

+TITLE 7 HEALTH
CHAPTER 8 RESIDENTIAL HEALTH FACILITIES
PART 4 GENERAL REQUIREMENTS FOR BOARDING HOMES

7.8.4.1 ISSUING AGENCY: New Mexico department of health, division of health improvement.
[7.8.4.1 NMAC – N, 6/3/2020]

7.8.4.2 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 which are required to be licensed by the state licensing authority. This rule applies to all boarding home facilities which receive lodging for compensation and are operated to provide assistance with one or more instrumental activities of daily living to residents or assistance with the coordination of community services and 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, nor does it include boarding homes under the control of an institution of higher learning. These requirements shall not include any facility which is otherwise licensed and regulated by the department, or any hotel or other landlord-tenant relationship or homeless shelter.
[7.8.4.2 NMAC – N, 6/3/2020]

7.8.4.3 STATUTORY AUTHORITY: The requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6, 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.
[7.8.4.3 NMAC – N, 6/3/2020]

7.8.4.4 DURATION: Permanent.
[7.8.4.4 NMAC – N, 6/3/2020]

7.8.4.5 EFFECTIVE DATE: June 3, 2020, unless a later date is specified at the end of a section.
[7.8.4.5 NMAC – N, 6/3/2020]

7.8.4.6 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 to use supportive services in the surrounding community to meet the needs of residents.
- E. Provide for facility 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.

[7.8.4.6 NMAC – N, 6/3/2020]

7.8.4.7 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 misuse, or neglect resulting in harm of an individual resident.
- B. “Amended license” means a change of manager 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.

C. "Activities of daily living (ADLs)" as per 42 CFR § 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; 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.

F. "APS" means the adult protective services division of the aging and long term services department.

G. "Assisted living facility" as per 7.8.2 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.

H. "Bed" is 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. A cot, futon, bunkbed or day bed shall not be use as a bed. The bed must be at a minimum a standard size "twin" or larger bed.

I. "Boarding home" also known as a "board and care home" means any facility that is required to be licensed by the department of health, that provides 24 hour a day assistance with 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.

J. "Care and supervision" means any one or more of the following activities provided by a person or facility to meet the needs of the residents:

(1) "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. 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 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 10 of 16.12.5 NMAC.

(2) Central storing and/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 medical and dental care.

(4) Maintenance of house rules for the protection of residents.

(5) Supervision of resident schedules and activities.

(6) Maintenance and/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.

K. "CMS" means centers for medicare & medicaid services.

L. "Consultant pharmacist" means a person licensed under the pharmacy act. Subsection D of Section 61-11-2, NMSA 1978, as a consultant pharmacist.

M. "Department" means the department of health.

N. "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.

O. "Instrumental activities of daily living (IADLs)" as per 42 CFR § 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".

P. "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.

Q. “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 has been issued and who is legally responsible for compliance with these requirements.

R. “Licensing authority” means the agency within the department vested with the authority to enforce these requirements.

S. “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. If limited assistance with self-administered medication is being provided, the resident retains all responsibility for taking their medications.

T. “Manufactured home” means any home factory-built in the U.S. to the HUD Title 6 construction standards (commonly known as ‘the HUD-code’) and built on a permanent chassis to ensure transportability.

U. “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 needs and supports care plan. Mechanical supports shall not be considered physical restraints when used pursuant to the residents needs and supports care plan.

V. “Medication administration” also known as: “administration of medications”, 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.

W. “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.

X. “Modular home” A modular home is any home factory-built pursuant to the New Mexico regulation and licensing department construction industries & manufactured house regulations, Section 14.12.1 through 11 NMAC, may be built as an “on-frame” or “off-frame” modular. On-frame will be built on a permanent chassis, whereas, the off-frame modular will be built with removal of the chassis frame in mind. An off-frame modular will usually require additional cranes to assist with home placement.

Y. “Mobile home” means (also known as: trailer home, or house trailer) is a prefabricated 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.

Z. “Needs and services plan” means a written comprehensive plan, that identifies all needs and services for a resident.

AA. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. 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.

