

**NEW MEXICO DEPARTMENT OF HEALTH
SCHOOL-BASED HEALTH CENTERS
RULE PROMULGATION HEARING**

Public Hearing: Proposed New Rule 7.30.15 NMAC

Actions in Question: Rule Promulgation Hearing for 7.30.15 NMAC (“School-Based Health Centers”)

Hearing Date: March 28, 2025

Report Date: April 2, 2025

REPORT OF HEARING OFFICER

A Public Hearing was held on Friday, March 28, 2023, at 9:00 a.m. via Microsoft Teams and telephone. The hearing was held for the purpose of considering the Department of Health’s (“DOH” or “the Department”) proposed new rule 7.30.15 NMAC (“School-Based Health Centers”) in the New Mexico Department of Health rules.

The Notice of Public Hearing

The Notice of Public Hearing (“the Notice”) states that the public hearing would be conducted to receive public comments regarding the adoption of the proposed new rule 7.30.15 NMAC concerning the requirements for school-based health centers, pursuant to NMSA 1978, §24-1-44(F) (“School-Based Health Centers”), and NMSA 1978, §9-7-6 of the Department of Health Act. *See* DOH Exhibit No. 2.

The Notice of Public Hearing further states that the purpose of the new rule is to implement Section 24-1-44 NMSA 1978 of the Public Health Act. That statute requires that the Department provide funding, technical assistance, clinical oversight, and other necessary support for the creation and operation of school-based health centers.

The Notice also summarizes the proposed minimum standards and requirements for school-based health centers that receive funding from the Department, including, but not limited to, the following subjects:

- School-based health center operations and services, including location, consent to services, non-discrimination, hours of operation, and the provision of clinical services;
- Department inspection and oversight of school-based health centers;
- Data collection, sharing of data with the Department, and medical record confidentiality;
- Health center certification;
- Staffing;
- Financial sustainability;

- Requests for waivers of rule requirements; and
- Disciplinary actions, the hearing process, and final decisions on proposed disciplinary actions.

SUMMARY OF PROCEEDINGS

Craig T. Erickson presided as Hearing Officer. The DOH was represented by Chris Woodward, Acting General Counsel for the Department. The other participants in the hearing included the following individuals, who participated via video connection to Microsoft Teams:

1. Kristin Oreskovich, Clinical Operations Manager for the School-Based Health Center Program within the Population and Community Health Bureau of the Department of Public Health Division of the Department of Health.
2. Melinda Wolinsky, Assistant General Counsel from the Office of General Counsel for the Department.
3. Stephanie Lopez, law clerk for the DOH Office of General Counsel.
4. Jacob Clark, Office Manager for the DOH Office of General Counsel.
5. Rene Thompson, who did not speak but Mr. Woodward indicated that he understands that she works for the Health Care Authority, at least according to their email system.

The proceeding was recorded via Microsoft Teams and hosted in that platform by Mr. Woodward.

The Hearing Officer opened the proceeding by introducing himself and Mr. Woodward. The Hearing Officer also introduced Ms. Oreskovich. The Hearing Officer stated that he had been appointed to act as hearing officer in this matter by then Interim Cabinet Secretary Gina DeBlassie (now officially Cabinet Secretary). The Hearing Officer then explained that the purpose of this public hearing was to give the public an opportunity to comment on the proposed new rule 7.30.15 NMAC (“School-Based Health Centers”).

The Hearing Officer noted that, pursuant to notice, this matter was heard on the 28th day of March, 2025 via Microsoft Teams online, and via telephone. Also pursuant to notice, the Hearing Officer stated that the public had been given the opportunity to comment on the proposed rule via Microsoft Teams and telephonically. The Hearing Officer further stated that opportunity was also given to the public to submit written comments via email messages, through the close of business on the day of hearing.

The Hearing Officer explained that the hearing is a recorded proceeding. He stated that we have learned from experience how to get the best recording we can obtain from the Microsoft Teams platform. The participants were informed that they can assist with that effort by being on “mute” at all times except when they are speaking. The Hearing Officer stated that this is important

for the recording, and it is also important for everyone to hear clearly each person who speaks during the course of the hearing.

The time was approximately 9:00 a.m. when the hearing began.

The Hearing Officer stated that this hearing was held in accordance with NMSA 1978, §9-7-6(E) of the Department of Health Act, and NMSA 1978, §24-1-44(F) of the Public Health Act.

