NEW MEXICO
Department of Health
Office of the Secretary

MICHELLE LUJAN GRISHAM
Governor

DAVID R. SCRASE, M.D.
Acting Cabinet Secretary

July 13, 2022

Craig T. Erickson, Esq.
Utton & Kery, P.A.
500 Tijeras Ave., NW
Albuquerque, NM 87102

Re: Hearing Officer Appointment, Rulemaking Hearing on Repeal and Replacement of Rule 7.4.6 NMAC – Requirements Governing the Harm Reduction/Syringe Exchange Program.

Dear Mr. Erickson:

Pursuant to NMSA 1978, § 9-7-6(E), I hereby appoint you to serve as the hearing officer to preside at the Department of Health's public hearing on August 17, 2022. This rulemaking hearing is scheduled for 9:00 a.m. and will be conducted via Microsoft Teams online and via telephone, per the attached Notice of Public Hearing.

The hearing will be conducted to receive public comment regarding the proposed Repeal and Replacement of rule 7.4.6 NMAC – Requirements Governing the Harm Reduction/Syringe Exchange Program. An exhibit binder will be provided to you prior to the date of the hearing.

Thank you for accepting this appointment.

Sincerely,

DocuSigned by:
David R. Scrase, M.D.
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David R. Scrase, M.D.
Acting Cabinet Secretary

7/14/2022
Date

cc: M. Shelley Strong, Assistant General Counsel

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed repeal and replace of 7.4.6 NMAC, "Requirements Governing the Harm Reduction/Syringe Exchange Program". The public hearing will be held on August 17, 2022 at 9:00 a.m. via Microsoft Teams, via telephone, and comments will be received via email through the conclusion of the hearing.

The hearing is being held via internet, email, and telephonic means due to the concerns surrounding Coronavirus and in consideration of Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

The hearing will be conducted to receive public comments regarding the proposed repeal and replace of rule 7.4.6 NMAC, concerning the implementation of the requirements and authority of the New Mexico Harm reduction Act, Section 24-2C-1 to 24-2C-6 NMSA 1978

The legal authority authorizing the proposed repeal and replacement of the rule by the Department is at Subsection E of Section 9-7-6 NMSA 1978, The Harm Reduction Act, Section 24-2C-1 to 24-2C-5 NMSA 1978, the Public Health Act, Section 24-1-3 NMSA 1978, and Section 30-31-25.1 NMSA 1978 of the Controlled Substances Act.

Purpose of the proposed repeal and replace are listed below:

7.4.6.1 - Issuing Agency:
- To identify the Department of Health, Public Health Division, Bureau of Infectious Diseases as the division responsible for issuing and implementing these rules.

7.4.6.2 - Scope:
- Included to identify the community and population that will be affected by these regulations.

7.4.6.3 - Statutory Authority:
- Identifies the statutory authority allowing the department of health to issue these rules.

7.4.6.4 - Duration
- Identifies these rules as permanent rules in effect until lawfully removed.

7.4.6.5 - Effective date
- Provides for when these rules will be in effect.

7.4.6.5 - Objective
- Defines the objective of the rules as implementing the requirements of the harm reduction act and the purpose of the regulations.

7.4.6.7 - Definitions
- Provides necessary definitions for terms as they are applied throughout the rules.

7.4.6.8 - General Provisions Governing the HRP Application Approval and Revocation Processes
- Describes the application process for becoming a harm reduction provider. It also designates direct service providers for individuals who use substances as automatic HRPs for the purposes of providing fentanyl test strips or other testing devices. This is included so that organizations who provide front line services on a daily basis who may not be a direct HRP can still provide the lifesaving testing devices to their clients under the protections of the harm reduction act.

7.4.6.9 - Harm Reduction Provider Requirements

- This section states what is required to become a harm reduction provider and for operations as a harm reduction provider.

7.4.6.10 - Supplies Provided

- This Section defines which supplies the department has designated as items that will reduce negative health consequences associated with substance use, prevent overdose mortality or encourage participant engagement in other programming designed to improve overall community health.
- Safer smoking supplies including screens, pipe covers, wooden pushers, copper scrub pads, aluminum foil and straws designed to inhale substances are designated as items which can reduce negative health outcomes associated with substance use and items which will improve participant engagement due to when these items are shared or other less healthy options are used it can lead to the transmission of blood borne pathogens, respiratory infection, and other soft tissue injuries such as burns. Due to the changing nature of substance use, more individuals are smoking and not engaged with harm reduction programs, this decreases participant engagement in other program services such as overdose prevention and navigation into substance use treatment. Evidence has also shown individuals who are provided supplies for a safer method of consuming substances than injection, individuals are willing to switch from injecting to smoking.
- Safer snorting supplies including clean spoons for measurement, clean plastic razors, and clean flat surfaces are designated as items which can reduce negative health outcomes associated with substance use and items which will improve participant engagement due to when these items are shared it can lead to the transmission of hepatitis c or other upper respiratory illness. Snorting substances is a significantly safer route of administration than injection and research shows when provided with these items people who inject substances are willing to switch to a safer route of consumption. Providing these items will lead to increased engagement for people who inhale substances, this will allow for additional health education messaging and overdose prevention and naloxone distribution services.
- Safer injecting supplies including syringes and needles, metal containers for cooking substances, cotton pellets or other filtration devices, twist ties, tourniquets, sterile water and saline, ascorbic acid, and biohazard containers for disposal of used syringes and needles are designated as items which reduce cases of negative health outcomes of substance use, sterile items which can be used to reduce harm associated with substance use, and items which can be used to improve participant engagement due to the fact that injection of substances is associated with the most serious negative health outcomes. Sharing of syringes or any of the items used to inject can lead to the transmission of blood borne pathogens such has hepatitis c and the Human Immunodeficiency Virus (HIV). Sharing of injection equipment or syringes is associated with higher rates of serious soft tissue infection. It has also been shown that individuals engaged in ham reduction and provided with these supplies are more likely to receive and succeed in substance use treatment. Sharps containers will also be provided to ensure individuals are disposing of used injection equipment in a safe manner.

7.4.6.11 - Participant Enrollment

- This section defines the process for enrolling participants in HRP programs and how participant cards will be issued and maintained.

7.4.6.12 - Harm Reduction Program Participant Requirements

- This section designates the requirements for the participants of the harm reduction program.

Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-505-312-4308 and enter meeting ID 185 897 54#. Your telephone comments will be recorded. To access the hearing via internet: please send an email to Joshua.swatek@state.nm.us to be sent an invitation link by no later than 5pm MDT August 15th 2022 ; You may also provide comment via Chat during the live streaming.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address:

Sheila Apodaca
Office of General Counsel
New Mexico Department of Health

1190 St. Francis Drive, Suite N-4095
Santa Fe, NM 87505
(505) 827-2997

Or preferably by e-mailing the comment to the e-mail address: Sheila.Apodaca@state.nm.us.

Written comments must be received by the close of the public rule hearing on August 17, 2022. All written comments will be published on the agency website at http://nmhealth.org/about/asd/cmo/rules/ within three (3) days of receipt and will be available at the New Mexico Department of Health Public Health Division for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

The foregoing are summaries of the proposed rule. The proposed rule includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department's website at https://nmhealth.org/publication/regulation/