

2020 MAY -7 PM 7: 29

**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 that are required to be licensed by the state licensing authority. This rule applies to all boarding homes facilities which receive lodging for compensation and are operated to provide assistance with one or more instrumental activities of daily living or with the coordination of community services to residents who do not need the level of services and supervision provided in a skilled nursing facility, intermediate care facility, assisted living facility, nor a general or special hospital or other institution. This rule does not apply to boarding homes under the control of an institution of higher learning, any facility which is otherwise licensed and regulated by the department, any hotel, 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 using supportive services in the surrounding community to meet the needs of residents.
- E.** Provide for boarding home compliance with these requirements through surveys to identify any areas that could be dangerous or harmful to the health, safety, or welfare of the residents and staff.

[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 abuse, or neglect resulting in harm of an individual resident.
- B.** “Amended license” means an amended license issued due to a change of manager name, location, capacity, or classification of any units.
- C.** “Activities of daily living (ADLs)” as per 42 CFR Section 441.505 2016 “means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring”.

2020 MAY -7 PM 7: 29

**D. “Annual license”** means a license issued for a one-year period to a boarding home that has met all license requirements prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

**E. “Applicant”** means the individual who, or organization which, applies for a license.

**F. “Assisted living facility”** as per 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.

**G. “Bed”** means a piece of furniture which is used as a place to sleep. A bed is a cushioned mattress on a bed frame, the mattress resting on a solid base of wood slats or a box spring inner sprung base.

**H. “Boarding home”** means any facility that is required to be licensed by the department of health, that provides assistance with one or more instrumental activities of daily living or assistance with the coordination of community services, for two or more adults age 18 or older, not related to the owner, that admits residents discharged from any mental or behavioral health care institution.

**I. “Care and supervision”** means any one or more of the following activities provided by a person or boarding home to meet the needs of the residents:

(1) Limited assistance with self-administered medication.

(2) Central storing or distribution of medications, as specified in 16.19.11 NMAC as per the requirements for a boarding and residential care home defined as a licensed custodial care facility by the board of pharmacy.

(3) Arrangement of and assistance with obtaining medical and dental care.

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

(5) Supervision of resident schedules and activities.

(6) Maintenance or supervision of resident’s cash resources or property, money management.

(7) Monitoring food intake or special diets.

(8) Providing basic services, such as, preparing meals, shopping, housework, using a phone or other technology, or assisting with filling out a job application.

**J. “Department”** means the department of health.

**K. “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.

**L. “Instrumental activities of daily living (IADLs)”** as per 42 CFR Section 441.505, “means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community”.

**M. “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.

**N. “Licensee”** means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the boarding home and in whose name a license has been issued and who is legally responsible for compliance with these requirements.

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

**P. “Limited assistance with self-administered medication”** means the individual is capable to self-administer their medication or treatment, but may need cues, reminders or prompts or assistive technology to self-administer their medications. It may include assisting (if needed) with opening of a medication container for the resident and other assistance not involving medication administration. Limited assistance with self-administered medication is not the same as medication administration, which requires a registered nurse (RN) to perform or a certified medication assistant (CMA) under RN supervision who follows board of nursing regulations Section 16.12.5.10 NMAC.

**Q. “Manufactured home”** means any home factory-built pursuant to the 24 CFR part 3280 manufactured home construction and safety standards (commonly known as ‘the HUD-code’) and built on a permanent chassis to ensure transportability.

**R. “Medication administration”** means a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board (board of nursing) to administer medications; as set forth in Paragraph (2) of Subsection A of 16.12.2.7 NMAC.

2020 MAY -7 PM 7: 29

**S. “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.

**T. “Modular home”** means any home factory-built pursuant to the New Mexico regulation and licensing department construction industries regulations, Section 14.12.1 through 14.12.11 NMAC.

**U. “Mobile home”** means a prefabricated residential structure, built in a factory on a permanently attached chassis before being transported to site (either by being towed or on a trailer), and used permanently or semi-permanently in one place in accordance with Section 14.12.1 through 14.12.11 NMAC.