BB. “Nontransient” means occupancy of a dwelling unit or sleeping unit for more than 30 days. See also; resident.

CC. “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.

DD. “Personal care services” means instrumental activities of daily living.

EE. “Pharmacist” means a person licensed under the Pharmacy Act, Sections 61-11-1 to 61-11-29, NMSA 1978.

FF. “Pharmacy” means a place where drugs are compounded or dispensed that is licensed by the New Mexico board of pharmacy.

GG. “Physical abuse” means damaging or potentially damaging acts or incidents that result in bodily injury or death.

HH. “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.

II. “Resident” means an individual receiving services and residing in the licensed facility; including the relatives of a licensee.

JJ. “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.

KK. “Residential services” means the provision of living accommodations, meals and certain levels of personal care services and supervision. Programmatic services beyond basic residential services are provided at some facilities.

LL. “Restraint” 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 (such as; 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).

MM. “Transient”: means occupancy of a dwelling unit or sleeping unit for not more than 30 days.

NN. “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.

OO. “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.

[7.8.4.7 NMAC – N, 6/3/2020]

7.8.4.8 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.

[7.8.4.8 NMAC – N, 6/3/2020]

7.8.4.9 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 department of health 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 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, are not appropriate for placement in a boarding home.

B. Licensure is required.

(1) No boarding home facility as defined in Subsection I of 7.8.4.7 NMAC may operate in New Mexico unless it is licensed in accordance with the requirements of the department of health.

(2) Any boarding home health facility 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 facility regulations contained in this rule shall not apply to any of the following:

(a) Any licensed health facility, as defined by the public health act Subsection F of Section 24-1-2, NMSA 1978 licensed by the department of health.

(b) Any clinic, as defined by the public health act Subsection F of Section 24-1-2 NMSA 1978 licensed by the department of health.

(c) Any home operated by a home and community-based medicaid waiver service provider, under contract with the department of health 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 certificated/registered by the state department of education.
 - (ii) The school and the school dormitory are on the same grounds.
 - (iii) All children accepted by the school are six years of age or older.
 - (iv) The program operates only during normal school terms unless the academic program runs year-around.
 - (v) The school's function is educational only.
 - (vi) 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 parent, 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 is 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.

[7.8.4.9 NMAC – N, 6/3/2020]

7.8.4.10 GENERAL LICENSING REQUIREMENTS:

- A. Application and 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) A license shall not be granted to an owner/applicant who does not clear the caregiver criminal history screening process as set forth in 7.1.9.8 NMAC. The applicant shall also provide to the department information including, but not limited to, felony convictions, a civil judgement against you 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 department of health 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 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.

(5) No license may be issued unless and until the applicant has supplied all information requested by the department.

(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.

(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 facility 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 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 name and resume of the proposed manager,

(6) the anticipated number of residents to be served,

(7) the number of residential beds in the proposed facility,

(8) the physical address of facility 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 facility location which is requesting the license.

C. License application and fees: After review by the department 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 department. Prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the department, the applicant must submit to the licensing authority an application form provided by the department, 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 department 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 department, 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.

D. 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:

(1) a list and description of all services and the scope of those services to be provided by the proposed facility,

(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 facility'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 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 facility to operate in the jurisdiction in which it is located, including but not limited to:

(a) written zoning approval,
(b) building permit final approval, and/or certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and
(c) 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.

(3) Custodial pharmacy permit: Any facility 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.

[7.8.4.10 NMAC – N, 6/3/2020]

7.8.4.11 ACTION BY THE DEPARTMENT:

A. After receiving complete application, the department 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 department shall either approve the application and issue a license or deny the application. If the application for a license is denied, the department 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, 7.1.8 NMAC, or has been noncompliant with plans of correction.

[7.8.4.11 NMAC – N, 6/3/2020]

7.8.4.12 TYPES OF LICENSE:

A. Annual license: An annual license is issued for a one-year period to a boarding home facility which has met all requirements of these regulations. If a temporary license is issued, once the department 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 temporary license is not guaranteed under these regulations and shall be limited and restricted to:

(i) a finding that the applicant is qualified and in full compliance with these requirements,

(ii) the facility being allowed to accept residents 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, in full compliance with these regulations and has requested an initial health survey from the licensing authority.

