

**REPORT AND RECOMMENDATIONS OF THE HEARING OFFICER**

**Public Hearing:** New Mexico Department of Health

**Proposed Action in Question:** Proposed New Rule NMAC § 7.1.29 "Health Information System Public Access Website"

**Public Hearing Date:** November 20, 2017      **Report Date:** December 1, 2017

**RECOMMENDATIONS:** See Attached Hearing Officer's Report

I recommend that the proposed rule designated as NMAC § 7.1.29 "Health Information System Public Access Website" be adopted with the following revisions:

NMAC § 7.1.29.5 should be revised as follows:

**EFFECTIVE DATE:** Month Day, 2018, unless a later date is cited at the end of a section.

NMAC § 7.1.29.6 should be revised as follows:

**OBJECTIVE:** The objective of this rule is to establish provisions that govern a public access website for health information or health data.

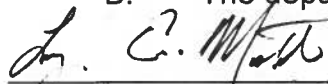
NMAC § 7.1.29.7(C) should be revised as follows:

**"Website"** means the New Mexico public access website for health information or health data created under this section.

NMAC § 7.1.29.8 should be revised as follows:

**Public Access Website Requirements:**

- A. The New Mexico public access website shall:
  - (1) be accessible to the public through the sunshine portal;
  - (2) allow the public to access and search for healthcare cost, quality and such other information the Department publishes pursuant to the Health Information System Act, Sections 24-14A-1 to 14A-11 NMSA 1978;
  - (3) have a unique and simplified website address;
  - (4) be directly accessible via the main page of the official department website.
- B. The department shall regularly update the public access website.



Lynn E. Mostoller

December 1, 2017

Date

## HEARING OFFICER'S REPORT

A public hearing was held on November 20, 2017 at approximately 9:00 a.m. at the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico, for the purpose of considering the adoption of the proposed new rule NMAC § 7.1.29 "Health Information System Public Access Website."

Lynn E. Mostoller, Esq., presided as Hearing Officer. Joey B. Wright, Assistant General Counsel, represented the Department of Health ("Department"). Victoria F. Dirmyer, Ph.D, a Health Systems Epidemiologists with the Department, attended the hearing to explain and discuss the proposed new rule.

At the beginning of the public hearing, the Hearing Officer made introductory remarks, explained that the purpose of the hearing was to allow members of the interested public to comment on the proposed rule, and requested members of the audience sign the attendance sheet.

### I. SUMMARY OF EVIDENCE

#### A. Documentary Evidence

Mr. Wright described and submitted the following Exhibits, which were made part of the record by the Hearing Officer:

1. Proposed Rule NMAC § 7.1..29 "Health Information System Public Access Website";
2. Hearing Officer Appointment Letter dated October 5, 2017;
3. Notice of Public Hearing;
4. Affidavit of Publication in the NM Register
5. Affidavit of Publication in the Albuquerque Journal;
6. Requests for copy of Proposed Rules;
7. Written Public Comments;
8. Public Sign-In Sheet.

#### B. Recording of Hearing

The hearing was recorded on a digital recorder. A CD containing a recording of the hearing is part of the hearing record.

#### C. Presentation of the Rule by the Department

Dr. Dirmyer gave a brief description of the objectives and the requirements of the public access website as set forth in the proposed new rule.

D. Public Comment and the Department's Response

No comments were made during the public hearing. Written comments were received from Think New Mexico and Nandini Paillai Kuehn Ph.D., MHA.

Think New Mexico made the following comments in its written submission:

- 1) The title of the proposed rule and Sections 7.1.29.2, 7.1.29.6 and 7.1.29.7 refer to the "public access website" but Section 7.1.29.8 refers to the "public website." The name of the website should be consistent throughout the rule, so we would recommend changing the references in 7.1.29.8. to "public access website."
- 2) It is unclear to us what the difference is between Section 7.1.29.8(A)(1) "be accessible through the sunshine portal" and Sect 7.1.29.8(A)(2) "allow a person through the sunshine portal." Could the language in these two sections be clarified or combined?
- 3) The Health Information System Act requires that "the department shall post **and update on a regular basis** cost, quality and such other information it publishes pursuant to the Health Information System Act." (emphasis added [by Think New Mexico]) However, the draft rules do not include any requirement for updating the information on the website. Think New Mexico recommends that an additional provision be added to 7.1.29.8(A), as follows: "(6) be regularly updated."