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

**W. “Neglect”** means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness, subject to a person’s right to refuse treatment and subject to a provider’s right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful sexual contact, including such contact with another recipient of care or services.

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

**Y. “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.

**Z. “Personal care services”** means assistance with instrumental activities of daily living.

**AA. “Pharmacist”** means a person licensed under the pharmacy act, Sections 61-11-1 to 61-11-29, NMSA 1978.

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

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

**DD. “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.

**EE. “Resident”** means an individual receiving services and residing in the licensed boarding home.

**FF. “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.

**GG. “Restraint”** means any physical or chemical restraints which restrict freedom of movement or is used for discipline or for the convenience of the boarding home. This includes any article, device, or garment which is used primarily to modify resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room or chemical restraint, which means a medication used primarily to modify behavior by interfering with the resident's freedom of movement or mental alertness. Mechanical supports shall not be considered physical restraints when used pursuant to the residents needs and supports care plan.

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

**II. “Variance”** means a decision that is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

**JJ. “Waive or waiver”** means a decision that is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

[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.

2020 MAY -7 PM 7: 29

[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 to provide residential placement to individuals seeking assistance with instrumental activities of daily living or assistance with accessing or the coordination of community services who may have been discharged from any mental or behavioral health care institution. Individuals who need assistance with one or more activities of daily living or who need a higher level of services and supervision provided in a skilled nursing facility, intermediate care facility, assisted living facility, a general or special hospital or other institution, shall not be placed in a boarding home.

**B.** Licensure is required:

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

(2) Any boarding home providing services described in these regulations that is in operation on the effective date of these regulations must apply for licensure within 30 days of the effective date.

(3) If an unlicensed boarding home is found to be providing services for which a license is required under these regulations or other health facility regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare.

**C.** Exemption from licensure:

(1) The boarding home regulations contained in this rule shall not apply to any of the following:

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

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

(c) Any home operated by a home and community-based medicaid waiver service provider, under contract with the department to provide waiver services.

(d) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, which provides no element of care and supervision.

(e) Any school dormitory or similar facility where all of the following conditions exist:

(i) The school is a public school as defined by Subsection L of Section 22-1-2 NMSA 1978 or a nonpublic school accredited by a generally accepted accreditation agency.

(ii) The school and the school dormitory are on the same grounds.

(iii) The program operates only during normal school terms unless the academic program runs year-around.

(iv) The school's function is educational only.

(v) The school program is not designated as providing rehabilitative or treatment services.

(f) Any care and supervision of persons by a relative, guardian or conservator.

(g) Any care and supervision of persons from only one family by a close friend of the family, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week. The provision of longer hours of care shall not be precluded when provided for a brief period of time for reasons, including but not limited to family emergencies, vacation, and military leave.

(h) Any arrangement for the care and supervision of an adult or adults from only one close friend, who is not a licensee or current employee of a residential care facility for the elderly or of an adult residential facility, and whose friendship pre-existed a provider/recipient relationship, and all of the following are met:

(i) The care and supervision are provided in a home or residence chosen by the recipient, regardless of who owns the home or residence.

(ii) The arrangement is not of a business nature, in that the provider does not represent himself or herself as being in the business of provision of care, and any compensation that may be paid to the provider is only for the value of the services rendered.

(iii) The arrangement occurs and continues only with the one resident.

(i) Any housing project for elderly or disabled individuals that meets other federal requirements.

2020 MAY -7 PM 7: 29

**D.** Other operations not affected: Boarding homes that also rent rooms solely on an owner-resident basis, to individuals who do not require assistance with one or more instrumental activities of daily living or assistance with the coordination of community services, are not required to comply with this rule in respect to those individuals only.