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 facility, 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.

[7.8.4.12 NMAC – N, 6/3/2020]

7.8.4.13 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 department 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.

[7.8.4.13 NMAC – N, 6/3/2020]

7.8.4.14 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.

[7.8.4.14 NMAC – N, 6/3/2020]

7.8.4.15 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. The department 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 department 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 all other applicable state and federal regulations.

C. If the existing license expires and the licensee has failed to submit a renewal application, the department 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 facility remains in full compliance with these regulations. If the facility does not renew its license and continues to operate without paying civil monetary penalties 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 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 facility of the renewal date or the expiration date of the facility's license.

E. After issuance of the initial license, if the facility is in substantial compliance with these regulations and provides an application and fee the facility may be issued a license renewal. The department, 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.

[7.8.4.15 NMAC – N, 6/3/2020]

7.8.4.16 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location or accessible to public view within the facility.
[7.8.4.16 NMAC – N, 6/3/2020]

7.8.4.17 REPORT OF CHANGES:

A. The licensee shall notify the department 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 department 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 department 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 department 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 department and shall result in the issuance of a corrected license.

[7.8.4.17 NMAC – N, 6/3/2020]

7.8.4.18 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 department 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 of the facility changes,

B. The facility changes location,

C. The licensee of the facility changes,

D. The facility discontinues operation, or

E. A facility wishing to continue operation as a boarding home facility under Subsections A through

D above must submit an application for initial licensure in accordance with Paragraph (2) of Subsection B of 7.8.4.9 NMAC of these regulations, at least 30 days prior to the anticipated change.

[7.8.4.18 NMAC – N, 6/3/2020]

7.8.4.19 CHANGE OF OWNERSHIP: An individual or entity wishing to purchase and continue operation of an already licensed facility 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 department 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 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 will 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 must include the following:

(a) process for the reassessment of residents,

(b) process for hiring facility staff and staffing plan identifying staff that will cover

all duties upon transition; and

(c) transfer agreements.

(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 facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.
[7.8.4.19 NMAC – N, 6/3/2020]

7.8.4.20 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 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.

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.

[7.8.4.20 NMAC – N, 6/3/2020]

7.8.4.21 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 department 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 department.

B. Any approval of the department granted under this section, or a certified copy thereof shall be posted immediately adjacent to the facility's license.

[7.8.4.21 NMAC – N, 6/3/2020]

7.8.4.22 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 facility'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 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. 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 facility 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 department, 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 department may require additional information from the facility prior to acting on the request.

- C. Grants and denials:
 - (1) The department 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 Department and a facility.
 - (3) The department may impose such conditions on the granting of a waiver or variance which it deems necessary.
 - (4) The department may limit the duration of any waiver or variance.
 - (5) The department's action on a request for a waiver is not subject to administrative appeal.
 - D. Revocation: The department 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 department 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.
- [7.8.4.22 NMAC – N, 6/3/2020]

7.8.4.23 UNLICENSED FACILITIES. Any person or entity that opens or maintains a non-medical boarding home or board and care 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, 7.1.8 NMAC.

- A. A civil monetary penalty not to exceed five-thousand dollars (\$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 facility that is operating without a license.
 - D. Additional criminal penalties 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 health facility and will be required to obtain the required applicable health facility licensure.
- [7.8.4.23 NMAC – N, 6/3/2020]

7.8.4.24 SURVEY OR MONITORING VISITS:

- 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 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 non-medical boarding homes facilities to determine compliance with this rule.
 - C. The facility shall provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility. 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 facility.
 - E. 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.
- [7.8.4.24 NMAC – N, 6/3/2020]

7.8.4.25 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. 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 his/her 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 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 facility 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 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 facility will be sent a second 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 department.

(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 facility license.

(5) The licensing authority may accept, reject, or direct the plan of correction.

