. Facilities shall not admit or allow the continued attendance of participants who are ill or who are known or suspected of having notifiable diseases.

C. After a participant has had a notifiable communicable disease, he or she shall be re-admitted to the facility only upon written approval of the attending physician.

[8.370.20.74 NMAC - N, 7/01/2024]

8.370.20.75 ISOLATION:

A. A participant who becomes sick at the facility must be separated from the rest of the participants until leaving the facility. The guardian or responsible party must be promptly notified of the participant's illness and arrangements must be made for the participant to be removed from the facility.

B. The facility must have a bed available for a sick participant which must be thoroughly cleaned after use.

C. The sick participant must be kept in an area where he/she can be under constant observation.

D. Staff must wash their hands thoroughly after caring for sick participants.

[8.370.20.75 NMAC - N, 7/01/2024]

8.370.20.76 MEDICATIONS: Any facility licensed pursuant to these regulations who supervises self-administration of medication for the participants or safeguards medication for residents must have an appropriate custodial drug permit as determined by the state board of pharmacy.

A. To apply for a custodial drug permit, or to obtain information concerning management of drugs and pharmaceutical, the facility should contact the state board of pharmacy.

B. Only medications which can be self-administered by the participant, unless they will be administered by a licensed physician, dentist, or nurse, can be kept by a facility.

C. Medications prescribed for one participant must not be given to any other participant.

D. Drugs and medications shall neither be supplied nor given to participants, unless ordered or prescribed by a licensed physician, dentist, or other practitioner licensed to do so.

E. Over the counter medications may be given to a participant by the facility, if the facility has a written procedure reviewed and approved by a licensed physician for giving such medications.

F. Medications must be kept in a locked cabinet or other suitable container approved by the state board of pharmacy. Medications must be separated, by individual, in the storage area.

G. The key for the medication storage area must be made available only to personnel duly authorized by the director of the facility.

H. Medication which requires refrigeration must be kept in a separate locked box within a refrigerator, a locked refrigerator, or a refrigerator in a locked room.

I. All medications must be kept in their original containers.

J. Poisonous substances and medications labeled for "external use only" must not be accessible to participants and must be kept separate from other medications.

K. All outdated medications shall be disposed of in a manner approved by the state board of pharmacy.

L. No facility will prepare dosages of medications, in advance, to be given to participants for self-administration with assistance. The medications must be in the original container, the staff member assisting may hold the container, assist the participant in opening the container, and assist the participant in administering the medication. Exception: If a facility has on [sic] the staff nurses registered in the state of New Mexico who prepare dosage and administer to the resident.

[8.370.20.76 NMAC - N, 7/01/2024]

8.370.20.77 USE OF PHYSICAL RESTRAINTS:

A. Physical restraints may only be used when authorized by a physician in writing for a specified period of time or in emergencies.

B. The use of physical restraints may only be applied by a licensed nurse.

C. Physical restraints must be applied in accordance with the written policies and procedures of the facility.

D. Supervision of participants in restraints shall be on a one to one basis for the duration of the time the restraints are in place.

[8.370.20.77 NMAC - N, 7/01/2024]

8.370.20.78 TRANSPORTATION:

- A.** If a facility licensed pursuant to these regulations provides transportation to participants it is responsible for the participant from the time picked up until delivered.
 - B.** All vehicles used for transportation of participants must be licensed and meet all applicable laws of the state of New Mexico.
 - C.** All vehicles used for transportation of participants must be equipped with a fire extinguisher and first aid kit.
 - D.** Participants must be loaded and unloaded at the curb side of the vehicle.
 - E.** Drivers may leave the vehicle only to assist participants in boarding and leaving the vehicle, and must remain in sight of the vehicle at all times.
 - F.** Drivers of vehicles used to transport participants must be licensed and abide by state and local laws.
 - G.** Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.
 - H.** Vehicles used to transport participants shall be equipped with seatbelts. Drivers shall insure participants use seatbelts while being transported.
- [8.370.20.78 NMAC - N, 7/01/2024]

8.370.20.79 RELATED REGULATIONS AND CODES: Adult day care 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.** Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
 - B.** Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.
 - C.** Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- [8.370.20.79 NMAC - N, 7/01/2024]

HISTORY OF 8.370.20 NMAC: RESERVED

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 21 QUALITY MANAGEMENT SYSTEM AND REVIEW REQUIREMENTS FOR
PROVIDERS OF COMMUNITY BASED SERVICES

8.370.21.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.21.1 NMAC - N, 7/1/2024]

8.370.21.2 SCOPE: This rule is applicable to persons, organizations or legal entities that are under contract to provide services to the New Mexico health care authority under the following programs: developmental disability waiver (DDW), disabled and elderly waiver (D&EW), medically fragile waiver (MFW), traumatic brain injury (TBI) and family, infants and toddler (FIT) and any additional programs that may require provider compliance with these requirements.
[8.370.21.2 NMAC - N, 7/1/2024]

8.370.21.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 NMSA 1978 and Subsections L, O, T and U of Section 24-1-3 of the Public Health Act, NMSA 1978 as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating health care purchasing and regulation.
[8.370.21.3 NMAC - N, 7/1/2024]

8.370.21.4 DURATION: Permanent.
[8.370.21.4 NMAC - N, 7/1/2024]

8.370.21.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.370.21.5 NMAC - N, 7/1/2024]

8.370.21.6 OBJECTIVE: This rule establishes standards for provider compliance with health care authority (HCA) requirements for quality assurance reviews of DDW, D&EW, MFW, TBI and FIT programs and any additional programs that may require provider compliance with these requirements and specifies that HCA authorized representatives shall have timely access to records, personnel, service locations and clients.
[8.370.21.6 NMAC - N, 7/1/2024]

8.370.21.7 DEFINITIONS: For purposes of these regulations, the following shall apply:

A. “Client” means any person who is requesting or receiving services from one or more service providers subject to these requirements.

B. “HCA” means the New Mexico health care authority.

C. “Developmental disability waiver (DDW)” means a program offering community based services under the administration of the HCA long term services division for persons eligible based on the criteria described in Subsection B of 8.290.400.10 NMAC.

D. “Disabled & elderly waiver (D&EW)” means a program offering community based services under the administration of the MAD for persons eligible based on the criteria described in Subsection A of 8.290.400.10 NMAC.

E. “Family infant and toddler (FIT)” means a program offering community based services under the administration of the HCA long term services division for persons eligible based on the criteria described in 7.30.8 NMAC.

F. “MAD” means the medical assistance division of the New Mexico health care authority.

G. “Medically fragile waiver (MFW)” means a program offering community based services under the administration of the HCA long term services division for persons eligible based on the criteria described in Subsection C of 8.290.400.10 NMAC.

H. “Provider” means a person, organization or legal entity under contract with HCA to provide services to clients eligible for services under one or more of the following programs: developmental disability waiver (DDW), disabled and elderly waiver (D&EW), medically fragile waiver (MFW); or traumatic brain injury (TBI) and any additional programs that may require provider compliance with these requirements.

I. “**Timely access**” means physical or in-person, electronic or other access needed by authorized representatives of the HCA to conduct a quality review activity. Timely access means immediate access upon request. If immediate access is not possible for a legitimate reason, the access shall be as prompt as reasonably possible.

J. “**Traumatic brain injury provider (TBI)**” means a person, organization or other legal entity as specified in Section 24-1-24 NMSA 1978, operating under the administration of the HCA long term services division, which generally offers community based services to eligible clients.
[8.370.21.7 NMAC - N, 7/1/2024]

8.370.21.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive.
[8.370.21.8.NMAC - N, 7/1/2024]

8.370.21.9 CONFIDENTIALITY: Client specific information reviewed or obtained in the course of quality assurance reviews of providers is confidential in accordance with all applicable federal and state law and regulation and with all applicable contract provisions. Other confidential information may include, but is not limited to: personnel records, the provider’s internal incident investigations, financial documents and proprietary business information.
[8.370.21.9 NMAC - N, 7/1/2024]

8.370.21.10 ACCESS TO FACILITATE PROVIDER REVIEW QA ACTIVITIES:

A. HCA shall review the quality of care delivered by providers subject to these requirements. These reviews may be either announced or unannounced.

B. Providers of services shall facilitate timely physical or in-person access to:

C. Provider records, regardless of media, including but not limited to: financial records, all client records, ISPs, personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys and agency policy/procedures manuals;

D. All provider personnel;

E. Clients currently receiving services from the provider;

F. Any information relevant to accessing guardians, representatives and family members;

G. All records, regardless of media, relating to former and deceased clients; and

H. All administrative and service delivery sites.

I. Failure to grant and facilitate timely physical or in-person access as defined in this rule may subject the provider to all available penalties and sanctions as provided in applicable federal, state or contract provisions.

[8.370.21.10 NMAC - N, 7/1/2024]

History of 8.370.21 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 22 REQUIREMENTS FOR HOME HEALTH AGENCIES

8.370.22.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.22.1 NMAC - N, 7/1/2024]

8.370.22.2 SCOPE: These regulations apply to:
A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;
B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[8.370.22.2 NMAC - N, 7/1/2024]

8.370.22.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of home health agencies have been pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978, and Subsection D of Section 24-1-2, Subsection I of Section 24-1-3 and Section 24-1-5 of the Public Health Act NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.22.3 NMAC - N, 7/1/2024]

8.370.22.4 DURATION: Permanent.
[8.370.22.4 NMAC - N, 7/1/2024]

8.370.22.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.22.5 NMAC - N, 7/1/2024]

8.370.22.6 OBJECTIVE:
A. Establish minimum standards for licensing of home health agencies who provide medically directed therapeutic or supportive services to a patient/client in their place of residence.
B. Monitor home health agencies' compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to a patient/client or staff.
C. Encourage the establishment and maintenance of home health agencies to provide medically directed therapeutic or supportive services, to a patient/client in their place of residence, that maintain or improve the health and quality of life to patients/clients who are in New Mexico.
[8.370.22.6 NMAC - N, 7/1/2024]

8.370.22.7 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 patient/client, including:
(1) physical contact that harms or is likely to harm a patient/client of a home health agency;
(2) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a patient/client;
(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 patient/client;
(5) medically inappropriate conduct that causes or is likely to cause great psychological harm to a patient/client;
(6) an unlawful act, a threat or menacing conduct directed toward a patient/client that results and might reasonably be expected to result in fear or emotional or mental distress to a patient/client.
B. "Administrator/director" means a qualified individual, on-site, appointed by the governing body who organizes and directs the agency's on-going functions, maintains liaison among the governing body, the group of professional personnel and other staff, employs qualified personnel, ensures adequate staff education, ensures the

accuracy of public information materials and activities, and implements an effective budgeting and accounting system. A branch office must have a qualified on-site branch manager who receives direction and supervision from the parent home health agency's administrator/director.

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

D. "Auxiliary work station" means a non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office.

E. "Branch office" means a licensed location or site from which a home health agency provides services and is located sufficiently close that it is not impractical for it to receive direction and supervision from the parent home health agency on a day-by-day basis.

F. "Bylaws" means a set of rules adopted by a home health agency for governing the agency's operation.

G. "Clinical/service note" means a written notation dated and signed by a member of the health team that summarizes facts about care furnished and the patient/client's response during a given period of time.

H. "Exploitation" of a patient/client consists of the act or process, performed intentionally, knowingly or recklessly, of using any patient/clients money or property, for another person's profit, advantage or benefit. Exploitation includes but is not limited to:

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

(2) misappropriation or misuse of monies belonging to a patient/client or the unauthorized sale, transfer or use of a patient/clients property;

(3) loans of any kind from patient/clients to agency staff or management;

(4) accepting monetary or other gifts from a patient/client or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year. All gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient. Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

I. "Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a home health agency licensed pursuant to these regulations.

J. "Great psychological harm" means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

K. "Home health agency" means any business, entity or organization primarily engaged in providing medically directed acute, restorative, rehabilitative, maintenance, preventive or supportive services through professional or paraprofessional personnel to a patient/client in the patient/client's residence. This term does not apply to any individual, licensed practitioner providing services within the scope of their practice or to any business, entity or organization providing non-medically directed services in a patient/client's place of residence.

L. "Home health aide" means a person who has successfully completed a course of training or demonstrated competency in assisting patient/clients to meet basic personal care needs. A home health aide provides medically directed personal care to patient/clients such as, but not limited to, taking and recording vital signs, bathing, grooming, feeding, ambulation, exercise, oral hygiene and skin care.

M. "Home health services" means those medically directed therapeutic or supportive services provided by a home health agency to a patient/client in their place of residence.

N. "Homemaker" means a person who has successfully demonstrated competency to provide household services such as cleaning, meal preparation, laundry, shopping and to assist a patient/client with activities of daily living.

O. "Level of care" means the long term care assessment abstract which medically qualifies a patient/client for medicaid waiver services.

P. "Licensed practical nurse" means a person licensed as a practical nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

Q. "Licensee" means the person(s) who, or organization which, has an ownership or similar interest in the home health agency and in whose name a license for a home health agency has been issued and who is legally responsible for compliance with these regulations.

R. "Licensing authority" means the New Mexico health care authority.

- S.** “**Medically directed services**” means in-home services that are provided in accordance with a patient/client’s plan or level of care which is reviewed and approved by a physician at least annually.
- T.** “**Neglect**” means subject to the patient/client’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, services, care, medication or item that is necessary to maintain the health or safety of a patient/client;
 - (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a patient/client;
 - (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 patient/client.
- U.** “**Occupational therapist**” is a person who is licensed by the state of New Mexico as an occupational therapist, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.
- V.** “**Occupational therapist assistant**” is a person who is licensed by the state of New Mexico as a certified occupational therapist assistant, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.
- W.** “**Parent home health agency**” means an agency that develops and maintains responsibility for the operation and administrative control of branch office(s).
- X.** “**Patient/client**” means a person who is receiving home health care services.
- Y.** “**Personal care attendant/provider**” means a person who has successfully demonstrated competency to provide assistance with personal care such as bathing, grooming, bowel and bladder needs.
- Z.** “**Physical therapist**” is a person who is licensed by the state of New Mexico as a physical therapist, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.
- AA.** “**Physical therapist assistant**” is a person who is licensed by the state of New Mexico as a physical therapist assistant, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.
- BB.** “**Plan of care**” means a written plan of treatment which sets forth each service that the home health agency agrees to provide to a patient/client.
- CC.** “**Plan of correction**” means a plan written and signed by the licensee or representative addressing how and when the licensing authority’s identified deficiencies will be corrected.
- DD.** “**Physician**” is a person who is a doctor of medicine, osteopathy or podiatry licensed to practice medicine.
- EE.** “**Policy**” means a statement of principle that guides and determines present and future decisions and actions.
- FF.** “**Procedure**” means the action(s) that must be taken in order to implement a policy.
- GG.** “**Professional personnel**” means the staff of the agency or personnel under contract or agreement with the agency who require a license, registration or certification by the state of New Mexico.
- HH.** “**Quality improvement**” means an on-going assessment program which addresses clinical care and program evaluation.
- II.** “**Registered nurse**” means a person who holds a certificate of registration as a registered nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.
- JJ.** “**Residence**” means the place in New Mexico where a patient/client is residing at the time home health services are provided.
- KK.** “**Social worker**” is a person who is licensed by the state of New Mexico as a social worker, pursuant to Sections 61-31-1 to 61-31-25 NMSA 1978.
- LL.** “**Speech language pathologist**” is a person licensed by the state of New Mexico to practice speech language pathology, pursuant to Sections 61-14B-1 to 61-14B-25 NMSA 1978.
- MM.** “**Supervision**” means direction, guidance and oversight by a qualified person, within their sphere of competence, of an individual providing services in accordance with a patient/client’s plan of care.
- NN.** “**Supportive services**” means medically or non-medically directed assistance to patient/clients to meet basic activities of daily living.
- OO.** “**Therapeutic services**” means a medically directed activity or activities to patients/clients based upon a knowledge of disease processes provided by a home health agency.
- PP.** “**Waive/waiver**” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time in which the health, safety, or welfare of the patient/clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
- [8.370.22.7 NMAC - N, 7/1/2024]

8.370.22.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide services of home health agencies as outlined in these regulations.
[8.370.22.8 NMAC - N, 7/1/2024]

8.370.22.9 HOME HEALTH AGENCY AND SCOPE OF SERVICES: An agency or organization meeting the following criteria must be licensed as a home health agency:

- A.** Provides at least one medically directed service, such as, but not limited to:
 - (1) skilled nursing;
 - (2) physical therapy;
 - (3) occupational therapy;
 - (4) inhalation therapy;
 - (5) infusion therapy;
 - (6) speech language pathology;
 - (7) social work;
 - (8) home health aide;
 - (9) personal care attendant;
 - (10) homemaker.
- B.** A home health agency must provide at least one of the above services, in its entirety, directly through employees, but may provide other services under arrangements with another agency or organization or provider.
- C.** A licensed home health agency may also provide non-medically directed services.
- D. Home health agency excludes:**
 - (1) independent or sole practitioners providing in-home services under their respective professional practice acts;
 - (2) medical suppliers who do not provide services listed above;
 - (3) family, friends, volunteers and paid individuals not under the direct control of a home health agency.
- E. Branch office:** Means a licensed location from which a home health agency provides services to patient/clients. A home health agency may not apply for a license to open a branch office unless the parent agency has been in operation for at least one year, had an annual survey conducted by the licensing authority, and is found to be in substantial compliance with these regulations.
 - (1) A branch office must be located within 100 miles distance from the licensed location of the parent home health agency.
 - (2) A branch office must have a qualified on-site administrator who receives direction and supervision from the parent home health agency’s administrator/director.
 - (3) A branch office must be able to provide the same services as the parent home health agency.
 - (4) Original patient/client records, if stored at the parent home health agency, shall be made available upon request of the licensing authority within two hours.
- F. Service area:** A home health agency may only provide services to patient/clients who reside within one hundred (100) miles distance from the licensed location of the agency.
 - (1) The licensing authority may grant a temporary exception to the 100 mile distance limitation when the following conditions exist:
 - (a) no other home health agency service for the patient/client is available;
 - (b) no home health agency in the area within the 100 miles distance limitation is able or willing to provide services to the patient/client.
 - (2) Home health agencies not previously required to be licensed by the licensing authority shall have twelve months from the date these regulations are adopted to comply.
- G. Auxiliary work station:** A non-licensed, non-staffed convenience work station away from the licensed location of the home health agency’s office for the limited purposes of storage of supplies and a work area for documentation by staff where a telephone and fax may be available for communication. The auxiliary work station shall not function as a branch office and the following requirements are intended to insure that the work station does not become a branch office:

- (1) must not be utilized to increase the geographical service area of a home health agency or as a substitute for a branch operation of the agency;
 - (2) the name of the agency must not be identified by signage at the work station;
 - (3) the telephone number for the work station shall not be advertised or otherwise made available to persons or individuals other than staff of the agency;
 - (4) patient/clients shall only be admitted by and through the licensed location of the agency;
 - (5) no orders for patient/client care from physicians shall be accepted by agency staff at its auxiliary work station;
 - (6) no original patient/client records, copies of patient/client records or personnel records shall be maintained by the agency at the auxiliary work station.
- [8.370.22.9 NMAC - N, 7/1/2024]

8.370.22.10 INITIAL LICENSURE PROCEDURES: The authority to determine if a person(s) or organization is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute and these regulations. To obtain an initial license for a home health agency pursuant to these regulations, the following procedures must be followed by the applicant:

- A. These regulations should be thoroughly understood by the applicant and used as reference prior to applying for initial licensure.
 - B. The following documents must be submitted to the licensing authority:
 - (1) Letter of intent: Submit to the licensing authority a letter of intention to open a home health agency pursuant to these regulations.
 - (2) Application for initial license: All information requested by the licensing authority must be provided. All applications for an initial license must be accompanied by the required non-refundable fee.
 - (3) Functional program outline: Each application for initial licensure must be accompanied by a functional program outline that provides the following information:
 - (a) scope of Services to be provided by the proposed home health agency;
 - (b) estimated number of patient/clients to be served monthly;
 - (c) services that will be contracted or arranged with another health provider, i.e., homemaker, I.V. therapy, etc.;
 - (d) hours and days of operation.
 - (4) Home health agency policies: Submit for review and approval by the licensing authority, a copy of the home health agency policies and a copy of these licensing regulations annotated to the agency's policies and procedures. Note: Each regulation must be referenced to the appropriate policy by writing the page or policy number by the corresponding regulation.
 - C. Upon the licensing authority's approval of documents listed above, a temporary license will be issued. Upon receipt of the temporary license, the home health agency may admit patients/clients.
 - D. Upon becoming fully operational and accepting a patient/client, a home health agency must submit a written request to the licensing authority for the initial survey.
 - E. Upon completion of the initial survey and determination that the facility is in compliance with these regulations, the licensing authority will issue an annual license.
- [8.370.22.10 NMAC - N, 7/1/2024]

8.370.22.11 LICENSES:

- A. Annual license: An annual license is issued for a one year period to a home health agency which has met all requirements of these regulations.
- B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations, or for administrative purposes.
 - (1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.
 - (2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.
- C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.
 - (1) application must be on a form provided by the licensing authority.
 - (2) application must be accompanied by the required fee for an amended license.

(3) application must be submitted within 10 working days of the change.
[8.370.22.11 NMAC - N, 7/1/2024]

8.370.22.12 LICENSE RENEWAL:

A. The licensee must submit renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application, required fee and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the agency is in substantial compliance with these regulations.

C. If the licensee fails to submit a renewal application with the required fee and the current license expires, the agency shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[8.370.22.12 NMAC - N, 7/1/2024]

8.370.22.13 POSTING OF LICENSE: The agency's current, original license must be posted in a conspicuous place at the licensed location, as identified in the application for licensure.

[8.370.22.13 NMAC - N, 7/1/2024]

8.370.22.14 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

- A. ownership of the agency changes;
- B. the agency changes location of its office;
- C. licensee of the agency changes;
- D. the agency discontinues operation;
- E. an agency wishing to continue operation as a licensed home health agency under circumstances

listed above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change.

[8.370.22.14 NMAC - N, 7/1/2024]

8.370.22.15 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended, revoked, or:

- A. on the day an agency discontinues operation;
- B. on the day an agency is sold, leased, or otherwise changes ownership or licensee;
- C. on the day an agency changes location of its office.

[8.370.22.15 NMAC - N, 7/1/2024]

8.370.22.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, as amended, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.22.16 NMAC - N, 7/1/2024]

8.370.22.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A. failure to comply with any provision of these regulations;
- B. failure to allow survey by authorized representatives of the licensing authority;
- C. any person active in the operation of an agency licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. discovery of repeat violations of these regulations during surveys;

F. failure to provide the required care and services as outlined by these regulations for the patients/clients receiving care from the agency.
[8.370.22.17 NMAC - N, 7/1/2024]

8.370.22.18 EARING PROCEDURES:

A. Hearing procedures for adverse action taken by the licensing authority against an agency's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations may be requested at any time by contacting the licensing authority.
[8.370.22.18 NMAC - N, 7/1/2024]

8.370.22.19 AGENCY SURVEYS:

A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a home health agency by authorized licensing authority representatives during pendency of the application, and if licensed, during the licensure period.

B. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility. The licensing authority may include patient/client home visits as part of any survey or investigation.

C. Upon receipt of the official deficiency statement from the licensing authority, the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the agency intends to correct each violation noted and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.
[8.370.22.19 NMAC - N, 7/1/2024]

8.370.22.20 ACCEPTANCE OF PATIENTS/CLIENTS: Patients/clients must be accepted for treatment by the agency when there is a reasonable expectation that the patient/client's health care or supportive service needs can be met adequately in the patient/client's place of residence.
[8.370.22.20 NMAC - N, 7/1/2024]

8.370.22.21 OFFICE REQUIREMENTS:

A. An agency licensed pursuant to these regulations shall establish and maintain an official office for the conduct of its business with posted hours of operation.

B. The office space must be able to maintain, store and safeguard agency records.
[8.370.22.21 NMAC - N, 7/1/2024]

8.370.22.22 HEALTH AND AGE REQUIREMENTS:

A. All staff or contracted personnel involved in the care of patients/clients shall be at least 18 years of age.

B. All staff, contracted personnel, or volunteers having patient/client contact must have a TB test in accordance with the requirements of the infectious disease bureau, of the public health division, health care authority.
[8.370.22.22 NMAC - N, 7/1/2024]

8.370.22.23 REQUIREMENTS FOR LICENSURE OF PROFESSIONALS: Any health professional employed or contracted by the home health agency, such as, but not limited to, physicians, physician's assistants, nurse practitioners, physical or occupational therapists, speech language pathologists, registered professional nurses, licensed practical nurses, licensed or certified social workers, physical therapy assistants or certified occupational therapy assistants, must have a current license, registration or certification from the state of New Mexico. Proof of licensure must be maintained on file by the agency.
[8.370.22.23 NMAC - N, 7/1/2024]

8.370.22.24 GOVERNING BODY: Each agency licensed pursuant to these regulations must have a governing body who adopts and reviews, at least annually, written by-laws or policies and procedures which govern

the day to day operation of the agency.

- A. The governing body may include the licensee of the agency.
 - B. The governing body must have full legal authority and responsibility for the operation of the agency.
 - C. The governing body must appoint a qualified administrator.
 - D. The governing body must oversee the management and fiscal affairs of the agency.
 - E. The governing body must meet at least annually. These meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.
- [8.370.22.24 NMAC - N, 7/1/2024]

8.370.22.25 ADVISORY GROUP: Each agency licensed pursuant to these shall have an advisory group.

- A. The advisory group shall consist of:
 - (1) at least three individuals;
 - (2) an individual representing at least one of the services offered by the agency;
 - (3) at least one member of the group must be neither an owner or an employee of the agency;
 - (4) governing body members may also be part of the advisory group.
 - B. The advisory group shall meet at least semi-annually to perform the following functions:
 - (1) to review the agency's required policies and procedures and on-going quality improvement program and make recommendations to the governing body, at least annually;
 - (2) to participate in the agency's program evaluation, at least annually;
 - (3) to advise the agency on professional issues;
 - (4) to assist the agency in maintaining liaison with other health care providers in the community and in its community information efforts.
 - C. The advisory group meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.
- [8.370.22.25 NMAC - N, 7/1/2024]

8.370.22.26 ADMINISTRATOR: Each agency licensed pursuant to these regulations must have an administrator appointed by the governing body who:

- A. is a licensed physician; or
 - B. is a registered nurse; or
 - C. has at a minimum, a high school diploma or general equivalency diploma, training and experience in health services administration, and at least one year of supervisory or administrative experience in home health care.
 - D. may also be the supervising physician or registered nurse.
 - E. is responsible for implementing the directions of the governing body and organizing and directing the on-going functions of the agency in compliance with these regulations.
 - F. A qualified person is authorized in writing to act in the absence of the administrator.
- [8.370.22.26 NMAC - N, 7/1/2024]

8.370.22.27 RESPONSIBILITIES OF AGENCY PERSONNEL: Home health agencies utilizing any of the following personnel for provision of home care services must assure the responsibilities listed below are met.

- A. **Primary service personnel:** including, but not limited to, registered nurses, physical therapists, occupational therapists, speech therapists, social workers, shall:
 - (1) provide necessary professional care and guidance within the scope of their licensure;
 - (2) evaluate the home for its suitability for the patient/client's care;
 - (3) teach the patient/client and caregivers how to provide care;
 - (4) develop, evaluate and coordinate the patient/client's plan of care on a continuing basis;
 - (5) inform the physician and other personnel of changes in the patient/client's condition and needs;
 - (6) perform an evaluation visit and follow-up visits as needed;
 - (7) prepare clinical notes.
- B. **Secondary service personnel:** Other licensed personnel, including, but not limited to, respiratory therapists, licensed practical nurses, physical therapy assistants, certified occupational therapist assistants, shall:
 - (1) provide services in accordance with an established plan of care and agency policies;
 - (2) provide necessary professional care and guidance within the scope of their licensure;

- (3) prepare clinical notes;
- (4) evaluate the home for its suitability for the patient/client's care;
- (5) teach the patient/client and caregiver how to provide care;
- (6) inform the physician and other personnel of changes in the patient/client's condition and

needs.

C. Non-licensed personnel: Individuals, including, but not limited to, home health aides, homemakers, personal care attendants, shall:

- (1) provide personal care including assistance in the activities of daily living;
- (2) assist to maintain a safe and clean environment;
- (3) perform household services and other activities as assigned;
- (4) communicate with appropriate supervisor about changes or variations in the patient/client or home situation;
- (5) teach the patient/client and caregivers how to provide care, within the level of their competency;
- (6) prepare patient/client notes.

[8.370.22.27 NMAC - N, 7/1/2024]

8.370.22.28 SUPERVISING PERSONNEL:

A. The medically directed services provided by the agency must be supervised by a licensed professional or an appropriately qualified staff member.

B. The supervising staff member or their alternate who is similarly qualified must be available at all times during operating hours of the agency.

C. The supervising staff member or alternate who is similarly qualified must participate in all activities relevant to the services provided, including developing qualifications for assignments of personnel.

[8.370.22.28 NMAC - N, 7/1/2024]

8.370.22.29 SUPERVISION OF SECONDARY AND NON-LICENSED PERSONNEL:

A. Licensed practical nurses: Services and care provided by a licensed practical nurse will be furnished under the supervision of a registered nurse who has a minimum of one year home health experience or a minimum of two (2) years nursing experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the licensed practical nurse.
- (2) Conduct and document a supervisory visit to at least one patient/client residence at least every sixty (60) days, or more often as indicated.

B. Physical therapy assistants: Services and care provided by a physical therapy assistant will be furnished under the supervision of a physical therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the physical therapy assistant.
- (2) Conduct and document a supervisory visit to the patient/client residence at least every thirty (30) days or as indicated.

(3) Be on-call and readily available and within a 100 mile radius, or have appointed another physical therapist in their absence.

- (4) Supervise no more than two physical therapy assistants.

C. Certified occupational therapy assistants: Services and care provided by a certified occupational therapy assistant will be furnished under the supervision of an occupational therapist, with a minimum of one (1) year experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the certified occupational therapy assistant.
- (2) Conduct and document a supervisory visit to the patient/client residence:

(a) at a minimum of every two weeks for intermediate-level certified occupational therapy assistants;

- (b) at a minimum of every 30 days for advanced-level certified occupational therapy

assistants.

D. Home health aides: Services and care provided by a home health aide will be furnished under the supervision of an appropriately licensed professional, such as, registered nurse, physical therapist, occupational therapist, or a speech language pathologist with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client instructions which identify appropriate tasks to be performed by the home health aide.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple home health aides require only one supervisory visit. This home health aide need not be present in the patient/client's residence at the time of the supervisory visit.

E. Personal care attendants or equivalent: Services and care provided by a personal care attendant or equivalent will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the personal care attendant or equivalent.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every sixty-two (62) days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple personal care attendants or equivalent require only one supervisory visit. The personal care attendant need not be present in the patient/client's residence at the time of the supervisory visit.

F. Homemakers: Services and care provided by a homemaker will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the homemaker.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every sixty-two (62) days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple homemakers require only one supervisory visit. The homemaker need not be present in the patient/client's residence at the time of the supervisory visit.

[8.370.22.29 NMAC - N, 7/1/2024]

8.370.22.30 HOME HEALTH AIDE TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a home health aide on a full-time, part-time, temporary, per diem, or other basis unless:

(1) that individual is competent to provide services as a home health aide;

(2) that individual has completed a training program or a competency evaluation program as outlined in these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct home health aide training and the training curriculum to the licensing authority. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of home health aides and document that each is determined competent.

(3) The licensing authority may deny a home health agency the right to conduct home health aide training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial non-compliance with these regulations.

C. Course requirements: Home health aides: The home health aide training program must address each of the subject areas listed below through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(1) The individual being trained must complete at least 16 hours of classroom training before beginning the supervised practical training;

(2) communications skills;

(3) observation, reporting and documentation of patient status and the care or service furnished;

(4) reading and recording of vital signs;

(5) basic infection control procedures;

(6) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

- (7) maintenance of a clean, safe and healthy environment;
- (8) recognizing emergencies and knowledge of emergency procedures (including CPR and first aid);
- (9) the physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, their privacy and their property;
- (10) appropriate and safe techniques in personal hygiene and grooming that include, but are not limited to, bathing, shampooing, nail and skin care, oral hygiene and toileting;
- (11) safe transfer techniques and ambulation;
- (12) normal range of motion and positioning;
- (13) nutrition and hydration;
- (14) patient/client rights, including respect for cultural diversity;
- (15) any other task that the home health agency may choose to have the home health aide perform.

D. Instructor personnel:

(1) The training of home health aides must be performed by, or under the supervision of, a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health services.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide home health aide training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. Competency evaluation includes both a written test and a skills demonstration. Skills demonstration must be observed and documented by a registered nurse or licensed practical nurse.

(2) Documentation must include at least the following information:

(a) Training:

- (i) name of individual taking training;
- (ii) title, purpose and objectives of class;
- (iii) name of instructor and qualifications;
- (iv) number of hours of instruction;
- (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

F. Annual in-service training: Each home health aide must participate in at least 12 documented hours of in-service training during each 12 month period. This requirement may be fulfilled on a prorated basis during the home health aide's first year of employment at the home health agency.

G. Annual performance review: A performance review, including written evaluation and skills demonstration must be completed on each home health aide no less frequently than every 12 months. [8.370.22.30 NMAC - N, 7/1/2024]

8.370.22.31 HOMEMAKER/PERSONAL CARE ATTENDANT OR EQUIVALENT TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a homemaker/personal care attendant or equivalent on a full-time, part time, temporary, per diem or other basis unless:

(1) That individual is competent to provide assigned tasks as a homemaker/personal care attendant or equivalent.

(2) That individual has completed a training program or a competency evaluation program as outlined in these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct homemaker/personal care attendant or equivalent training and the source of training material. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of homemaker/personal care attendant or equivalent and document that each is determined to be competent.

(3) The licensing authority may deny a home health agency the right to conduct homemaker/personal care attendant or equivalent training or competency evaluation, for a specified period of time, not to exceed two (2) years, if the licensing authority finds the agency in substantial noncompliance with these regulations.

C. Course requirements: The home health agency's homemaker/personal care attendant or equivalent training program must consist of no less than 40 hours of training, to be completed by the homemaker/personal care attendant or equivalent in the first year of employment. Ten hours of training must be completed prior to placing the homemaker/personal care employee in a patient/client home. Two of the 10 hours may include agency orientation. Eight of the 10 hours training must be patient/client service specific. The training must address, at a minimum, the following areas:

- (1) communication skills;
- (2) patient/client rights, including respect for cultural diversity;
- (3) recording of information for patient/client records;
- (4) nutrition and meal preparation;
- (5) housekeeping skills;
- (6) care of the ill and disabled, including the special needs populations;
- (7) emergency response (including CPR and first aid);
- (8) basic infection control;
- (9) home safety.

D. Instructor personnel:

(1) The training of homemaker/personal care attendant or equivalent must be performed by or under the direction of a licensed professional or an appropriately qualified person.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide homemaker/personal care attendant or equivalent training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. The training or competency evaluation must be observed and documented by a licensed professional or an appropriately qualified person.

(2) Documentation must include at least the following information:

(a) Training:

- (i) name of individual taking training;
- (ii) title, purpose, and objectives of class;
- (iii) name of instructor;
- (iv) number of hours of instruction;
- (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

(3) Annual in-service training: Each homemaker/personal care attendant or equivalent shall participate in at least 10 documented hours of in-service training during each 12-month period.
[8.370.22.31 NMAC - N, 7/1/2024]

8.370.22.32 PATIENT/CLIENT RIGHTS: A home health agency licensed pursuant to these regulations must protect and promote the rights of each individual under its care, including each of the following rights:

A. the right to be fully informed in advance about the care and treatment to be provided by the agency;

B. the right to refuse or terminate treatment;

C. the right to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being;

D. the right to participate in planning care and treatment or changes in care or treatment, except for those individuals adjudged incompetent;

E. the right to be treated with dignity and respect and to be free from abuse, neglect, and exploitation. No home health agency to whom a patient/client's money or valuables have been entrusted shall mingle the patient/client's monies, valuables or property, with that of the licensee, staff or management;

F. the right to voice grievances, with respect to treatment or care that is or fails to be furnished, without discrimination or reprisal for voicing such grievances;

G. the right to confidentiality of medical care and patient/client records;

H. the right to have one's property treated with respect;

I. the right to be fully informed, orally and in writing, of all charges for services to be performed by the agency and of any changes in these charges;

J. the right to be informed of the New Mexico home health agency hotline number (1-800-752-8649), hours of operation (8:00 am-5:00 pm, Monday-Friday), and purpose of the hotline, which is to receive complaints, questions about local home health agencies, or to lodge complaints concerning the implementation of the advance directives requirements;

K. the right to be fully informed regarding advance directives, prior to care being given. This information must include agency policies on advance directives and a description of applicable state law;

L. the right to be fully informed, in writing, of the patient/client's rights pursuant to these regulations. [8.370.22.32 NMAC - N, 7/1/2024]

8.370.22.33 PLAN OF CARE: Care of a patient/client by the agency must follow a written plan of care which is reviewed at least annually.

A. Medically directed care: An agency must follow a written plan of care established and periodically reviewed by a physician, and care continues under the supervision of a physician.