The Hearing Officer then explained that the hearing would proceed as follows:

- Ms. Oreskovich would give a brief introduction regarding the proposed rule.
- Mr. Woodard would then introduce and move for the admission of the hearing exhibits into the record.
- The Hearing Officer would then take public comments on each section from those wishing to offer comments.

The Hearing Officer reminded those giving comments today that this hearing was being recorded, and before each person offered public comment, they should state for the record their full name and who they represent.

The Hearing Officer also explained that the Department is not bound by the formal rules of evidence during these proceedings. However, the Hearing Officer may, in his discretion, exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious. The Hearing Officer may take notice of judicially cognizable, technical or scientific facts within the Department's specialized knowledge.

The Hearing Officer stated that this is the public's opportunity to offer public comment, and that this public hearing is intended to provide the public with an opportunity to voice opinions on the proposed rule.

Introductory Remarks of Kristin Oreskovich

Ms. Oreskovich began her comments by stating that she is the Critical Operations Manager for the New Mexico Department of Health School-Based Health Center Program. She stated that in 2023 the School-Based Health Center Act was codified in the state legislature. NMAC 7.30.15 creates the rules applicable to school-based health centers in New Mexico that receive funding from the New Mexico Department of Health in relation to the Act that was passed in 2023.

Ms. Oreskovich stated that school-based health centers in New Mexico are defined as health care clinics that are located in a school or on a school campus. Their programs are to be run through agreements between local school districts and local health care providers and entities such as hospitals systems, federally qualified health centers, and other medical practices.

Ms. Oreskovich stated that these rules establish minimum standards for the implementation of school-based health center operations, ensuring evidence-based practices in a public health framework, such as access to care, assessment of health needs, preventive care, and health promotion. The rules also establish the procedure and criteria used by the Department of Health to certify, suspend, and decertify school-based health centers. She stated that certification is a review process where the Department's team goes in and assures that all of the standards for operating a school-based health center are being met. She also stated that certification is voluntary, and it will continue to be voluntary. However, only a certified school-based health center, or one in the process of certification, is illegible to receive operational funding from the New Mexico School-Based Health Center Program.

Preliminary Matters

Mr. Woodward then moved for the admission of the Department's exhibits into the record, and the exhibits were admitted by the Hearing Officer into the record. He also stated that all of the exhibits are available at the DOH website where "regulations" are designated. The are also available on the New Mexico Sunshine Portal. The exhibits introduced at the time of hearing were as follows:

- DOH Exhibit No. 1: Proposed Rule 7.30.15 NMAC – School-Based Health Centers
- DOH Exhibit No. 2: Notice of Public Hearing for this hearing, which details how people can participate in this hearing.
- DOH Exhibit No. 3: Affidavit of Publication in the Albuquerque Journal, which published the Notice of Hearing for this hearing on February 25, 2025. A copy of the published Notice is attached to the Affidavit.
- DOH Exhibit No. 4: Affidavit of Publication in the New Mexico Register, wherein Matthew Ortiz of the New Mexico State Records and Archives. Mr. Ortiz attested that the Notice of Hearing was published in the New Mexico Register. The Notice of Hearing is attached to the affidavit. It was published in Volume XXXVI, Issue 4, of the Register on February 25, 2025.
- DOH Exhibit No. 5: Letter Requesting Part Designation, a letter from Chris Woodward to Pamela Lujan y Vigil, the Rules Management Analyst for the Administrative Law Division of the State Records Center and Archives. The letter requests a new rule "part" designation. NMAC 7.30.15 is a new rule part. One of the requirements of the State Records Center is that you have to request the creation of a new rule part, and then they give it their blessing.
- DOH Exhibit No. 6: Letter Appointing Hearing Officer which appoints Craig Erickson a the hearing officer in this proceeding. It was signed by then Interim Cabinet Secretary DeBlassie, and is dated December 20, 2024.

DOH Exhibit No. 7: Affidavit of Notice to the Public. This Affidavit was completed by Stephanie Lopez, who is a law clerk in the DOH Office of General Counsel. Ms. Lopez assisted in the creation of this rulemaking proceeding and satisfied the various notice requirements of the State Rules Act. The Affidavit addresses a series of notice requirements that are identified in the State Rules Act. Those requirements have increased quite a bit in the last several years; the Affidavit established what was done to comply with those requirements.