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

**7.8.4.10 GENERAL LICENSING REQUIREMENTS:**

**A.** Application and requirements for licensure:

- (1) All applications shall be made on forms provided by the licensing authority.
  - (a) All information requested on the application must be provided.
  - (b) The application must be dated and signed by the person who shall be the licensee or, if the applicant is an organization, then the individual signing the application on behalf of the organization must have the authority to sign for the organization.
  - (c) The application must be notarized.
- (2) In every application, the applicant shall provide the following information:
  - (a) the identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the boarding home; and
  - (b) the identities of all persons or business entities having five percent ownership interest whatsoever in the boarding home, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building, and
  - (c) the identities of all creditors holding a security interest in the premises, whether land or building; and
  - (d) in the case of a change of ownership, disclosure of any relationship or connection, including familial or direct or indirect business relationship, between the old licensee and the new licensee, and between any owner or operator of the new licensee, whether direct or indirect.
- (3) A license shall not be granted to an owner/applicant who does not clear the caregiver criminal history screening process as set forth in 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 the applicant for fraud, embezzlement or misappropriation of property, and any state or federal adverse action resulting in suspension or revocation of license or permit. All criminal history records obtained pursuant to this section by the department are confidential pursuant to Section 29-17-5 NMSA 1978.
- (4) The new applicant shall submit evidence of sufficient resources to permit operation of the boarding home for a period of six months. The evidence shall include a credit report from a recognized credit bureau, and with a minimum credit score of 650 or above for applicants that are individuals.
- (5) No license may be issued unless and until the applicant has supplied all information requested by the department.
- (6) Fees: All applications for initial licensure must be accompanied by the required fee.
  - (a) Current fee schedules will be provided by the licensing authority.
  - (b) Fees must be in the form of a certified check, money order, personal or business check made payable to the state.
  - (c) Fees are non-refundable.

**B.** Notification and letter of intent: The license applicant shall advise the licensing authority of its intent to open a boarding home pursuant to these regulations by submitting a letter of intent. The letter of intent must be on the applicant's letterhead and signed by a person with authority to make legal decisions for the license applicant and the boarding home and at a minimum, include the following:

- (1) the name of boarding home;
- (2) the name of the owner and licensee and the type of legal entity under which the boarding home shall be owned;
- (3) the name of the management company, if any;
- (4) the type of boarding home license requested;
- (5) the name and resume of the proposed manager;
- (6) the anticipated number of residents to be served;
- (7) the number of beds in the proposed boarding home;
- (8) the physical address of the boarding home including building name or suite number;
- (9) the mailing address, if different from physical address;
- (10) the applicant's contact name(s), address, e-mail address, and telephone number(s);

2020 MAY -7 PM 7: 29

- (11) the anticipated payers and sources of reimbursement; and
- (12) a list of all services to be provided at the boarding home location which is requesting the

license.

**C.** License application and fees: After review by the 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 submit a fully completed, printed or typed, dated, signed and notarized license application. The owner shall submit the application prior to any construction, renovation or addition to an existing building and after review and approval of the letter of intent by the 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 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 compliance by the applicable zoning authority.

**D.** Program description: The applicant must submit with its license application a program outline consistent with these regulations which includes at a minimum, the following information:

- (1) a list and description of all services and the scope of those services to be provided by the proposed boarding home;
- (2) projected number of residents to be served monthly;
- (3) a list of staffing and personnel requirements and duties to be performed;
- (4) proposed staffing plans;
- (5) admission and discharge criteria; and
- (6) an organizational structure diagram or chart including the manager, governing body, direct care staff, and other staff.

**E.** Policies and procedures: The applicant must submit with its license application a copy of the boarding home's policies and procedures with a crosswalk to these regulations to show compliance.

**F.** Building plans: the application for licensure must also include building plans as set forth in this rule. Boarding homes licensed for three or fewer residents are not required to submit building plans.

