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

**IN THE MATTER OF PROPOSED
ADOPTION OF DEPARTMENT
RULE PART 7.8.4 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF PROPOSED
GENERAL REQUIREMENTS FOR BOARDING HOMES RULE**

Kathyleen M. Kunkel, Secretary for the New Mexico Department of Health, following a public hearing conducted on March 24, 2020, on the proposed adoption of a General Requirements for Boarding Homes rule, part 7.8.4 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, Christopher L. Graeser, dated April 27, 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, 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 February 11, 2020.
3. In accordance with NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule was also published in the Albuquerque Journal newspaper on February 6, 2020.

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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 December 12, 2019, the Secretary designated Mr. Graeser 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 March 24, 2020 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 and during the date of the hearing.

8. Oral and written comments from members of the public were received prior to the rule hearing and at the rule hearing, and those comments are described in the March 25, 2020 letter from the Hearing Officer inviting the Department to respond to certain public comments.

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 Rule incorporates revisions made after the public hearing based on the comments received, and in consideration of the response of the Division of Health Improvement along with the Hearing Officer's recommendations.

11. The Secretary finds that the revisions to the proposed rule text that have been made after the hearing are consistent with the response of the Division of Health

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Improvement and 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 rule, 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 rule. 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.

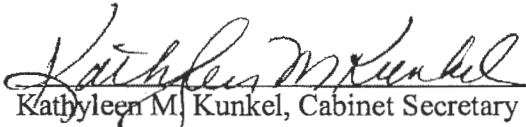
13. Certain text that was originally proposed as the 7.8.4 NMAC has been revised in the final version of the rule, based in part on concerns raised by members of the public.

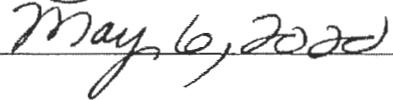
14. The Secretary further finds that all written and oral public comments were reviewed and considered, and that some comments were not accepted due to the fact those matters not being supported by statute or were not accepted because they were inconsistent or incompatible with other DOH rules. (A more detailed rationale for not accepting suggestions made in the comment process is contained in the record in the April 17, 2019 letter from Ann H. Washburn, Esq. responding to public comments addressed in the March 25, 2020 letter from Hearing Officer Graeser, which is hereby incorporated by reference as if set forth in full).

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15. The Secretary finds that the proposed rule 7.8.4 NMAC, as revised by public comment received, the response of the Division of Health Improvement and the Hearing Officer's recommendations, is appropriate and consistent with the authorizing law, and the proposed rule, a copy of which is attached hereto. is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH


Kathyleen M. Kunkel, Cabinet Secretary


Date