C. 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.

[7.8.4.25 NMAC – N, 6/3/2020]

7.8.4.26 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 facility and survey by authorized representatives of the licensing authority.

(3) Any person working at the facility 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 facility.

(7) Abuse, neglect or exploitation of any resident by facility operator, staff, or relatives or operator/staff.

(8) 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, 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.

(9) The list above shall not limit the department from imposing sanctions and civil monetary penalties under all applicable statutes, regulations and codes.

[7.8.4.26 NMAC – N, 6/3/2020]

7.8.4.27 HEARING PROCEDURES: Hearing procedures for an administrative appeal of an adverse action taken by the department against a facility's license will be held in accordance with applicable rules relating to adjudicatory hearings, including but not limited to, 7.1.2 NMAC, as amended. 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.

[7.8.4.27 NMAC – N, 6/3/2020]

7.8.4.28 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 facility is in accordance with adjudicatory hearings for licensed facilities, 7.1.2 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 department.

[7.8.4.28 NMAC – N, 6/3/2020]

7.8.4.29 POLICIES AND PROCEDURES: The facility shall establish written policies and procedures that are reviewed annually and approved by the governing body, which govern the facility's operation. 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 facility's written policies and procedures shall include how the facility intends to comply with all requirements of these regulations and address:

- A. incident management system,
- B. the maintenance of the facility, 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 facility 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 facility safe, clean, and free of hazards and clutter,
- L. If applicable, laundry services for the facility'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.

[7.8.4.29 NMAC – N, 6/3/2020]

7.8.4.30 STAFFING REQUIREMENTS:

A. Operator or manager: A boarding home facility 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 7.1.9 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 facility,
- (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,

7.1.12 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 facility) 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,

the residents,

- (3) shall comply with the pre-employment requirements pursuant to the employee abuse registry, 7.1.12 NMAC,

registry, 7.1.12 NMAC,

- (4) shall comply with the current requirements of reporting and investigating incidents

pursuant to incident reporting, intake processing and training requirements, 7.1.13 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:

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) proof of insurance;
- (c) documentation of a clean driving record, and

(6) comply with the requirements of the caregivers criminal history screening requirements,

7.1.9 NMAC.

[7.8.4.30 NMAC – N, 6/3/2020]

7.8.4.31 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 7.1.13

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 facility.

[7.8.4.31 NMAC – N, 6/3/2020]

7.8.4.32 PERSONNEL 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 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.

[7.8.4.32 NMAC – N, 6/3/2020]

7.8.4.33 PERSONNEL RECORDS:

- A. The facility 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 facility and include:
 - (1) Employment application.
 - (2) Training records.
 - (3) Licenses and certifications, if applicable, and
 - (4) caregiver criminal history screening documentation pursuant to 7.1.9 NMAC.

[7.8.4.33 NMAC - N, 6/3/2020]

7.8.4.34 STAFFING REQUIREMENTS AND RATIOS:

- A. Minimum staffing requirements.
 - (1) 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 must be 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 facility.
 - (2) During resident sleeping hours, boarding home facilities shall have at least one direct care staff person available on the premises in case of emergency.
 - (3) 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 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.

[7.8.4.34 NMAC – N, 6/3/2020]

7.8.4.35 RESIDENT ACCEPTANCE, ADMISSIONS AND DISCHARGE: The facility shall complete an admission agreement for each resident. The manager 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 18 or for whom the facility is unable to provide appropriate care as set forth in this regulation.

- A. The facility shall develop admission and discharge criteria and agreements.
- B. Admission criteria must be available in writing to all residents and visitors to the facility.

C. Materials describing services offered, eligibility requirements and resident rights and responsibilities 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 facility 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 service 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.

[7.8.4.35 NMAC – N, 6/3/2020]

7.8.4.36 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 provider.

(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.

B. Individuals with the following criteria would be unacceptable for boarding home admission:

(1) Persons who require more care and supervision than is provided by the facility.

(2) Persons who require nursing care, or who are not ambulatory shall not be accepted into this type of facility.