**G.** Additional documents required for license application: The following additional documents are required to be provided as part of the initial licensure process prior to the issuance of a temporary license, include, but are not limited to:

- (1) Building approvals: The applicant must submit all building approvals required for the boarding home to operate in the jurisdiction in which it is located, including but not limited to:
  - (a) written zoning approval or proof of zoning compliance;
  - (b) building permit final approval, or certificates of occupancy from the appropriate authority (state, city, county, or municipality) for business occupancy; and
  - (c) approvals from the fire safety authority having jurisdiction.
- (2) Environment department approvals: If applicable or required, the applicant must provide written approval from the New Mexico environment department for the following:
  - (a) private water supply;
  - (b) private waste or sewage disposal;
  - (c) kitchen/food service.

(3) Custodial pharmacy permit: Any boarding home licensed pursuant to these regulations that supervises self-administration of medication for the residents or safeguards medication for residents must have an appropriate custodial drug permit from the state board of pharmacy.

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

**7.8.4.11 ACTION BY THE DEPARTMENT:**

**A.** After receiving a 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.

2020 MAY -7 PM 7: 29

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

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

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

requirements;

(b) the boarding home being allowed to accept residents and provide care services, subject to any requirements and restrictions attached to the temporary license.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of manager or when there is a change of name for the boarding home, but an amended license shall only be issued if the manager is not an owner. If the manager is also the owner, a new license application must be submitted as provided in this regulation. The amended license application must:

(1) be on a form, or filed electronically if available, as required by the licensing authority;

(2) be accompanied by the required fee for the amended license; and

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

[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 boarding homes which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same legal lot of record, multiple buildings on contiguous legal lots of record, or contiguous campus or condominium units within the same ownership.

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

2020 MAY -7 PM 7: 29

**7.8.4.15 LICENSE RENEWAL:**

**A.** A licensee must submit a renewal application, electronically, if available, or on forms authorized by the licensing authority, along with the required license fee at least 30 days prior to expiration of the current license. The applicant shall certify that the boarding home complies with all applicable state and federal regulations in force at the time of renewal. The department reserves the right to require that a renewal applicant provide all additional documents, including any necessary proof of current compliance by licensee with these regulations and all applicable state and federal statutes and regulations, as part of its license renewal application for the department to determine whether the applicant and the boarding home are in full compliance with these regulations.

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

**C.** If the existing license expires and the licensee has failed to submit a renewal application, the 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 boarding home remains in full compliance with these regulations. If the boarding home does not renew its license and continues to operate without paying civil monetary penalties and without being in full compliance with these regulations, the boarding home shall cease operations until it obtains a new license through the initial licensure procedures and shall still be required to pay civil monetary penalties. Under Section 24-1-5 NMSA 1978, as amended, no boarding home shall be operated without a license and any such failure may subject the operators to various sanctions and legal remedies, including at a minimum the imposition of civil monetary penalties.

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

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

[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 accessible to public view within the boarding home.

[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 10 days in writing by the licensee. Such writing shall include the name and business address of such officer.

**E.** Any decrease or increase in licensed bed capacity of the boarding home shall require notification by letter to the 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.** 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:

- (1) any ownership interest of the boarding home changes;
- (2) the boarding home changes location;
- (3) the licensee of the boarding home changes;
- (4) the boarding home discontinues operation; or.



2020 MAY -7 PM 7: 29

**B.** A boarding home wishing to continue operation as a boarding home under the conditions described in Paragraphs (1) through (4) above must submit an application for initial licensure in accordance with Paragraph (2) of Subsection B of 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 boarding home shall:

**A.** Submit a new application for an initial license in accordance with these regulations at least 60 days prior to the anticipated change. The 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 intended termination of current ownership, a closure plan and a request for a change of ownership to the licensing authority no later than 60 days prior to the date of sale.

**C.** The new owners shall complete and submit a new license application and transition plan. The license application and transition plan must be submitted to the licensing authority no later than 60 days prior to the date of sale. The new owners must provide a letter agreeing to assume all liabilities to the state and provide the following as described in the initial licensure procedures section of these regulations:

- (1) letter of intent;
- (2) license application and fee;
- (3) program description;
- (4) transition plan; and
- (5) policies and procedures or a statement that the new owners are utilizing previously approved policies and procedures.