(1) The plan of care shall be developed in consultation with appropriate agency staff and cover all pertinent diagnoses, including but not limited to:

- (a)** mental status;
- (b)** types of services and equipment required;
- (c)** frequency and duration of visits;
- (d)** functional limitations;
- (e)** activities permitted;
- (f)** nutritional requirements;
- (g)** medications and treatments;
- (h)** safety measures to protect against injury;
- (i)** plans or goals for care;
- (j)** any other appropriate items.

(2) If a physician refers a patient/client under a plan of care which cannot be completed until after an evaluation visit, the physician must be consulted to approve additions or modifications to the original plan.

(3) The plan of care must be reviewed by the attending physician and home health agency personnel at least annually or as often as the condition of the patient/client requires.

(4) Agency professional staff must promptly alert the physician to any changes that suggest a need to alter the plan of care.

(5) Conformance with physician's orders:

(a) Drugs and treatments shall be administered by agency staff only as ordered by the physician.

(b) Licensed professionals must immediately record and sign oral orders and obtain the physician's countersignature.

(c) For a patient/client receiving nursing services, all medications a patient/client may be taking must be checked to identify possible ineffective drug therapy, adverse reactions, significant side effects, drug allergies and contraindicated medications. Medication problems must be promptly reported to the physician.

B. Non-medically directed care: An agency must follow a written plan of care, which includes goals and objectives appropriate to the patient/client being served, and which is established and reviewed at least annually by agency staff.

[8.370.22.33 NMAC - N, 7/1/2024]

8.370.22.34 PATIENT/CLIENT RECORDS: Each agency licensed pursuant to these regulations must maintain the original record for each patient/client receiving services. Patient/client records shall be made available

for review upon request of the licensing authority. Every record must be accurate, legible, promptly completed and consistently organized. A patient/client record must meet the following criteria:

- A.** Content of patient/client record:
- (1) Medically directed patient/client record must include:
- (a) past and current medical findings in accordance with accepted professional standard;
 - (b) plan of care;
 - (c) identifying information;
 - (d) name of physician;
 - (e) medications, diet, treatment/services, and activity orders;
 - (f) signed and dated notes on the day service(s) provided;
 - (g) copies of summary reports sent to the physician;
 - (h) evidence of patient/client being informed of rights;
 - (i) evidence of coordination of care provided by all personnel providing patient/client services;
 - (j) discharge summary.
- (2) Non-medically directed patient/client records must include:
- (a) plan of care;
 - (b) identifying information;
 - (c) signed and dated notes on the day service(s) provided;
 - (d) evidence of patient/client being informed of rights;
 - (e) evidence of coordination of care of all personnel providing patient/client services;
 - (f) evidence of discharge.
- B.** If the patient/client is discharged or transferred to another provider of health care, upon receipt of a signed request from the patient/client, a copy of the original record or an abstract of the same must be made available to the receiving facility, within 24 hours.
- C. Protection of patient/client records:**
- (1) The agency must insure that the original patient/client records and information is safeguarded against loss or unauthorized use.
- (2) The agency must have written policies and procedures governing the use and removal of patient/client records and conditions for release of information.
- (3) Patient/client's written consent is required for release of information not authorized by law.
- D. Retention of patient/client records:**
- (1) Original patient/client records shall be retained for at least 10 years after the patient/client is discharged.
- (2) Original patient/client records shall be maintained for the requisite period even if the agency has discontinued operations.
- (3) The licensing authority must be notified, in writing, prior to discontinuing operation of the storage location of patient/client records.

[8.370.22.34 NMAC - N, 7/1/2024]

8.370.22.35 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE AGENCY:

- A.** a copy of the last survey conducted by the licensing authority;
- B.** licensing regulations: A copy of these regulations, 8.370.22 NMAC;
- C.** agreements or contracts to provide services or care;
- D.** patient/client records;
- E.** staff records;
- F.** training and in-service records as applicable;
- G.** minutes of advisory group and governing board meetings;
- H.** quality improvement program records;
- I.** grievances and resolutions;
- J.** state board of pharmacy certificates as applicable.

[8.370.22.35 NMAC - N, 7/1/2024]

8.370.22.36 CONTRACTED SERVICES: Services that are provided under arrangement by an individual or entity and the home health agency, shall include a written contract between those individuals or entities and the agency, that specifies the following:

- A. that patients are accepted for care only by the primary (admitting) home health agency;
- B. the services to be furnished under the contract.
- C. the necessity to conform to all applicable agency policies including personnel qualifications;
- D. the responsibility for participating in developing plans of care;
- E. the manner in which services will be controlled, coordinated and evaluated by the primary agency;
- F. the procedures for submitting clinical notes, scheduling of visits and conducting periodic patient evaluation;
- G. the procedures for payment for services furnished under the contract.

[8.370.22.36 NMAC - N, 7/1/2024]

8.370.22.37 STAFF RECORDS: Each agency licensed pursuant to these regulations must maintain a complete record on file for each staff member and for all volunteers with in-home contact or working more than half-time. Staff records shall be made available for review upon request of the licensing authority within four hours. Staff records must contain at least the following:

- A. name;
- B. address;
- C. position for which employed;
- D. date of employment;
- E. health certificate for all staff having contact with patient/clients stating that the employee is free from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, health care authority;

F. a copy or proof of the current license, registration or certificate for each staff member for whom a license, registration, or certification is required by the State of New Mexico.

[8.370.22.37 NMAC - N, 7/1/2024]

8.370.22.38 POLICIES AND PROCEDURES: Each agency licensed pursuant to these regulations must have written policies and procedures for at least the following:

- A. scope of services offered;
- B. providing of services through arrangement or contract with individuals or agencies;
- C. admission and discharge;
- D. written job descriptions for all categories of personnel;
- E. personnel policies;
- F. staff training;
- G. emergency and after normal business hour care policies/procedures;
- H. preparation, safeguarding, and release of information from patient/client records;
- I. quality improvement program;
- J. complaints and grievances, including timely resolution.

[8.370.22.38 NMAC - N, 7/1/2024]

8.370.22.39 QUALITY IMPROVEMENT: Each agency must establish an on-going quality improvement program to ensure an adequate and effective operation. To be considered on-going, the quality improvement program must document quarterly activity that addresses, but is not limited to:

A. Clinical care: Assessment of patient/client goals and outcome, such as, diagnosis(es), plan of care, services provided, and standards of patient/client care.

B. Operational activities: Assessment of the total operation of the agency, such as, policies and procedures, statistical data (i.e., admissions, discharges, total visits by discipline, etc.), summary of quality improvement activities, summary of patient/client complaints and resolutions, and staff utilization.

C. Quality improvement action plan: Written responses to address existing or potential problems which have been identified.

D. Documentation of activities: The results of the quality improvement activities shall be compiled annually in report format and formally reviewed and approved by the governing body and advisory group of the home health agency. No more than one year may lapse between evaluations of the same part.

E. The licensing authority may, at its sole discretion, request quarterly activity summaries of an agency's on-going quality improvement activities or may direct the agency to conduct specific quality improvement studies.

[8.370.22.39 NMAC - N, 7/1/2024]

8.370.22.40 COMPLAINTS: The home health agency must investigate complaints made by a patient/client, caregiver, or guardian regarding treatment or care, or regarding the lack of respect for the patient/client's property and must document both the existence of the complaint and the resolution of the complaint. The agency's investigation of a complaint(s) must be initiated within three working days.

[8.370.22.40 NMAC - N, 7/1/2024]

8.370.22.41 INCIDENTS:

A. Reporting: All home health agencies licensed pursuant to these regulations must report to the licensing authority any of the following which has, or could threaten the health, safety and welfare of the patient/clients or staff:

- (1) any serious incident or unusual occurrence;
- (2) injuries of unknown origin or known, suspected or alleged incidents of patient/client abuse, neglect, exploitation, or mistreatment by staff or person(s) contracted by the home health agency.

B. Documentation: The agency is responsible for documenting all incidents, within five days of the incident, and having on file the following:

- (1) a narrative description of the incident;
- (2) evidence contact was made to the licensing authority;
- (3) results of the facility's investigation;
- (4) the facility action, if any.

[8.370.22.41 NMAC - N, 7/1/2024]

8.370.22.42 RELATED REGULATIONS AND CODES: 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. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.

B. Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

[8.370.22.42 NMAC - N, 7/1/2024]

HISTORY OF 8.370.22 NMAC: RESERVED

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 24 REQUIREMENTS FOR END STAGE RENAL DISEASE FACILITIES

8.370.24.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.24.1 NMAC - N, 7/1/2024]

8.370.24.2 SCOPE: These regulations apply to:

A. public, profit or nonprofit facilities or entities providing dialysis services as outlined by these regulations;

B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[8.370.24.2 NMAC - N, 7/1/2024]

8.370.24.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-7-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.24.3 NMAC - N, 7/1/2024]

8.370.24.4 DURATION: Permanent.
[8.370.24.4 NMAC - N, 7/1/2024]

8.370.24.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.24.5 NMAC - N, 7/1/2024]

8.370.24.6 OBJECTIVE:

A. Establish minimum standards for end stage renal disease facilities in the state of New Mexico.

B. Monitor end stage renal disease facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the patients or staff.

C. Encourage the maintenance of end stage renal disease facilities that will provide quality services which maintain or improve the health and quality of life for the patients.

[8.370.24.6 NMAC - N, 7/1/2024]

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

A. **“Applicant”** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

B. **“Deficiency”** means a violation of or failure to comply with a provision(s) of these regulations.

C. **“License”** means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.

D. **“Licensee”** means the person(s) who, or organization which, has an ownership, leasehold or similar interest in the end stage renal disease facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.

E. **“Licensing authority”** means the New Mexico health care authority.

F. **“NMSA”** means the New Mexico Statutes Annotated, 1978 compilation, and all the revisions and compilations thereof.

G. **“Plan of correction”** means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.

H. **“Policy”** means a statement of principal that guides and determines present and future decisions and actions.

I. **“Procedure”** means the action(s) that must be taken in order to implement a policy.

J. **“Variance”** means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the

granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a facility, and is at the sole discretion of the licensing authority.

K. “Waive/waiver” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety or welfare of the patients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
[8.370.24.7 NMAC - N, 7/1/2024]

8.370.24.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may.” “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide dialysis services as outlined in these regulations.
[5/7/1991; Recompiled 7/1/2024]

8.370.24.9 TYPES OF END STAGE RENAL DISEASE (ESRD) FACILITIES AND SCOPE OF SERVICES:

A. Renal transplantation center: A hospital unit which is approved to furnish directly, transplantation and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis furnished directly or under arrangement. A renal transplantation center may also be a renal dialysis center.

B. Renal dialysis center: A hospital unit which is approved and licensed to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of ESRD dialysis patients (including inpatient dialysis furnished directly or under arrangement). A hospital need not provide renal transplantation to qualify as a renal dialysis center.

C. Renal dialysis facility: A unit which is located in a building other than a hospital which is approved and licensed to furnish dialysis services directly to ESRD patients.

D. Self dialysis unit: A unit that is within a licensed renal transplantation center, renal dialysis center, or a renal dialysis facility, which provides self-dialysis service.

E. Special purpose renal dialysis facility: A renal dialysis facility which is approved and licensed pursuant to these regulations to provide dialysis at special locations on a short term basis (not to exceed eight months) to a group of dialysis patients otherwise unable to obtain treatment in the geographical area. The special locations must be either special rehabilitative (including vacation) locations serving ESRD patients temporarily residing there, or locations in need of ESRD facilities under emergency circumstances.

F. End stage renal disease (ESRD) services: The types of care or services furnished to an ESRD patient are:

- (1) transplantation service which is a process by which:
 - (a) a kidney is excised from a live or cadaveric donor;
 - (b) that kidney is implanted in an ESRD patient;
 - (c) supportive care is furnished to the living donor and to the recipient following implantation;
 - (d) this service is only provided at an approved and licensed transplantation center.
- (2) inpatient dialysis which because of medical necessity, is furnished to an ESRD patient on a temporary inpatient basis in a hospital. This service may only be provided by a transplantation center or renal dialysis center.
- (3) outpatient dialysis is dialysis furnished on an outpatient basis at a licensed transplantation center, renal dialysis center, or renal dialysis facility and includes:
 - (a) staff assisted dialysis which is dialysis performed by the staff of the center or facility;
 - (b) self dialysis which is performed with little or no professional assistance, by an ESRD patient who has completed an appropriate course of training;
 - (c) home dialysis performed by an appropriately trained patient at home.
- (4) self dialysis and home dialysis training in which the licensed ESRD transplantation center, renal dialysis center, or renal dialysis facility provides a program that trains ESRD patients to perform self-dialysis or home dialysis with little or no professional assistance, and trains other individuals to assist patients in performing self-dialysis or home dialysis.

[8.370.24.9 NMAC - N, 7/1/2024]

8.370.24.10 INITIAL LICENSURE PROCEDURES: To obtain an initial license for a end stage renal disease facility pursuant to these regulations the following procedures must be followed by the applicant:

A. Initial phase: These regulations should be thoroughly understood by the applicant and used as a reference for design of a new building or renovation or addition to an existing building for licensure as a ESRD facility pursuant to these regulations. Prior to starting construction, renovations or additions to an existing building the applicant of the proposed ESRD facility shall advise the licensing authority of intention to open an ESRD facility pursuant to these regulations and submit the following:

(1) Plans: Submit a complete set of construction documents (blueprints) for the total building. Plans should indicate if new construction, remodeled or alteration, or an addition. If remodeled or an addition the plans must indicate existing and new construction.

(2) Functional program outline: The proposed end stage renal disease facility must also submit to the licensing authority a functional program outline that provides the following information:

(a) scope of services to be provided by the proposed ESRD facility;
(b) projected number of patients to be served daily;
(c) number of staff and duties to be performed;
(d) services that will be provided under agreement or arrangement with another facility;

(e) number of dialysis stations, treatment rooms and other rooms for diagnostic use such as X-ray, laboratory, etc.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building the applicant will submit to the licensing authority the following:

(1) Application form:

- (a) will be provided by the licensing authority;
- (b) all information requested on the application must be provided;
- (c) will be printed or typed;
- (d) will be dated and signed;
- (e) will be notarized.

(2) Fees: All applications for licensure must be accompanied by the required fee.

(a) Current fee schedules will be provided by the licensing authority.
(b) Fees must be in the form of a certified check, money order, personal, or business check made payable to the state of New Mexico.
(c) Fees are non-refundable.

(3) Zoning and building approval:

(a) All initial applications must be accompanied with written zoning approval from the appropriate authority (city, county or municipality).
(b) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).

(4) Fire authority approval: All initial applications must be accompanied with written approval of the fire authority having jurisdiction.

(5) New Mexico environment department approval: All initial applications must be accompanied by written approval of the environmental department for the following:

- (a) private water supply, if applicable;
- (b) private waste or sewage disposal, if applicable;
- (c) X-ray equipment, if applicable.

(6) Copy of appropriate drug permit issued by the state board of pharmacy, if applicable.

(7) Initial survey: Upon receipt of a properly completed application with all supporting documentation as outlined above an initial survey of the proposed end stage renal disease facility will be scheduled by the licensing authority.

(8) Issuance of license: Upon completion of the initial survey and determination that the end stage renal disease facility is in compliance with these regulations the licensing authority will issue a license.

[8.370.24.10 NMAC - N, 7/1/2024]

8.370.24.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to an end stage renal disease facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility.

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for an amended license.

(3) Application must be submitted within 10 working days of the change.

[8.370.24.11 NMAC - N, 7/1/2024]

8.370.24.12 LICENSE RENEWAL:

A. Licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application and required fee, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the facility is in substantial compliance with these regulations.

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the ESRD facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.

[8.370.24.12 NMAC - N, 7/1/2024]

8.370.24.13 POSTING OF LICENSE: The ESRD facility's license must be posted in a conspicuous place in an area visible to the public.

[8.370.24.13 NMAC - N, 7/1/2024]

8.370.24.14 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. the facility discontinues operation;

E. a facility wishing to continue operation as a licensed end stage renal disease facility under circumstances listed above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change.

[8.370.24.14 NMAC - N, 7/1/2024]

8.370.24.15 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended or revoked, or:

A. on the day a facility discontinues operation;

B. on the day a facility is sold, leased, or otherwise changes ownership or licensee;

C. on the day a facility changes location.

[8.370.24.15 NMAC - N, 7/1/2024]

8.370.24.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.24.16 NMAC - N, 7/1/2024]

8.370.24.17 GROUND FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A. Failure to comply with any provision of these regulations.
- B. Failure to allow survey by authorized representatives of the licensing authority.
- C. Any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony.
- D. Misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority.
- E. Discovery of repeat violations of these regulations during surveys.
- F. Failure to provide the required care and services as outlined by these regulations for the patients receiving care at the facility.

[8.370.24.17 NMAC - N, 7/1/2024]

8.370.24.18 HEARING PROCEDURES:

- A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against an ESRD facility license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- B. A copy of the adjudicatory hearing procedures will be furnished to an ESRD facility at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.

[8.370.24.18 NMAC - N, 7/1/2024]

8.370.24.19 CURRENTLY LICENSED FACILITIES: Any ESRD facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements, may continue to be licensed if:

- A. variance may be granted for those building requirements the ESRD facility cannot meet provided the variances granted will not create a hazard to the health, safety and welfare of the patients and staff, and are not in violation of current fire and building codes;
- B. the building requirements for which variances are granted cannot be corrected without an unreasonable expense to the ESRD facility; and
- C. variances granted will be recorded and made a permanent part of the end stage renal disease facility file.

[8.370.24.19 NMAC - N, 7/1/2024]

8.370.24.20 NEW FACILITY: A new ESRD facility may be opened in an existing building or a newly constructed building.

- A. If opened in an existing building a variance may be granted for those building requirements the ESRD facility cannot meet under the same criteria outlined in 8.370.24.19 NMAC, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.
- B. A new ESRD facility opened in a newly constructed building must meet all requirements of these regulations.

[8.370.24.20 NMAC - N, 7/1/2024]

8.370.24.21 FACILITY SURVEYS:

- A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a ESRD facility by authorized licensing authority representatives at reasonable times during the pendency of the application and, if licensed, during the licensure period.
- B. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility.

C. Upon receipt of a notice of deficiency from the licensing authority the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the facility intends to correct each violation noted and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.
[8.370.24.21 NMAC - N, 7/1/2024]

8.370.24.22 ADOPTION OF FEDERAL STANDARDS: The licensing authority hereby adopts the federal standards for certification of end stage renal disease (ESRD) services, as set out in 42 C.F.R. Sections 405.2100 through 405.2171, as amended from time to time, as the standards for licensure of end stage renal disease services in the state of New Mexico.
[8.370.24.22 NMAC - N, 7/1/2024]

8.370.24.23 RELATED REGULATIONS AND CODES: End stage renal disease 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. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
B. Health facility sanctions and civil monetary penalties, New Mexico health care authority 8.370.4 NMAC.

C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
[8.370.24.23 NMAC - N, 7/1/2024]

HISTORY OF 8.370.24 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND
COMMUNITY BASED WAIVER PROGRAMS
PART 25 HEARING REQUIREMENTS FOR CERTIFIED NURSE AIDES

8.370.25.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.25.1 NMAC - N, 7/1/2024]

8.370.25.2 SCOPE: These regulations apply to nurse aides on the nurse aide registry who may perform nurse aide duties at medicare or medicaid facilities.
[8.370.25.2 NMAC - N, 7/1/2024]

8.370.25.3 STATUTORY AUTHORITY: The regulations set forth herein have been promulgated by authority of Subsection E of Sections 9-8-6, Subsection O of Section 24-1-3, and Subsection B of Section 24-2-5 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.
[8.370.25.3 NMAC - N, 7/1/2024]

8.370.25.4 DURATION: Permanent.
[8.370.25.4 NMAC - N, 7/1/2024]

8.370.25.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.25.5 NMAC - N, 7/1/2024]

8.370.25.6 OBJECTIVE: The purpose of these regulations is to:

- A.** provide for notification to the nurse aide of allegations of abuse, neglect, or exploitation;
- B.** provide the opportunity for a hearing to the nurse aide against whom an allegation of abuse, neglect, or exploitation has been made;
- C.** provide for notification to the nurse aide and the nurse aide registry if the allegations are substantiated and upheld following any appeal requested pursuant to these regulations.

[8.370.25.6 NMAC - N, 7/1/2024]

8.370.25.7 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. “Facility”** means a skilled nursing facility or nursing facility, or a distinct part of a skilled nursing facility or nursing facility.
- D. “Great psychological harm”** means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

E. “Licensed health professional” means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

F. “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.

G. “Nurse aide” means any individual who provides nursing or nursing related services to residents in a facility and who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

H. “Registry” means a listing by the state survey agency of all individuals who have satisfactorily completed a nurse aide training or competency evaluation program approved by the health care authority and state survey agency, or who have qualified by reciprocity.

I. “Resident” means any person who resides in a health care facility or who receives treatment from a certified health care provider.

J. “Survey agency” means the health facility licensing and certification bureau of the New Mexico health care authority.

[8.370.25.7 NMAC - N, 7/1/2024]

8.370.25.8 INVESTIGATION: Following review by the survey agency, all allegations for which there is reason to believe, either through oral or written evidence, that the resident has been abused, neglected or exploited will be investigated.

[8.370.25.8 NMAC - N, 7/1/2024]

8.370.25.9 SOURCE OF COMPLAINTS: All complaints received by the survey agency for which there is reason to believe that the resident has been abused, neglected or exploited will be investigated regardless of their source.

[8.370.25.9 NMAC - N, 7/1/2024]

8.370.25.10 NOTIFICATION: If the survey agency determines, based on oral or written evidence, that resident abuse, neglect or exploitation occurred, it shall notify by mail the nurse aide implicated in the investigation and the administrator of the facility that employs the nurse aide of the:

A. nature of the allegation(s);

B. date of the occurrence;

C. right to a hearing;

D. survey agency’s intent to report the substantiated findings, once the nurse aide has had the opportunity for a hearing, to the nurse aide registry and other appropriate licensure authorities;

E. fact that the nurse aide’s failure to request a hearing in writing within 30 days from the date of the notice will result in the survey agency reporting the substantiated findings to the administrator of the facility that employs the nurse aide to the nurse aide registry.

[8.370.25.10 NMAC - N, 7/1/2024]

8.370.25.11 REQUEST FOR HEARING: A nurse aide determined by the survey agency to have committed abuse, neglect, or exploitation may request an administrative hearing. The request for a hearing shall be in writing and mailed or delivered to the New Mexico health care authority as directed in the notification sent pursuant to 8.370.25.10 NMAC.

[8.370.25.11 NMAC - N, 7/1/2024]

8.370.25.12 IMPARTIAL HEARING OFFICER: Upon receipt of a timely request for a hearing, the secretary of the health care authority or their designee shall appoint an impartial hearing officer to conduct the hearing and issue a report and recommended decision. The hearing officer need not be an attorney. The hearing officer must not have been involved in any way in the action which is challenged in the hearing.

[8.370.25.12 NMAC - N, 7/1/2024]

8.370.25.13 PARTIES: The parties to a hearing conducted under these regulations shall be the survey agency and the nurse aide.

[8.370.25.13 NMAC - N, 7/1/2024]

8.370.25.14 PRE-HEARING DISCOVERY:

A. Upon written request, the nurse aide who has requested a hearing shall be entitled to review and copy documents in the survey agency's file that are relevant to the challenged action. Documents protected by confidentiality or privilege, however, shall not be inspected or copied.

B. The parties shall disclose to each other verbally, or in writing, and to the hearing officer, the names of witnesses to be called and the general subject matter of their testimony no later than two days prior to the hearing. No formal depositions shall be allowed, although if the witnesses do not object, they may be informally interviewed prior to their testimony.

[8.370.25.14 NMAC - N, 7/1/2024]

8.370.25.15 SCHEDULING THE HEARING:

A. The hearing shall take place within 30 days after the survey agency's receipt of the request for a hearing.

B. The survey agency or, if so delegated, the hearing officer shall schedule the hearing at a place and time reasonably convenient for the nurse aide and shall provide reasonable notice to the parties and to the administrator of the facility that employs the nurse aide of the place and time of the hearing.

[8.370.25.15 NMAC - N, 7/1/2024]

8.370.25.16 CONDUCT OF HEARING:

A. The hearing officer shall conduct the hearing in public except when a closed hearing is requested in order to protect confidential information.

B. The survey agency has the burden of proving, by a preponderance of the evidence, the existence of the conduct relied upon to take the challenged action.

C. Testimony shall be under oath and witnesses are subject to cross examination.

D. The rules of evidence do not apply, however, evidence shall be admitted if it is the type that a reasonable person would rely on in the conduct of their affairs.

E. If a nurse aide demonstrates that resident neglect was caused by factors beyond their control, such showing shall constitute a defense to the charge of neglect.

F. A record made by audio recording device shall be maintained with the hearing officer's file.

[8.370.25.16 NMAC - N, 7/1/2024]

8.370.25.17 REPORT AND RECOMMENDATIONS OF HEARING OFFICER: The hearing officer shall render and mail a written report and recommended decision within five working days of the conclusion of the hearing to the secretary of the health care authority or their designee. The report shall state the basis of such decision and recommend final action to the secretary or the designee. The decision need not contain formal findings of fact or conclusions of law.

[8.370.25.17 NMAC - N, 7/1/2024]

8.370.25.18 FINAL DECISION: The secretary, or the designee, shall render a final determination within 10 days of the submission of the hearing officer's report. Parties may be notified personally, by telephone or by mail of the final order. A copy of the final decision shall be mailed to each party or attorney of record.

[8.370.25.18 NMAC - N, 7/1/2024]

8.370.25.19 REPORT OF FINDINGS: If the secretary, or the designee, finds that the nurse aide has abused, neglected, or exploited a resident the survey agency shall report these findings to:

A. the nurse aide;

B. the administrator of the facility that employs the nurse aide; and

C. the nurse aide registry.

[8.370.25.19 NMAC - N, 7/1/2024]

8.370.25.20 REPORT OF FINDINGS TO THE NURSE AIDE REGISTRY: Within 10 working days of the secretary's, or their designee's, findings, the survey agency shall report the following information to the nurse aide registry:

- A. the finding made by the secretary, or the designee, as a result of the hearing;
- B. any statement by the nurse aide disputing the finding;
- C. that the nurse aide waived the right to a hearing, if applicable;
- D. any failure by the nurse aide to respond to the allegation.

[8.370.25.20 NMAC - N, 7/1/2024]

8.370.25.21 REQUIRED CONTENT OF REGISTRY RECORDS: The survey agency shall retain in accordance with state of New Mexico recordkeeping requirements:

- A. records of occurrence;
- B. investigative reports;
- C. hearing findings;
- D. waiver of hearing rights.

[8.370.25.21 NMAC - N, 7/1/2024]

8.370.25.22 APPEAL OF FINAL ACTION: A party may appeal the secretary's, or their designee's, final action to the first judicial district court in Santa Fe pursuant to Rule 1-075, NMRA within 30 days from the date of the final action. An appeal does not stay the final action.

[8.370.25.22 NMAC - N, 7/1/2024]

8.370.25.23 RIGHT TO PETITION THE REMOVAL OF NAME FROM THE NURSE AIDE REGISTRY IN CASES OF NEGLIGENCE: A nurse aide may petition the health care authority for the removal of their name from the nurse aide registry in cases where there was a finding of neglect. Petitions for removal will not be accepted when the finding was for abuse, physical or verbal. Such petitions shall be made in writing and mailed or hand delivered to the health care authority, division of health improvement, HFL&C bureau chief. The following procedures apply to nurse aides who petition for the removal of their name from the nurse aide registry.

A. The nurse aide may petition the authority after one year from the date that they were placed on the nurse aide registry. In their petition the nurse aide must show that through their employment and personal history their performance as a nurse aide does not reflect a pattern of abusive behavior or neglect; and that neglect involved in the original finding was a singular occurrence.

B. Within 30 days of receipt of a petition the authority shall set the date for a hearing. Failure to petition within 30 days from the conclusion of the one year period shall result in forfeiture of the person's right to a hearing. Such a request shall be made in writing and mailed, or hand delivered, and shall be accompanied by a payment of \$40.00 or a sworn statement of indigence on a form provided by the authority. The hearing shall be held in Santa Fe, New Mexico at the health care authority.

C. In the event that the authority denies the petition, the authority will notify the nurse aide within 30 days of the reasons for denying the petition and the nurse aide will continue to be placed on the nurse aide registry.

D. If the secretary of the health care authority, or their designee, determines that the nurse aide does not show a pattern of abusive behavior or neglect, and the neglect involved was a singular occurrence, the nurse aide shall be placed in probationary status on the nurse aide registry. The period of probation will be determined by the secretary, or their designee, and shall not exceed one year. During the probationary period the nurse aide must complete necessary training involving resident's rights, or other training approved by the health facility licensing and certification bureau. Upon successful completion of the probationary period the nurse aide's certification will be reinstated, and they will be removed from the nurse aide registry.

[8.370.25.23 NMAC - N, 7/1/2024]

HISTORY OF 8.370.25 NMAC: RESERVED

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 2 REQUIREMENTS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

8.371.2.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.371.2.1 NMAC - N, 7/1/2024}

8.371.2.2 SCOPE: These regulations apply to any facility providing services as outlined by these regulations and any facility which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial permanent or temporary federal funding as an intermediate care facility for the mentally retarded (ICF/MR). All facilities licensed after the effective date of these regulations shall be limited to a capacity of no greater than four clients, except as provided herein in Subsection C of 8.371.2.21 NMAC.
[8.371.2.2 NMAC - N, 7/1/2024}

8.371.2.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. 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..
[8.371.2.3 NMAC - N, 7/1/2024}

8.371.2.4 DURATION: Permanent.
[8.371.2.4 NMAC - N, 7/1/2024}

8.371.2.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.371.2.4 NMAC - N, 7/1/2024}

8.371.2.6 OBJECTIVE: The purpose of these regulations is to:

- A.** Establish professional minimum standards for ICF/MR facilities in the state of New Mexico which were formerly licensed under regulations governing long term care facilities.
- B.** Monitor ICF/MR facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the clients or staff.
- C.** Encourage the maintenance of ICF/MR facilities that provide quality services which maintain or improve the health and quality of life to the clients.
- D.** Expand the availability of ICF/MR programs to assure timely placement for persons who need residential services.
- E.** Assure integrated active treatment programs, homelike living arrangements, and consumer protections for ICF/MR clients.
- F.** Promote access and availability statewide.
- G.** Recognize specialized ICF/MR programs to serve individuals with intense needs.

[8.371.2.6 NMAC - N, 7/1/2024}

8.371.2.7 GENERAL DEFINITIONS: For purposes of these regulations the following shall apply:

- A.** **“Active treatment”** means the consistent, aggressive, accountable, and continuous application of competent interactions between caregivers and persons with developmental disabilities whom they serve in structured and unstructured settings alike, directed toward each individual's developmental progress through the life cycle.
- B.** **“Applicant”** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.
- C.** **“Client”** means an individual living in and receiving services from an ICF/MR licensed pursuant to these regulations.
- D.** **“Community supports”** means community services such as recreational activities, social clubs, religious services, employment services, and transportation, as well as other supportive services that are available to the general population and not designated to serve only persons with disabilities.

E. “**Dietitian**” means a person eligible or required to be licensed under the New Mexico Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978, effective July 1, 1989.

F. “**Facility**” means a building or buildings in which clients live and ICF/MR services are provided and is licensed or required to be licensed pursuant to these regulations.

G. “**Governing body**” means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a facility licensed pursuant to these regulations.

H. “**ICF/MR**” means an intermediate care facility that provides food, shelter, health or rehabilitative and active treatment for the mentally retarded or persons with related conditions.

I. “**License**” means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.

J. “**Licensee**” means the person(s) who, or organization which, has an ownership, leasehold or similar interest in the ICF/MR facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.

K. “**Licensing authority**” means the New Mexico health care authority.

L. “**NMSA**” means the New Mexico Statutes Annotated 1978 compilation and all the revisions and compilations thereof.

M. “**Nurse**” is an individual who is currently licensed/registered in the state of New Mexico.

N. “**Occupational therapist**” is an individual who is eligible for certification by the American occupational therapy association or another comparable body.

O. “**Physical therapist**” is an individual who is eligible for certification as a physical therapist by the American physical therapy association or another comparable body.

P. “**Plan of correction**” means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.

Q. “**Policy**” means a statement of principle that guides and determines present and future decisions and actions.

R. “**Premises**” means all parts of buildings, grounds, and equipment of a facility.

S. “**Procedure**” means the action(s) that must be taken in order to implement a policy.

T. “**Psychologist**” is an individual who has at least a master's degree in psychology from an accredited school.

U. “**Social worker**” means a person required to be licensed under the Social Work Practice Act Sections 61-31-1 through 61-31-25 NMSA 1978.

V. “**Speech language pathologist or audiologist**” is an individual who is eligible for a certificate of clinical competence in speech-language pathology or audiology granted by the American speech-language hearing association or another comparable body or who meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

W. “**U/L approved**” means approved for safety by the national underwriters laboratory.

X. “**Training and habilitation services**” means the training and services which are provided to a client intended to aid the intellectual, sensorimotor, and emotional development of that client.

Y. “**Variance**” means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of clients or staff of a facility, and is at the sole discretion of the licensing authority.

Z. “**Waive/waiver**” means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.

[8.371.2.7 NMAC - N, 7/1/2024}

8.371.2.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide ICF/MR services to the public in facilities governed by these regulations.

[8.371.2.8 NMAC - N, 7/1/2024}

8.371.2.9 ICF/MR FACILITY AND SCOPE OF SERVICES PROVIDED: The ICF/MR provides active treatment in the least restrictive setting and includes all needed services for mentally retarded individuals or persons with related conditions whose mental or physical condition require services on a regular basis that are above the level of a residential or room and board setting and can only be provided in a facility which is equipped and staffed to provide the appropriate services.
[8.371.2.9 NMAC - N, 7/1/2024}

8.371.2.10 [RESERVED]

8.371.2.11 INITIAL LICENSURE PROCEDURES: The following procedures must be followed by the applicant for initial licensure of an ICF/MR facility.

A. Initial phase: These regulations should be thoroughly understood by the applicant and used as a reference for design of a new building or renovation or addition to an existing building for licensure as an ICF/MR facility pursuant to these regulations. Prior to starting construction, renovations, or additions to an existing building the applicant of the proposed facility shall:

- (1) advise the licensing authority of intention to open a ICF/MR facility pursuant to these regulations;
- (2) submit a complete set of construction documents (blueprints) for the total building;
- (3) blueprints will be reviewed by the licensing authority for compliance with current licensing regulations, building and fire codes;
- (4) if blue prints or plans are approved the licensing authority will advise the applicant that construction may begin.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building, the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building the applicant will submit to the licensing authority the following:

- (1) Application form:
 - (a) will be provided by the licensing authority;
 - (b) all information requested on the application must be provided;
 - (c) will be printed or typed;
 - (d) will be dated and signed;
 - (e) will be notarized.
- (2) Fees: All applications for licensure must be accompanied by the required fee.
 - (a) Fees must be in the form of a certified check, money order, personal or business check made payable to the state of New Mexico.
 - (b) Fees are non-refundable.
- (3) Zoning and building approval:
 - (a) All initial applications must be accompanied with written zoning approval from the appropriate authority (city, county, or municipality).
 - (b) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).
- (4) Fire authority approval: All initial applications must be accompanied with written approval of the fire authority having jurisdiction.
- (5) New Mexico environment department approval: All initial applications must be accompanied by written approval of the environmental improvement division for the following:
 - (a) private water supply, if applicable;
 - (b) private waste or sewage disposal, if applicable;
 - (c) kitchen approval.
 - (d) Exception: Facilities utilizing the kitchen as a training site for clients to develop personal skills in meal planning and preparation may be exempt from this requirement if the New Mexico environment department waives the requirement and a letter of exemption is on file in the facility.
- (6) Copy of appropriate drug permit issued by the state board of pharmacy.
- (7) Initial survey: Upon receipt of a properly completed application with all supporting documentation as outlined above an initial survey of the proposed facility shall be scheduled by the licensing authority.

(8) Issuance of license: Upon completion of the initial survey and determination that the facility is in compliance with these regulations the licensing authority shall issue a license.
[8.371.2.11 NMAC - N, 7/1/2024}

8.371.2.12 LICENSES:

A. Annual license: An annual license is issued for a one year period to an ICF/MR facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for amended license.

(3) Application must be submitted within 10 working days of the change.

[8.371.2.12 NMAC - N, 7/1/2024}

8.371.2.13 LICENSE RENEWAL:

A. Licensee must submit a renewal application on forms provided by the licensing authority, along with the required fee at least 30 days prior to expiration of the current license.

B. Upon receipt of renewal application and required fee prior to expiration of current license the licensing authority will issue a new license effective the day following the date of expiration of the current license if the facility is in substantial compliance with these regulations.

C. If a licensee fails to submit a renewal application with the required fee and the current license expires the facility shall cease operations until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978 as amended, provides that no health facility shall be operated without a license.

[8.371.2.13 NMAC - N, 7/1/2024}

8.371.2.14 POSTING OF LICENSE: The facility's license must be posted in a conspicuous place on the licensed premises in an area visible to the public.

