

VIA E-MAIL

October 7, 2020

Craig T. Erickson, Esq.
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RE: Revisions to 7.28.2 NMAC based on public comments received

Dear Mr. Erickson:

The Department of Health (Department) is writing to respond to various public comments received by the Department concerning the proposed repeal and replacement of rule 7.28.2 NMAC. I have attached a revised version of the Rule with changes made in response to public comments for your review and consideration. I have also provided an explanation in response to comments in the body of the letter below

Prior to the hearing, the Department received written comments from Mr. Chris Mechels, Mr. Frank Herrington with the American Association of Nurse Practitioners (AANP), and Ms. Linda Siegle with the New Mexico Nurse Practitioner Council (NMNPC), relating to requested definitions. Mr. Herrington and Ms. Siegal also suggested by comment that the three new practitioners, added by amendment to Section 33 of 7.28.2 NMAC, be added to Section 34.

The Department has adopted several suggested changes to the proposed rule. These adopted changes include adding definitions for the three new practitioners added to Section 33—physician assistant, nurse practitioner and clinical nurse specialist—as suggested by AANP and NMNPC. The definitions of nurse practitioner and clinical nurse specialist suggested by these two groups of licensed medical professionals are from the New Mexico Nurse Practice Act, Section 61-3-3 NMSA 1978. The Department feels use of the definitions from the state nurse practice act is needed for continuity and relevant to public comprehension of the added list of practitioners to the rule. The Department has also revised the proposed rule with a definition of physician assistant, as requested by NMNPC, which comes from the existing 7.9.2 NMAC Requirements for Long Term Care Facilities, which relies upon the existing state Physician Assistant Act, Section 61.6.7-10 NMSA 1978.

The Department has revised Section 34 pursuant to public comment to add the list of the three additional practitioners to paragraphs (A) (1) (d) and (g) of Section 34 for continuity with Section 33, listing the three added practitioners as names that are to be in a patient/client record as well as providing the applicable practitioner with copies of summary reports.

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The Department has also adopted the change suggested by Disability Rights New Mexico (DRNM) comment to Section 33 to provide the individual with inclusion in the decision-making process related to development of a plan of care by adding the term “patient/client” to Paragraphs 1, 2 and 3 of Subsection A. The Department feels this will clarify engagement of a patient/client.

The Department feels the changes made to the proposed rule after the hearing pursuant to public comment are a logical outgrowth of the rule process, and members of the public had a reasonable opportunity to comment on them and could reasonably anticipate that they would be adopted. The changes made were in the written comments posted to the public and fall within the scope of the rulemaking proceeding.

The Department has also corrected a typographical error located in 7.28.2.2. NMAC to replace Section B, which had inadvertently been left out of the proposed replacement rule. No change was intended to this section from the original rule.

Sincerely,

/s/ Ann H. Washburn

Ann H. Washburn
Assistant General Counsel

Attachments: 5

TITLE 7 HEALTH
CHAPTER 28 HOME HEALTH SERVICES
PART 2 REQUIREMENTS FOR HOME HEALTH AGENCIES

7.28.2.1 ISSUING AGENCY: New Mexico department of health, division of health improvement.
[7.28.2.1 NMAC - Rp 7 NMAC 28.2.1, 10/27/20]

7.28.2.2 SCOPE: These regulations apply to:
A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;
B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[7.28.2.2 NMAC - Rp 7 NMAC 28.2.2, 10/27/20]

7.28.2.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of home health agencies have been promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6 NMSA 1978, and Subsection D of Section 24-1-2 and Subsection J of Section 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act, as amended.
[7.28.2.3 NMAC - Rp 7 NMAC 28.2.3, 10/27/20]

7.28.2.4 DURATION: Permanent.
[7.28.2.4 NMAC - Rp 7 NMAC 28.2.4, 10/27/20]

7.28.2.5 EFFECTIVE DATE: October 27, 2020 unless a different date is cited at the end of a section.
[7.28.2.5 NMAC - Rp 7 NMAC 28.2.5, 10/27/20]

7.28.2.6 OBJECTIVE:
A. Establish minimum standards for licensing of home health agencies who provide medically directed therapeutic or supportive services to a patient/client in their place of residence.
B. Monitor home health agencies' compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to a patient/client or staff.
C. Encourage the establishment and maintenance of home health agencies to provide medically directed therapeutic or supportive services, to a patient/client in their place of residence, that maintain or improve the health and quality of life to patients/clients who are in New Mexico.
[7.28.2.6 NMAC - Rp 7 NMAC 28.2.6, 10/27/20]

7.28.2.7 DEFINITIONS: For purposes of these regulations the following shall apply:
A. Definitions beginning with "A":
(1) "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a patient/client, including:
(a) physical contact that harms or is likely to harm a patient/client of a home health agency;
(b) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a patient/client;
(c) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;
(d) medically inappropriate conduct that causes or is likely to cause physical harm to a patient/client;
(e) medically inappropriate conduct that causes or is likely to cause great psychological harm to a patient/client;
(f) an unlawful act, a threat or menacing conduct directed toward a patient/client that results and might reasonably be expected to result in fear or emotional or mental distress to a patient/client.
(2) "Administrator/director" means a qualified individual, on-site, appointed by the governing body who organizes and directs the agency's on-going functions, maintains liaison among the governing body, the group of professional personnel and other staff, employs qualified personnel, ensures adequate staff education, ensures the accuracy of public information materials and activities, and implements an effective

budgeting and accounting system. A branch office must have a qualified on-site branch manager who receives direction and supervision from the parent home health agency's administrator/director.

(3) **"Applicant"** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

(4) **"Auxiliary work station"** means a non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office.

B. Definitions beginning with "B"

(1) **"Branch office"** means a licensed location or site from which a home health agency provides services and is located sufficiently close that it is not impractical for it to receive direction and supervision from the parent home health agency on a day-by-day basis.

(2) **"Bylaws"** means a set of rules adopted by a home health agency for governing the agency's operation.

C. Definitions beginning with "C":

(1) **"Clinical/service note"** means a written notation dated and signed by a member of the health team that summarizes facts about care furnished and the patient/client's response during a given period of time.

(2) **"Clinical Nurse Specialist"** means a registered nurse who is licensed by the New Mexico Board of Nursing for advance practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the New Mexico Board of Nursing, as defined in the Nursing Practice Act, Subsection G of Section 61.3.3 NMSA 1978.

D. Definitions beginning with "D": "Department" means the New Mexico department of health.

E. Definitions beginning with "E":

(1) **"Exception"** Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

(2) **"Exploitation"** of a patient/client consists of the act or process, performed intentionally, knowingly or recklessly, of using any patient/client's money or property, for another person's profit, advantage or benefit. Exploitation includes but is not limited to:

(a) manipulating the patient/client by whatever mechanism to give money or property to any agency staff or management member;

(b) misappropriation or misuse of monies belonging to a patient/client or the unauthorized sale, transfer or use of a patient/client's property;

(c) loans of any kind from patient/clients to agency staff or management;

(d) accepting monetary or other gifts from a patient/client or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year. All gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient.

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G":

(1) **"Governing body"** means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a home health agency licensed pursuant to these regulations.

(2) **"Great psychological harm"** means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

H. Definitions beginning with "H":

(1) **"Home health agency"** means any business, entity or organization primarily engaged in providing medically directed acute, restorative, rehabilitative, maintenance, preventive or supportive services through professional or paraprofessional personnel to a patient/client in the patient/client's residence. This term does not apply to any individual, licensed practitioner providing services within the scope of his/her practice or to any business, entity or organization providing non-medically directed services in a patient/client's place of residence.

(2) **"Home health aide"** means a person who has successfully completed a course of training or demonstrated competency in assisting patient/clients to meet basic personal care needs. A home health aide provides medically directed personal care to patient/clients such as, but not limited to, taking and recording vital signs, bathing, grooming, feeding, ambulation, exercise, oral hygiene and skin care.

(3) **“Home health services”** means those medically directed therapeutic or supportive services provided by a home health agency to a patient/client in his or her place of residence.

(4) **“Homemaker”** means a person who has successfully demonstrated competency to provide household services such as cleaning, meal preparation, laundry, shopping and to assist a patient/client with activities of daily living.

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

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

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

L. Definitions beginning with “L”:

(1) **“Level of care”** means the long term care assessment abstract which medically qualifies a patient/client for medicaid waiver services.

(2) **“Licensed practical nurse”** means a person licensed as a practical nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

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

(4) **“Licensing authority”** means the New Mexico department of health.

M. Definitions beginning with “M”: **“Medically directed services”** means in-home services that are provided in accordance with a patient/client’s plan or level of care which is reviewed and approved by a physician, physician assistant, nurse practitioner or clinical nurse specialist at least annually.

N. Definitions beginning with “N”:

(1) **“Neglect”** means subject to the patient/client’s right to refuse treatment and subject to the caregiver’s right to exercise sound medical discretion, the grossly negligent: (1) failure to provide any treatment, services, care, medication or item that is necessary to maintain the health or safety of a patient/client; (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a patient/client; (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a patient/client.

(2) **“Nurse Practitioner”** means a registered nurse who is licensed by the New Mexico Board of Nursing for advance practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the New Mexico Board of Nursing, as defined in the Nursing Practice Act, Subsection E of Section 61.3.3 NMSA 1978.O. **Definitions beginning with “O”:**

(1) **“Occupational therapist”** is a person who is licensed by the state of New Mexico as an occupational therapist, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

(2) **“Occupational therapist assistant”** is a person who is licensed by the state of New Mexico as a certified occupational therapist assistant, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

P. Definitions beginning with “P”:

(1) **“Parent home health agency”** means an agency that develops and maintains responsibility for the operation and administrative control of branch office(s).

(2) **“Patient/client”** means a person who is receiving home health care services.

(3) **“Personal care attendant/provider”** means a person who has successfully demonstrated competency to provide assistance with personal care such as bathing, grooming, bowel and bladder needs.

(4) **“Physical therapist”** is a person who is licensed by the state of New Mexico as a physical therapist, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(5) **“Physical therapist assistant”** is a person who is licensed by the state of New Mexico as a physical therapist assistant, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(6) **“Physician's assistant”** means a person licensed under Section 61-6-7 through 61-6-10 NMSA 1978, the Physician Assistant Act, to perform as a physician's assistant. ~~(6)(7)~~ **“Plan of care”**

means a written plan of treatment which sets forth each service that the home health agency agrees to provide to a patient/client.

~~(7)(8)~~ **“Plan of correction”** means a plan written and signed by the licensee or representative addressing how and when the licensing authority’s identified deficiencies will be corrected.

~~(8)(9)~~ **“Physician”** is a person who is a doctor of medicine, osteopathy or podiatry licensed to practice medicine.

~~(9)(10)~~ **“Policy”** means a statement of principle that guides and determines present and future decisions and actions.

~~(10)(11)~~ **“Procedure”** means the action(s) that must be taken in order to implement a policy.

~~(11)~~(12) **“Professional personnel”** means the staff of the agency or personnel under contract or agreement with the agency who require a license, registration or certification by the state of New Mexico.

Q. Definitions beginning with “Q”: **“Quality improvement”** means an on-going assessment program which addresses clinical care and program evaluation.

R. Definitions beginning with “R”:

(1) **“Registered nurse”** means a person who holds a certificate of registration as a registered nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

(2) **“Residence”** means the place in New Mexico where a patient/client is residing at the time home health services are provided.

S. Definitions beginning with “S”:

(1) **“Social worker”** is a person who is licensed by the state of New Mexico as a social worker, pursuant to Sections 61-31-1 to 61-31-25 NMSA 1978.

(2) **“Speech language pathologist”** is a person licensed by the state of New Mexico to practice speech language pathology, pursuant to Sections 61-14B-1 to 61-14B-25 NMSA 1978.

(3) **“Supervision”** means direction, guidance and oversight by a qualified person, within his/her sphere of competence, of an individual providing services in accordance with a patient/client’s plan of care.

(4) **“Supportive services”** means medically or non-medically directed assistance to patient/clients to meet basic activities of daily living.

T. Definitions beginning with “T”: **“Therapeutic services”** means a medically directed activity or activities to patients/clients based upon a knowledge of disease processes provided by a home health agency.

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

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

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

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

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

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

[7.28.2.7 NMAC - Rp 7 NMAC 28.2.7, 10/27/20]

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

[7.28.2.8 NMAC - Rp 7 NMAC 28.2.8, 10/27/20]

7.28.2.9 HOME HEALTH AGENCY AND SCOPE OF SERVICES: An agency or organization meeting the following criteria must be licensed as a home health agency:

A. Provides at least one medically directed service, such as, but not limited to:

- (1) skilled nursing
- (2) physical therapy
- (3) occupational therapy
- (4) inhalation therapy
- (5) infusion therapy
- (6) speech language pathology
- (7) social work
- (8) home health aide
- (9) personal care attendant
- (10) homemaker

B. A home health agency must provide at least one of the above services, in its entirety, directly through employees, but may provide other services under arrangements with another agency or organization or provider.

C. A licensed home health agency may also provide non-medically directed services.

D. Home health agency excludes:

- (1) independent or sole practitioners providing in-home services under their respective professional practice acts;
- (2) medical suppliers who do not provide services listed in Paragraph (1) of Subsection D of 7.28.2.9 NMAC above;
- (3) family, friends, volunteers and paid individuals not under the direct control of a home health agency.

E. Branch office: Means a licensed location from which a home health agency provides services to patient/clients. A home health agency may not apply for a license to open a branch office unless the parent agency has been in operation for at least one year, had an annual survey conducted by the licensing authority, and is found to be in substantial compliance with these regulations.

- (1) A branch office must be located within 100 miles distance from the licensed location of the parent home health agency.
- (2) A branch office must have a qualified on-site administrator who receives direction and supervision from the parent home health agency's administrator/director.
- (3) A branch office must be able to provide the same services as the parent home health agency.
- (4) Original patient/client records, if stored at the parent home health agency, shall be made available upon request of the licensing authority within two hours.

F. Service area: A home health agency may only provide services to patient/clients who reside within 100 miles distance from the licensed location of the agency.

- (1) The licensing authority may grant a temporary exception to the 100 mile distance limitation when the following conditions exist:
 - (a) no other home health agency service for the patient/client is available;
 - (b) no home health agency in the area within the 100 miles distance limitation is able or willing to provide services to the patient/client.
- (2) Home health agencies not previously required to be licensed by the licensing authority shall have twelve months from the date these regulations are adopted to comply.

G. Auxiliary work station: A non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office for the limited purposes of storage of supplies and a work area for documentation by staff where a telephone and fax may be available for communication. The auxiliary work station shall not function as a branch office and the following requirements are intended to insure that the work station does not become a branch office:

- (1) must not be utilized to increase the geographical service area of a home health agency or as a substitute for a branch operation of the agency;
- (2) the name of the agency must not be identified by signage at the work station;
- (3) the telephone number for the work station shall not be advertised or otherwise made available to persons or individuals other than staff of the agency;
- (4) patient/clients shall only be admitted by and through the licensed location of the agency;
- (5) no orders for patient/client care from physicians shall be accepted by agency staff at its auxiliary work station;
- (6) no original patient/client records, copies of patient/client records or personnel records shall be maintained by the agency at the auxiliary work station.

[7.28.2.9 NMAC - Rp 7 NMAC 28.2.9, 10/27/20]

7.28.2.10 INITIAL LICENSURE PROCEDURES: The authority to determine if a person(s) or organization is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute and these regulations. To obtain an initial license for a home health agency pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations should be thoroughly understood by the applicant and used as reference prior to applying for initial licensure.

B. The following documents must be submitted to the licensing authority:

- (1) Letter of intent: Submit to the licensing authority a letter of intention to open a home health agency pursuant to these regulations.
- (2) Application for initial license: All information requested by the licensing authority must be provided. All applications for an initial license must be accompanied by the required non-refundable fee.

(3) Functional program outline: Each application for initial licensure must be accompanied by a functional program outline that provides the following information:

- (a) scope of services to be provided by the proposed home health agency;
- (b) estimated number of patient/clients to be served monthly;
- (c) services that will be contracted or arranged with another health provider, i.e., homemaker, I.V. therapy, etc.;
- (d) hours and days of operation.

(4) Home health agency policies: Submit for review and approval by the licensing authority, a copy of the home health agency policies and a copy of these licensing regulations annotated to the agency's policies and procedures. Note: Each regulation must be referenced to the appropriate policy by writing the page or policy number by the corresponding regulation.

C. Upon the licensing authority's approval of items Paragraphs (1) through (4) of Subsection B of 7.28.2.10 NMAC above, a temporary license will be issued. Upon receipt of the temporary license, the home health agency may admit patients/clients.

D. Upon becoming fully operational and accepting a patient/client, a home health agency must submit a written request to the licensing authority for the initial survey.

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

[7.28.2.10 NMAC - Rp 7 NMAC 28.2.10, 10/27/20]

7.28.2.11 LICENSES:

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

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

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

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

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

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

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

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

[7.28.2.11 NMAC - Rp 7 NMAC 28.2.11, 10/27/20]

7.28.2.12 LICENSE RENEWAL:

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

B. Upon receipt of renewal application, required fee and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the agency is in substantial compliance with these regulations.

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

[7.28.2.12 NMAC - Rp 7 NMAC 28.2.12, 10/27/20]

7.28.2.13 POSTING OF LICENSE: The agency's current, original license must be posted in a conspicuous place at the licensed location, as identified in the application for licensure.

[7.28.2.13 NMAC - Rp 7 NMAC 28.2.13, 10/27/20]

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

- A. ownership of the agency changes;
- B. the agency changes location of its office;
- C. licensee of the agency changes;
- D. the agency discontinues operation;
- E. an agency wishing to continue operation as a licensed home health agency under circumstances

Subsections A through D of 7.28.2.14 NMAC above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change.

[7.28.2.14 NMAC - Rp 7 NMAC 28.2.14, 10/27/20]

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

- A. on the day an agency discontinues operation;
- B. on the day an agency is sold, leased, or otherwise changes ownership or licensee;
- C. on the day an agency changes location of its office.

[7.28.2.15 NMAC - Rp 7 NMAC 28.2.15, 10/27/20]

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

[7.28.2.16 NMAC - Rp 7 NMAC 28.2.16, 10/27/20]

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

- A. failure to comply with any provision of these regulations;
- B. failure to allow survey by authorized representatives of the licensing authority;
- C. any person active in the operation of an agency licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. discovery of repeat violations of these regulations during surveys;
- F. failure to provide the required care and services as outlined by these regulations for the patients/clients receiving care from the agency.

[7.28.2.17 NMAC - Rp 7 NMAC 28.2.17, 10/27/20]

7.28.2.18 HEARING PROCEDURES:

- A. Hearing procedures for adverse action taken by the licensing authority against an agency's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.
- B. A copy of the above regulations may be requested at any time by contacting the licensing authority.

[7.28.2.18 NMAC - Rp 7 NMAC 28.2.18, 10/27/20]

7.28.2.19 AGENCY SURVEYS:

- A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a home health agency by authorized licensing authority representatives during pendency of the application, and if licensed, during the licensure period.
- B. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility. The licensing authority may include patient/client home visits as part of any survey or investigation.

C. Upon receipt of the official deficiency statement from the licensing authority, the licensee or his/her representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the agency intends to correct each violation noted and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.
[7.28.2.19 NMAC - Rp 7 NMAC 28.2.19, 10/27/20]

7.28.2.20 ACCEPTANCE OF PATIENTS/CLIENTS: Patients/clients must be accepted for treatment by the agency when there is a reasonable expectation that the patient/client's health care or supportive service needs can be met adequately in the patient/client's place of residence.

[7.28.2.20 NMAC - Rp 7 NMAC 28.2.20, 10/27/20]

7.28.2.21 OFFICE REQUIREMENTS:

A. An agency licensed pursuant to these regulations shall establish and maintain an official office for the conduct of its business with posted hours of operation.

B. The office space must be able to maintain, store and safeguard agency records.

[7.28.2.21 NMAC - Rp 7 NMAC 28.2.21, 10/27/20]

7.28.2.22 HEALTH AND AGE REQUIREMENTS:

A. All staff or contracted personnel involved in the care of patients/clients shall be at least eighteen (18) years of age.

B. All staff, contracted personnel, or volunteers having patient/client contact must have a TB test in accordance with the requirements of the infectious disease bureau, of the public health division, department of health.

[7.28.2.22 NMAC - Rp 7 NMAC 28.2.22, 10/27/20]

7.28.2.23 REQUIREMENTS FOR LICENSURE OF PROFESSIONALS: Any health professional employed or contracted by the home health agency, such as, but not limited to, physicians, physician's assistants, nurse practitioners, physical or occupational therapists, speech language pathologists, registered professional nurses, licensed practical nurses, licensed or certified social workers, physical therapy assistants or certified occupational therapy assistants, must have a current license, registration or certification from the state of New Mexico. Proof of licensure must be maintained on file by the agency.

[7.28.2.23 NMAC - Rp 7 NMAC 28.2.23, 10/27/20]

7.28.2.24 GOVERNING BODY: Each agency licensed pursuant to these regulations must have a governing body who adopts and reviews, at least annually, written by-laws or policies and procedures which govern the day to day operation of the agency.

A. The governing body may include the licensee of the agency.

B. The governing body must have full legal authority and responsibility for the operation of the agency.

C. The governing body must appoint a qualified administrator.

D. The governing body must oversee the management and fiscal affairs of the agency.

E. The governing body must meet at least annually. These meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.24 NMAC - Rp 7 NMAC 28.2.24, 10/27/20]

7.28.2.25 ADVISORY GROUP: Each agency licensed pursuant to these shall have an advisory group.

A. The advisory group shall consist of:

(1) at least three individuals;

(2) an individual representing at least one of the services offered by the agency;

(3) at least one member of the group must be neither an owner or an employee of the agency;

(4) governing body members may also be part of the advisory group.

B. The advisory group shall meet at least semi-annually to perform the following functions:

(1) to review the agency's required policies and procedures and on-going quality improvement program and make recommendations to the governing body, at least annually;

(2) to participate in the agency's program evaluation, at least annually;

- (3) to advise the agency on professional issues;
- (4) to assist the agency in maintaining liaison with other health care providers in the

community and in its community information efforts.

C. The advisory group meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.25 NMAC - Rp 7 NMAC 28.2.25, 10/27/20]

7.28.2.26 ADMINISTRATOR: Each agency licensed pursuant to these regulations must have an administrator appointed by the governing body who:

- A. is a licensed physician; or
- B. is a registered nurse; or
- C. has at a minimum, a high school diploma or general equivalency diploma, training and experience in health services administration, and at least one year of supervisory or administrative experience in home health care;
- D. may also be the supervising physician or registered nurse;
- E. is responsible for implementing the directions of the governing body and organizing and directing the on-going functions of the agency in compliance with these regulations;
- F. a qualified person is authorized in writing to act in the absence of the administrator.

[7.28.2.26 NMAC - Rp 7 NMAC 28.2.26, 10/27/20]

7.28.2.27 RESPONSIBILITIES OF AGENCY PERSONNEL: Home health agencies utilizing any of the following personnel for provision of home care services must assure the responsibilities listed below are met.

A. **Primary service personnel:** including, but not limited to, registered nurses, physical therapists, occupational therapists, speech therapists, social workers, shall:

- (1) provide necessary professional care and guidance within the scope of their licensure;
- (2) evaluate the home for its suitability for the patient/client's care;
- (3) teach the patient/client and caregivers how to provide care;
- (4) develop, evaluate and coordinate the patient/client's plan of care on a continuing basis;
- (5) inform the physician and other personnel of changes in the patient/client's condition and needs;
- (6) perform an evaluation visit and follow-up visits as needed;
- (7) prepare clinical notes.

B. **Secondary service personnel:** Other licensed personnel, including, but not limited to, respiratory therapists, licensed practical nurses, physical therapy assistants, certified occupational therapist assistants, shall:

- (1) provide services in accordance with an established plan of care and agency policies;
- (2) provide necessary professional care and guidance within the scope of their licensure;
- (3) prepare clinical notes;
- (4) evaluate the home for its suitability for the patient/client's care;
- (5) teach the patient/client and caregiver how to provide care;
- (6) inform the physician and other personnel of changes in the patient/client's condition and needs.

C. **Non-licensed personnel:** Individuals, including, but not limited to, home health aides, homemakers, personal care attendants, shall:

- (1) provide personal care including assistance in the activities of daily living;
- (2) assist to maintain a safe and clean environment;
- (3) perform household services and other activities as assigned;
- (4) communicate with appropriate supervisor about changes or variations in the patient/client or home situation;
- (5) teach the patient/client and caregivers how to provide care, within the level of their competency;
- (6) prepare patient/client notes.

[7.28.2.27 NMAC - Rp 7 NMAC 28.2.27, 10/27/20]

7.28.2.28 SUPERVISING PERSONNEL:

A. The medically directed services provided by the agency must be supervised by a licensed professional or an appropriately qualified staff member.

B. The supervising staff member or their alternate who is similarly qualified must be available at all times during operating hours of the agency.

C. The supervising staff member or alternate who is similarly qualified must participate in all activities relevant to the services provided, including developing qualifications for assignments of personnel. [7.28.2.28 NMAC - Rp 7 NMAC 28.2.28, 10/27/20]

7.28.2.29 SUPERVISION OF SECONDARY AND NON-LICENSED PERSONNEL:

A. Licensed practical nurses: Services and care provided by a licensed practical nurse will be furnished under the supervision of a registered nurse who has a minimum of one year home health experience or a minimum of two years nursing experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the licensed practical nurse.
- (2) Conduct and document a supervisory visit to at least one patient/client residence at least every 60 days, or more often as indicated.

B. Physical therapy assistants: Services and care provided by a physical therapy assistant will be furnished under the supervision of a physical therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the physical therapy assistant.
- (2) Conduct and document a supervisory visit to the patient/client residence at least every 30 days or as indicated.
- (3) Be on-call and readily available and within a 100 mile radius, or have appointed another physical therapist in his/her absence.
- (4) Supervise no more than two physical therapy assistants.

C. Certified occupational therapy assistants: Services and care provided by a certified occupational therapy assistant will be furnished under the supervision of an occupational therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

- (1) Identify appropriate tasks to be performed by the certified occupational therapy assistant.
- (2) Conduct and document a supervisory visit to the patient/client residence:
 - (a) at a minimum of every two weeks for intermediate-level certified occupational therapy assistants;
 - (b) at a minimum of every 30 days for advanced-level certified occupational therapy assistants.

D. Home health aides: Services and care provided by a home health aide will be furnished under the supervision of an appropriately licensed professional, such as, registered nurse, physical therapist, occupational therapist, or a speech language pathologist with a minimum of one year experience. Such supervision will include, at a minimum:

- (1) Preparation of written patient/client instructions which identify appropriate tasks to be performed by the home health aide.
- (2) Conduct and document a supervisory visit to the patient/client residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple home health aides require only one supervisory visit. This home health aide need not be present in the patient/client's residence at the time of the supervisory visit.

E. Personal care attendants or equivalent: Services and care provided by a personal care attendant or equivalent will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

- (1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the personal care attendant or equivalent.
- (2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple personal care attendants or equivalent require only one supervisory visit. The personal care attendant need not be present in the patient/client's residence at the time of the supervisory visit.