Dr. Kuehn made the following comments in her written submission:

1. **7.1.29.7 – Definitions, Sec B:** Health Information or Health Data should include . . . claims billed and/or paid by providers and payers. The DOH needs to be able to include APCD data once that is developed.
2. **7.1.29.8 – Public Website Requirements:** Include links to sites that might assist the public to make informed decisions, e.g., HIX, OSI tools for comparative payments, quality indicators – as these emerge.

No other public comments were received.

II. HEARING OFFICER'S COMMENTS

In considering the written comments submitted by Think New Mexico, the Hearing Officer finds that all three comments are well-taken and supported by the statutory language authorizing this rule-making, see NMSA 1978, § 24-14A-6.1. Think New Mexico's recommended changes should be incorporated into the proposed rule, as reflected in the Hearing Officer's recommendations

In contrast, Dr. Kuehn's comments, particularly her request that the definition of "health information" or "health data" include claims billed and/or paid by providers, are not specifically supported by the language of NMSA 1978, § 24-14A-6.1 and may be inconsistent with the language of NMSA 1978, §§ 24-14A-2(D) and 24-14A-6 and NMAC § 7.1.27, depending upon how Dr. Kuehn's requested changes are interpreted. That said, the proposed definition for "health information" or "health data" is broad enough to include Dr. Kuehn's suggestions without revision, so long as the claims, payment, and other data are handled in accordance with the Health Information System Act and the Department's regulations.

Finally, the Hearing Officer notes some independent observations about the proposed new rule: First, the Effective Date of the new rule will need to be adjusted to reflect an Effective Date in 2018, rather than 2016.

The Hearing Officer further notes that while "health information" and "health data" are defined terms in the proposed new rule, neither is used in the rest of the proposed rule, but the undefined term "healthcare data" is used. The Department's definition tracks the definition of these terms as set forth in NMSA 1978, § 24-14A-2(D). The Health Information System Act uses these terms to describe what information and data the Department collects and maintains through the Health Information System Act. It is appropriate to use these terms from the Health Information System Act in the proposed new rule, but the definition of "Website" should be revised to use these defined terms instead of the undefined term "healthcare data." Otherwise the term "healthcare data" should be defined by the new rule and the terms "health information" or "health data" need not be defined in the rule, as they are not otherwise used by the rule.

Lastly, the Health Information System Act provides: "[T]he department shall ensure that the public is provided with access, free of charge, to a user-friendly, searchable and easily accessible web site on which the department shall post and update on a regular basis cost, quality **and such other information it publishes pursuant to the Health Information System Act.**" NMSA 1978, § 24-14A-6.1 (emphasis added). The proposed new rule only mentions healthcare cost and quality data to identify the information the public will be able to search for on the website. That provision should be revised to fully track the language set forth in NMSA 1978, § 24-14A-6.1.

### III. HEARING OFFICER'S RECOMMENDATION

In light of the written comments from the public and the Hearing Officer's own observations and analysis, the Hearing Officer recommends the following:

The Hearing Officer recommends that the proposed new rule 7.1.29 NMAC "Health Information System Public Access Website" be adopted with the following revisions:

NMAC § 7.1.29.5 should be revised as follows:

**EFFECTIVE DATE:** Month Day, 2018, unless a later date is cited at the end of a section.

NMAC § 7.1.29.6 should be revised as follows:

**OBJECTIVE:** The objective of this rule is to establish provisions that govern a public access website for health information or health data.

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- B. The department shall regularly update the public access website.