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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.

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

Specific statutory or other authority authorizing rulemaking:

The regulations set forth herein are promulgated by the secretary of the New Mexico department of health, pursuant to the authority granted under Subsection E of Section 9-7-6 NMSA 1978, Section 24-1-2 NMSA 1978, Subsection S of Section 24-1-3 NMSA 1978 and Section 24-1-5 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.

Please see the attached statement of Reasons for Adoption of Proposed Repeal/Replacement of Requirements for Long Term Care Facilities Rule 7.9.2.

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

Name:

Kathyleen M. Kunkel

Check if authority has been delegated

Title:

Cabinet Secretary

Signature: (BLACK ink only)

Date signed:

Billy Jimenez for Kathyleen Kunkel

5/28/20

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

**IN THE MATTER OF PROPOSED
ADOPTION OF REPEAL AND
REPLACEMENT OF DEPARTMENT
RULE PART 7.9.2 NMAC**

**STATEMENT OF REASONS
FOR ADOPTION OF PROPOSED
REPEAL/REPLACEMENT OF REQUIREMENTS FOR LONG TERM CARE
FACILITIES RULE**

Kathyleen M. Kunkel, Secretary for the New Mexico Department of Health, following a public hearing conducted on May 6, 2020, on the proposed repeal and replacement of the Requirements for Long Term Care Facilities rule, part 7.9.2 NMAC, hereby adopts the proposed repeal and replacement rule. 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, Craig T. Erickson, Esq., dated May 11, 2020.

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

1. The Department of Health is authorized to repeal promulgated regulations and 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 March 24, 2020.
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 March 24, 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 March 5, 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 repeal and replacement rule.
6. A public rule hearing was held in Albuquerque, New Mexico via Cisco WebEx on May 6, 2020 pursuant to NMSA 1978, Section 9-7-6(E).
7. Members of the public were afforded an opportunity to comment orally on the proposed rules at the hearing, and in writing prior to the hearing through the close of business on May 6, 2020.
8. The purpose of the proposed repeal and rule amendment is to replace the rule with one in the current format required for rules, and to adopt a revision to 7.9.2.27 NMAC, to lower the age to hire direct care staff to 16 years of age, as more fully described in the rulemaking record.
9. No written comments from members of the public were received prior to the rule hearing, no oral or written comments were made at the rule hearing, nor were any written comments received after the rule hearing up until the close of business on May 6, 2020. These facts are described in the May 11, 2020 recommendation letter from the Hearing Officer to the Secretary.
10. The Secretary finds that the Hearing Officer has appropriately considered the entire record and finds that the recommendations of the Hearing Officer are appropriate


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11. The Secretary further finds that there were no written and oral public comments received.

12. An emergency rule amendment to 7.9.2 NMAC was previously adopted by the Cabinet Secretary on March 26, 2020 and published in the NM Register, Vol. XXXI, Issue 7, on April 7, 2020. By amending 7.9.2 NMAC within 180 days of the emergency rule amendment, in accordance with NMSA 1978, § 14-4-5, the Cabinet Secretary adopts a permanent rule that replaces the March 26, 2020 emergency rule amendment.

13. The Secretary finds that the proposed repeal and replacement of 7.9.2 NMAC, as recommended by the Hearing Officer, 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

 Billy T. Jimenez for
Kathyleen M. Kunkel, Cabinet Secretary

5/22/20
Date