F. Homemakers: Services and care provided by a homemaker will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

- (1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the homemaker.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple homemakers require only one supervisory visit. The homemaker need not be present in the patient/client's residence at the time of the supervisory visit.

[7.28.2.29 NMAC - Rp 7 NMAC 28.2.29, 10/27/20]

7.28.2.30 HOME HEALTH AIDE TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a home health aide on a full-time, part-time, temporary, per diem, or other basis unless:

(1) that individual is competent to provide services as a home health aide;

(2) that individual has completed a training program or a competency evaluation program as outlined in Subsections C or E of 7.28.2.30 NMAC of these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct home health aide training and the training curriculum to the licensing authority. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of home health aides and document that each is determined competent.

(3) The licensing authority may deny a home health agency the right to conduct home health aide training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial non-compliance with these regulations.

C. Course requirements: Home health aides: The home health aide training program must address each of the subject areas listed below through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(1) The individual being trained must complete at least 16 hours of classroom training before beginning the supervised practical training;

(2) communications skills;

(3) observation, reporting and documentation of patient status and the care or service furnished;

(4) reading and recording of vital signs;

(5) basic infection control procedures;

(6) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(7) maintenance of a clean, safe and healthy environment;

(8) recognizing emergencies and knowledge of emergency procedures (including CPR and first aid);

(9) the physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy and his or her property;

(10) appropriate and safe techniques in personal hygiene and grooming that include, but are not limited to, bathing, shampooing, nail and skin care, oral hygiene and toileting;

(11) safe transfer techniques and ambulation;

(12) normal range of motion and positioning;

(13) nutrition and hydration;

(14) patient/client rights, including respect for cultural diversity;

(15) any other task that the home health agency may choose to have the home health aide perform.

D. Instructor personnel:

(1) The training of home health aides must be performed by, or under the supervision of, a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health services.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide home health aide training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. Competency evaluation includes both a written test and a skills demonstration. Skills demonstration must be observed and documented by a registered nurse or licensed practical nurse.

(2) Documentation must include at least the following information:

(a) Training:

- (i) name of individual taking training;
- (ii) title, purpose and objectives of class;
- (iii) name of instructor and qualifications;
- (iv) number of hours of instruction;
- (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

F. Annual in-service training: Each home health aide must participate in at least 12 documented hours of in-service training during each 12 month period. This requirement may be fulfilled on a prorated basis during the home health aide's first year of employment at the home health agency.

G. Annual performance review: A performance review, including written evaluation and skills demonstration must be completed on each home health aide no less frequently than every 12 months.

[7.28.2.30 NMAC - Rp 7 NMAC 28.2.30, 10/27/20]

7.28.2.31 HOMEMAKER/PERSONAL CARE ATTENDANT OR EQUIVALENT TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a homemaker/personal care attendant or equivalent on a full-time, part time, temporary, per diem or other basis unless:

(1) That individual is competent to provide assigned tasks as a homemaker/personal care attendant or equivalent.

(2) That individual has completed a training program or a competency evaluation program as outlined in Subsections C or E of 7.28.2.31 NMAC of these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct homemaker/personal care attendant or equivalent training and the source of training material. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of homemaker/personal care attendant or equivalent and document that each is determined to be competent.

(3) The licensing authority may deny a home health agency the right to conduct homemaker/personal care attendant or equivalent training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial noncompliance with these regulations.

C. Course requirements: The home health agency's homemaker/personal care attendant or equivalent training program must consist of no less than 40 hours of training, to be completed by the homemaker/personal care attendant or equivalent in the first year of employment. 10 hours of training must be completed prior to placing the homemaker/personal care employee in a patient/client home. Two of the 10 hours may include agency orientation. Eight of the 10 hours training must be patient/client service specific. The training must address, at a minimum, the following areas:

- (1) communication skills;
- (2) patient/client rights, including respect for cultural diversity;
- (3) recording of information for patient/client records;
- (4) nutrition and meal preparation;
- (5) housekeeping skills;
- (6) care of the ill and disabled, including the special needs populations;
- (7) emergency response (including CPR and first aid);
- (8) basic infection control;

(9) home safety.

D. Instructor personnel:

(1) The training of homemaker/personal care attendant or equivalent must be performed by or under the direction of a licensed professional or an appropriately qualified person.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide homemaker/personal care attendant or equivalent training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. The training or competency evaluation must be observed and documented by a licensed professional or an appropriately qualified person.

(2) Documentation must include at least the following information:

(a) Training:

(i) name of individual taking training;

(ii) title, purpose, and objectives of class;

(iii) name of instructor;

(iv) number of hours of instruction;

(v) date instruction was given.

(b) Competency:

(i) name of individual being evaluated for competency;

(ii) date and method used to determine competency.

(3) Annual in-service training: Each homemaker/personal care attendant or equivalent shall participate in at least 10 documented hours of in-service training during each 12 month period.

[7.28.2.31 NMAC - Rp 7 NMAC 28.2.31, 10/27/20]

7.28.2.32 PATIENT/CLIENT RIGHTS: A home health agency licensed pursuant to these regulations must protect and promote the rights of each individual under its care, including each of the following rights:

A. the right to be fully informed in advance about the care and treatment to be provided by the agency;

B. the right to refuse or terminate treatment;

C. the right to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being;

D. the right to participate in planning care and treatment or changes in care or treatment, except for those individuals adjudged incompetent;

E. the right to be treated with dignity and respect and to be free from abuse, neglect, and exploitation. No home health agency to whom a patient/client's money or valuables have been entrusted shall mingle the patient/clients monies, valuables or property, with that of the licensee, staff or management;

F. the right to voice grievances, with respect to treatment or care that is or fails to be furnished, without discrimination or reprisal for voicing such grievances;

G. the right to confidentiality of medical care and patient/client records;

H. the right to have one's property treated with respect;

I. the right to be fully informed, orally and in writing, of all charges for services to be performed by the agency and of any changes in these charges;

J. the right to be informed of the New Mexico home health agency hotline number (1-800-752-8649), hours of operation (8:00am-5:00pm, Monday-Friday), and purpose of the hotline, which is to receive complaints, questions about local home health agencies, or to lodge complaints concerning the implementation of the advance directives requirements;

K. the right to be fully informed regarding advance directives, prior to care being given. This information must include agency policies on advance directives and a description of applicable state law;

L. the right to be fully informed, in writing, of the patient/client's rights pursuant to these regulations.

[7.28.2.32 NMAC - Rp 7 NMAC 28.2.32, 10/27/20]

7.28.2.33 PLAN OF CARE: Care of a patient/client by the agency must follow a written plan of care which is reviewed at least annually.

A. Medically directed care: An agency must follow a written plan of care established and periodically reviewed by a physician, physician assistant, nurse practitioner or clinical nurse specialist within the

extent of their licensed scope of practice as defined by state law. Care continues under the supervision of a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice as defined by state law.

(1) The plan of care shall be developed in consultation with a patient/client, appropriate agency staff and cover all pertinent diagnoses, including but not limited to:

- (a) mental status;
- (b) types of services and equipment required;
- (c) frequency and duration of visits;
- (d) functional limitations;
- (e) activities permitted;
- (f) nutritional requirements;
- (g) medications and treatments;
- (h) safety measures to protect against injury;
- (i) plans or goals for care;
- (j) any other appropriate items.

(2) If a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice, refers a patient/client under a plan of care which cannot be completed until after an evaluation visit, the patient/client, physician, physician assistant, nurse practitioner and clinical nurse specialist must be consulted to approve additions or modifications to the original plan.

(3) The plan of care must be reviewed by the patient/client, attending physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice, and home health agency personnel at least annually or as often as the condition of the patient/client requires.

(4) Agency professional staff must promptly alert the physician, physician assistant, nurse practitioner and clinical nurse specialist to any changes that suggest a need to alter the plan of care.

(5) Conformance with physician, physician assistant, nurse practitioner and clinical nurse specialist's orders:

(a) Drugs and treatments shall be administered by agency staff only as ordered by the physician, or physician assistants, nurse practitioners and clinical nurse specialists within the extent of their licensed scope of practice as defined by state law.

(b) Licensed professionals must immediately record and sign oral orders and obtain the physician, or physician assistant, nurse practitioner or clinical nurse specialist's countersignature.

(c) For a patient/client receiving nursing services, all medications a patient/client may be taking must be checked to identify possible ineffective drug therapy, adverse reactions, significant side effects, drug allergies and contraindicated medications. Medication problems must be promptly reported to the physician, or physician assistant, nurse practitioner or clinical nurse specialist.

B. Non-medically directed care: An agency must follow a written plan of care, which includes goals and objectives appropriate to the patient/client being served, and which is established and reviewed at least annually by agency staff.

[7.28.2.33 NMAC - Rp 7 NMAC 28.2.33, 10/27/20]

7.28.2.34 PATIENT/CLIENT RECORDS: Each agency licensed pursuant to these regulations must maintain the original record for each patient/client receiving services. Patient/client records shall be made available for review upon request of the licensing authority. Every record must be accurate, legible, promptly completed and consistently organized. A patient/client record must meet the following criteria:

A. Content of patient/client record:

- (1) Medically directed patient/client record must include:
- (a) past and current medical findings in accordance with accepted professional standard;
 - (b) plan of care;
 - (c) identifying information;
 - (d) name of physician, physician assistant, nurse practitioner or clinical nurse specialist;
 - (e) medications, diet, treatment/services, and activity orders;
 - (f) signed and dated notes on the day service(s) provided;
 - (g) copies of summary reports sent to the physician, physician assistant, nurse practitioner or clinical nurse specialist;

- (h) evidence of patient/client being informed of rights;
- (i) evidence of coordination of care provided by all personnel providing patient/client services;
- (j) discharge summary.
- (2) Non-medically directed patient/client records must include:
 - (a) plan of care;
 - (b) identifying information;
 - (c) signed and dated notes on the day service(s) provided;
 - (d) evidence of patient/client being informed of rights;
 - (e) evidence of coordination of care of all personnel providing patient/client services;
 - (f) evidence of discharge.

B. If the patient/client is discharged or transferred to another provider of health care, upon receipt of a signed request from the patient/client, a copy of the original record or an abstract of the same must be made available to the receiving facility, within 24 hours.

C. Protection of patient/client records:

- (1) The agency must insure that the original patient/client records and information is safeguarded against loss or unauthorized use.
- (2) The agency must have written policies and procedures governing the use and removal of patient/client records and conditions for release of information.
- (3) Patient/client's written consent is required for release of information not authorized by law.

D. Retention of patient/client records:

- (1) Original patient/client records shall be retained for at least 10 years after the patient/client is discharged.
- (2) Original patient/client records shall be maintained for the requisite period even if the agency has discontinued operations.
- (3) The licensing authority must be notified, in writing, prior to discontinuing operation of the storage location of patient/client records.

[7.28.2.34 NMAC - Rp 7 NMAC 28.2.34, 10/27/20]

7.28.2.35 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE AGENCY:

- A.** a copy of the last survey conducted by the licensing authority;
- B.** licensing regulations: A copy of these regulations 7.28.2 NMAC;
- C.** agreements or contracts to provide services or care;
- D.** patient/client records;
- E.** staff records;
- F.** training and in-service records as applicable;
- G.** minutes of advisory group and governing board meetings;
- H.** quality improvement program records;
- I.** grievances and resolutions;
- J.** state board of pharmacy certificates as applicable.

[7.28.2.35 NMAC - Rp 7 NMAC 28.2.35, 10/27/20]

7.28.2.36 CONTRACTED SERVICES: Services that are provided under arrangement by an individual or entity and the home health agency, shall include a written contract between those individuals or entities and the agency, that specifies the following:

- A.** that patients are accepted for care only by the primary (admitting) home health agency;
- B.** the services to be furnished under the contract;
- C.** the necessity to conform to all applicable agency policies including personnel qualifications;
- D.** the responsibility for participating in developing plans of care;
- E.** the manner in which services will be controlled, coordinated and evaluated by the primary agency;
- F.** the procedures for submitting clinical notes, scheduling of visits and conducting periodic patient evaluation;
- G.** the procedures for payment for services furnished under the contract.

[7.28.2.36 NMAC - Rp 7 NMAC 28.2.36, 10/27/20]

7.28.2.37 STAFF RECORDS: Each agency licensed pursuant to these regulations must maintain a complete record on file for each staff member and for all volunteers with in-home contact or working more than half-time. Staff records shall be made available for review upon request of the licensing authority within four hours. Staff records must contain at least the following:

- A. name;
- B. address;
- C. position for which employed;
- D. date of employment;
- E. health certificate for all staff having contact with patient/clients stating that the employee is free from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, department of health;

from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, department of health;

F. a copy or proof of the current license, registration or certificate for each staff member for whom a license, registration, or certification is required by the state of New Mexico.

[7.28.2.37 NMAC - Rp 7 NMAC 28.2.37, 10/27/20]

7.28.2.38 POLICIES AND PROCEDURES: Each agency licensed pursuant to these regulations must have written policies and procedures for at least the following:

- A. scope of services offered;
- B. providing of services through arrangement or contract with individuals or agencies;
- C. admission and discharge;
- D. written job descriptions for all categories of personnel;
- E. personnel policies;
- F. staff training;
- G. emergency and after normal business hour care policies/procedures;
- H. preparation, safeguarding, and release of information from patient/client records;
- I. quality improvement program;
- J. complaints and grievances, including timely resolution.

[7.28.2.38 NMAC - Rp 7 NMAC 28.2.38, 10/27/20]

7.28.2.39 QUALITY IMPROVEMENT: Each agency must establish an on-going quality improvement program to ensure an adequate and effective operation. To be considered on-going, the quality improvement program must document quarterly activity that addresses, but is not limited to:

A. **Clinical care:** Assessment of patient/client goals and outcome, such as, diagnosis(es), plan of care, services provided, and standards of patient/client care.

B. **Operational activities:** Assessment of the total operation of the agency, such as, policies and procedures, statistical data (i.e., admissions, discharges, total visits by discipline, etc.), summary of quality improvement activities, summary of patient/client complaints and resolutions, and staff utilization.

C. **Quality improvement action plan:** Written responses to address existing or potential problems which have been identified.

D. **Documentation of activities:** The results of the quality improvement activities shall be compiled annually in report format and formally reviewed and approved by the governing body and advisory group of the home health agency. No more than one year may lapse between evaluations of the same part.

E. The licensing authority may, at its sole discretion, request quarterly activity summaries of an agency's on-going quality improvement activities or may direct the agency to conduct specific quality improvement studies.

[7.28.2.39 NMAC - Rp 7 NMAC 28.2.39, 10/27/20]

7.28.2.40 COMPLAINTS: The home health agency must investigate complaints made by a patient/client, caregiver, or guardian regarding treatment or care, or regarding the lack of respect for the patient/client's property and must document both the existence of the complaint and the resolution of the complaint. The agency's investigation of a complaint(s) must be initiated within three working days.

[7.28.2.40 NMAC - Rp 7 NMAC 28.2.40, 10/27/20]

7.28.2.41 INCIDENTS:

A. Reporting: All home health agencies licensed pursuant to these regulations must report to the licensing authority any of the following which has, or could threaten the health, safety and welfare of the patient/clients or staff:

- (1) any serious incident or unusual occurrence;
- (2) injuries of unknown origin or known, suspected or alleged incidents of patient/client abuse, neglect, exploitation, or mistreatment by staff or person(s) contracted by the home health agency.

B. Documentation: The agency is responsible for documenting all incidents, within five days of the incident, and having on file the following:

- (1) a narrative description of the incident;
- (2) evidence contact was made to the licensing authority;
- (3) results of the facility's investigation;
- (4) the facility action, if any.

[7.28.2.41 NMAC - Rp 7 NMAC 28.2.41, 10/27/20]

7.28.2.42 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico department of health, 7.1.7 NMAC.

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

C. Adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.

[7.28.2.42 NMAC - Rp 7 NMAC 28.2.42, 10/27/20]

HISTORY OF 7.28.2 NMAC:

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HSSD 77-4, Home Health Agency Licensing Regulations, 7/22/1977.

DOH 91-2 (PHD), New Mexico Regulations Governing Home Health Agencies, 5/7/1991.

History of Repealed Material:

7 NMAC 28.2, Requirements For Home Health Agencies (filed 10/31/2001), Repealed 10/27/20.

Other History:

7 NMAC 28.2, Requirements For Home Health Agencies (filed 10/31/2001), replaced by 7.28.2 NMAC - Requirements For Home Health Agencies, effective 10/27/20.

TITLE 7 HEALTH
CHAPTER 28 HOME HEALTH SERVICES
PART 2 REQUIREMENTS FOR HOME HEALTH AGENCIES

7.28.2.1 ISSUING AGENCY: New Mexico department of health, division of health improvement.
[7.28.2.1 NMAC - Rp 7 NMAC 28.2.1, ~~6/5/2020~~ 10/27/20]

7.28.2.2 SCOPE: These regulations apply to:
A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;
B. any facility providing services as outlined by these regulations which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.
[7.28.2.2 NMAC - Rp 7 NMAC 28.2.2, 10/27/20]

~~A. public, profit or nonprofit home health agencies providing services as outlined by these regulations;~~
~~The licensed by the state of New Mexico to obtain or maintain full or partial, permanent or temporary federal funding.~~
[7.28.2.2 NMAC - Rp 7 NMAC 28.2.2, 6/5/2020]

7.28.2.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of home health agencies have been promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6 NMSA 1978, and Subsection D of Section 24-1-2 and Subsection J of Section 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act, as amended.
[7.28.2.3 NMAC - Rp 7 NMAC 28.2.3, ~~6/5/2020~~ 10/27/20]

7.28.2.4 DURATION: Permanent.
[7.28.2.4 NMAC - Rp 7 NMAC 28.2.4, ~~6/5/2020~~ 10/27/20]

7.28.2.5 EFFECTIVE DATE: ~~October 27~~ June 5, 2020 unless a different date is cited at the end of a section.
[7.28.2.5 NMAC - Rp 7 NMAC 28.2.5, ~~6/5/2020~~ 10/27/20]

7.28.2.6 OBJECTIVE:
A. Establish minimum standards for licensing of home health agencies who provide medically directed therapeutic or supportive services to a patient/client in their place of residence.
B. Monitor home health agencies' compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to a patient/client or staff.
C. Encourage the establishment and maintenance of home health agencies to provide medically directed therapeutic or supportive services, to a patient/client in their place of residence, that maintain or improve the health and quality of life to patients/clients who are in New Mexico.
[7.28.2.6 NMAC - Rp 7 NMAC 28.2.6, ~~6/5/2020~~ 10/27/20]

7.28.2.7 DEFINITIONS: For purposes of these regulations the following shall apply:
A. Definitions beginning with "A":
(1) "Abuse" means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a patient/client, including:
(a) physical contact that harms or is likely to harm a patient/client of a home health agency;
(b) inappropriate use of a physical restraint, isolation or medication that harms or is likely to harm a patient/client;
(c) inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order;
(d) medically inappropriate conduct that causes or is likely to cause physical harm to a patient/client;
(e) medically inappropriate conduct that causes or is likely to cause great psychological harm to a patient/client;

(f) an unlawful act, a threat or menacing conduct directed toward a patient/client that results and might reasonably be expected to result in fear or emotional or mental distress to a patient/client.

(2) **“Administrator/director”** means a qualified individual, on-site, appointed by the governing body who organizes and directs the agency’s on-going functions, maintains liaison among the governing body, the group of professional personnel and other staff, employs qualified personnel, ensures adequate staff education, ensures the accuracy of public information materials and activities, and implements an effective budgeting and accounting system. A branch office must have a qualified on-site branch manager who receives direction and supervision from the parent home health agency’s administrator/director.

(3) **“Applicant”** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have authority from the organization. The applicant must be the owner.

(4) **“Auxiliary work station”** means a non-licensed, non-staffed convenience work station away from the licensed location of the home health agency’s office.

B. Definitions beginning with “B”

(1) **“Branch office”** means a licensed location or site from which a home health agency provides services and is located sufficiently close that it is not impractical for it to receive direction and supervision from the parent home health agency on a day-by-day basis.

(2) **“Bylaws”** means a set of rules adopted by a home health agency for governing the agency’s operation.

C. Definitions beginning with “C”:

(1) **“Clinical/service note”** means a written notation dated and signed by a member of the health team that summarizes facts about care furnished and the patient/client’s response during a given period of time.

(2) **“Clinical Nurse Specialist”** means a registered nurse who is licensed by the New Mexico Board of Nursing for advance practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the New Mexico Board of Nursing, as defined in the Nursing Practice Act, Subsection G of Section 61.3.3 NMSA 1978.

D. Definitions beginning with “D”: **“Department”** means the New Mexico department of health.

E. Definitions beginning with “E”:

(1) **“Exception”** Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

(2) **“Exploitation”** of a patient/client consists of the act or process, performed intentionally, knowingly or recklessly, of using any patient/client’s money or property, for another person’s profit, advantage or benefit. Exploitation includes but is not limited to:

(a) manipulating the patient/client by whatever mechanism to give money or property to any agency staff or management member;

(b) misappropriation or misuse of monies belonging to a patient/client or the unauthorized sale, transfer or use of a patient/client’s property;

(c) loans of any kind from patient/clients to agency staff or management;

(d) accepting monetary or other gifts from a patient/client or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year. All gifts received by agency operators, their families or staff of the agency must be documented and acknowledged by the person giving the gift and the recipient.

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

G. Definitions beginning with “G”:

(1) **“Governing body”** means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a home health agency licensed pursuant to these regulations.

(2) **“Great psychological harm”** means psychological harm that causes mental or emotional incapacitation for a prolonged period of time or that causes extreme behavioral change or severe physical symptoms that require psychological or psychiatric care.

H. Definitions beginning with “H”:

(1) **“Home health agency”** means any business, entity or organization primarily engaged in providing medically directed acute, restorative, rehabilitative, maintenance, preventive or supportive services through professional or paraprofessional personnel to a patient/client in the patient/client’s residence. This term does not apply to any individual, licensed practitioner providing services within the scope of his/her practice or to

any business, entity or organization providing non-medically directed services in a patient/client's place of residence.

(2) **“Home health aide”** means a person who has successfully completed a course of training or demonstrated competency in assisting patient/clients to meet basic personal care needs. A home health aide provides medically directed personal care to patient/clients such as, but not limited to, taking and recording vital signs, bathing, grooming, feeding, ambulation, exercise, oral hygiene and skin care.

(3) **“Home health services”** means those medically directed therapeutic or supportive services provided by a home health agency to a patient/client in his or her place of residence.

(4) **“Homemaker”** means a person who has successfully demonstrated competency to provide household services such as cleaning, meal preparation, laundry, shopping and to assist a patient/client with activities of daily living.

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

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

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

L. Definitions beginning with “L”:

(1) **“Level of care”** means the long term care assessment abstract which medically qualifies a patient/client for medicaid waiver services.

(2) **“Licensed practical nurse”** means a person licensed as a practical nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

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

(4) **“Licensing authority”** means the New Mexico department of health.

M. Definitions beginning with “M”: **“Medically directed services”** means in-home services that are provided in accordance with a patient/client's plan or level of care which is reviewed and approved by a physician, physician assistant, nurse practitioner or clinical nurse specialist at least annually.

N. Definitions beginning with “N”:

(1) **“Neglect”** means subject to the patient/client's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent: (1) failure to provide any treatment, services, care, medication or item that is necessary to maintain the health or safety of a patient/client; (2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a patient/client; (3) failure to carry out a duty to supervise properly or control the provision of any treatment, care, good, service or medication necessary to maintain the health or safety of a patient/client.

(2) **“Nurse Practitioner”** means a registered nurse who is licensed by the New Mexico Board of Nursing for advance practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the New Mexico Board of Nursing, as defined in the Nursing Practice Act, Subsection E of Section 61.3.3 NMSA 1978.

O. Definitions beginning with “O”:

(1) **“Occupational therapist”** is a person who is licensed by the state of New Mexico as an occupational therapist, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

(2) **“Occupational therapist assistant”** is a person who is licensed by the state of New Mexico as a certified occupational therapist assistant, pursuant to Sections 61-12A-1 to 61-12A-24 NMSA 1978.

P. Definitions beginning with “P”:

(1) **“Parent home health agency”** means an agency that develops and maintains responsibility for the operation and administrative control of branch office(s).

(2) **“Patient/client”** means a person who is receiving home health care services.

(3) **“Personal care attendant/provider”** means a person who has successfully demonstrated competency to provide assistance with personal care such as bathing, grooming, bowel and bladder needs.

(4) **“Physical therapist”** is a person who is licensed by the state of New Mexico as a physical therapist, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(5) **“Physical therapist assistant”** is a person who is licensed by the state of New Mexico as a physical therapist assistant, pursuant to Sections 61-12-1 to 61-12-21 NMSA 1978.

(6) **“Physician's assistant”** means a person licensed under Section 61-6-7 through 61-6-10 NMSA 1978, the Physician Assistant Act, to perform as a physician's assistant.

(6)(7) **“Plan of care”** means a written plan of treatment which sets forth each service that the home health agency agrees to provide to a patient/client.

~~(7)~~**(8)** **“Plan of correction”** means a plan written and signed by the licensee or representative addressing how and when the licensing authority’s identified deficiencies will be corrected.

~~(8)~~**(9)** **“Physician”** is a person who is a doctor of medicine, osteopathy or podiatry licensed to practice medicine.

~~(9)~~**(10)** **“Policy”** means a statement of principle that guides and determines present and future decisions and actions.

~~(10)~~**(11)** **“Procedure”** means the action(s) that must be taken in order to implement a policy.

~~(11)~~**(12)** **“Professional personnel”** means the staff of the agency or personnel under contract or agreement with the agency who require a license, registration or certification by the state of New Mexico.

Q. Definitions beginning with “Q”: **“Quality improvement”** means an on-going assessment program which addresses clinical care and program evaluation.

R. Definitions beginning with “R”:

(1) **“Registered nurse”** means a person who holds a certificate of registration as a registered nurse in the state of New Mexico under the Nursing Practice Act, Sections 61-3-1 to 61-3-31 NMSA 1978.

(2) **“Residence”** means the place in New Mexico where a patient/client is residing at the time home health services are provided.

S. Definitions beginning with “S”:

(1) **“Social worker”** is a person who is licensed by the state of New Mexico as a social worker, pursuant to Sections 61-31-1 to 61-31-25 NMSA 1978.

(2) **“Speech language pathologist”** is a person licensed by the state of New Mexico to practice speech language pathology, pursuant to Sections 61-14B-1 to 61-14B-25 NMSA 1978.

(3) **“Supervision”** means direction, guidance and oversight by a qualified person, within his/her sphere of competence, of an individual providing services in accordance with a patient/client’s plan of care.

(4) **“Supportive services”** means medically or non-medically directed assistance to patient/clients to meet basic activities of daily living.

T. Definitions beginning with “T”: **“Therapeutic services”** means a medically directed activity or activities to patients/clients based upon a knowledge of disease processes provided by a home health agency.

