

This is an amendment to 7.5.3 NMAC, Sections 6, 7, 8, and 9 effective xx/xx/2023.

7.5.3.6 OBJECTIVE: The objective is to establish standards and procedures for obtaining exemptions to required immunizations as allowed by Section 24-5-3 NMSA 1978; specifically for children whose:

A. licensed physician, a physician assistant, or a certified nurse practitioner [~~duly licensed physician~~] provides a certificate stating that any of the required immunizations would seriously endanger the life or health of the child; or

B. parent or legal guardian attests via affidavit or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

C. parent or legal guardian attests via affidavit or written affirmation that their religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent. [7.5.3.6 NMAC - Rp, 7 NMAC 5.3.6, 11/27/2013; A, xx/xx/2023]

7.5.3.7 DEFINITIONS:

A. "ACIP" means advisory committee on immunization practice.

B. "Administrative authority" means the superintendent, principal, or the designee of such person.

C. "Certified nurse practitioner" means a registered nurse licensed by the New Mexico board of nursing for advanced practice as a certified nurse practitioner.

~~D. [C.]~~ "~~Denial~~" means a denial of a request for exemption from immunizations.

~~E. [D.]~~ "~~Department~~" means the department of health.

~~F. [E.]~~ "~~Licensed physician~~" means a physician licensed by the New Mexico board of medicine to practice medicine or osteopathic medicine.

~~G. [F.]~~ "~~NMSIIS~~" means the New Mexico Statewide Immunization Information System; a secured, confidential, population-based, computerized registry for recording vaccination information established pursuant to Sections 24-5-7 through 24-5-15 NMSA 1978.

~~H.~~ "Physician assistant" means a health care practitioner licensed by the New Mexico board of medicine to practice as a physician assistant and to provide services to patients with the supervision of or in collaboration with a licensed physician.

~~I. [G.]~~ "~~Public health division~~" means a division of the department of health within which the immunization program is located.

~~J. [H.]~~ "~~Required immunizations~~" means those immunizations against diseases deemed to be dangerous to the public health by the public health division, and set forth in its immunization requirements, which are within recommendations of the ACIP.

~~K. [I.]~~ "~~Satisfactory evidence of commencement of immunization~~" means satisfactory evidence of a person having begun the process of immunizations, such as a certificate, or record signed by a [~~duly~~] licensed physician or other recognized public or private health provider [~~facility~~] stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule.

~~L. [J.]~~ "~~Satisfactory evidence of immunization~~" means a statement, certificate, or record signed by a licensed physician or other recognized licensed health provider stating that the required immunizations have been given to the person or record of receipt of immunization in the NMSIIS registry.

~~M. [K.]~~ "~~Secretary~~" means the secretary for the department of health. [7.5.3.7 NMAC - Rp, 7 NMAC 5.3.7, 11/27/2013; A, xx/xx/2023]

7.5.3.8 REQUIREMENTS FOR APPROVAL OF EXEMPTIONS FROM IMMUNIZATION:

A. Any minor child through his parent or guardian may file a request for exemption from required immunization with the director of the public health division by providing the following:

(1) certificate or affidavit from a licensed physician, a physician assistant, or a certified nurse practitioner [~~duly licensed physician~~] attesting that any of the required immunizations would seriously endanger the life or health of the child; or

(2) an affidavit or written affirmation from an officer of a recognized religious denomination stating that the parents or guardians are bona fide members of the recognized denomination, whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(3) an affidavit or written affirmation by a parent or guardian whose religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agents.

B. The original request for approval of any exemptions from immunization must be mailed to the department of health, public health division, immunization program. The address is P.O. Box 26110, Suite S-1250, Santa Fe, NM, 87502. Request forms can be found at the immunization program offices 1190 St. Francis Drive, Suite South 1250 or on the program's website.