[8.371.2.14 NMAC - N, 7/1/2024}

8.371.2.15 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. The facility discontinues operation.

E. A facility wishing to continue operation as a licensed ICF/MR facility under circumstances found in Subsections A through D above must submit an application for initial licensure in accordance with Section 11 of these regulations at least 30 days prior to the anticipated change.

[8.371.2.15 NMAC - N, 7/1/2024}

8.371.2.16 AUTOMATIC EXPIRATION OF LICENSE: A license will automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed suspended or revoked or:

A. on the day a facility discontinues operation;

B. on the day a facility is sold, leased, or otherwise changes ownership or licensee;

C. on the day a facility changes location.

[8.371.2.16 NMAC - N, 7/1/2024}

8.371.2.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.
[8.371.2.17 NMAC - N, 7/1/2024]

8.371.2.18 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A. failure to comply with any material provision of these regulations;
- B. failure to allow survey by authorized representatives of the licensing authority;
- C. any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. discovery of repeat violations of these regulations during surveys;
- F. failure to provide the required care and services as outlined by these regulations for the clients receiving care at the facility.

[8.371.2.18 NMAC - N, 7/1/2024]

8.371.2.19 HEARING PROCEDURES:

A. Hearing procedures for adverse action taken by the licensing authority against a facility license as outlined in Section 17 and 18 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations may be requested at any time by contacting the licensing authority.

[8.371.2.19 NMAC - N, 7/1/2024]

8.371.2.20 CURRENTLY LICENSED FACILITIES: Any facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements may continue to be licensed as an ICF/MR.

A. Variance may be granted for those building requirements the facility cannot meet provided the variances granted will not create a hazard to the health, safety and welfare of the clients and staff, and;

B. The building requirements for which variances are granted cannot be corrected without an unreasonable expense to the facility, and

C. Variances granted will be recorded and made a permanent part of the facility file.

D. Facilities currently licensed for more than four clients may not increase their capacity.

[8.371.2.20 NMAC - N, 7/1/2024]

8.371.2.21 NEW FACILITY: A new facility may be opened in an existing building or a newly constructed building.

A. If opened in an existing building a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in Subsections A, B and C of 8.371.2.20 NMAC, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

B. A new facility opened in a newly constructed building must meet all requirements of these regulations.

C. A new facility may not be licensed for more than four clients. Exception: ICF/MR facilities may be licensed for a maximum capacity of six clients based upon a written plan that must be submitted to the licensing authority prior to the facility's licensure. Approval of the plan is in the discretion of the licensing authority. The plan must demonstrate the following:

(1) The anticipated facility service benefits to the client population.

(2) How the facility's services will promote, independence, active treatment and community supports.

(3) How the facility's services will address the needs and protections of the proposed clients.

[8.371.2.21 NMAC - N, 7/1/2024}

8.371.2.22 FACILITY SURVEYS:

A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a facility by authorized licensing authority representatives at reasonable times during the pendency of the application and, if licensed, during the licensure period.

B. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

C. Upon receipt of a notice of deficiency from the licensing authority the licensee or their representative will be required to submit a plan of correction to the licensing authority within 10 working days stating how the facility intends to correct each violation noted and the expected date of completion.

D. The licensing authority may at its sole discretion accept the plan of correction as written or require modifications of the plan by the licensee.

E. The licensing authority may impose intermediate supervisory and management requirements, including the administrative costs therefore, and civil monetary penalties pursuant to Section 24-1-5.2 NMSA 1978. [8.371.2.22 NMAC - N, 7/1/2024}

8.371.2.23 REPORTING OF INCIDENTS: All facilities licensed pursuant to these regulations must report to the licensing authority any serious incident or unusual occurrence which has, or could threaten the health, safety, and welfare of the clients or staff, such as but not limited to:

A. fire, flood, or other natural disaster which creates structural damages to the facility or poses health hazards;

B. any serious outbreak of contagious diseases dangerous to the public health;

C. any serious human errors by staff members of the facility which has resulted in the death, serious illness, or physical impairment of a client.

D. in accordance with the 'Resident Abuse and Neglect Act', NMSA 1978, any incident of abuse, neglect or exploitation of a client, patient, or resident of a health facility must be reported to the health care authority and adult protective services.

E. any incidents of abuse, neglect, exploitation, death or other reportable incidents must be reported in accordance with health care authority incident management policies.

[8.371.2.23 NMAC - N, 7/1/2024}

8.371.2.24 QUALITY ASSURANCE: All facilities licensed pursuant to these regulations must have an on-going, comprehensive self-assessment of the services provided by the facility. The assessment must include the total operation of the facility.

A. To be considered comprehensive the assessment for quality assurance must include, but is not limited to the following:

(1) condition of clients and services rendered;

(2) completeness of client records;

(3) organization of the facility;

(4) administration;

(5) staff utilization and training;

(6) policies and procedures.

B. Where problems (or potential problems) are identified the facility must act as soon as possible to avoid any risks to clients by taking corrective steps such as, but not limited to, the following:

(1) changes in policies and procedures;

(2) staffing and assignment changes;

(3) additional educational training for the staff;

(4) changes in equipment or physical plant;

(5) deletion or addition of services.

C. The governing body of the facility shall ensure that the effectiveness of the quality assurance program is evaluated by professional and administrative staff at least once a year. If the evaluation is not done all at once, no more than a year must lapse between evaluation of the same parts.

D. Documentation of the quality assurance program must be maintained by the facility.

[8.371.2.25 NMAC - N, 7/1/2024}

8.371.2.25 CLIENT RECORDS: The facility must develop and maintain a record keeping system that includes a separate record for each client which documents the client's health care, active treatment, social information, and protection of the client's rights. As a minimum the client's record must contain:

- A. Personal information:
 - (1) full name;
 - (2) date of birth;
 - (3) social security number;
 - (4) height;
 - (5) weight;
 - (6) color of hair;
 - (7) color of eyes;
 - (8) identifying marks and recent photograph;
 - (9) full name of parents and their dates of birth;
 - (10) language(s) spoken and understood and language used in the natural home;
 - (11) information relevant to religious preference;
 - (12) legal documentation relevant to commitment or guardianship status;
 - (13) name, address, and telephone number of next-of-kin, other person or agency to contact in case of an emergency.
 - B. Medical information:
 - (1) reports of previous histories, evaluations or observations;
 - (2) age at onset of disability;
 - (3) name, address and telephone number of physician or health facility providing medical care;
 - (4) medication history, including present medication dosage and schedule;
 - (5) reports of all treatments, etc.
 - C. Individual habilitation plan: Each client must have an individual habilitation plan which specifies goals and objectives.
 - D. Admission agreement.
- [8.371.2.26 NMAC - N, 7/1/2024]

8.371.2.26 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE FACILITY: Each facility licensed pursuant to these regulations must keep the following reports and records on file and make them available for review upon request of the licensing authority.

- A. a copy of the latest fire inspection report by the fire authority having jurisdiction;
 - B. a copy of the last survey conducted by the licensing authority and variances granted;
 - C. record of fire and emergency evacuation drills conducted by the facility;
 - D. licensing regulations: a copy of these regulations: Requirements for Intermediate Care Facilities for the Mentally Retarded, New Mexico health care authority, 8.371.2 NMAC;
 - E. health certificates of staff;
 - F. a copy of the current license, registration or certificate, of each staff member for which a license, registration, or certification is required by the state of New Mexico;
 - G. valid drug permit as required by the state board of pharmacy;
 - H. latest inspection by the state board of pharmacy;
 - I. New Mexico environment department approval of private water system, if applicable;
 - J. New Mexico environment department approval of private waste or sewage disposal, if applicable;
 - K. New Mexico environment department approval of the kitchen. NOTE: An approval of kitchen is not required if preparing meals is part of the training program of the clients of the facility and the facility has a letter of exemption on file from the New Mexico environment department;
 - L. documentation of fire equipment and fire systems inspections;
 - M. reports of client abuse and incidents involving clients.
- [8.371.2.26 NMAC - N, 7/1/2024]

8.371.2.27 CLIENT RIGHTS: Any facility licensed pursuant to these regulations must support, protect, and enhance the rights of clients as listed below:

- A. Information: Each client or legal guardian must be fully informed before or at time of admission, of their rights and responsibilities and of all rules governing clients conduct.

(1) If a facility amends its policies on client rights and responsibilities and its rules governing conduct the clients must be immediately informed.

(2) Each client and or legal guardian must acknowledge, in writing, that they have been informed of these rights.

(3) Each client and or legal guardian must be fully informed, in writing, of all services available in the facility and of the charges for these services. If charges change the client must be immediately informed.

B. Medical condition and treatment: Each client must be fully informed by a physician of their health and medical condition unless the physician decides that informing the client is medically contraindicated.

(1) Each client must be given the opportunity to participate in planning their total care and medical treatment.

(2) Each client must be given the opportunity to refuse treatment.

(3) Each client must give informed, written consent before participating in experimental research.

C. Transfer and discharge: Each client must be transferred or discharged only for:

(1) medical reasons;

(2) their welfare or that of the other residents;

(3) non-payment for services rendered;

(4) the client requests to be discharged;

(5) the client no longer requires an active treatment program.

D. Exercising rights: Each client must be encouraged and assisted to exercise their rights as a client of the facility and as a citizen and allowed to submit complaints or recommendations concerning the policies and services of the facility.

E. Financial affairs: Each client must be allowed to possess and use money in normal ways or be learning to do so.

F. Freedom from abuse and restraints: Each client must be free from mental and physical abuse and free from chemical and physical restraints unless necessary as part of their treatment plan.

G. Privacy: Each client must be treated with consideration, respect, and full recognition of their dignity and individuality.

(1) Each client must be given privacy during treatment and care of personal needs.

(2) Each client's record, including information in an automatic data bank (computer), must be treated confidentially.

(3) Each client must give written consent before the facility may release information from their record to someone not otherwise authorized by law to receive it.

(4) A married client must be given privacy during visits by their spouse. If husband and wife are both clients in the facility they must be permitted to share a room.

H. Work: No client shall be required to perform services for the facility for which they are not paid.

I. Freedom of association and correspondence: Each client must be allowed to:

(1) communicate, associate, and meet privately with individuals of their choice, unless this infringes on the rights of another client;

(2) send and receive personal mail unopened.

J. Activities: Each client must be allowed to participate in social, religious, and community group activities, unless the interdisciplinary team determines that these activities are contraindicated for a client. Any such determination must be documented in the client's records.

K. Personal possessions: Each client must be allowed to retain and use their personal possessions and clothing as space permits.

[8.371.2.27 NMAC - N, 7/1/2024}

8.371.2.28 PHILOSOPHY, OBJECTIVES AND GOALS: Each facility licensed pursuant to these regulations must have a written outline of the philosophy, objectives, and goals it is striving to achieve that includes, at least:

A. the facility's role in the state comprehensive program for the mentally retarded;

B. the facility's goals for its clients to include but not limited to: an integrated active treatment program, homelike living environments and consumer protections;

C. the facility's concept of its relationship to the parents or legal guardians of its residents;

- D. the facility's outline of the above must be available for distribution to staff, consumer representatives, and the interested public;
 - E. the facility's promotion of informed decision making by the consumer;
 - F. the facilities policies on utilization of community supports and how clients will be involved in the community.
- [8.371.2.28 NMAC - N, 7/1/2024]

8.371.2.29 POLICIES AND PROCEDURES: Each facility licensed pursuant to these regulations must have written policies and procedures covering the following areas:

- A. client's civil rights;
- B. delegation of client's civil rights;
- C. handling of client funds;
- D. admission criteria and evaluations;
- E. personnel policies;
- F. prohibitions against mistreatment, neglect or abuse of clients by employees or other persons;
- G. staff training and evaluations;
- H. control and discipline of clients, including behavior management;
- I. use of physical and chemical restraints;
- J. quality assurance;
- K. procurement, handling, storage, safeguarding and accountability of medications;
- L. maintenance of buildings, grounds and equipment;
- M. transfer of client to hospital or other facility;
- N. release of client medical records;
- O. fire and disaster.

[8.371.2.29 NMAC - N, 7/1/2024]

8.371.2.30 STAFF RECORDS: There must be maintained on file in the facility or in a central office if there are multi-facilities run by the same organization in the same city or town, a record for each staff member which contains at least, but is not limited to, the following:

- A. Personal information:
 - (1) name;
 - (2) address and telephone number;
 - (3) position for which employed;
 - (4) person to contact in case of emergency.
- B. a clearance letter from the health care authority caregivers criminal history screening program stating criminal records check has been conducted with negative results;
- C. documentation of training to include transportation and wheelchair safety training.
- D. health certificate as outlined in Section 68 of these regulations.

[8.371.2.30 NMAC - N, 7/1/2024]

8.371.2.31 FACILITY RULES:

- A. Each facility licensed pursuant to these regulations must have facility rules which must include, but is not limited to, the following:
 - (1) the use of tobacco or alcohol;
 - (2) visitors and visiting hours;
 - (3) use of the telephone;
 - (4) hours and volume for viewing and listening to television, radio, and phonographs;
 - (5) use and safekeeping of personal property.
- B. Facility rules shall be posted in a conspicuous place in the facility.

[8.371.2.31 NMAC - N, 7/1/2024]

8.371.2.32 ADMISSION AGREEMENT: Prior to admission to a facility, the licensee or authorized representative and the client or client's parent/s or guardian shall sign a written admission agreement. The facility shall keep the original agreement in the client's record and a copy must be provided to the client or client/s parent/s or guardian. A standard form may be developed and used. The admission agreement must meet the criteria stated below:

- A. The services that will be provided by the facility and the charges for such services must be explained in full.
 - B. The method of payment for the services must be clearly stated.
 - C. Terms for termination of the admission agreement either on part of the facility or the client or parent/s or guardian must be clearly outlined.
 - D. A new admission agreement must be made whenever any term of the agreement is changed by either the facility or the client or the parent/s or guardian of the client.
- [8.371.2.32 NMAC - N, 7/1/2024}

8.371.2.33 AGREEMENTS WITH OUTSIDE RESOURCES: If the ICF/MR does not employ a qualified professional to furnish a required service, it must have in effect a written agreement with a qualified professional outside the ICF/MR to furnish the required service. The agreement must:

- A. contain the responsibilities, functions, objectives, and other items agreed to by the ICF/MR and the qualified professional;
 - B. be signed by the administrator or their representative and by the qualified professional;
 - C. the facility must assure that outside providers meet all appropriate state and federal requirements, and the quality of services meet the needs of the individual.
- [8.371.2.33 NMAC - N, 7/1/2024}

8.371.2.34 STAFF CLIENT COMMUNICATIONS: The facility must provide for effective staff and resident participation and communication in the following manner:

- A. The facility must establish appropriate standing committees such as human rights, and other committees as appropriate to the facility.
 - B. The committees must meet regularly and include direct-care staff whenever appropriate.
 - C. Reports of staff meetings and standing and ad hoc committee meetings must include recommendations and their implementation, and be filed in the facility.
- [10/11/1990; Recompiled 10/31/2001]

8.371.2.35 COMMUNICATIONS WITH THE CLIENTS, PARENTS/GUARDIANS: The facility must have an active program of communication with the client's and their families, that includes:

- A. keeping client's families or legal guardians informed of resident activities that may be of interest to them and of significant changes in the client's condition;
- B. answering communications from client's relatives promptly and appropriately;
- C. allowing close relatives and guardians to visit at any reasonable hour, without prior notice, unless the client's needs limit visits;
- D. allowing parents to visit any part of the facility that provides services to clients;
- E. encouraging frequent and informal visits home by the clients;
- F. having rules that make it easy to arrange visits home;
- G. the facility must insure that individuals allowed to visit the facility under Subsection C of

8.371.2.35 NMAC above do not infringe on the privacy and rights of other clients.
[8.371.2.35 NMAC - N, 7/1/2024}

8.371.2.36 RESEARCH STATEMENT: If the facility conducts research, it must establish protocols based on standards of conduct currently endorsed by professional and federal standards.

[8.371.2.36 NMAC - N, 7/1/2024}

8.371.2.37 BUILDING(S), GROUNDS, AND SAFETY REQUIREMENTS:

- A. Those programs which are located in a building which is licensed as a long term care facility or hospital must meet all the building requirements for that type facility as outlined in the following regulations:
 - (1) Requirements for General and Special Hospitals, New Mexico health care authority, 8.370.12 NMAC.
 - (2) Requirements for Long Term Care Facilities, New Mexico health care authority, 8.370.16 NMAC.
 - (3) Copies of these regulations may be requested from the licensing authority.
- B. **Capacity of building(s):** All building requirements contained in these regulations are based on a maximum capacity of 15 clients. All facilities requesting licensure for more than 15 clients will have additional

requirements according to the applicable building and fire codes. Due to the complexities of the building and fire codes these additional requirements will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review and on site surveys during the licensing process. Maximum capacity for any facility licensed after the effective date of revisions to these regulations is four clients. Exception: ICF/MR facilities may be licensed for a maximum capacity of six clients based upon a written plan that must be approved by the licensing authority prior to the facility's licensure. The plan must demonstrate the following:

(1) the anticipated facility service benefits to the client population;
(2) how the facility's services will promote, independence, active treatment and community supports;

(3) how the facility's services will address the needs and protections of the proposed clients.

C. Number of stories: All building requirements contained in these regulations are based on buildings of one story, which do not house clients above or below ground level. Buildings which are multi-storied or house clients below ground level shall have additional requirements which vary due to the complexities of the building and fire codes. These additional requirements will be outlined by the appropriate building and fire authorities and by the licensing authority through plan review and on-site surveys during the licensing process.

D. Additional requirements: A facility applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may require these additional requirements. Any additional requirement will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review, consultation and on-site surveys during the licensing process.

E. Access to the handicapped: All facilities licensed pursuant to these regulations must be accessible to and usable by handicapped employees, visitors and clients.

F. Prohibition on mobile homes: Trailers and mobile homes must not be used as any part of a facility in which services and care are given to clients.

G. Extent of a facility: All buildings on the premises providing client care and services shall be considered part of the facility and must meet all requirements of these regulations.

H. Individual living units may not be located within 150 feet of each other.

[8.371.2.37 NMAC - N, 7/1/2024}

8.371.2.38 MAINTENANCE OF BUILDING(S), GROUNDS, AND EQUIPMENT: Facilities licensed pursuant to these regulations must keep the building(s), grounds, and equipment in good repair and presentable at all times such as, but not limited to the following:

A. All electrical, signaling, mechanical, water supply, heating, fire protection, and sewage disposal systems must be maintained in a safe and functioning condition to include regular inspections of these systems.

B. All client care equipment must be maintained in a safe and operable condition at all times.

C. All furniture and furnishings must be kept clean and in good repair. Furnishings or decorations of an explosive or highly flammable character must not be used.

D. The grounds of the facility must be maintained in a safe, sanitary and presentable condition at all times.

[8.371.2.38 NMAC - N, 7/1/2024}

8.371.2.39 HOUSEKEEPING:

A. The facility must be kept free from offensive odors, accumulations of dirt, rubbish, dust and safety hazards.

B. Client rooms must be cleaned and tidied daily.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polish shall provide a slip-resistant finish.

D. Bathrooms and lavatories must be cleaned as often as necessary to maintain a clean and sanitary condition.

E. Deodorizers must not be used to mask odors caused by the unsanitary conditions or poor housekeeping practices.

F. Storage areas must be kept free from accumulation of refuse, discarded furniture, old newspapers, and the like.

G. Combustibles such as cleaning rags and compounds must be kept in closed metal containers in areas providing adequate ventilation and away from client rooms.

H. Poisonous or flammable substances must not be stored in residential areas, food preparation areas, or food storage areas.
[8.371.2.39 NMAC - N, 7/1/2024}

8.371.2.40 HEATING, VENTILATION AND AIR CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical, and construction codes. All facilities must have documentation that fuel-fire heating systems have been checked, tested and maintained annually by qualified personnel.

B. The heating method used by the facility must provide a minimum temperature of 70 degrees fahrenheit in all rooms used by the clients.

C. An ample supply of outside air for proper combustion must be provided in all spaces where fueled fired boilers or heaters are located.

D. All gas fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

E. Each building where gas is used must have an outside gas shutoff valve. The facility must have a tool readily available which will operate the shut-off valve. All personnel employed by the facility must be instructed as to location of the shut-off valve and tool and must know how to shut off the gas supply in case of fire or gas leakage.

F. No open-face gas or electric heater nor unprotected single shell gas or electric heating device shall be used for heating the facility. Portable heating units shall not be used for heating the facility.

G. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one-hour. Doors to these rooms shall be 1-3/4" solid core.

H. A facility must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors by either mechanical or natural means.

I. All gas burning heating and cooking equipment must be connected to an approved venting system to take the products of combustion directly to the outside air.

J. All openings to the outer air used for ventilation must be screened with screening material of not less than 16 meshes per lineal inch.

K. Screen doors must be equipped with self-closing devices.

L. A facility must be provided with a system for maintaining residents comfort during periods of hot weather.

[8.371.2.40 NMAC - N, 7/1/2024}

8.371.2.41 WATER HEATERS:

A. All fuel fired water heaters shall be separated from other parts of the facility by partitions having a fire resistive rating of one hour. Doors to enclosure must be one and three quarter inches solid core.

B. All water heaters must be equipped with a pressure relief valve (pop-off valve).

C. Water heaters must not be located in sleeping rooms or rooms opening into sleeping rooms.

[8.371.2.41 NMAC - N, 7/1/2024}

8.371.2.42 WATER:

A. A facility must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to insure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department.

C. Hot and cold running water under pressure must be distributed to all food preparation areas, lavatories, washrooms, and laundries. The hot water temperature in all rooms accessible to clients must be maintained at a maximum of 110 degrees fahrenheit.

[8.371.2.42 NMAC - N, 7/1/2024}

8.371.2.43 SEWAGE AND WASTE DISPOSAL:

- A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.
 - B. Where a municipal sewage system is not available, the system used must be inspected and approved by the environmental health authority.
 - C. Where municipal or community garbage collection and disposal service are not available the method of collection and disposal of garbage used by the facility must be inspected and approved by the New Mexico environment department.
 - D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof, and constructed of material which will not absorb liquids. Receptacles must be kept clean.
- [8.371.2.43 NMAC - N, 7/1/2024}

8.371.2.44 LIGHTING AND LIGHTING FIXTURES:

- A. All areas of the facility including storerooms, stairways, hallways, and entrances must be lighted sufficiently to make all parts of the area clearly visible.
 - B. Exits, exit-access ways, and other areas used at night by clients and staff must be illuminated.
 - C. Lighting fixtures must be selected and located with the comfort and convenience of the clients in minds.
 - D. Lamps and lighting fixtures must be shaded to prevent glare to the eyes of clients and staff, and shielded from accidental breakage or shattering.
 - E. A facility must be provided with emergency lighting which will activate automatically upon disruption of electrical services.
- [8.371.2.44 NMAC - N, 7/1/2024}

8.371.2.45 ELEMENTS OF FACILITY ELECTRICAL SYSTEM:

- A. Electrical installations and electrical equipment must comply with all current state and local codes.
 - B. All fuse and breaker boxes must be labeled to indicate the area of the facility to which each fuse or circuit breaker provides services.
 - C. The main electrical service line must have a readily available disconnect switch. All staff personnel of the facility must know the location of the electrical disconnect switch in each building to which such staff are regularly assigned.
 - D. The use of jumpers or devices to bypass circuit breakers or fuses is prohibited.
 - E. Electrical cords and appliances must be U/L approved.
 - (1) Electrical cords shall be replaced as soon as they show wear.
 - (2) Under no circumstances shall extension cords be used as a general wiring method.
 - (3) Extension cords must be plugged into an electrical outlet within the room where used and may not be connected in one room and extended to some other room.
 - (4) Extension cords must not be used in series.
 - F. The use of multiple sockets in electrical outlets is strictly prohibited.
- [8.371.2.45 NMAC - N, 7/1/2024}

8.371.2.46 WINDOWS:

- A. Each resident sleeping room and activity room must have window area of at least one-tenth the floor area with a minimum of at least 10 square feet.
 - B. Each sleeping room must provide at least one window for egress or rescue with a minimum net clear opening of five point seven square feet. The minimum net clear opening for height dimension shall be 24 inches. The minimum net clear opening width dimension shall be 20 inches.
 - C. Egress and rescue windows shall have a finished sill height of not more than 44 inches above the floor. Exception: If a sleeping room has a door directly to the outside, egress/rescue window is not required.
- [8.371.2.46 NMAC - N, 7/1/2024}

8.371.2.47 EXITS:

- A. Each building must have at least two approved exits.
- B. Each exit will be clearly marked with signs having letters at least six inches high whose principal strokes are at least three fourths of an inch wide. Exit signs shall be visible at all times.
- C. Exits must be clear of obstructions at all times.

D. Exits, exit paths, or means of egress shall not pass through hazardous areas, storerooms, closets, bedrooms, or spaces subject to locking.
[8.371.2.47 NMAC - N, 7/1/2024}

8.371.2.48 CORRIDORS:

A. Corridors in a facility must have a minimum width of 36 inches. Corridors in newly constructed facilities shall have a minimum width of 44 inches.

B. Corridors shall have a clear ceiling height of not less than seven feet measured to the lowest projection from the ceiling.

C. Corridors shall be maintained clear and free of obstructions at all times.

[8.371.2.48 NMAC - N, 7/1/2024}

8.371.2.49 MINIMUM ROOM DIMENSIONS:

A. All habitable rooms in a facility shall have a ceiling height of not less than seven feet six inches. Kitchens, halls, bathrooms and toilet compartments will have a ceiling height of not less than seven feet.

B. All habitable rooms other than a kitchen shall be not less than seven feet in any dimension.

C. Any room with sloped ceiling is subject to review and approval or disapproval by the licensing authority, based upon Uniform Building Code computation of minimum area.

[8.371.2.49 NMAC - N, 7/1/2024}

8.371.2.50 DOORS:

A. All client sleeping room doors must be at least one and three quarter inches bonded solid core with a minimum width of 30 inches.

B. All exit doors must have a minimum width of 36 inches.

C. All doors to toilet and bathing facilities must have a minimum width of 24 inches.

D. Locks on doors to toilets, if used, shall be of such type that the lock can be released from the outside.

E. Exit doors leading to the outside of the facility with a capacity of 10 or more clients must open outward. Exit doors may be provided with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key, tool, or any special knowledge and are mounted at a height not to exceed 48 inches above the finished floor.

F. If locks are not readily openable by all occupants within the building, then the locks must:

(1) unlock upon activation of the fire detection or sprinkler system;

(2) unlock upon loss of power in the facility. The facility must have written approval from

the fire authorities having jurisdiction prior to installing such locking devices.

[8.371.2.50 NMAC - N, 7/1/2024}

8.371.2.51 CLIENT ROOMS:

A. Each client room must be an outside room.

B. There must be no through traffic in client rooms.

C. Client rooms must communicate directly with other areas of the facility.

D. Client rooms must be private or semi-private.

E. Private rooms must have at least 100 square feet of floor area. Closet and locker area shall not be counted as part of the available floor space.

F. Semi-private rooms must have at least 80 square feet of floor area for each bed. Closet and locker area shall not be counted as part of the available floor space.

G. Client rooms will have beds spaced at least three feet apart.

[8.371.2.51 NMAC - N, 7/1/2024}

8.371.2.52 TOILET AND BATHING FACILITIES:

A. Toilets and sinks for residents in a facility must be provided in a ratio of at least one toilet and one sink for every eight clients.

B. If a facility has a capacity greater than five and provides service to both male and female clients, separate facilities must be provided for each sex in the same ratio as stated above.

C. Showers or tubs must be provided for the clients use in the same ratio as stated in Subsections A and B above. At least one tub and one shower must be provided to allow for residents bathing preference.

- D. The combination type tub and shower is permitted.
 - E. Toilets, tubs, and showers must be provided with grab bars.
 - F. If a facility has live-in staff, a separate toilet, hand washing, and bathing facilities for staff must be provided.
 - G. Tubs and showers must have a slip resistant surface.
 - H. Toilet, hand washing, and bathing facilities must be readily available to the clients. No passage through a client room by another client to reach a toilet, bath, or hand washing facility is permitted.
 - I. All facilities must have at least one toilet and bathing facility which meets requirements for handicapped.
 - J. Toilet paper and soap must be provided in each toilet room.
 - K. The use of a common towel is prohibited.
- [8.371.2.52 NMAC - N, 7/1/2024}

8.371.2.53 FIRE SAFETY COMPLIANCE: All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility.
[8.371.2.53 NMAC - N, 7/1/2024}

8.371.2.54 FIRE CLEARANCE AND INSPECTIONS:

- A. Written documentation from the state fire marshal's office or fire prevention authority having jurisdiction evidencing a facility's compliance with applicable fire prevention codes shall be submitted to the licensing authority prior to issuance of a initial license.
 - B. Each facility shall request, from the local fire prevention authorities, an annual fire inspection. If the policy of the local fire department does not provide for annual inspection of the facility, the facility will document the date the request was made and to whom. If the local fire prevention authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.
- [8.371.2.54 NMAC - N, 7/1/2024}

8.371.2.55 FIRE ALARMS, SMOKE DETECTORS AND OTHER FIRE EQUIPMENT:

- A. The facility shall be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction.
 - B. Approved smoke detectors powered by house electrical service shall be installed to provide, when activated, an alarm which is audible in all sleeping areas. Smoke detectors must be installed in corridors at no more than 30 foot spacing. Areas of assembly, such as the dining and living room, must be provided with smoke detectors. All smoke detectors must be connected to the electrical system of the facility and have battery back-up.
 - C. Heat detectors shall be installed in all enclosed kitchens and also powered by the facility electrical service.
 - D. Fire extinguishers, as approved by the state fire marshal or fire prevention authority having jurisdiction, must be located in the facility. Facilities must, as a minimum, have two 2A10BC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the facility. All fire extinguishers shall be inspected yearly and recharged as needed. All fire extinguishers must be tagged noting the date of inspection.
 - E. Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting equipment must be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or fire authority having jurisdiction. Documentation of these inspections must be maintained on file in the facility.
- [8.371.2.55 NMAC - N, 7/1/2024}

8.371.2.56 STAFF AND CLIENT FIRE AND SAFETY TRAINING:

- A. All staff personnel of the facility must know the location of and be instructed in proper use of fire fighting equipment and other procedures to be observed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instructions in the use of fire prevention and techniques of evacuation.
- B. Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the clients or staff.
- C. Each new client must, upon being accepted into the facility, be given an orientation tour of the facility to include, but not be limited to, the location of the exits, fire extinguishers, and telephones, and shall be instructed in action to be taken in case of fire or other emergency.

- D.** Fire drills and evacuation drills: The facility must conduct at least one fire drill each month.
- (1)** Fire drills must be held at different times of the day.
 - (2)** The fire alarm system or detector system in the facility shall be used in the conduct of fire drills.
 - (3)** In the conduct of fire drills, emphasis must be placed upon orderly evacuation under proper discipline rather than upon speed.
 - (4)** A record of fire drills held must be maintained on file in the facility. Such record must show date and time of the drill, number of personnel participating in the drill, any problem noted during the drill and the evacuation time in total minutes.
 - (5)** The local fire department should be requested to supervise and participate in fire drills.
- [8.371.2.56 NMAC - N, 7/1/2024]

8.371.2.57 PROVISIONS FOR EMERGENCY CALLS:

- A.** An easily accessible telephone for summoning help in case of emergency must be available in each facility. A pay telephone will not fulfill this requirement.
 - B.** A list of emergency numbers, including, but not limited to, fire department, police department, ambulance services, and poison control center, shall be posted by each telephone in the facility.
- [8.371.2.57 NMAC - N, 7/1/2024]

8.371.2.58 SMOKING:

- A.** Smoking by clients and staff must only be done in supervised areas designated by the facility and approved by the state fire marshal or local fire prevention authorities. Smoking must not be allowed in a kitchen or food preparation area.
 - B.** All designated smoking areas must be provided with suitable ashtrays.
- [8.371.2.58 NMAC - N, 7/1/2024]

8.371.2.59 ACCESS REQUIREMENTS FOR THE HANDICAPPED IN NEW FACILITIES:

Accessibility to the handicapped must be provided in all facilities in accordance with ANSI standards and shall include the following:

- A.** main entry into the facility must be ground level or ramped to allow wheelchair access;
- B.** building must allow access to main living area and dining area;
- C.** access to at least one bedroom is provided which requires a door clearance of 34 inches;
- D.** access to at least one toilet and bathing facility is required which requires a minimum door clearance of 34 inches, 36 inches is recommended. Toilet and bathing area must also provide a 60 inch diameter clear space (turning radius for a wheelchair);
- E.** if ramps are provided to the building, slope must be at least 12 inches horizontal run for each one inch of vertical rise;
- F.** ramps leading to doorway must have a five foot by five foot level area at the doorway;
- G.** ramps exceeding a six inch rise shall be provided with handrails;
- H.** Requirements contained herein are minimum and additional handicap requirements may apply depending on size and complexity of the facility.

[8.371.2.59 NMAC - N, 7/1/2024]

8.371.2.60 GOVERNING BODY:

- A.** Each facility licensed pursuant to these regulations must have a governing body that:
 - (1)** exercises general direction over the affairs of the facility.
 - (2)** establishes policies concerning the operation of the facility and the welfare of the individuals it serves.
 - (3)** establishes qualifications for the administrator in the following areas:
 - (a)** education;
 - (b)** experience;
 - (c)** personal factors;
 - (d)** skills;
 - (4)** appoints the administrator.
- B.** The governing body may consist of one individual or a group.

[8.371.2.60 NMAC - N, 7/1/2024]

8.371.2.61 ADMINISTRATOR: Each facility licensed pursuant to these regulations must have an administrator appointed by the governing body who acts for the governing body in the overall management of the facility.
[8.371.2.61 NMAC - N, 7/1/2024]

8.371.2.62 QUALIFIED MENTAL RETARDATION PROFESSIONAL: Each facility licensed pursuant to these regulations must have a qualified mental retardation professional. A qualified mental retardation professional is a person who has specialized training or one year of experience in treating or working with the mentally retarded and is one of the following:

- A. a psychologist with a masters degree from an accredited program;
 - B. a licensed doctor of medicine or osteopathy;
 - C. an educator with a degree in education from an accredited program;
 - D. a social worker with a bachelors degree in:
 - (1) social work from an accredited program; or
 - (2) a field other than social work and at least three years of social work experience under the supervision of a qualified social worker.
 - E. a physical or occupational therapist who meets all criteria of the state or federal government as a physical or occupational therapist.
 - F. a speech pathologist or audiologist who meets all criteria of the state or federal government as a speech pathologist or audiologist.
 - G. a registered nurse licensed in the state of New Mexico.
 - H. a therapeutic recreation specialist who:
 - (1) is a graduate of an accredited program; or
 - (2) meets all criteria of the state or federal government as a therapeutic recreation specialist;
 - I. a rehabilitation counselor who is certified by the committee on rehabilitation counselor certification.
 - J. a human services professional who has at least a bachelor's degree in a human services field (including but not limited to sociology, special education, rehabilitation counseling, or psychology).
- [8.371.2.62 NMAC - N, 7/1/2024]

8.371.2.63 INTERDISCIPLINARY TEAM: Each facility licensed pursuant to these regulations must have an interdisciplinary team assigned to each client.

- A. Each interdisciplinary team shall be composed of staff members including direct care staff and individuals including the client's family or guardian who are involved or interested in meeting the client's active treatment needs.
- B. Interdisciplinary teams must:
 - (1) evaluate each client's needs;
 - (2) plan an individualized habilitation program to meet each client's identified needs;
 - (3) quarterly review each client's responses to their program and revise the program accordingly.

[8.371.2.63 NMAC - N, 7/1/2024]

8.371.2.64 SUPPORT STAFF: Each facility licensed pursuant to these regulations must have either adequate staff not involved in direct care to clients or contractual services to perform the following functions:

- A. administration;
- B. fiscal;
- C. clerical;
- D. housekeeping and maintenance.

[8.371.2.64 NMAC - N, 7/1/2024]

8.371.2.65 DIRECT CARE STAFF: Direct care staff must make care and development of the clients, their primary responsibility, this includes training of each client in the activities of daily living and in the development of self-help and social skills.

- A. The facility management must insure that the direct care staff are not diverted from their primary responsibilities by housekeeping or clerical duties or other activities not related to client care.

B. Members of the direct care staff from all shifts must participate in appropriate activities relating to the care and development of the client including at least, referral, planning, initiation, coordination, implementation, follow-through, monitoring and evaluation.
[8.371.2.65 NMAC - N, 7/1/2024}

8.371.2.66 STAFF EVALUATION AND DEVELOPMENT: A facility licensed pursuant to these regulations must have a written plan for the orientation, on-going staff development, supervision, and evaluation of all staff members.