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

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

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

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

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

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

[7.28.2.7 NMAC - Rp 7 NMAC 28.2.7, ~~6/5/2020~~ 10/27/20]

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

[7.28.2.8 NMAC - Rp 7 NMAC 28.2.8, ~~6/5/2020~~ 10/27/20]

7.28.2.9 HOME HEALTH AGENCY AND SCOPE OF SERVICES: An agency or organization meeting the following criteria must be licensed as a home health agency:

A. Provides at least one medically directed service, such as, but not limited to:

- (1) skilled nursing
- (2) physical therapy
- (3) occupational therapy
- (4) inhalation therapy
- (5) infusion therapy
- (6) speech language pathology
- (7) social work
- (8) home health aide

(9) personal care attendant

(10) homemaker

B. A home health agency must provide at least one of the above services, in its entirety, directly through employees, but may provide other services under arrangements with another agency or organization or provider.

C. A licensed home health agency may also provide non-medically directed services.

D. Home health agency excludes:

(1) independent or sole practitioners providing in-home services under their respective professional practice acts;

(2) medical suppliers who do not provide services listed in Paragraph (1) of Subsection D of 7.28.2.9 NMAC above;

(3) family, friends, volunteers and paid individuals not under the direct control of a home health agency.

E. Branch office: Means a licensed location from which a home health agency provides services to patient/clients. A home health agency may not apply for a license to open a branch office unless the parent agency has been in operation for at least one year, had an annual survey conducted by the licensing authority, and is found to be in substantial compliance with these regulations.

(1) A branch office must be located within 100 miles distance from the licensed location of the parent home health agency.

(2) A branch office must have a qualified on-site administrator who receives direction and supervision from the parent home health agency's administrator/director.

(3) A branch office must be able to provide the same services as the parent home health agency.

(4) Original patient/client records, if stored at the parent home health agency, shall be made available upon request of the licensing authority within two hours.

F. Service area: A home health agency may only provide services to patient/clients who reside within 100 miles distance from the licensed location of the agency.

(1) The licensing authority may grant a temporary exception to the 100 mile distance limitation when the following conditions exist:

(a) no other home health agency service for the patient/client is available;

(b) no home health agency in the area within the 100 miles distance limitation is able or willing to provide services to the patient/client.

(2) Home health agencies not previously required to be licensed by the licensing authority shall have twelve months from the date these regulations are adopted to comply.

G. Auxiliary work station: A non-licensed, non-staffed convenience work station away from the licensed location of the home health agency's office for the limited purposes of storage of supplies and a work area for documentation by staff where a telephone and fax may be available for communication. The auxiliary work station shall not function as a branch office and the following requirements are intended to insure that the work station does not become a branch office:

(1) must not be utilized to increase the geographical service area of a home health agency or as a substitute for a branch operation of the agency;

(2) the name of the agency must not be identified by signage at the work station;

(3) the telephone number for the work station shall not be advertised or otherwise made available to persons or individuals other than staff of the agency;

(4) patient/clients shall only be admitted by and through the licensed location of the agency;

(5) no orders for patient/client care from physicians shall be accepted by agency staff at its auxiliary work station;

(6) no original patient/client records, copies of patient/client records or personnel records shall be maintained by the agency at the auxiliary work station.

[7.28.2.9 NMAC - Rp 7 NMAC 28.2.9, ~~6/5/2020~~ 10/27/20]

7.28.2.10 INITIAL LICENSURE PROCEDURES: The authority to determine if a person(s) or organization is subject to regulation under the statute is inherent in the responsibility to regulate agencies that are within the definitions of the statute and these regulations. To obtain an initial license for a home health agency pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations should be thoroughly understood by the applicant and used as reference prior to applying for initial licensure.

B. The following documents must be submitted to the licensing authority:

(1) Letter of intent: Submit to the licensing authority a letter of intention to open a home health agency pursuant to these regulations.

(2) Application for initial license: All information requested by the licensing authority must be provided. All applications for an initial license must be accompanied by the required non-refundable fee.

(3) Functional program outline: Each application for initial licensure must be accompanied by a functional program outline that provides the following information:

(a) scope of services to be provided by the proposed home health agency;

(b) estimated number of patient/clients to be served monthly;

(c) services that will be contracted or arranged with another health provider, i.e., homemaker, I.V. therapy, etc.;

(d) hours and days of operation.

(4) Home health agency policies: Submit for review and approval by the licensing authority, a copy of the home health agency policies and a copy of these licensing regulations annotated to the agency's policies and procedures. Note: Each regulation must be referenced to the appropriate policy by writing the page or policy number by the corresponding regulation.

C. Upon the licensing authority's approval of items Paragraphs (1) through (4) of Subsection B of 7.28.2.10 NMAC above, a temporary license will be issued. Upon receipt of the temporary license, the home health agency may admit patients/clients.

D. Upon becoming fully operational and accepting a patient/client, a home health agency must submit a written request to the licensing authority for the initial survey.

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

[7.28.2.10 NMAC - Rp 7 NMAC 28.2.10, ~~6/5/2020~~ 10/27/20]

7.28.2.11 LICENSES:

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

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

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

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

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

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

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

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

[7.28.2.11 NMAC - Rp 7 NMAC 28.2.11, ~~6/5/2020~~ 10/27/20]

7.28.2.12 LICENSE RENEWAL:

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

B. Upon receipt of renewal application, required fee and an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the agency is in substantial compliance with these regulations.

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

[7.28.2.12 NMAC - Rp 7 NMAC 28.2.12, ~~6/5/2020~~ 10/27/20]

7.28.2.13 POSTING OF LICENSE: The agency's current, original license must be posted in a conspicuous place at the licensed location, as identified in the application for licensure.
[7.28.2.13 NMAC - Rp 7 NMAC 28.2.13, ~~6/5/2020~~ 10/27/20]

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

- A. ownership of the agency changes;
- B. the agency changes location of its office;
- C. licensee of the agency changes;
- D. the agency discontinues operation;
- E. an agency wishing to continue operation as a licensed home health agency under circumstances

Subsections A through D of 7.28.2.14 NMAC above must submit an application for initial licensure in accordance with Section 10 of these regulations, at least 30 days prior to the anticipated change.

[7.28.2.14 NMAC - Rp 7 NMAC 28.2.14, ~~6/5/2020~~ 10/27/20]

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

- A. on the day an agency discontinues operation;
- B. on the day an agency is sold, leased, or otherwise changes ownership or licensee;
- C. on the day an agency changes location of its office.

[7.28.2.15 NMAC - Rp 7 NMAC 28.2.15, ~~6/5/2020~~ 10/27/20]

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

[7.28.2.16 NMAC - Rp 7 NMAC 28.2.16, ~~6/5/2020~~ 10/27/20]

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

- A. failure to comply with any provision of these regulations;
- B. failure to allow survey by authorized representatives of the licensing authority;
- C. any person active in the operation of an agency licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony;
- D. misrepresentation or falsification of any information on application forms or other documents provided to the licensing authority;
- E. discovery of repeat violations of these regulations during surveys;
- F. failure to provide the required care and services as outlined by these regulations for the patients/clients receiving care from the agency.

[7.28.2.17 NMAC - Rp 7 NMAC 28.2.17, ~~6/5/2020~~ 10/27/20]

7.28.2.18 HEARING PROCEDURES:

A. Hearing procedures for adverse action taken by the licensing authority against an agency's license as outlined in Section 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.

B. A copy of the above regulations may be requested at any time by contacting the licensing authority.

[7.28.2.18 NMAC - Rp 7 NMAC 28.2.18, ~~6/5/2020~~ 10/27/20]

7.28.2.19 AGENCY SURVEYS:

A. Application for licensure, whether initial or renewal shall constitute permission for entry into and survey of a home health agency by authorized licensing authority representatives during pendency of the application, and if licensed, during the licensure period.

B. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility. The licensing authority may include patient/client home visits as part of any survey or investigation.

C. Upon receipt of the official deficiency statement from the licensing authority, the licensee or his/her representative will be required to submit a plan of correction to the licensing authority within 10 working days, stating how the agency intends to correct each violation noted and the expected date of completion.

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

[7.28.2.19 NMAC - Rp 7 NMAC 28.2.19, ~~6/5/2020~~ [10/27/20](#)]

7.28.2.20 ACCEPTANCE OF PATIENTS/CLIENTS: Patients/clients must be accepted for treatment by the agency when there is a reasonable expectation that the patient/client's health care or supportive service needs can be met adequately in the patient/client's place of residence.

[7.28.2.20 NMAC - Rp 7 NMAC 28.2.20, ~~6/5/2020~~ [10/27/20](#)]

7.28.2.21 OFFICE REQUIREMENTS:

A. An agency licensed pursuant to these regulations shall establish and maintain an official office for the conduct of its business with posted hours of operation.

B. The office space must be able to maintain, store and safeguard agency records.

[7.28.2.21 NMAC - Rp 7 NMAC 28.2.21, ~~6/5/2020~~ [10/27/20](#)]

7.28.2.22 HEALTH AND AGE REQUIREMENTS:

A. All staff or contracted personnel involved in the care of patients/clients shall be at least eighteen (18) years of age.

B. All staff, contracted personnel, or volunteers having patient/client contact must have a TB test in accordance with the requirements of the infectious disease bureau, of the public health division, department of health.

[7.28.2.22 NMAC - Rp 7 NMAC 28.2.22, ~~6/5/2020~~ [10/27/20](#)]

7.28.2.23 REQUIREMENTS FOR LICENSURE OF PROFESSIONALS: Any health professional employed or contracted by the home health agency, such as, but not limited to, physicians, physician's assistants, nurse practitioners, physical or occupational therapists, speech language pathologists, registered professional nurses, licensed practical nurses, licensed or certified social workers, physical therapy assistants or certified occupational therapy assistants, must have a current license, registration or certification from the state of New Mexico. Proof of licensure must be maintained on file by the agency.

[7.28.2.23 NMAC - Rp 7 NMAC 28.2.23, ~~6/5/2020~~ [10/27/20](#)]

7.28.2.24 GOVERNING BODY: Each agency licensed pursuant to these regulations must have a governing body who adopts and reviews, at least annually, written by-laws or policies and procedures which govern the day to day operation of the agency.

A. The governing body may include the licensee of the agency.

B. The governing body must have full legal authority and responsibility for the operation of the agency.

C. The governing body must appoint a qualified administrator.

D. The governing body must oversee the management and fiscal affairs of the agency.

E. The governing body must meet at least annually. These meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.24 NMAC - Rp 7 NMAC 28.2.24, ~~6/5/2020~~ [10/27/20](#)]

7.28.2.25 ADVISORY GROUP: Each agency licensed pursuant to these shall have an advisory group.

A. The advisory group shall consist of:

(1) at least three individuals;

- (2) an individual representing at least one of the services offered by the agency;
 - (3) at least one member of the group must be neither an owner or an employee of the agency;
 - (4) governing body members may also be part of the advisory group.
- B.** The advisory group shall meet at least semi-annually to perform the following functions:
- (1) to review the agency's required policies and procedures and on-going quality improvement program and make recommendations to the governing body, at least annually;
 - (2) to participate in the agency's program evaluation, at least annually;
 - (3) to advise the agency on professional issues;
 - (4) to assist the agency in maintaining liaison with other health care providers in the community and in its community information efforts.
- C.** The advisory group meetings shall be documented by dated minutes and a copy of these minutes shall be kept on file in the agency.

[7.28.2.25 NMAC - Rp 7 NMAC 28.2.25, ~~6/5/2020~~ 10/27/20]

7.28.2.26 ADMINISTRATOR: Each agency licensed pursuant to these regulations must have an administrator appointed by the governing body who:

- A.** is a licensed physician; or
- B.** is a registered nurse; or
- C.** has at a minimum, a high school diploma or general equivalency diploma, training and experience in health services administration, and at least one year of supervisory or administrative experience in home health care;
- D.** may also be the supervising physician or registered nurse;
- E.** is responsible for implementing the directions of the governing body and organizing and directing the on-going functions of the agency in compliance with these regulations;
- F.** a qualified person is authorized in writing to act in the absence of the administrator.

[7.28.2.26 NMAC - Rp 7 NMAC 28.2.26, ~~6/5/2020~~ 10/27/20]

7.28.2.27 RESPONSIBILITIES OF AGENCY PERSONNEL: Home health agencies utilizing any of the following personnel for provision of home care services must assure the responsibilities listed below are met.

- A. Primary service personnel:** including, but not limited to, registered nurses, physical therapists, occupational therapists, speech therapists, social workers, shall:
- (1) provide necessary professional care and guidance within the scope of their licensure;
 - (2) evaluate the home for its suitability for the patient/client's care;
 - (3) teach the patient/client and caregivers how to provide care;
 - (4) develop, evaluate and coordinate the patient/client's plan of care on a continuing basis;
 - (5) inform the physician and other personnel of changes in the patient/client's condition and needs;
 - (6) perform an evaluation visit and follow-up visits as needed;
 - (7) prepare clinical notes.
- B. Secondary service personnel:** Other licensed personnel, including, but not limited to, respiratory therapists, licensed practical nurses, physical therapy assistants, certified occupational therapist assistants, shall:
- (1) provide services in accordance with an established plan of care and agency policies;
 - (2) provide necessary professional care and guidance within the scope of their licensure;
 - (3) prepare clinical notes;
 - (4) evaluate the home for its suitability for the patient/client's care;
 - (5) teach the patient/client and caregiver how to provide care;
 - (6) inform the physician and other personnel of changes in the patient/client's condition and needs.
- C. Non-licensed personnel:** Individuals, including, but not limited to, home health aides, homemakers, personal care attendants, shall:
- (1) provide personal care including assistance in the activities of daily living;
 - (2) assist to maintain a safe and clean environment;
 - (3) perform household services and other activities as assigned;
 - (4) communicate with appropriate supervisor about changes or variations in the patient/client or home situation;

(5) teach the patient/client and caregivers how to provide care, within the level of their competency;

(6) prepare patient/client notes.

[7.28.2.27 NMAC - Rp 7 NMAC 28.2.27, ~~6/5/2020~~ 10/27/20]

7.28.2.28 SUPERVISING PERSONNEL:

A. The medically directed services provided by the agency must be supervised by a licensed professional or an appropriately qualified staff member.

B. The supervising staff member or their alternate who is similarly qualified must be available at all times during operating hours of the agency.

C. The supervising staff member or alternate who is similarly qualified must participate in all activities relevant to the services provided, including developing qualifications for assignments of personnel.

[7.28.2.28 NMAC - Rp 7 NMAC 28.2.28, ~~6/5/2020~~ 10/27/20]

7.28.2.29 SUPERVISION OF SECONDARY AND NON-LICENSED PERSONNEL:

A. Licensed practical nurses: Services and care provided by a licensed practical nurse will be furnished under the supervision of a registered nurse who has a minimum of one year home health experience or a minimum of two years nursing experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the licensed practical nurse.

(2) Conduct and document a supervisory visit to at least one patient/client residence at least every 60 days, or more often as indicated.

B. Physical therapy assistants: Services and care provided by a physical therapy assistant will be furnished under the supervision of a physical therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the physical therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 30 days or as indicated.

(3) Be on-call and readily available and within a 100 mile radius, or have appointed another physical therapist in his/her absence.

(4) Supervise no more than two physical therapy assistants.

C. Certified occupational therapy assistants: Services and care provided by a certified occupational therapy assistant will be furnished under the supervision of an occupational therapist, with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Identify appropriate tasks to be performed by the certified occupational therapy assistant.

(2) Conduct and document a supervisory visit to the patient/client residence:

(a) at a minimum of every two weeks for intermediate-level certified occupational therapy assistants;

(b) at a minimum of every 30 days for advanced-level certified occupational therapy assistants.

D. Home health aides: Services and care provided by a home health aide will be furnished under the supervision of an appropriately licensed professional, such as, registered nurse, physical therapist, occupational therapist, or a speech language pathologist with a minimum of one year experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client instructions which identify appropriate tasks to be performed by the home health aide.

(2) Conduct and document a supervisory visit to the patient/client residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple home health aides require only one supervisory visit. This home health aide need not be present in the patient/client's residence at the time of the supervisory visit.

E. Personal care attendants or equivalent: Services and care provided by a personal care attendant or equivalent will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the personal care attendant or equivalent.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple personal

care attendants or equivalent require only one supervisory visit. The personal care attendant need not be present in the patient/client's residence at the time of the supervisory visit.

F. Homemakers: Services and care provided by a homemaker will be supervised by a licensed professional or by an appropriately qualified staff member who has one year direct patient care experience. Such supervision will include, at a minimum:

(1) Preparation of written patient/client care instructions which identify appropriate tasks to be performed by the homemaker.

(2) Conduct and document a supervisory visit to the patient/client's residence at least every 62 days or as often as the condition of the patient/client requires. Note: Patient/clients who have multiple homemakers require only one supervisory visit. The homemaker need not be present in the patient/client's residence at the time of the supervisory visit.

[7.28.2.29 NMAC - Rp 7 NMAC 28.2.29, ~~6/5/2020~~ 10/27/20]

7.28.2.30 HOME HEALTH AIDE TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a home health aide on a full-time, part-time, temporary, per diem, or other basis unless:

(1) that individual is competent to provide services as a home health aide;

(2) that individual has completed a training program or a competency evaluation program as outlined in Subsections C or E of 7.28.2.30 NMAC of these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct home health aide training and the training curriculum to the licensing authority. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of home health aides and document that each is determined competent.

(3) The licensing authority may deny a home health agency the right to conduct home health aide training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial non-compliance with these regulations.

C. Course requirements: Home health aides: The home health aide training program must address each of the subject areas listed below through classroom and supervised practical training totaling at least 75 hours, with at least 16 hours devoted to supervised practical training. "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(1) The individual being trained must complete at least 16 hours of classroom training before beginning the supervised practical training;

(2) communications skills;

(3) observation, reporting and documentation of patient status and the care or service furnished;

(4) reading and recording of vital signs;

(5) basic infection control procedures;

(6) basic elements of body functioning and changes in body function that must be reported to an aide's supervisor;

(7) maintenance of a clean, safe and healthy environment;

(8) recognizing emergencies and knowledge of emergency procedures (including CPR and first aid);

(9) the physical, emotional and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy and his or her property;

(10) appropriate and safe techniques in personal hygiene and grooming that include, but are not limited to, bathing, shampooing, nail and skin care, oral hygiene and toileting;

(11) safe transfer techniques and ambulation;

(12) normal range of motion and positioning;

(13) nutrition and hydration;

(14) patient/client rights, including respect for cultural diversity;

(15) any other task that the home health agency may choose to have the home health aide perform.

D. Instructor personnel:

(1) The training of home health aides must be performed by, or under the supervision of, a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of home health services.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide home health aide training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. Competency evaluation includes both a written test and a skills demonstration. Skills demonstration must be observed and documented by a registered nurse or licensed practical nurse.

(2) Documentation must include at least the following information:

(a) Training:

- (i) name of individual taking training;
- (ii) title, purpose and objectives of class;
- (iii) name of instructor and qualifications;
- (iv) number of hours of instruction;
- (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

F. Annual in-service training: Each home health aide must participate in at least 12 documented hours of in-service training during each 12 month period. This requirement may be fulfilled on a prorated basis during the home health aide's first year of employment at the home health agency.

G. Annual performance review: A performance review, including written evaluation and skills demonstration must be completed on each home health aide no less frequently than every 12 months.

[7.28.2.30 NMAC - Rp 7 NMAC 28.2.30, ~~6/5/2020~~ 10/27/20]

7.28.2.31 HOMEMAKER/PERSONAL CARE ATTENDANT OR EQUIVALENT TRAINING REQUIREMENTS:

A. General: No agency licensed pursuant to these regulations may employ an individual as a homemaker/personal care attendant or equivalent on a full-time, part time, temporary, per diem or other basis unless:

(1) That individual is competent to provide assigned tasks as a homemaker/personal care attendant or equivalent.

(2) That individual has completed a training program or a competency evaluation program as outlined in Subsections C or E of 7.28.2.31 NMAC of these regulations.

B. Source of training: Any agency licensed pursuant to these regulations may provide training under the following conditions:

(1) The agency must submit, in writing, its intent to conduct homemaker/personal care attendant or equivalent training and the source of training material. Approval of the curriculum must be obtained from the licensing authority prior to instituting training.

(2) Agencies electing not to provide formal training must identify the method by which they will establish the competency of homemaker/personal care attendant or equivalent and document that each is determined to be competent.

(3) The licensing authority may deny a home health agency the right to conduct homemaker/personal care attendant or equivalent training or competency evaluation, for a specified period of time, not to exceed two years, if the licensing authority finds the agency in substantial noncompliance with these regulations.

C. Course requirements: The home health agency's homemaker/personal care attendant or equivalent training program must consist of no less than 40 hours of training, to be completed by the homemaker/personal care attendant or equivalent in the first year of employment. 10 hours of training must be completed prior to placing the homemaker/personal care employee in a patient/client home. Two of the 10 hours may include agency orientation. Eight of the 10 hours training must be patient/client service specific. The training must address, at a minimum, the following areas:

- (1) communication skills;
- (2) patient/client rights, including respect for cultural diversity;
- (3) recording of information for patient/client records;
- (4) nutrition and meal preparation;
- (5) housekeeping skills;
- (6) care of the ill and disabled, including the special needs populations;
- (7) emergency response (including CPR and first aid);
- (8) basic infection control;
- (9) home safety.

D. Instructor personnel:

(1) The training of homemaker/personal care attendant or equivalent must be performed by or under the direction of a licensed professional or an appropriately qualified person.

(2) Other pertinent personnel from the health professions may also be utilized as supplemental instructors.

E. Documentation of training or competency evaluation:

(1) All agencies which provide homemaker/personal care attendant or equivalent training courses or competency evaluations must document such training or competency evaluation for each individual taking the training or competency evaluation. The training or competency evaluation must be observed and documented by a licensed professional or an appropriately qualified person.

(2) Documentation must include at least the following information:

(a) Training:

- (i) name of individual taking training;
- (ii) title, purpose, and objectives of class;
- (iii) name of instructor;
- (iv) number of hours of instruction;
- (v) date instruction was given.

(b) Competency:

- (i) name of individual being evaluated for competency;
- (ii) date and method used to determine competency.

(3) Annual in-service training: Each homemaker/personal care attendant or equivalent shall participate in at least 10 documented hours of in-service training during each 12 month period.

[7.28.2.31 NMAC - Rp 7 NMAC 28.2.31, ~~6/5/2020~~ 10/27/20]

7.28.2.32 PATIENT/CLIENT RIGHTS: A home health agency licensed pursuant to these regulations must protect and promote the rights of each individual under its care, including each of the following rights:

- A.** the right to be fully informed in advance about the care and treatment to be provided by the agency;
- B.** the right to refuse or terminate treatment;
- C.** the right to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being;
- D.** the right to participate in planning care and treatment or changes in care or treatment, except for those individuals adjudged incompetent;
- E.** the right to be treated with dignity and respect and to be free from abuse, neglect, and exploitation. No home health agency to whom a patient/client's money or valuables have been entrusted shall mingle the patient/clients monies, valuables or property, with that of the licensee, staff or management;
- F.** the right to voice grievances, with respect to treatment or care that is or fails to be furnished, without discrimination or reprisal for voicing such grievances;
- G.** the right to confidentiality of medical care and patient/client records;
- H.** the right to have one's property treated with respect;
- I.** the right to be fully informed, orally and in writing, of all charges for services to be performed by the agency and of any changes in these charges;
- J.** the right to be informed of the New Mexico home health agency hotline number (1-800-752-8649), hours of operation (8:00am-5:00pm, Monday-Friday), and purpose of the hotline, which is to receive complaints, questions about local home health agencies, or to lodge complaints concerning the implementation of the advance directives requirements;

K. the right to be fully informed regarding advance directives, prior to care being given. This information must include agency policies on advance directives and a description of applicable state law;

L. the right to be fully informed, in writing, of the patient/client's rights pursuant to these regulations. [7.28.2.32 NMAC - Rp 7 NMAC 28.2.32, ~~6/5/2020~~ 10/27/20]

7.28.2.33 PLAN OF CARE: Care of a patient/client by the agency must follow a written plan of care which is reviewed at least annually.

A. Medically directed care: An agency must follow a written plan of care established and periodically reviewed by a physician, physician assistant, nurse practitioner or clinical nurse specialist within the extent of their licensed scope of practice as defined by state law. Care continues under the supervision of a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice as defined by state law.

(1) The plan of care shall be developed in consultation with a patient/client, appropriate agency staff and cover all pertinent diagnoses, including but not limited to:

- (a) mental status;
- (b) types of services and equipment required;
- (c) frequency and duration of visits;
- (d) functional limitations;
- (e) activities permitted;
- (f) nutritional requirements;
- (g) medications and treatments;
- (h) safety measures to protect against injury;
- (i) plans or goals for care;
- (j) any other appropriate items.

(2) If a physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice, refers a patient/client under a plan of care which cannot be completed until after an evaluation visit, the a patient/client, physician, physician assistant, nurse practitioner and clinical nurse specialist must be consulted to approve additions or modifications to the original plan.

(3) The plan of care must be reviewed by the patient/client, attending physician, physician assistant, nurse practitioner and clinical nurse specialist acting within the extent of their licensed scope of practice, and home health agency personnel at least annually or as often as the condition of the patient/client requires.

(4) Agency professional staff must promptly alert the physician, physician assistant, nurse practitioner and clinical nurse specialist to any changes that suggest a need to alter the plan of care.

(5) Conformance with physician, physician assistant, nurse practitioner and clinical nurse specialist's orders:

(a) Drugs and treatments shall be administered by agency staff only as ordered by the physician, or physician assistants, nurse practitioners and clinical nurse specialists within the extent of their licensed scope of practice as defined by state law.

(b) Licensed professionals must immediately record and sign oral orders and obtain the physician, or physician assistant, nurse practitioner or clinical nurse specialist's countersignature.

(c) For a patient/client receiving nursing services, all medications a patient/client may be taking must be checked to identify possible ineffective drug therapy, adverse reactions, significant side effects, drug allergies and contraindicated medications. Medication problems must be promptly reported to the physician, or physician assistant, nurse practitioner or clinical nurse specialist.

B. Non-medically directed care: An agency must follow a written plan of care, which includes goals and objectives appropriate to the patient/client being served, and which is established and reviewed at least annually by agency staff.

[7.28.2.33 NMAC - Rp 7 NMAC 28.2.33, ~~6/5/2020~~ 10/27/20]

7.28.2.34 PATIENT/CLIENT RECORDS: Each agency licensed pursuant to these regulations must maintain the original record for each patient/client receiving services. Patient/client records shall be made available for review upon request of the licensing authority. Every record must be accurate, legible, promptly completed and consistently organized. A patient/client record must meet the following criteria:

A. Content of patient/client record:

(1) Medically directed patient/client record must include:

- standard;
- (a) past and current medical findings in accordance with accepted professional
 - (b) plan of care;
 - (c) identifying information;
 - (d) name of physician, physician assistant, nurse practitioner or clinical nurse specialist;
 - (e) medications, diet, treatment/services, and activity orders;
 - (f) signed and dated notes on the day service(s) provided;
 - (g) copies of summary reports sent to the physician, physician assistant, nurse practitioner or clinical nurse specialist;
 - (h) evidence of patient/client being informed of rights;
 - (i) evidence of coordination of care provided by all personnel providing patient/client services;
 - (j) discharge summary.
- (2) Non-medically directed patient/client records must include:
- (a) plan of care;
 - (b) identifying information;
 - (c) signed and dated notes on the day service(s) provided;
 - (d) evidence of patient/client being informed of rights;
 - (e) evidence of coordination of care of all personnel providing patient/client services;
 - (f) evidence of discharge.

