NMAC
Transmittal Form

Volume: XXXII  Issue:  8  Publication date:  04/20/2021  Number of pages:  6  (ALD Use Only)  Sequence No.

Issuing agency name and address:
New Mexico Dept. of Health, PO Box 26110, Santa Fe, New Mexico 87502-6110

Contact person's name:  Kenneth Geter
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Type of rule action:
New [X] Amendment [ ] Repeal [ ] Emergency [ ] Renumber [ ]

Title number:  7  Title name:
Health

Chapter number:  1  Chapter name:
Health -- General Provisions

Part number:  31  Part name:
Statewide Health Care Claims Database

Amendment description (If filing an amendment):

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

Are there any materials incorporated by reference? [X] Yes  No [ ]

Please list attachments or Internet sites if applicable.

All Payer Claims Database -- APCD - Common Data Layout

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

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Specific statutory or other authority authorizing rulemaking:
The regulations set forth herein are promulgated by the secretary of the New Mexico department of health, pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978, Section 24-1-3, Section 24-14A-3 (D)(5) and Section 24-14A-5, NMSA 1978.

Notice date(s):  11/24/2020  Hearing date(s):  01/06/2021  Rule adoption date:  04/01/2021  Rule effective date:  4/20/2021

7/1/2019
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.

Please see the attached Statement of Reasons for Adoption of Proposed Statewide Health Care Claims Database Rule Pursuant to the New Mexico Health Information Systems Act.

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

Name: Chris D. Woodward

Title: Assistant General Counsel

Signature: [Signature]  Date signed: 4/6/21
STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH

IN THE MATTER OF PROPOSED
ADOPTION OF DEPARTMENT
RULE PART 7.1.31 NMAC

STATEMENT OF REASONS FOR ADOPTION OF PROPOSED
STATEWIDE HEALTH CARE CLAIMS DATABASE RULE
PURSUANT TO THE NEW MEXICO HEALTH INFORMATION SYSTEMS ACT

Dr. Tracie C. Collins, M.D., Secretary for the New Mexico Department of Health, following a public hearing conducted on January 6, 2021, on the proposed adoption of a Statewide Health Care Claims Database rule, part 7.1.31 NMAC, hereby adopts the proposed rule, as revised after the hearing in response to public comments received. This decision is based on the entire record in this matter, which includes a recording of the hearing and the Report, Analysis and Recommendation of the Hearing Officer, Craig T. Erickson, dated February 26, 2021.

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

1. The Department of Health is authorized to promulgate regulations as may be necessary to carry out the duties of the Department and its divisions. Section 9-7-6 (E), NMSA 1978, and to enact this rule pursuant to Section 24-1-3, Section 24-14A-3 (D)(5) and Section 24-14A-5, NMSA 1978.

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 November 24, 2020.

3. In accordance with NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule was also published in the Albuquerque Journal newspaper on November 24, 2020.
4. In accordance with Section 14-4-5.2, NMSA 1978, prior to the date of the rule hearing, notice of the public hearing for adoption of the proposed rule 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 November 17, 2020, the Acting Secretary of the Department, Billy J. Jimenez, designated Mr. Erickson to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed rule.

6. A public rule hearing was held in Santa Fe, New Mexico on January 6, 2021 pursuant to Section 9-7-6 (E), NMSA 1978.

7. Members of the public were afforded an opportunity to comment on the proposed rules at the hearing, and in writing prior to and during the date of the hearing.

8. Oral and written comments from members of the public were received prior to the rule hearing and at the rule hearing, and the written comments are described in the January 13, 2021 letter from the Hearing Officer inviting the Department to respond to certain public comments.

9. The Secretary finds that the Hearing Officer has appropriately considered the comments received, and finds that the recommendations of the Hearing Officer, are appropriate.

10. The final Rule incorporates revisions made after the public hearing based on the comments received, and in consideration of the response of the Epidemiology and Response Division along with the Hearing Officer’s recommendations.

11. The Secretary finds that the revisions to the proposed rule text that have been made after the hearing are consistent with the response of the Epidemiology and
Response Division and the Hearing Officer’s recommendations and are appropriate, and
do not require further notice, public comment or hearing. See Small Refiner Lead Phase-
(Federal Admin. Procedures Act) (The notice requirement should not force an agency
endlessly to re-propose a rule because of minor changes, nor should a court vacate and
remand an otherwise reasonable rule because of a minor procedural flaw).

12. The Secretary further finds that the proposed rule, including the revisions made
after the hearing, are a logical outgrowth of the notice given and comment received, and
that commenters were afforded a fair opportunity to present their views on the contents of
Costle, 598 F.2d 637, 642 (1st Cir. 1979)); see also Wylie Bros. Contracting Co. v.
Albuquerque-Bernalillo Cty. Air Quality Control Bd., 1969-NMCA-089, ¶ 39, 80 N.M.
633, 642.

13. Certain text that was originally proposed as the 7.1.31 NMAC has been revised in
the final version of the rule, based in part on concerns raised by members of the public.

14. The Secretary further finds that all written and oral public comments were
reviewed and considered, and that some comments were not accepted due to the fact that
those matters were inconsistent or incompatible with other DOH rules or were not
supported by statute. (A more detailed rational for not accepting suggestions made in the
comment process is contained in the record in the February 19, 2021 letter from Joey
Wright, Esq. responding to public comments listed and addressed in the February 26,
2021 Report from Hearing Officer Erickson, which is hereby incorporated by reference
as if set forth in full).
15. The Secretary finds that the proposed rule 7.1.31 NMAC, as revised by public comment received, the response of the Epidemiology and Response Division and the Hearing Officer's recommendations, is appropriate and consistent with the authorizing law, and the proposed rule, a copy of which is attached hereto, is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH

Dr. Tracie C. Collins, M.D., Cabinet Secretary

4/1/2021
Date