- A.** The facility must have a staff training program appropriate to the size and nature of the facility that includes:
- (1)** orientation for each new employee to acquaint them with the philosophy, organization, program, practices and goals of the facility;
 - (2)** orientation for each new employee on the facility's emergency and safety procedures;
 - (3)** orientation for each new employee on the policies and procedures of the facility.
- B.** The facility must have continuing in-service training for all employees to update and improve their skills.
- C.** The facility must have supervisory and management training for each employee who is in, or a candidate for, a supervisory position.
- D.** Each facility must have someone designated to be responsible for staff development and training.
- E.** Any employee or agent of a facility or agency who is responsible for assisting a client in boarding or alighting from a motor vehicle must complete a state-approved training program in passenger transportation assistance before assisting any client.
- F.** Any employee or agent of a facility or agency who drives a motor vehicle provided by the facility or agency for use in the transportation of clients must complete:
- (1)** a state approved training program in passenger assistance, and
 - (2)** a state approved training program in the operation of a motor vehicle to transport clients of a regulated facility or agency.
- G.** Each facility and agency shall establish and enforce written policies (including training) and procedures for employees who provide assistance to clients with boarding or alighting from motor vehicles.
- H.** Each facility and agency shall establish and enforce written policies (including training) and procedures for employees who operate motor vehicles to transport clients.
[8.371.2.66 NMAC - N, 7/1/2024}

8.371.2.67 ORGANIZATION CHART: The facility must have an organization chart that shows the following:

- A.** the major operating programs of the facility;
- B.** the staff divisions of the facility;
- C.** the administrative personnel in charge of the programs and divisions;
- D.** the lines of authority, responsibility and communication for administrative personnel.

[8.371.2.67 NMAC - N, 7/1/2024}

8.371.2.68 HEALTH REQUIREMENTS FOR STAFF:

- A.** Prior to employment all staff must obtain a health certificate stating that they are free from tuberculosis.
- B.** Health certificate means a completed New Mexico health care authority, public health division form 015, "health certificate" signed by a physician licensed in New Mexico or a public health nurse in one of the public health division health offices who is acting for the state tuberculosis control officer.
[8.371.2.68 NMAC - N, 7/1/2024}

8.371.2.69 STAFF/CLIENT RATIOS: For each facility regardless of organization or design must have, as a minimum, overall staff/client ratios (allowing for a five day work week plus holiday, vacation and sick time) as shown below:

- A.** Those facilities serving children under the age of six years, severely and profoundly retarded, severely physically handicapped, or client's who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one staff member to three point two (3.2) clients.

B. Those facilities serving moderately retarded clients requiring habit training, the overall ratio is one staff member to four clients.

C. Those facilities serving clients in vocational training programs and adults who work in sheltered employment situation, the overall ratio is one staff member to six point four (6.4) clients.
[8.371.2.69 NMAC - N, 7/1/2024]

8.371.2.70 CRIMINAL RECORDS CHECK AS CONDITION OF EMPLOYMENT:

A. All staff of a facility providing services must apply for a nationwide criminal records check and employment history in compliance with New Mexico regulations governing criminal records check.

B. Copies of the above cited regulations will be provided by the health care authority, caregivers criminal history screening program.

C. Fingerprint cards, instructions, and employment history forms will be provided by the health care authority, caregivers criminal history screening program.
[8.371.2.70 NMAC - N, 7/1/2024]

8.371.2.71 ACTIVE TREATMENT SERVICES: Each client must receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services as described in these regulations, that is directed toward:

A. the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible;

B. the prevention of deceleration of regression or loss of current optimal functional status;

C. clients who are admitted by the facility must be in need of receiving active treatment services;

D. active treatment does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous active treatment plan.
[8.371.2.71 NMAC - N, 7/1/2024]

8.371.2.72 CLIENT ACTIVITIES: Every facility licensed pursuant to these regulations must develop an activity schedule for each client that:

A. The amount of daily active treatment a person receives should be based on the individual needs of that person and planned and provided for by the facility in both formal and informal settings directed at achieving needed and possible independence. To the extent possible, the active treatment schedule should allow for the flexible participation of the individual in a broad range of options, rather than a fixed routine.

B. Allows free time for individual or group activities using appropriate materials.

C. Includes planned outdoor periods all year round.

D. Each client's activity schedule must be available to direct care staff and be carried out daily.

E. The facility must insure that a multiple-handicapped or non-ambulatory client:

(1) spends a major portion of the waking day out of bed;

(2) spends a portion of the waking day out of their bedroom area;

(3) has planned daily activity and exercise periods;

(4) moves around by various methods and devices whenever possible.

[8.371.2.72 NMAC - N, 7/1/2024]

8.371.2.73 PERSONAL POSSESSIONS: The facility must allow the clients to have personal possessions such as toys, books, pictures, games, radios, arts and crafts materials, religious articles, toiletries, jewelry, and letters.

[8.371.2.73 NMAC - N, 7/1/2024]

8.371.2.74 CONTROL AND DISCIPLINE OF CLIENTS: The facility must have written policies and procedures for the control and discipline of clients that are available in each living unit and to parents and guardians.

A. If appropriate, clients must participate in formulating these policies and procedures.

B. The facility must not allow:

(1) corporal punishment of a client;

(2) a client to discipline another client unless it is done as part of an organized self-government program conducted in accordance with written policy;

(3) a client to be placed alone in a locked room.

[8.371.2.74 NMAC - N, 7/1/2024]

8.371.2.75 PHYSICAL RESTRAINT OF CLIENTS: Except as provided for behavior modification programs, the facility may allow the use of physical restraint on a client only if absolutely necessary to protect the client from injuring himself or others.

- A. The facility may not use physical restraint:
 - (1) as punishment;
 - (2) for the convenience of the staff;
 - (3) as a substitute for activities or treatment.
 - B. The facility must have written policies that specify:
 - (1) how and when physical restraints may be used;
 - (2) the staff members who must authorize its use;
 - (3) the method for monitoring and controlling its use.
 - C. An order for physical restraint may not be in effect longer than 12 hours.
 - D. Appropriately trained staff must check a client placed in a physical restraint at least every 30 minutes and keep a record of these checks.
 - E. A client who is in a physical restraint must be given an opportunity for motion and exercise for a period of not less than 10 minutes during each two hours of restraint.
- [8.371.2.75 NMAC - N, 7/1/2024]

8.371.2.76 MECHANICAL DEVICES USED FOR PHYSICAL RESTRAINT: Mechanical devices used for physical restraint must be designed and used in a way that causes the client no physical injury and the least possible physical discomfort.

- A. A totally enclosed crib or a barred enclosure is a physical restraint.
 - B. Mechanical supports used to achieve proper body position and balance are not physical restraints. However, mechanical supports must be designed and applied:
 - (1) under the supervision of a qualified professional;
 - (2) in accordance with principles of good body alignment, concern for circulation, and allowance for change of position.
- [8.371.2.76 NMAC - N, 7/1/2024]

8.371.2.77 CHEMICAL RESTRAINT OF CLIENTS: The facility shall not use chemical restraints in the following manner:

- A. excessively;
 - B. as punishment;
 - C. for the convenience of the staff;
 - D. as a substitute for activities or treatment;
 - E. in quantities that interfere with a client habilitation program.
- [8.371.2.77 NMAC - N, 7/1/2024]

8.371.2.78 BEHAVIOR MODIFICATION PROGRAMS:

- A. "Aversive stimuli": things or events that a client finds unpleasant or painful that are used to immediately discourage undesired behavior may be used by the facility as a means of behavior modification.
 - B. "Time out": a procedure designed to improve a client's behavior by removing positive reinforcement when their behavior is undesirable may be used by the facility as a means of behavior modification.
 - C. Behavior modification programs involving the use of aversive stimuli or time out must be:
 - (1) reviewed and approved by the facility's human rights committee and the qualified mental retardation professional;
 - (2) conducted only with the consent of the affected client's parents or legal guardian;
 - (3) described in written plans that are kept on file in the facility;
 - (4) a physical restraint used as a time-out device shall be applied only during behavior modification exercises and only in the presence of the trainer.
 - (5) time-out devices and aversive stimuli may not be used for longer than one hour for time-out purposes involving removal from a situation, and then only during the behavior modification program and only under the supervision of the trainer.
- [8.371.2.78 NMAC - N, 7/1/2024]

8.371.2.79 GROUPING AND ORGANIZATION OF LIVING UNITS:

A. A facility licensed pursuant to these regulations may not house clients of grossly different ages, developmental levels, and social needs in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together.

B. The facility may not segregate clients on the basis of their physical handicaps. It must integrate residents who are mobile, non-ambulatory, deaf, blind, epileptic, and so forth with others of comparable social and intellectual development.

C. Individual living units may not be located within 150 feet of each other.
[8.371.2.79 NMAC - N, 7/1/2024}

8.371.2.80 RECREATION SERVICES: The facility must coordinate recreational services with other services and programs provided to each client in order to:

A. make the fullest possible use of the facility's resources;

B. maximize benefits to the clients;

C. design and construct or modify recreation areas and facilities so that all residents, regardless of their disabilities have access to them;

D. provide recreation equipment and supplies in a quantity and variety that is sufficient to carry out the stated objectives of the activities programs.

[8.371.2.80 NMAC - N, 7/1/2024}

8.371.2.81 RESIDENT CLOTHING: The facility must insure that each client:

A. has enough neat, clean, suitable and seasonable clothing;

B. has their own clothing marked with their name when necessary;

C. is dressed daily in their own clothing unless this is contraindicated in written medical orders;

D. is trained and encouraged as appropriate to:

(1) select their daily clothing;

(2) dress themselves;

(3) change their clothes to suit their activities;

(4) has storage space for their clothing that is accessible to them even if they are in a

wheelchair.

[8.371.2.81 NMAC - N, 7/1/2024}

8.371.2.82 CLIENT ROOMS: The facility must provide each client with:

A. a separate bed of proper size and height for the convenience of the client;

B. bedding appropriate to the weather and climate;

C. a clean comfortable mattress;

D. appropriate furniture, such as a chest of drawers, a table or desk, and an individual closet with clothes racks and shelves accessible to the client.

[8.371.2.82 NMAC - N, 7/1/2024}

8.371.2.83 STORAGE SPACE IN LIVING UNITS: Each facility licensed pursuant to these regulations must provide:

A. space for equipment for daily out-of-bed activity for all clients who are not yet mobile, except those who have a short-term illness or those few clients for whom out-of-bed activity is a threat to life;

B. suitable storage space, accessible to the client for personal possessions, such as toys and prosthetic equipment;

C. adequate clean linen and dirty linen storage areas.

[8.371.2.83 NMAC - N, 7/1/2024}

8.371.2.84 HEALTH, HYGIENE, GROOMING AND TOILET TRAINING:

A. Each client must be trained to be as independent as possible in health, hygiene and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving and caring for toenails and fingernails.

B. Each client who does not eliminate appropriately and independently must be in a regular, systematic toilet training program and a record must be kept of their progress in the program.

C. A client who is incontinent must be bathed or cleaned immediately upon voiding or soiling, unless specifically contraindicated by the training program and all soiled items must be changed.

D. The facility must establish procedures for:

(1) weighing each client monthly, unless the special needs of the client require more frequent weighing;

(2) measuring the height of each client every three months until the client reaches the age of maximum growth;

(3) maintaining weight and height records for each client;

(4) insuring that each client maintains a normal weight.

E. At least every three days a physician must review orders prescribing bed rest or prohibiting a client from being outdoors.

F. The facility must furnish, maintain in good repair, and encourage the use of dentures, eyeglasses, hearing aids, braces, and other aids prescribed for a client by an appropriate specialist.

[8.371.2.84 NMAC - N, 7/1/2024}

8.371.2.85 DENTAL SERVICES:

A. Diagnostic services:

(1) The facility must provide each client with comprehensive diagnostic dental services that include a complete extraoral and intraoral examination using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after a client's admission to the facility unless they received the examination within six months before admission.

(2) The facility must review the results of the examination and enter them in the client's record.

B. Treatment: The facility must provide each client with comprehensive dental treatment that includes:

(1) provision for emergency dental treatment on a 24 hour a day basis by a qualified dentist;

(2) a system that assures that each client is re-examined as needed but at least once a year.

C. Education and training: The facility must provide education and training in the maintenance of oral health that includes:

(1) a dental hygiene program that informs clients and all staff on nutrition and diet control measures, and clients and living unit staff on proper oral hygiene methods;

(2) instruction of parents or guardians in the maintenance of proper oral hygiene in appropriate instances, for example when the client leaves the facility.

[8.371.2.85 NMAC - N, 7/1/2024}

8.371.2.86 PREVENTIVE HEALTH SERVICES: The facility must have preventive health services for clients that include:

A. means for the prompt detection and referral of health problems through adequate medical surveillance, periodic inspection and regular medical examinations;

B. annual physical examinations that include:

(1) examination of vision and hearing;

(2) routine screening laboratory examinations as determined necessary by the physician and special studies when needed.

C. immunizations using as a guide the recommendations of the public health service advisory committee on immunization practices and of the committee on the control of infectious diseases of the American academy of pediatrics;

D. Tuberculosis control in accordance with New Mexico state law;

E. Reporting of communicable diseases and infections in accordance with New Mexico state law.

[8.371.2.86 NMAC - N, 7/1/2024}

8.371.2.87 MEDICAL SERVICES: The facility must:

A. provide medical services through direct contact between physicians and clients and through contact between physicians and individuals working with the clients;

B. provide health services including treatment, medications, diet, and any other health service prescribed or planned for the client 24 hours a day;

C. have available electroencephalographic services as needed;

- D. have enough space, facilities and equipment to fulfill the medical needs of the clients;
- E. provide evidence that hospital and laboratory services are used in accordance with professional standards.;
- F. goals and evaluations: physicians must participate, when appropriate, in:
 - (1) the continuing interdisciplinary evaluation of individual clients for the purposes of beginning, monitoring, and following-up on individualized habilitation programs;
 - (2) the development for each client of a detailed written statement of:
 - (a) case management goals for physical and mental health, education and functional and social competence;
 - (b) a management plan detailing the various habilitation or rehabilitation services to achieve those goals with clear designation of responsibility for implementation.
 - (3) the facility must review and update the statement of treatment goals and management plans as needed but at least annually to insure:
 - (a) continuing appropriateness of the goals;
 - (b) consistency of management methods with the goals;
 - (c) the achievement of progress toward the goals.

[8.371.2.87 NMAC - N, 7/1/2024}

8.371.2.88 PSYCHOLOGICAL SERVICES: The facility must:

- A. provide psychological services through personal contact between psychologists and clients and through contact between psychologists and individuals involved with the clients;
- B. have available enough qualified staff and support personnel to furnish the following psychological services based on need:
 - (1) administration and supervision of psychological services;
 - (2) staff training.
- C. a qualified psychologist must:
 - (1) participate, when appropriate, in the continuing interdisciplinary evaluation of each individual client for the purpose of beginning, monitoring and following-up on the clients individualized habilitation program.
 - (2) report and disseminate evaluation results in a manner that:
 - (a) promptly provides information useful to staff working directly with the clients;
 - (b) maintains accepted standards of confidentiality.
 - (3) participate, when appropriate, in the development of written detailed, specific and individualized habilitation program that:
 - (a) provide for periodic review, follow-up and updating;
 - (b) are designated to maximize each client's development and acquisition of

perceptual skills, sensorimotor skills, self-help skills, communication skills, social skills, self-direction, emotional stability, and effective use of time, including leisure time.

[8.371.2.88 NMAC - N, 7/1/2024}

8.371.2.89 PHYSICAL AND OCCUPATIONAL THERAPY SERVICES: The facility must provide physical and occupational therapy services through direct contact between therapist and individuals involved with the clients.

- A. Physical and occupational therapy staff must provide treatment training programs that are designed to:
 - (1) preserve and improve abilities for independent function, such as range of motion, strength, tolerance, coordination and activities of daily living;
 - (2) prevent, insofar as possible, irreducible or progressive disabilities through means such as the use of orthotic and prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations and sensory stimulation.
- B. The therapist must:
 - (1) work closely with the client's primary physician and with other medical specialists;
 - (2) record regularly and evaluate periodically the treatment training progress;
 - (3) use the treatment training progress as the basis for continuation or change in the client's program.

C. The facility must have evaluation results, treatment objectives, plans and procedures, and continuing observations of treatment progress, which must be:

- (1) recorded accurately, summarized, and communicated to all relevant parties;
- (2) used in evaluating progress;
- (3) included in the client's record kept in the living unit.

[8.371.2.89 NMAC - N, 7/1/2024}

8.371.2.90 NURSING SERVICES: The facility must provide clients with nursing services, in accordance with their needs, that include, as appropriate, the following:

- A. Registered nurse participation:
 - (1) The pre-admission evaluation study and plan.
 - (2) The evaluation study, program design, and placement of the client at the time of admission.
 - (3) The periodic re-evaluation of the type, extent and quality of services and programming.
- B. Training in habits of personal hygiene, family life and sex education that includes, but is not limited to, family planning and venereal disease counseling.
- C. Control of communicable diseases and infections through:
 - (1) Identification and assessment.
 - (2) Reporting to medical authorities.
 - (3) Implementation of appropriate protective and preventive measures.
 - (4) Development of a written nursing services plan for each client as part of the total habilitation program.
 - (5) Modification of the nursing plan in terms of the client's daily needs, at least annually for adults and more frequently for children in accordance with developmental changes.
- D. Management of the medication aide program in accordance with the board of nursing.

[8.371.2.90 NMAC - N, 7/1/2024}

8.371.2.91 SOCIAL SERVICES: The facility must provide, as part of an inter-disciplinary set of services, social services to each client directed toward:

- A. maximizing the social functioning of each client;
- B. enhancing the coping capacity of each client's family;
- C. asserting and safeguarding the human and civil rights of the retarded and their families;
- D. fostering the human dignity and personal worth of each client;
- E. the development of the discharge plan;
- F. the referral to appropriate community resources.

[8.371.2.91 NMAC - N, 7/1/2024}

8.371.2.92 LAUNDRY SERVICES: The facility must manage its laundry services to that it meets daily clothing and linen needs without delays.

- A. Each client must have available a clean change of clothing whenever necessary.
- B. There must be separate handling and storage of clean and soiled linens.
- C. Linens must be laundered and disinfected prior to re-use by another client.
- D. New linens must be laundered before use.

[8.371.2.92 NMAC - N, 7/1/2024}

8.371.2.93 SPEECH PATHOLOGY AND AUDIOLOGY SERVICES: The facility must provide speech pathology and audiology services through direct contact between speech pathologists and audiologist and clients, and working with other personnel, including but not limited to, teachers and direct care staff. Speech pathology and audiology services must include:

- A. screening and evaluation of clients with respect to speech and hearing functions;
- B. comprehensive audiological assessment of clients, as indicated by screening results that include tests of puretone air and bone conduction, speech audiometry and other procedures as necessary, and the assessment of the use of visual cues;
- C. assessment of the use of amplification;
- D. provision for procurement, maintenance and replacement of hearing aids, as specified by a qualified audiologist;

- E. comprehensive speech and language evaluation of clients, as indicated by screening results including appraisal of articulation, voice, rhythm, and language;
 - F. participation in the continuing interdisciplinary evaluation of individual clients for purposes of beginning, monitoring, and following-up on individualized habilitation programs;
 - G. treatment services as an extension of the evaluation process that include:
 - (1) direct counseling with clients;
 - (2) consultation with appropriate staff for speech improvement and speech education activities;
 - (3) work with appropriate staff to develop specialized programs for developing each client's communication skills, in comprehension, including speech, reading, auditory training, hearing aid utilization and skills in expression, including improvement in articulation, voice, rhythm, and language.
 - H. participation in in-service training programs for direct care and other staff.
- [8.371.2.93 NMAC - N, 7/1/2024}

8.371.2.94 PHARMACY SERVICES: Any facility licensed pursuant to these regulations that supervises the administration or self-administration of medications for clients must have a current custodial care facility license issued by the New Mexico board of pharmacy.

- A. The facility must make formal arrangements for qualified pharmacy services, including provision for emergency service.
- B. Have a current pharmacy manual that:
 - (1) includes policies and procedures and defines the functions and responsibilities relating to pharmacy services;
 - (2) is revised annually to keep abreast of current developments in services and management techniques;
 - (3) have a formulary system approved by a responsible physician and pharmacist and other appropriate staff. Copies of the facility's formulary system and of the American Hospital Formulary Service must be located and available in the facility.
- C. Pharmacist:
 - (1) Pharmacy services must be provided under the direction of a qualified pharmacist.
 - (2) The pharmacist must:
 - (a) when a client is admitted obtain, if possible, a history of prescription and non-prescription drugs used and enter this information in the client's record;
 - (b) receive the original, or a direct copy, of the physician's drug treatment order;
 - (c) maintain for each client an individual record of all prescription and non-prescription medication dispensed, including quantities and frequency of refills;
 - (d) participate, as appropriate, in the continuing interdisciplinary evaluation of individual clients for the purpose of beginning, monitoring and following up on individualized habilitation programs;
 - (e) establish quality specifications for drug purchases and insure that they are met.
 - (3) A pharmacist must regularly review the medication record of each client for potential adverse reactions, allergies, interactions, contraindications, rationality and laboratory test modifications and advise the physician of any recommended changes with reasons and with an alternate drug regimen.
 - (4) The responsible pharmacist, physician, nurse and other professional staff must write policies and procedures that govern the safe administration and handling of all drugs. The following policies and procedures must be included:
 - (a) self-administration of drugs, whether prescribed or not.
 - (b) the pharmacist or an individual under the pharmacist's supervision must compound, package, label and dispense drugs including samples and investigational drugs. Proper controls and records must be kept of these processes.
 - (c) each drug must be identified up to the point of administration.
 - (d) whenever possible, the pharmacist must dispense drugs that require dosage measurements in a form ready to be administered to the client.
- D. Drugs and medications:
 - (1) A medication must be used only by the client for whom it is issued. Only appropriately trained staff may administer drugs.

(2) Any drug that is discontinued or outdated and any container with a worn, illegible or missing label must be returned to the pharmacy for proper disposition.

(3) The facility must have:

(a) an automatic stop order on all drugs;

(b) a drug recall procedure that can be readily used;

(c) a procedure for reporting adverse drug reactions to the Food and Drug

Administration;

(d) an emergency kit available to each living unit and appropriate to the needs of its

clients.

(4) Medication errors and drug reactions must be recorded and reported immediately to the practitioner who ordered the drug.

E. Drug storage:

(1) The facility must store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

(2) The facility must store drugs used externally and drugs taken internally on separate shelves or in separate cabinets.

(3) The facility must keep medication that is stored in a refrigerator containing other items in a separate compartment with proper security.

(4) If there is a drug storeroom separate from the pharmacy, an inventory of receipts and issues of all drugs from that storeroom must be kept.

(5) The facility must meet the drug security requirements of federal and state laws that apply to storerooms, pharmacies and living units.

[8.371.2.94 NMAC - N, 7/1/2024}

8.371.2.95 FOOD AND NUTRITION SERVICES:

A. Dietician: The facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis. If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service.

B. Food services: The facility's food services must include:

(1) menu planning;

(2) initiating food orders or requisitions;

(3) establishing specifications for food purchases and insuring that the specifications are met;

(4) storing and handling food;

(5) preparing and serving food;

(6) maintaining sanitary standards in compliance with the New Mexico environment

department food service regulations;

(7) orienting, training and supervising food service personnel.

C. Diet requirements:

(1) The facility must provide each client with a nourishing well-balanced diet.

(2) Modified diets must be:

(a) prescribed by the client's interdisciplinary team with a record of the prescription

kept on file;

(b) planned, prepared and served by individuals who have received adequate

instruction;

(c) periodically reviewed and adjusted as needed.

(3) The facility must furnish a nourishing, well-balanced diet in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences, adjusted for age, sex, activity and disability, unless otherwise required by medical needs.

(4) A client may not be denied a nutritionally adequate diet as a form of punishment.

D. Meal service:

(1) The facility must serve at least three meals daily at regular times comparable to normal mealtimes in the community with:

(a) not more than 14 hours between a substantial evening meal and breakfast of the

following day;

(b) not less than 10 hours between breakfast and the evening meal of the same day.

(2) Food must be served:

- (a) in appropriate quantity;
 - (b) at appropriate temperature;
 - (c) in a form consistent with the developmental level of the resident;
 - (d) with appropriate utensils;
 - (e) food served and uneaten must be discarded.
- E. Menus:**
- (1) Must be written in advance.
 - (2) Provide a variety of foods at each meal.
 - (3) Be different for the same days of each week and adjusted for seasonal changes.
 - (4) Menus must be kept on file for at least 30 days as served.
- F. Food storage:**
- (1) Dry or staple food items at least 12 inches above the floor, in a ventilated room not subject to sewage or waste water back flow or contamination by condensation, leakage, rodents or vermin.
 - (2) Perishable foods must be kept at proper temperatures to conserve nutritive values.
- G. Work areas:**
- (1) The facility must have effective procedures for cleaning all equipment and work areas.
 - (2) The facility must be provided with hand washing facilities to include hot and cold water, soap and paper towels adjacent to the work areas.
- H. Dining areas and service:**
- (1) The facility must serve meals for all residents, including the mobile non-ambulatory, in dining rooms unless otherwise required for health reasons or by decision of the team responsible for the client's program.
 - (2) The facility must provide table service for all clients who can and will eat at a table, including clients in wheelchairs.
 - (3) The facility will equip areas with table, chairs, eating utensils and dishes designed to meet the developmental needs of each client.
 - (4) The facility must supervise and staff dining rooms adequately to direct self-help dining procedures and to assure that each client receives enough food.
- [8.371.2.95 NMAC - N, 7/1/2024}

8.371.2.96 RELATED REGULATIONS AND CODES: ICF/MR 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.** Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
 - B.** Health facility sanctions and civil monetary penalties, 8.370.4 NMAC.
 - C.** Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
 - D.** Caregivers criminal history screening requirements, New Mexico health care authority, 8.370.5 NMAC.
- [8.371.2.96 NMAC - N, 7/1/2024}

HISTORY OF 8.371.2 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 3 RIGHTS OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES LIVING IN THE COMMUNITY

8.371.3.1 ISSUING AGENCY: New Mexico Health Care Authority, Developmental Disabilities Division.
[8.371.3.1 NMAC - N, 7/1/2024]

8.371.3.2 SCOPE:

- A.** This regulation applies only to clients and service providers as defined below.
- B.** This regulation is not available to resolve disputes concerning the content of or the substantial failure to implement a community individual service plan. Any dispute concerning the content of a plan or any claim alleging substantial failure to implement a plan must be raised in the dispute resolution process, if available. This regulation is not available to review any action by a service provider or the authority to suspend, terminate or reduce medicaid covered services if a fair hearing procedure is available pursuant to federal law.
- C.** Nothing in this regulation alters or modifies the duty of any person having reason to believe that a person is being abused, neglected, or exploited to report that information as required by the Adult Protective Services Act, Section 27-7-30 NMSA 1978 (1992 Repl.) and the Abuse and Neglect Act, Section 32A-4-3 NMSA 1978 (1993 Repl.).

[8.371.3.2 NMAC - N, 7/1/2024]

8.371.3.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 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..

[8.371.3.3 NMAC - N, 7/1/2024]

8.371.3.4 DURATION: Permanent.

[8.371.3.4 NMAC - N, 7/1/2024]

8.371.3.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.371.3.5 NMAC - N, 7/1/2024]

8.371.3.6 OBJECTIVE:

- A.** These regulations set out rights that the authority expects all providers of services to individuals with developmental disabilities to respect. These regulations are intended to complement the authority's client complaint procedures 8.371.4 NMAC.
- B.** These regulations are promulgated, in part, to satisfy requirements arising from the implementation of the decision in the Jackson v. Fort Stanton, N.M. Dist. Ct. No. Civ. 87-839, including agreements reached by the parties. These regulations are promulgated to further the goals of the Developmental Disabilities Act, Sections 28-16A-1 through 28-16A-18 NMSA 1978.
- C.** The purpose of this regulation is to promote the health, safety and welfare of individuals who are receiving supports and services for persons with developmental disabilities from service providers certified by, or funded in whole or in part with state funds administered by the authority through contracts or agreements. This regulation defines rights of persons with developmental disabilities so that these rights can be readily identified, exercised and protected and provides that the authority will enforce remedies for substantiated complaints of violation of the client's right as provided in the client complaint procedure.

[8.371.3.6 NMAC - N, 7/1/2024]

8.371.3.7 DEFINITIONS:

- A.** “**Aversive procedures**” means those prohibited procedures, including, but not limited to, taste and odor aversives, excessive deprivation or stimulation of basic sensory experiences, any device or intervention intended to cause pain or unpleasant sensations, electric shock, isolation, mechanical restraint, forced exercise, withholding of food, water or sleep, inappropriate clothing, humiliation and water mist, as defined in the division’s behavioral support policy.
- B.** “**Client**” means a person with developmental disabilities who is receiving supports and services for individuals with developmental disabilities by a service provider certified by, or funded in whole or in part with state funds administered by the authority through contracts or agreements.

- C. **“Complainant”** means a client or their legal guardian who files a complaint pursuant to this regulation.
- D. **“Chemical restraint”** means the use of medication, including psychoactive medication, as punishment, as a substitute for a habilitation or in quantities that interfere with services or habilitation, for the convenience of staff, or for unreasonable restricting a client's freedom of movement, other than in an emergency where there is a substantial and imminent risk of serious physical harm to the client or others.
- E. **“Days”** means calendar days.
- F. **“Developmental disabilities”** means a severe chronic disability of a person that:
- (1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or a combination of mental and physical impairments;
 - (2) is manifest before the person reaches the age twenty-two years;
 - (3) is expected to continue indefinitely;
 - (4) results in substantial functional limitations in three or more of the following areas of major life activity:
 - (a) self-care;
 - (b) receptive and expressive language;
 - (c) learning;
 - (d) mobility;
 - (e) self-direction;
 - (f) capacity for independent living; and
 - (g) economic self-sufficiency; and
 - (5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of life-long or extended duration and are individually planned and coordinated.
- G. **“Director”** means the director, developmental disabilities division or the director’s designate.
- H. **“Division”** means the developmental disabilities division of the authority.
- I. **“Emergency”** means a circumstance in which the health or safety of the client or another person is in imminent risk of harm and immediate action is necessary to prevent the harm.
- J. **“Emotional or psychological abuse”** means use of verbal or other communication to threaten a client with physical harm or to ridicule, curse, humiliate, degrade or antagonize a client, or any similar action
- K. **“Exploitation of a client's personal property”** means intentionally, knowingly or recklessly using a client's person or property for another person's profit, advantage, or benefit without legal right or authority. Exploitation includes failure to compensate a client for services or work for which he or she is entitled to compensation.
- L. **“Facilities”** means institutions operated by the authority.
- M. **“Guardian”** means the parent of an individual with developmental disabilities if the client is a minor or a legal guardian appointed or recognized pursuant to the Uniform Probate Code, Section 45-5-11, et seq. NMSA 1978 (1993 Repl.).
- N. **“Mechanical restraint”** means any apparatus that restricts a client's movement excluding mechanical supports designed by a physical therapist and approved by a physician or designed by an occupational therapist that is used to achieve proper body position and excluding protective devices.
- O. **“Medical restraint”** means any apparatus prescribed by a physician, dentist or medical practitioner acting within the scope of their license, as health-related protection that restricts a client's movement during the conduct of a specific medical or surgical procedure.
- P. **“Neglect”** means, subject to the client's right to refuse treatment and subject to medical personnel's right to exercise sound medical discretion:
- (1) the failure to provide any treatment, services, care, medication or item that is necessary to maintain the health and safety of a client;
 - (2) the failure to take reasonable precaution that is necessary to prevent damage to the health and safety of a client; or
 - (3) the failure to carry out a duty to supervise properly or control the provision of any treatment, care, goods, services, or medication necessary to maintain the health or safety of a client.
- Q. **“Office”** means the office of quality assurance or a regional office within the developmental disabilities division.
- R. **“Plan”** means the individual service plan for services, treatment or habilitation developed by the interdisciplinary team.

S. “Physical abuse” means any act, or failure to act, performed knowingly, intentionally or recklessly that causes or is likely to cause harm. Physical abuse includes, but is not limited to, physically striking or assaulting a client, hitting, slapping, pinching, kicking, pushing, dragging, shaking, squeezing, choking and shoving. Physical contact which endangers the safety of a client as well as handling the client with more force than is necessary also constitute physical abuse.

T. “Physical restraint” means the use of manual methods to restrict the movement or normal functioning of a portion of an individual's body other than physical guidance and prompting techniques of brief duration.

U. “Protective devices” means helmets, safety goggles or glasses, guards, mitts, gloves, pads and other common safety devices that are normally used or recommended for use by persons without disabilities while engaged in a sport, occupation, or during transportation.

V. “Service provider” means a private entity that has entered into a contract or provider agreement with the authority or that is certified by the authority for the purpose of providing supports and services to individuals with developmental disabilities. When the context requires, the service provider means the executive director or administrator having authority to bind the service provider. Service provider does not include facilities operated by the authority.

W. “Sexual abuse” means sexual activity between a client and staff, nonconsensual sexual activity or contact with others without regard to injury, and sexual exploitation. Sexual activity includes, but is not limited to kissing, hugging, stroking or fondling with sexual intent; oral sex or sexual intercourse; and request or suggestion or encouragement by staff for performance of sex with the employee or another. Sexual intent is to be determined by an examination of all the circumstances related to the incident. Sexual exploitation includes sexual exploitation as defined in the Abuse and Neglect Act, Subsection F of Section 32A-4-2 NMSA 1978 and allowing, permitting or encouraging obscene or pornographic filming or photographing of an adult client without their consent for commercial or noncommercial purposes.

[8.371.3.7 NMAC - N, 7/1/2024]

8.371.3.8 REGULATION DOES NOT CREATE AN ENTITLEMENT TO SERVICES: Nothing in this regulation shall provide an entitlement to programs, supports, services or benefits that does not otherwise exist pursuant to other law or regulation.

[8.371.3.8 NMAC - N, 7/1/2024]

8.371.3.9 REGULATION DOES NOT CREATE A CAUSE OF ACTION: Any rights or remedies provided pursuant to this regulation that do not otherwise exist pursuant to other law or regulation are enforceable only through the client complaint procedure and are not enforceable in court. Nothing in this regulation shall create a right of judicial review of the administrative decision of the director or the secretary or the secretary's designee made pursuant to the client complaint procedure.

[8.371.3.9 NMAC - N, 7/1/2024]

8.371.3.10 CLIENT RIGHTS: Unless expressly modified by court order or specifically granted to a guardian or conservator, all clients have:

A. the same legal rights guaranteed to all other individuals under the United States Constitution, New Mexico State Constitution, and federal and state laws;

B. the right to be free from unlawful discrimination on the basis of race, age, religion, color, national origin, ancestry, sex, sexual preference, physical or mental handicap or medical condition;

C. the right to be free from emotional or psychological abuse, physical abuse, sexual abuse, neglect and exploitation of their personal property;

D. the right to practice the religion of their choice or to abstain from the practice of religion;

E. the right to safe working conditions, hours of labor and wages for labor consistent with the Fair Labor Standards Act and other applicable federal and state laws, and worker's compensation, except that clients receiving residential services may be required to do normal housekeeping and home maintenance chores; clients shall not be required to perform labor involving the essential operation of the service provider, including the care and treatment of other clients; clients may volunteer to do labor, consistent with federal and state labor laws; if a client volunteers to do work for which the program would otherwise be required to pay non-clients, the client shall be paid a commensurate wage;

F. the right to consent to or refuse medical treatment, medical services, and other forms of habilitation services or supports, consistent with the ISP regulations and the duties of a parent, guardian or treatment

guardian pursuant to the requirements of the Children's Mental Health and Developmental Disabilities Act, Section 32A-6-14 NMSA 1978 (1993 Repl.) or the Mental Health and Developmental Disabilities Act, Section 43-1-15 NMSA 1978 (1993 Repl.);

G. the right to have privacy, including both periods of privacy and places of privacy;
H. the right to communicate freely with persons of their choice in any reasonable manner and at any reasonable time they choose;

I. the right to own, use and control real property and personal possessions;

J. the right to engage in social interaction with members of either sex;

K. the right to enter into contract, including the contract to marry;

L. the right to engage in consensual sexual activity, except sexual activity defined as sexual abuse;

M. the right to procreate and to parent or not to procreate;

N. the right to manage their financial affairs, unless the client has a court appointed guardian or conservator or access to their funds is restricted by the individual service plan; a service provider who manages the funds of a client pursuant to the client's individual service plan shall comply with applicable federal standards or regulations and the following requirements:

(1) the service provider shall have obtained informed consent and written authorization from the client or the guardian or conservator, which shall state the service provider's responsibilities;

(2) the service provider shall maintain a written record of all financial transactions involving the funds of the client and shall make the record available to the client and the guardian or conservator upon request;

(3) the service provider shall provide for the safekeeping of the funds, shall keep the funds separate from all other funds and shall be held strictly accountable for the funds and any interest;;

(4) the service provider shall return the funds to the client or guardian or conservator, including interest, upon request. Upon the death of a client, the service provider shall provide the executor or personal representative a complete accounting of all funds and property;

O. the right to participate in the political process, including the right to vote;

P. the right to have access to their records, except as expressly limited by statute, and to have confidential treatment of all information in their records, including personal and medical records; confidentiality does not preclude access to an individual's records by an individual or organization otherwise entitled under federal or state law to review records;

Q. the right to voice grievances and complaints and to recommend changes in service provider policies and services without restraint, interference, coercion, discrimination or reprisal;

R. the right to have access to available advocacy services, including consultation and assistance on the individual's concerns and training on legal rights;

S. the right to refuse to participate in medical or psychological research experimentation;

T. the right to be free from excessive use of medical restraint;

U. the right to be free from the use of chemical restraint;

V. the right to be free from the use of physical restraint except in an emergency;

W. the right to be free from limitations on freedom of movement except in an emergency;

X. the right to be free from the use of mechanical restraint; and

Y. the right to be free from the use of aversive procedures.

[8.371.3.10 NMAC - N, 7/1/2024]

8.371.3.11 RESTRICTIONS OR LIMITATION OF CLIENT'S RIGHTS:

A. A service provider shall not restrict or limit a client's rights except:

(1) where the restriction or limitation is allowed in an emergency and is necessary to prevent imminent risk of physical harm to the client or another person; or

(2) where the interdisciplinary team has determined that the client's limited capacity to exercise the right threatens their physical safety; or

(3) as provided for in Subsection N of 8.371.3.10 NMAC.