There were no written public comments submitted to the Department.

Mr. Woodward moved for the admission of the exhibits and the motion was granted, thereby making the exhibit part of the record in this proceeding.

Public Comments

There were no public comments.

The Hearing Officer then closed the hearing.

ANALYSIS AND RECOMMENDATION

In conducting the analysis of the issues in this rule promulgation process, the Hearing Officer was guided by New Mexico case law which provides guidance in determining whether a rule adopted by an administrative agency will be upheld. This guidance can be found in *New Mexico Mining Association v. New Mexico Mining Commission*, 1996-NMCA-098, 122 N.M. 332, which states as follows:

Rules adopted by an administrative agency will be upheld if they are in *harmony* with the agency's express statutory authority or *spring from those powers that may be fairly implied therefrom*. [Citations omitted.] Similarly, regulations adopted by an agency are presumed to be valid if they are shown to be *reasonably consistent* with the statutory purposes of the agency. [Citation omitted.] [Emphasis added.]

See also Rio Grande Chapter of Sierra Club v. New Mexico Mining Com'n, 2003-NMSC-005, 133 N.M. 97 at ¶ 25.

The Hearing Officer has reviewed the comments at hearing by Ms. Oreskovich regarding the proposed new rule 7.30.15 NMAC and has reviewed the information regarding the provisions of the proposed rule provided in the Notice of Public Hearing, which addresses the purpose of the new rule, and the issues to be regulated under the rule. These sources of information are summarized in detail above.

Further, the Hearing Officer has reviewed NMSA 1978, §24-1-44 (“School-based health centers; creation and operation”), which states as follows:

A. The department shall provide funding, technical assistance, clinical oversight and other necessary support for the creation and operation of school-based health centers.

B. School-based health centers receiving funding from the department shall be regulated by the department to provide services pursuant to Subsection E of this section.

C. School-based health centers shall be established in schools, within the boundaries of school campuses or within safe walking distances from school campuses as determined by the school and the school-based health center operator, in communities based on:

- (1) need for services;
- (2) operator availability; and
- (3) support from local educational authorities.

D. School-based health centers shall work in cooperation with schools and school districts and be operated by licensed health care providers, including hospitals, federally qualified health centers, the department's public health nurses and other qualified health care providers.

E. School-based health centers shall provide services through licensed providers, including:

- (1) primary health care;
- (2) preventive health care, including comprehensive health assessments and diagnosis;
- (3) treatment of minor, acute and chronic conditions;
- (4) mental health care;
- (5) substance use disorder assessments, treatment and referral;
- (6) crisis intervention; or
- (7) referrals as necessary for additional treatment, including inpatient care, specialty care, emergency psychiatric care, oral health care and vision health care services.

F. The department shall adopt and promulgate rules for the regulation, operation and oversight of school-based health centers receiving funding from the department.

G. For purposes of this section:

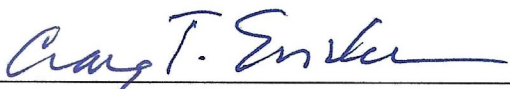
- (1) "department" means the department of health;
- (2) "mental health care" means services related to emotional, psychological and social well-being;
- (3) "preventive health care" means services that include screenings, checkups and patient counseling to stop or slow the progression of illness, diseases and other health problems; and
- (4) "primary health care" means health care services that include providing preventive care, promoting wellness and treating common illnesses.

The Hearing Officer recommends that the Cabinet Secretary find that the proposed new rule is consistent with the authority granted to the agency in rulemaking and consistent with the statutory purposes of the agency as set forth in the statute. The Hearing Officer, having reviewed the record in this proceeding in full, recommends that the Secretary find that the provisions of the proposed new rule 7.30.15 NMAC ("School-Based Health Centers Hospitals") are in harmony with, and/or spring from the authority given to the Department to promulgate rules under the Department of Health Act.

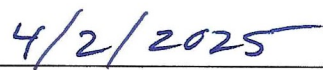
There was no opposition expressed by anyone, either in the form of a public comment at hearing, or in the form of a written comment submitted to the Department, to any of the provisions of the proposed new rule.

Recommendations:

Based upon the foregoing, the Hearing Officer recommends that the Secretary adopt and promulgate the proposed new rule, 7.30.15 NMAC "School-Based Health Centers," as set forth in DOH Exhibit No. 1.



Craig T. Erickson



Date