B. If the patient/client is discharged or transferred to another provider of health care, upon receipt of a signed request from the patient/client, a copy of the original record or an abstract of the same must be made available to the receiving facility, within 24 hours.

C. Protection of patient/client records:

- (1) The agency must insure that the original patient/client records and information is safeguarded against loss or unauthorized use.
- (2) The agency must have written policies and procedures governing the use and removal of patient/client records and conditions for release of information.
- (3) Patient/client's written consent is required for release of information not authorized by law.

D. Retention of patient/client records:

- (1) Original patient/client records shall be retained for at least 10 years after the patient/client is discharged.
- (2) Original patient/client records shall be maintained for the requisite period even if the agency has discontinued operations.
- (3) The licensing authority must be notified, in writing, prior to discontinuing operation of the storage location of patient/client records.

[7.28.2.34 NMAC - Rp 7 NMAC 28.2.34, ~~6/5/2020~~ 10/27/20]

7.28.2.35 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE AGENCY:

- A.** a copy of the last survey conducted by the licensing authority;
- B.** licensing regulations: A copy of these regulations 7.28.2 NMAC;
- C.** agreements or contracts to provide services or care;
- D.** patient/client records;
- E.** staff records;
- F.** training and in-service records as applicable;
- G.** minutes of advisory group and governing board meetings;
- H.** quality improvement program records;
- I.** grievances and resolutions;
- J.** state board of pharmacy certificates as applicable.

[7.28.2.35 NMAC - Rp 7 NMAC 28.2.35, ~~6/5/2020~~ 10/27/20]

7.28.2.36 CONTRACTED SERVICES: Services that are provided under arrangement by an individual or entity and the home health agency, shall include a written contract between those individuals or entities and the agency, that specifies the following:

- A. that patients are accepted for care only by the primary (admitting) home health agency;
- B. the services to be furnished under the contract;
- C. the necessity to conform to all applicable agency policies including personnel qualifications;
- D. the responsibility for participating in developing plans of care;
- E. the manner in which services will be controlled, coordinated and evaluated by the primary agency;
- F. the procedures for submitting clinical notes, scheduling of visits and conducting periodic patient evaluation;
- G. the procedures for payment for services furnished under the contract.

[7.28.2.36 NMAC - Rp 7 NMAC 28.2.36, ~~6/5/2020~~ 10/27/20]

7.28.2.37 STAFF RECORDS: Each agency licensed pursuant to these regulations must maintain a complete record on file for each staff member and for all volunteers with in-home contact or working more than half-time. Staff records shall be made available for review upon request of the licensing authority within four hours. Staff records must contain at least the following:

- A. name;
- B. address;
- C. position for which employed;
- D. date of employment;
- E. health certificate for all staff having contact with patient/clients stating that the employee is free from tuberculosis in a transmissible form as required by the infectious disease bureau, of the public health division, department of health;
- F. a copy or proof of the current license, registration or certificate for each staff member for whom a license, registration, or certification is required by the state of New Mexico.

[7.28.2.37 NMAC - Rp 7 NMAC 28.2.37, ~~6/5/2020~~ 10/27/20]

7.28.2.38 POLICIES AND PROCEDURES: Each agency licensed pursuant to these regulations must have written policies and procedures for at least the following:

- A. scope of services offered;
- B. providing of services through arrangement or contract with individuals or agencies;
- C. admission and discharge;
- D. written job descriptions for all categories of personnel;
- E. personnel policies;
- F. staff training;
- G. emergency and after normal business hour care policies/procedures;
- H. preparation, safeguarding, and release of information from patient/client records;
- I. quality improvement program;
- J. complaints and grievances, including timely resolution.

[7.28.2.38 NMAC - Rp 7 NMAC 28.2.38, ~~6/5/2020~~ 10/27/20]

7.28.2.39 QUALITY IMPROVEMENT: Each agency must establish an on-going quality improvement program to ensure an adequate and effective operation. To be considered on-going, the quality improvement program must document quarterly activity that addresses, but is not limited to:

- A. **Clinical care:** Assessment of patient/client goals and outcome, such as, diagnosis(es), plan of care, services provided, and standards of patient/client care.
- B. **Operational activities:** Assessment of the total operation of the agency, such as, policies and procedures, statistical data (i.e., admissions, discharges, total visits by discipline, etc.), summary of quality improvement activities, summary of patient/client complaints and resolutions, and staff utilization.
- C. **Quality improvement action plan:** Written responses to address existing or potential problems which have been identified.
- D. **Documentation of activities:** The results of the quality improvement activities shall be compiled annually in report format and formally reviewed and approved by the governing body and advisory group of the home health agency. No more than one year may lapse between evaluations of the same part.

E. The licensing authority may, at its sole discretion, request quarterly activity summaries of an agency's on-going quality improvement activities or may direct the agency to conduct specific quality improvement studies.

[7.28.2.39 NMAC - Rp 7 NMAC 28.2.39, ~~6/5/2020~~ 10/27/20]

7.28.2.40 COMPLAINTS: The home health agency must investigate complaints made by a patient/client, caregiver, or guardian regarding treatment or care, or regarding the lack of respect for the patient/client's property and must document both the existence of the complaint and the resolution of the complaint. The agency's investigation of a complaint(s) must be initiated within three working days.

[7.28.2.40 NMAC - Rp 7 NMAC 28.2.40, ~~6/5/2020~~ 10/27/20]

7.28.2.41 INCIDENTS:

A. Reporting: All home health agencies licensed pursuant to these regulations must report to the licensing authority any of the following which has, or could threaten the health, safety and welfare of the patient/clients or staff:

- (1) any serious incident or unusual occurrence;
- (2) injuries of unknown origin or known, suspected or alleged incidents of patient/client abuse, neglect, exploitation, or mistreatment by staff or person(s) contracted by the home health agency.

B. Documentation: The agency is responsible for documenting all incidents, within five days of the incident, and having on file the following:

- (1) a narrative description of the incident;
- (2) evidence contact was made to the licensing authority;
- (3) results of the facility's investigation;
- (4) the facility action, if any.

[7.28.2.41 NMAC - Rp 7 NMAC 28.2.41, ~~6/5/2020~~ 10/27/20]

7.28.2.42 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health facility licensure fees and procedures, New Mexico department of health, 7.1.7 NMAC.

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

C. Adjudicatory hearings, New Mexico department of health, 7.1.2 NMAC.

[7.28.2.42 NMAC - Rp 7 NMAC 28.2.42, ~~6/5/2020~~ 10/27/20]

HISTORY OF 7.28.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: HSSD 74-17, Home Health Agency Licensing Regulations, 9/12/1974.
HSSD 77-4, Home Health Agency Licensing Regulations, 7/22/1977.
DOH 91-2 (PHD), New Mexico Regulations Governing Home Health Agencies, 5/7/1991.

History of Repealed Material:

7 NMAC 28.2, Requirements For Home Health Agencies (filed 10/31/2001) - Repealed ~~06/05/2020~~ 10/27/20.

Other History:

7 NMAC 28.2, Requirements For Home Health Agencies (filed 10/31/2001), replaced by 7.28.2 NMAC - Requirements For Home Health Agencies, effective ~~6/5/2020~~ 10/27/20.

West's New Mexico Statutes Annotated
Chapter 61. Professional and Occupational Licenses (Refs & Annos)
Article 3. Nursing (Refs & Annos)

N. M. S. A. 1978, § 61-3-3

§ 61-3-3. Definitions

Currentness

As used in the Nursing Practice Act:

- A. “advanced practice” means the practice of professional registered nursing by a registered nurse who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;
- B. “board” means the board of nursing;
- C. “certified hemodialysis technician” means a person who is certified by the board to assist in the direct care of a patient undergoing hemodialysis, under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;
- D. “certified medication aide” means a person who is certified by the board to administer medications under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;
- E. “certified nurse practitioner” means a registered nurse who is licensed by the board for advanced practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board;
- F. “certified registered nurse anesthetist” means a registered nurse who is licensed by the board for advanced practice as a certified registered nurse anesthetist and whose name and pertinent information are entered on the list of certified registered nurse anesthetists maintained by the board;
- G. “clinical nurse specialist” means a registered nurse who is licensed by the board for advanced practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the board;
- H. “collaboration” means the cooperative working relationship with another health care provider in the provision of patient care, and such collaborative practice includes the discussion of patient diagnosis and cooperation in the management and delivery of health care;

I. “licensed practical nurse” means a nurse who practices licensed practical nursing and whose name and pertinent information are entered in the register of licensed practical nurses maintained by the board or a nurse who practices licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

J. “licensed practical nursing” means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which practice is at the direction of a registered nurse, physician or dentist licensed to practice in this state. This practice includes but is not limited to:

- (1) contributing to the assessment of the health status of individuals, families and communities;
- (2) participating in the development and modification of the plan of care;
- (3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;
- (4) collaborating with other health care professionals in the management of health care; and
- (5) participating in the evaluation of responses to interventions;

K. “Nurse Licensure Compact” means the agreement entered into between New Mexico and other jurisdictions permitting the practice of professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege;

L. “nursing diagnosis” means a clinical judgment about individual, family or community responses to actual or potential health problems or life processes, which judgment provides a basis for the selection of nursing interventions to achieve outcomes for which the person making the judgment is accountable;

M. “practice of nursing” means assisting individuals, families or communities in maintaining or attaining optimal health, assessing and implementing a plan of care to accomplish defined goals and evaluating responses to care and treatment. This practice is based on specialized knowledge, judgment and nursing skills acquired through educational preparation in nursing and in the biological, physical, social and behavioral sciences and includes but is not limited to:

- (1) initiating and maintaining comfort measures;
- (2) promoting and supporting optimal human functions and responses;
- (3) establishing an environment conducive to well-being or to the support of a dignified death;
- (4) collaborating on the health care regimen;

(5) administering medications and performing treatments prescribed by a person authorized in this state or in any other state in the United States to prescribe them;

(6) recording and reporting nursing observations, assessments, interventions and responses to health care;

(7) providing counseling and health teaching;

(8) delegating and supervising nursing interventions that may be performed safely by others and are not in conflict with the Nursing Practice Act; and

(9) maintaining accountability for safe and effective nursing care;

N. “professional registered nursing” means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral sciences and of nursing theory and may include advanced practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

(1) assessing the health status of individuals, families and communities;

(2) establishing a nursing diagnosis;

(3) establishing goals to meet identified health care needs;

(4) developing a plan of care;

(5) determining nursing intervention to implement the plan of care;

(6) implementing the plan of care commensurate with education and verified competence;

(7) evaluating responses to interventions;

(8) teaching based on the theory and practice of nursing;

(9) managing and supervising the practice of nursing;

(10) collaborating with other health care professionals in the management of health care; and

(11) conducting nursing research;

O. “registered nurse” means a nurse who practices professional registered nursing and whose name and pertinent information are entered in the register of licensed registered nurses maintained by the board or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

P. “scope of practice” means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise; and

Q. “training program” means an educational program approved by the board.

Credits

L. 1991, Ch. 190, § 2; L. 1993, Ch. 61, § 1; L. 1997, Ch. 244, § 3; L. 2001, Ch. 137, § 2; L. 2003, Ch. 307, § 5, eff. Jan. 1, 2004; L. 2005, Ch. 307, § 1, eff. April 7, 2005.

NMSA 1978, § 61-3-3, NM ST § 61-3-3

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

End of Document

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TITLE 7 HEALTH
CHAPTER 9 NURSING HOMES AND INTERMEDIATE CARE FACILITIES
PART 2 REQUIREMENTS FOR LONG TERM CARE FACILITIES

7.9.2.1 ISSUING AGENCY: New Mexico department of health, division of health improvement.
 [7.9.2.1 NMAC - Rp, 7.9.2.1 NMAC, 6/9/2020]

7.9.2.2 SCOPE:

A. Services for residents shall be provided on a continuing 24 hour basis and shall maintain or improve physical, mental and psychosocial well-being under plan of care developed by a physician or other licensed health professional and shall be reviewed and revised based on assessment.

B. All facilities licensed as nursing homes pursuant to Subsection A of Section 24-1-5 NMSA 1978, are subject to all provisions of these regulations.

[7.9.2.2 NMAC - Rp, 7.9.2.2 NMAC, 6/9/2020]

7.9.2.3 STATUTORY AUTHORITY: The regulations set forth herein are promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under Subsection E of Section 9-7-6 NMSA 1978 of the Department of Health Act, as amended; and the authority granted under Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and 24-1-5 NMSA 1978 of the Public Health Act, as amended.

[7.9.2.3 NMAC - Rp, 7.9.2.3 NMAC, 6/9/2020]

7.9.2.4 DURATION: Permanent.

[7.9.2.4 NMAC - Rp, 7.9.2.4 NMAC, 6/9/2020]

7.9.2.5 EFFECTIVE DATE: June 9, 2020, unless a different date is cited at the end of a section or paragraph.

[7.9.2.5 NMAC - Rp, 7.9.2.5 NMAC, 6/9/2020]

7.9.2.6 OBJECTIVE:

A. Establish minimum standards for long term care facilities in the state of New Mexico.

B. Monitor long term care facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the residents or staff.

C. Encourage the maintenance of long term care facilities that will provide quality services which maintain or improve the health and quality of life to the residents.

[7.9.2.6 NMAC - Rp, 7.9.2.6 NMAC, 6/9/2020]

7.9.2.7 DEFINITIONS: For purposes of these regulations the following shall apply:

A. Definitions beginning with "A":

(1) "Abuse" means any act or failure to act performed intentionally, knowingly, or recklessly that causes or is likely to cause harm to a resident, including but not limited to:

(a) Physical contact that harms or is likely to harm a resident of a care facility.

(b) Inappropriate use of physical restraint, isolation, or medication that harms or is likely to harm a resident.

(c) Inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physician's order.

(d) Medically inappropriate conduct that causes or is likely to cause physical harm to a resident.

(e) Medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident.

(f) An unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

(2) "Ambulatory" means able to walk without assistance.

(3) "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

B. Definitions beginning with "B": [RESERVED]

C. Definitions beginning with "C": [RESERVED]

D. Definitions beginning with "D":

(1) "Department" means the New Mexico department of health.

(2) "Developmental disability" means mental retardation or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:

(a) manifested before the individual reaches age 22;

- (b) likely to continue indefinitely; and
- (c) results in substantial functional limitations in three or more of the following areas of major life activity:
- (i) self-care;
 - (ii) understanding and use of language;
 - (iii) learning;
 - (iv) mobility;
 - (v) self-direction;
 - (vi) capacity for independent living; and
 - (vii) economic self-sufficiency.

(3) **“Dietitian”** means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association under its requirements in effect on January 17, 1982.

(4) **“Direct supervision”** means supervision of an assistant by a supervisor who is present in the same building as the assistant while the assistant is performing the supervised function.

E. Definitions beginning with “E”: **“Exploitation”** of a patient/client/resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a patient/client's property, including any form of property, for another persons profit, advantage or benefit.

(1) **Exploitation** includes but is not limited to:

(a) manipulating the patient/client resident by whatever mechanism to give money or property to any facility staff or management member;

(b) misappropriation or misuse of monies belonging to a resident or the unauthorized sale, or transfer or use of a patient/client/residents property;

(c) loans of any kind from a patient/client/resident to family, operator or families of staff or operator;

(d) accepting monetary or other gifts from a patient /client/resident or their family with a value in excess of \$25 and not to exceed a total value of \$300 in one year.

(e) All gifts received by facility operators, their families or staff of the facility must be documented and acknowledged by person giving the gift and the recipient.

(2) **Exception:** Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

F. Definitions beginning with “F”:

(1) **“Facility”** means a nursing home subject to the requirements of these regulations.

(2) **“Full-time”** means at least an average of 37.5 hours each week devoted to facility business.

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

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

I. Definitions beginning with “I”:

(1) **“Intermediate care facility”** means a nursing home, which is licensed by the department as an intermediate care facility to provide intermediate nursing care.

(2) **“Intermediate nursing care”** means a basic care consisting of physical, emotional, social and other rehabilitative services under periodic medical supervision. This nursing care requires the skill of a licensed nurse for observation and recording of reactions and symptoms, and for supervision of nursing care. Most of the residents have long-term illnesses or disabilities which may have reached a relatively stable plateau. Other residents whose conditions are stabilized may need medical and nursing services to maintain stability. Essential supportive consultant services are provided in accordance with these regulations.

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

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

L. Definitions beginning with “L”:

(1) **“Licensed practical nurse”** means a person licensed as a licensed practical nurse under Section 61-3-1 through Section 61-3-30 NMSA 1978, Nursing Practice Act.

(2) **“Licensee”** means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the long term care facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.

M. Definitions beginning with “M”: **“Mobile non-ambulatory”** means unable to walk without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair or a wheeled platform.

N. Definitions beginning with “N”:

(1) **“Non-ambulatory”** means unable to walk without assistance.

(2) **“Non-mobile”** means unable to move from place to place.

(3) **“Nurse”** means registered nurse or licensed practical nurse.

(4) **“Nurse practitioner (certified)”** means a registered professional nurse who meets the requirements for licensure as established under Sections 61-3-1 through 61-3-30 NMSA 1978, Nursing Practice Act.

O. Definitions beginning with “O”:

P. Definitions beginning with “P”:

(1) **“Personal care”** means personal assistance, supervision and a suitable activities program. In addition:

(a) the services provided are chiefly characterized by the fact that they can be provided by personnel other than those trained in medical or allied fields. The services are directed toward personal assistance, supervision, and protection;

(b) the medical service emphasizes a preventive approach of periodic medical supervision by the resident's physician as part of a formal medical program that will provide required consultation services and also cover emergencies; and

(c) the dietary needs of residents are met by the provision of adequate general diet or by therapeutic, medically prescribed diets.

(2) **"Pharmacist"** means a person registered as a pharmacist under Section 61-11-1 NMSA 1978, the Pharmacy Act.

(3) **"Physical therapist"** means a person licensed to practice physical therapy under Sections 61-12D-1 to Section 61-12D-19 NMSA 1978, the Physical Therapy Act.

(4) **"Physician"** means a person licensed to practice medicine or osteopathy as defined by Section 61-6-1 NMSA 1978, the Medical Practice Act, and Sections 61-10-1 through 61-10-21 NMSA 1978, the Osteopathic Medicine Act.

(5) **"Physician's extender"** means a person who is a physician's assistant or a nurse practitioner acting under the general supervision and direction of a physician.

(6) **"Physician's assistant"** means a person licensed under Section 61-6-7 through 61-6-10 NMSA 1978, the Physician Assistant Act, to perform as a physician's assistant.

(7) **"Practitioner"** means a physician, dentist or podiatrist or other person permitted by New Mexico law to distribute, dispense and administer a controlled substance in the course of professional practice.

Q. Definitions beginning with "Q": [RESERVED]

R. Definitions beginning with "R":

(1) **"Registered nurse"** means a person who holds a certificate of registration as a registered nurse under Section 61-3-1 to 61-3-30 NMSA 1978, the Nursing Practice Act.

(2) **"Resident"** means a person cared for or treated in any facility on a 24-hour basis irrespective of how the person has been admitted to the facility.

S. Definitions beginning with "S":

(1) **"Skilled nursing facility"** means a nursing home which is licensed by the department to provide skilled nursing services.

(2) **"Skilled nursing care"** means those services furnished pursuant to a physician's orders which:

(a) require the skills of professional personnel such as registered or licensed practical nurses; and

(b) are provided either directly by or under the supervision of these personnel;

(c) in determining whether a service is skilled nursing care, the following criteria shall be used:

(i) the service would constitute a skilled service where the inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of professional personnel;

(ii) the restoration potential of a resident is not the deciding factor in determining whether a service is to be considered skilled or unskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities; and

(iii) a service that is generally unskilled would be considered skilled where, because of special medical complications, its performance or supervision or the observation of the resident necessitates the use of skilled nursing personnel.

(3) **"Specialized consultation"** means the provision of professional or technical advice, such as systems analysis, crisis resolution or in-service training, to assist the facility in maximizing service outcomes.

(4) **"Supervision"** means at least intermittent face-to-face contact between supervisor and assistant, with the supervisor instructing and overseeing the assistant, but does not require the continuous presence of the supervisor in the same building as the assistant.

T. Definitions beginning with "T": "Tour of duty" means a portion of the day during which a shift of resident care personnel are on duty.

U. Definitions beginning with "U": "Unit dose drug delivery system" means a system for the distribution of medications in which single doses of medications are individually packaged and sealed for distribution to residents.

V. Definitions beginning with "V": "Variance" means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of residents or staff of a long term care facility, and is at the sole discretion of the licensing authority.

W. Definitions beginning with "W": "Waive/waivers" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of residents and staff are not in danger. Waivers are issued at the sole discretion of the licensing.

[7.9.2.7 NMAC - Rp, 7.9.2.7 NMAC, 6/9/2020]

7.9.2.8 LICENSURE:

A. Application/requirements for licensure:

- (1) All initial applications shall be made on forms provided by the licensing authority.
- (a) all information requested on the application must be provided;
 - (b) The application must be dated and signed by the person who shall be the licensee;
 - (c) the application must be notarized.
- (2) In every application, the applicant shall provide the following information:
- (a) the identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;
 - (b) the identities of all persons or business entities having five percent ownership interest whatsoever in the facility, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building, and
 - (c) the identities of all creditors holding a security interest in the premises, whether land or building; and
 - (d) in the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, and between any owner or operator of the new licensee, whether direct or indirect.
- (3) The applicant shall provide to the department, information including, but not limited to, information regarding felony convictions, civil actions involving fraud, embezzlement or misappropriation of property, any state or federal adverse action resulting in suspension or revocation of license or permit.
- (4) The new licensee shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of six months.
- (5) No license may be issued unless and until the applicant has supplied all information requested by the 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 of New Mexico.
 - (c) Fees are non-refundable.

B. Action by the department:

- (1) After receiving complete application, the department shall investigate the applicant to determine the applicant's ability to comply with these regulations.
- (2) Within 60 days after receiving a complete application for a license, the 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.
- (3) The licensing authority shall not issue a new license if the applicant has had a health facility license revoked or denied renewal, or has surrendered a license under threat of revocation or denial of renewal, or has lost certification as a Medicaid provider as a result of violations of applicable medicaid requirements. The licensing authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be Class A or Class B deficiencies as defined in *Health Facility Sanctions and Civil Monetary Penalties*, 7NMAC 1.8, or has been noncompliant with plans of correction. [7.9.2.8 NMAC - Rp, 7.9.2.8 NMAC, 6/9/2020]

7.9.2.9 TYPES OF LICENSE:

- A. Annual license:** An annual license is issued for a one year period to a long term care facility which has met all requirements of these regulations.
- B. Temporary license:** The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.
- (1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.
 - (2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.
- C. Amended license:** A license must apply to the licensing authority for an amended license when there is a change of administrator/director, when there is a change of name for the facility, when a change in capacity is sought, a change in bed classification is sought, or an addition or deletion of any special or operation unit(s) as listed in these regulations is sought.
- (1) Application must be on a form provided by the licensing authority.
 - (2) Application must be accompanied by the required fee for amended license.
 - (3) Application must be submitted within 10 working days of the change.

[7.9.2.9 NMAC - Rp, 7.9.2.9 NMAC, 6/9/2020]

7.9.2.10 SCOPE OF LICENSE:

- A.** The licensed is issued only for the premises and the persons named in the license application and may not be transferred or assigned by the licensee.

B. The license shall state any applicable restrictions, including maximum bed capacity and the level of care that may be provided, and any other limitations that the 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.
[7.9.2.10 NMAC - Rp, 7.9.2.10 NMAC, 6/9/2020]

7.9.2.11 SEPARATE LICENSES: Separate licenses shall be required for facilities which are maintained on separate premises even though they are under the same management. Separate licenses shall not be required for separate buildings on the same ground or adjacent ground.
[7.9.2.11 NMAC - Rp, 7.9.2.11 NMAC, 6/9/2020]

7.9.2.12 LICENSE RENEWAL:

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

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

C. If a licensee fails to submit a renewal application with the required fee and the current license expires, the long term care facility shall cease operation until it obtains a new license through the initial licensure procedures. Subsection A of Section 24-1-5 NMSA 1978, as amended, provides that no health facility shall be operated without a license.
[7.9.2.12 NMAC - Rp, 7.9.2.12 NMAC, 6/9/2020]

7.9.2.13 POSTING: The license or a certified copy thereof shall be conspicuously posted in a location or accessible to public view within the facility.
[7.9.2.13 NMAC - Rp, 7.9.2.13 NMAC, 6/9/2020]

7.9.2.14 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 administrator 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 administrator.

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.
[7.9.2.14 NMAC - Rp, 7.9.2.14 NMAC, 6/9/2020]

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

A. Ownership of the facility changes.

B. The facility changes location.

C. Licensee of the facility changes.

D. The facility discontinues operation.

E. A facility wishing to continue operation as a licensed long term care facility under circumstances listed in 7.9.2.15 NMAC must submit an application for initial licensure in accordance with 7.9.2.8 NMAC of these regulations, at least 30 days prior to the anticipated change.

[7.9.2.15 NMAC - Rp, 7.9.2.15 NMAC, 6/9/2020]

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

A. On the day a facility discontinues operation.

B. On the day a facility is sold, leased, or otherwise changes ownership or licensee.

C. On the day a facility changes location.

[7.9.2.16 NMAC - Rp, 7.9.2.16 NMAC, 6/9/2020]

7.9.2.17 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Subsection H of Section 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may suspend a license

pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.
[7.9.2.17 NMAC - Rp, 7.9.2.17 NMAC, 6/9/2020]

7.9.2.18 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:

A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A. Failure to comply with any provision of these regulations.
 - B. Failure to allow survey by authorized representatives of the licensing authority.
 - C. Any person active in the operation of a facility licensed pursuant to these regulations shall not be under the influence of alcohol or narcotics or convicted of a felony.
 - D. Misrepresentation of falsification of any information or application forms or other documents provided to the licensing authority.
 - E. Discovery of repeat violations of these regulations during surveys.
 - F. Failure to provide the required care and services as outlined by these regulations for the patients receiving care at the long term care facility.
 - G. Abuse, neglect or exploitation of any patient/client/resident by facility operator, staff, or relatives or operator/staff.
- [7.9.2.18 NMAC - Rp, 7.9.2.18 NMAC, 6/9/2020]

7.9.2.19 HEARING PROCEDURES:

- A. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the long term care facility as outlined in 7.9.2.17 NMAC and 7.9.2.18 NMAC will be held in accordance with adjudicatory hearings, New Mexico department of health, 7 NMAC 1.2 (2-1-96).
 - B. A copy of the adjudicatory hearing procedures will be furnished to the long term care facility or agency at the time an adverse action is taken against its license by the licensing authority. A copy may be requested at any time by contacting the licensing authority.
- [7.9.2.19 NMAC - Rp, 7.9.2.19 NMAC, 6/9/2020]

7.9.2.20 PROGRAM FLEXIBILITY:

- A. All facilities shall maintain compliance with the licensee requirements. If the use of alternate concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of pilot projects conflicts with requirements, then prior written approval from the 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.
- [7.9.2.20 NMAC - Rp, 7.9.2.20 NMAC, 6/9/2020]

7.9.2.21 WAIVERS AND VARIANCES:

- A. **Definitions:** As used in this section:
 - (1) waiver: means the grant of an exemption from a requirement of these regulations;
 - (2) variance: means the granting of an alternate requirement in place of a requirement of these regulations.
- B. **Requirements for waivers and variances:** A waiver or variance may be granted if the department finds that the waiver or variance will not adversely affect the health, safety, or welfare of any resident and that:
 - (1) strict enforcement of a requirement would result in unreasonable hardship on the facility or on a resident;
 - (2) an alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications, or the conducting of pilot projects, is in the interest of better care or management.
- C. **Applications:**
 - (1) All applications for waiver or variance from the requirements of these regulations shall be made in writing to the 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.
- D. **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.