B. Any emergency intervention to prevent physical harm shall be reasonable to prevent harm, shall be the least restrictive intervention necessary to meet the emergency, shall be allowed no longer than necessary and shall be subject to interdisciplinary team (IDT) review. The IDT upon completion of its review may refer its findings to the office of quality assurance. The emergency intervention may be subject to review by the service provider's behavioral support committee or human rights committee in accordance with the behavioral support policies or other authority regulation or policy.

C. The service provider may adopt reasonable program policies of general applicability to clients served by that service provider that do not violate client rights.
[8.371.3.11 NMAC - N, 7/1/2024]

8.371.3.12 RETALIATION FOR INITIATION OF COMPLAINT PROCEDURE PROHIBITED: A client has the right to present or make known a complaint without restraint, interference or coercion. A service provider shall not retaliate or discriminate against a client, staff person or other person who complains to the service provider or initiates a complaint procedure.
[8.371.3.12 NMAC - N, 7/1/2024]

8.371.3.13 CLIENT COMPLAINT PROCEDURE AVAILABLE: A complainant may initiate a complaint as provided in the client complaint procedure to resolve complaints alleging that a service provider has violated a client's rights as described in Section 10. The authority will enforce remedies for substantiated complaints of violation of a client's rights as provided in client complaint procedure.
[8.371.3.13 NMAC - N, 7/1/2024]

HISTORY OF 8.371.3 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 4 CLIENT COMPLAINT PROCEDURES

8.371.4.1 ISSUING AGENCY: New Mexico Health Care Authority, Developmental Disabilities Division.
[8.371.4.1 NMAC - N, 7/1/2024]

8.371.4.2 SCOPE:

A. This regulation applies only to clients and service providers as defined below.
B. Except as described in Section VII (A), this regulation is not available to resolve disputes concerning the content of or the substantial failure to implement a community individual service plan. Any dispute concerning the content of a plan or any claim alleging substantial failure to implement a plan must be raised in the dispute resolution process, if available. This regulation is not available to review any action by a service provider or the authority to suspend, terminate or reduce medicaid covered services if a fair hearing procedure is available pursuant to federal law.

C. Nothing in this regulation alters or modifies the duty of any person having reason to believe that a person is being abused, neglected, or exploited to report that information as required by the Adult Protective Services Act, Section 27-7-30 NMSA 1978 (1992 Repl.) and the Abuse and Neglect Act, Section 32A-4-3 NMSA 1978 (1993 Repl.)

[8.371.4.2 NMAC - N, 7/1/2024]

8.371.4.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 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.

[8.371.4.3 NMAC - N, 7/1/2024]

8.371.4.4 DURATION: Permanent.

[8.371.4.4 NMAC - N, 7/1/2024]

8.371.4.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.371.4.5 NMAC - N, 7/1/2024]

8.371.4.6 OBJECTIVE: The purpose of this regulation is to promote the health, safety and welfare of individuals who are receiving supports and services for persons with developmental disabilities from service providers certified by or funded in whole or in part with state funds administered by the authority through contracts or agreements. This regulation provides a procedure to address client complaints and provides that the authority will enforce remedies for substantiated complaints through the service providers funding contract or provider agreements.

[8.371.4.6 NMAC - N, 7/1/2024]

8.371.4.7 DEFINITIONS:

A. “**Client**” means a person with developmental disabilities who is receiving supports and services for individuals with developmental disabilities by a service provider certified by or funded in whole or in part with state funds administered by the authority through contracts or agreements.

B. “**Complainant**” means a client or their legal guardian who files a complaint pursuant to this regulation.

C. “**Days**” means calendar days.

D. “**Developmental disabilities**” means a severe chronic disability of a person that:
(1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or a combination of mental and physical impairments;

(2) is manifest before the person reaches the age 22 years;

(3) is expected to continue indefinitely;

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

(a) self-care;

(b) receptive and expressive language;

(c) learning;

- (d) mobility;
- (e) self-direction;
- (f) capacity of independent living; and
- (g) economic self-sufficiency.

E. “**Director**” means the director, developmental disabilities division or the director’s designee.

F. “**Division**” means the developmental disabilities division of the authority.

G. “**Emergency**” means a circumstance in which the health or safety of the client or another person is in immediate and serious jeopardy and must be protected immediately to stop or prevent harm.

H. “**Facilities**” means institutions operated by the authority.

I. “**Guardian**” means the parent of an individual with developmental disabilities if the client is a minor or a legal guardian appointed or recognized pursuant to the Uniform Probate Code, Section 45-5-101. et. Seq. NMSA 1978 (1993 Repl.).

J. “**Office**” means the office of quality assurance or a regional office within the developmental disabilities division.

K. “**Plan**” means the individual service plan for services, treatment or habilitation developed by the interdisciplinary team.

L. “**Service provider**” means a private entity that has entered into a contact or provider agreement with the authority or that is certified by the authority for the purpose of providing supports and services to individuals with developmental disabilities. When the context requires, the service provider means the executive director or administrator having authority to bind the service provider. Service provider does not include facilities operated by the authority.

[8.371.4.7 NMAC - N, 7/1/2024]

8.371.4.8 REASONS FOR ADOPTION:

A. These regulations provide a procedure to address client complaints and provides that the authority will enforce remedies for substantiated complaints through the service providers funding contracts or provider agreements.

B. These regulations are promulgated, in part, to satisfy requirements arising from the implementation of the decision in the Jackson v. Fort Stanton, N.M. Dist. CT. NO. Civ. 87-839, including agreements reached by the parties.

[8.371.4.8 NMAC - N, 7/1/2024]

8.371.4.9 REGULATION DOES NOT CREATE AN ENTITLEMENT TO SERVICES: Nothing in this regulation shall provide and entitlement to programs, supports, services or benefits that does not otherwise exist pursuant to other law or regulation.

[8.371.4.9 NMAC - N, 7/1/2024]

8.371.4.10 REGULATION DOES NOT CREATE A CAUSE OF ACTION: Any remedies provided pursuant to this regulation that do not otherwise exist pursuant to other law or regulation are enforceable only through the complaint and appeal process provided herein and are not enforceable in court. Nothing in this regulation shall create a right of judicial review of the administrative decision of the director or the secretary or their designee made pursuant to this regulation unless such review is available pursuant to other law or regulation.

[8.371.4.10 NMAC - N, 7/1/2024]

8.371.4.11 RETALIATION FOR INITIATION OF COMPLAINT PROCEDURE PROHIBITED: A client has the right to present or make known a complaint without restraint, interference, or coercion. A service provider shall not retaliate or discriminate against a client who complains to the service provider or initiates a complaint procedure.

[8.371.4.11 NMAC - N, 7/1/2024]

8.371.4.12 COMPLAINT PROCEDURE AVAILABLE:

A. The complaint process (Section 13 of this regulation) is available to resolve complaints alleging that a service provider, its employee, or a person acting under contract with the service provider has violated rights of the client set forth in the federal or state constitutions, statutes or applicable authority regulations or policies and such violation adversely affects the client. The administrative appeal process (Section 14 of this regulation) is

available, however, only as to alleged violations of rights set forth in the federal and state constitutions, statutes and authority regulations and policies designated “client's rights.”

B. The complaint procedure shall be available to clients or their legal guardians. The client or the legal guardian has the right to a legal representative or advocate of their choice at no expense to the authority.

C. If a complaint alleges a violation of statute, regulation or ordinance that another state agency or public entity has authority to investigate and enforce, the division may refer the complaint to that entity unless the client objects to the referral, except that the division shall report the violation when there is a statutory requirement to report. The division may decline to investigate the complaint.

D. The complaint procedure is not available to the service provider to review the final decision of the authority. The service provider may seek redress for any adverse action if provided by the terms of the service provider's contract or provider agreement.

E. The client may withdraw their complaint at any time. If the complainant is not the client, the division shall not continue the complaint procedure under this regulation if the client objects. The division may pursue its own investigation and take corrective action as appropriate.

F. The complainant and the service provider may settle a complaint by mutual agreement unless the client objects. However, the complainant and the service provider may not modify a finding substantiating the complaint.

[8.371.4.12 NMAC - N, 7/1/2024]

8.371.4.13 COMPLAINT PROCESS:

A. Step one: Service provider review:

(1) Each service provider shall have a complaint or grievance procedure that is reviewed and approved by the division. Except as provided in Paragraph (7) below, a client or a legal guardian must initiate a complaint with the service provider within 180 days of the event or occurrence that is the subject of the complaint and in the manner set forth in the service provider's complaint or grievance procedure.

(2) The service provider's complaint or grievance procedure shall provide, at a minimum, that:

(a) the client is notified of the service provider's complaint or grievance procedure;

(b) a complaint may be made orally or in writing;

(c) the service provider shall meet with the complainant if a complaint is made; if the complainant is not the client, the client shall be notified of the meeting and allowed to attend;

(d) the complainant and the client may have a representative(s) of their choice present at the meeting;

(e) the complaint will be decided by an impartial person who is not involved in the incident complained of but who may be an employee of the service provider;

(f) the complainant and their representative, if any, will receive a written response within 15 days of the complaint;

(g) the complainant has a right to file a complaint with the authority if the complainant is not satisfied with the service provider's response; and

(h) the service provider will assist the client in filing a complaint with the division upon request.

(3) The employees or staff of the service provider shall have the responsibility to initiate a complaint on behalf of the client whenever they have reason to believe that a violation of the client's rights may have occurred.

(4) The service provider shall issue a brief written response to the client and the guardian stating the nature of the complaint and the result(s) requested by the complainant, the disputed facts, if any, the undisputed facts, if any, the resolution of the complaint of the attempts made to resolve the complaint.

(5) The service provider shall respond to the complaint in writing within 15 days of the initial complaint. The time line may be extended by mutual agreement of the complainant and the service provider. The service provider shall maintain a copy of each written response in the client's record and in a central file that is available to the authority. If the complaint alleges abuse or neglect, the service provider shall, in addition to any other requirements, provide a copy of the response to child protective services or adult protective services. If the complainant alleges abuse or neglect or if the complaint involves a dangerous condition or a risk to the client's health or safety, the service provider shall provide a copy of the written response to the office.

(6) The failure of the service provider to issue a response to a client's complaint in writing shall be a separate and independent ground for filing a complaint with the division.

(7) If a complainant alleges abuse or neglect, or if the complaint involves a dangerous condition, or a risk to the client's health or safety, the complaint may be made with the division's office pursuant to step two without initiating a complaint with the service provider.

B. Step two. Quality assurance review: Expedited investigation: In addition to the investigation and review procedures and described herein, if the office has reason to believe that the health or safety of the client is in jeopardy, the division shall, in cooperation with other agencies as necessary, take steps to ensure that the client is safe while the complaint is under investigation and shall expedite the investigation and issue preliminary findings within 10 days of receipt of the complaint. If the complainant alleges abuse or neglect or the office has reason to believe that abuse or neglect has occurred or is occurring, the office shall make an immediate referral to child protective services of adult protective services for investigation.

(1) If the complaint is not resolved, a complaint may be filed with the division's designated office. The complaint must be made orally or in writing within 20 days from the date of the written response of the service provider, unless the service provider has failed to respond in writing or the complainant is filing the initial complaint with the office as provided in Paragraph (7) of Subsection A of 8.371.4.13 NMAC.

(2) The complaint shall be a brief statement of the act(s) that is the basis of the alleged violation. The complaint may be made orally or in writing. The complainant may provide the office a copy of the service provider's written response.

(3) If the office has reason to believe that abuse or neglect has occurred or is occurring, the Office shall make an immediate referral to child protective services (CPS) or adult protective services (APS) so that they may investigate the complaint immediately. The division shall coordinate with and assist CPS and APS as necessary.

(4) The office shall examine each complaint and determine whether the complainant alleges that a service provider, its employee, or a person under contract with the provider has violated rights of the client set forth in federal or state constitutions, statutes, or applicable authority regulations or policies. If the complainant does not allege such violation of the rights of the client, or if the allegation is not against a service provider or its employee or contractor, the office shall refer the complaint to any federal, state or local governmental body or private entity with authority over the issue or subject matter unless the client objects the referral.

(5) The office shall notify the service provider of the complaint within five days of receipt of the complaint. If the complainant initiated the complaint with the service provider, the service provider shall provide the office a copy of its written response to the unresolved complaint upon request.

(6) The office shall review the complaint and determine whether an expedited investigation is necessary. If an expedited investigation is not necessary, the office will determine whether a full investigation is necessary to resolve the complaint. If the office determines that a full investigation is not necessary because the facts are not in dispute or the facts can be determined without a full investigation, the office shall issue a report within 15 days of receipt of the complaint.

(7) If the office initiates a full investigation of the complaint, the office shall contact and interview the client and their representative, if any. The office shall interview the client in person unless:

(a) the client has the capacity to be interviewed by telephone and

(b) the complaint does not involve a dangerous condition, a risk to the client's health or safety, a significant rights violation, or other serious circumstance. The complainant, the service provider, and any other persons having relevant information shall be given the opportunity to present facts and documents relevant to the complaint.

(8) The office shall prepare a written report of the results of the investigation within 45 days of receipt of the complaint. The written report shall include a statement of the complaint, a summary of the findings of fact, a determination whether the allegation(s) is substantiated, and the reasons for the determination. If the alleged violation is substantiated, the written report shall include a recommendation of proposed action.

(9) The director shall review the office's written report. The director shall issue a written decision within 10 days of receipt of the written report, unless the director extends the time as provided below.

(a) The director shall either adopt the findings of fact or return the matter to the office with specific instructions for additional investigation and findings if he or she determines that there is insufficient information on which to base a decision. If the director returns the complaint to the office for additional investigation and findings, the director shall state the deadline for completion of the investigation and additional findings, which shall be no more than 14 days unless the director determines that circumstances require additional time.

(b) Director shall determine whether there is reason to support the complainant's allegations and determine what action, if any, should be taken. If the director reflects the findings of fact or modifies the recommendation of proposed action, the director shall state the reasons for their decision.

(10) The written decision of the division director is final unless the complainant requests an administrative hearing as provided in section of this regulation.
[8.371.4.13 NMAC - N, 7/1/2024]

8.371.4.14 ADMINISTRATIVE APPEAL PROCESS: The administrative appeal process is available only to review the decision of the division director as to alleged violations by the service provider, its employees, or persons under contract with the service provider of rights set forth in the federal or state constitutions, statutes, or authority regulations or policies designated “client's rights.” The administrative hearing is intended to be accomplished without the involvement of legal counsel, but the complainant and the service provider may be represented by legal counsel of their choosing at their own expense.

A. Step one: Administrative hearing:

(1) Request for hearing:

(a) If the complainant is not satisfied with the decision of the director, the complainant may request an evidentiary hearing before and impartial hearing officer. The request must be in writing, must be filed with the director, and must be mailed within 20 days from receipt of the director’s decision.

(b) The appeal shall be a brief statement of the acts that are the basis of the alleged violation of rights.

(2) Assignment of hearing officer:

(a) The director shall assign a hearing officer within 10 days of receipt of the request for hearing.

(b) If any person who may appear at the hearing, as described in Paragraph (3) of Subsection B of 8.371.4.14 NMAC, has reason to believe that the hearing officer cannot render an impartial decision, the person shall notify the director in writing stating the objection and the reason(s) therefor within five days of the date of the notice of the assignment. If the director determines that there is a good cause, the director shall assign another hearing officer within 10 days of receipt of the objection.

(3) Notice of hearing:

(a) The hearing officer shall conduct the hearing within 15 days of assignment as hearing officer. The hearing officer may grant a continuance not to exceed 15 days for good cause shown.

(b) The hearing officer shall notify the complainant and the service provider (s) of the date, time and place of the hearing at least five days prior to the hearing. If feasible, the hearing shall be held in the city or town where the client resides or at a location convenient to the client.

(c) The service provider may decline to appear at the hearing and the hearing shall proceed. The complainant and the service provider may settle the complaint by mutual agreement at any time prior to the hearing unless the client objects. The complainant shall notify the hearing officer of the settlement by withdrawing the complaint in writing prior to the hearing. The hearing officer shall notify the division director that the complainant has withdrawn the complaint.

(4) Conduct of hearing:

(a) The complainant has the burden to show by a preponderance of the evidence that:

(i) the act (s) complained occurred;

(ii) the act (s) constitutes a violation by the service provider, employee or a person under contract with the service provider, of rights of the client set forth in the federal or state constitution, statutes, or authority regulations or policies designated “client's rights”; and

(iii) the client is adversely affected.

(b) The complainant and the service provider (s) have the right to call witnesses on their behalf, question witnesses called by others, and present other evidence relevant to the complaint.

(c) The hearing officer shall admit all relevant evidence that is reasonably likely to assist him or her in making a fully informed, fair decision. The hearing officer may exclude irrelevant or repetitious evidence. Conformity to rules of evidence is not required. The hearing officer's rulings on evidence are final.

(5) Recommended decision of the hearing officer:

(a) The hearing officer shall render a recommended decision to the secretary of the authority or the secretary’s designee in writing within 10 days of the hearing.

(b) The recommended decision shall include:

(i) a statement of uncontested facts and finding of fact on contested issues; and

(ii) a recommendation dismissing the complaint as not supported by a preponderance of the evidence; or
(iii) a finding substantiating the complaint and a recommendation either adopting the authority's relief or remedy or proposing individual relief or remedy.

B. Step two: Decision:

(1) The secretary or the secretary's designee may adopt the recommendation of the hearing officer or may reverse or modify the recommendation of the hearing officer. If the secretary or the designee modifies or reverses the recommendation of the hearing officer, they shall state the reasons for the decision.

(2) The secretary or their designee shall notify the persons described in Paragraph (3) of Subsection A of 8.371.4.14 NMAC of the decision in writing within 15 days of receipt of the recommendations of the hearing officer.

(3) The decision of the secretary or the secretary's designee is final and is not subject to judicial review.

[8.371.4.14 NMAC - N, 7/1/2024]

8.371.4.15 SANCTIONS, CORRECTIVE ACTION OR RELIEF:

A. Sanction, corrective action or other relief for substantiation of a complaint may include a directive prohibiting any future violation, a corrective action plan that shall be implemented as a condition for the continuation of the service provider's contract or provider agreement and enforceable under terms of the contract or provider agreement, reimbursement or repayment by the service provider of a client's funds, recoupment by the authority of a client's funds on behalf of the client, a requirement that the service provider take corrective or disciplinary action against an employee, or any other affirmative relief that is fair and just. Sanctions imposed under this regulation shall not include revocation or suspension of a license, denial of a license application, a monetary penalty, fine, compensatory damages (except reimbursement of client funds), or consequential or punitive damages except as may be specifically provided in the agreement between the service provider and the authority.

B. In imposing sanctions, corrective action or other relief, the office, director or the secretary may consider prior substantiated complaints involving the service provider, if any, data from child protective services or adult protective services abuse or neglect reports, performance audit reviews, and the responsiveness of the service provider to prior remedial action imposed by the division or other authority.

C. If the complainant's allegation is substantiated and sanction or corrective action is imposed or other relief granted, the division may require that the service provider prepare and submit documents to the division or allow access to records necessary to demonstrate the service provider is in compliance with the provisions of the sanction, corrective action or other relief.

D. If the complaint is substantiated, the notice of final action shall state that the division may impose additional sanctions for failure of the service providers to comply with the decision and may impose sanctions, corrective action or other relief as provided in Subsection A of 8.371.4.15 NMAC in addition to the individual remedy or relief granted.

[8.371.4.15 NMAC - N, 7/1/2024]

8.371.4.16 ACTION OF THE DIVISION NOT EXCLUSIVE OF OTHER ACTION: The division shall cooperate with the health care authority licensing and certification bureau, the long term care ombudsman, the children, youth and families department, the department of labor, and medicaid fraud unit, as appropriate, regarding any investigation, allegation or substantiated complaint. Any remedy imposed by the division for violation of authority policy or regulation does not preclude other sanction or corrective action by other divisions of the authority or preclude another agency or authority with jurisdiction over the subject matter from taking action arising from the same conduct, actions or omissions.

[8.371.4.16 NMAC - N, 7/1/2024]

8.371.4.17 PUBLIC DISCLOSURE OF FINAL ACTIONS:

A. The office of quality assurance will conduct its investigations in a manner that protects the clients' privacy.

B. Complaints and documents, materials, or records not otherwise exempt from public inspection shall be subject to public inspection. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated or redacted by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. The complaints and related documents shall not be available for

public inspection until the investigation is concluded, action of the authority is final, and any time period allowed for review or administrative hearing has expired.

C. Client identifying confidential information, records pertaining to physical or mental illness or medical treatment, and records protected from disclosure by statute or court-recognized rule are exempt from public inspection.

D. Those portions of the division's investigation file containing confidential sources, methods, and related investigation materials may be exempt from public inspection on public policy grounds if the harm to the public interest from allowing inspection outweighs the public's right to know.

E. The authority may charge reasonable fees for copying public records.

F. The division will track complaints to ensure that the complaint process operates satisfactorily, meets time lines, and achieves any program changes required of service providers. Non-confidential data from the complaint tracking process will be available to the public. If the division produces periodic statistical reports containing aggregate information about substantiated and unsubstantiated complaints, including nonpersonally identifiable information about the complaints received, type or nature of the allegations, frequency of complaints by type and by service provider, resolution of substantiated complaints, tracking of corrective action and follow-up, other investigation results, and any other data the authority deems appropriate, the statistical reports shall be subject to public inspection.

[8.371.4.17 NMAC - N, 7/1/2024]

8.371.4.18 THIS COMPLAINT PROCEDURE IS NOT AVAILABLE FOR APPLICANTS: This complaint procedure is not available to review financial eligibility determinations or denial of applications for services. Applicants for services may seek other review that may be available under law or regulations.

[8.371.4.18 NMAC - N, 7/1/2024]

HISTORY OF 8.371.4 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 5 SERVICE PLANS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES
LIVING IN THE COMMUNITY

8.371.5.1 ISSUING AGENCY: New Mexico Health Care Authority, Developmental Disabilities Supports Division.

[8.371.5.1 NMAC - N, 7/1/2024]

8.371.5.2 SCOPE:

A. For each individual with developmental disabilities receiving services in the community, either through state general funds or federal funding through the developmental disabilities medicaid waiver, there shall exist a single, unified individual service plan, or ISP. This ISP shall be developed by a single interdisciplinary team, or IDT, consisting of the individual, the guardian, parents, family, and representatives from all key community service provider agencies servicing to the individual, regardless of their source of funding, as well as advocates and others invited to participate by the individual.

B. These regulations shall apply to all individuals with developmental disabilities living in the community, regardless of whether their services are funded through the developmental disabilities medicaid waiver or through state general fund contracts with community providers. The following groups are *excluded* from these regulations, as their services and service delivery are addressed in other regulations:

(1) children, aged birth to three, who are recipients of services covered by the federal Individuals with Disabilities Education Act (IDEA), Part C as administered under the New Mexico family, infant and toddler program;

(2) early periodic screening, diagnosis and treatment (EPSDT) case management recipients, unless allocated to the DD waiver;

(3) medically fragile waiver recipients;

(4) state general funded recipients of only ancillary services (non-residential and non-day program services), such as respite and the various therapies;

(5) community ICF/MR group home residents, covered by federal ICF regulations, except *Jackson* class members.

[8.371.5.2 NMAC - N, 7/1/2024]

8.371.5.3 STATUTORY AUTHORITY: Subsection E Section 9-7-6 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 facility licensure and health care purchasing and regulation.

[8.371.5.3 NMAC - N, 7/1/2024]

8.371.5.4 DURATION: Permanent.

[8.371.5.4 NMAC - N, 7/1/2024]

8.371.5.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.371.5.5 NMAC - N, 7/1/2024]

8.371.5.6 OBJECTIVE:

A. These regulations contain a process for development of an individual service plan for persons with a developmental disability. The requirements set out in these regulations apply, with some exceptions, to providers of services to persons with developmental disabilities living in the community.

B. These regulations are promulgated, in part, to satisfy requirements arising from the implementation of the decision in *Jackson, et al. v. Fort Stanton, et al.*, N.M. Dist. Ct. No. Civ. No. 87-839. These regulations incorporate certain agreements reached by the parties, including the authority, to the *Jackson* lawsuit.

C. The purpose of this regulation is to establish a framework for planning, designing, implementing and modifying the individual service plan for an individual with developmental disabilities living in the community.

[8.371.5.6 NMAC - N, 7/1/2024]

8.371.5.7 DEFINITIONS:

A. The Interdisciplinary Team (IDT):

(1) The “**interdisciplinary team (IDT)**” is responsible for the development of the individual service plan (ISP) and for identifying the agencies and individuals responsible for providing the services and supports identified in the ISP.

(2) The IDT shall consist of the following core members:

(a) “**individual**”: the person with a developmental disability for whom the ISP is written;

(b) “**case manager**”: the independently-funded professional responsible for service coordination to individuals with developmental disabilities on the developmental disabilities medicaid waiver; the case manager must be external to, and independent from, the community service provider agency;

(c) “**guardian**”: the court appointed guardian of an adult individual or the custodial parent(s) if the individual is a minor;

(d) “**helper**”: the individual may choose a helper to assist with communication; in instances where the individual is unable to make this choice, the guardian may choose a helper, if desired; the helper may be a friend, housemate, family member, teacher, co-worker, current or former employee of an agency or facility with which the individual has had contact, foster grandparent, or any other person from the individual's circle of relatives, friends and acquaintances;

(e) “**key community service provider staff**”: “key” community service providers are providers of residential employment, day program and behavioral services specifically designed for persons with developmental disabilities; “key” provider staff participating in the IDT shall include, at a minimum:

(i) “**direct service staff**”: the provider staff member(s) directly responsible for the provision of specified services to the individual with developmental disabilities;

(ii) “**service coordinator**”: the community provider staff member, sometimes called the program manager or the internal case manager, who supervises, implements and monitors the service plan within the community service provider agency;

(f) “**ancillary service providers**”: the service provider agencies and staff providing non-residential and non-day services, either specifically designed for individuals with developmental disabilities or generic in nature, regardless of funding source; examples of ancillary services include nutritional services, physical therapy, occupational therapy, speech therapy, respite, nursing, etc.; as well as services provided by the individual's physician and other medical personnel;

(g) “**designated healthcare coordinator**”: the team member designated to coordinate medical supports and services which the individual requires to manage any chronic health conditions and to access preventative healthcare services;

(h) “**others**”: unless the individual objects, other participants may include family members not already mentioned, if invited by the individual or guardian; advocates or other chosen representatives who participate in the ISP development process on the individual's behalf; representatives of generic services, who may participate in the IDT with the individual's or guardian's consent; representatives of the public school system, if the individual is of school age and attends public school; and, any others that the individual wishes to have attend the IDT meeting.

B. Content of individual service plans:

(1) “**Demographic information**”: The individual's name, age, date of birth, important identification numbers (i.e., medicaid, medicare, social security numbers, level of care), address, phone number, guardian information (if applicable), physician name and address, primary care giver or service provider(s), date of the ISP meeting (either annual, or revision), scheduled month of next annual ISP meeting, and team members in attendance.

(2) “**Long-term vision**”: A written statement of the individual's personal vision for the future.

(3) “**Outcomes**”: Desired outcomes generated by the individual, guardian and the team. An outcome is a realistic change that can occur in the individual's life, that the individual can achieve and that leads towards the attainment of the individual's long-term vision. For example, an outcome may state that the individual obtain preferred employment or that the individual learn to drive.

(4) “**Individual preference**”: The individual's preferences, capabilities, strengths and needs in each life area determined to be relevant to the identified ISP outcomes shall be reflected in the ISP. The long term vision, age, circumstances and interests of the individual, shall determine the life area relevance, if any, to the individual's ISP.

(5) “**Action plans**”:

(a) specific action plans designed to assist the individual in achieving each identified desired outcome listed in the ISP, by the team, which include criteria for measuring progress, timelines and responsible parties on each action step.

(b) service providers shall develop specific tasks and strategies (methods and procedures) for implementing each specified action step within timelines established by the IDT.

(6) **“Assistive technology”**: Necessary support mechanisms, devices, and environmental modifications including the rationale for the use of assistive technology or adaptive equipment when a need has been identified, shall be documented in the ISP. The rationale shall include the environments and situations in which assistive technology is used. Selection of assistive technology shall support the individual's independence and functional capabilities in as nonintrusive a fashion as possible.

(7) **“Availability of supports and services”**: Identification of potential supports and services for individuals by the IDT should be undertaken without regard to the cost of the supports and services or whether they are actually available at that time in the community.

(8) **“Signature form”**: A signature form, containing the name, phone number and role on the IDT of all team members shall be included in the ISP. All individuals attending the annual IDT meeting shall sign the signature form to indicate their participation in the planning process. For all team members not in attendance the alternative method of their participation shall be stated on the signature line. (e.g. telephone, written report, premeeting consultation or designated representative).

(9) **“Budget page”**: For individuals receiving services through the developmental disabilities medicaid waiver a proposed budget page developed by the case manager in consultation with the various service providers shall be included in the ISP.

[8.371.5.7 NMAC - N, 7/1/2024]

8.371.5.8 INTRODUCTION:

A. For all recipients of the developmental disabilities medicaid waiver services, this interdisciplinary team shall be chaired by the individual, if they so desire, or by the independent case manager. Services called for in the ISP shall be coordinated by the independent case manager according to the procedures described herein.

B. For all state general fund recipients, this interdisciplinary team shall be chaired by the individual, if he or she desires, or by the designated service coordinator of a community service provider agency. Services called for in the ISP shall be coordinated by the service coordinator staff of the key community service provider agency according to the procedures described herein.

C. The IDT shall review and discuss information and recommendations with the individual, with the goal of supporting the individual in attaining desired outcomes. The IDT develops an ISP based upon the individual's personal vision statement, strengths, needs, interests and preferences. The ISP is a dynamic document, revised periodically, as needed, and amended to reflect progress towards personal goals and achievements consistent with the individual's future vision. This regulation is consistent with standards established for individual plan development as set forth by accreditation entities approved and adopted by the developmental disabilities supports division and the health care authority. It is the policy of the developmental disabilities support division (DDSD) that to the extent permitted by funding, each individual receive supports and services that will assist and develop independence and productivity in the community and take affirmative action to prevent regression or loss of current capabilities. Services and supports include specialized and generic services, training, education or treatment as determined by the IDT and documented in the ISP.

D. The intent is to provide choice and obtain opportunities for individuals to live, work and play with full participation in their communities.

[8.371.5.8 NMAC - N, 7/1/2024]

8.371.5.9 GUIDING PRINCIPLES: The following principles shall provide direction and purpose in planning with individuals with developmental disabilities.

A. Principle No. 1: The individual with developmental disabilities has choices in, and ownership of, the planning process. If the individual is unable to independently communicate, the team shall use observed preferences and consultation with close friends, family members, guardians, helpers, direct service staff and advocates to guide decisions.

B. Principle No. 2: A person-centered planning process shall be used to maintain the self-esteem of the person with developmental disabilities.

C. Principle No. 3: The individual's long-term vision statement shall guide assessments, planning, plan implementation and service evaluation. The plan shall describe reasonable accommodations and supports to assist the individual in the realization of the individual's vision.

D. Principle No. 4: Planning shall focus on outcomes or results which the individual wishes to achieve.

E. Principle No. 5: The plan shall address individual strengths and capabilities in developing action plans and strategies for reaching desired outcomes.

F. Principle No. 6: Visions shall usually reflect results which can be reached within one (1) year. Action plans will delineate which activities will be completed within one year and those which will be detailed in future plans or plan modifications.

G. Principle No. 7: The team developing the action plan shall recognize and understand that behavior is a form of communication.

H. Principle No. 8: Natural supports and services normally utilized by the community at large shall be preferred over specialized services in assisting individuals to reach desired outcomes; when specialized services are necessary they shall take place in natural settings whenever possible.

I. Principle No. 9: The planning process shall be tailored to each individual's culture, communication style, physical requirements, learning style and personal preferences.

[8.371.5.9 NMAC - N, 7/1/2024]

8.371.5.10 AVAILABILITY OF SUPPORTS, SERVICES AND FUNDS AND DDS APPROVALS:

A. The case manager assures that identification of potential supports and services for the individual by the IDT is undertaken without regard to the cost of the supports and services or whether they are actually available at that time in the community. If needed supports and services are not available this shall be reported to the DDS regional office by the case manager.

B. For individuals who are not *Jackson* class members, in specifying the supports and services in the ISP required to be provided, the IDT, exercising professional judgment, may take into account the availability of supports and services. If supports or services are identified in the ISP, but not required to be provided in the exercise of professional judgment taking into account the availability of services, the IDT shall promptly submit a list of these unavailable supports and services to the DDS. The DDS shall use these lists to identify appropriate community resource needs and develop strategies to add community supports and services for persons with developmental disabilities, subject to appropriations for this purpose.

C. For *Jackson* class members, the ISP shall include the supports and services identified by the IDT.

D. The ISP for individuals who are on the developmental disabilities medicaid waiver, including *Jackson* class members, must be reviewed and approved by the DDS, as to the cost of the individual's ISP, and aggregate costs of ISPs, and as to compliance with medicaid regulations and DDS standards. If the DDS does not approve the ISP because of cost or non-compliance with DDS standards, the ISP will be returned to the IDT with appropriate instructions to develop an ISP that meets requirements and is within the DDS's budget parameters. The ISP for these individuals will not be implemented unless and until it is approved by the DDS.

E. Because cost limitations are established upfront in the contracting process for persons funded solely by state general funds, the above ISP review and approval process (per Subsection D of 8.371.5.10 NMAC above) is not required. The DDS reserves the right to conduct on-site reviews for compliance with applicable policy and regulation.

[8.371.5.10 NMAC - N, 7/1/2024]

8.371.5.11 THE INTERDISCIPLINARY TEAM:

A. The interdisciplinary team (IDT) is responsible for the development of the individual service plan (ISP) and for identifying the agencies and individuals responsible for providing the services and supports identified in the ISP.

B. The IDT shall consist of the following core members:

(1) individual: the individual shall be actively encouraged to participate in all IDT meetings and the ISP development process; this participation shall include, but not be limited to, expressing a personal vision statement for the future, indicating desired outcomes that help to realize that vision, identifying action plans that will achieve those outcomes, and personally chairing the IDT meeting, if desired and when able to do so;

(2) case manager: the duties of the case manager in relation to the individual with developmental disabilities and the IDT shall include:

- (a) coordinating the development, modification and implementation of the ISP in consultation with the IDT and the individual;
 - (b) monitoring the integration and coordination of the individual's services;
 - (c) serving as the IDT chairperson, or assisting the individual in chairing the IDT meeting if he or she is capable of doing so and wishes to do so;
 - (d) scheduling IDT meetings annually, or more often as needed, to review or modify the ISP, and encouraging optimum participation by all IDT members;
 - (e) monitoring supports and services being delivered as specified in the ISP as determined by the IDT;
 - (f) reviewing progress on chosen outcomes, and action plans and through consultation with the IDT, amending the ISP, if needed;
 - (g) through timely consultation with the IDT, modifying unsuccessful service programs and developing service programs for previously unaddressed but significant individual needs that may arise prior to the next scheduled ISP meeting;
 - (h) advocating on behalf of the individual by making recommendations and requests on behalf of the individual;
 - (i) ensuring objective, quantifiable data has been systematically recorded, analyzed and used to determine effectiveness of service provided in order to justify needed changes in services;
 - (j) coordinating and monitoring any follow-up needed as a result of reviews;
 - (k) serving as liaison between the IDT and the public school system, the special education division, or any other community service teams relevant to the individual served; and
 - (l) assisting the community service providers in community placement or other services as needed and as specified by the IDT;
- (3) the case manager ensures that the IDT identified services and supports for the individual without regard to their current availability; at the conclusion of the IDT meeting the case manager shall document unavailable services on the appropriate page of the ISP form, which is provided for this purpose, and submits this list to the DDS, regional office;
- (4) guardian: the guardian shall convey to the IDT information about the individual, historical or otherwise, which shall be useful in the development of the ISP;
- (5) helper: the helper is someone who knows the individual's capabilities, interests, likes, and dislikes and who can assist the individual in communicating these with the IDT; in turn, the helper may assist the individual in understanding the ISP development process and the individual service plan that is developed;
- (6) "key" community service provider staff: "key" community service providers are providers of residential, employment day program and behavioral services specifically designed for persons with developmental disabilities; "key" provider staff participating in the IDT shall include, at a minimum:
- (a) direct service staff: the participation of direct service staff in the development of the individual service plan is crucial, as they are the persons who work directly with the individual within their respective domains; at least one provider staff member from each of the "key" service areas (residential, day/work-related and behavioral), who is directly involved in the provision of services to the individual in those areas, must be in attendance at all IDT meetings;
 - (b) service coordinator: the service coordinators of the community provider agencies shall assure that appropriate staff develop strategies specific to their responsibilities in the ISP; the service coordinators shall assure the action plans and strategies are implemented consistent with the provisions of the ISP, and shall report to the case manager on ISP implementation and the individual's progress on action plans within their agencies; for persons funded solely by state general funds, the service coordinator shall assume all the duties of the independent case manager described within these regulations; if there are two or more "key" community service provider agencies with two or more service coordinator staff, the IDT shall designate which service coordinator shall assume the duties of the case manager; the criteria to guide the IDT's selection are set forth as follows:
 - (i) the designated service coordinator shall have the skills necessary to carry out the duties and responsibilities of the case manager as defined in these regulations;
 - (ii) the designated service coordinator shall have the time and interest to fulfill the functions of the case manager as defined in these regulations;
 - (iii) the designated service coordinator shall be familiar with and understand community service delivery and supports;
 - (iv) the designated service coordinator shall know the individual or be willing to become familiar and develop a relationship with the individual being served;

(7) ancillary service providers: ancillary service providers shall participate in the IDT meeting and the ISP development process through written assessments, evaluations or reports to the IDT, or in person; the case manager, in consultation with the individual and the IDT, shall determine the need for personal participation at IDT meetings on the part of any ancillary service provider;

(8) designated healthcare coordinator: the team member designated to coordinate medical supports and services which the individual requires to manage any chronic health conditions and to access preventative healthcare services;

(9) others: unless the individual objects, other participants may include family members not already mentioned, if invited by the individual or the ISP development process on the individual's behalf; representatives of general services, who may participate in the IDT with the individual's or guardians' consent; representatives of the public school system, if the individual is of school age and attends public school; and, any others that the individual wishes to have attend the IDT meeting.