(3) A boarding home may not accept a resident with dementia or related disorders causing memory impairment.

(4) No person may be admitted to a boarding home who has a primary diagnosis of developmental disability.

(5) A boarding home may not accept a resident whose physician has prescribed a therapeutic diet if those dietary requirements cannot be met.

(6) Persons who have needs that are in conflict with the needs of other residents or the program of services offered.

(7) Any person who currently requires acute inpatient psychiatric care due to a mental disorder

(8) Persons who require inpatient care in a health facility.

(9) Any person who is unable to care for themselves and would be at risk if left alone.

(10) Any person who requires services which the boarding home does not provide or make available shall not be admitted or retained.

(11) Any person who is actively being destructive of property, self-destructive, disturbing or abusive to others, or suicidal or in need of acute inpatient psychiatric services, shall not be admitted.

C. Resident retention limitations: Residents whose behavior exceed their 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.

[7.8.4.36 NMAC – N, 6/3/2020]

7.8.4.37 PROGRAM SERVICES:

A. The facility must be able to provide oversight to the residents, such as reminding them of meals, medications and appointments, to monitor activities while on the premises of the facility.

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 and/or dentist as needed.

C. Boarding homes shall provide assistance with 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 requires a registered nurse to perform or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations. 16.12.5.10 NMAC.

[7.8.4.37 NMAC – N, 6/3/2020]

7.8.4.38 “NEEDS AND SERVICES PLAN”: Prior to admission, the licensee shall determine whether the facility'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. The following individuals shall be included in developing the plan:

- (1) the resident or resident’s surrogate decision maker, or his/her authorized representative, if any,
- (2) any relative participating in the placement,
- (3) the facility manager or designee responsible for facility 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.

B. If the resident is to be admitted, then prior to admission, the licensee shall complete a written needs and services plan, which shall include:

(1) The resident's desires and background, obtained from the resident's family or his/her 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) Facility plans for providing services to meet the individual needs identified above.

(a) Objectives, within a time frame, that relate to the resident's problems and/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.

C. 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 and/or social functioning. If modifications to the plan identify an individual resident service need which is not being met by the general program of facility 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 facility within the facility's program of services.

(2) If it is determined that the resident's needs cannot be met, the licensee shall inform the resident and/or his/her 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.

[7.8.4.38 NMAC – N, 6/3/2020]

7.8.4.39 “RESIDENT RECORDS”: The licensee shall ensure that a separate, complete, and current record is maintained in the facility 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 facility will provide assistance to the resident in meeting his/her 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) Resident records should also include but are not limited to the following:
 - (a) Medical and dental appointments.
 - (b) Accidents or injuries.
 - (c) Any problems or improvements observed in the resident.
 - (d) Any change in the resident’s condition which would indicate a need for higher level of care.
 - (e) Date, time, and services provided by a visiting nurse service.
 - (18) Signed consent for the release of information, if information is released.
 - (19) Documentation of guardianship, agent or other legal decision maker other than resident.
 - (20) 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. 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 the following current records for current residents unless the same information is otherwise readily available in another document or format.
 - (ii) Original resident records or photographic reproductions shall be retained for at least three years following termination of service to the resident.

[7.8.4.39 NMAC – N, 6/3/2020]

7.8.4.40 RESIDENT RIGHTS:

A. All licensed facilities shall understand, protect and respect the rights of all residents. Prior to admission to a facility, 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 meet the resident’s understanding.

B. A written copy of the resident’s legal rights shall be provided to the resident, the resident’s legal guardian or agent, if applicable, or 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) the resident's advocate

C. The resident rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers to contact the department to file a complaint which shall include the licensing authority and the state ombudsman's office.

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, 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 facility 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 during designated visiting hours except when restricted for good cause,
- (9) protect the resident's right to receive visits from his attorney, physician, psychologist, clergyman, or social worker in private irrespective of visiting hours,
- (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 his/her 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 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 his/her own clothes,
- (e) possess and use his/her own personal items, including his/her own toilet articles,
- (f) have access to individual storage space for his/her private use,
- (g) have the right to voice grievances to the facility 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 facility, to participate in community groups and organizations, and to leave the facility 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 facility in accordance with the terms of the admission agreement,

[7.8.4.40 NMAC – N, 6/3/2020]

7.8.4.41 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 current USDA dietary guidelines for Americans. Vending machines shall not be considered a source of snacks.

