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NMAC Transmittal Form

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: (ALD Use Only)
New Amendment Repeal Emergency Renumber Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):
Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

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Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

the findings in support of this emergency rule repeal are as stated in the attached letter from Cabinet Secretary Kathyleen M. Kunkel dated June 5, 2020, which is hereby incorporated by reference.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Kathyleen M. Kunkel

Check if authority has been delegated

Title:

Cabinet Secretary

Signature: (BLACK ink only)

Date signed:

Billy Jimenez for Kathyleen Kunkel

6/5/20

MICHELLE LUJAN GRISHAM
GOVERNOR

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KATHYLEEN M. KUNKEL
CABINET SECRETARY

June 5, 2020

State Records and Archives
Attn: Pamela Lujan y Vigil
Rules Management Analyst
Administrative Law Division
Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, NM 87505

**Regarding Emergency Repeal and Replacement and Amendment to Rule 7.28.2 NMAC,
"Requirements for Home Health Agencies"**

Dear Ms. Lujan y Vigil:

The New Mexico Department of Health (Department) is filing an emergency repeal/replacement and amendment to Section A of 7.8.2.33 NMAC, "Requirements for Home Health Agencies" via emergency rulemaking. This emergency rule is adopted to bring the New Mexico regulation into compliance with the federal regulatory changes made by the Centers for Medicare & Medicaid Services (CMS), HHS, to certain rules governing home health agencies in response to changes made with the enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (pub. L. 116-136, March 27, 2020).

On May 8, 2020, CMS published permanent changes to its regulations in CMS-5531-IFC reflecting changes to business relationships among medical providers due to the COVID 19 pandemic and to make permanent an expansion in the list of practitioners who can order home health services to include physician assistants, nurse practitioners and clinical nurse specialists acting within the extent of their licensed scope of practice as defined by state law. The Department of Health is filing this emergency amendment to reflect the list of practitioners set forth in CMS-5531-IFC in order that the Department of Health regulation does not conflict with or violate federal law.

The Department of Health holds authority to promulgate and implement rules that are reasonable and necessary to implement and effectuate the Public Health Act. The emergency repeal/replacement and amendment to Section A of 7.28.2.33 NMAC is adopted in accordance with Section 24-1-5, NMSA 1978, and the State Rules Act at NMSA 1978, § 14-4-5.6 in order to expand the list of practitioners who can order home health services to include physician assistants, nurse practitioners and clinical nurse specialists acting within the extent of their licensed scope of practice, which will bring state regulation into compliance with federal law.

In accordance with the State Rules Act at NMSA 1978, § 14-4-5.6, the Department adopts the emergency repeal/replacement of 7.28.2 NMAC via emergency rulemaking because the original rule document is no longer in the database of Records and Archives and must be updated to NMAC.

OFFICE OF THE SECRETARY

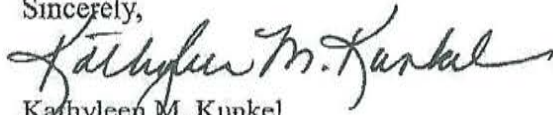
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2 in order to incorporate any amendment. For the reasons stated, the Department finds that the time required to complete the procedures of the State Rules Act would place the agency in conflict with or in violation with federal law. This emergency repeal/replacement and amendment is temporary and will expire in 180 days pursuant to NMSA 1978, § 14-4-5.6(E), unless a permanent rule is adopted under the normal rulemaking process in that period.

Sincerely,



Kathyleen M. Kunkel
Cabinet Secretary