E. 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.

[7.9.2.21 NMAC - Rp, 7.9.2.21 NMAC, 6/9/2020]

7.9.2.22 RIGHTS OF RESIDENTS: Every resident shall have the right to:

A. Communications: Have private and unrestricted communications with the resident's family, physician, attorney and any other person, unless medically contraindicated as documented by the resident's physician in the resident's medical record, except that communications with public officials or with the resident's attorney shall not be restricted in any event. The right to private and unrestricted communications shall include, but is not limited to, the right to:

(1) Receive, send, and mail sealed, unopened correspondence. No resident's incoming or outgoing correspondence may be opened, delayed, held, or censored, except that a resident or guardian may direct in writing that specified incoming correspondence be opened, delayed, or held.

(2) Use a telephone for private communications during reasonable hours.

(3) Have private visiting pursuant to a reasonable written visitation policy.

B. Access: Immediate access by representatives of human services department, health and environment department, ombudsman, personal physician and, subject to resident's consent, immediate family or other relatives or visitors following notification of staff person in charge and presentation of valid identification. Reasonable access by providers of health, social, legal or other services must be assured.

C. Grievances: Present grievances on one's own behalf or through others to the facility's staff or administrator, to public officials or to any other person without justifiable fear of reprisal, and join with other residents or individuals within or outside of the facility to work for improvements in resident care.

D. Finances: Manage one's own financial affairs, including any personal allowances under federal or state programs. No resident funds may be held or spent except in accordance with the following requirements:

(1) A facility may not hold or spend a resident's funds unless the resident or another person legally responsible for the resident's funds authorize this action in writing. The facility shall obtain separate authorization for holding a resident's funds and for spending a resident's funds. The authorization for spending a resident's funds may include a spending limit. Expenditures that exceed the designated spending limit require a separate authorization for each individual occurrence.

(2) Any resident funds held or controlled by the facility, and any earnings from them, shall be credited to the resident and may not be comingled with other funds or property except that of other residents.

(3) The facility shall furnish a resident, the resident's guardian, or a representative designated by the resident with at least a quarterly statement of all funds held by the facility for the resident and all expenditures made from the resident's account, and a similar statement at the time of the resident's permanent discharge.

(4) The facility shall maintain a record of all expenditures, disbursements and deposits made on behalf of the resident.

E. Admission information: Be fully informed in writing prior to or at the time of admission, of all services and the charges for these services, and be informed in writing, during the resident's stay, of any changes in services available or in charges for services, as follows:

(1) No person may be admitted to a facility without that person or that person's guardian or designated representative signing an acknowledgement of having received a statement of information before or on the day of admission which contains at least the following information or, in the case of a person to be admitted for short-term care, the information required under these regulations.

(a) an accurate description of the basic services provided by the facility, the rate charged for those services, and the method of payment for them;

(b) information about all additional services regularly offered but not included in the basic services. The facility shall provide information on where a statement of the fees charged for each of these services can be obtained. These additional services include pharmacy, x-ray, beautician and all other additional services regularly offered to residents or arranged for residents by the facility;

(c) the method for notifying residents of a change in rates or fees;

(d) terms for refunding advance payments in case of transfer, death or voluntary or involuntary discharge.

- (e) terms of holding and charging for a bed during a resident's temporary absence.
- (f) conditions for involuntary discharge or transfer, including transfers within the facility;
- (g) information about the availability of storage space for personal effects; and
- (h) a summary of residents' rights recognized and protected by this section and all facility policies

and regulations governing resident conduct and responsibilities.

- (2) No statement of admission information may be in conflict with any part of these regulations.

F. Treatment: Be treated with courtesy, respect, and full recognition of one's dignity and individuality by all employees of the facility and by all licensed, certified, and registered providers under contract with the facility.

G. Privacy: Have physical and emotional privacy in treatment, living arrangements, and in caring for personal needs, including, but not limited to:

(1) Privacy for visits by spouse. If both spouses are residents of the same facility, they shall be permitted to share a room unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

(2) Privacy concerning health care. Case discussion, consultation, examination, and treatment are confidential and shall be conducted discreetly. Persons not directly involved in the resident's care shall require the resident's permission to authorize their presence.

(3) Confidentiality of health and personnel records, and the right to approve or refuse their release to any individual outside the facility, except in the case of the resident's transfer to another facility or as required by law or third-party payment contracts.

H. Work: Not be required to perform work for the facility, but may work for the facility if:

(1) the work is included by the physician for therapeutic purposes in the resident's plan of care; and

(2) the work is ordered by the resident's physician and does not threaten the health, safety, or welfare of the resident or others.

(3) the resident volunteers for work and such activities is not contra-indicated by physician.

I. Outside activities: Meet with and participate in activities of social, religious, and community groups at the resident's discretion, unless medically contra-indicated as documented by the resident's physician in the resident's medical record.

J. Personal possessions: Retain and use personal clothing and effects and to retain, as space permits, other personal possessions in a reasonably, secure manner.

K. Transfer, discharge and bedhold: Involuntary transfer shall be conducted only for resident's welfare, health and safety of others, or failure to pay. Reasons other than failure to pay must be documented by a physician in resident's record. Prior to transfer the facility must notify resident and next of kin or responsible party of right to appeal and name and address of ombudsman.

L. Abuse and restraints: Be free from mental and physical abuse, and be free from chemical and physical restraints except as authorized in writing by a physician for a specified and limited period of time and documented in the resident's medical record. Physical restraints may be used in an emergency when necessary to protect the resident from injury to himself or herself or others or to property. However, authorization for continuing use of the physical restraints shall be secured from a physician within 12 hours. Any use of physical restraints shall be noted in the resident's medical records. "Physical restraint" includes, but is not limited to, any article, device, or garment which interferes with the free movement of the resident and which the resident is unable to remove easily.

M. Care: Receive adequate and appropriate care within the capacity of the facility.

N. Choice of provider: Use the licensed, certified or registered provider of health care and pharmacist of the resident's choice. The pharmacist of choice must be able to supply drugs and biologicals in such a manner as is consistent with the facility's medication delivery system.

O. Care planning: Be fully informed of one's treatment and care and participate in the planning of that treatment and care, unless contra-indicated by physician order.

P. Religious activity: Participate in religious activities and services, of resident's choice and meet privately with clergy.

Q. Non-discriminatory treatment: Be free from discrimination based on the source from which the facility's charges for the resident's care are paid, as follows:

(1) No facility may assign a resident to a particular wing or other distinct area of the facility, whether for sleeping, dining or any other purpose, on the basis of the source or amount of payment. A facility only part of which is certified for medicare or medicaid reimbursement under Title XVIII/XIX of the Social Security Act is not prohibited from assigning a resident to the certified part of the facility because of the source of payment for the resident's care is medicare or medicaid.

(2) Facilities shall offer and provide an identical package of basic services meeting the requirements of these regulations to all individuals regardless of the sources of a resident's payment or amount of payment. Facilities may offer enhancements of basic services, provided that these enhanced services are made available at an identical cost to all residents regardless of the source of a resident's payment. A facility which elects to offer enhancements to basic services to its residents must provide all residents with a detailed explanation of enhanced services and the additional charges for these services.

(3) If a facility offers at extra charge additional services which are not covered by the facility's provider agreement under which it provides medicaid and medicare services, it shall provide them to any resident willing and able to pay for them, regardless of the source from which the resident pays the facility's charges.

(4) No facility may require, offer or provide an identification tag for a resident that publicly identifies the source from which the facility's charges for that resident's care are paid.

R. Incompetence: If a resident is found incompetent by a court under New Mexico's Probate Code, (Sections 45-5-101 through 45-5-432 NMSA 1978), and not restored to legal capacity, the rights and responsibilities established under this section which the resident is not competent to exercise shall devolve upon the resident's guardian or conservator.

S. Corrections clients: Rights established under this section do not, except as determined by the department, apply to residents in a facility who are in the legal custody of the department for correctional purposes.

T. Notification:

(1) Serving notice: Copies of the resident rights provided under this section and the facility's policies and regulations governing resident conduct and responsibilities shall be made available to each prospective resident and his or her guardian, if any, and to each member of the facility's staff. Facility staff shall verbally explain to each new resident and to that person's guardian, if any, prior to or at the time of the person's admission to the facility, these rights and the facility's policies and regulations governing resident conduct and responsibilities.

(2) Amendments: All amendments to the rights provided under this section and all amendments to the facility regulations and policies governing resident conduct and responsibilities require notification of each resident and guardian, if any, at the time the amendment is put into effect. The facility shall provide the resident, guardian, if any, and each member of the facility's staff with a copy of all amendments.

(3) Posting: Copies of the resident's rights provided under these regulations and the facility's policies and regulations governing resident conduct and responsibilities shall be posted in a prominent place in the facility.

U. Encouragement and assistance: Each facility shall encourage and assist residents to exercise their rights as residents and citizens and shall provide appropriate training for staff awareness so that staff are encouraged to respect the rights of residents established under this section.

[7.9.2.22 NMAC - Rp, 7.9.2.22 NMAC, 6/9/2020]

7.9.2.23 COMPLAINTS:

A. Filing complaints: Any person may file a complaint with a licensee or the department regarding the operation of a facility. Complaints may be made orally or in writing.

B. Reviewing complaints: Each facility shall establish a system of reviewing complaints and allegations of violations of resident's rights established under this section. The facility shall designate a specific individual who, for the purpose of effectuating this section, shall report to the administrator.

C. Reporting complaints: Allegations that residents' rights have been violated by persons licensed, certified or registered by any professional licensing board or designated authority shall be promptly reported by the facility to the appropriate licensing or examining board or authority and to the person against whom the allegation has been made. Any employee of the facility and any person licensed, certified, or registered by any professional licensing board or authority, may also report such allegations to the board.

[7.9.2.23 NMAC - Rp, 7.9.2.23 NMAC, 6/9/2020]

7.9.2.24 COMMUNITY ORGANIZATION ACCESS:

A. In this section, "access" means the right to:

- (1) enter any facility;
- (2) seek a resident's agreement to communicate privately and without restriction with the resident;
- (3) communicate privately and without restriction with any resident who does not object to communication.

B. Any employee, agent, or designated representative of a community legal services program or community service organization shall be permitted access to any facility whenever visitors are permitted by the written visitation policy referred to in these regulations, but not before 8:00 am., nor after 5:00 p.m. The facility visitation policy shall include provisions for scheduling visits after 5:00 p.m.

C. Conditions:

(1) The employee, agent, or designated representative shall, upon request of the facility's administrator or administrator's designee, present valid and current identification signed by the principal officer of the agency, program or organization represented.

(2) Access shall be granted for visits which are consistent with an express purpose of an organization the purpose of which is to:

- (a) Visit, talk with, or offer personal, social, and legal services to any resident, or obtain information from the resident about the facility and its operations.
- (b) Inform residents of their rights and entitlements and their corresponding obligations under federal and state law, by means of educational materials and discussions in groups or with individual residents.
- (c) Assist any residents in asserting legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which a resident may be aggrieved.
- (d) Engage in any other method of advising and representing residents so as to assure them full enjoyment of their rights.

[7.9.2.24 NMAC - Rp, 7.9.2.24 NMAC, 6/9/2020]

7.9.2.25 HOUSING RESIDENTS IN LOCKED UNITS: Definitions as used in this section:

A. Locked unit: means a ward, wing or room which is designated as a protected environment and is secured in a manner that prevents a resident from leaving the unit at will. A physical restraint applied to the body is not a locked unit. A facility locked for purposes of security is not a locked unit, provided that residents may exit at will. An alarmed unit does not constitute a locked unit.

B. Consent: means a written, signed request given without duress by a resident capable of understanding the nature of the locked unit, the circumstances of one's condition, and the meaning of the consent to be given.

(1) A resident or responsible party may give consent to reside in a locked unit.

(2) The consent shall be effective only for 90 days from the date of the consent, unless revoked. Consent may be renewed for 90 day periods pursuant to this subsection.

(3) The consent may be revoked by the resident if competent or by legal guardian at any time. The resident shall be transferred to an unlocked unit promptly following revocation.

C. Emergencies: In an emergency, a resident may be confined in a locked unit if necessary to protect the resident or others from injury or to protect property, providing the facility immediately attempts to notify the physician for instructions. A physician's orders for the confinement must be obtained within 12 hours. No resident may be confined for more than an additional hours under order of the physician.

[7.9.2.25 NMAC - Rp, 7.9.2.25 NMAC, 6/9/2020]

7.9.2.26 ADMINISTRATOR/STATUTORY REFERENCE: A nursing home shall be supervised by an administrator licensed under the Nursing Home Administrators Act, Sections 61-13-16 through 61-13-16 NMSA 1978. Supervision shall include, but not be limited to, taking all reasonable steps to provide qualified personnel to assure the health, safety, and right's of the residents.

A. Full-time administrator: Every nursing home shall be supervised full-time by an administrator licensed under the Nursing Home Administrators Act, except multiple facilities. If more than one nursing home or other licensed health care facility is located on the same or contiguous property, one full-time administrator may serve all the facilities.

B. Absence of administrator: A person present in and competent to supervise the facility shall be designated to be in charge whenever there is not an administrator in the facility, and shall be identified to all staff.

C. Change of administrator:

(1) Replacement of administrator: If it is necessary immediately to terminate an administrator, or if the licensee loses an administrator for other reasons, a replacement shall be employed or designated as soon as possible within days of vacancy.

(2) Temporary replacement: During any vacancy in the position of administrator, the licensee shall employ or designate a person competent to fulfill the functions of an administrator immediately.

(3) Notice of change of administrator: When the licensee loses an administrator, the licensee shall notify the department within two department working days of such loss and provide written notification to the department of the name and qualifications of the person in charge of the facility during the vacancy; and the name and qualifications of the replacement administrator, when known.

[7.9.2.26 NMAC - Rp, 7.9.2.26 NMAC, 6/9/2020]

7.9.2.27 EMPLOYEES: In this section, "employee" means anyone directly employed by the facility on other than a consulting or contractual basis.

A. Qualifications and restrictions: No person under 16 years of age shall be employed to provide direct care to residents.

B. Physical health certifications: Every new employee shall be certified in writing by a physician as having been screened for tuberculosis infection and provide a statement of medical evidence that they are currently free from communicable disease prior to beginning work.

C. Disease surveillance and control: Facilities shall develop and implement written policies for control of communicable diseases which ensure that employees and volunteers with systems or signs of communicable disease or infected skin lesions are not permitted to work unless authorized to do so by a physician or physician extender.

D. Volunteers: Facilities may use volunteers provided that the volunteers receive the orientation, training, and supervision necessary to assure resident health, safety and welfare.

E. Abuse of residents:

(1) Orientation for all employees: Except in an emergency, before performing any duties, each new employee, including temporary help, shall receive appropriate orientation to the facility and its policies, including, but not limited to, policies relating to fire prevention, accident prevention, and emergency procedures. All employees shall be oriented to resident's rights and to their position and duties by the time they have worked 30 days.

(2) Training: Except for nurses, all employees who provide direct care to residents shall be trained through a program approved by the department.

(3) Assignments: Employees shall be assigned only to resident care duties consistent with their training.

(4) Reporting: All employees will be instructed in the reporting requirements of Section 27-7-14 NMSA 1978, the Adult Protective Services Act, of abuse, neglect or exploitation of any resident.

F. Continuing education:

(1) **Nursing in-service:** The facility shall require employees who provide direct care to residents to attend educational programs desired to develop and improve the skill and knowledge of the employees with respect to the needs of the facility's residents, including rehabilitative therapy, oral health care, wheelchair safety and transportation and special programming for developmentally disabled residents if the facility admits developmentally disabled person. These programs shall be conducted quarterly to enable staff to acquire the skills and techniques necessary to implement the individual program plans for each resident under their care.

(2) **Dietary in-service:** Educational programs shall be held quarterly for dietary staff, and shall include instruction in the proper handling of food, personal hygiene and grooming, and nutrition and modified diet patterns served by the facility.

(3) **All other staff in-service:** The facility shall provide in-service designed to improve the skills and knowledge of all other employees.

[7.9.2.27 NMAC - Rp, 7.9.2.27 NMAC, 6/9/2020]

7.9.2.28 RECORDS - GENERAL: The administrator or administrator's designee shall provide the department with any information required to document compliance with these regulations and shall provide reasonable means for examining records and gathering the information.

[7.9.2.28 NMAC - Rp, 7.9.2.28 NMAC, 6/9/2020]

7.9.2.29 PERSONNEL RECORDS: A separate record of each employee shall be maintained, be kept current, and contain sufficient information to support assignment to the employee's current position and duties.

[7.9.2.29 NMAC - Rp, 7.9.2.29 NMAC, 6/9/2020]

7.9.2.30 MEDICAL RECORDS - STAFF:

A. Timeliness: Duties relating to medical records shall be completed in a timely manner.

B. Each facility shall designate an employee of the facility as the person responsible for the medical record service, who:

(1) is a graduate of a school of medical record science that is accredited jointly by the council on medical education of the American medical association; or

(2) receives regular consultation but not less than four hours quarterly as appropriate from a person who meets the requirements of Paragraph (1) of Subsection B of 7.9.2.30 NMAC. Such consultation shall not be substituted for the routine duties of staff maintaining records. The records consultant shall evaluate the records and records service, identify problem areas, and submit written recommendations for change to the administrator.

(3) Sufficient time will be allocated to the person who is designated responsible for medical record service to insure that accurate records are maintained.

[7.9.2.30 NMAC - Rp, 7.9.2.30 NMAC, 6/9/2020]

7.9.2.31 MEDICAL RECORDS - GENERAL:

A. Availability of records: Medical records of current residents shall be stored in the facility and shall be easily accessible, at all times, to persons authorized by the resident to obtain the release of the medical records.

B. Organization: The facility shall maintain a systematically organized records system appropriate to the nature and size of the facility for the collection and release of resident information.

C. Unit record: A unit record shall be maintained for each resident and day care client.

D. Indexes: A master resident index shall be maintained.

E. Maintenance: The facility shall safeguard medical records against loss, destruction, or unauthorized use, and shall provide adequate space and equipment to efficiently review, index, file and promptly retrieve the medical records.

F. Retention and destruction:

(1) The medical record shall be completed and stored within 60 days following a resident's discharge or death.

(2) An original medical record and legible copy or copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of this resident shall be retained for a period of at least 10 years following a resident's discharge or death. All other records required by these regulations shall be retained for the period for which the facility is under review.

(3) Medical records no longer required to be retained under this section may be destroyed, provided:

(a) the confidentiality of the information is maintained; and

(b) the facility permanently retains at least identification of the resident, final diagnosis, physician, and dates of admission and discharge.

(4) A facility shall arrange for the storage and safekeeping of records for the periods and under the conditions required by this paragraph in the event the facility closes.

(5) If the ownership of a facility changes, the medical records and indexes shall remain with the facility.

G. Records documentation:

(1) All entries in medical records shall be legible, permanently recorded, dated, and authenticated with the name and title of the person making the entry.

(2) Symbols and abbreviations may be used in medical records if approved by a written facility policy which defines the symbols and abbreviations and which controls their use.

[7.9.2.31 NMAC - Rp, 7.9.2.31 NMAC, 6/9/2020]

7.9.2.32 MEDICAL RECORDS - CONTENT: Except for persons admitted for short-term care, each resident's medical record shall contain:

A. Identification and summary sheet:

B. Physician's documentation:

(1) An admission medical evaluation by a physician, including:

- (a) a summary of prior treatment;
- (b) current medical findings;
- (c) diagnosis at the time of admission to the facility;
- (d) the resident's rehabilitation potential;
- (e) the results of the required physical examination;
- (f) level of care.

(2) All physician's orders including:

- (a) admission to the facility;
- (b) medications and treatments;
- (c) diets;
- (d) rehabilitative services;
- (e) limitations on activities;
- (f) restraint orders;
- (g) discharge or transfer orders.

(3) Physician progress notes following each visit.

(4) Annual physical examination.

(5) Alternate visit schedule, and justification for such alternate visits, not to exceed 90 days.

C. Nursing service documentation:

(1) An assessment of the resident's nursing needs.

(2) Initial nursing care plan and any revisions.

(3) Nursing notes are required as follows:

(a) for residents requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least weekly; and

(b) for residents not requiring skilled care, a narrative nursing note shall be required as often as needed to document the resident's condition, but at least monthly.

(4) In addition to the nursing care plan, nursing documentation describing:

- (a) the general physical and mental condition of the resident, including any unusual symptoms or actions;
- (b) all incidents or accidents including time, place, injuries or potential complications from injury or accident, details of incident or accident, action taken, and follow-up care;
- (c) the administration of all medications, the need for PRN medications and the resident's response, refusal to take medication, omission of medications, errors in the administration of medications, and drug reactions;
- (d) food intake, when the monitoring of intake is necessary;
- (e) fluid Intake when monitoring of intake is necessary;
- (f) any unusual occurrences of appetite or refusal or reluctance to accept diets;
- (g) summary of restorative nursing measures which are provided;
- (h) summary of the use of physical and chemical restraints;
- (i) other non-routine nursing care given;
- (j) the condition of a resident upon discharge; and
- (k) the time of death, the physician called, and the person to whom the body was released.

D. Social services records:

(1) a social history of the resident; and

(2) notes regarding pertinent social data and action taken.

E. Activities records: Documentation of activities programming, a history and assessment, a summary of attendance, and quarterly progress notes.

F. Rehabilitative services:

(1) An evaluation of the rehabilitative needs of the resident.

(2) Plan of treatment.

(3) Progress notes detailing treatment given, evaluation, and progress.

G. Dietary assessment: Record of the dietary assessment.

- H. Dental services:** Summary of all dental services resident has received.
- I. Diagnostic services:** Records of all diagnostic tests performed during the resident's stay in the facility.
- J. Plan of care:** Plan of care which includes integrated program activities, therapies and treatments designed to help each resident achieve specific goals as developed by an interdisciplinary team.
- K. Authorization or consent:** A photocopy of any court order, power of attorney or living will authorizing another person to speak or act on behalf of the resident and any resident consent forms.
- L. Discharge or transfer information:** Documents, prepared upon a resident's discharge or transfer from the facility, summarizing, when appropriate:
 - (1) current medical finding and condition;
 - (2) final diagnosis;
 - (3) rehabilitation potential;
 - (4) a summary of the course of treatment;
 - (5) nursing and dietary information;
 - (6) ambulation status;
 - (7) administrative and social information; and
 - (8) needed continued care and instructions.

[7.9.2.32 NMAC - Rp, 7.9.2.32 NMAC, 6/9/2020]

7.9.2.33 OTHER RECORDS: The facility shall retain:

- A. Dietary records:** All menus and therapeutic diets for one year.
- B. Staffing records:** Records of staff work schedules and time worked for one year.
- C. Safety tests:** Records of tests of fire detection, alarm, and extinguishment equipment.
- D. Resident census:** At least a daily census of all residents, indicating number of residents requiring each level of care.
- E. Professional consultations:** Documentation of professional consultations by:
 - (1) A dietician.
 - (2) A registered nurse.
 - (3) Others, as may be used by the facility.
- F. In-service and orientation programs:** Subject matter, instructors and attendance records of all in-service and orientation programs.
- G. Transfer agreements:** Transfer agreements.
- H. Funds and property statement:** The statement prepared upon a resident's discharge or transfer from the facility that accounts for all funds and receipted property held by the facility for the resident.
- I. Court orders and consent forms:** Copies of court orders or other documents, if any, authorizing another person to speak or act on behalf of the resident.

[7.9.2.33 NMAC - Rp, 7.9.2.33 NMAC, 6/9/2020]

7.9.2.34 LICENSE LIMITATIONS:

- A. Bed capacity:** No facility may house more residents than the maximum bed capacity for which it is licensed. Persons participating in a day care program are not residents for purposes of these regulations.
- B. Care levels:** No person who requires care greater than that which the facility is licensed to provide may be admitted to or retained in the facility, unless under waiver according to state guidelines.
- C. Other conditions:** The facility shall comply with all other conditions of the license.

[7.9.2.34 NMAC - Rp, 7.9.2.34 NMAC, 6/9/2020]

7.9.2.35 OTHER LIMITATIONS ON ADMISSION:

- A. Persons requiring unavailable services:** Persons who require services which the facility does not provide or make available shall not be admitted or retained.
- B. Communicable diseases:**
 - (1) Restriction: No person suspected of having a disease in a communicable state shall be admitted or retained unless the facility has the means to manage the condition.
 - (2) Isolation techniques: Persons suspected of having a disease in a communicable state shall be managed according to isolation techniques for use in hospitals, published by the U.S. department of health and human services, public health services, center for disease control, or with comparable methods as developed by facility policies.
 - (3) Reportable diseases: Suspected diseases reportable by law shall be reported to the local public health agency and the division of health, bureau of community health and prevention within time frames specified by these agencies.
- C. Destructive residents:** Residents who are known to be destructive of property, self-destructive, disturbing or abusive to other residents, or suicide, shall not be admitted or retained, unless the facility has and uses sufficient resources to appropriately manage and care for them.
- D. Developmental disabilities:** No person who has a primary diagnosis of developmental disability may be admitted to a facility unless the facility is certified as an intermediate care facility for the mentally retarded, except that a person who has a

developmental disability and who requires skilled nursing care services may be admitted to a skilled nursing facility if approved for such level of care by the state developmental disability authority.

E. Mental illness: No person with a primary diagnosis of mental illness may be admitted to long term care facilities except that a person who has a diagnosis of mental illness and who requires skilled nursing care services may be admitted to a long term care facility if approved for such level of care by the state mental illness authority.

F. Admission seven days a week: With prior approval, facilities shall take reasonable steps to admit residents seven days a week.

[7.9.2.35 NMAC - Rp, 7.9.2.35 NMAC, 6/9/2020]

7.9.2.36 PROGRAM STATEMENT FOR DEVELOPMENTALLY DISABLED RESIDENTS:

A. Approval: Each facility serving residents who have a developmental disability and require active treatment shall submit a written program statement to the department for approval.