A. Dietary services. The facility 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.

[7.8.4.41 NMAC – N, 6/3/2020]

7.8.4.42 FOOD SERVICE: Requirements for boarding home facilities.

A. The facility shall have either contracted food preparation or prepare food on site.

B. A facility that provides onsite food preparation shall comply with the New Mexico environment department (NM ED) food preparation regulations.

C. The facility shall have the equipment and staff necessary to receive and serve the food.

D. The facility 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 facility 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 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).
[7.8.4.42 NMAC – N, 6/3/2020]

7.8.4.43 PHARMACEUTICAL SERVICES:

A. Any facility 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 facility.
- (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 facility if the facility has a written procedure for giving such medications reviewed and approved by a licensed physician or advanced practice registered nurse.
- (5) 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.
- (6) The key for the medication storage area must be made available only to personnel duly authorized by the manager of the facility.
- (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 facility 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 facility’s custodial drug permit issued by the state board of pharmacy must be displayed, if any medications are kept by the facility on behalf of any residents.
[7.8.4.43 NMAC – N, 6/3/2020]

7.8.4.44 INFECTION CONTROL:

A. The facility 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 facility shall have policies and procedures for the handling, processing, storing and transporting of clean and dirty laundry.

[7.8.4.44. NMAC – N, 6/3/2020]

7.8.4.45 RESIDENT SAFETY: The facility 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 facility has no medical unit on the grounds, first aid supplies shall be maintained and be readily available in a central location in the facility.

(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 a resident experiences a medical emergency, facility staff should immediately telephone 9-1-1. 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 and/or request regarding resuscitative measures.

(2) For residents with an advance directive and/or request regarding resuscitative measures, during a medical emergency, the facility staff shall present the advance directive and/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 his/her mental and/or physical health or safety, or to the health and safety of others in the facility, the facility staff must immediately telephone 9-1-1.

D. The facility 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 facility.

(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 his/her 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 facility 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 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.

- (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 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.
- (8) The facility shall not require the residents to purchase medications from any particular pharmacy.

[7.8.4.45 NMAC – N, 6/3/2020]

7.8.4.46 COMPLAINTS: The boarding home facility 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 facility's investigation of a complaint(s) must be initiated within three working days of receipt of the complaint.

[7.8.4.46 NMAC – N, 6/3/2020]

7.8.4.47 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,
- (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 facility 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 department of health 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 7.1.13 NMAC, as may be amended from time to time.

B. Documentation: The facility 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, and
- (4) the facility action, if any.

[7.8.4.47 NMAC – N, 6/3/2020]

7.8.4.48 PHYSICAL ENVIRONMENT AND GENERAL BUILDING PLAN REQUIREMENTS:

A. Building plans: Boarding homes licensed for four or more residents the facility must submit building plans. The facility building plans must be of professional quality, prepared and stamped by an architect licensed 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 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 department 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 fire extinguishers, 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 facility 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 department 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.

C. New construction: Building plans must be submitted and will be reviewed by the department for compliance with these licensing regulations, and applicable building and fire safety codes. If the department approves the facility'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 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 department and verify ongoing compliance with these regulations. The department 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 department before construction begins.

D. Completed construction: All new or renovated construction completed shall comply with the building plans approved by the department in the plan review process and prior to construction, these rules, and all other applicable rules and codes; and any of the department'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 department prior to accepting or admitting any residents into the facility.

[7.8.4.48 NMAC – N, 6/3/2020]

7.8.4.49 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 facility and must meet all requirements of these regulations. Where a part of the facility services is contained in another facility, separation and access shall be maintained as described in current building and fire codes.

C. 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 in New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.

D. Use of manufactured homes, modular homes and mobile homes:

(1) Use of a manufactured home or modular 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, trailers and mobile homes shall not be allowed.

