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# NMAC 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  Renummer  (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.

Statement of Reasons

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

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**Specific statutory or other authority authorizing rulemaking:**

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.

Please see attached Statement of Reasons

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

Name:


Kathleen Kunkel Abinash Ashrekar

Check if authority has been delegated

Title:

Cabinet Secretary, New Mexico Department of Health

Signature: (BLACK ink only)

 For Kathleen Kunkel.

Date signed:

10.17.19

**IN THE MATTER OF PROPOSED  
REPEAL AND REPLACE OF DEPARTMENT RULE PART 7.2.2 NMAC**

**STATEMENT OF REASONS FOR ADOPTION OF PROPOSED  
RULE 7.2.2**

Kathyleen Kunkel, Secretary for the New Mexico Department of Health, following a public hearing conducted on October 1, 2019 on the proposed repeal and replace of the New Mexico Vital Records and Statistics rule 7.2.2 NMAC, hereby adopts the proposed repeal and replace of rule 7.2.2 NMAC. 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, Christopher L. Graeser, Esq., dated October 15, 2019.

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

1. The Department of Health is authorized to adopt department promulgated regulations as may be necessary to carry out the duties of the Department and its division. NMSA 1978, Section 9-7-6(E).
2. By a letter dated September 9, 2019, the Cabinet Secretary, Kathyleen Kunkel, designated Mr. Graeser to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed rule.
3. A Notice of Public Hearing, compliant with NMSA 1978, Section 14-4-5.2, for the proposed rule repeal and replace was provided to the public pursuant to NMSA 1978, Section 14-4-2(E), through the following:

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- a. On August 22, 2019, the Notice of Public Hearing was electronically posted on the agency website at <https://nmhealth.org/publication/rules/>.
  - b. On August 28, 2019, the Notice of Public Hearing was published in the New Mexico Register.
  - c. On August 21, 2019, the Notice of Public Hearing was published in the Albuquerque Journal.
  - d. On August 22, 2019, the Notice of Public Hearing and proposed rule text was posted on the New Mexico Sunshine Portal website.
  - e. On August 27, 2019, the Notice of Public Hearing was emailed to Tim Gardner at Disability Rights New Mexico (DRNM), Jacob Candelaria, Marilyn Wolf, the Legislative Counsel Service, and the New Mexico Small Business Regulatory Advisory Commission.
  - f. No person provided a postal address requesting notice of hearings regarding the subject of this rulemaking by mail, therefore the Notice of Public Hearing was not mailed to any person.
  - g. The proposed rule was sent to all persons who requested the rule text.
  - h. There are no other persons who participated in the repeal process who provided an electronic mail address to the agency.
4. A public rule hearing was held in Santa Fe, New Mexico on October 1, 2019 pursuant to NMSA 1978, Section 9-7-6(E).
  5. Members of the public were afforded an opportunity to comment on the proposed rule at the hearing, and in writing prior to the hearing.

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6. Two written comments were received regarding the proposed amendments. Those comments were posted to the Department of Health website and on the sunshine portal as well as being made part of the record.
7. Members of the public were present and presented comment during the hearing. Those comments are presented in the Hearing Officer's Report and Recommendation.
8. The Hearing Officer has appropriately considered the entire record and the recommendations of the Hearing Officer are appropriate and well taken.
9. The recommendations and findings from the Hearing Officer are adopted in their entirety with the following exceptions:
  - a. For the purposes of clarity, section 7.2.2.17(F)(1) will be amended to read "A registrant if 18 years of age or over, born in New Mexico, or a registrant's parent, guardian or legal representative, may amend the birth certificate to indicate a designated gender by providing the following:"
  - b. Section 7.2.2.11(A) will not be changed from "man" to "person" as under the Uniform Parentage Act the Acknowledgement of Paternity only applies at this time to a male father.
  - c. The following additional typographical errors will be amended in the final draft:
    - i. Section 7.2.2.10(A) on the last sentence the word "sign" shall be changed to "signed";
    - ii. Section 7.2.2.20(A)(1) shall be amended to add a period at the end of the last sentence;
    - iii. Section 7.2.2.23(F) the word "used" shall be changed to the word "use";

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10. NMSA 1978, Section 24-14-3, of the Vital Records and Health Statistics Act provide that the Secretary of the Department shall adopt rules that address specific matters related to vital records and health statistics.

11. The proposed repeal and replace of rule, 7.2.2 NMAC is appropriate and consistent with law, and the final rule as outlined and amended herein is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH

  
Kathyleen Kunkel, Cabinet Secretary

10/16/19  
Date

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The New Mexico Department of Health, based on its 10/01/2019 public hearing has decided to repeal 7.2.2 NMAC, Vital Records and Statistics - filed 12/15/2010 and replace it with 7.2.2 NMAC Vital Records and Statistics adopted 10/16/2019 and effective 10/29/2019.

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