(6) Transition plan with timelines, that must include the following:

- (a) process for the reassessment of residents;
- (b) process for hiring boarding home staff and staffing plan identifying staff that will cover all duties upon transition; and
- (c) execution of transfer agreements between the buyer and seller.

(7) Failure by any individual or entity to apply for and obtain a new license while continuing to operate under these regulations, shall be considered in violation of these regulations and the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed boarding home may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.

[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 boarding home discontinues operation, is sold, leased or otherwise changes any ownership interest or changes location, the existing license shall automatically expire at midnight on the date of such action.

**B.** Failure by any owner or new owner to apply for a renewal or new license, while continuing to operate under these regulations, shall be considered a violation and subject to the imposition of civil monetary penalties, sanctions or other actions for operating without a license, allowed under these regulations and all other applicable statutes and regulations.

[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 boarding home's license.

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

2020 MAY -7 PM 7: 30

**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 boarding home's residents and staff and is not in violation of other applicable state and federal statutes and regulations. Variances and waivers are non-transferrable. Waivers and variances may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of residents.

(1) All variances shall be in writing, attached to the license. A variance is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, unless otherwise limited, and provided that the health, safety, or welfare of the residents and staff are not in danger. All variances shall expire upon remodel of the facility or change of ownership.

(2) All waivers shall be in writing, attached to the license, is made at the discretion of the licensing authority to allow a boarding home to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, and shall be limited to the term of the license. Upon renewal of a license, waivers shall only be extended or continued at the sole discretion of the licensing authority.

**B.** Waiver/variance applications:

(1) All applications for waiver or variance from the requirements of these regulations shall be made in writing to the 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 boarding home proposes;
- (d) the reasons for the request; and
- (e) justification that the goal or purpose of the rule or regulations would be satisfied.

(2) Requests for a waiver or variance may be made at any time.

(3) The department may require additional information from the boarding home 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 denial shall contain the reasons for denial.

(2) The terms of a requested variance may be modified upon agreement between the department and a boarding home.

(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 boarding home 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 without a license is subject to the imposition of civil monetary penalties by the licensing authority. Failure to comply with the licensure requirements of this rule within 10 days of notice by the licensing authority may result in the following actions pursuant to health facility sanctions and civil monetary penalties, 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 boarding home that is operating without a license.

**D.** Criminal penalties that may apply and shall be imposed as necessary.

2020 MAY -7 PM 7: 30

E. If it is determined that the boarding home is operating outside the scope of this license it will be deemed operating as an unlicensed boarding home and will be required to obtain the required applicable boarding home licensure.

[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 boarding home by authorized licensing authority representatives during the pendency of the license application, and if licensed, during the licensure period.

B. The licensing authority shall perform on-site survey or monitoring visits at all boarding homes to determine compliance with this rule.

C. The boarding home shall provide the licensing authority full access to all boarding home operations, buildings and information related to the operation of the boarding home. Surveys may be announced or unannounced at the sole discretion of the licensing authority.

D. The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the boarding home.

E. Failure by the boarding home to provide the licensing authority access to the premises or information, including resident records, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, as deemed appropriate by the licensing authority.

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

**7.8.4.25 CORRECTIVE ACTION:** If violations of this rule are cited, the boarding home will be provided with an official statement of deficiencies within 10 business days following the survey.

A. Plan of correction (POC). Upon receipt of a report of deficiency from the licensing authority, and after receipt of a revised statement of deficiencies, when the findings are changed pursuant to an IDR, the licensee or their representative shall be required to submit a plan of correction to the licensing authority within 10 working days stating how the boarding home intends to correct each violation noted and the expected date of completion. All plans of correction for deficiencies, if any, shall be disclosed in compliance with applicable statutes and regulations. A plan of correction is not confidential once it has been approved and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a boarding home license, including to prove licensee compliance violations. The plan of correction must contain the following:

(1) what measures will be put into place or what systematic changes will be made to ensure the deficient practice does not recur;

(2) the anticipated implementation date (a reasonable time-frame is allowed);

(3) how the corrective action will be monitored to ensure compliance;

(4) what quality assurance indicators will be put into place;

(5) who will be responsible to oversee their monitoring; and

(6) the date and signature of the manager or authorized representative.