(3) Prohibition on recreational vehicles, travel or camper trailers: The use of recreational vehicles, travel or camper trailers which are designed to be towed behind a road vehicle are 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 facility 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.
[7.8.4.49 NMAC – N, 6/3/2020]

7.8.4.50 MAINTENANCE OF BUILDING AND GROUNDS: The facilities 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 facility must be maintained in a safe and sanitary condition at all times.
[7.8.4.50 NMAC – N, 6/3/2020]

7.8.4.51 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, 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 (ICB), current edition as adopted by the New Mexico construction industries division.

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 inch solid core.

[7.8.4.51NMAC – N, 6/3/2020]

7.8.4.52 EXITS:

A. Each floor of a facility shall have exits as required by the latest adopted edition of the New Mexico commercial building code and local codes.

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 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.
[7.8.4.52 NMAC – N, 6/3/2020]

7.8.4.53 HALLWAYS AND CORRIDORS: For facilities contained within existing commercial or residential buildings, corridor widths must conform with latest adopted edition of the New Mexico commercial building and residential codes, and local building codes.
[7.8.4.53 NMAC – N, 6/3/2020]

7.8.4.54 HOUSEKEEPING:

- A. The facility 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.

[7.8.4.54 NMAC – N, 6/3/2020]

7.8.4.55 PROVISIONS FOR EMERGENCY CALLS:

- A. An easily accessible hard-wired 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, local hospital, poison control center, and the department’s division of health improvement’s complaint hotline must be prominently posted by the telephone(s).

[7.8.4.55 NMAC – N, 6/3/2020]

7.8.4.56 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.

[7.8.4.56 NMAC – N, 6/3/2020]

7.8.4.57 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 provide noncombustible metal ash urns.

[7.8.4.57 NMAC – N, 6/3/2020]

7.8.4.58 KITCHEN AND DINING:

A. The facility shall prepare food on site or have contracted food preparation. A facility that provides onsite food preparation shall comply with the current standards and regulations of the New Mexico environment department (NM ED), and other local government authorities.

B. A facility 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 NM ED 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.

[7.8.4.58 NMAC – N, 6/3/2020]

7.8.4.59 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 and/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 shall have a minimum net glazed area (window) not less than eight percent of the floor area of the room served.

D. 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.

[7.8.4.59 NMAC – N, 6/3/2020]

7.8.4.60 RESIDENT ROOMS: Resident bedrooms must meet, at a minimum, the following requirements:

A. A facility shall not exceed the resident (bed) capacity approved by the licensing authority. Any beds or bedroom, 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 areas of the facility.

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 100 square feet.

(2) Semi-private rooms may not house more than two residents and shall provide 80 square feet per resident.

(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.

E. Resident rooms shall not be less than nine feet in any horizontal direction.

F. Each resident room shall have operable window(s) with screens. The area of the outdoor window 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 state commercial or residential building code requirements.

G. Each resident room shall be furnished with well-constructed, comfortable furniture in good repair:

(1) An individual bedframe with a clean, fire-retardant mattress & pillow, with firm support.

(2) Cots, daybeds, bunk beds or futons are not allowed.

(3) In addition to the bed, each resident shall be furnished with a chair, a night stand, and lights 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.

[7.8.4.60 NMAC – N, 6/3/2020]

7.8.4.61 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 latest adopted edition of the New Mexico commercial building and local building codes.

- (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 or provided with mechanical blower.
- (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 facility has live-in staff, a separate toilet, hand washing, and bathing facilities 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 residential building or commercial building code, or local building codes.
- (7) Toilets and bathrooms shall be located near resident bedrooms.
- (8) Individual privacy shall be provided in all toilet, bath and shower areas.

[7.8.4.61 NMAC – N, 6/3/2020]

7.8.4.62 LAUNDRY SERVICES:

A. General requirements: A boarding home facility 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) 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) Facility 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.

[7.8.4.62 NMAC – N, 6/3/2020]

7.8.4.63 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, New Mexico plumbing code, New Mexico mechanical code, and local building codes.