C. Within 60 days of receipt of a request for exemption from immunization, the department of health immunization program ~~staff~~ [manager] shall review the request to determine whether the certificate has been duly completed. Incomplete requests shall be returned to the requester with information regarding what elements are missing.

D. The department of health immunization program ~~staff~~ [manager] shall determine approval status of all requests for exemption:

(1) exemption requests shall be approved for a one-year [~~nine-month~~] period indicated by the public health division director or designee;

(2) in the case of approval of a request for exemption, an approved, signed copy of the request shall be provided to the parents or guardian of the child [~~and to the administrative authority of the school or director of the pre-school or childcare center at which the child has been conditionally enrolled~~];

(3) in the case of a denial, the department of health immunization program staff shall state the reasons for denial in a letter of notification to the parents or guardian of the child [~~and to the administrative authority of the school or director of the pre-school or childcare center at which the child has been conditionally enrolled~~]. The notice to the parents or guardians shall also include information about the review process in 7.5.3.9 NMAC.

[7.5.3.8 NMAC - Rp, 7 NMAC 5.3.8, 11/27/2013; A, xx/xx/2023]

7.5.3.9 REVIEW CRITERIA:

A. The department of health immunization program ~~staff~~ [manager] will consider the requirements and allowances of the law and the completeness and clarity of the requests for exemption in his or her review. Written criteria for review of exemption from immunization shall be available on the department of health website, included in documents required for submission of immunization exemptions, and provided upon request made to the department.

B. Requests for exemption based on a certificate or affidavit from a licensed physician, a physician assistant, or a certified nurse practitioner [~~duly licensed physician~~] will be reviewed for the following:

(1) an original document signed by a licensed physician, a physician assistant, or a certified nurse practitioner [~~duly licensed doctor of medicine or doctor of osteopathic medicine~~], which

(2) contains a statement that immunizations would seriously endanger the health of the child.

C. Requests for religious exemption based on an affidavit or written affirmation from an officer of a religious denomination will be reviewed for the following:

(1) an original document signed by an officer of the denomination, which

(2) contains a statement affirming that the parent or guardian of the child are members of the religious denomination; and

(3) that the religious teachings of the denomination require reliance on prayer or spiritual means alone for healing.

D. Requests for exemption based on an affidavit or written affirmation from a parent will be reviewed for the following:

(1) an original, signed, complete, properly notarized form, which

(2) contains a statement of affirmation from the parent or guardian that their personal religious belief, or jointly-held religious belief does not permit immunization of their child.

[7.5.3.9 NMAC - Rp, 7 NMAC 5.3.9, 11/27/2013; A, xx/xx/2023]

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed adoption of amendments to rule Part 7.5.3 NMAC, “Exemptions From School, Childcare, and Pre-School Immunization”, Sections 6 (“Objective”), 7 (“Definitions”), 8 (“Requirements For Approval Of Exemptions From Immunization”), and 9 (“Review Criteria”). The public hearing will be held on July 7, 2023 at 9:00 a.m. MDT via web video conference and telephone. The hearing will be conducted to receive public comment regarding the adoption of the proposed rule amendments, which concern requirements for the approval of exemptions from immunization for children, pursuant to Section 24-5-3, NMSA 1978 (“Exemption From Immunization”).

The proposed amendments seek to make the following changes:

- Expand the list of medical practitioners who may issue a certificate or affidavit attesting that a required immunization would seriously endanger the life or health of a child, in accordance with a recent statutory amendment. The healthcare professionals who are qualified to issue an exemption certificate or affidavit are being expanded from a “duly licensed physician”, to “a licensed physician, a physician assistant or a certified nurse practitioner”.
- Include new definitions for “physician assistance” and “certified nurse practitioner”, and make certain edits to existing definitions.
- Change certain existing references to the Immunization Program Manager, to Immunization Program staff.
- Remove provisions authorizing the agency to provide a signed copy of a request for exemption, and denial of an exemption request, to the administrative authority of a school, pre-school, or daycare center at which the affected child has been conditionally enrolled.