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

(1) If the first plan of correction (POC) is rejected by the licensing authority, the boarding home will be sent a second copy of the statement of deficiencies. The boarding home shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The department may at its option repeat the process 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 boarding home license.

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

C. Informal dispute review (IDR). The boarding home may request an informal review of survey deficiencies by providing a written request to the licensing authority within 10 calendar days of receipt of the written survey findings. With the request, the boarding home shall include information or evidence that justifies the disagreement with a cited deficiency.

2020 MAY -7 PM 7: 30

- (1) The licensing authority will review the submitted information and make a determination.
  - (2) If the deficiency is removed, a new statement of deficiencies will be issued to the boarding home.
  - (3) The boarding home shall provide a new plan of correction for all remaining deficiencies upon receipt of the new statement of deficiencies.
  - (4) A copy of the "IDR operating rules" is available upon request.
- [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 boarding home and survey by authorized representatives of the licensing authority.
- (3) Any person working at the boarding home under the influence of alcohol or drugs in a manner which harms the health, safety or welfare of the residents, staff or visitors.
- (4) Misrepresentation or falsification of any information or application forms or other documents provided to the licensing authority.
- (5) Discovery of repeat violations of these regulations during surveys.
- (6) Failure to provide the required care and services as outlined by these regulations for the residents receiving care at the boarding home.
- (7) Abuse, neglect or exploitation of any resident by boarding home operator, staff, or relatives of operator/staff.
- (8) Allowing any person, subject to all applicable statutes and regulations, to work at the boarding home if that person is listed on the employee abuse registry, nurse aid registry, or considered an unemployable caregiver or has a disqualifying conviction under the caregivers criminal history screening requirements, 7.1.9 NMAC, as amended, and related regulations as amended.

**C** 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 boarding home'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 boarding home'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 boarding home are in accordance with adjudicatory hearings for licensed facilities, 7.1.2 NMAC.

**B.** All notices, orders or decisions which the licensing authority issues to a boarding home prior to a transfer of ownership shall be in effect against both the former owner and the new owner, unless the transfer of penalties to the new owner is rescinded in writing by the department.

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

**7.8.4.29 POLICIES AND PROCEDURES:** The boarding home shall establish written policies and procedures that are reviewed and approved annually by the governing body. The manager shall ensure that these policies and procedures are adopted, administered and enforced to provide quality services in a safe environment.

2020 MAY -7 PM 7: 30

At a minimum, the boarding home's written policies and procedures shall include how the boarding home intends to comply with all requirements of these regulations and address:

- A. incident management system;
- B. the maintenance of the boarding home, equipment and supplies; inspection and maintenance of emergency equipment; maintenance of emergency supplies; maintenance, upkeep and cleaning of the building(s) and equipment; fire and emergency evacuation procedures;
- C. quality of care and services including appropriate and inappropriate admission and discharge criteria; and resident risk assessment;
- D. referral of residents for services; transfer of residents to a hospital or other facility or program; ambulance transfer services; and emergency procedures and resuscitative techniques;
- E. infectious waste and biohazard disposal in accordance with all applicable statutes and regulations;
- F. infection control and prevention;
- G. staffing plan, personnel records, and minimum staffing;
- H. maintenance of the resident's confidential records including protection of resident confidentiality and privacy as required by law; secure release of medical information and records; and safe handling and storage of resident records including appropriate document destruction procedures;
- I. the retention, maintenance, security and destruction of resident, personnel and boarding home records;
- J. dietary services including meal service; staff in-service training; dietary records; clean and sanitary conditions; and food management;
- K. housekeeping services to keep the boarding home safe, clean, and free of hazards and clutter;
- L. If applicable, laundry services for the boarding home's laundry and resident's laundry including handling, process and storage of clean and dirty laundry;
- M. pharmacy practices including the storage, administration, and disposal of medications; medication management; and documentation;
- N. resident's personal belongings including locked storage and contraband;
- O. resident rights;
- P. smoking policy;
- Q. grievance policy;
- R. house rules, to include freedom permitted and limitations necessary to protect the rights of others;
- S. Visiting hours.