B. Contents: The program statement shall detail the following:

- (1) services to be provided;
- (2) admission policies for developmentally disabled persons;
- (3) program goals for developmentally disabled residents;
- (4) description of program elements, including relationships, contracted services and arrangements with

other health and social services agencies and programs.

(5) a designation of staff assigned to the care of developmentally disabled residents. Staff scheduling shall demonstrate consistency of staff involvement. Staff members shall have demonstrated skill in the management of these residents; and

(6) a description of care evaluation procedures for developmentally disabled residents. These procedures shall require that case evaluation results be incorporated into the individual resident's care plan and that individual plans of care be reviewed and revised as indicated by resident need.

[7.9.2.36 NMAC - Rp, 7.9.2.36 NMAC, 6/9/2020]

7.9.2.37 PROCEDURES FOR ADMISSION OF RESIDENTS:

A. "Applicability": The procedures in this section apply to all persons admitted to facilities except persons admitted for short-term care.

B. "Physicians orders": No person may be admitted as a resident except upon:

- (1) order of a physician;
- (2) receipt of information from a physician, before or on the day of admission, about the person's current medical condition and diagnosis, and receipt of a physician's initial plan of care and orders from a physician for immediate care of the resident; and

(3) receipt of certification in writing from a physician that the person is free of active tuberculosis and clinically apparent communicable disease the person may be found to have.

C. "Medical examination and evaluation":

(1) Examination: Each resident shall have a physical examination by a physician or physician extender within 48 hours following admission unless an examination was performed within 15 days before admission.

(2) Evaluation: Within 48 hours after admission the physician or physician extender shall complete the resident's medical history and physical examination record. If copies of previous evaluations are used, the physician must authenticate such findings within 48 hours of admission.

D. "Resident assessment": A comprehensive accurate assessment of each resident's functional capacity and impairment, as basis for care delivery, shall be conducted by designated qualified staff. A preliminary assessment shall be completed within 48 hours of admission, a comprehensive assessment within 30 days of admission, after significant change and repeated at least annually.

[7.9.2.37 NMAC - Rp, 7.9.2.37 NMAC, 6/9/2020]

7.9.2.38 REMOVALS FROM THE FACILITY: The provisions of this section shall apply to all resident removals.

A. Conditions: No resident may be temporarily or permanently removed from this facility except:

- (1) Voluntary removal: Upon the request or with the informed consent of the resident or guardian.
- (2) Involuntary removal:
 - (a) for nonpayment of charges, following seven days notice and opportunity to pay any deficiency;
 - (b) if the resident requires care other than that which the facility is licensed to provide;
 - (c) for medical reasons as ordered by a physician;
 - (d) in case of a medical emergency or disaster;
 - (e) for the resident's welfare or the welfare of other residents;
 - (f) if the resident does not need nursing home care, and alternate placement is identified and arrangements for transfer have been completed;
 - (g) if the short-term care period for which the resident was admitted has expired; and
 - (h) as otherwise permitted by law.

(3) **Alternate placement:** Except for removal under the preceding section, no resident may be involuntarily removed unless an alternate placement is arranged for the resident.

B. Permanent removals:

(1) **Notice:** The facility shall provide a resident, the resident's physician and guardian, relative, or other responsible person, at least 30 days notice of removal under Subsection A of 7.9.2.38 NMAC, except Subparagraph (a) of Paragraph (2) of Subsection A of 7.9.2.38 NMAC, unless the continued presence of the resident endangers the health, safety, or welfare of the resident or other residents.

(2) **Removal procedures:**

(a) The resident, shall be given a notice containing the time and place of a planning conference; a statement informing the resident that any persons of the resident's choice may attend the conference; and the -procedure for submitting a complaint to the department.

(b) Unless the resident is receiving respite care or unless precluded by circumstances posing a danger to the health, safety, or welfare of a resident, prior to involuntary removal under Subsection A of 7.9.2.38 NMAC a planning conference shall be held at least three days before removal with the resident, guardian, if any, any appropriate county agency, and others designated by the resident, including the resident's physician, to review the need for relocation, assess the effect of relocation on the resident, discuss alternative placements, and develop a relocation plan which includes at least those activities listed below.

(c) **Removal activities shall include:** counseling regarding the impending removal; arrangements for the resident to visit the potential alternative placement or meeting with that facility's admissions staff, unless medically contraindicated or waived by the resident; assistance to the resident in planning the moving of belongings and funds to the new facility or quarters; and provisions for needed medications and treatments during relocation.

(d) **Discharge records:** Upon removal of a resident, all relevant documents shall be prepared and provided to the facility admitting the resident.

[7.9.2.38 NMAC - Rp, 7.9.2.38 NMAC, 6/9/2020]

7.9.2.39 TRANSFER AGREEMENTS:

A. Requirement: Each facility shall have in effect a transfer agreement with one or more hospitals under which in-patient hospital care or other hospital services are available promptly to the facility's resident's when needed. Facilities under same management having identified distinct parts are exempt from transfer agreements.

B. Transfer of residents: A hospital and a facility shall be considered to have a transfer agreement in effect if there is a written agreement between them or, when the two Institutions are under common control, if there is a written statement by the person or body which controls them, which gives reasonable assurance that:

(1) transfer of residents will take place between the hospital and the facility ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there shall be interchange of medical and other information necessary for the care and treatment of individuals transferred between the institutions or for determining, whether such individuals can be adequately cared for somewhere other than in either of the institutions.

C. Exemption: A facility which does not have a resident transfer agreement in effect, but which is found by the Department to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between the two facilities and the information referred to in Subsection B of 7.9.2.39 NMAC above, shall be considered to have such an agreement in effect if and for so long as the department finds that to do so is in the public interest and essential to ensuring nursing facility services in the community.

[7.9.2.39 NMAC - Rp, 7.9.2.39 NMAC, 6/9/2020]

7.9.2.40 BEDHOLD:

A. Bedhold: A resident who is on leave or temporarily discharged has expressed an intention to return to the facility under the terms of the admission policy for bedhold, shall not be denied readmission, if level of care remains the same.

B. Limitation: The facility shall hold a resident's bed until the resident returns, until the resident waives his right to have the bed held or until the maximum time allowable as defined by facility policies expires. The facility is responsible for notifying resident or family of their bedhold policy.

[7.9.2.40 NMAC - Rp, 7.9.2.40 NMAC, 6/9/2020]

7.9.2.41 TRANSFER WITHIN THE FACILITY: Prior to any transfer of a resident between rooms or beds within a facility, the resident or guardian, if any, and any other person designated by the resident shall be given a reasonable notice and explanation of the reasons for transfer. Transfer of a resident between rooms or beds within a facility may be made only for medical reasons or for the resident's welfare or the welfare of other residents, or voluntarily with the residents' approval.

[7.9.2.41 NMAC - Rp, 7.9.2.41 NMAC, 6/9/2020]

7.9.2.42 INDIVIDUAL CARE: Each resident shall receive care based upon individual needs.

A. Hygiene:

(1) Each resident shall be kept comfortably clean and well groomed.

(2) Beds shall be made daily, with a complete change of linen to be provided as often as necessary, but at least once a week.

(3) Residents shall have clean clothing as needed to present a neat appearance and to be free of odors. Residents who are not bedfast shall be dressed each day, in their own clothing, as appropriate to their activities, preferences, and comforts.

B. Decubiti prevention: Nursing personnel shall employ appropriate nursing management techniques to promote the maintenance of skin integrity and to prevent development of decubiti filed in the resident's clinical record, except as provided in this section.

(1) Verbal orders: Verbal orders from physicians or dentists may be accepted by a nurse or pharmacist, or, in the case of verbal orders for rehabilitative therapy, by a therapist. Verbal orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a requirement may be waived if:

- (a) facility has made unsuccessful good faith effort; and
- (b) the health and environment department determines residents will not be endangered; or
- (c) staffing is sufficient to meet residents' needs.

(2) Nursing personnel shall provide care, including proper hydration, designated to maintain current functioning and to improve the resident's ability to carry out activities of daily living, including assistance with maintaining good body alignment and proper positioning to prevent deformities.

(3) Each resident shall be encouraged to be up and out of bed as possible, unless otherwise ordered by a physician.

(4) Any significant changes in the condition of any resident shall be reported to the nurse in charge or on call, who shall take appropriate action.

C. Rehabilitative measures: Residents shall be assisted in carrying out rehabilitative measures initiated by a rehabilitative therapist ordered by a physician, including assistance with adjusting to any disabilities and using any prosthetic devices.

D. Tuberculosis retesting: Resident's shall be retested for tuberculosis infection based on the prevalence of tuberculosis in the community and the likelihood of exposure to tuberculosis in the facility.

E. Nourishment:

(1) Diets: Residents shall be served diets as prescribed by a physician.

(2) Adaptive devices: Adaptive self-help devices shall be available to residents assessed as capable of using such devices and these residents shall be trained in their use to contribute to independence in eating.

(3) Assistance: Residents who require assistance with food or fluid intake shall be helped as necessary.

(4) Food and fluid intake and diet acceptance: A resident's food and fluid intake and acceptance of diet shall be monitored and documented, and significant deviations from normal eating patterns shall be reported to the nurse and either the resident's physician or dietician as appropriate.

[7.9.2.42 NMAC - Rp, 7.9.2.42 NMAC, 6/9/2020]

7.9.2.43 NOTIFICATION OF CHANGES IN CONDITION OR STATUS OF RESIDENT:

A. Changes in condition: A resident's physician, guardian, if any, and any other responsible person designated in writing by the resident or guardian to be notified shall be notified promptly of any significant accident, injury, or adverse change in the resident's condition.

B. Changes in status: A resident's guardian and other person designated in writing by the resident or guardian shall be notified promptly of any significant nonmedical change in the resident's status, including financial situation, any plan to discharge the resident, or any plan to transfer the resident within the facility or to another facility.

[7.9.2.43 NMAC - Rp, 7.9.2.43 NMAC, 6/9/2020]

7.9.2.44 TREATMENT AND ORDERS:

A. Orders:

(1) Restriction: Medications, treatments and rehabilitative therapies shall be administered as ordered by a physician or dentist subject to the resident's rights to refuse them. No medication, treatment or changes in medication or treatment may be administered to a resident without a physician's or dentists written order which shall be filed in the resident's clinical record, except as provided in this section.

(2) Verbal orders: Verbal orders from physicians or dentists may be accepted by a nurse or pharmacist, or, in the case of verbal orders for rehabilitative therapy, by a therapist. Verbal orders shall be immediately written, signed and dated by the nurse, pharmacist or therapist on a not specifically limited as to time or number of doses when ordered shall be automatically stopped in accordance with the stop order policy required by Subsection A of 7.9.2.57 NMAC of these regulations.

(3) Notice to physicians or dentists: Each resident's attending physician or dentist shall be notified of stop order policies and contacted promptly for renewal of orders which are subject to automatic termination.

B. Stop orders: Medications shall be in accordance with the stop order policy required by Subsection E of 7.9.2.57 NMAC of these regulations.

(1) Notice to physicians or dentists: Each resident's attending physician or dentist shall be notified of stop order policies and contacted promptly for renewal of orders which are subject to automatic termination.

C. Release of medications to residents: Medications shall be released to residents who are on leave or have been discharged only on order of the physician.

D. Administration of medications:

- (1) Personnel who may administer medications: In a nursing home, medications may be administered only by a nurse or other licensed medical professional whose, licensed scope of practice permits administration of medication.
- (2) Responsibility for administration: Policies and procedures designed to provide safe and accurate administration of medications shall be developed by the facility and shall be followed by personnel assigned to prepare and administer medication except when a single unit dose package distribution system is used. Person administering medication will immediately record in the resident's clinical records.
- (3) Omitted doses: If, for any reason, a medication is not administered as ordered the omission shall be noted in the resident's medication record with explanation of the omission.
- (4) Self-administration: Self-administration of medications by residents shall be permitted on order of the resident's physician.
- (5) Errors and reactions: Medication errors and suspected or apparent drug reactions shall be reported to the nurse in charge or on call as soon as discovered and any entry made in the resident's clinical record. The nurse shall take appropriate action, including notifying the physician.
- (6) Day care: The handling and administration of medications for day care clients shall comply with the requirements of this subsection.

[7.9.2.44 NMAC - Rp, 7.9.2.44 NMAC, 6/9/2020]

7.9.2.45 PHYSICAL AND CHEMICAL RESTRAINTS:

A. Definitions: As used in this subsection, the following definitions apply:

- (1) Physical restraint: means any article, device, or garment which is used primarily to modify, resident behavior by interfering with the free movement of the resident, and which the resident is unable to remove easily, or confinement in a locked room. Mechanical supports shall not be considered physical restraints.
- (2) Mechanical support: means any article, device, or garment which is used only to achieve the proper position or balance of the resident, which may include but is not limited to a geriatric chair, posey belt, or jacket, waist belt, pillows, or wedges. Necessity for mechanical support use must be documented in the resident's record and such use must be outlined in the resident's care plan.
- (3) Chemical restraint: means a medication used primarily to modify behavior by interfering with the resident's freedom of movement or mental alertness.

B. Orders required: Physical or chemical restraints shall be applied or administered only on the written order of a physician which shall indicate the resident's name, the type of restraint(s), the reason for restraint, the type of restraint authorized, and the period during which the restraint(s) is (are) to be applied.

C. Emergencies: A physical restraint may be applied temporarily without an order if necessary to protect the resident or another person from injury or to prevent physical harm to the resident or another person resulting from the destruction of property, provided that the physician is notified immediately and authorization for continued use is obtained from the physician within 12 hours.

D. Restriction: If the mobility of a resident is required to be restrained and can be appropriately restrained either by a physical or chemical restraint or by a locked unit, the provisions of this section shall apply.

E. Type of restraints: Physical restraints shall be of a type which can be removed promptly in an emergency, and shall be the least restrictive type appropriate to the resident.

F. Periodic care: Nursing personnel shall check a physically restrained resident as necessary, but at least every 30 minutes to see that the resident's personal needs are met and to change the resident's position if necessary. The restrained resident shall have restraints released and shall have opportunity for toileting, hydration, and exercise at least every two hours. Checks and releases will be documented.

G. Records: Any use of restraints shall be noted, dated, and documented in the resident's clinical record on each tour of duty during which the restraints are in use.

[7.9.2.45 NMAC - Rp, 7.9.2.45 NMAC, 6/9/2020]

7.9.2.46 USE OF OXYGEN:

A. Orders of oxygen: Except in an emergency, oxygen shall be administered only on order of a physician.

B. Person administering: Oxygen shall be administered to residents only by a capable person trained in its administration and use.

C. Signs: "No smoking" signs shall be posted at the entrance of the room in which oxygen is in use.

D. Flammable goods: Prior to administering oxygen, all matches and other smoking material shall be removed from the room.

[7.9.2.46 NMAC - Rp, 7.9.2.46 NMAC, 6/9/2020]

7.9.2.47 RESIDENT CARE PLANNING:

A. Developmental and content of care plans: Except In the case of a person admitted for short-term care, within two weeks following admission a written care plan shall be developed, based on the resident's history and assessments from all

appropriate disciplines and the physician's evaluations and orders, which shall include:

- (1) Measurable goals with specific time limits for attainment.
- (2) The specific approaches for delivery needed care, and indication of which professional disciplines are

responsible for delivering the care.

B. Evaluations and updates: The care of each resident shall be reviewed by each of the services involved in the resident's care and the care plan evaluated and updated no less than quarterly or more often as needed.

C. Implementation: The care plans shall be substantially followed.

[7.9.2.47 NMAC - Rp, 7.9.2.47 NMAC, 6/9/2020]

7.9.2.48 MEDICAL DIRECTION IN SKILLED CARE FACILITIES:

A. Medical director: Every skilled care facility shall retain, pursuant to a written agreement, a physician to serve as medical director on a part-time or full-time basis as is appropriate for the needs of the residents and the facility. If the facility has an organized medical staff, the medical director shall be designated by the medical staff with approval of the licensee.

B. Coordination of medical care: Medical direction and coordination of medical care in the facility shall be provided by the medical director. The medical director shall be responsible for development of written rules and regulations which shall be approved by the licensee and include delineation of the responsibilities of attending physicians. If there is an organized medical staff, by-laws also shall be developed by the medical director and approved by the licensee. Coordination of medical care shall include liaison with attending physician to provide that physicians' orders are written promptly upon admission of a resident, that periodic evaluations of the adequacy and appropriateness of health professional and supportive staff and services are conducted, and that the medical needs of the residents are met.

C. Responsibilities to the facility: The medical director shall monitor the health status of the facility's employees. Incidents and accidents that occur on the premises shall be reviewed by the medical director to identify hazards to health and safety. [7.9.2.48 NMAC - Rp, 7.9.2.48 NMAC, 6/9/2020]

7.9.2.49 PHYSICIAN SERVICES IN ALL FACILITIES: The facility shall assure that the following services are provided:

A. Attending physicians: Each resident shall be under the supervision of a physician of the resident's or guardian's choice who evaluates and monitors the resident's immediate and long-term needs and prescribes measures necessary for the health, safety and welfare of the resident. Each attending physician shall make arrangements for the medical care of the physician's residents in the physician's absence.

B. Physician's visit:

- (1) Each resident who requires skilled nursing care shall be seen by a physician at least every 30 days and an intermediate care resident at least every 60 days unless the physician specifies and justifies in writing an alternate schedule of visits.
- (2) The physician shall review the plan of care required at the time of each visit.
- (3) The physician shall review the resident's medications and other orders at least at the time of each visit.
- (4) The physician shall review the resident's medications and orders at least at the time of each visit.

C. Availability of physicians for emergency patient care: The facility shall have written procedures, available at each nurse's station, for procuring a physician to furnish necessary medical care in emergencies and for providing care pending arrival of a physician. The names and telephone numbers of the physicians or medical service personnel available for emergency care shall be posted at each nursing station.

[7.9.2.49 NMAC - Rp, 7.9.2.49 NMAC, 6/9/2020]

7.9.2.50 NURSING SERVICES:

A. Definitions:

- (1) Nursing personnel: means nurses, nurse aides, nursing assistants, and orderlies.
- (2) Ward clerk: means an employee who performs clerical duties of the nursing personnel.

B. Director of nursing services in skilled care and intermediate care facilities:

(1) Staffing requirement: Every skilled care facility and every intermediate care facility shall employ a full-time director of nursing services who may also serve as a charge nurse. The director of nursing services shall work only on the day shift except as in an emergency or required for the proper supervision of nursing personnel.

(2) Qualifications: The director of nursing services shall:

- (a) be a registered or licensed practical nurse; and
- (b) be trained or experienced in areas such as nursing service administration, restorative nursing,

psychiatric nursing, or geriatric nursing.

(3) Duties: The director of nursing services shall be responsible for:

- (a) supervising the functions, activities and training of the nursing personnel;
- (b) developing and maintaining standard nursing practice, nursing policy and procedure manuals, and written job descriptions for each level of nursing personnel;
- (c) coordinating nursing services with other resident services;
- (d) designating the charge nurses provided for by this section;

(e) ensuring that the duties of nursing personnel shall be clearly defined and assigned to staff members consistent with the level of education, preparation, experience, and licensing of each.

C. Charge nurses in skilled care facilities and intermediate care facilities:

(1) Staffing requirement:

(a) A skilled nursing facility shall have at least one charge nurse on duty at all times.

(b) An intermediate care facility shall have a charge nurse during every tour of duty.

(2) Qualifications: Unless otherwise required under this paragraph, the charge nurses shall be registered nurses or licensed practical nurses, and shall have had training, or be acquiring training, or have had experience in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.

(3) Duties:

(a) The charge nurse, if a registered nurse, shall supervise the nursing care of all assigned residents, and delegate the duty to provide for the direct care of specific residents, including administration of medications by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.

(b) The charge nurse, if a licensed practical nurse, shall manage and direct the nursing and other activities of other licensed practical nurse and less skilled assistants and shall arrange for the provision of direct care to specific residents, including administration of medications, by nursing personnel based upon individual resident needs, the facility's physical arrangement, and the staff capability.

[7.9.2.50 NMAC - Rp, 7.9.2.50 NMAC, 6/9/2020]

7.9.2.51 NURSING STAFF: In addition to the requirements of Section 7.9.2.50 NMAC, the following conditions shall be met:

A. Assignments: There shall be sufficient nursing service personnel assigned to care for the specific needs of each resident on each tour of duty. Those personnel shall be briefed on the condition and appropriate care of each resident prior to beginning hands-on care of residents.

B. Relief personnel: Facilities shall obtain qualified relief personnel.

C. Records, weekly schedules: Weekly time schedules shall be planned at least one week in advance, shall be posted and dated, shall indicate the names and classifications of nursing personnel and relief personnel assigned on each nursing unit for each tour of duty, and shall be updated as changes occur.

D. Staff meetings: Meetings shall be held at least quarterly for the nursing personnel to brief them on new developments, raise issues relevant to the service, and for such other purposes as are pertinent.

E. Twenty-four (24) hour coverage: All facilities shall have at least one nursing staff person on duty at all times.

F. Staffing patterns: The assignment of the nursing personnel required by this subsection to each tour of duty shall be sufficient to meet each resident's needs and implement each resident's comprehensive care plan.

(1) Nursing department personnel means, the director of nursing, the assistant director of nursing, nursing department directors, licensed nursing personnel, certified nursing assistants, nursing assistants who have completed 16 hours or more of orientation and demonstrated competency and restorative nursing assistants.

(2) The director of nursing, the assistant director of nursing, and nursing department directors may be counted towards the minimum staffing requirements only for the time spent on the shift providing direct resident care services.

(a) A skilled nursing facility or facility that offers intermediate and skilled nursing shall maintain a nursing department minimum staffing level of two and a half hours per patient day calculated on a seven day average.

(b) An intermediate care facility shall maintain a nursing department minimum staffing level of two and three-tenths (2.3) hours per patient day calculated on a seven day average.

(c) Within one hour of shift change, facilities shall post the number of nursing personnel on duty in a conspicuous and consistent location for public review. Shifts are informally defined as the day shift, evening shift, and night shift. Employees working variations of these shifts shall be included within the shift count where a majority of the hours fall. Example: For a facility with 100 patients, two and three-tenths (2.3) hours per patient day averages one nursing department employee on duty for approximately every 10 to 11 patients. For a facility with 100 patients, two and five tenths (2.5) hours per patient day averages one nursing department employee for every nine to 10 patients. These are daily averages that will vary from shift to shift so that actual staffing might approximate:

| | | |
|---------------|---------------------------|---------------------------|
| | 2.3 Hours per patient day | 2.5 Hours per patient day |
| Day Shift | 1 staff for 8 patients | 1 staff for 7 patients |
| Evening Shift | 1 staff for 10 patients | 1 staff for 10 patients |
| Night Shift | 1 staff for 13 patients | 1 staff for 12 patients |

[7.9.2.51 NMAC - Rp, 7.9.2.51 NMAC, 6/9/2020]

7.9.2.52 DIETARY SERVICE: The facility shall provide a dietary service or contract for a dietary service which meets the requirements of this section.

A. Staff:

(1) Full or part-time supervisor: The dietary service shall be supervised by a full-time supervisor, except that an intermediate care facility with fewer than 50 residents may employ a person to work as supervisor part-time.

(2) Qualifications: The dietary service supervisor shall be either:

(a) a dietitian; or

(b) shall receive necessary consultation from a dietitian and shall have completed a course of study of not less than 90 hours credit in food service supervision at a vocational, technical, or adult education school or equivalent, or presently be enrolled in such a course of study; or hold an associate degree as a dietetic technician.

(3) Staff: There shall be dietary service personnel on duty at least 12 hours daily who may include the supervisor.

B. Hygiene of staff: Dietary staff and other personnel who participate in dietary service shall be in good health and practice hygienic food handling techniques.

C. Menus:

(1) Menus shall be planned and written at least two weeks in advance of their use, and shall be adjusted for seasonal availability of foods.

(2) Menus shall be planned, to the extent medically possible, in accordance with the "recommended daily dietary allowances", of the food and nutrition board of the national research council, national academy of sciences.

(3) Food sufficient to meet the needs of each resident shall be planned, prepared and served for each meal. When changes in the menu are necessary, substitutions shall provide equal nutritive value. Record of menus as served, including substitutions shall be retained for one year.

(4) The facility shall make reasonable adjustments to accommodate each resident's preferences, habits, customs, appetite, and physical condition.

(5) A file of tested recipes shall be maintained.

(6) A variety of protein food, fruits, vegetables, dairy products, breads, and cereals shall be provided.

D. Therapeutic diets:

(1) Therapeutic diets shall be served only on order of the physician, and shall be consistent with such orders.

(2) Therapeutic menus shall be planned with supervision or consultation from a qualified dietitian.

(3) Vitamin and mineral supplements shall be given only on order of the physician.

E. Meal service: All diets shall be prescribed by the attending physician.

(1) Schedule: At least three meals or their equivalent shall be offered to each resident daily, not more than six hours apart, with not more than a 14 hour span between a substantial evening meal and the following breakfast.

(2) Identification to trays: Trays, if used, shall be identified with the resident's name and type diet.

(3) Table service: Table service shall be provided for all residents who can and want to eat at a table.

(4) Re-service: Food served to a resident in an unopened manufacturer's package may not be re-served unless the package remains unopened and maintained at the proper temperature.

(5) Temperature: Food shall be served and maintained at proper temperatures, according to standards established by environmental improvement division.

(6) Snacks: If not prohibited by the resident's diet or condition, nourishments shall be offered routinely to all residents between the evening meal and bedtime.

(7) Drinking water: When a resident is confined to bed, a covered pitcher of drinking water and a glass shall be provided on a beside stand. The water shall be changed frequently during the day, and pitchers and glasses shall be sanitized daily. Single-service disposable pitchers and glasses may be used. Common drinking utensils shall not be used.

(8) Food transportation: Food transported into public areas other than the dining room shall be protected from environmental contamination.

[7.9.2.52 NMAC - Rp, 7.9.2.52 NMAC, 6/9/2020]

7.9.2.53 FOOD SUPPLIES AND PREPARATION:

A. Supplies: Food shall be purchased or procured from approved sources or sources meeting federal, state, and local standards or laws.

B. Preparation: Food shall be cleaned and prepared by methods that conserve nutritive value, flavor and appearance. Food shall be cut, chopped, or ground as needed for individual residents.

C. Milk: Only pasteurized fluid milk which is certified Grade A shall be used for beverages. Powdered milk may be used for cooking if it meets Grade A standards or is heated to a temperature of 165 degrees Fahrenheit during cooking

[7.9.2.53 NMAC - Rp, 7.9.2.53 NMAC, 6/9/2020]

7.9.2.54 SANITATION:

A. Equipment and utensils:

(1) All equipment, appliances and utensils used in preparation or serving of food shall be maintained in a functional, sanitary, and safe condition. Replacement equipment shall meet criteria established in "listing of food service equipment" by the national sanitation foundation.

(2) The floors, walls, and ceilings of all rooms in which food or drink is stored or prepared or In which utensils are washed shall be kept clean, smooth, and in good repair.