The purpose of the proposed rule amendments is to adopt the rule changes described, some of which are proposed in order to conform the Immunization Exemption rule to recent statutory amendments to Section 24-5-3 of the NM Immunization Act enacted via Senate Bill 81 of the 2023 legislative session, which go into effect on July 1, 2023.

The legal authority authorizing the proposed amendment of the rule by the Department is at Subsection E of Section 9-7-6, NMSA 1978, and the Immunization Act at 24-5-1 and 24-5-3 NMSA 1978.

A free copy of the full text of the proposed rule amendments can be obtained from the Department’s website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing, and anyone may offer public comments on the proposed rule amendments orally at the hearing. To access the hearing by telephone: please call 1-505-312-4308, phone conference i.d. code 460 889 552#. To access the hearing via internet: please go to <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>, enter the following meeting i.d. code and passcode where indicated on screen—meeting i.d. code 248 667 629 571, Passcode: mj6X42, then click the “Join a meeting” button. All oral comments will be recorded.

Any person may submit written public comment concerning the rule amendments. Written comments may be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rules to the attention of:

Via Postal Mail:
Kathryn Cruz, NMSIIS Manager
P.O. Box 26110
1190 St. Francis Drive, Suite S-1250
Santa Fe, NM 87502-6110

Via E-mail: Kathryn.Cruz@doh.nm.gov

Mailed written comments must be received no later than 5:00 p.m. MDT on Wednesday, July 5, 2023. Written comments may also be submitted to the email address shown above through 5:00 pm MDT on the date of the hearing. All written comments will be published on the agency website at

<http://nmhealth.org/publication/regulation/> within 3 business days of receipt, and will be available at the Office of the New Mexico Department of Health, at the address above, 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 Brandy Sanchez by telephone at (505) 827-2997. The Department requests at least ten (10) days' advance notice to provide requested special accommodations.

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AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Wayne Barnard, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

05/31/2023



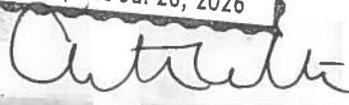
Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 31 day of May of 2023

PRICE \$200.07

Statement to come at the end of month.

ACCOUNT NUMBER 1060434

CHRISTINA MARIE WHITE
Notary Public - State of New Mexico
Commission # 1122050
My Comm. Expires Jul 26, 2026



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Journal: May 31, 2023

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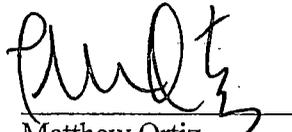


NEW MEXICO
State Records Center and Archives
COMMISSION OF PUBLIC RECORDS
Your Access to Public Information

Affidavit of Publication in New Mexico Register

I, Matthew Ortiz, certify that the agency noted on Invoice # 6916 has published legal notice of rulemaking or rules in the NEW MEXICO REGISTER, VOLUME XXXIV, that payment has been assessed for said legal notice of rulemaking or rules, which appears on the publication date and in the issue number noted on Invoice # 6906, and that Invoice # 6906 has been sent electronically to the person(s) listed on the *Billing Information Sheet* provided by the agency.

Affiant:


Matthew Ortiz

Subscribed, sworn and acknowledged before me this 31st day of May, 2023.

Notary Public:

My Commission Expires:


2/19/2024

STATE OF NEW MEXICO
NOTARY PUBLIC
Pamela Anne Lujan Y Vigil
Commission No. 1056580
February 19, 2024

1205 Camino Carlos Rey | Santa Fe, NM 87507 | www.srca.nm.gov

Hon. Hector Balderas
Attorney General

Hon. Brian S. Colón
Chairman/State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra Garcia y Griego
Department of Cultural Affairs