[8.371.5.11 NMAC - N, 7/1/2024]

8.371.5.12 DEVELOPMENT OF THE INDIVIDUAL SERVICE PLAN (ISP) - PARTICIPATION IN AND SCHEDULING OF INTERDISCIPLINARY TEAM MEETINGS:

A. Prior to the initial IDT meeting the case manager shall provide the individual and guardian, if any, with an orientation to the person-centered planning process, purpose of the ISP and roles and responsibilities of IDT members. After completion of the ISP, the individual and guardian shall be offered the opportunity to meet with the case manager and ask questions regarding the completed ISP within 30 days of the meeting, if desired.

B. The IDT shall be convened at least annually and may be convened as frequently as conditions or circumstances warrant to review and modify the ISP. If an ISP includes programs or services which restrict an individual or a behavioral program subject to the DDS behavior support policy, the IDT shall review the relevant program or service at least quarterly. In situations where an individual is at risk of significant harm, the team shall convene within one working day, in person or by teleconference. If necessary, the ISP shall be modified accordingly within 72 hours.

C. The IDT meeting shall be scheduled and conducted by the case manager who will solicit and facilitate the full participation of all team members. The individual shall be present unless he/she chooses not to attend. If any member is unable to attend IDT meetings, arrangements for their involvement shall be made through teleconference, designated representatives, or in the case of ancillary services, written reports provided to the case manager prior to the meeting.

D. The case manager shall provide written notice of the annual IDT meeting at least 21 days prior to the meeting. Notice shall be provided to the individual, their representative, guardian, providers and other invited participants. The case manager shall consult IDT members prior to scheduling the meeting in order to determine the best dates and times. The case manager shall attempt to accommodate team member's scheduling needs shall be accommodated as long as the timing does not jeopardize continued eligibility for the DD Waiver. A request for a change of meeting date made by the individual and guardian. Written documentation of notice and scheduling activities will be maintained by the case manager in the individual's records.

E. For state general funded services, the initial IDT meeting shall be held within 60 days of the start of services, and then annually thereafter. For all other developmental disabilities medicaid waiver recipients, the IDT meeting shall be held annually based upon the previous or initial ISP approval date.

F. In the event the individual or guardian requests that others be invited to attend the IDT meeting, the case manager shall also provide them with notification of the meeting.

G. The case manager will convene the IDT on an "as needed" basis to modify (revise or amend) the ISP once it has been developed. Participants may attend through teleconference.

H. The IDT shall be convened to discuss and modify the ISP, as needed, to address:

(1) a significant life change, including a change in medical condition or medication that affects the individual's behavior or emotional state;

(2) situations where an individual is at risk of significant harm. In this case the team shall convene within one working day, in person or by teleconference; if necessary, the ISP shall be modified accordingly within 72 hours;

(3) changes in any desired outcomes, (e.g. desired outcome is not met, a change in vocational goals or the loss of a job);

(4) the loss or death of a significant person to the individual;

(5) a serious accident, illness, injury or hospitalization that disrupts implementation of the ISP;

- (6) individual, guardian or provider requests for a program change or relocation, or when a termination of a service is proposed; the DDS's policy no. 150 requires the IDT to meet and develop a transition plan whenever an individual is at risk of discharge by the provider agency or anticipates a change of provider agency to identify strategies and resources needed; if the individual or guardian is requesting a discharge or a change of provider agency, or there is an impending change in housemates the team must meet to develop a transition plan;
 - (7) situations where it has been determined the individual is a victim of abuse, neglect or exploitation;
 - (8) criminal justice involvement on the part of the individual (e.g., arrest, incarceration, release, probation, parole);
 - (9) any member of the IDT may also request that the team be convened by contacting the case manager; the case manager shall convene the team within 10 days of receipt of any reasonable request to convene the team, either in person or through teleconference;
 - (10) for any other reason that is in the best interest of the individual, or any other reason deemed appropriate, including development, integration or provision of services that are inconsistent or in conflict with the desired outcomes of the ISP and the long term vision of the individual;
 - (11) whenever the DDS decides not to approve implementation of an ISP because of cost or because the DDS believes the ISP fails to satisfy constitutional, regulatory or statutory requirements.
- [8.371.5.12 NMAC - N, 7/1/2024]

8.371.5.13 DEVELOPMENT OF THE INDIVIDUAL SERVICE PLAN (ISP) ASSESSMENTS:

- A.** Assessment information, as described in Subsection C of 8.371.5.13 NMAC, shall be utilized to develop and revise the ISP. The individual, helper, family members and friends shall be provided an opportunity to present their perceptions regarding the individual's progress and current status. The observations and perceptions of people who know the individual well shall be considered when decisions regarding the ISP are made.
- B.** All IDT members shall review clinical and other assessments and evaluations completed on behalf of the individual. These assessments must be prepared with enough time for adequate review prior to the annual IDT meeting. Service providers preparing written assessment reports shall be responsible for submitting these documents to the IDT members at least two weeks prior to the scheduled annual IDT meeting. The case manager shall review written assessment reports with the individual and guardian prior to the IDT meeting.
- C.** Relevant IDT members, including ancillary service providers, shall prepare reports at least two weeks in advance of the IDT meeting, based on their assessments of the individual's progress and current status in the domain for which they are responsible. Reports shall include, at a minimum, a client individual assessment (CIA) and a long term care abstract (LOC) completed by the case manager at least annually in consultation with the IDT; adaptive behavior scales completed by relevant IDT members; assessments from the various disciplines providing services to the individual (such as vocational evaluations, physical therapy evaluations, history and physical, etc.); objective data to corroborate evaluation information; reports by progress residential and day program providers; information, historical or otherwise, provided by guardians or family members; direct observations, especially during transitional periods. IDT members shall report other relevant information depending on the individual's service needs. Assessments shall be performed in settings normally utilized whenever possible.
- D.** When the IDT determines further independent assessment is needed, the team shall develop action plans within the ISP that addresses the need for such an assessment, including responsibility and timelines. Implementation of any action plan related to independent assessment shall be monitored by the case manager.
- E.** At the IDT meeting, team members shall:
 - (1) elicit and develop the individual's long term vision statement;
 - (2) review and discuss clinical and other assessments and evaluation reports in relation to the individual's abilities, interests, preferences and desired outcomes;
 - (3) review objectives, quantifiable data information from the previous ISP to determine the effectiveness of services and interventions and use this information when determining new or revised outcomes, action plans and strategies for the ISP under development;
 - (4) use the comprehensive compilation of client assessment information and the long term vision statement to perform a functional assessment; this functional assessment identifies the supports and services needed in assisting the individual in the attainment of the long term vision; for example, the functional assessment may evaluate the use of an interpreter as a support or assistive communication devices, environmental modifications, etc.; and
 - (5) the functional assessment shall reflect the experience, choices, cultural background, skills, needs and abilities of the individual; this functional assessment precedes the development of the action plan at

the IDT meeting; functional assessments shall reflect the individual's current skills and abilities in relation to the individual's environment and community; functional assessments shall include the interpretation of clinical assessments and evaluations in assisting the individual in meeting the long term vision.
[8.371.5.13 NMAC - N, 7/1/2024]

8.371.5.14 DEVELOPMENT OF THE INDIVIDUAL SERVICE PLAN (ISP) - CONTENT OF INDIVIDUAL SERVICE PLANS: Each ISP shall contain.

A. Demographic information: The individual's name, age, date of birth, important identification numbers (ie., medicaid, medicare, social security numbers), level of care address, phone number, guardian information (if applicable), physician name and address, primary care giver or service provider(s), date of the ISP meeting (either annual, or revision), scheduled month of next annual ISP meeting, and team members in attendance.

B. Long term vision: The vision statement shall be recorded in the individual's actual words, whenever possible. For example, in a long term vision statement, the individual may describe him or herself living and working independently in the community.

C. Outcomes:

(1) The IDT has the explicit responsibility of identifying reasonable services and supports needed to assist the individual in achieving the desired outcome and long term vision. The IDT determines the intensity, frequency, duration, location and method of delivery of needed services and supports. All IDT members may generate suggestions and assist the individual in communicating and developing outcomes. Outcome statements shall also be written in the individual's own words, whenever possible. Outcomes shall be prioritized in the ISP.

(2) Outcomes planning shall be implemented in one or more of the four "life areas" (work or leisure activities, health or development of relationships) and address as appropriate home environment, vocational, educational, communication, self-care, leisure/social, community resource use, safety, psychological/behavioral and medical/health outcomes. The IDT shall assure that the outcomes in the ISP relate to the individual's long term vision statement. Outcomes are required for any life area for which the individual receives services funded by the developmental disabilities medicaid waiver.

D. Individual preference: The individual's preferences, capabilities, strengths and needs in each life area determined to be relevant to the identified ISP outcomes shall be reflected in the ISP. The long term vision, age, circumstances, and interests of the individual, shall determine the life area relevance, if any to the individual's ISP.

E. Action plans:

(1) Specific ISP action plans that will assist the individual in achieving each identified, desired outcome shall be developed by the IDT and stated in the ISP. The IDT establishes the action plan of the ISP, as well as the criteria for measuring progress on each action step.

(2) Service providers shall develop specific action plans and strategies (methods and procedures) for implementing each ISP desired outcome. Timelines for meeting each action step are established by the IDT. Responsible parties to oversee appropriate implementation of each action step are determined by the IDT.

(3) The action plans, strategies, timelines and criteria for measuring progress, shall be relevant to each desired outcome established by the IDT. The individual's definition of success shall be the primary criterion used in developing objective, quantifiable indicators for measuring progress.

(4) Provider agencies shall use formats to complete strategies relating to the ISP action plans during or after the IDT meeting. Separate provider agencies working to coordinate specific strategies to achieve the same action plans shall develop their strategies jointly. Service provider agencies shall develop strategies that are clearly integrated and associated with the individual's long term vision, outcomes, action plans and therapy recommendations identified by the IDT. Therapists shall provide input into the development of strategies either directly or through review and revision prior to submission to the case manager. Provider agencies shall submit strategies for inclusion into the ISP to the case manager within two weeks following the ISP meeting. The case manager shall review the strategies for consistency.

(5) Supports and services, including services available to the general public, determined by the IDT and indicated in the ISP, shall be relevant to the individual's long term vision, desired outcomes and action plans. Supports and services shall be the least restrictive, not unduly intrusive and not excessive in light of the individual's needs.

F. Assistive technology: Necessary support mechanisms devices, and environmental modifications including the rationale for the use of assistive technology or adaptive equipment when a need has been identified, shall be documented in the ISP. The rationale shall include the environments and situations in which assistive

technology is used. Selection of assistive technology shall support the individual's independence and functional capabilities in as nonintrusive a fashion as possible.

G. Availability of supports and services:

(1) Identification of potential supports and services for individuals by the IDT should be undertaken without regard to the cost of the supports and services or whether they are actually available at the time in the community.

(2) For individuals who receive services through state general fund or developmental disabilities medicaid waiver but who are NOT *Jackson* class members, the IDT, exercising professional judgment, may take into account the availability of supports and services in specifying in the ISP the supports and services required to be provided. If supports or services are identified in the ISP, but not required to be provided in the exercise of professional judgment taking into account the availability of services, the IDT shall promptly submit a list of these unavailable supports and services to the DDS.

(3) For *Jackson* class members, the ISP shall include the supports and services identified by the IDT.

(4) The DDS shall use these lists to identify appropriate community resource needs and develop strategies to add community supports and services, generally, for persons with developmental disabilities, subject to appropriations for this purpose.

H. Signature form:

(1) A signature form, containing the name, phone number and role on the IDT of all team members shall be included in the ISP. All individuals participating in the annual IDT meeting shall sign the signature form to indicate their participation in the planning process.

(2) Signing this form does not affect the individual's or guardian's right, if any, to dispute all or part of the ISP or to initiate a complaint or grievance procedure. The case manager shall explain the right to dispute or to file a grievance to the individual and guardian at the IDT meeting. The case manager shall inform the individual and guardian of the DDS, office of quality assurance, its role and function in monitoring services in the community, as well as the role and function of any other relevant monitoring agencies, such as the licensing and certification bureau of the division of health improvement and adult protective services program of the aging and long term services department. The case manager shall give the individual and guardian their business address and phone number, as well as the 800 number of the DDS's office of quality assurance and other relevant numbers.

I. Budget page: For individuals receiving services through the developmental disabilities medicaid waiver, a proposed budget page developed by the case manager in consultation with the various service providers shall be included in the ISP.

[8.371.5.14 NMAC - N, 7/1/2024]

8.371.5.15 DEVELOPMENT OF THE INDIVIDUAL SERVICE PLAN (ISP) - APPROVAL OF THE ISP BY THE DEVELOPMENTAL DISABILITIES SUPPORTS DIVISION:

A. The ISP for recipients of the medicaid developmental disabilities waiver services (including *Jackson* class members) must be reviewed by the DDS as to the cost of the individual's ISP and aggregate costs of ISPs and as to compliance with DDS standards and medicaid regulations. If the DDS does not approve an ISP because of cost or non-compliance, the ISP will be returned to the IDT with appropriate instructions to develop an ISP that meets requirements and is within the DDS's budget parameters. The ISP for developmentally disabled medicaid waiver recipients (including *Jackson* class members) shall not be implemented until approval by the DDS.

B. Because cost limitations are established upfront in the contracting process for persons funded solely by state general funds, the above ISP review and approval process (per Subsection A of 8.371.5.15 NMAC above) is not required. The DDS reserves the right to conduct on-site review for compliance with these regulations.

[8.371.5.15 NMAC - N, 7/1/2024]

8.371.5.16 DEVELOPMENT OF THE INDIVIDUAL SERVICE PLAN (ISP) - IMPLEMENTATION OF THE ISP: The ISP shall be implemented according to the timelines determined by the IDT and as specified in the ISP for each stated desired outcome and action plan.

[8.371.5.16 NMAC - N, 7/1/2024]

8.371.5.17 DEVELOPMENT OF THE INDIVIDUAL SERVICE PLAN (ISP) - DISSEMINATION OF THE ISP, DOCUMENTATION AND COMPLIANCE:

A. The case manager shall provide copies of the completed ISP, with all relevant service provider strategies attached, within 14 days of ISP approval to:

- (1) the individual;
- (2) the guardian (if applicable);
- (3) all relevant staff of the service provider agencies in which the ISP will be implemented, as well as other key support persons;
- (4) all other IDT members in attendance at the meeting to develop the ISP;
- (5) the individual's attorney, if applicable;
- (6) others the IDT identifies, if they are entitled to the information, or those the individual or guardian identifies;
- (7) for all developmental disabilities medicaid waiver recipients, including *Jackson* class members, a copy of the completed ISP containing all the information specified in 8.371.5.14 NMAC, including strategies, shall be submitted to the local regional office of the DDS;
- (8) for *Jackson* class members only, a copy of the completed ISP, with all relevant service provider strategies attached, shall be sent to the *Jackson* lawsuit office of the DDS.

B. Current copies of the ISP shall be available at all times in the individual's records located at the case management agency. The case manager shall assure that all revisions or amendments to the ISP are distributed to all IDT members, not only those affected by the revisions.

C. Objective quantifiable data reporting progress or lack of progress towards stated outcomes, and action plans shall be maintained in the individual's records at each provider agency implementing the ISP. Provider agencies shall use this data to evaluate the effectiveness of services provided. Provider agencies shall submit to the case manager data reports and individual progress summaries quarterly, or more frequently, as decided by the IDT. These reports shall be included in the individual's case management record, and used by the team to determine the ongoing effectiveness of the supports and services being provided. Determination of effectiveness shall result in timely modification of supports and services as needed.

D. The ISP shall be consistent with all relevant health care authority and DDS rules, policies, procedures operational guidelines, including, but not limited to, the HCA operational procedures; standards and applicable accreditation standards approved by the authority and DDS; the behavioral support policy, the *Jackson* management manual (appendices A and B); the medicaid waiver operations manual; the program standards for DD community agencies; the case manager standards and client rights regulations. Confidentiality and individual rights shall be protected at all times.

E. For *Jackson* class members, the request to initiate a dispute under appendix B of the *Jackson* management manual shall automatically delay implementation of the disputed portions of the ISP until the dispute is resolved unless the health or safety of the individual would be adversely affected. Any dispute raised under appendix B shall be decided under the hearing officer guidelines for decisions contained in the appendix.

F. Nothing in this regulation shall provide an entitlement to programs, supports, services or benefits or create any legal rights that do not otherwise exist under other law or regulation.

G. The health care authority's decision regarding the allocation of resources to any ISP is final, (within the HCA) in the authority's sole discretion, and is not reviewable in the dispute resolution process or other agency administrative review process.

H. Community service provider agencies and case management agencies shall modify or amend their internal policies and procedures regarding ISP development to reflect the provisions stated within the ISP regulations. All ISPs and all modifications to ISPs shall be developed in compliance with these regulations. [8.371.5.17 NMAC - N, 7/1/2024]

8.371.5.18 SANCTIONS. The authority or other governmental agency having regulatory enforcement authority for community based services provider agencies who have entered into contracts or medicaid provider agreements with the health care authority, developmental disabilities supports division, may sanction in accordance with applicable law if the service provider fails to provide services as set forth by this rule. Such sanctions may include revocation or suspension of license, directed plan of correction, intermediate sanctions or civil monetary penalty up to \$5000 per instance, or termination or non-renewal of any contract with the authority or other governmental agency.

[8.371.5.18 NMAC - N, 7/1/2024]

HISTORY OF 8.371.5 NMAC: RESERVED

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 6 REQUIREMENTS FOR DEVELOPMENTAL DISABILITIES COMMUNITY
PROGRAMS

8.371.6.1 ISSUING AGENCY: New Mexico Health Care Authority, Developmental Disabilities Division.
[8.371.6.1 NMAC - N, 7/1/2024]

8.371.6.2 SCOPE: These regulations apply to all community agencies who have entered into contracts or medicaid provider agreements with the health care authority, developmental disabilities division, to provide services to persons with developmental disabilities.
[8.371.6.2 NMAC - N, 7/1/2024]

8.371.6.3 STATUTORY AUTHORITY: Sections 28-16-7 and 28-16-8, NMSA 1978, (the Developmental Disabilities Community Services Act) and Subsection E of Section 9-8-6 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.
[8.371.6.3 NMAC - N, 7/1/2024]

8.371.6.4 DURATION: Permanent.
[8.371.6.4 NMAC - N, 7/1/2024]

8.371.6.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.
[8.371.6.5 NMAC - N, 7/1/2024]

8.371.6.6 OBJECTIVE:
A. These regulations are being promulgated to promote and assure the provision of quality services to persons with developmental disabilities residing in community agencies.
B. These regulations are being promulgated as part of a quality assurance initiative requiring all community agencies providing services to persons with developmental disabilities and contracting with the developmental disabilities division to be accredited by the commission on accreditation of rehabilitation facilities (CARF).
[8.371.6.6 NMAC - N, 7/1/2024]

8.371.6.7 DEFINITIONS:
A. “**Adult**” means an individual who has attained the age of 18 years.
B. “**Community agency**” means any nonprofit or for profit corporation, tribal organization, unit of local government, or other organization which has entered into a contract with the authority for the purpose of providing developmental disabilities services.
C. “**Community living setting**” refers, for the purpose of these regulations, to a community living situation supervised by a community agency, which:
 (1) provides living arrangements for persons with a developmental disability; and
 (2) is located in the community. Such facilities may include licensed group homes, foster homes, family living situations, supported living situations, companion homes, semi-independent living and assisted living residences or similar residences or innovative residential settings. When personal care and respite services are the sole services provided to the individual, these services are not included under the definition for “community living setting” as long as they are provided in the individual’s or family’s personal home which is not under the direct auspices or control of the community agency.
D. “**Consent screening instrument**” means the instruments or procedures for determining an adult’s ability to give informed consent to a residential placement as the authority will designate.
E. “**Court**” means a New Mexico state district court.
F. “**Developmental disability**” means a severe chronic disability of a person which is attributable to a mental or physical impairment, including the result of trauma to the brain, or combination of mental and physical impairments; is manifested before the person attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas of major life activity:
 (1) self-care;

- (2) receptive or expressive language;
- (3) learning;
- (4) mobility;
- (5) self-direction;
- (6) capacity for independent living;
- (7) economic self-sufficiency; and
- (8) reflects the person's need for a combination and sequence of special interdisciplinary or

generic care treatment or other services that are of life-long or extended duration and which are individually planned and coordinated.

G. "Developmental delay" is defined as a discrepancy between chronological age, after correction for prematurity, and developmental age in one or more of the following areas of development: cognitive, communication, physical/motor (including vision and hearing), social/emotional, or adaptive.

(1) Eligibility: To be eligible for services, a child must demonstrate twenty-five percent or more discrepancy between chronological age, after correction for prematurity, and developmental age. The extent of the child's delay must be documented. A determination of developmental delay shall not be based upon behavior related to cultural or language differences.

(2) Determination of developmental status: The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 31 of "Policies, Procedures and Guidelines for the Family, Infant, Toddler Program (FIT)". The procedures may include informed clinical opinion, norm-referenced/standardized measures, criterion-referenced/curriculum-based instruments, behavior checklists and adaptive behavior measures.

H. "Established condition" is defined as a diagnosed physical, mental or neurobiological condition which has a high probability of resulting in developmental delay. A delay in development may or may not be exhibited at the time of the diagnosis. Examples of an "established condition" include, but are not limited to: down's syndrome, and other chromosomal abnormalities associated with delays in development; congenital and postnatal conditions associated with delays in developmental, such as sensory impairments (including vision and hearing), inborn errors of metabolism, myelomeningocele, cerebral palsy, fetal alcohol syndrome, non-febrile seizures, malignancy of the brain or spinal cord, acquired immune deficiency syndrome (AIDS), hydrocephaly, and infections such as cytomegalovirus (CMV), herpes or encephalitis; neurobiological conditions such as autism or other pervasive developmental disorders.

(1) Eligibility: The determination of the presence of an established condition is identified by a physician or other primary health care provider. The diagnosis of the condition(s) establishes eligibility.

(2) Determination of developmental status: The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 31 of "policies, procedures and guidelines for the family, infant, toddler program (FIT)".

I. A "Biological or medical risk for developmental delay" is the presence of early medical conditions which are known to produce developmental delays in some children. Examples of "biological or medical risk" include, but are not limited to, the following medical conditions: pre-term birth of less than 32 weeks gestation; very low birth weight (less than 1500 grams or three pounds, four ounces); periventricular intraventricular hemorrhage (PIVH); periventricular leukomalacia (PVL); hypoxic ischemic encephalopathy (birth asphyxia); chronic lung disease (CLD) of prematurity or bronchopulmonary dysplasia (BPD); prenatal exposure to drugs or medications or other teratogens known to be associated with developmental delays; failure to thrive; chronic otitis media.

(1) Eligibility: The determination of the presence of biological/medical risk condition(s) is identified by a physician or other primary health care provider (PHCP). The diagnosis of the condition(s) establishes eligibility.

(2) Determination of developmental status: The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 31 of "policies, procedures and guidelines for the family, infant, toddler program (FIT)".

J. An "Environmental risk for developmental delay" is the presence of physical, social or economic factors in the environment which pose a substantial threat to development. Examples of "environmental risk" are usually a combination of more than one factor which may include, but are not limited to: Parental developmental disabilities or psychiatric disorders; parental substance abuse; child abuse or neglect; homelessness; exposure to domestic or other episodes of violence.

(1) Eligibility: The determination of the presence of eligible environmental risk factors must be established by a multi-agency team.

(2) Determination of developmental status: The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process which meets the criteria defined in Section 31 of “policies, procedures and guidelines for the family, infant, toddler program (FIT)”.

K. “Guardian” means for purposes of these regulations a guardian, limited guardian or guardian ad litem as defined in Section 45-1-21 NMSA 1978 or as may be subsequently amended.

L. “Person” or “person served” means individuals with “developmental disabilities”, “developmental delay”, “established condition” or “at risk for developmental delay (biological/medical risk or environmental risk)” as defined within these regulations, currently receiving or waiting to receive services. [8.371.6.7 NMAC - N, 7/1/2024]

8.371.6.8 ELIGIBILITY FOR SERVICES:

A. Community agencies shall establish clearly written criteria for eligibility which correspond with the definitions of “developmental disability”, “developmental delay” and “at risk for developmental delay” as defined within these regulations:

B. Community agencies shall have written procedures for notifying the person(s) served of their eligibility status.

[8.371.6.8 NMAC - N, 7/1/2024]

8.371.6.9 CONSENT SCREENING FOR PERSONS ENTERING COMMUNITY LIVING FACILITIES:

A. Prior to admission into a community living setting, community agencies shall convene an interdisciplinary team (IDT) to determine if the person served has the ability to consent to a residential placement or is likely to need consent screening. This determination and its justification is to be documented in writing. If the IDT determines:

(1) that the person served does not need consent screening, then the person served should at this point be given the option to accept or reject the community agency’s services.

(2) that the person served needs consent screening, the ability to consent should then be determined using the consent screening instrument.

B. The community living setting will have a written review process that provides an expedient means to re-evaluate the person’s ability to give consent. The process shall describe steps in the procedure and timelines governing the procedure.

C. If the person served is found able to give consent then they should have the option to accept or reject the community agency’s services.

D. At any time the person served or guardian believes the person served has the ability to give consent, they can have their consent status reviewed and request a new consent screening.

E. The need for consent screening should be reviewed by the IDT at least once a year.

(1) If the person served did not pass the consent screening at the time of the initial admission, then the consent screening must be administered within one year and annually thereafter.

(2) If the person served was able to give consent, the IDT will be required to review the need to administer the consent screening instrument when it has reasonable grounds for believing that the client may no longer be capable of providing consent.

[8.371.6.9 NMAC - N, 7/1/2024]

8.371.6.10 ADMISSION TO COMMUNITY LIVING SETTINGS:

A. If the person served is found able to consent and agrees to be admitted to the community living-setting they shall record their signature or make other appropriate designation of approval on the admissions document.

B. If the person served is found able to consent and the IDT indicates that the person served would benefit from placement in a community-living setting, but the person served refuses such placement attempt, then the person served may be admitted only upon involuntary commitment under Sections 43-1-13 NMSA 1978, or 43-1-11 NMSA 1978 and 43-1-12 NMSA 1978 of the New Mexico Mental Health and Developmental Disabilities Code.

C. If the person served is found not able to give consent and the IDT indicates that the person served

would benefit from placement in a community-living setting, then the program may not admit the person without the consent of a guardian legally authorized to provide or withhold such consent. The exception would be in the case of an emergency admission for a period not to exceed 90 days, pursuant to 8.371.6.12 NMAC.

[8.371.6.10 NMAC - N, 7/1/2024]

8.371.6.11 WAITING LIST: The authority shall maintain an up-to-date waiting list consisting of all persons who need placement in a community living-setting, but are not yet placed in a community living setting. Any program with an opening in a community living-setting may select any person from the waiting list of persons from the developmental disabilities bureau of the authority who has been evaluated for admission to the community living-setting. A person should not be admitted to a community living setting unless the community agency agrees to serve that person.

[8.371.6.11 NMAC - N, 7/1/2024]

8.371.6.12 EMERGENCY SERVICES:

A. Services in a community living setting may be provided on an emergency basis to any person believed to be developmentally disabled when a community agency determines that there is imminent danger that the physical health or safety of the person will be seriously impaired if the services are not provided, and that the normal admissions procedure, including consent screening and evaluation, cannot be accomplished in time to avoid danger.

B. When emergency services are provided, the community agency should document the nature of the emergency resulting in services being provided.

C. When the person served is receiving emergency services, the community agency should evaluate the person in a timely manner to determine if the person served will continue to receive services from their community agency.

D. Emergency services should not be provided for more than seven days unless an evaluation has begun, or, for more than 21 days in total, unless a court or the authority orders otherwise.

[8.371.6.12 NMAC - N, 7/1/2024]

8.371.6.13 NOTICE OF THE DEATH OF A PERSON SERVED:

A. The agency shall have policies and procedures regarding the death of a person under supervision of the agency. These policies and procedures shall include:

- (1) staff responsibilities and protocols for handling the immediate situation;
- (2) person(s) to be notified and procedure for notification;
- (3) provisions for disposal of estate and person's funds, when person has no relevant

person(s) to perform these duties.

B. If termination of services is the result of a person's death, the following information shall be prepared for the person's file and sent to the authority:

- (1) time and date of person's death;
- (2) cause of death;
- (3) circumstances surrounding death;
- (4) medical/autopsy report;
- (5) summary of any follow-up findings relating to the death.

[8.371.6.13 NMAC - N, 7/1/2024]

8.371.6.14 CARF STANDARDS MANUAL FOR ORGANIZATIONS SERVING PEOPLE WITH DEVELOPMENTAL DISABILITIES: Community agencies governed by these regulations are required to meet applicable provisions of the most current edition of the "*CARF standards manual for organizations serving people with disabilities*". Sections of the CARF standards may be waived by the authority when deemed not applicable to the services provided by the community agency.

[8.371.6.14 NMAC - N, 7/1/2024]

HISTORY OF 8.371.6 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 7 (APPENDIX A) INDIVIDUAL TRANSITION PLANNING PROCESS

8.371.7.1 ISSUING AGENCY: New Mexico Health Care Authority, Developmental Disabilities Division.
[8.371.7.1 NMAC - N, 7/1/2024]

8.371.7.2 SCOPE:

A. The regulations provide a systematic process for the individualized planning and implementation of a developmentally disabled resident's transition from the two large, state-operated institutional facilities into a community setting.

B. The ITP process described in this document is intended to develop a proposed community placement for an individual based upon the individual's preferences and upon community service provider selections made generally by the individual's parent/guardian in consultation with the individual. As specified in Activity 19, below, the placement proposal developed by this process is subject to the health care authority review of the cost of the individual's plan or aggregate costs.

[8.371.7.2 NMAC - N, 7/1/2024]

8.371.7.3 STATUTORY AUTHORITY: Section 9-7-6 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 facility licensure and health care purchasing and regulation.

[8.371.7.3 NMAC - N, 7/1/2024]

8.371.7.4 DURATION: Permanent.

[8.371.7.4 NMAC - N, 7/1/2024]

8.371.7.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.371.7.5 NMAC - N, 7/1/2024]

8.371.7.6 OBJECTIVE:

A. These regulations are promulgated, in part, to satisfy requirements arising from the implementation of the decision in *Jackson, et al. v. Fort Stanton*, et al., N.M. Dist. Ct. No. Civ. No. 87-839. The transition process appearing in these regulations has evolved over time, initially appearing as Appendix A to the Jackson Management Manual. This transition planning process history accounts for the continuing reference in the regulation title to Appendix A. The regulations embody certain agreements and arrangements reached by the parties to the *Jackson* lawsuit. And they reflect the developmental disabilities division's cumulative experience in planning and administering the transition process.

[8.371.7.6 NMAC - N, 7/1/2024]

8.371.7.7 DEFINITIONS: The transition interdisciplinary team:

A. The individual: The individual with a developmental disability must participate to the greatest extent possible. There must be a serious effort to ensure that the individual is present and that they, even when lacking verbal skills, are given the opportunity to express their interests, choices and strengths. However, no individual shall be compelled to participate in the planning process. The individual's normal daily routine and schedule should be followed as much as possible on days when meetings occur; special accommodations for the individual should be identified prior to each meeting and appropriate adjustments and modifications in the meeting should be planned to enable them to participate as fully as possible. An individual may choose someone to represent them consistent with their wishes in the TIDT meetings. If such a representative is chosen, that person shall receive all notices and other documents sent to TIDT participants.

B. The parent/guardian: As used in these procedures, the phrase "parent/guardian" shall mean the individual's legal guardian or, if the individual is a minor, the individual's parent(s). The division shall attempt to inform and involve the parent/guardian in the transition planning process, including making reasonable scheduling accommodations and providing interpreters as necessary.

C. The helper: The helper is someone who knows the individual's capabilities, interests, likes and dislikes and who communicates with the individual. The helper may be a friend, roommate, family member,

teacher, co-worker, current or former employee of the institutional facility, foster grandparent, or any other person from the individual's circle of relatives, friends, or acquaintances.

D. The social worker: The social worker should be the social worker at the facility, i.e., either Los Lunas or Fort Stanton, who has worked with the individual or, if unavailable, the social worker who has been assigned.

E. Facility interdisciplinary team (IDT) members: Facility interdisciplinary team members, designated pursuant to division *Jackson* office policy memoranda, who have been trained to participate in the transition process and who have knowledge of the individual shall assist with ITP planning, implementation and follow-up, as required.

F. Jackson transition representative (JTR): The *Jackson* transition representative (JTR) is the division's representative at transition meetings and activities.

G. Key community service providers: Key community service providers are selected prior to the TIDT meeting pursuant to Activity 7. The term key community service providers means the community residential provider and other providers of significant services for the individual, including but not limited to the competitive and supportive employment provider, medical professional(s) if the individual's medical condition so requires, and other support service providers identified by the expanded IDT as key community service providers. When the individual is of school age, a representative of the local education agency is a key community service provider. [8.371.7.7 NMAC - N, 7/1/2024]

8.371.7.8 INTRODUCTION:

A. There are two planning components that must be accomplished concurrently:

- (1) planning and effecting the move for each individual who will be moving; and
- (2) planning and preparing the system of community supports.

B. This document provides the process by which each individual transition plan (ITP) shall be developed. The *Jackson* systemic plan and *Jackson* management manual address the preparation of the system of community placements and supports. These documents have been developed so that the systemic components are consistent with and support the proposed means of individualized planning and placement.

C. The developmental disabilities division, hereinafter "division", is committed to preparing and implementing ITPs expeditiously, consistent with professional judgement. The ITP process reflects the fact that New Mexico is currently seeking to create a system of supports and services for individuals who are moving from institutional facilities to community living. The division anticipates that as its service system for individuals with developmental disabilities expands, the time associated with several activities may be shortened. Therefore, prior to October 1, 1994, the division shall review its experience in implementing these procedures to determine whether any of the provisions may be modified and particularly whether any of the time periods should be shortened. These procedures shall remain in effect unless modified by the division after consultation with the parties in *Jackson et al. v. Fort Stanton et al.*, Civ. No. 87-839 JP. The health care authority, hereinafter, "the authority", intends that the procedures described herein shall be consistent with federal regulations and requirements. If there is a conflict between these procedures and the federal regulations and requirements, the federal regulations and requirements shall govern.

[8.371.7.8 NMAC - N, 7/1/2024]

8.371.7.9 BASIC CONCEPTS AND ITP DEVELOPMENT GUIDELINES:

A. Individual transition planning is founded on the following basic concepts:

- (1) Individual transition planning strives for the goal that the individual can live in and be a part of a community in the same manner and to the same extent as would any other person of like age and interests.
- (2) There are no starting assumptions based on models of service. Planning is not performed in order to fit an individual into existing models of service, but rather to tailor necessary supports to the individual who is moving, through uniquely individualized planning.
- (3) Supports and services are provided to the extent there is a demonstrated individual need, and no more.
- (4) All persons have strengths and interests and are capable of growth and development, at differing paces.
- (5) Successful human planning starts from and builds on individual strengths and interests, not deficits.
- (6) Human planning must be flexible and responsive to changing individual circumstances and environments.

