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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:

This rulemaking by the Acting Secretary of the Department of Health is made in accordance with the following authorities: Sections 9-7-6 (E), 24-1-2 (C)(1), 24-1-3(S), and 24-1-5 (B) NMSA 1978.

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

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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.

The findings in support of this rulemaking are as stated in the attached Statement of Reasons for Adoption of the Proposed Amendment of the rule, which is hereby incorporated by reference.

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

Name:

Billy J. Jimenez

Check if authority has been delegated

Title:

Acting Cabinet Secretary Department of Health

Signature: (BLACK ink only)

Date signed:

10/7/2020

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

**IN THE MATTER OF PROPOSED
ADOPTION OF AMENDMENT OF
DEPARTMENT RULE PART 7.8.2 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF PROPOSED
AMENDMENT OF ASSISTED LIVING FACILITIES FOR ADULTS RULE**

Kathyleen M. Kunkel, Secretary for the New Mexico Department of Health, following a public hearing conducted on September 25, 2020, on the proposed amendment of the Assisted Living Facilities For Adults rule, part 7.8.2 NMAC, hereby adopts the proposed amendment to the rule. This decision is based on the entire record in this matter, which includes exhibits 1 through 9, the recording of the hearing and the Report and Recommendation of the Hearing Officer, Craig T. Erickson, Esq., dated September 29, 2020, and received by the Cabinet Secretary via email on September 29, 2020 and via Federal Express on September 30, 2020.

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. 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, and NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule amendment was provided to the public published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on August 25, 2020.

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3. In accordance with NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule amendment was also published in the Albuquerque Journal newspaper on August 25, 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 July 6, 2020, the Secretary designated Mr. Erickson to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed amendment to the rule.
6. A public rule hearing was held in Albuquerque, New Mexico via the Internet - based video conference platform Cisco WebEx on September 25, 2020 pursuant to NMSA 1978, Section 9-7-6(E). The hearing was conducted entirely via video conference and by telephone, rather than in-person, due to the ongoing declared public health emergency concerning the novel coronavirus disease COVID-19.
7. Members of the public were afforded an opportunity to comment orally on the proposed amendment at the hearing, and in writing prior to and after the hearing through the close of business on September 25, 2020.
8. The purpose of the proposed amendment to 7.8.2.16 NMAC, to lower the age to hire direct care staff to 16 years of age, is to increase the size of the pool of potential workers in this area and to increase the likelihood of students age 16 and older developing an interest in working at a facility for older residents or patients as a career, as more fully described in the rulemaking record.

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9. An amendment to Rule part 7.8.2.16 NMAC was initially adopted by the Cabinet Secretary as an emergency rule to lower the hiring age of direct care staff to 17 years of age on March 26, 2020 and published in the NM Register, Vol. XXXI, Issue 7 on April 7, 2020.

10. The emergency rule amendment has expired and the permanent amendment to lower the age of hiring of direct care staff to 16 years of age is stated in the record of the hearing and described in the Hearing Officer's Report and Recommendation.

11. Written comments from a member 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 25, 2020. Based on a comment from the member of the public regarding concern of student transmission of the COVID-19 virus, the Hearing Officer sought additional information from the Department regarding the practices in place to screen all employees of assisted living facilities for COVID-19. The Hearing Officer determined based on the materials provided that there are appropriate measures in place to screen all employees at assisted living facilities for COVID-19. These facts are described in the September 29, 2020 Report and Recommendation from the Hearing Officer to the Secretary.

12. The Secretary has familiarized herself 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

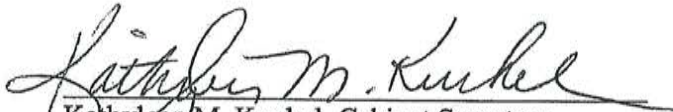
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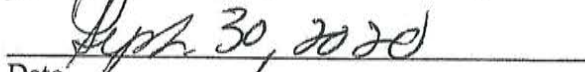
13. The Cabinet Secretary hereby adopts the Hearing Officer's recommendations concerning the proposed amendment to the rule.

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

15. The Secretary finds that the proposed amendment of 7.8.2.16 NMAC, as recommended by the Hearing Officer, is appropriate and consistent with the authorizing law, and accordingly, the proposed amendment of 7.8.2.16 NMAC is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH


Kathleen M. Kunkel, Cabinet Secretary


Date