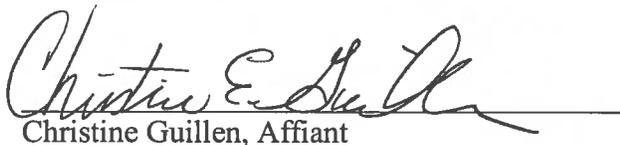
Stephanie Wilson
Acting Director, Supreme Court Law Library

Affidavit of Notice to the Public

I, Christine Guillen, the undersigned, on oath, swear and affirm that the Notice of the Public Hearing for the proposed adoption of the proposed amendments of 7.5.3 NMAC, Sections 6, 7, 8, and 9, were provided to the public as identified below:

1. The Notice of Public Hearing was electronically posted on the New Mexico Department of Health agency website at <http://nmhealth.org/publication/rules/> on May 22, 2023.
2. The Notice of Public Hearing was posted on the New Mexico Sunshine Portal website at https://statenm.force.com/public/SSP_RuleHearingSearchPublic on May 19, 2023.
3. On June 21, 2023, I emailed the Notice of Public Hearing to persons who have made a written request for notice from the agency of announcements addressing the subject of rulemakings and who have provided the agency an electronic mail address. The list of persons who requested notice includes the following persons: Tim Gardner, tgardner@drnm.org; Lucy Galaviz, lgalaviz@drnm.org; and Crystal Hodges, chodges@nmag.gov.
4. No persons have provided a postal address to request written notice by postal mail.
5. On June 21, 2023, I emailed the Notice of Public hearing to the New Mexico Legislative Counsel Service, at lcsmail@nmlegis.gov, in accordance with the State Rules Act at NMSA 1978, § 14-4-5.2.
6. On June 21, 2023, I emailed the Notice of Public Hearing to Westlee Painter of New Mexico Small Business Regulatory Advisory Commission, the identified contact person for the receipt of proposed rule changes, at westlee.painter@edd.nmg.gov, pursuant to the Small Business Regulatory Relief Act at NMSA 1978, § 14-4A-4.
7. On June 20, 2023, a copy of the Notice of Public Hearing was posted on the front doors of the Harold Runnels building, where the Public Health Division of the Department of Health is located.

FURTHER AFFIDANT SAYETH NAUGHT.


Christine Guillen, Affiant

State of New Mexico)
County of Santa Fe)

SWORN TO and SUBSCRIBED before me on the 21st day of June, 2023, by Christine Guillen.


Notary Public

6/21/2026
My commission expires

STATE OF NEW MEXICO
NOTARY PUBLIC
MARIA SUSANA MONTOYA
COMMISSION # 1138241
COMMISSION EXPIRES 06/21/2026



EXHIBIT 6

MICHELLE LUJAN GRISHAM
Governor

PATRICK M. ALLEN
Cabinet Secretary

July 3, 2023

Jared D. Najjar, Esq.
Virtue & Najjar, P.C.
2204 Brothers Rd.
Santa Fe, NM 87505

Re: Hearing Officer Appointment, Rulemaking Hearing on Proposed Amendments to 7.5.3 NMAC, “Exemptions From School, Childcare, and Pre-School Immunization”

Dear Mr. Najjar:

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 July 7, 2023. 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 adoption of amendments to various sections of 7.5.3 NMAC, “Exemptions From School, Childcare, and Pre-School Immunization”. Exhibits will be provided to you prior to the date of the hearing.

Thank you for accepting this appointment.

Sincerely,

DocuSigned by:
 Jul 3, 2023 | 4:12 PM MDT
BCCCC0A6564A457...
Patrick M. Allen
Cabinet Secretary

cc: Christopher D. Woodward, Assistant General Counsel

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From: [Chris Mechels](#)
To: [Cruz, Kathryn, DOH](#)
Subject: [EXTERNAL] 7.5.3 NMAC Rule Hearing
Date: Tuesday, June 27, 2023 10:26:34 AM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Ms. Cruz,

I am looking at upcoming Rule Hearing this morning, and it seems you may have a problem.

This Hearing is set as a "virtual" hearing, and I believe that to be an error.

