

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) Most recent filing date:
New Amendment Repeal Emergency Renumber

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:

This rulemaking by the Secretary of the Department of Health is made in accordance with the following authorities: Sections 9-7-6, 26-2a-17, and § 24-1-3(S) NMSA 1978.

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

2020 AUG 27 PM 12: 20

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH**

**IN THE MATTER OF THE PROPOSED
ADOPTION OF 7.1.30 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF RULE**

The Cabinet Secretary for the New Mexico Department of Health (“Department”), Kathyleen M. Kunkel, hereby adopts the rule 7.1.30 NMAC. This decision is based on the record in this matter, which includes Exhibits 1 through 10, the recording of the hearing, and the Report and Recommendation of the Hearing Officer, Craig Erickson, Esq., dated August 20, 2020 and received by the Cabinet Secretary on August 21, 2020 via FedEx Express. The rule shall become effective on September 15, 2020, upon publication in the New Mexico Register.

In further support of this action, the Cabinet Secretary finds the following:

1. The Department of Health is authorized to promulgate rules as may be necessary to carry out the duties of the Department and its divisions. NMSA 1978, § 9-7-6(E).

2. The Department of Health is also required, pursuant to the Public Health Emergency Response Act (PHERA) at NMSA 1978, § 12-10a-17, to “promulgate and implement rules that are reasonable and necessary to implement and effectuate the Public Health Emergency Response Act.”

3. By a letter dated June 15, 2020, the Cabinet Secretary designated Mr. Erickson to serve as Hearing Officer for the purpose of conducting the hearing, receiving and reviewing public comment, and submitting a recommendation regarding the proposed rule.

4. Notice of the July 23, 2020 hearing for the proposed rule was provided to the public in accordance with NMSA 1978, Section 9-7-6(E) and NMSA 1978, § 14-4-5.2, which

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Officer has appropriately considered the proposed rule changes and the substantive comments made through public comment; and the Secretary hereby adopts the Hearing Officer's recommendations concerning the proposed rule.

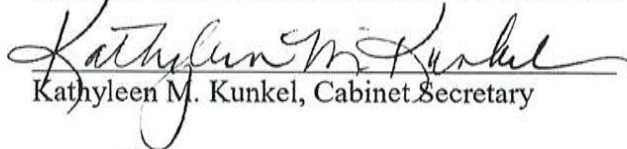
11. The Cabinet Secretary finds that the Department has shown that the proposed rule is reasonable and necessary; that it is in harmony with the agency's express statutory authority under the Public Health Emergency Response Act at NMSA 1978, § 26-2a-17, the Department of Health Act at NMSA 1978, § 9-7-6(E), and the Public Health Act at NMSA 1978, § 24-1-3(S); and that it further springs from the powers that are fairly implied therefrom.

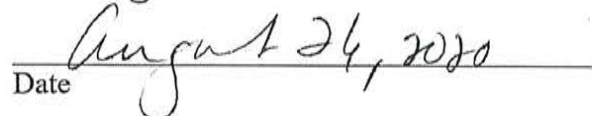
12. The Cabinet Secretary finds that the proposed rule 7.1.30 NMAC has been shown to be reasonably consistent with the statutory purposes of the New Mexico Department of Health. *See, e.g.*, NMSA 1978, § 9-7-3.

13. The Cabinet Secretary further finds that the rule promulgation process met the requirements of the State Rules Act and the New Mexico Attorney General's Default Procedural Rule for Rulemaking at 1.24.25 NMAC.

14. The Cabinet Secretary further finds that the proposed rule, as modified after the hearing based upon the Hearing Officer's recommendation, is appropriate and consistent with authorizing laws, and accordingly, the rule 7.1.30 NMAC is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH


Kathyleen M. Kunkel, Cabinet Secretary


Date