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

**IN THE MATTER OF PROPOSED
ADOPTION OF DEPARTMENT
RULE PART 7.1.29 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF PROPOSED
HEALTH INFORMATION SYSTEM WEBSITE RULE**

Lynn Gallagher, Secretary for the New Mexico Department of Health, following a public hearing conducted on November 20, 2017 on the proposed adoption of a Health Information System Website rule part 7.1.29 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 and Recommendation of the Hearing Officer, Lynn Mostoller, Esq., dated December 1, 2017.

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 24-14A-6.1.
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 October 17, 2017.
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 October 4, 2017.

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>, and was also posted at the Department's Epidemiology and Response Division primary office.
5. By a letter dated October 5, 2017, the Secretary designated Ms. Mostoller to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed rules.
6. A public rule hearing was held in Santa Fe, New Mexico on November 20, 2017 pursuant to NMSA 1978, Section 9-7-6(E).
7. Members of the public were afforded an opportunity to comment on the proposed rules at the hearing, and in writing prior to the hearing.
8. No oral comments were received; however, written comments from members of the public were received at the rule hearing, and those comments are described in the report of the Hearing Officer.
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 rules incorporate revisions made after the public hearing based on the comments received, and in consideration of the Hearing Officer's recommendations, as well as the Department's addition of references to the Health Information Systems Act in NMAC §§ 7.1.27.6, 7.1.29.7(C), 7.1.29.8 (in the title), 7.1.29.8(A), and 7.1.29(A), in front of each reference to the public access website.

11. The Secretary finds that the revisions to the proposed rule text that have been made after the hearing are consistent with the Hearing Officer's recommendations and are appropriate, and do not require further notice, public comment or hearing. See Small Refiner Lead Phase-Down Task Force v. U.S. Env'tl. Protection Agency, 705 F.2d 506, 547 (D.C. Cir. 1983)(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 rules, 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 the final plan. See N.M. Att'y Gen. Op. 87-59 (1987) (citing BASF Wyandotte Corp. v. 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.

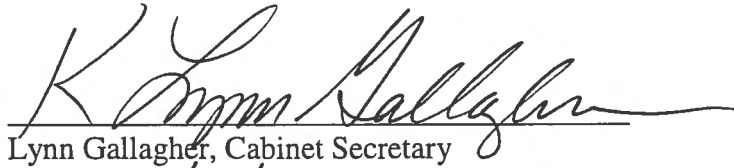
13. Certain text that was originally proposed as 7.1.29 NMAC has been revised in the final version of the rule, based in part on concerns raised by members of the public.

14. The purpose of the proposed rule 7.1.29 NMAC is to establish standards for a public access website for health information and health data published by the Department pursuant to the Health Information System Act, NMSA 1978, Sections 24-14A-1 to 14A-

11.

15. The Secretary finds that the proposed rule 7.1.29 NMAC, as revised, is appropriate and consistent with the authorizing law, and the proposed rule is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH


Lynn Gallagher, Cabinet Secretary

12/14/17
Date