A. Water: 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.

- (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 facility 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 wastes generated by the facility 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.

[7.8.4.63 NMAC – N, 6/3/2020]

7.8.4.64 ELECTRICAL POWER & LIGHTING STANDARDS:

A. All electrical equipment and installation shall comply with the latest adopted edition of the New Mexico electrical code, applicable national standards, and local codes.

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; and

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

[7.8.4.64 NMAC – N, 6/3/2020]

7.8.4.65 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, ventilation, air-conditioning, piping, boilers, and furnaces must be installed and maintained to meet all requirements. The latest adopted edition of the state plumbing, mechanical, and electrical codes, applicable national standards, and local codes.

(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 100 percent automatic cutoff control valve in event of pilot failure.

B. A facility 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. The facility must be provided with an evaporative or refrigerated air conditioning system for maintaining residents and staff's comfort during periods of hot weather.

(1) All building code requirements must be met regarding emergency egress for an outside window or door.

(2) A window unit air conditioner or fan shall not be installed in the required emergency egress window.

D. Fireplace and/or wood burning stoves must be properly vented, have exterior combustion air, securely screened or have tempered glassed doors. Fireplaces or wood burning stoves are not allowed in resident rooms.

[7.8.4.65 NMAC – N, 6/3/2020]

7.8.4.66 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 facility 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 facility.

(1) Copies of the fire inspection records must be kept on file at the facility 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 facility, the facility 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 facility.

B. Staff fire and safety training: All staff of the facility must know the location of, and instructed in proper use of fire extinguishers, fire safety systems, and other procedures to be observed in case of fire or other emergencies.

(1) 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 residents or staff.

(2) The facility should request the fire authority having jurisdiction to give periodic instruction in fire prevention and techniques of evacuation.

C. Evacuation plan: Each facility 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 facility 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 facility. 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, the fire alarm system(s) shall be inspected and approved in writing by the fire authority with jurisdiction.

(2) 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.

(3) Approved carbon monoxide detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas.

F. Fire extinguishers: Fire extinguisher(s) shall be installed in the facility, 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 facility.

(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 latest adopted editions of the New Mexico commercial building & residential building codes, and state fire marshal, or local fire authority having jurisdiction.

(1) Exception: Boarding homes designated as "R-3 in the New Mexico commercial building & residential 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 and their accessory structures. (as referenced in section 310.5 Residential Group R-3).

(2) Exception: Boarding homes designated as "R-3 in the New Mexico commercial building & residential building codes," 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 and their accessory structures. (as referenced in section 310.5 Residential Group R-3).

[7.8.4.66 NMAC – N, 6/3/2020]

7.8.4.67 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, department of health, 7.1.7 NMAC.

B. Health facility sanctions and civil monetary penalties, department of health, 7.1.8 NMAC.

C. Adjudicatory hearings for licensed facilities, department of health, 7.1.2 NMAC.

D. Caregiver's criminal history screening requirements, 7.1.9 NMAC.

E. Employee abuse registry, 7.1.12 NMAC.

F. Incident reporting, intake processing and training requirements, 7.1.13 NMAC.

G. New Mexico Administrative Code, Title 14 Housing and Construction, chapters 5 through 12.

[7.8.4.67 NMAC – N, 6/3/2020]

History of 7.8.4 NMAC:

Pre-NMAC history:

Material in this part was derived from that previously filed with the commission of public records state records center and archives:

HSSD 72-1, New Mexico Licensing regulations and standards for boarding homes, filed 05-26-72.

HSSD 76-6, Adult residential shelter care homes, regulations and standards, filed 09-24-76.

HED 80-2A (HSD), Regulations for community residential facilities for developmentally disabled individuals, filed 09-26-80.

HED 86-3 (HSD), Regulations governing residential shelter care and boarding home facilities for adults, filed 07-11-86.

HED 90-1 (PHD), Regulations governing residential shelter care and boarding home facilities for adults, filed 01/11/90.

History of Repealed Material:

Other History: