

Instructions for completing the NMAC TRANSMITTAL FORM



Your agency must complete the following:

Volume, Issue and Publication Date. [Example: Volume: XXX , Issue: 10, Publication date: May 28, 2019.](#)

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document. [Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.](#)

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. [Example: 123](#)

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. [For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new \(replacement\) rule.](#)

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

[Example:](#)

Title 19 Natural Resources and Wildlife
Chapter 30 Wildlife Administration Aquatic
Part 14 Invasive Species

Description of Amendment: (if amending) [Example: "Amending three sections"](#).

Amendment's NMAC citation: (if amending) [Example: "Sections 9 and 18 of 7.1.13 NMAC"](#).

Are any materials incorporated by reference? [Check: Yes or No. If Yes, please list attachments or provide Internet site.](#)

If incorporated, has copyright permission been granted? [Check Yes or No or check if document is in the public domain.](#)

Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) ([when notice of rulemaking was published in Register](#)): Hearing date(s) (if agency has board or commission): Rule adoption date: ([see note below](#)) and Rule effective date ([date rulemaking becomes effective](#))

Note:

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

[Check with your agency's general counsel office regarding substance of any required findings to be filed.](#)

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black ink**:

[Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.](#)

NMAC

Transmittal Form



Volume: Issue: Publication date: Number of pages: (ALD Use Only)
Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renumber (ALD Use Only)
Most recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):
Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Check if authority has been delegated

Title:

Signature: (BLACK ink only)

Date signed:



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

**IN THE MATTER OF PROPOSED
ADOPTION OF REPEAL AND
REPLACEMENT OF DEPARTMENT
RULE PART 7.28.2 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF PROPOSED
REPEAL/REPLACEMENT OF REQUIREMENTS FOR HOME HEALTH
AGENCIES**

Billy J. Jimenez, Acting Cabinet Secretary for the New Mexico Department of Health, following a public hearing conducted on September 17, 2020, on the proposed repeal and replacement of the Requirements for Home Health Agencies rule, part 7.28.2 NMAC, hereby adopts the proposed repeal and replacement rule. This decision is based on the entire record in this matter, which includes a recording of the hearing and the Report and Recommendation of the Hearing Officer, Craig T. Erickson, Esq., dated October 23, 2020.

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

1. The Department of Health is authorized to repeal promulgated regulations and to promulgate regulations as may be necessary to carry out the duties of the Department and its divisions. NMSA 1978, Section 9-7-6(E), and to enact this rule pursuant to NMSA 1978, Section 24-1-2, Section 24-1-3 and Section 24-1-5.
2. In accordance with NMSA 1978, Section 14-4-5.2, notice of the public hearing for the proposed rule adoption was published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on August 11, 2020.

3. In accordance with NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule changes was also published in the Albuquerque Journal newspaper on August 11, 2020.
4. In accordance with NMSA 1978, Section 14-4-5.2, prior to the date of the rule hearing, notice of the public hearing for the proposed rule changes was also posted to the agency website at <http://www.nmhealth.org>, as well as to the NM Sunshine Portal at <http://www.newmexico.gov>.
5. By a letter dated August 4, 2020, then Cabinet Secretary Kathyleen M. Kunkel designated Mr. Erickson to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed repeal and replacement rule.
6. A public rule hearing was held in Albuquerque, New Mexico via the Internet-based video conference platform Cisco WebEx and by telephone on September 17, 2020 pursuant to NMSA 1978, Section 9-7-6(E).
7. Members of the public were afforded an opportunity to comment orally on the proposed rules at the hearing, and in writing prior to the hearing and through the close of business on September 17, 2020.
8. The purpose of the proposed repeal and replacement rule is to replace the rule with one in the current format required for rules, and to make permanent the changes which were incorporated into emergency rule 7.28.2 NMAC, which was adopted on 6/5/2020 to bring the New Mexico regulation into compliance with the federal regulatory changes made by the Centers for Medicare and Medicaid Services (CMS), HHS, to certain rules governing home health agencies in response to changes made with the

enactment of the Coronavirus Aid, Relief, and Economics Security Act (CARES Act)(pub.L.116-136, March 27, 2020). The purpose of the proposed repeal and replacement of 7.28.2.33 NMAC expands the list of practitioners who can order home health services to include physician assistants, nurse practitioners and clinical nurse specialists acting within the extent of their licensed scope of practice, which brings the state regulation into compliance with federal law. The purpose of the repeal and replacement of 7.28.2 NMAC is also to adopt amendments to definitions in 7.28.2.7 NMAC to provide definitions of these additional practitioners, and to adopt amendments to 7.28.2.34 NMAC which add the list of additional practitioners to those who are to be named in the patient/client record and to receive copies of summary reports as well as provide clarity of engagement of the patient/client in development of a plan of care, as more fully described in the rulemaking record.

9. An amendment to Rule part 7.8.2.33 NMAC was initially adopted by the former Cabinet Secretary Kathyleen M. Kunkel as an emergency rule to bring the New Mexico regulation into compliance with the federal regulatory changes made by the Centers for Medicare and Medicaid Services (CMS), HHS, to expand the list of practitioners who can order home health services to include physician assistants, nurse practitioners and clinical nurse specialists acting within the extent of their licensed scope of practice on June 5, 2020 and published in the NM Register, Vol. XXXI, Issue 12 on June 23, 2020.

10. By amending 7.28.2 NMAC within 180 days of the emergency rule, in accordance with NMSA 1978, § 14-4-5, the Cabinet Secretary adopts a permanent rule that replaces the June 5, 2020 emergency rule.

11. Written comments from members of the public were received prior to the rule hearing and received also after the rule hearing up until the close of business on September 17, 2020. Based on a comment from a member of the public regarding additional explanation as to the reason 7.28.2 NMAC is being amended, the Hearing Officer sought and received additional information from the Department at the hearing regarding the explanation for the proposed amendment to 7.28.2.33 NMAC. Additional written public comments were received and considered and adopted by the department. These facts are described in the October 23, 2020 Report and Recommendation from the Hearing Officer to the Acting Cabinet Secretary.

12. Changes between the rule draft that was offered at the rule hearing and the final rule are as stated in the record of the hearing and as described in the Hearing Officer's Report and Recommendation, the recommendations of which are adopted herein by the Acting Cabinet Secretary.

13. The Acting Cabinet Secretary has familiarized himself with the rulemaking record, including the Report and Recommendation of the Hearing Officer, and finds that the Hearing Officer has appropriately considered the entire record and substantive comments made through public comments, and finds that the recommendations of the Hearing Officer are appropriate.

14. The Acting Cabinet Secretary hereby adopts the Hearing Officer's recommendations concerning the proposed repeal and replacement to the rule.

15. The Acting Cabinet Secretary finds that the rule promulgation process substantially complied with the requirements of the State Rules Act and the New Mexico Attorney General's Default Procedural Rule for Rulemaking at 1.24.25 NMAC.

16. The Acting Cabinet Secretary finds that the proposed repeal and replacement of 7.28.2 NMAC, as recommended by the Hearing Officer, is appropriate and consistent with the authorizing law, and accordingly, the proposed repeal and replacement of 7.28.2 NMAC is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH



Billy J. Jimenez, Acting Cabinet Secretary

October 29, 2020

Date