(3) All furnishings, table linens, drapes, and furniture shall be maintained in a clean and sanitary condition.

(4) Single-service, individually packaged, utensils shall be stored in the original, unopened wrapper until used, may not be made of toxic material and may not be re-used or re-distributed if the original wrapper has been opened.

B. Storage and handling of food:

(1) Food shall be stored, prepared, distributed, and served under sanitary conditions which prevent contamination.

(2) All readily perishable food and drink, except when being prepared or served, shall be kept in a refrigerator which shall have a temperature maintained at or below 40 degrees Fahrenheit.

C. Animals: Animals shall not be allowed where food is prepared, served or stored, or where utensils are washed or stored except in eating areas when food is not being served.

D. Dishwashing: Whether washed by hand or mechanical means, all dishes, plates, cups, glasses, pots, pans, and utensils shall be cleaned in accordance with accepted procedures which shall include separate steps for prewashing, washing, rinsing, and sanitizing by means of hot water or chemicals or a combination approved by the department.

[7.9.2.54 NMAC - Rp, 7.9.2.54 NMAC, 6/9/2020]

7.9.2.55 REHABILITATIVE SERVICES: Each facility shall either provide or arrange for, under written agreement, specialized rehabilitative services as needed by residents to improve and maintain functioning.

A. Conformity with orders and plan: Rehabilitative services shall be administered under a written plan of care that is developed in consultation with the attending physician and the therapist(s). The plan of care will be based on physician orders and assessment by the therapist(s).

B. Report to physician: Within two weeks of the initiation of rehabilitative treatment, a report of the resident's progress shall be made to the physician.

C. Review of plan: Rehabilitative services shall be reevaluated at least quarterly by the physician and therapists, and the plan of care updated as necessary.

[7.9.2.55 NMAC - Rp, 7.9.2.55 NMAC, 6/9/2020]

7.9.2.56 SPECIALIZED SERVICES-QUALIFICATIONS:

A. Physical therapy: Physical therapy shall be given or supervised only by a licensed physical therapist.

B. Speech and hearing therapy:

(1) Speech and hearing therapy shall be given or supervised only by a therapist who is licensed under the New Mexico Speech-Language and Pathology and Audiology Act, (Sections 61-14B-1 through 61-14B-16 NMSA 1978).

(2) Meets the educational standards, and is in the process of acquiring the supervised experience required for the certification of speech-language pathologists.

C. Occupational therapy: Occupational therapy shall be given or supervised only by a therapist who meets the standard for registration as an occupational therapist of the American occupational therapy association.

D. Equipment: Equipment necessary for the provision of therapies required by the residents shall be available and used as needed.

[7.9.2.56 NMAC - Rp, 7.9.2.56 NMAC, 6/9/2020]

7.9.2.57 PHARMACEUTICAL SERVICES:

A. Definitions: As used in this section:

(1) Medication: has the same meaning as the term "drug".

(2) Prescription medication: has the same meaning as the term "prescription drug".

B. Services: Each facility shall provide for obtaining medications for the residents from licensed pharmacies.

C. Supervision:

(1) Medication consultant: Each facility shall retain a registered pharmacist who shall visit the facility at least monthly to review the drug regimen of each resident and medication practices.

(2) The pharmacist shall submit a written report of findings at least monthly to the facility's administrator.

D. Emergency medication kit:

(1) A facility may have one or more emergency medication kits available to each charge nurse. All emergency kits shall be under the control of a pharmacist.

(2) The emergency kit shall be sealed and stored in a locked area. The facility shall have a policy and procedures for access by staff to the emergency kit in case of need.

E. Requirements for all medication systems:

(1) Obtaining new medications: When medications are needed which are not stocked, a licensed nurse shall telephone an order to the pharmacist who shall fill the order.

(2) Storing and labeling medications: All medications shall be handled in accordance with the following provisions:

(a) The storage and labeling of medications shall be based on currently acceptable professional practices.

(b) The consulting pharmacist shall be responsible to develop policies and procedures governing all aspects of storage and labeling of medications.

(c) The consulting pharmacist shall be responsible for assuring the facility meets all requirements for storage and labeling as required by New Mexico board of pharmacy.

(3) Destruction of medications:

(a) Time limit: Unless otherwise ordered by a physician, a resident's medication not returned to the pharmacy for credit shall be removed to a locked storage area when discontinued by a physician's order. Such discontinued medications will be destroyed within 30 days of the physician's discontinuance of use.

(b) Procedure: Records shall be kept of all medication returned for credit or disposal.

(c) Remaining controlled substances: Any controlled substances remaining after the discontinuance of physician's orders or the discharge or death of the resident shall be inventoried on the appropriate U.S. drug enforcement agency form and one copy shall be kept on file in the facility.

(4) Control of medication:

(a) Receipt of medications: The administrator or a physician, nurse, or pharmacist, may be an agent of the resident for the receipt of medications.

(b) Signatures: When the medication is received by the facility, the person completing the control record shall sign the record indicating the amount received.

(c) Discontinuance of medications: The consulting pharmacist shall assist the facility to develop policies for the automatic discontinuance of medications.

(5) Proof-of-use record:

(a) For schedule II drugs, a proof-of-use record shall be maintained which lists, on separate proof-of-use sheets for each type and strength of schedule II drug, the date and time administered, resident's name, physician's name, dose, signature of the person administering dose, and balance.

(b) Proof-of-use records shall be audited daily by the registered nurse or licensed practical nurse.

(6) Resident control and use of medications:

(a) Residents may have medications in their possession or stored at their bedside on the order of a physician.

(b) Medications which, if ingested or brought into contact with the nasal or eye mucosa, would produce toxic or irritant effects shall be stored and used only in accordance with the health, safety, and welfare of all residents.

[7.9.2.57 NMAC - Rp, 7.9.2.57 NMAC, 6/9/2020]

7.9.2.58 DIAGNOSTIC SERVICES:

A. **Requirement of services:** The facility shall provide for promptly obtaining required laboratory, x-ray, and other diagnostic services.

B. **Facility-provided services:** Any laboratory and x-ray services provided by the facility shall meet the applicable requirements for hospitals.

C. **Outside services:** If the facility does not provide these services, arrangements shall be made for obtaining the services from a physician's office, hospital, nursing facility, portable x-ray supplier, or independent laboratory.

D. **Physician's order:** No services under the subsection may be provided without an order of a physician.

E. **Notice of findings:** The attending physician shall be notified promptly of the findings of all tests provided under this subsection.

F. **Transportation:** The facility shall assist the resident, if necessary, in arranging for transportation to and from the provider of service.

(1) Any employee or agent of a regulated facility or agency who is responsible for assisting a resident in boarding or alighting from a motor vehicle must complete a state-approved training program in passenger transportation assistance before assisting any resident.

(a) the passenger transportation assistance program shall be comprised of but not limited to the following elements:

(i) resident assessment;

(ii) emergency procedures;

(iii) supervised practice in the safe operation of equipment;

(iv) familiarity with state regulations governing the transportation of persons with

disabilities;

(v) and a method for determining and documenting successful completion of the course.

(b) the course requirements above are examples and may be modified as needed.

(2) Any employee or agent of a regulated facility or agency who drives a motor vehicle provided by the facility or agency for use in the transportation of clients must complete:

(a) a state approved training program in passenger assistance; and

(b) a state approved training program in the operation of a motor vehicle to transport clients of a regulated facility or agency.

(c) the motor vehicle transportation assistance program shall be comprised of but not limited to the following elements:

(i) resident assessment, emergency procedures, supervised practice in the safe operation of motor vehicles, familiarity with state regulations governing the transportation of persons with disabilities, maintenance and safety record keeping, training on hazardous driving conditions and a method for determining and documenting successful completion of the course;

(ii) the course requirements above are examples and may be modified as needed.

(d) a valid New Mexico drivers license for the type of vehicle being operated consistent with state of New Mexico requirements.

(3) Each regulated facility and agency shall establish and enforce written polices (including training) and procedures for employees who provide assistance to clients with boarding or alighting from motor vehicles.

(4) Each regulated facility and agency shall establish and enforce written polices (including training and procedures for employees who operate motor vehicles to transport clients.

[7.9.2.58 NMAC - Rp, 7.9.2.58 NMAC, 6/9/2020]

7.9.2.59 BLOOD AND BLOOD PRODUCTS: Any blood-handling and storage facilities shall be safe, adequate, and properly supervised. If the facility provides for maintaining and transferring blood and blood products, it shall meet the appropriate requirements for licensed hospitals. If the facility only provides transfusion services, it shall meet the requirements of applicable regulations.

[7.9.2.59 NMAC - Rp, 7.9.2.59 NMAC, 6/9/2020]

7.9.2.60 DENTAL SERVICES:

A. Advisory dentist: The facility shall retain an advisory dentist to participate in the staff development program for nursing and other appropriate personnel to recommend oral hygiene policies and practices for the care of residents.

B. Attending dentists:

(1) Arrangements for dental care: The facility shall make arrangements for dental care for residents who do not have a private dentist.

(2) Transportation: The facility shall assist the resident, if necessary, in arranging for transportation to and from the dentist's office.

C. Dental examination of residents: Dental health care shall be provided or arranged for the resident as needed.

D. Emergency dental care: The facility shall arrange for emergency dental care when a resident's attending dentist is unavailable.

[7.9.2.60 NMAC - Rp, 7.9.2.60 NMAC, 6/9/2020]

7.9.2.61 SOCIAL SERVICES:

A. Provision of services: Each facility shall provide for social services in conformance with this section.

B. Staff:

(1) Social worker: Each facility shall employ or retain a person full-time or part-time to coordinate the social services, to review the social needs of residents, and to make referrals.

(2) Qualifications: The person shall:

(a) have a bachelor's degree in social work, sociology, or psychology; and have one year of social work experience in a health care setting; or

(b) have a master's degree in social work from a graduate school of social work accredited by the council on social work education; or

(c) if the designated person is not a qualified social worker, the facility shall receive at least monthly consultation from a social worker who meets the required standards.

C. Admission:

(1) Interviews: Before or at a time of admission, each resident and guardian, if any, and any other person designated by the resident or guardian, shall be interviewed by the social service designee to assist the patient in adjusting to the social and emotional aspects of illness, treatment, and stay in the facility.

(2) Admission history: A social history of each resident shall be prepared.

D. Care planning:

(1) Within two weeks after admission, an evaluation of social needs and potential for discharge shall be completed for each resident.

(2) A social component of the plan of care, including preparation for discharge, if appropriate, shall be developed and included in the plan of care; required by these regulations.

(3) Social services care and plan shall be evaluated every 90 days.

E. Services: Social services staff shall provide the following:

(1) Referrals: If necessary, referrals for legal services, or to appropriate agencies in cases of legal, financial, psychiatric, rehabilitative or social problems which the facility cannot serve.

(2) Adjustment assistance: Assistance with adjustment to the facility, and continuing assistance to and communication with the resident, guardian, family, or other responsible persons.

(3) Discharge planning: Assistance to other facility staff and the resident in discharge planning at the time of admission and prior to removal under this chapter.

(4) Training: Participation in in-service training for direct care staff on the emotional and social problems and needs of the aged and ill and on methods for fulfilling these needs.

[7.9.2.61 NMAC - Rp, 7.9.2.61 NMAC, 6/9/2020]

7.9.2.62 ACTIVITIES:

A. Program:

(1) Every facility shall provide an activities program which meets the requirements of this section. The program may consist of any combination of activities provided by the facility and those provided by other community resources.

(2) The activities program shall be planned for group and individual activities, and shall be designed to meet the needs and interests of each resident and to be consistent with each resident's plan of care.

B. Staff:

(1) Definition: "Qualified activities coordinator" means, in a skilled nursing facility, a person who:

(a) has a bachelor's degree in recreation therapy and is eligible for registration as a therapeutic recreation specialist with the National therapeutic recreation society; or

(b) is an occupational therapist or occupational therapy assistant who meets the requirements for certification by the American occupational therapy association; or

(c) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a patient activities program in a health care setting; or

(d) has completed a state approved program.

(e) in an intermediate care facility, a staff member who is qualified by experience or training in directing group activity.

(2) Supervision: The activity program shall be supervised by:

(a) a qualified activities coordinator; or

(b) an employee who receives at least monthly consultation from a qualified activities coordinator.

[7.9.2.62 NMAC - Rp, 7.9.2.62 NMAC, 6/9/2020]

7.9.2.63 EQUIPMENT AND SUPPLIES:

A. Beds:

(1) Each resident shall be provided a bed which is at least 36 inches wide, is equipped with a headboard of sturdy construction and is in good repair. Roll-away beds, day beds, cots, or double or folding beds shall not be used.

(2) Each bed shall be in good repair and provided with a clean, firm mattress of appropriate size for the bed.

(3) Side rails shall be installed for both sides of the bed when required by the resident's condition.

B. Bedding:

(1) Each resident shall be provided at least one clean, comfortable pillow. Additional pillows shall be provided if requested by the resident or required by the resident's condition.

(2) Each bed shall have a mattress pad unless contraindicated by special use equipment.

(3) If mattress is not moisture-proof, a moisture-proof mattress cover shall be provided. A moisture-proof pillow cover shall be provided to keep each mattress and pillow clean and dry.

(a) A supply of sheets and pillow cases sufficient to keep beds clean, dry and odor-free shall be stocked. At least two sheets and two pillow cases shall be furnished to each resident each week.

(b) Beds occupied by bedfast or incontinent residents shall be provided drawsheets or appropriate pads.

(4) A sufficient number of blankets shall be provided to keep each resident warm. Blankets shall be changed and laundered as often as necessary to maintain cleanliness and freedom from odors.

(5) Each bed shall have a clean, washable bedspread.

C. Other furnishings:

(1) Each resident who is confined to bed shall be provided with a bedside storage unit containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment. All other residents shall be provided with a storage unit in the resident's room, containing at least one drawer for personal items and a drawer or compartment for necessary nursing equipment.

(2) At least one arm chair shall be available for each room for each bed. A folding chair shall not be used.

(3) A properly shaded reading light in working condition shall be installed over or at each bed.

(4) Adequate compartment or drawer space shall be provided in each room for each resident to store personal clothing and effects and to store, as space permits, other personal possessions in a reasonably secure manner.

(5) A sturdy and stable table that can be placed over the bed or armchair shall be provided to every resident who does not eat in the dining room.

D. Towels, washcloths, and soap:

(1) Clean towels and washcloths shall be provided to each resident as needed. Towels shall not be used by more than one resident between launderings.

(2) An individual towel rack shall be installed at each resident's bedside or at the lavatory.

(3) Single service towels and soap shall be provided at each lavatory for use by staff.

E. Window coverings: Every window in patient care area shall be supplied with flame retardant shades, draw drapes or other covering material or devices which, when properly used and maintained, shall afford privacy and light control for the resident.
[7.9.2.63 NMAC - Rp, 7.9.2.63 NMAC, 6/9/2020]

7.9.2.64 RESIDENT CARE EQUIPMENT:

A. Personal need items: When a resident because of his or her conditions needs a mouthwash cup, a wash basin, a soap dish, a bedpan, an emesis basin, or a standard urinal and cover, that item shall be provided to the resident. This equipment may not be interchanged between residents until it is effectively washed and sanitized.

B. Thermometers: If reusable oral and rectal thermometers are used, they shall be cleaned and disinfected between use.

C. First aid supplies: Each nursing unit shall be supplied with first aid supplies, including bandages, sterile gauze dressings, bandage scissors, tape, and a sling tourniquet.

D. Other equipment: Other equipment, such as wheelchairs with brakes, footstools, commodes, foot cradles, footboards, under-the-mattress bedboards, walkers, trapeze frames, transfer boards, parallel bars, reciprocal pulleys, suction machines, patient lifts and stryker or froster frames, shall be used as needed for the care of the residents.

[7.9.2.64 NMAC - Rp, 7.9.2.64 NMAC, 6/9/2020]

7.9.2.65 MAINTENANCE: All facility furnishings and equipment shall be maintained in a usable, safe and sanitary condition.

[7.9.2.65 NMAC - Rp, 7.9.2.65 NMAC, 6/9/2020]

7.9.2.66 STERILIZATION OF SUPPLIES AND EQUIPMENT: Each facility shall provide sterilized supplies and equipment by one or more of the following methods:

A. use of an autoclave;

B. use of disposable, individually wrapped, sterile supplies such as dressings, syringes, needles, catheters, and gloves;

C. sterilization services under a written agreement with another facility; or

D. other sterilization procedures when approved in writing by the department.

[7.9.2.66 NMAC - Rp, 7.9.2.66 NMAC, 6/9/2020]

7.9.2.67 SANITIZATION OF UTENSILS: Utensils such as individual bedpans, urinals and wash basins which are in use shall be sanitized in accordance with acceptable sanitization procedures on a routine schedule. These procedures shall be done in an appropriate area.

[7.9.2.67 NMAC - Rp, 7.9.2.67 NMAC, 6/9/2020]

7.9.2.68 DISINFECTION OF RESIDENT GROOMING UTENSILS: Hair care tools such as combs, brushes, metal instruments, and shaving equipment which are used for more than one resident shall be disinfected before each use.

[7.9.2.68 NMAC - Rp, 7.9.2.68 NMAC, 6/9/2020]

7.9.2.69 OXYGEN:

A. No oil or grease shall be used on oxygen equipment.

B. When placed at the resident's bedside, oxygen tanks shall be securely fastened to a tip-proof carrier or base.

C. Oxygen regulators shall not be stored with solution left in the attached humidifier bottle.

D. When in use at the resident's bedside, cannulas, hoses, and humidifier bottles shall be changed at least every 30 days.

E. Disposable inhalation equipment shall be pre-sterilized and kept in contamination-proof containers until used, and shall be replaced at least every 30 days when in use.

F. With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days.

[7.9.2.69 NMAC - Rp, 7.9.2.69 NMAC, 6/9/2020]

7.9.2.70 HOUSEKEEPING SERVICES:

A. Requirement: Facilities shall develop and implement written policies that ensure a safe and sanitary environment for personnel and residents at all times.

B. Cleaning:

(1) **General:** The facility shall be kept clean and free from offensive odors, accumulations of dirt, rubbish, dust, and safety hazards.

(2) **Floors:** Floors and carpeting shall be kept clean. Polishes on floors shall provide a non-slip finish. Carpeting or any other material covering the floors that is worn, damaged, contaminated or badly soiled shall be replaced, repaired or cleaned.

(3) Other surfaces: Ceiling and walls shall be kept clean and in good repair at all times. The interior and exterior of the buildings shall be painted or stained as needed to protect the surfaces. Loose, cracked, or peeling wallpaper or paint shall be replaced or repaired.

(4) Furnishings: All furniture and other furnishings shall be kept clean and in good repair at all times.

(5) Combustibles in storage areas: Attics, cellars and other storage areas shall be kept safe and free from dangerous accumulations of combustible materials. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

(6) Grounds: The grounds shall be kept free from refuse, litter, and wastewater. Areas around buildings, sidewalks, gardens, and patios shall be kept clear of dense undergrowth.

C. **Poisons:** All poisonous compounds shall be clearly labeled as poisonous and, when not in use, shall be stored in a locked area separate from food, kitchenware, and medications.

D. Garbage:

(1) Storage containers: All garbage and rubbish shall be stored in leak-proof, non-absorbent containers with close-fitting covers, and in areas separate from those used for the preparation and storage of food. Containers shall be cleaned regularly. Paperboard containers shall not be used.

(2) Disposal: Garbage and rubbish shall be disposed of promptly in a safe and sanitary manner.

E. **Linens and towels:** Linens shall be handled, stored, processed, and transported in such a manner as to prevent the spread of infection. Soiled linen shall not be sorted, rinsed, or stored in bathrooms, residents' rooms, kitchens, food storage areas, nursing units, common hallways.

F. Pest control:

(1) Requirement: The facility shall be maintained reasonably free from insects and rodents, with harborage and entrances of insects and rodents eliminated.

(2) Provision of service: Pest control shall be provided when required for the control of insects and rodents.

(3) Screening of windows and doors: All windows and doors used for ventilation purposes shall be provided with wire screening of not less than number 16 mesh or its equivalent, and shall be properly installed and maintained to prevent entry of insects. Hinged screen days when in use.

(4) With other inhalation equipment such as intermittent positive pressure breathing equipment, the entire resident breathing circuit, including nebulizers and humidifiers, shall be changed at least every seven days.

[7.9.2.70 NMAC - Rp, 7.9.2.70 NMAC, 6/9/2020]

7.9.2.71 PHYSICAL ENVIRONMENT:

A. **General:** The buildings of the nursing facility shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery services appropriate to the needs of the community and with due for protecting the health and safety of the patients. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted. Existing waivers at the time these regulations are enacted would continue to be accepted unless it is determined that the facility is unable to protect the health and safety of the resident.

B. **Definitions:** The definitions in the applicable Life Safety Code required under these regulations apply to this subchapter. In addition, in this subchapter:

(1) Existing construction: means a building which is in place or is being constructed with plans approved by the department prior to the effective date of this chapter.

(2) Life Safety Code: means the National Fire Protection Association's standard 101.

(3) 1981 Code: means facilities with construction plans first approved by the department on or after November 26, 1982, shall be free from dangerous accumulations of combustible materials. Combustibles such as cleaning rags and compounds shall be kept in closed metal containers.

(4) Fire safety evaluation system: means a proposed or existing facility not meeting all requirements of the applicable Life Safety Code shall be considered in compliance if it achieves a passing score on the Fire Safety Evaluation System (FSSES), developed by the United State department of commerce, National bureau of standards, to establish safety equivalencies under the Life Safety Code.

(5) New construction: means construction for the first time of any building or addition to an existing building, the plans for which are approved after the effective date of this chapter.

(6) Remodeling: means to make over or rebuild any portion of a building or structure and thereby modify its structural strength, fire hazard character, exists, heating and ventilating system, electrical system or internal circulation, as previously approved by the department. Where exterior walls are in place but interior walls are not in place at the time of the effective date of this chapter, construction of interior walls shall be considered remodeling. "Remodeling" does not include repairs necessary for the maintenance of a building structure.

C. **Approvals:** The facility shall keep documentation of approvals on file in the facility following all inspections by state and local authorities.

D. Fire protection:

(1) Basic responsibility: The facility shall provide fire protection adequate to ensure the safety of patients, staff and others on the premises. Necessary safeguards such as extinguishers, sprinkling and detection devices, fire and smoke barriers, and ventilation control barriers shall be installed to ensure rapid and effective fire and smoke control.

(2) New construction: Any new construction or remodeling shall meet the applicable provisions of the 1981 edition of the Life Safety Code.

(3) Existing facilities: Any existing facility shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the facility complied with and continues to comply with the applicable provisions of the 1967, 1973, or 1981 edition of the Life Safety Code, with or without waivers.

(4) Equivalent Compliance: An existing facility that does not meet all requirements of the applicable Life Safety Code may be considered in compliance with it if it achieves a passing score on the Fire Safety Evaluation System (FSES) developed by the U.S. department of commerce National bureau of standard, to establish safety equivalencies under the Life Safety Code.

(5) Note: See Appendix C of the 1981 Life Safety Code.

E. General construction: All capital investment plans subject to these regulations, shall be submitted to the department for review and approval.

(1) One copy of preliminary or schematic plans shall be submitted to the department for review and approval.

(2) One copy of final plans and specifications which are used for bidding purposes shall be submitted to the department for review and approval before construction is started. Plans must be prepared and stamped by an architect registered in the state of New Mexico.

(3) If on-site construction above the foundation is not started within 12 months of the date of approval of the final plans and specifications, the approval under these regulations shall be void and the plans and specifications shall be resubmitted for reconsideration of approval.

(4) Any changes in the approved final plans affecting the application of the requirements of this subchapter shall be shown on the approved final plans and shall be submitted to the department for approval before construction is undertaken. The department shall notify the facility in writing of any conflict with this subchapter found in its review of modified plans and specifications.

(5) General: Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exit ways, and fire protection shall be so maintained that the safety of the occupants will not jeopardized during construction.

(6) Minimum requirements: All requirements listed in new construction, relating to new construction projects, are applicable to renovation projects involving additions or alterations, except that when existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted if the intent of the requirements is met and if the care and safety of patients will not be jeopardized.

(7) Non-conforming conditions: When doing renovation work, if it is found to be unfeasible to correct all of the nonconforming conditions in the existing facility in accordance with these standards, acceptable compliance status may be recognized by the licensing agency if the operation of the facility, necessary access by the handicapped, and safety of the patients, are not jeopardized by the remaining non-conforming conditions.

(8) Note #1: Plan approval by construction industries division, labor and human relations under these regulations is also required for any new construction or remodeling.

(9) Note #2: Copies of the 1967, 1973, and 1981 Life Safety Codes and related codes can be obtained from the National Fire Protection Association, Battery March Park, Quincy, PA 02269.

F. Constructions and inspections:

(1) General: Construction, of other than minor alterations, shall not be commenced until plan-review deficiencies have been satisfactorily resolved.

(a) The completed construction shall be in compliance with the approved drawings and specifications, including all addenda or modifications approved for the project.

(b) A final inspection of the facility will be scheduled for the purpose of verifying compliance with the approved drawings and specifications including all addenda or modifications approved for the project.

(2) In addition to compliance with these standards, all other applicable building codes, ordinances, and regulations under city, county, or other state agency jurisdiction shall be observed. Compliance with local codes shall be prerequisite for licensing. In areas not subject to local building codes, the state building codes, as adopted, shall apply insofar as such codes are not in conflict with these standards.

(a) New construction is governed by the current editions of the following Codes Standards:

(b) Uniform Building Code (UBC), Uniform Plumbing Code (UPC), Uniform Mechanical Code (UMC), National Electrical Code (NEC), National Fire Protection Association Standards (NFPA), American National Standard Institute (ANSI), American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), department of health and human services (DHHS) guidelines for construction and equipment of hospital and medical facilities.

G. Resident safety and disaster plan:

(1) Disaster plan:

(a) Each facility shall have a written procedure which shall be followed in case of fire or other disasters, and which shall specify persons to be notified, locations of alarm signals and fire extinguishers, evacuation routes, procedures for evacuating helpless residents, frequency of fire drills and assignment of specific tasks and responsibilities to the personnel of each shift and each discipline.

(b) The plan developed by the facility shall be submitted to qualified fire and safety experts, including the local fire authority, for review and approval. The facility shall maintain documentation of approval by the reviewing authority.

(c) All employees shall be oriented to this plan and trained to perform assigned tasks.

(d) The plan shall be available at each nursing station.

(e) The plans shall include a diagram of the immediate floor area showing the exits, fire alarm stations, evacuation routes and location of fire extinguishers. The diagram shall be posted in conspicuous locations in the corridor throughout the facility.

(2) Drills: Fire drills shall be held at irregular intervals at least four times a year on each shift and the plan shall be reviewed and modified as necessary. Records of drills and dates of drills shall be maintained.

(3) Fire inspections: The administrator of the facility shall arrange for fire protection as follows:

(a) At least annual inspection of the facility shall be made by the local fire inspection authorities. Signed certificates of such inspections shall be kept on file in the facility.