Virtual hearings were allowed under guidance from the AG office, as part of the Covid emergency. That emergency ended in NM on March 31st, and with it the allowance for such hearings. A "hybrid" format would seem ok as it allows for "in person" attendance AND video. Hybrid can be an advantage for those hard of hearing, such as myself (old age). I do pretty well at "in person" hearings with hearing aids.

This issue came up last month, and resulted in rescheduling of three Public Hearings.

I have suggested to the Records Commission that they catch this problem, but they have resisted doing this. Your last previous hearing was prior to March 31st, so the transition is easy to miss.

I know its annoying, but Rules Act compliance is important to public interest.

Please contact me for any questions.

Regards,

Chris Mechels
505-982-7144

From: [Chris Mechels](#)
To: [Cruz, Kathryn, DOH](#)
Subject: RE: [EXTERNAL] 7.5.3 NMAC Rule Hearing
Date: Tuesday, June 27, 2023 5:29:01 PM

Dear Ms. Cruz,

Thanks for the prompt response, but the advice from your general counsel seems inappropriate.

The Hearings are intended for input on the "content" of the proposed Rule, not the process itself. If the hearing itself is illegal, as I suggest, then we are asking the party putting on the hearing to determine if the hearing is "legal", after the hearing. This is unworkable.

I have been involved in many Rules Hearings, esp at the Law Enforcement Academy Board (LEAB), and the most likely outcome is that the illegal process is just ignored. The time to deal with an illegal hearing process, is PRIOR to the hearing, before the momentum builds up for approval. After the hearing there is resistance to redoing the hearing, as counsel doesn't want to be "wrong", and they don't want the delay of rehearing. The law means little.

So, letting an illegal hearing go forward is really saying "so sue us" to the public. A rather common, but unfortunate, reaction by our government, and our many "counsels" who are typically not familiar with the Rules Act, having "better things to do".

Proceeding with this illegal hearing is essentially committing Malfeasance, but this is typically not prosecuted in NM and is therefore become common.

So, the question is NOT to be left to your counsel, but you and your superiors. You have all sworn to uphold NM laws, including the Rules Act. Do you really break our laws so casually? As you are now aware of the problem, it is Malfeasance, pure and simple.

In an ideal world, your hearing would be quickly overturned as "invalid" via a writ from the Court. But, in fact, our courts are crowded, and finding an attorney for such suits is difficult, as there is "no money in it". So, your invalid/illegal hearing is likely to go without legal challenge, based on my experience.

That is why it is important for the Rules Commission to "cut off" proposed hearings on such problems, Matt Ortiz and Rick Hendricks prefer not to examine the proposed hearings, and really don't care if they are legal. To much of this in our government. Misfeasance on their part.

So, it comes down to you, and your superiors. Are you scofflaws, who knowingly violate our laws, including the Rules Act, knowingly?

I hope not. As President Truman famously said; "The Buck Stops Here". Do our laws, and oaths, mean anything here in New Mexico?

Three other agencies, when recently faced with this issue, simply rescheduled their hearings,

with a legal format.

What will you do? The law is clear.

Regards,

Chris Mechels
505-982-7144

On Tue, 27 Jun, 2023 at 1:45 PM, Cruz, Kathryn, DOH <Kathryn.Cruz@doh.nm.gov> wrote:

To: chris mechels

Good afternoon Chris,

Thank you for reaching out on this. I've recorded your email to be included with the public hearing comments, per our general council.

Thank you,
Katie

Kathryn (Katie) Cruz
NMSIIS Manager
Please note that my email address
is now Kathryn.Cruz@doh.nm.gov



From: Chris Mechels <cmechels@q.com>
Sent: Tuesday, June 27, 2023 10:27 AM
To: Cruz, Kathryn, DOH <Kathryn.Cruz@doh.nm.gov>
Subject: [EXTERNAL] 7.5.3 NMAC Rule Hearing

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