- B.** The TIDT shall develop the ITP in accordance with the following guidelines:
- (1)** The contents of the ITP are reasonable and appropriate to meet the individual's needs and promote identified strengths and capacities.
 - (2)** The ITP reflects the individual's preferences, to the extent appropriate, unless the individual communicates no preference or is incapable of communicating any preference.
 - (3)** The ITP is designed to utilize services that allow the individual to be more, rather than less, integrated in the community and rely on available generic services to the extent feasible and consistent with the individual's needs.
 - (4)** The ITP provides services which are least restrictive, not unduly intrusive and not excessive in light of the individual's needs.
 - (5)** The ITP can be practicably implemented.
- [8.371.7.9 NMAC - N, 7/1/2024]

8.371.7.10 THE INTERDISCIPLINARY TEAM: Each individual residing at Los Lunas or Fort Stanton hospital and training school has an interdisciplinary team (IDT), which is responsible for developing the individual program plan (IPP) as long as the individual resides in the facility. It is the individual's IDT that, among its other activities, has the responsibility for recommending the individual for community placement. Once that recommendation is made, transition planning is begun. To successfully accomplish the development of an ITP, each individual's IDT shall expand to include community membership and become the transition interdisciplinary team (TIDT).

[8.371.7.10 NMAC - N, 7/1/2024]

8.371.7.11 THE TRANSITION INTERDISCIPLINARY TEAM (TIDT):

A. In order to develop a transition plan that is tailored to the individual, and in order to help achieve successful placement of the individual in the community, the IDT shall expand to include a number of non-professionals, managers and prospective community service providers, as well as the IDT's professionals. There is no universal combination of persons necessary for the TIDT meeting. The individual's participation at the TIDT meeting is necessary unless the individual objects. The participation of the parent/guardian at the meeting is usually required unless the absence is by choice or by necessity. The persons who comprise the TIDT shall normally be present at the TIDT meeting, but in the absence of any person, the team members may proceed with the individual planning process if those present determine it to be appropriate under the circumstances.

- B.** The TIDT shall usually include the following persons:
- (1)** The Individual: The individual with a developmental disability must participate to the greatest extent possible. There must be a serious effort to ensure that the individual is present and that he or she, even when lacking verbal skills, is given the opportunity to express their interests, choices and strengths. However, no individual shall be compelled to participate in the planning process. The individual's normal daily routine and schedule should be followed as much as possible on days when meetings occur; special accommodations for the individual should be identified prior to each meeting and appropriate adjustments and modifications in the meeting should be planned to enable them to participate as fully as possible. An individual may choose someone to represent them consistent with their wishes in the TIDT meetings. If such a representative is chosen, that person shall receive all notices and other documents sent to TIDT participants.
 - (2)** The parent/guardian:
 - (a)** The division shall attempt to inform and involve the parent/guardian in the transition planning process, including making reasonable scheduling accommodations and providing interpreters as necessary.
 - (b)** If by 30 days prior to the transition interdisciplinary team (TIDT) meeting described in Activity 11 a parent/guardian has advised the division that the guardian is unwilling or unable to be an active participant during the transition planning process, the division shall seek prompt modification of the guardianship and, if needed, appointment of a co-guardian or a successor guardian to ensure that the individual's guardian, if any, is an informed and active participant in the planning process. A parent/guardian may choose someone to represent him/her consistent with his/her wishes in TIDT meetings. If such a representative is chosen, that person shall receive all notices and other documents sent to TIDT participants.
 - (3)** The helper:
 - (a)** The role of the helper is to assist the individual in participating in the transition planning process by helping the individual to communicate his or her interests, likes and dislikes to other TIDT

members. The same helper should be available throughout the transition process. Whenever the helper is a facility employee, accommodation should be made to facilitate his/her availability for all meetings.

(b) The individual can select their helper. For those individuals who do not select a helper, but do not object to the assistance of a helper, the facility's director of social work shall identify a qualified helper. If necessary, the division shall reimburse the helper for reasonable travel expenses incurred solely to visit the individual at least once before the TIDT meeting and to attend TIDT meeting(s) described in Activity 11.

(4) The social worker:

(a) The social worker should be the social worker at the facility i.e., either Los Lunas or Fort Stanton, who has worked with the individual or, if unavailable, the social worker who has been assigned.

(b) The social worker shall work with the case manager on behalf of the facility to assist with the proposed transition and any follow-up support as required.

(5) The case manager:

(a) The case manager should be the individual selected or assigned pursuant to activity 2.

(b) The case manager shall have a good working knowledge of the available generic and specialized services in the geographic area to which the individual will be moving. The case manager, in addition to the duties described herein and in the *Jackson* management manual, shall review the bi-weekly reports of the *Jackson* office on the status of pre-placement activities and monitor ITP implementation at the facility and in the community and shall review the ITP and the community programs identified for the individual immediately prior to the move to ensure the necessary supports and services are in place.

(6) Facility interdisciplinary team (IDT) members: Facility interdisciplinary team members, designated pursuant to division *Jackson* office policy memoranda, who have been trained to participate in the transition process and who have knowledge of the individual shall assist with ITP planning, implementation and follow-up, as required.

(7) *Jackson* transition representative (JTR): The *Jackson* transition representative (JTR) is the division's representative at transition meetings and activities. This individual's primary purpose shall be to assist in identifying community service providers and facilitating and documenting the transition planning process.

(8) Key community service providers: Key community service providers are selected prior to the TIDT meeting pursuant to Activity 7. The term key community service providers means the community residential provider and other providers of significant services for the individual, including but not limited to, the competitive and supportive employment provider, medical professional(s) if the individual's medical condition so requires, and other support service providers identified by the expanded IDT as key community service providers. When the individual is of school age, a representative of the local education agency is a key community service provider, and should be present at transition planning meetings.

C. The individual and or the parent/guardian may invite other individuals to attend TIDT meetings. Parents or family members who are not guardians of an adult individual may be invited, unless the adult individual objects. Voting privileges are limited to TIDT core group members, pursuant to DDD *Jackson* office policy memoranda. Scheduling of the TIDT meeting(s) shall not be delayed for the convenience of these "other individuals" who have been invited to attend, nor rescheduled if such "other individuals" fail to attend. [8.371.7.11 NMAC - N, 7/1/2024]

8.371.7.12 PREPARATION FOR PARTICIPATION IN TRANSITION PLANNING: In order to prepare team members for participation in the team process, the following activities, as provided in the *Jackson* systemic plan and management manual should occur:

A. Team members who are staff of the health care authority or of the case management agencies providing services on behalf of the state shall be trained in the TIDT process.

B. The case manager and the helper shall meet with and provide assistance to the individual so that the individual understands and is prepared to participate in the TIDT process to the extent possible.

C. The case manager shall meet with the parent/guardian and provide information on the TIDT process.

D. The information developed for the individual and parent/guardian pursuant to the *Jackson* Management Manual shall be provided to the individual and parent/guardian.

E. The authority shall provide for an interpreter, if necessary, and for transportation for the parent/guardian to attend team meetings as needed.

[8.371.7.12 NMAC - N, 7/1/2024]

8.371.7.13 THE PROCESS FOR THE DEVELOPMENT OF THE INDIVIDUAL TRANSITION PLAN (ITP) - TIME LINES:

A. The individual transition plan (ITP) process provides timelines by which specific actions are scheduled to occur. Although the health care authority intends to accomplish the specified activities within the time lines provided, the quality of individual program planning and the involvement of the individual will not be compromised in order to achieve a specific time line.

B. The health care authority shall provide to the plaintiffs and plaintiff-intervenors a “planning initiation schedule” on a quarterly basis that will identify the date by which Activity 11, the TIDT meeting, shall be initiated for each individual on the schedule. The initial transition interdisciplinary team (TIDT) meeting is scheduled by the *Jackson* office of the developmental disabilities division (DDD) upon the recommendation of the facility IDT for community placement. Except as provided herein, effective August 1, 1994, and thereafter, the initial transition interdisciplinary team (TIDT) meeting will be scheduled within sixty days of a community placement recommendation of the facility interdisciplinary team (FIDT). If, as of July 31, 1994, new Los Lunas center for persons with developmental disabilities FIDT community placement recommendations exceed one, but do not exceed two per month, the requirement to schedule the TIDT meeting within 60 days is effective September 1, 1994. If, as of July 31, 1994, new Los Lunas hospital and training school FIDT community placement recommendations exceed two per month, the requirement to schedule the TIDT meeting within 60 days is effective October 1, 1994. TIDT dates are fixed and subject to change only on condition of extraordinary circumstances, absence of key team members or due process initiation.

C. The time lines shall be extended only so long as necessary to accommodate:

- (1) additional TIDT meetings, as determined by the TIDT under Activity 11 or the case manager under activity 17;
- (2) a pending dispute pursuant to the dispute resolution process (DRP) for individual transition plans (see Activity 18 and 8.371.8 NMAC) dispute resolution process (Appendix B); or
- (3) extraordinary circumstances as determined by:
 - (a) the case manager under Activities 16 and 17, for example.or
 - (b) the *Jackson* coordinator as a result of significant changes in an individual’s condition or circumstances.
- (4) A delay for extraordinary circumstances is subject to review by the TIDT upon the request of the individual, the parent/guardian or their representative.

D. Absent such events, the division shall schedule and accomplish the activities identified below within the following time lines:

- (1) TIDT meeting (Activity 11): No more than 228 days prior to placement, and as set by *Jackson* transition office calendar (absent extraordinary circumstances or judicial stay order); updated calendars submitted to the court;
- (2) additional TIDTs (Activity 11): within 21 days of initial TIDT meeting;
- (3) cost proposals (Activity 13 - 14): submitted 30 days after distribution of the ITP; reviewed within 30 days;
- (4) ITPQA review meeting (Activity 17): scheduled at the final TIDT meeting; to occur 30 - 45 days prior to placement date.

E. Case manager activities (activities 2 - 9) may begin as early as 120 days, but no later than 90 days prior to the established initial TIDT meeting date.

F. Interim target time lines are more fully set forth below in the specific paragraph describing the activity. Activities 1 - 10 may begin for each individual at the division’s discretion sufficiently in advance of the planning initiation schedule identified by the division. In no event shall activity 10 be completed later than 14 days before each individual’s planning initiation date. Unless otherwise specified, days means calendar days.

[8.371.7.13 NMAC - N, 7/1/2024]

8.371.7.14 THE PROCESS FOR THE DEVELOPMENT OF THE INDIVIDUAL TRANSITION PLAN (ITP) - TRANSITION PLANNING ACTIVITIES:

A. Prior to the start of the formal transition process, the facility interdisciplinary team (FIDT) shall convene to conduct the annual IPP meeting. At this facility IDT meeting, the following transition activities shall be conducted:

(1) Review individual for community placement; if appropriate, make formal recommendation for community transition to begin and identify probable geographic area of community move. The individual and parent/guardian(s) shall, in consultation with the FIDT, choose the probable area of relocation.

(a) If a recommendation for community placement is made, the presumption is that the individual shall, if a child, move home with necessary supports, or, if an adult, move to the family's home town or nearby. This presumption may be altered by factors such as individual interest and choice, work interest and opportunities, friendships, families with competing interests, and the potential availability and costs of medical resources and other support services or service providers. The social worker shall notify the *Jackson* office of the facility of the individual's community placement recommendation and probable area of relocation within five days.

(b) After notification regarding an individual's probable area of relocation, the *Jackson* office shall add the individual to the transition planning calendar. The *Jackson* transition representative (JTR) shall inform the individual and the individual's parent/guardian of the identity of potential community service providers and the types of services the community service provider offers. The facility social worker and case manager, if already chosen, shall assist the individual and parent/guardian in making the community service provider selection (see Activity 7, below).

(2) Establish goals and objectives in the IPP that will facilitate the individual's transition, if community placement is recommended.

(3) Identify strengths and supports within the ten "life areas" (profile of supports form). Make support descriptions useful.

(4) Access regional office staff for community resource information and liaison. Identify generic resources in the area of relocation that could be utilized by the individual.

B. Transition planning for individuals recommended for community placement shall proceed after the facility IDT meeting with the following activities. Unless the context requires otherwise, activities may occur concurrently.

[8.371.7.14 NMAC - N, 7/1/2024]

8.371.7.15 ACTIVITY 1: SELECTION OF HELPER: At least 90 days before the TIDT meeting identified in Activity 11, the social worker shall contact the individual and, using appropriate communication assistance or aids, explain to the individual their right to identify a helper or representative to assist in the upcoming TIDT meetings and the right to invite any other person as provided in Section 11. The individual may refuse to have the assistance of a helper.

[8.371.7.15 NMAC - N, 7/1/2024]

8.371.7.16 ACTIVITY 2: CASE MANAGER ASSIGNED:

A. For the individual moving to the community the social worker shall, after identification of the probable area of relocation, provide the individual and mail to the parent/guardian a listing of eligible case management agencies that serve the individual's probable area of relocation. The *Jackson* transition representative (JTR) shall also provide the individual and the parent/guardian with the information necessary for them to make an informed selection. The parent/guardian, in consultation with the individual, shall, within 21 days of the date the list was mailed, select a case management agency.

B. The social worker shall confirm, in writing, the selection of the agency with the individual, the agency, the parent/guardian and the case management unit of the community programs bureau of the DDD. The social worker shall identify the date by which a case manager must be assigned. The agency shall assign a case manager by the date contained in the written confirmation, which shall be no later than 90 days prior to the initial TIDT meeting described in Activity 11. The assigned case manager must be located in or close to the probable area of relocation but in no instance more than 150 miles from the probable area of relocation.

C. This activity is to be accomplished concurrently with Activity 7, selection of community service provider(s), whenever possible.

D. If, within 85 days of the established initial TIDT meeting described in Activity 11, the parent/guardian has not consulted with the individual and selected a case management agency, the authority shall consult with the individual and make the selection.

[8.371.7.16 NMAC - N, 7/1/2024]

8.371.7.17 ACTIVITY 3: MEETING WITH INDIVIDUAL:

A. The case manager shall meet with and, using appropriate communication assistance or aids and observation, get to know the individual. The case manager and the helper shall meet with and provide assistance to the individual so the individual understands and is prepared to participate in the TIDT process to the extent possible.

B. The case manager shall also explain to the individual and helper the process by which the individual's placement shall be designed and implemented, including the TIDT process for developing a proposed placement, the state's implementation decision described in Activity 19, and the process for resolving disputes. As appropriate, the case manager shall provide a copy of the ITP process, the DRP, and the case manager's phone number and address to the individual prior to or at the first meeting.

C. In addition, the case manager shall explain the selection of community service providers, Activities 6 and 7, and make all effort to encourage and expedite this selection, if it has not already occurred, prior to convening any transition meetings. The case manager shall encourage the individual's preference for living arrangements and housemates.

D. If the individual is not familiar with other persons who are identified as probable housemates, the individual will be offered an opportunity to meet with such persons. The individual shall be given an opportunity to approve or object to any identified housemates. The case manager shall communicate with the individual as frequently as necessary before placement to keep the individual informed and involved in the team process. The case manager shall inform the individual and helper that the individual may invite others to attend the TIDT meetings, and arrange co-scheduling of TIDTs where housemates are agreed to.

[8.371.7.17 NMAC - N, 7/1/2024]

8.371.7.18 ACTIVITY 4: RECORD REVIEW: Specified staff at the facility where the individual resides shall prepare a summary of the individual's record as set forth in the *Jackson* management manual, with particular attention to those historic events, medical or otherwise, that may affect community living design. The record summary shall be prepared pursuant to division *Jackson* office policy memoranda. This summary of pertinent historic factors shall be provided to the case manager, social worker and key community service providers.

[8.371.7.18 NMAC - N, 7/1/2024]

8.371.7.19 ACTIVITY 5: MEETING WITH INDIVIDUAL'S PARENT/GUARDIAN:

A. The case manager shall meet with the individual's parent/guardian to explain the case manager's role and the process by which the individual's placement will be designed and implemented, including the TIDT activities for developing a placement plan, the state's implementation decision described in Activity 19, and the process for resolving disputes. In addition, the case manager shall explain the selection of community service providers, Activities 6 and 7, and make all effort to encourage and expedite this selection, if it has not already occurred, prior to convening any transition meetings.

B. The case manager shall solicit any concerns the parent/guardian might have with any aspect of the transition process of eventual placement in the community. The case manager shall carefully consider and attempt to address those concerns and shall endeavor to reassure the parent/guardian of the authority's commitment to a successful and appropriate placement.

C. The case manager shall provide a copy of the ITP process, 8.371.7 NMAC, individual transition planning process (Appendix A), the dispute resolution process, 8.371.8 NMAC, dispute resolution process (Appendix B) and the case manager's phone number and address to the parent/guardian prior to or at the first meeting with the parent/guardian. The case manager shall encourage the parent/guardian's full participation in the placement process and arrange for interpreter services by coordinating with the *Jackson* transition representative (JTR) and arrange transportation as needed; which shall be paid for by the division, if needed.

D. The case manager shall communicate with the parent/guardian before placement as frequently as necessary (through meetings whenever practical) to keep the parent/guardian informed and involved in the team process. The information developed for the individual and parent/guardian pursuant to the *Jackson* management manual shall be provided to the individual and parent/guardian.

[8.371.7.19 NMAC - N, 7/1/2024]

8.371.7.20 ACTIVITY 6: DISTRIBUTION OF LIST OF ELIGIBLE COMMUNITY SERVICE PROVIDERS:

A. At the first meeting between the case manager and the individual, and the case manager and the parent/guardian(s), the case manager shall explain the basic community service models, including alternatives to traditional service providers; explain the selection of community service provider(s); and provide the individual and

the parent/guardian(s) with a listing of eligible community service provider agencies serving the individual's probable area of relocation. The case manager will encourage a timely selection of community service provider(s).

B. Community service providers could be selected as early as the facility IDT meeting (see above), if the individual and parent/guardian(s) are familiar with community service provider agencies in the area of relocation. Community service providers must be selected no later than 30 days after the parent/guardian(s) initial meeting with the case manager (Activity 5, above). The *Jackson* transition representative (JTR) may supplement the list of eligible community service providers at any time. The *Jackson* transition representative (JTR) shall assist the individual and the parent/guardian with the information necessary for them to make an informed selection. The case manager shall review with the parent/guardian and the individual all possible community service providers in the chosen area of re-location during Activities 3 and 5.

[8.371.7.20 NMAC - N, 7/1/2024]

8.371.7.21 ACTIVITY 7: SELECTION OF COMMUNITY SERVICE PROVIDER(S):

A. The parent/guardian, in consultation with the individual, shall select community service provider(s) to be included in the TIDT and shall notify the case manager of the community service provider selection(s). Community service providers could be selected as early as the facility IDT meeting (see above), if the individual and parent/guardian(s) are familiar with community service provider agencies in the area of relocation. Community service providers must be selected no later than 30 days after the parent/guardian(s) initial meeting with the case manager (Activity 5, above). If the individual's choice of community service provider differs from that of the parent/guardian, the case manager shall arrange for both community service providers to be present at the TIDT meeting if possible. If there is more than one eligible community service provider for a particular service, the parent/guardian may indicate alternate community service provider(s) in order of preference in the event the parent's or guardian's first choice is unavailable to provide the applicable service.

B. The *Jackson* transition representative (JTR) shall confirm community service provider selection within 10 days by contacting the community service provider(s) by telephone and in writing. If the parent/guardian has indicated alternate community service provider(s) in order of preference, the *Jackson* transition representative (JTR) shall document the reason for the unavailability of the higher ranked community service provider before contacting the next ranked provider. If key community service provider(s) are not selected by the parent/guardian and individual, within 49 days of the initial TIDT meeting, the *Jackson* transition representative (JTR) and case manager shall make the selection(s). The *Jackson* transition representative (JTR) shall notify the parent/guardian(s) of the selection, as well as the community service provider(s). Notice of the TIDT meeting as provided in Activity 10 shall be mailed. The TIDT shall review these selection(s) and shall select the non-key provider(s) at its first meeting, if the individual or parent/guardian(s) does not do so.

C. The individual and the parent/guardian should give priority to selecting the community residential provider and other key community service providers within the timelines specified above. The key community service provider(s) shall, either before or at the TIDT meeting, acknowledge that it is able to provide the residential placement or other type of services for which the key service provider(s) shall be brought into the planning process as expeditiously as possible, preferably prior to the TIDT, and shall receive all previous planning and client information.

[8.371.7.21 NMAC - N, 7/1/2024]

8.371.7.22 ACTIVITY 8: WRITTEN INDIVIDUAL PREFERENCE ASSESSMENT: After completing the activities specified above, but at least 26 days before the TIDT meeting described in Activity 11, the case manager shall complete, with the individual and helper, a written assessment of the individual's strengths, interests, likes and dislikes. This assessment shall detail what the individual would like their life to be like in the community, including maintaining existing friendships and building new ones, community involvement, employment for the individual who is an adult, hobbies, leisure activities, and housemates. This assessment and review shall be individualized and rely as much as possible on available community generic resources rather than specialized service models. The case manager will collaborate with the *Jackson* transition representative (JTR) and the facility Q.M.R.P. or social worker to facilitate any co-scheduling of the TIDTs where other class member housemates are identified as a preference.

[8.371.7.22 NMAC - N, 7/1/2024]

8.371.7.23 ACTIVITY 9: WRITTEN COMMUNITY ASSESSMENT: After completing the activities specified above, but at least 26 days before the TIDT meeting described in Activity 11, the case manager shall prepare a written assessment of the resources and services available in the community or relocation. At the TIDT,

this assessment shall be reviewed, in light of the individual's preferences, as assessed under Activity 8, and the identification of the individual's strengths and needs during their daily activities, as identified at the facility annual IPP meeting.

[8.371.7.23 NMAC - N, 7/1/2024]

8.371.7.24 ACTIVITY 10: TIDT MEETING SCHEDULE, NOTICE, AND AGENDA: The *Jackson* transition representative (JTR), shall schedule the full TIDT meeting, which shall be held as promptly as possible after completion of the activities required by Activities 6 and 7. Notice of the date, time and place of the TIDT meeting shall be sent to all participants at least 10 days prior to the meeting. The notice shall also state that participants are to be prepared to address all issues for the individual to ensure a successful transition into a community setting. If any activities required by Activities 6 and 7 occur in less than the maximum time allotted for them by the activity, the *Jackson* transition representative (JTR) shall, whenever possible, proceed to schedule the next required activity (for example, the TIDT meeting required by Activity 11 will be scheduled as promptly as possible after community service providers are selected under Activity 7).

[8.371.7.24 NMAC - N, 7/1/2024]

8.371.7.25 ACTIVITY 11: FULL TIDT MEETING TO DEVELOP THE ITP:

A. The purpose of the TIDT meeting is to develop the individual transition plan (ITP). The ITP is the document developed by TIDT participants identifying the proposed steps to be taken before and after placement and until implementation of a new annual community individual service plan (CISP).

B. The team should attempt to identify or develop services that use the same resources that the general population uses. For instance, the team should make attempts to use or adapt for use local adult education resources instead of looking for a way to set up a special adult education program for individuals who are transitioning.

C. Upon failing to find a generic solution or one that might be adapted, the team should match the preferred specialized solution to the individual's needs and not provide additional services if the need cannot be demonstrated. For instance, if an individual needs staff support only to assist in preparing the evening meal, the team should find ways to deliver that service and no more, rather than developing a residential placement that provides 24 hour staff support because that service is available at the facility.

D. In addition, the TIDT should specify the training and other necessary supports for direct care staff persons who would work directly with the individual in the community setting. Therapeutic and behavioral supports should be delivered primarily through direct care staff persons since they are the most consistently present, interact the most with the individual, and thus know the individual best. Therapists and psychologists should design the individual interventions, train staff to carry them out through the course of the normal daily routine, monitor the program implementation and be available to coach staff and solve problems.

E. The team shall identify each activity in objective form with specific assignment of responsibility and timelines for the accomplishment of each transition activity. For example, a home living provider would be responsible for the accomplishment of home living related tasks, a work/education provider for work/education tasks, and the case manager for monitoring service provision and assuring the presence and preparation of community life and professional services tasks.

F. All team members are encouraged to participate in all areas of the team process, not just in their area or expertise, skill or involvement. Decisions should be made by consensus. Where there is disagreement, the team should continue to work towards a solution that all participants can accept. If consensus is not reached, the team shall make decisions by majority rule. A record shall be maintained of team decisions. The result of the team's effort is the ITP proposed to the division for implementation.

G. The TIDT should attempt to complete the preparation of the ITP in one meeting. Additional TIDT meetings should be scheduled only if the first meeting does not resolve significant issues, such as the identity of the community residential provider or the competitive or supported employment provider, major medical resources or safety issues. For some individuals, planning for the move will be complex and lengthy and may require more than one meeting. For others, addressing the basic requirements of home, work/education, community life and necessary supports will be straightforward and less complex. The case manager, with the concurrence of the TIDT, shall specify in writing the issue(s) necessitating the additional meeting, the identity of the person or entity responsible for addressing and resolving the issue prior to the next meeting, and any other relevant information.

H. Each additional TIDT meeting shall be held within 21 days of the preceding TIDT meeting. The case manager shall mail a copy of the written reasons for the additional meeting to the *Jackson* transition representative (JTR) and shall notify TIDT members of specific tasks and the date of the next TIDT meeting.

Absent extraordinary circumstances agreed upon by the TIDT, there shall be no more than two additional TIDT meetings.

I. The TIDT meeting shall be chaired by the case manager. The team shall begin by reviewing the previous assessments made pursuant to Activities 8 and 9 and the community service provider selections made pursuant to Activity 7. Issues identified and solutions suggested throughout the meeting shall be compared with the assessments to ensure consistency with the individual's preferences where possible.

J. The TIDT shall review and revise the assessments developed in Activities 8 and 9; describe what life should be like for that individual in that community, starting with a discussion of what life is like for other persons of the individual's age and interests and taking into consideration the assessment developed as a result of Activity 9 above; describe those supports that will be needed by the individual; identify the area's generic resources that will be used to provide those supports, or, if generic resources are not readily available, a consideration of those actions that could be taken to enhance existing generic supports for the individual; describe and justify the use of any specialized community service providers. Specialized providers are to be used only when either no generic supports exist or existing generic supports cannot reasonably be enhanced to meet the needs of the individual.

K. TIDT meeting guidelines and agenda: The TIDT shall develop the ITP in accordance with the following guidelines:

(1) The contents of the ITP are reasonable and appropriate to meet the individual's needs and promote identified strengths and capacities.

(2) The ITP reflects the individual's preferences, to the extent appropriate, unless the individual communicates no preference or is incapable or communicating any preference.

(3) The ITP is designed to utilize services that allow the individual to be more, rather than less, integrated in the community and rely on available generic services to the extent feasible consistent with the individual's needs.

(4) The ITP provides services which are least restrictive, not unduly intrusive and not excessive in light of the individual's needs. The ITP can be practically implemented.

L. Life area planning:

(1) The primary task of the TIDT shall be to discuss all issues to be considered for the individual's transition to succeed. This discussion shall include a review of specific items within each of the following "life areas": home environment, vocational, educational, self-care, communication, leisure/social, community resource use, safety, psychological/behavioral/emotional, and medical/health; as well as other pre-placement planning.

(2) The TIDT should review the existing facility IPP objectives related to each of the above "life areas", and identify which objectives are to be continued during the transition period into the community. The TIDT may develop transition objectives to begin at the facility.

M. Supports needed: For each of the life areas discussed, the following general supports should be identified for each relevant transition objective:

(1) human resources needed (volunteers, family, friends/neighbors, paid staff);

(2) assistive technology and adaptive equipment needs listed;

(3) environmental modifications needed / environmental supports described;

(4) transfer and mobility issues identified;

(5) transportation and community access needs identified;

(6) additional support needs identified.

N. Life area discussion items: Life area discussions include the following (other transition objectives may need to be developed in specific life areas in order to assure a successful transition):

(1) Home environment:

(a) roommate(s) / housemates desired;

(b) location of home identified;

(c) type of home preferred;

(d) orientation to new home;

(e) housing agreements signed, telephone and utilities deposits, and household

maintenance;

(f) arrangement for furnishings and household items;

(g) housekeeping skills training required;

(h) food management/ assistance with meals;

(i) respite needs (not applicable for individuals living independently);

(j) banking, financial and budget/ money management;

- required.
- (k) transfer of personal belongings and description of actual move;
 - (l) self-management of home and daily routine described.
- (2) Vocational:
- (a) referral to DVR/NMCB completed;
 - (b) type of employment or environment preferred;
 - (c) orientation to new work environment;
 - (d) assessments needed, vocational training required or training in related skills
- training needed;
- (3) Educational:
- (a) type of educational goal desired;
 - (b) alternative community based education;
 - (c) orientation to new school environment.
- (4) Self-care:
- (a) toileting;
 - (b) menses;
 - (c) dental hygiene;
 - (d) bathing, grooming and shaving;
 - (e) dressing and clothing care.
- (5) Communication:
- (a) method or style individual prefers to use;
 - (b) communication strengths maintained in new home or communication skills
 - (c) speech therapy;
 - (d) audiology.
- (6) Leisure/social:
- (a) opportunities to continue with or increase personal support systems and friends;
 - (b) opportunities to continue with or increase identified interests and hobbies;
 - (c) opportunities to continue with or increase family interactions and involvement;
 - (d) current or desired pets;
 - (e) sexual education, choices and needs (e.g., relationship or dating skills,
- AIDS/STD awareness).
- (7) Community resource use:
- (a) orientation to community and social life, including cultural and ethnic heritages of the community and individual;
 - (b) religious affiliation;
 - (c) access to community resources (shopping, laundry, library, post office, etc).
- (8) Safety:
- (a) safety and hazard awareness training required in home (use of stoves, heaters; emergency use of telephone; poisons, wiring, fire prevention);
 - (b) safety and hazard awareness training required in community (street safety, dealing with strangers);
 - (c) alert devices required in home/community;
 - (d) identification card or medical alert bracelet/ necklace;
 - (e) updated medical summary.
- (9) Psychological/behavioral/emotional:
- (a) development of self-advocacy and decision making skills;
 - (b) reinforcers and coping mechanisms identified;
 - (c) psychoactive meds used for emotional or psychiatric purposes;
 - (d) community psychologist/ psychiatrist identified;
 - (e) transition or ongoing counseling needs;
 - (f) behavioral responses to new home;
 - (g) crisis intervention needs anticipated;
 - (h) emergency response anticipated;
 - (i) behavior management plan reviewed.
- (10) Medical/health:
- (a) physical condition identified and medical services or appointments needed;

- (b) how the individual communicates illness identified;
 - (c) physician identified and medical records transferred;
 - (d) physical and occupational therapies;
 - (e) dental appointments made;
 - (f) pharmacy identified and prescriptions transferred;
 - (g) ophthalmologist;
 - (h) nursing services required;
 - (i) medication/self-administration;
 - (j) emergency medical needs anticipated;
 - (k) hospitalization issues discussed;
 - (l) nutritionist needed, special diet;
 - (m) training needs for community medical personnel.
- (11) Other pre-placement activities/community IDT planning:
- (a) pre-placement visit(s);
 - (b) cross training activities and community service provider skills development;
 - (c) specific strategies to provide stability to children not moving to a family home;
 - (d) guardianship status reviewed;
 - (e) establish a placement date: The placement date established by the TIDT shall be

no later than 228 days after the date of the established initial TIDT meeting.

[8.371.7.25 NMAC - N, 7/1/2024]

8.371.7.26 ACTIVITY 12: DISTRIBUTION OF THE ITP:

A. Within 14 days of the conclusion of the TIDT meeting, the *Jackson* transition representative (JTR) shall produce and distribute the ITP to the case manager, the parent/guardian, the facility *Jackson* office (for distribution to the facility TIDT members), the community service provider(s), advocate (if appropriate), the division *Jackson* office, other agencies mentioned in the ITP, counsel for plaintiffs, counsel for intervenors (when appropriate).

B. The case manager, after receipt of the ITP, shall meet with the individual, the QMRP and the helper, and review the completed ITP and what it means from the individual's perspective. The case manager shall assist the parent/guardian by providing information and answering questions concerning the completed ITP and the DRP process.

[8.371.7.26 NMAC - N, 7/1/2024]

8.371.7.27 ACTIVITY 13: COMMUNITY SERVICE PROVIDER CONTRACTS: No later than 30 days after the distribution of the ITP, each community service provider identified in the ITP shall submit, in writing, to the health care authority its cost proposal, including the following information:

- A.** start up funds required;
- B.** staff training that will be provided as specified in the ITP, to whom and by when;
- C.** facility modifications that may be required;
- D.** provision for administration of medication;
- E.** any other information as specified by the ITP to be provided in this submission;
- F.** any other information as specified by the authority.

[8.371.7.27 NMAC - N, 7/1/2024]

8.371.7.28 ACTIVITY 14: PROPOSAL REVIEW: The health care authority shall review the community service provider's proposal and may discuss or clarify any aspect of the proposal with the community service provider. The cost proposals shall be negotiated and approved, according to agreed upon costs, by the division's community programs bureau. The authority shall submit to the community service provider a written notice of the state's intent to fund services for an individual within 30 days of receipt of the community service provider's written proposal. The written notice of intent is not a contract. Unusual costs or specialized services may require an additional two weeks to negotiate and approve. It is incumbent upon the community service providers to submit cost proposals no later than 30 days after the distribution of the ITP.

[8.371.7.28 NMAC - N, 7/1/2024]

8.371.7.29 ACTIVITY 15: COMMUNITY SERVICE PROVIDER / STATE AGREEMENT: Unless delayed because of extraordinary circumstances or an administrative (DRP) or judicial stay order, within 30 days of

the community service provider's submittal described in Activity 13 above, providers of service and the health care authority shall negotiate and execute agreements for the delivery of services as specified in the ITP. The medicaid waiver plan of care (POC) shall be approved and submitted to the case manager for signatures. The case manager shall obtain signatures on the completed plan of care, based upon the approved authority cost proposals, at the ITP quality assurance review meeting (Activity 17, below).
[8.371.7.29 NMAC - N, 7/1/2024]

8.371.7.30 ACTIVITY 16: ALTERNATE COMMUNITY SERVICE PROVIDER SELECTION:

A. An ITP quality assurance review meeting shall be held within 30 - 45 days prior to the placement date specified in the ITP. The purpose of this meeting is to assure that the ITP is being successfully implemented, assigned responsibilities have been or are being met and that activities are appropriately accomplished in preparation for the community placement. Participants at the ITPQA review meeting are the same TIDT members, including designated representatives, who were responsible for the development of the ITP. The *Jackson* transition representative (JTR) is responsible for documenting activities at this meeting. Activities occurring at this meeting include:

- (1) review of ITP objectives that occur prior to placement and their implementation status;
- (2) confirm accomplishment or initiation of tasks by TIDT members;
- (3) amendments to the ITP, if required, due to failure to implement objectives or a change in the individual's circumstances;
- (4) confirm identity of housemates, staff and others;
- (5) confirm cross-over training agenda, participants and schedule with the facility;
- (6) describe and plan activities of the actual transition day, including responsible parties and times;
- (7) recommend a change in placement date, if required, to assure a successful transition;
- (8) finalization of the waiver plan of care: The case manager shall obtain signatures on the completed approved plan of care, based upon the approved cost proposals.

B. The TIDT may review the placement date and recommend a change or extension beyond the 228 day placement requirement; however, changing the originally established placement date requires authorization of the *Jackson* coordinator. Such authorization shall only be given upon evidence of extraordinary circumstances, a judicial stay order or other due process activity.

C. Within two working days following the ITPQA review meeting, the case manager shall submit the completed plan of care with original signatures to the community programs bureau (CPB).

D. In addition to the regularly scheduled ITPQA review meeting, described above, the case manager may, in extraordinary circumstances, reconvene the TIDT, in person or by teleconference if planning activity time lines fall behind schedule, the implementation of the ITP is in jeopardy, or the ITP requires significant modification, such as substitution of a key community service provider. In the case of such reconvened TIDT meetings, the assigned *Jackson* transition representative (JTR) will not attend the meeting, and the case manager shall be responsible for documenting the amendments to the ITP that are developed. Amendments should be distributed, in a hand-written form, to all TIDT members and designated representatives at the conclusion of the meeting, if xerox capabilities are available.
[8.371.7.30 NMAC - N, 7/1/2024]

8.371.7.31 ACTIVITY 18: DISPUTES: See: Appendix B, Dispute Resolution Process (DRP) for Individual Transition Plans.

[8.371.7.31 NMAC - N, 7/1/2024]

8.371.7.32 ACTIVITY 19: IMPLEMENTATION DECISION BY HEALTH CARE AUTHORITY:

A. Within seven days of the completion of the DRP, if any, the health care authority shall inform the parties to the DRP in writing whether, on the basis of the cost of the individual's ITP or the aggregate costs of individual ITPs, or because the health care authority believes the ITP fails to satisfy constitutional or statutory requirement, it is unable to implement the ITP. If the decision was based on cost, the authority shall not implement the ITP until and unless they have sufficient funds to do so. The authority has the sole discretion to determine whether there are sufficient funds available to implement an ITP. The decision of the authority as to the allocation of funds to ITPs is final and not reviewable. The authority shall engage in good faith efforts to seek the necessary funds through the supplemental and regular budgetary process for the developmental disabilities division of the health care authority and the medicaid DD waiver program and through federal funding which might be available to

these programs. Upon appropriation of funding determined by the authority to be sufficient, the TIDT or the community IDT, as appropriate, shall convene to review the final ITP in light of the individual's current circumstances and determine whether any changes should be made.