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

**7.8.4.30 STAFFING REQUIREMENTS:**

- A. Operator or manager: A boarding home shall be supervised by a full-time manager. Multiple facilities that are located within a 40-mile radius may have one full-time manager. The manager shall:
    - (1) be at least 21 years of age;
    - (2) have a high school diploma or its equivalent;
    - (3) pass the background check and screening process pursuant to 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 boarding home;
    - (7) provide three notarized letters of reference from persons unrelated to the applicant, and
    - (8) comply with the pre-employment requirements pursuant to the employee abuse registry,
- 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 boarding home) to assume the responsibility of the boarding home;
  - (10) provide orientation to all new employees which shall include resident rights, evacuation and emergency procedures, training in policies and procedures, and competent supervision designed to improve resident care;
  - (11) not act as, or become, the legal guardian of or have power of attorney for any resident.
- B. Direct care staff:
    - (1) shall be at least 18 years of age;

2020 MAY -7 PM 7:30

(2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;

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

C. if a boarding home provides transportation for residents, the employees of the boarding home who drive vehicles and transport residents shall have copies of the following documents on file at the boarding home:

(1) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(2) proof of insurance;

(3) documentation of a clean driving record; and

(4) shall comply with the requirements of the caregivers criminal history screening requirements, 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 boarding home.

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

**7.8.4.32 PERSONNEL POLICIES:** The boarding home shall have and implement written personnel policies for the following:

A. staff, private duty attendant and volunteer qualifications;

B. staff, private duty attendant and volunteer conduct;

C. staff, private duty attendant and volunteer training policies;

D. staff and private duty attendant and volunteer criminal history screening;

E. emergency procedures;

F. medication administration restrictions;

G. the retention and maintenance of current and past personnel records; and

H. facilities shall maintain records and files that reflect compliance with state and federal

employment rules.

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

**7.8.4.33 PERSONNEL RECORDS:**

2020 MAY -7 PM 7: 30

- A. The boarding home shall have policies and procedures for managing personnel information and records.
- B. Staff scheduling records shall be maintained for at least three years.
- C. Employee records shall be kept at the boarding home and include:
  - (1) employment application;
  - (2) training records;
  - (3) licenses and certifications, if applicable, and
  - (4) caregiver criminal history screening documentation pursuant to 7.1.9 NMAC.

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

**7.8.4.34 STAFFING REQUIREMENTS AND RATIOS:** Minimum staffing requirements.

- A. There shall be an adequate number of personnel on duty to provide the basic care, resident assistance and the required supervision based on the assessment of the residents' needs. There shall be at least one staff member on duty or available to be on the premises within 30 minutes, and responsible for care and supervision of residents in case of accidents or emergencies, when residents are present in the boarding home.
- B. During resident sleeping hours, boarding home facilities shall have at least one direct care staff person available on the premises or available to be on the premises within 30 minutes in case of emergency.
- C. Facilities that care for more than 15 residents must have an adequate number of personnel on duty to meet the needs of the residents with a minimum of at least one staff member available at all times and a second staff member on call and capable of being on the premises of the boarding home within 30 minutes.

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

**7.8.4.35 RESIDENT ACCEPTANCE, ADMISSIONS AND DISCHARGE:** The boarding home shall complete an admission agreement for each resident. The manager of the boarding home or a designee responsible for admission decisions shall meet with the resident or the resident's legally authorized person prior to admission. No resident shall be admitted who is below the age of 18 or for whom the boarding home is unable to provide appropriate care as set forth in this regulation.