(b) Certification by the local fire authority as to the fire safety of the facility and to the adequacy of a written fire plan for orderly evacuation of residents shall be obtained and kept on file in the facility.

(c) Where the facility is located in a city, village, or township that does not have an official established fire department, the licensee shall obtain and maintain a continuing contract for fire protection service with the nearest municipality providing such service. A certification of the existence of such contract shall be kept on file in the facility.

(4) Fire equipment: All fire protection equipment shall be maintained in readily usable condition and inspected annually. In addition to any other equipment, a fire extinguisher suitable for grease fires shall be provided in or adjacent to the kitchen. Each extinguisher shall be provided with a tag for the date of inspection.

(5) Fire Report: All incidents of fire in a facility shall be reported to the department within 72 hours.

(6) Smoking: Smoking by residents shall be permitted only in designated areas supervised in accordance with the conditions, needs, and safety of residents.

(7) Prevention of ignition: Heating devices and piping shall be designed or enclosed to prevent the ignition of clothing or furniture.

(8) Floor coverings: Scatter rugs and highly polished, slippery floors are prohibited, except for non-slip entrance mats. All floor coverings and edging shall be securely fastened to the floor or so constructed that they are free of hazards such as curled and broken edges.

(9) Roads and sidewalks: The ambulatory and vehicular access to the facility shall be kept passable and open at all times of the year. Sidewalks, drives, fire escapes, and entrances shall be kept free of ice, snow, and other obstructions.

H. Safety and systems:

(1) Maintenance: The building shall be maintained in good repair and kept free of hazards such as those created by any damaged or defective building equipment.

(2) Corridors:

(a) Handrails: Corridors used by residents shall be equipped with handrails firmly secured on each side of the corridor.

(b) Size: All corridors in resident use areas shall be at least eight feet wide.

(3) Doors:

(a) Size: Doors to residents' rooms shall not be less than three feet eight inches wide and six feet eight inches in height, and shall be at least one and three-quarter inches solid core wood or equivalent construction.

(b) Latches: Each designated fire exit door shall have such latches or hardware that the door can be opened from the inside by pushing against a single bar or plate or by turning a single knob or handle.

(c) Locks on exit doors from the building and from nursing areas and wards may not be hooked or locked to prevent exit from the inside, shall be installed on the door of the resident's room, unless the lock is operable from inside the room with a simple one-hand, one-motion operation without the use of a key unless the resident is confined; a master-key is available to emergency personnel such as the fire department.

(4) Toilet room doors: Resident toilet room doors shall be not less than three feet zero inches by six feet eight inches, and shall not swing into the toilet room unless they are provided with two way hardware.

(5) Thresholds: Raised thresholds which cannot be traversed easily by a bed on wheels, a wheelchair, a drug cart, or other equipment on wheels shall not be used.

I. Emergency power: Emergency electrical service with an independent power source which covers lighting as nursing stations, telephone switchboards, exit and corridor lights, boiler room, and fire alarm systems, shall be provided. The service may be battery operated if effective for at least four hours.

J. Fire protection:

(1) Carpeting: Carpeting shall not be installed in rooms used primarily for the following purposes: food preparation and storage, dish and utensil washing, soiled utility workroom, janitor closet, laundry processing, hydro-therapy, toilet and bathing, resident isolation, and resident examination.

(2) Carpet fireproofing: Carpeting, including underlying padding, if any, shall have a flamespread rating of 75 or less when tested in accordance with standard 255 of the National Fire Protection Association (NFPA), or a critical radiant flux of more than 0.45 watts per square centimeter when tested in accordance with NFPA standard 253, 1978 edition. Certified proof by the

manufacturer of the aforementioned test for the specific product shall be available in the facility. Certification by the installer that the material installed is the product referred to in the test shall be obtained by the facility. Carpeting shall not be applied to walls in any case except where the flamespread rating can be shown to 25 or less.

(3) Acoustical tile: Acoustical tile shall be non-combustible.

(4) Wastebaskets: Wastebaskets shall be of non-combustible materials.

(5) Vertical exit stairways: At least one interior exit stairway shall be provided to that an enclosed protected path of at least one-hour fire resistive construction is available for occupants to proceed with safety to the exterior of the facility.

(6) Housing blind, non-ambulatory, or handicapped residents: In an existing facility of two or more stories which is not of at least two-hour fire resistive construction, blind, non-ambulatory, or physically handicapped residents shall not be housed above the street level floor unless the facility is either of one-hour protected non-combustible construction (as defined in national fire protection standard 200), fully sprinklered one-hour protected ordinary construction, or fully sprinklered one-hour protected wood frame construction.

(7) Storage of oxygen: Oxygen tanks, when not in use, shall be stored in a ventilated closet designated for that purpose only or stored outside the building of the home in an enclosed secured area. Oxygen storage areas must comply with NFPA 99.

K. Sprinklers for fire protection: Facilities shall have automatic sprinkler protection throughout buildings. In the event of an addition to, or remodeling of a facility, the entire facility shall have automatic sprinkler protection throughout unless there is a two hour fire rated partition wall between the old and new construction, in which case only the new or remodeled area shall be sprinklered.

L. Mechanical systems:

(1) Water supply:

(a) A portable water supply shall be available at all times. If a public water supply is available, it shall be used. If a public water supply is not available, the well or wells shall comply with applicable regulations.

(b) An adequate supply of hot water shall be available at all times. The temperature of hot water at plumbing fixtures used by residents may not exceed 110 degrees Fahrenheit (43 degrees C.) and shall be automatically regulated by control valves or by another approved device.

(2) Sewage disposal: All sewage shall be discharged into a municipal sewage system if available. Otherwise, the sewage shall be collected, treated, and disposed of by means of an independent sewage system approved under applicable state law and local authority.

(3) Plumbing: The plumbing for potable water and drainage for the disposal of excreta, infectious discharge, and wastes shall comply with applicable state plumbing standards.

(4) Heating and air conditioning:

(a) The heating and air conditioning systems shall be capable of maintaining adequate temperatures and providing freedom from drafts.

(b) A minimum temperature of at least 70 degrees Fahrenheit (21 degrees C.) in all bedrooms and in all other areas used by residents, unless resident preference is documented for deviations.

(5) Incineration:

(a) Facilities for the incineration of soiled dressings and similar wastes, as well as garbage and refuse, shall be provided when other methods of disposal are not available.

(b) An incinerator shall not be flue fed nor shall any upper floor charging chute be connected with the combustion chamber.

(6) Telephone: There shall be at least one operational non-pay telephone on the premises and as many additional telephones as are deemed necessary in an emergency.

(7) General lighting:

(a) Adequate lighting shall be provided in all areas of the facility. Lighting shall be of a type that does not produce discomfort due to high brightness, glare or reflecting surface. No candles, oil lanterns, or other open flame method of illumination may be used.

(b) Facilities shall have lighting during the evening and night hours that is commensurate with staff needs.

(8) Ventilation:

(a) The facility shall be well-ventilated through the use of windows, mechanical ventilation, or a combination of both. Rooms and areas which do not have outside windows and which are used by residents or personnel shall be provided with functioning mechanical ventilation to change the air on a basis commensurate with the type of occupancy.

(b) All inside bathrooms and toilet rooms shall have mechanical ventilation to the outside.

(c) Mechanical ventilation shall be provided to the resident area corridors, solaria, dining, living and recreation areas, and nursing stations. These areas shall be under positive pressure;

(d) All rooms in which food is stored, prepared or served, or in which utensils are washed shall be well-ventilated. Refrigerated storage rooms need not be ventilated.

(e) Kitchens, bathrooms, utility rooms, janitor closets, and soiled linen rooms shall be ventilated.

(9) Elevators: At least one elevator shall be provided in the facility if resident beds or activities are located on more than one floor. The platform size of the elevator shall be large enough to hold a resident bed and an attendant.

(10) Electrical:

- (a)** In all facilities, non-conductive wall plates shall be provided where the system is not properly grounded.
- (b)** In new construction begun after the effective date of these regulations, at least two duplex-type outlets shall be provided for each bed.

[7.9.2.71 NMAC - Rp, 7.9.2.71 NMAC, 6/9/2020]

7.9.2.72 RESIDENTS' ROOMS:

- A. Assignment of residents:** Residents co-habiting a double occupancy room or a ward shall be of the same sex unless residents are married, related, or are consenting adults.
- B. Location:** No bedroom housing or resident shall:
- (1)** Open directly to a kitchen or laundry.
- (2)** Be located so that a person must pass through a resident's bedroom, toilet room, or bathroom to gain access to any other part of the facility.
- (3)** Be located so that a person must pass through a kitchen or laundry to gain access to the resident's room or other part of the facility.
- C. Access to corridor and outside:** Each bedroom shall have direct access to a corridor and outside exposure with the floor at or above grade level.
- D. Size:**
- (1)** The minimum floor area per bed shall be 100 square feet in single rooms and 80 square feet per bed in multiple bedrooms, exclusive of vestibule, closets, built-in vanity and wardrobe, toilet rooms and built-in lockers. The department may waive this requirement in individual cases where the facility has demonstrated in writing that such variations are in accordance with the particular needs of the residents and will not adversely affect their health and safety.
- (2)** Resident rooms shall be large enough to permit the sides and feet of all beds to be not less than two feet from the nearest walls.
- (3)** Ceilings shall be at least eight feet in height.
- E. Windows:** The bottom sill of windows in bedrooms shall be no more than three feet from the floor.
- F. Bed Capacity:** No rooms shall house more than four beds.
- G. Bed arrangements:** The beds shall be arranged so that the beds shall be at least three feet apart and clear aisle space of at least three feet from the entrance to the room to each bed shall be provided.
- H. Closet space:** A closet or locker shall be provided for each resident in each bedroom. Closets or lockers shall afford a space of not less than 15 inches wide by 18 inches deep by five feet in height for each resident bed.
- I. Cubicle curtains:** Each bed in a multiple-bed room shall have a flame retardant or flameproof cubicle curtain or an equivalent divider that will assure resident privacy.
- J. Room identification:** Each bedroom shall be identified with a unique number placed on or near the door.
- K. Design and proximity to baths:** Residents' bedrooms shall be designed and equipped for adequate nursing care and the comfort and privacy of residents. Each bedroom shall have or shall be conveniently located near adequate toilet and bathing facilities.

[7.9.2.72 NMAC - Rp, 7.9.2.72 NMAC, 6/9/2020]

7.9.2.73 TOILET AND BATHING FACILITIES:

- A. General:** All lavatories required by this subsection shall have hot and cold running water. Toilets shall be water flushed and equipped with open front seats without lids.
- (1)** Toilet facilities shall be provided in conjunction with each resident's rooms, with not more than two residents' rooms, and not more than four beds per toilet room.
- (2)** One toilet and one lavatory for not more than four residents shall be provided and separate facilities shall be provided for each sex.
- (3)** One tub or shower for every 20 residents shall be provided. The bath or shower shall be located on the same floor as the residents served. Facilities for showering with a wheeled shower chair shall be provided.
- (4)** Every tub, shower, or toilet shall be separated in such a manner that it can be used independently and afford privacy.
- (5)** On floors where wheelchair residents are cared for, there shall be a toilet room large enough to accommodate a wheelchair and attendant.
- B. Employee and family facilities:** Toilets, baths, and lavatories for use by employees or family members shall be separate from those used by residents.
- C. Grab bars:** Firmly secured grab bars shall be installed in every toilet and bathing compartment used by residents.
- D. Wheelchair facilities:**
- (1)** On floors housing residents who use wheelchairs, there shall be at least one toilet room large enough to accommodate wheelchairs.
- (2)** In all facilities licensed for skilled care, a bathtub or shower room large enough to accommodate a wheelchair and attendant shall be provided.

E. The requirement of separate facilities for male and female residents is not applicable to facilities used by married couples sharing a room, or those referenced in Subsection A of 7.9.2.72 NMAC if the facilities are not used by other residents. [7.9.2.73 NMAC - Rp, 7.9.2.73 NMAC, 6/9/2020]

7.9.2.74 NURSING FACILITIES:

A. All facilities: Each facility shall have:

- (1) A medicine storage area.
- (2) Space for storage of linen, equipment, and supplies.
- (3) Utility rooms, which shall be located, designed and equipped to provide areas for the separate handling of clean and soiled linen, equipment, and supplies.

B. Each resident care area on each floor shall have:

(1) A centrally located nurse station located to provide visual control of all resident room corridors; equipped with storage for records and charts, a desk or work counter, operational telephone, and nurse call system as required in 7.9.2.75 NMAC.

(2) A medicine preparation room immediately adjacent to the nurse station with a work counter, refrigerator, sink, and a well-lighted medicine cabinet with lock and space for medicine cart. The room shall be mechanically ventilated.

(3) A soiled utility room with a flush-rim siphon jet service sink cabinet counter, and sink with hot and cold running water. The utility shall be mechanically ventilated and under negative pressure.

(4) A cleaning area or room with a sink with hot and cold running water, counter, and cabinets.

(5) Staff toilet and lavatory facilities separate from those of residents, near nursing station.

(6) If a kitchen is not open at all times, a nourishment station with sink, hot and cold running water, refrigerator, and storage for serving between meal nourishment. Each station may service more than one nursing area. [7.9.2.74 NMAC - Rp, 7.9.2.74 NMAC, 6/9/2020]

7.9.2.75 NURSE CALL SYSTEM: A nurse call station shall be installed at each resident's bed, in each resident's toilet room, and at each bathtub and shower. The nurse call at the toilet, bath, and shower rooms shall be an emergency call equipped with pull cords of sufficient length to extend to within 18 inches off the floor. All calls shall register at the nurse station and shall actuate a visible signal in the corridor where visibility to corridors is obstructed at the room door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. An emergency call station shall also be provided in any enclosed room used by residents.

[7.9.2.75 NMAC - Rp, 7.9.2.75 NMAC, 6/9/2020]

7.9.2.76 DINING, RECREATION AND ACTIVITY AREAS:

A. Multi-purpose space: The facility shall provide one or more furnished multi-purpose areas of adequate size for dining, diversional, and social activities of residents.

B. Lounge: At least one dayroom or lounge, shall be provided for use of the residents.

C. Size of dining rooms: Dining rooms shall be of sufficient size to seat all residents at no more than two shifts. Dining tables and chairs shall be provided. TV trays or portable card tables shall not be used as dining tables.

D. Space: If a multi-purpose room is used for dining and diversional and social activities of residents, there shall be sufficient space to accommodate all activities and minimize their interference with each other.

E. Total area: The combined floor space of dining, recreation, and activity areas shall not be less than 25 square feet per bed. Solaria and lobby sitting areas, exclusive of traffic areas, shall be categorized as living room space.

[7.9.2.76 NMAC - Rp, 7.9.2.76 NMAC, 6/9/2020]

7.9.2.77 FOOD SERVICE - GENERAL:

A. The facility shall have a kitchen or dietary area which shall be adequate to meet food service needs and shall be arranged and equipped for the refrigeration, storage and preparation, and serving of food, as well as for dish and utensil cleaning and refuse storage and removal.

B. Dietary areas shall comply with the local health or food handling codes. Food preparation space shall be arranged for the separation of functions and shall be located to permit efficient services to residents and shall not be used for non-dietary functions.

(1) **Kitchen and dietary:** Kitchen and dietary facilities shall be provided to meet food service needs and arranged and equipped for proper refrigeration, heating, storage, preparation, and serving of food. Adequate space shall be provided for proper refuse handling and washing of waste receptacles, and for storage of cleaning components.

(2) **Traffic:** Only traffic incidental to the receiving, preparation and serving of food and drink shall be permitted.

(3) **Toilets:** No toilet facilities may open directly into the kitchen.

(4) **Food storage:** Food day-storage space shall be provided adjacent to the kitchen and shall be ventilated to the outside.

(5) **Handwashing:** A separate handwashing sink with soap dispenser, single service towel dispenser, or other approved hand drying facility shall be located in the kitchen.

(6) Dishwashing: A separate dishwashing area, preferably a separate room, with mechanical ventilation shall be provided.

(7) Sink: At least a three-compartment sink shall be provided for washing, rinsing and sanitizing utensils, with adequate drainboards, at each end. In addition, a single-compartment sink located adjacent to the soiled utensil drainboard shall be available for prewashing. The additional sink may also be used for liquid waste disposal. The size of each sink compartment shall be adequate to permit immersion of at least fifty percent of the largest utensil used. In lieu of the additional sink for prewashing, a well type garbage disposal with overhead spray wash may be provided.

(8) Mechanical dishwashers: Mechanical dishwashers and utensil washers, where provided, shall meet the requirements of the current approved list from the national sanitation foundation or equivalent with approval of the department.

(9) Temperature: Temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line at the machine of a spray-type mechanical dishwasher or in the rinse water tank of in immersion-type dishwasher. The temperature gauges shall be readily visible, fast-acting and accurate to plus or minus two degrees Fahrenheit or one degree (C.).

(10) Fire extinguishers: Approved automatic fire extinguishing equipment shall be provided in hoods and attached ducts above all food cooking equipment.

(11) Walls: The walls shall be of plaster or equivalent material with smooth, light - colored, non-absorbent, and washable surface.

(12) Ceiling: The ceiling shall be of plaster or equivalent material with smooth, light-colored, non-absorbent, washable, and seamless surface.

(13) Floors: The floors of all rooms, except the eating areas of dining rooms, in which food or drink is stored, prepared, or served, or in which utensils are washed, shall be of such construction as to be non-absorbent and easily cleaned.

(14) Screens: All room openings to the out - of-doors shall be effectively screened. Screen doors shall be self-closing.

(15) Lighting: All rooms in which food or drink is stored or prepared or in which utensils are washed shall be well lighted.

(16) Sewage contamination: Rooms subject to sewage or wastewater backflow or to condensation or leakage from overhead water or wastelines shall not be used for storage of food preparation unless provided with acceptable protection from such contamination.

[7.9.2.77 NMAC - Rp, 7.9.2.77 NMAC, 6/9/2020]

7.9.2.78 STORAGE:

A. **General storage:** A general storage area shall be provided for supplies, equipment, and wheelchairs.

B. **Linens:** Facilities shall provide a linen storage space or cabinet for each nursing unit.

[7.9.2.78 NMAC - Rp, 7.9.2.78 NMAC, 6/9/2020]

7.9.2.79 **FAMILY AND EMPLOYEE LIVING QUARTERS:** Any family and employee living quarters shall be separate from the residents' area.

[7.9.2.79 NMAC - Rp, 7.9.2.79 NMAC, 6/9/2020]

7.9.2.80 **EMPLOYEE FACILITIES:** The following shall be provided for employees, and shall not be located in food preparation, food storage, utensil washing area or in resident's rooms:

A. An area, room, or rooms for employee wraps, with lockers for purses and other personal belongings when on duty.

B. Handwashing lavatories with soap dispenser, single service towel dispenser, or other approved hand drying equipment.

C. Toilet facilities separate from those used by residents.

[7.9.2.80 NMAC - Rp, 7.9.2.80 NMAC, 6/9/2020]

7.9.2.81 **JANITOR FACILITIES:** Facilities shall have a mechanically ventilated janitor closet of adequate size on each floor and in the food service area, equipped with hot and cold running water and a service sink or receptor.

[7.9.2.81 NMAC - Rp, 7.9.2.81 NMAC, 6/9/2020]

7.9.2.82 LAUNDRY FACILITIES:

A. **Facilities:** A laundry room shall be provided unless commercial laundry facilities are used. Laundry facilities shall be located in areas separate from resident units and shall be provided with necessary washing and drying equipment.

B. **Work room:** When commercial laundries are used, a room for sorting, processing, and storing soiled linen shall be provided and shall have mechanical exhaust ventilation.

C. In addition to the requirements of Subsection A of 7.9.2.82 NMAC and Subsection B of 7.9.2.82 NMAC, facilities shall have:

(1) A soiled linen sorting room separate from the laundry, which shall be mechanically ventilated and under negative pressure.

(2) A lavatory with both hot and cold running water, soap, and individual towels in the laundry area.

[7.9.2.82 NMAC - Rp, 7.9.2.82 NMAC, 6/9/2020]

7.9.2.83 ISOLATION: For every 100 beds or fraction thereof, facilities shall have available one separate room, equipped with separate toilet, handwashing, and bathing facilities, for the temporary isolation of a resident. The isolation room bed shall be considered part of the licensed bed capacity of the facility.

[7.9.2.83 NMAC - Rp, 7.9.2.83 NMAC, 6/9/2020]

7.9.2.84 ADMINISTRATION AND ACTIVITY AREAS:

A. Administration and resident activity areas: Administration and resident activities areas shall be provided. The sizes of the various areas will depend upon the requirements of the facility. Some functions allotted separate spaces or rooms under Subsection B of 7.9.2.84 NMAC may be combined, provided that the resulting plan will not compromise acceptable standards of safety, medical and nursing practices, and the social needs of residents.

B. Administration department areas shall include:

- (1) business office;
- (2) lobby and information center;
- (3) office of administrator;
- (4) admitting and medical records area;
- (5) public and staff toilet room;
- (6) office of director of nurses; and
- (7) in-service training area.

C. Resident activities areas shall include:

- (1) occupational therapy;
- (2) physical therapy;
- (3) activity area; and
- (4) beauty and barber shop.

[7.9.2.84 NMAC - Rp, 7.9.2.84 NMAC, 6/9/2020]

7.9.2.85 MIXED OCCUPANCY: Rooms or areas within the facility may be used for occupancy by individuals other than residents and facility staff if the following conditions are met:

A. the use of these rooms does not interfere with the services provided to the residents; and

B. the administrator takes reasonable steps to ensure that the health and safety and rights of the residents are protected.

[7.9.2.85 NMAC - Rp, 7.9.2.85 NMAC, 6/9/2020]

7.9.2.86 LOCATION AND SITE:

A. Zoning: The site shall adhere to local zoning regulations.

B. Outdoor areas: Areas shall be provided for outdoor recreation area, exclusive of driveways and parking area.

C. Parking: Space for off-street parking for staff and visitors shall be provided.

[7.9.2.86 NMAC - Rp, 7.9.2.86 NMAC, 6/9/2020]

7.9.2.87 SUBMISSION OF PLANS AND SPECIFICATIONS: For all new construction:

A. One copy of schematic and preliminary plans shall be submitted to the department for review and approval of the functional layout.

B. One copy of working plans and specifications shall be submitted to and approved by the department before construction is begun. The department shall notify the facility in writing of any divergence in the plans and specifications, as submitted, from the prevailing rules.

C. The plans specified in Subsection B of 7.9.2.87 NMAC shall show the general arrangement of the buildings, including a room schedule and fixed equipment for each room and a listing of room numbers, together with other pertinent information. Plans submitted shall be drawn to scale.

D. Any changes in the approved working plans affecting the application of the requirements herein established shall be shown on the approved working plans and shall be submitted to the department for approval before construction is undertaken. The department shall notify the facility in writing of any divergence in the plans and specifications as submitted, from the prevailing rules.

E. If on-site construction above the foundation is not started within six months of the date of approval of the working plans and specifications under Subsection B of 7.9.2.87 NMAC, the approval shall be void and the plans and specifications shall be resubmitted for reconsideration of approval.

F. If there are no divergences from the prevailing rules, the department shall provide the facility with written approval of the plans as submitted.

[7.9.2.87 NMAC - Rp, 7.9.2.87 NMAC, 6/9/2020]

7.9.2.88 RELATED REGULATIONS AND CODES: Long term care facilities subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:

A. Health facility licensure fees and procedures, New Mexico department of health, 7 NMAC 1.7 (10/31/1996).

B. Health facility sanctions and civil monetary penalties, New Mexico department of health, 7 NMAC 1.8 (10/31/1996).

C. Adjudicatory hearings, New Mexico department of health, 7 NMAC 1.2 (2-1-96).
[7.9.2.88 NMAC - Rp, 7.9.2.88 NMAC, 6/9/2020]

History of 7.9.2 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the Supreme Court Law Library: New Mexico Department of Public Health Licensing Regulations Part 3, Nursing Homes, June 1964.

The commission of public records, state records center and archives:

HED 89-2, Regulations Governing Long Term Care Facilities, 5/2/1989.

History of Repealed Material:

7.9.2 NMAC - Requirements for Long Term Care Facilities (filed 8/31/2000) - Repealed effective 6/9/2020.

Other History:

7 NMAC 9.2, Requirements for Long Term Care Facilities, filed 10/18/1996, reformatted, renumbered and amended to 7.9.2 NMAC, effective 8/31/2000.

7.9.2 NMAC - Requirements for Long Term Care (filed 8/31/2000), was replaced by 7.9.2 NMAC, - Requirements for Long Term Care, effective 6/9/2020.

West's New Mexico Statutes Annotated
Chapter 61. Professional and Occupational Licenses (Refs & Annos)
Article 6. Medicine and Surgery (Refs & Annos)

N. M. S. A. 1978, § 61-6-7

§ 61-6-7. Short title; licensure as a physician assistant; scope of practice; biennial registration of supervision; license renewal; fees

Effective: June 16, 2017
Currentness

- A. Sections 61-6-7 through 61-6-10 NMSA 1978 may be cited as the “Physician Assistant Act”.
- B. The board may license as a physician assistant a qualified person who has graduated from a physician assistant program accredited by the national accrediting body as established by rule and has passed a physician assistant national certifying examination as established by rule. The board may also license as a physician assistant a person who passed the physician assistant national certifying examination administered by the national commission on certification of physician assistants prior to 1986.
- C. A person shall not perform, attempt to perform or hold the person's own self out as a physician assistant without first applying for and obtaining a license from the board.
- D. Physician assistants may prescribe, administer, dispense and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act pursuant to rules adopted by the board after consultation with the board of pharmacy if the prescribing, administering, dispensing and distributing are done with the supervision of a licensed physician or in collaboration with a licensed physician. The distribution process shall comply with state laws concerning prescription packaging, labeling and recordkeeping requirements.
- E. A physician assistant shall perform only the acts and duties that are within the physician assistant's scope of practice.
- F. An applicant for licensure as a physician assistant shall complete application forms supplied by the board and shall pay a licensing fee as provided in Section 61-6-19 NMSA 1978.
- G. A physician assistant shall biennially submit proof of current certification by the national commission on certification of physician assistants or another certifying agency as designated by rules promulgated by the board and shall renew the license and registration of supervision of the physician assistant with the board.
- H. A physician assistant shall not practice medicine until the physician assistant has established a supervising or collaborating relationship with a licensed physician in accordance with rules adopted by the board.

I. Each biennial renewal of licensure shall be accompanied by a fee as provided in Section 61-6-19 NMSA 1978.

Credits

L. 1973, Ch. 361, § 3; L. 1977, Ch. 110, § 2; L. 1989, Ch. 9, § 1; L. 1994, Ch. 57, § 13; L. 1994, Ch. 80, § 2; L. 1997, Ch. 187, § 2, eff. July 1, 1997; L. 2003, Ch. 19, § 7; L. 2017, Ch. 103, § 2, eff. June 16, 2017.

Formerly 1953 Comp., § 67-5-3.3; 1978 Comp., § 61-6-6.

NMSA 1978, § 61-6-7, NM ST § 61-6-7

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

End of Document

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