B. In the event the ITP is not implemented because of cost or because the authority believes the ITP fails to satisfy constitutional or statutory requirements, within 14 days of the completion of the DRP, the authority (with the assistance of its qualified professionals) shall prepare and mail to everyone specified in Activity 12, an interim plan which can be implemented immediately within available resources and which meets constitutional and statutory requirements; or the authority shall immediately request the reconvening of the TIDT and direct the team to develop an interim plan which can be implemented immediately. The interim plan shall be distributed within 14 days of its completion by the reconvened TIDT. Any party eligible to initiate a DRP of the original ITP may initiate a DRP of the interim plan pursuant to Section IV(E) of the DRP. However, the authority's decision regarding the allocation of resources to any ITP or interim plan is within the authority's sole discretion and is not reviewable in the DRP process.

C. If within 20 days of mailing the interim plan no party challenges the plan in a DRP, and the authority approves, the interim plan shall be implemented forthwith.
[8.371.7.32 NMAC - N, 7/1/2024]

8.371.7.33 ACTIVITIES 20 - 23: Activities 20 - 23 shall take place in the time frame specified unless delayed because of the DRP, or extraordinary circumstances.
[8.371.7.33 NMAC - N, 7/1/2024]

8.371.7.34 ACTIVITY 20: IMPLEMENTING THE ITP: TIDT members shall carry out their assigned pre-placement responsibilities. The TIDT is responsible for assuring the completion of placement activities and the readiness of the placement unless delayed pursuant to the policies of Appendix B, Section IV.F., dispute resolution process.
[8.371.7.34 NMAC - N, 7/1/2024]

8.371.7.35 ACTIVITY 21: MONITORING IMPLEMENTATION OF THE ITP: The assigned *Jackson* office representative shall check and document progress twice per month beginning 60 days prior to the placement date on fulfillment of responsibilities assigned in the ITP. If the representative learns of serious implementation problems the *Jackson* office shall direct the case manager to reconvene the TIDT, either in person or through teleconference, to correct the problem.
[8.371.7.35 NMAC - N, 7/1/2024]

8.371.7.36 ACTIVITY 22: REPORTING ON IMPLEMENTATION OF THE ITP: Every other week the division's *Jackson* office representative shall send to TIDT members a report on the status of pre-placement activity. The *Jackson* coordinator shall report specifically on the status of all agreements and community service provider plans of care. Any delay in execution of agreements that may affect other time lines or pre-placement activities shall be identified and strategies for specific action developed and implemented.
[8.371.7.36 NMAC - N, 7/1/2024]

8.371.7.37 ACTIVITY 23: COMMUNITY PLACEMENT: Pre-placement visits with staff and to the new home and work site shall take place as provided in the ITP. Placement shall be accomplished on the date established by the TIDT consistent with the timelines established in Section 13 above.
[8.371.7.37 NMAC - N, 7/1/2024]

8.371.7.38 TRANSITION ACTIVITIES AFTER PLACEMENT:

A. Absent extraordinary circumstances or an administrative (DRP) or judicial stay order, placement shall occur when planned pre-placement ITP activities have been completed. Moving is a stressful experience for anyone. Change in an individual's environment may result in changes in behavior or the need to make adjustments in program design. Thus, intensive interaction and monitoring shall be necessary immediately following placement. During the two months following placement the following activities shall take place:

- (1) Habilitation, treatment and services shall be implemented as provided in the ITP.
- (2) During the first week following placement, the case manager shall visit the individual on three of seven calendar days at both the individual's residence and day program with one of the visits occurring in the evening and one occurring on the weekend. The case manager shall observe the implementation of planned

services. The case manager, in consultation with the appropriate TIDT member(s) and with the prior approval of the health care authority, may make adjustments in the plan that do not alter the extent of the plan or the frequency, duration or scope of services. Any significant adjustments to the ITP shall be made by the community IDT convened by the case manager as provided in Paragraph (7) below. The case manager shall record the time of the visit, their observations regarding program implementation, and adjustments made to the plan, if any.

(3) During the first month following placement, the community service provider(s) specified in the ITP shall perform assessments as identified and scheduled in the ITP. The direct care staff may collect base line data for the assessments.

(4) During the second through the fourth week following placement, the case manager shall visit the individual at least two times per week.

(5) During the second month following placement the case manager shall visit the individual at least weekly, or more often if required, by the team or the circumstances in order to ensure program implementation in the new environment.

(6) Case managers shall comply with all developmental disabilities division reporting requirements relevant to post-placement activities and reporting.

(7) The case manager should convene and chair the first meeting of the individual's new community IDT (CIDT) within 14 days of placement. The CIDT shall normally consist of the individual (and their chosen representative, if any), the parent/guardian (and their chosen representative, if any), the helper, the case manager, and professional and direct care provider(s). In the absence of any member, the CIDT may proceed with the meeting if appropriate under the circumstances. The team shall meet to:

- (a) review program implementation;
- (b) provide for any necessary program adjustments;
- (c) identify and resolve any problems or potential problems in successful implementation;
- (d) determine if assessments are occurring as scheduled pursuant to the ITP; and
- (e) schedule the next IDT meeting to develop the community IPP, which shall be developed within 60 days of placement.

(8) The case manager shall convene and chair the second meeting and subsequent meetings of the CIDT to prepare and complete the individual's community individual service plan (ISP). If the current placement plan is an interim plan developed pursuant to Activity 19, in the course of developing the individual's ISP the CIDT shall review the original ITP that was not implemented by the health care authority (see Activity 19) to determine whether any of the components of the original ITP should be incorporated into the ISP. By agreement of the individual, parent/guardian and health care authority or as a result of a decision through a DRP, the ISP shall supersede all previous plans.

(9) Subject to the community DRP and to the principles set forth in Activity 19, the ISP shall be implemented within 60 days following placement. Adjustments to the plan of care or community service provider contracts shall be completed pursuant to the ISP.

B. The goal of the community IDT is to ensure the implementation of the community individual service plan (ISP). In order to do this, the case manager or the case manager's local representative should visit the individual as specified in the ISP or as often as necessary, but no less than two times per month, to assure that the plan is being fully implemented and to assist the individual in becoming a part of their community.

[8.371.7.38 NMAC - N, 7/1/2024]

HISTORY OF 8.371.7 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 8 (APPENDIX B) DISPUTE RESOLUTION PROCESS

8.371.8.1 ISSUING AGENCY: New Mexico Health Care Authority, Developmental Disabilities Division.
[8.371.8.1 NMAC - N, 7/1/2024]

8.371.8.2 SCOPE:

A. This dispute resolution process (DRP) provides for the resolution of disputes concerning the content of or the substantial failure to implement individual program, transition or community plans for class members in *Jackson et al. v. Fort Stanton, et al.*, Civ. No. 87-839 JP.

B. This DRP provides a two-step administrative mechanism for resolving disputes:

(1) a conciliation or mediation stage; and

(2) a review by an independent hearing officer.

C. This process does not allow review by the courts of the decisions of the hearing officers. Any court challenge to any facility, community or other plan or the implementation thereof must be by separate de novo action or by a de novo motion in the *Jackson* case as set forth in Paragraph (9) of Subsection D of 8.371.8.12 NMAC of this DRP.

D. Substantial failure to implement plans shall not include the initial decision by the authority not to implement or approve implementation of the plans because of cost or because of failure to satisfy constitutional or statutory requirements.

[8.371.8.2 NMAC - N, 7/1/2024]

8.371.8.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 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.

[8.371.8.3 NMAC - N, 7/1/2024]

8.371.8.4 DURATION: Permanent.

[8.371.8.4 NMAC - N, 7/1/2024]

8.371.8.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.371.8.5 NMAC - N, 7/1/2024]

8.371.8.6 OBJECTIVE:

A. These regulations amend the authority's previously adopted provisions for resolution of disputes arising from the community transition plans of individuals residing at Fort Stanton hospital and training school and Los Lunas hospital and training school. They provide a process for informal resolutions and administrative hearings as well as for suspending the implementation of challenged provisions of an individual's transition or program plan during the time period necessary to allow the dispute to be heard and decided. These amendments reflect the authority's cumulative experience in resolving disputes arising from the transition process.

B. These regulations are promulgated, in part, to satisfy requirements arising from the implementation of the decision in *Jackson, et al. v. Fort Stanton, et al.*, N.M. Dist. Ct. No. Civ. No. 87-839. The transition process appearing in these regulations has evolved over time, initially appearing as Appendix B to the *Jackson* management manual and later as authority regulations under the title *Jackson* Dispute Resolution (DRP) process for individual transition plans, Appendix B, HCA 93-1 (DDD). These regulations incorporate certain agreements reached by the parties, including the authority, to the *Jackson* lawsuit.

[8.371.8.6 NMAC - N, 7/1/2024]

8.371.8.7 DEFINITIONS:

A. **"Coordinator":** The *Jackson* coordinator or the dispute resolution process coordinator or their designees.

B. **"Days":** Calendar days, except where otherwise specified.

C. **"Defendants":** The defendants in *Jackson et al. v. Fort Stanton, et al.*, Civ. No. 87-839 JP who are represented by the attorney general. If notice is to be provided to the defendants, it shall be provided to the attorney general.

D. “Division”: The developmental disabilities division of the health care authority. If notice is to be provided to the division it shall be provided to the *Jackson* coordinator.

E. “Dispute resolution process coordinator”: The developmental disabilities division employee who, under the supervision of the *Jackson* coordinator, is responsible for the coordination and implementation of the dispute resolution process.

F. “Facility”: Fort Stanton hospital and training school or Los Lunas center for persons with developmental disabilities.

G. “Helper”: Someone who knows the individual’s capabilities, interests, likes and dislikes, who communicates with the individual and assists the individual with communication. The helper, if any, is to be chosen by the individual or, if none is chosen by the individual and the individual does not object, by the facility’s director of social work or the individual’s case manager.

H. “Individual”: A person currently residing in Fort Stanton hospital and training school or Los Lunas center for persons with developmental disabilities or a class member who has moved to the community in New Mexico through the ITP process.

I. “Intervenors”: The members of the plaintiff-Intervenor-class in *Jackson v. Fort Stanton*, as they may be defined by the court and who are represented by attorneys Kent Winchester and Vernon Salvador.

J. “Jackson coordinator”: The developmental disabilities division employee who is responsible for various aspects of the division’s implementation of the court’s orders in *Jackson v. Fort Stanton*.

K. “Parent/guardian”: The court-appointed guardian of an adult individual or the custodial parent(s) if the individual is a minor.

L. “Parties”: The individuals and entities identified in Section 9 who may initiate the DRP. As this term is used in subsequent sections of this DRP, it also includes:

(1) The intervenors in their capacity as representative of each parent/guardian of each individual residing in Fort Stanton and Los Lunas who is a member of the plaintiff-intervenor-class, unless the parent/guardian has chosen a representative other than intervenors;

(2) The plaintiffs in their capacity as representative of each individual residing in Fort Stanton and Los Lunas who is a member of the plaintiff-class, unless the individual has chosen a representative other than plaintiffs;

(3) Any other representative chosen in place of intervenors or plaintiffs; and

(4) The office of the attorney general in its capacity as representative of the authority or the authority’s office of general counsel.

(5) If a dispute involves a facility IPP or community ISP, the term “parties” does not include the intervenors or the plaintiffs. Intervenors and plaintiffs may participate in a facility IPP or community ISP dispute only as the representative of an individual or parent/guardian who chooses them to be their representative.

M. “Plaintiffs”: The members of the plaintiff-class in *Jackson v. Fort Stanton*, as they may be defined by the court in that case, who are represented by protection and advocacy system of New Mexico.

N. “Plan”: The individualized programs developed by the interdisciplinary team (IDT) including, the facility individual program plan (IPP), the individual transition plan (ITP), the interim plan developed when the authority does not approve the ITP, and the community individual service plan (ISP).

O. “Team”: The facility interdisciplinary team (FIDT), the transition interdisciplinary team (TIDT) or the community interdisciplinary team (CIDT).

[8.371.8.7 NMAC - N, 7/1/2024]

8.371.8.8 APPLICABILITY:

A. Facility IPP: This DRP may be used for the resolution of disputes concerning the content of or the substantial failure to implement individual program plans for residents of Fort Stanton and Los Lunas hospitals and training schools.

B. Transition planning:

(1) If the dispute involves an individual transition plan (ITP) the DRP may not be invoked until Activity 18 of the “individual transition planning process” (8.371.7 NMAC, hereinafter “ITP Process”).

(2) Interim plans: This DRP may be used for the resolution of disputes concerning interim plans developed per Activity 19 of the “individual transition planning process” (8.371.7 NMAC) by the same parties eligible to initiate a dispute concerning the original ITP.

C. Community ISP: This DRP may be used to resolve disputes concerning the content of or the substantial failure to implement *Jackson* class members’ ISPs following their placements in the community.

[8.371.8.8 NMAC - N, 7/1/2024]

8.371.8.9 PARTICIPANTS: This DRP may be utilized by: the individual; the individual's parent/guardian; or the authority. The participants may be represented by legal counsel or other representatives.
[8.371.8.9. NMAC - N, 7/1/2024]

8.371.8.10 LIMITATIONS: The state retains the discretion to provide, within current and future resources, individualized plans which may exceed what is required by law. To this end, the DRP provides guidelines for hearing officer decisions in Paragraphs (7) and (8) of Subsection D of 8.371.8.12 NMAC that go beyond the requirements of the law. Neither the fact that such guidelines are part of the DRP nor the fact that the state agrees in some cases to provide ITPs or other plans that may exceed the state's legal obligations shall be construed as a waiver of any of the state's legal defenses in any legal proceeding concerning such plans or as an agreement to provide in other cases, plans that exceed what is required by law.
[8.371.8.10 NMAC - N, 7/1/2024]

8.371.8.11 PRELIMINARY MATTERS:

A. Prior to or at the facility IPP or community ISP meeting, the social worker or case manager shall explain the DRP to the individual, the parent/guardian and helper, if any. Prior to or at the initial meeting of the transition interdisciplinary team (TIDT), the case manager shall explain the DRP to the individual, the parent/guardian and helper, if any.

B. Team meetings are intended to be the primary and most effective means of addressing and resolving planning issues. Therefore, all team members are encouraged to participate actively in meetings and in the development of proposed plans.

C. Completed plans shall be distributed as follows:

(1) The completed proposed IPP shall be mailed or delivered, within 30 days of completion, to all team members and to the individual's or the parent's/guardian's chosen representative, if any.

(2) The completed proposed ITP shall be mailed or delivered, within 14 days of completion of the proposed ITP, to all TIDT members, to plaintiffs and to intervenors if the parent/guardian of the individual is an intervenor.

(3) The completed ISP shall be mailed or delivered to all team members and to the individual's or the parent's/guardian's chosen representative within 30 days of the meeting.

D. Although the DRP contains time lines requiring rapid response, such time lines are not intended to reduce the potential for resolving disputes or limiting the involvement of the individual. Thus, for good cause, any person who is responsible for accomplishing a task within a specified time described in 8.371.8.12 NMAC may request a reasonable extension of time from the *Jackson* coordinator or dispute resolution process coordinator, as appropriate. No extensions of time may be granted to accomplish the informal resolution activities described in Subsection B of 8.371.8.12 NMAC. Absent extraordinary circumstances, extensions of time for the activities described in Subsection C of 8.371.8.12 NMAC shall not exceed 20 days. Grant or denial of a request for an extension of time shall be in writing.

E. Any party initiating the DRP may terminate the process at any time as to the matters raised by that party by withdrawing all pending objections.

F. The DRP is ordinarily intended to be accomplished without the involvement of legal counsel, but the parties may be represented by legal counsel of their choosing at their own expense.

G. Implementation of the plan shall proceed even though there is a DRP in progress except as provided below in Subsection F of 8.371.8.12 NMAC.

H. If the individual has a helper who has participated in a meeting on the individual's behalf, such helper may initiate a facilitated conference or administrative hearing and assist the individual in the DRP only on behalf of the individual and consistent with the wishes of the individual.

I. The plaintiffs, intervenors or other chosen representative of an individual or parent/guardian may initiate a facilitated conference or administrative hearing on behalf of the individual or parent/guardian only if doing so is consistent with the wishes of the individual or the parent/guardian.

J. Notice required to be given to the individual shall also include notice to the individual's helper and representative, if any. Notice required to be given to the parent/guardian shall also include notice to the parent's/guardian's representative, if any. If notice is to be provided to the intervenors, it shall be provided to intervenor's counsel. If notice is to be provided to plaintiffs, it shall be provided to the protection and advocacy system.

K. Any party claiming substantial failure to implement a plan shall request the QMRP or the case manager, as appropriate, to convene a special meeting of the relevant team members prior to initiating the DRP. The meeting shall be held within 10 days.

(1) The team may adopt additional strategies to fully implement the existing plan.

(2) Any actions or additional strategies adopted by the team shall not affect the party's right to initiate a DRP challenging the failure to substantially implement the plan. The time for filing a DRP shall run from the date of the special meeting.

[8.371.8.11 NMAC - N, 7/1/2024]

8.371.8.12 THE PROCESS:

A. Request for facilitated conference: The DRP is initiated by a request for a facilitated conference by any of the parties identified in Section 7 in the capacities specified in that section. The request must be directed to the *Jackson* coordinator or dispute resolution process coordinator and must be received by the coordinator no later than 30 days after the mailing of the completed plan. The request may be made by telephone, in person, or in writing and shall identify any disputed portions of the plan. The coordinator shall record the date of receipt of the request and shall notify the members of the team and the parties of the substance of the dispute. If the request involves an allegation of substantial failure to implement the plan, the request shall be received by the coordinator no later than 30 days after the special team meeting held to address that implementation issue, as provided in Subsection K of 8.371.8.11 NMAC, above. In the event the case manager does not convene the team meeting as requested, or within the time allotted, the DRP must be initiated within 30 days of the request to reconvene the team.

B. Informal resolution: The coordinator shall promptly communicate with the parties and with appropriate team members to determine whether there is a genuine dispute and whether the dispute can be resolved informally without a facilitated conference. If it appears that the dispute can be resolved informally, the coordinator shall attempt to do so. If the dispute is resolved, the coordinator shall notify the members of the team and the parties in writing.

C. Facilitated conference: If the dispute is not resolved informally, the coordinator shall schedule a facilitated conference. The conference shall occur and the resolution or determination shall be distributed within 45 days of receipt of the request for the facilitated conference. The parties shall be notified of the time and location of the conference at least 10 days prior to the conference. The coordinator may request the attendance of team members, professionals, authority personnel or other persons whose presence the coordinator believes could assist in resolving the disputed portions of the plan.

(1) The purpose of the facilitated conference is to resolve the dispute to the extent possible and to agree on any material facts. If the conference participants are unable to resolve the dispute issues to the satisfaction of the party who requested the facilitated conference, the coordinator shall make determinations regarding the disputed issues as follows:

(a) determine that the objection(s) to portion(s) of the plan has merit and either:

(i) amend the plan, accordingly; or

(ii) remand the plan to the team for revision consistent with the

coordinator's determination; or

(b) determine that the objection(s) to portions of the plan lacks merit and deny the

objection(s); or

(c) determine that implementation of the plan is in substantial compliance with the plan and direct that implementation continue; or

(d) determine that implementation of the plan is not in substantial compliance with the plan and direct that the plan be implemented appropriately.

(2) The coordinator shall reduce the determination to writing and mail or deliver it to all conference participants and non-participating team members. The written determination shall include the reasons for the determination and recite any amendments to the plan and any agreements as to material facts.

D. Administrative hearing:

(1) Request for hearing: If the party who requested a facilitated conference is dissatisfied with the coordinator's determination, that party may request an administrative hearing to review the determination. If the original dispute issue involved an allegation of a substantial failure to implement and the party making the original request believes that there continues to be a substantial failure to implement, that party may request an administrative hearing. Other parties may request an administrative hearing to review the coordinator's determination only if they participated in the facilitated conference and the coordinator's determination resulted in a change in the contents or implementation schedule of the plan. The request must be made to the developmental

disabilities division, Attention: *Jackson* coordinator within 15 days of the date of the coordinator's written determination.

(2) Grounds for hearing: In order for a request to be heard, the party making the request must allege in its request for a hearing that a plan fails to meet at least one of the guidelines set forth in Paragraphs (7) and (8) of Subsection D of 8.371.8.12 NMAC, as appropriate. The grounds for requesting an administrative hearing are set forth in Paragraphs (7) and (8) of Subsection D of 8.371.8.12 NMAC, below.

(3) Notice of hearing: The division shall provide written notice of the hearing, the issues raised in the request for hearing and the name of the hearing officer to the parties at least 20 days before the hearing date.

(4) Recusal of hearing officer: If any of the parties has reason to believe that the hearing officer assigned to hear a dispute cannot render a fair and impartial decision, that party shall notify the developmental disabilities division, attention *Jackson* coordinator, of its challenge and the reasons therefore, no later than 10 days from the date of the notice of hearing. If the coordinator determines that there is good cause to recuse the assigned hearing officer, the coordinator shall select another hearing officer within seven days of the date the division received the challenge.

(5) Conduct of hearing:

(a) The authority shall make any team members who are the authority's employees available to testify at a hearing.

(b) The *Jackson* transition representative or another team member will introduce the plan and the coordinator's determination into evidence.

(c) If the contents of a plan are in dispute and the authority is not the objecting party, the authority will go forward to present evidence in support of the plan. If the authority is objecting to the contents of a plan, the party or parties who support the plan will go forward to present evidence in support of the plan.

(d) The party objecting to the contents of the plan will have the burden to prove that the objection has merit and that the plan should be amended in accordance with the objecting party's request.

(e) If a party is alleging that a plan includes a service(s) that is not being provided, that party has the burden to prove that:

(i) The service(s) is not being provided; and

(ii) Such lack of service(s) is a substantial failure to implement the plan.

(6) Evidence:

(a) The hearing officer shall admit all relevant and material evidence, including agreements as to material facts as determined by the Coordinator, that is reasonably likely to assist in the making of a fully informed, fair decision in the dispute. The hearing officer's rulings on evidence are not reviewable. Conformity to legal rules of evidence shall not be necessary.

(b) In all cases the burden of proof shall be established by a preponderance of the evidence.

(7) Guidelines for decisions regarding ITPs and community ISPs: In arriving at a decision, the hearing officer shall utilize the following guidelines in resolving disputed portions of the ITP and community ISP:

(a) The contents of the plan are reasonable and appropriate to meet the individual's needs and promote identified strengths and capacities.

(b) The ITP/ISP reflects the individual's preferences, to the extent appropriate, unless the individual communicates no preference or is incapable of communicating any preference.

(c) The ITP/ISP is designed to utilize services that allow the individual to be more, rather than less, integrated in the community and rely on available generic services to the extent feasible and consistent with the individual's needs.

(d) The ITP/ISP provides services which are least restrictive, not unduly intrusive and not excessive in light of the individual's needs.

(e) The ITP/ISP can be practicably implemented. Except as provided in Subsection E of 8.371.8.12 NMAC, below, practicality or impracticality is to be determined without regard to cost.

(f) The plan includes a service or support that is not being provided and the failure to provide such service is a substantial failure to implement the plan.

(8) Guidelines for decisions regarding facility IPPs:

(a) The contents of the IPP are based on professional judgment and are reasonable and appropriate to meet the individual's needs and promote identified strengths and capacities.

(b) The IPP reflects the individual's preferences, to the extent appropriate, unless the individual communicates no preference or is incapable of communicating any preference.

(c) The IDT considered residential placement, supports, programs, services and activities that would give the individual the opportunity to be more, rather than less, integrated in the community. The IDT's decision to recommend or not to recommend discharge was based upon a consideration of the individual's needs and is consistent with appropriate professional judgment.

(d) The IPP provides services which are least restrictive, not unduly intrusive and not excessive in light of the individual's needs.

(e) The IPP can be practicably implemented. Except as provided in Subsection E of 8.371.8.12 NMAC, below, practicality or impracticality is to be determined without regard to cost.

(f) The plan includes a service or support that is not being provided and the failure to provide such service is a substantial failure to implement the plan.

(9) Decision:

(a) The hearing shall be conducted, and the hearing officer shall render a decision, within 30 days of the *Jackson* coordinator's receipt of the hearing request, or within 30 days of the selection of a new hearing officer if the recusal provisions of Paragraph (4) of Subsection D of 8.371.8.12 NMAC have been invoked. All hearing officer decisions shall contain the following:

(i) The decision on the merits of the dispute; and

(ii) The reasons for the decision, including reference to any guidelines listed in Paragraphs (7) and (8) of Subsection D of 8.371.8.12 NMAC, as appropriate.

(b) The decision of the hearing officer shall be final as to the plan's compliance with the guidelines set forth in Paragraphs (7) and (8) of Subsection D of 8.371.8.12 NMAC, as appropriate, of this DRP.

(c) Any challenge in court to any individual plans or the implementation thereof must be by separate *de novo* action or by a *de novo* motion in the *Jackson* case, where appropriate. In any such challenge the DRP and guidelines set forth in Paragraphs (7) and (8) of Subsection D of 8.371.8.12 NMAC, and in Activity 11 of the individual transition planning process (8.371.7 NMAC) shall not be enforced by the court.

(i) The sole basis for any court challenge to any individualized plan or the implementation thereof shall be that the plan on its face or as implemented does not comply with the individual's rights under constitutional or statutory law. Nothing herein shall be deemed a waiver of any of the state's defenses in the event of such action.

(ii) Statements and evidence presented to the coordinator, the decision of the coordinator, the decision of the hearing officer and the record of any hearing shall not be offered as evidence nor be admissible in any proceeding in court.

(10) Notice of decision: The *Jackson* coordinator shall mail the hearing officer's decision to the parties within three working days of receipt of the decision.

E. Review of interim plans:

(1) If the authority does not implement an ITP because of cost or because the plan fails to satisfy constitutional or statutory requirements and develops an *interim* plan instead, any party eligible to initiate a DRP of the original plan may initiate a DRP of the interim plan. However, the authority's decision regarding the allocation of resources to any plan or interim plan is final, within the authority's sole discretion and not reviewable in the DRP. DRP hearing officers have no authority to order the authority to expend resources beyond those the authority allocates to any plan or interim plan.

(2) All DRP procedures and limitations, including but not limited to those set forth in Subparagraphs (b) and (c) of Paragraph (9) of Subsection D of 8.371.8.12 NMAC, will apply except that if the matter goes to a hearing:

(a) The hearing officer cannot be the person who held the hearing on the original plan, and

(b) The grounds for review and the hearing guidelines are modified and limited to whether the interim plan satisfies the guidelines set forth in Paragraph (8) of Subsection D of 8.371.8.12 NMAC, above, as appropriate, to the extent possible within the resources allocated by the authority to the individual to implement the interim plan.

F. Delays in implementing plans:

(1) Delay of transition process:

(a) During any stage of the DRP, a party may request that some or all ITP implementation activities be delayed pending resolution of the dispute. A request to delay prior to the

administrative hearing must be directed to the *Jackson* coordinator. A party may also request a delay in implementation from the hearing officer at the administrative hearing.

(b) The *Jackson* coordinator or the hearing officer shall order that some or all ITP implementation activities be delayed pending resolution of the dispute if the coordinator or hearing officer determines that:

(i) there are extraordinary circumstances which necessitate delay; or
(ii) the immediate implementation of the ITP would adversely affect the health or safety of the individual.

(c) Delays in implementation pending resolution of a dispute shall be terminated automatically when a dispute is resolved by withdrawal of the dispute, agreement of the parties, failure to request an administrative hearing, or upon the determination by the hearing officer.

(2) Delay of facility or community plans:

(a) The request to initiate a DRP regarding any portion of an IPP or ISP shall automatically delay implementation of the disputed portions unless the health or safety of the individual would be adversely affected.

(b) Delays in implementation pending resolution of a dispute shall be terminated automatically when a dispute is resolved by withdrawal of the dispute, agreement of the parties, failure to request an administrative hearing, or upon the determination.

[8.371.8.12 NMAC - N, 7/1/2024]

HISTORY OF 8.371.8 NMAC: [RESERVED]

TITLE 8 SOCIAL SERVICES
CHAPTER 371 DEVELOPMENTAL DISABILITIES
PART 9 ADMISSION, DISCHARGE AND TRANSFER OF ELIGIBLE RECIPIENTS FOR SERVICES IN ICF/MR FACILITIES

8.371.9.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.371.9.1 NMAC - N, 7/1/2024]

8.371.9.2 SCOPE:

A. These regulations provide a systematic process for admission of persons requesting services from an intermediate care facility for the mentally retarded (ICF/MR); the transfer between ICF/MR facilities of persons previously determined eligible; and the discharge of persons residing in an ICF/MR.

B. These regulations apply to persons who request admission to an ICF/MR and who reside in the community; in a nursing facility; in a hospital; or, in an ICF/MR. In addition, these regulations apply to any ICF/MR in the state of New Mexico that is licensed under health care authority regulations governing long term care facilities.

C. These regulations are limited to the admission, transfer and discharge of persons receiving support and services funded in whole or in part by state funds or for whom services can reasonably be expected to be funded in whole or in part with state funds within six months of admission into an ICF/MR.

[8.371.9.2 NMAC - N, 7/1/2024]

8.371.9.3 STATUTORY AUTHORITY: Subsection E of Section 9-8-6 NMSA 1978 and Section 28-16A-15 NMSA 1978. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (HCA) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.

[8.371.9.3 NMAC - N, 7/1/2024]

8.371.9.4 DURATION: Permanent.

[8.371.9.4 NMAC - N, 7/1/2024]

8.371.9.5 EFFECTIVE DATE: July 1, 2024, unless a later date is cited at the end of a section.

[8.371.9.5 NMAC - N, 7/1/2024]

8.371.9.6 OBJECTIVE: The purpose of these regulations is to:

A. establish the process for the admission of any and all persons requesting admission to an ICF/MR, to be transferred between ICF/MR facilities, or to be discharged from an ICF/MR;

B. establish admission, transfer and discharge procedures for ICF/MR facilities licensed and located in the state of New Mexico consistent with the Developmental Disabilities Act, Section 28-16A-15 NMSA 1978;

[8.371.9.6 NMAC - N, 7/1/2024]

8.371.9.7 DEFINITIONS:

A. “Discharge” means the termination of services for a person previously admitted into an ICF/MR and the discharging facility ceases to be legally responsible for the care of the person.

B. “Eligible central registry person” means a person who has requested admission to an ICF/MR, or discharge from an ICF/MR and transfer to a community-based HCA funded program, and who is determined by the HCA to meet pre-admission screening criteria for ICF/MR and home/community-based developmental disabilities services.

C. “ICF/MR” means an intermediate care facility that provides food, shelter, health or rehabilitative and active treatment for persons with mental retardation or related conditions, and that has a current license issued by the HCA.

D. “New admission” means a person requesting an ICF/MR admission for the first time and does not otherwise qualify as a re-admission. New admissions are subject to pre-admission screening.

E. “NMSA” means the New Mexico Statutes Annotated 1978 compilation and all the revisions and compilations thereof.

F. “Pre-admission screening” means the evaluation process of the health care authority to determine a person’s choice between ICF/MR and community based services, and whether the person has a

developmental disability as described in the *American association on mental retardation's manual on classification in mental retardation (1996)*, or a related condition as defined by 42 CFR 435.1009.

G. "Readmission" means a person re-admitted to an ICF/MR from another type of institution to which they were transferred for the purpose of receiving acute, psychiatric care or rehabilitation following a temporary, acute care episode. A readmission is not subject to pre-admission screening.

H. "Transfer" means movement of an individual from one ICF/MR to another ICF/MR, with or without an intervening hospital stay. A transfer is not subject to pre-admission screening.

I. "State medicaid agency" means the health care authority.

J. "Central registry" means a registry of persons who are requesting or receiving services established by the HCA in accordance with Section 28-16A-15 NMSA 1978.
[8.371.9.7 NMAC - N, 7/1/2024]

8.371.9.8 ADMISSION:

A. No person shall be admitted into an ICF/MR unless the person has been pre-screened and referred to an ICF/MR by the health care authority central registry.

B. Consistent with the provisions of 42 CFR 431.51 any person who requests to be placed on the HCA's central registry will be provided the opportunity to indicate a choice between ICF/MR and home/community-based waiver services at the time of application to the central registry. The purpose of this information request is for system service planning to identify persons who may be potentially eligible for ICF/MR services.

C. All applicants to the central registry may choose to be placed on the central registry for both ICF/MR and home/community-based waiver services.

D. All persons referred for admission into an ICF/MR from the central registry may choose to remain on the central registry for home/community-based waiver services. All persons referred for admission into home/community-based waiver services may choose to remain on the central registry for ICF/MR services.

E. All persons applying to the central registry will be pre-screened by the HCA before placement on the central registry to determine each person's choice between ICF/MR and home/community-based waiver services, and whether the person has a developmental disability or related condition. Pre-screening does not include determination of financial eligibility and level of care, which are functions performed by the state medicaid agency.

F. The HCA will implement application procedures for the central registry that identifies applicant's freedom to choose between ICF/MR and home and community based services.

G. Upon notification from a ICF/MR to the HCA that a vacancy exist in their facility, the HCA will identify three persons from the central registry, in the order of date of application to the central registry, who have indicated a choice for ICF/MR services, and who:

- (1) have never been admitted into an ICF/MR; or
- (2) were discharged from an ICF/MR for at least 30 days; or
- (3) did not qualify as a readmission;
- (4) the group of three individuals will be classified as "new admission" for the purposes of

these regulations.

H. The HCA will notify the three persons about the availability of a vacancy and request each person to reaffirm in writing their choice between ICF/MR, developmental disabilities home and community waiver services, or other services.

I. The HCA will furnish to an ICF/MR the names and contact information of any persons on the central registry who indicate a choice for ICF/MR services in the long term services division region in which the ICF/MR is located.

J. The ICF/MR will contact and review each person's request for admission in accordance with federal licensing and certification requirements.

K. The ICF/MR will refer any person referred by the central registry, and whom the ICF/MR determined appropriate for admission based on its admission decision, to the state medicaid agency for level of care and financial eligibility determination.

L. The ICF/MR will notify the HCA and the eligible central registry person of the results of its admission decision for all three persons referred by the HCA with an explanation for its decision on each person referred. The ICF/MR will notify any person not admitted of their right to a review of the admission decision.

M. The ICF/MR may admit any person who meets the definition of "readmission" without referral through the HCA's central registry. A readmission will not be subject to pre-screening by the HCA.

N. The health care authority central registry may refer an individual to an ICF/MR vacancy based on the HCA's determination that the referral is an emergency. The HCA may exempt an emergency referral from the central registry to be made based on the person's date of application to the central registry.
[8.371.9.8 NMAC - N, 7/1/2024]

8.371.9.9 TRANSFER:

A. A person may be transferred to another ICF/MR operated by the same entity, or an ICF/MR that operates independent of the ICF/MR where the person currently resides without referral through the central registry, provided:

- (1) the person's interdisciplinary team recommends the transfer;
- (2) the person's transfer is based on the person's freedom of choice of providers; and
- (3) the receiving ICF/MR has identified a vacancy.

B. An ICF/MR may transfer a person temporarily to a psychiatric acute care hospital, or temporarily to a nursing facility for care following a hospital stay. Persons returning to the ICF/MR under these conditions will be classified a "readmission" and will not be subject to pre-screening by the HCA.

C. Persons receiving services from an ICF/MR may be transferred to a home and community-based waiver program provided the person has been allocated to the program by the HCA in accordance with central registry policies and procedures.

D. The ICF/MR shall provide a complete copy of the person's medical and service records, including assessments required for individual program planning to the ICF/MR or community to which the person is transferred.

[8.371.9.9 NMAC - N, 7/1/2024]

8.371.9.10 DISCHARGE:

A. A person may be discharged from an ICF/MR when the individual/guardian requests to be discharged; when the person's interdisciplinary team recommends the facility cannot meet the individual's needs; the individual no longer requires an active treatment program in an ICF/MR setting; the discharge would be more beneficial to the person; or for any other good cause. Any decision to discharge a person from an ICF/MR based on good cause must be adequately justified in writing by the ICF/MR and reviewed by the HCA prior to discharge.

B. The ICF/MR will ensure the person's family/guardian and the person's advocate is involved in the interdisciplinary team process, involving a discussion and proposed decision regarding discharge.

C. The ICF/MR will ensure a transition plan is developed 30 working days prior to discharge in accordance with HCA policies on discharge and transition of persons in services.

D. The ICF/MR will ensure the person and their guardian are fully informed of their right to a fair hearing in accordance with 42 CFR 431.200-431.250.

E. The ICF/MR will ensure any discharge decision is carried out in accordance with provisions of 42 CFR 456.380.

[8.371.9.10 NMAC - N, 7/1/2024]

8.371.9.11 NOTIFICATION OF THE HCA:

A. The ICF/MR will notify the HCA of any vacancy or anticipated vacancy in their facility.

B. The ICF/MR will notify the HCA of any person requesting ICF/MR services and for whom state funding may be necessary.

C. The HCA will notify an ICF/MR of any person on the central registry indicating a choice of ICF/MR services in the long term services division region in which the ICF/MR is located.

D. Notice by either party shall be based on timelines adopted by the HCA.

[8.371.9.11 NMAC - N, 7/1/2024]

HISTORY OF 8.371.9 NMAC: [RESERVED]