- A. The boarding home shall develop admission and discharge criteria and agreements.
- B. Admission and discharge criteria must be available in writing to all residents and visitors to the boarding home.
- C. Materials describing services offered, eligibility requirements, resident rights and responsibilities and fees charged must be provided in a form understandable to the resident and legal guardian(s) with consideration of the resident's and guardian's primary language, and the mode of communication best understood by persons with visual or hearing impairments, as applicable.
- D. The admission agreement shall meet these criteria:
  - (1) The services that are provided by the boarding home and the charges for such services must be explained in full.
  - (2) The method of payment by the resident must be clearly stated.
  - (3) The terms and notification process for termination of the admission agreement must be explained and included in the admission agreement.
  - (4) A new admission agreement must be made whenever services to be provided or other terms are changed.
  - (5) The admission agreement shall also contain the responsibilities of the representative payee or other individuals who are assisting the resident, if any.

[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.
  - (2) Although unable to live independently and in need of some protective living accommodations, residents of a boarding home must be able to perform activities of daily living without assistance.
  - (3) Individuals seeking assistance with instrumental activities of daily living or assistance with accessing or the coordination of community services who may have been discharged from any mental or behavioral health care institution.

2020 MAY -7 PM 7: 32

(5) if applicable, the local fire department may be requested to supervise and participate in fire drills.

**E.** Fire alarms, smoke detectors and other equipment: The system shall comply with the current applicable requirements of the state fire marshal, or local fire authority having jurisdiction.

(1) Facilities shall have an automatic fire alarm system, if required by the authority having jurisdiction. The fire alarm system(s) shall be inspected and approved in writing by the fire authority with jurisdiction.

(2) Approved smoke detectors that when activated provides an alarm which is audible in all sleeping areas shall be installed on each floor. Areas of assembly, such as the dining, living or activity room(s) must also be provided with smoke detectors.

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

**F.** Fire extinguishers: Fire extinguisher(s) shall be installed in the boarding home, as approved by the state fire marshal or the local fire prevention authority with jurisdiction.

(1) Facilities must as a minimum have two 2A10BC fire extinguishers:

(a) One extinguisher located in the kitchen or food preparation area.

(b) One extinguisher centrally located in the boarding home.

(c) The maximum distance between fire extinguishers shall be 50 feet.

(d) All fire extinguishers shall be inspected yearly, recharged as needed and tagged

noting the date of the inspection.

(2) Fire extinguishers, alarm systems, automatic detection equipment and other firefighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

**G.** Automatic fire protection (fire sprinkler) system: Facilities shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with the New Mexico commercial building code, international building code (IBC), current edition as adopted by the New Mexico construction industries division and local building codes as applied by the state fire marshal, or local fire authority having jurisdiction.

(1) Exception: Boarding homes designated as "R-3" in the New Mexico commercial building codes, with 10 transient residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress (as referenced in section 310.5 Residential Group R-3).

(2) Exception: Boarding homes designated as "R-3" in the New Mexico commercial building code, with 16 nontransient residents or less, are not required to have a fire sprinkler system, when they are housed in a one- or two-family dwellings units that are not more than three stories above grade plane in height and that have separate means of egress (as referenced in section 310.5 Residential Group R-3).

[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 5/26/1972.

HSSD 76-6, Adult residential shelter care homes, regulations and standards, filed 9/24/1976.



2020 MAY -7 PM 7: 32

HED 80-2A (HSD), Regulations for community residential facilities for developmentally disabled individuals, filed 9/26/1980.

HED 86-3 (HSD), Regulations governing residential shelter care and boarding home facilities for adults, filed 7/11/1986.

HED 90-1 (PHD), Regulations governing residential shelter care and boarding home facilities for adults, filed 1/11/1990.

**HISTORY of 7.8.2 NMAC: [RESERVED]**

**HISTORY OF REPEALED MATERIAL:**

**OTHER HISTORY:**