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August 2, 2023

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Patrick M. Allen, Cabinet Secretary
New Mexico Department of Health
Office of the Secretary
1190 St. Francis Dr., Suite N4100
P.O. Box 26110
Santa Fe, New Mexico 87502

New Mexico Department of Health
Rulemaking Hearing on Proposed Amendments to 7.5.3 NMAC

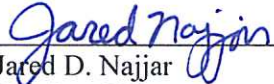
Dear Secretary Allen,

Enclosed for your consideration, please find the Report of Hearing Officer and Recommendation with respect to the proposed amendments to 7.5.3 NMAC.

Please contact me at (505) 982-8514, or at jnajjar@virtuelaw.com if you have any questions.

Sincerely,

VIRTUE & NAJJAR, PC

By: 
Jared D. Najjar
Hearing Officer

Enclosure

**NEW MEXICO DEPARTMENT OF HEALTH
RULEMAKING HEARING ON PROPOSED AMENDMENTS TO 7.5.3 NMAC**

Public Hearing: Proposed Amendments to 7.5.3 NMAC, “Exemptions From School, Childcare, and Pre-School Immunization.”

Actions in Question: Proposed Adoption of Amendments to Rule Part 7.5.3 NMAC, Sections 6 (“Objective”), 7 (“Definitions”), 8 (“Requirements for Approval of Exemptions From Immunization”), and 9 (“Review Criteria”).

Hearing Date: July 7, 2023

Report Date: August 2, 2023

REPORT OF HEARING OFFICER

A public hearing was held on Friday, July 7, 2023 beginning at 9:00 a.m. via Microsoft Teams and via telephone. The hearing was held for the purpose of considering the proposed amendments to 7.5.3 NMAC noted above. Jared D. Najjar presided as Hearing Officer. The New Mexico Department of Health (the “Department”) was represented by Christopher D. Woodward, Assistant General Counsel.

The proceeding was recorded via Microsoft Teams and hosted in that platform by Mr. Woodward. The original recording is in the possession of the Department, Office of General Counsel.

SUMMARY OF PROCEEDING

The Hearing Officer opened the proceeding by introducing himself and noting that the hearing was open to any interested member of the public. Notice of Public Hearing (the “Notice”) was published in the Albuquerque Journal and the New Mexico Register. The purpose of the hearing was to receive public comment regarding 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. Pursuant to the Notice, the proposed amendments seek to make the following changes:

1. 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.”

Mr. Woodward then responded to the only written comment received, which was admitted as Exhibit 7. Exhibit 7 was an email exchange between Chris Mechels and Kathryn Cruz, the New Mexico State Immunization Information System Manager within the Department's Public Health Division. Mr. Mechels objected to the public hearing proceeding by video conference, arguing that the State Rules Act does not permit virtual hearings. Mr. Woodward noted that pursuant to Section 14-4-5.3 NMSA, 1978, "members of the public shall be given a reasonable opportunity to submit data, views or arguments orally in writing: but "[e]ach agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings." *See* 14-4-5.3(B) NMSA, 1978. The Department determined that this hearing should be conducted via Microsoft Teams and via telephone because the substance of this hearing is not complicated. A hybrid setting, which involves both virtual and in-person attendance and participation would be unnecessarily complicated and present logistical challenges to accommodate various forms of attendance.

Mr. Mechels did not attend the public hearing and did not submit any additional written comments.

Subsequently, Kathryn Cruz provided comment on behalf of the Department. She explained the content and reasoning behind the proposed rule amendments.

The Hearing Officer then announced that members of the public would be given an opportunity to comment on the proposed rule amendments. However, there were no members of the public in attendance and therefore, no members of the public provided comment.

The Hearing Officer then announced again that, as reflected on the Notice, additional written comment could be submitted via email until 5:00pm on the day of the hearing. No additional written comments were submitted.

RECOMMENDATION

The proposed amendments expand the list of medical providers who can issue a certificate or affidavit attesting to the fact that a required immunization would endanger the life or health of a child. This is consistent with current state law and a recent statutory amendment. Further, the proposed amendments revise current definitions to include the expanded providers under state law. Additionally, the proposed amendments change existing references to Department of Health Immunization Program manager to program staff, in order to expedite the process. Finally, the proposed amendments 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.

Given the lack of opposition to the proposed amendments, and the clarification they provide, I recommend that the amendments be adopted. This recommendation is based on my review of the written comment submitted, and the testimony presented at the hearing.