From:	Chris Mechels
To:	Apodaca, Sheila, DOH
Subject:	[EXT] Mechels comment #1 on NMAC 7-1-30 Rules Hearing
Date:	Monday, July 13, 2020 2:33:14 PM
Attachments:	com SSP_RuleHearingSearchPublic.pdf comp SSP_RuleHearingSearchPublic.pdf

Dear Ms. Apodaca,

This is the first of a number of comments on this hearing.

It concerns procedural issues with the hearing, sufficient to cancel the hearing. The attachments serve to support the comments.

1) The Sunshine Portal description of the hearing (comp file) beginning "This emergency rule" is a very serious error, as emergency rules have a very different process.

a) It seems that the information was erroneously copied from an earlier document. It needs to be corrected of course, but that does not seems sufficient as those exposed to the error have false information affecting their participation.

2) The hearing description pointed to at the next Sunshine Portal level (com file) also has serious errors, which compromise the right of the public to be fully informed about the hearing.

a) The description of the hearing, consistent with the earlier file (1), describes the proposed rule as an emergency rule. This is a serious error.

b) Further errors in the document are the following lines; Clearly, the documents "not available" must be available, somewhere, as they are required for a hearing to take place.

Rule Explanatory Statement:
Not available
Related New Mexico Register Publications:
Not available

c) The March emergency rule, which is being replaced in the current hearing, was not properly posted, as required under the rules act, thus would appear to be invalid. This suggests that this whole hearing process, which relies upon the earlier emergency rule, is invalid. Emergency rules must, by law, NMAC 14-4-5.6, "B. The agency shall provide to the public" and "provide to the public" is defined at NMAC 14-4-2 as E. "provide to the public" means for an agency to distribute rulemaking information by:

(1) posting it on the agency website, if any;

(2) posting it on the sunshine portal;

The Sunshine Portal has no evidence of the March emergency rule being posted on the sunshine portal thus it is invalid. The Department of Health did FOUR (4) emergency rulemakings in March, 2020 and NONE of them were posted on the sunshine portal as required by law. This seems a complete lack of compliance with rulemaking requirements, which is present in the current process. A check of the portal shows that other agencies DO post emergency rulemaking on the portal as required.

In summary, I have described three very serious problems with the current rulemaking process, sufficient to terminate the current rulemaking and restart it. The problems with the failure to legally post the emergency rulemaking in March throws that rule into question also.

d) Added to the many procedural failures by the Department of Health, the Sunshine Portal has been "updated" with

result that, since 9 July, the rulesmaking information is no longer available on the portal. I have advised both Ms. Apodaca, and the portal staff, of this failure. The Rules Act requires 30 days notice to the public, and the portal is a key part of that notice. It seems that the 30 days notice is therefore not met. Thus, on that basis alone, it would seem wise to cancel, and reschedule, this hearing.

I will be submitting further comments on the substance of the hearing procedure proposed in the rulemaking. There are more very serious problems there.

Regards,

Chris Mechels
505-982-7144

From:	Amy Dunlap
To:	Apodaca, Sheila, DOH
Subject:	[EXT] NOTICE OF PUBLIC HEARING The New Mexico Department of Health will hold a public hearing on the adoption of a new rule, 7.1.30 NMAC
Date:	Thursday, July 16, 2020 9:06:32 AM

Hello Sheila,
My comments on this proposed rule change request is that this hearing should be postponed until the Legislature has time to weigh in, via developing their own proposed changes and then holding committee hearings, and adoption by the full House and Senate. To seek to make this emergency rule permanent, is quite severe, especially since there has been no public debate and almost no dissemination to the public and media about this proposed change.

Our Governor and her current administration have seized too much power during this public health situation and it is time to dial back that power, not add to it.

Thank you,

Amy Dunlap
Tijeras, NM

Sent from Mail for Windows 10

From:	Chris Mechels
To:	Apodaca, Sheila, DOH
Cc:	stcyr, peter
Subject:	[EXT] Mechels comment #2 on NMAC 7-1-30 Rules Hearing
Date:	Thursday, July 16, 2020 4:36:07 PM
Attachments:	7.1.30-Admin-Hearings-for-Civil-Monetary-Penalties-Issued-Pursuant-to-PHERA-REV.pdf 7.1.2 NMAC.pdf

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Dear Ms. Apodaca,

This is the second of a number of comments on this hearing. I have attached two files for convenience in directing comments to text.

These comments concern the substance of the hearing procedure proposed in the rulemaking. There are very serious problems there.

My comments are based on a comparison between NMAC 7.1.2, the hearing procedure commonly used ADJUDICATORY HEARINGS at the Department of Health (DOH), and the NMAC 7.1.30 hearing procedure proposed for PHERA penalties. This seems a fair comparison, as it is obvious that the existing 7.1.2 procedure could have been, with slight modifications, used for the PHERA hearings. In fact, an examination shows that a majority of the new procedure was directly based on 7.1.2.

A cursory comparison of the two NMACs shows that most of the rights accorded the appellant in 7.1.2 have been stripped from 7.1.30. This would seem to demand an explanation, other than malice.

1) at 7.1.30.8.A An appellant may request the hearing by mailing a certified letter, return receipt requested, to the New Mexico department of health at the mailing address that is specified on the notice of contemplated action within five days after service of the notice of the contemplated action, is more restrictive than 7.1.2.13.B which reads; B. Delivery: the request for hearing shall be addressed to the director of the division of health improvement or to any other department employee indicated in the department's notice, and it shall be hand delivered or mailed, return receipt requested

2) 7.1.2.15..E makes provision for a "Stay" upon Request for Hearing. 7.1.30 has no such provision, which can work a very real hardship on the appellant at $5,000 per day.

3) 7.1.30.8.B allows the DOH to appoint a Hearing Officer; 7.1.2.17 allows the appellant a right to seek an impartial Hearing Officer.

4) 7.1.30.8.B allows the hearing to be scheduled "not more than 60 days and not less than 12 days" after request. Coupled with a failure to allow for a "Stay", this is very oppressive.

5) 7.1.30.8.B has a proposed change, from 5 to 20 days, for notice of hearing details. Again, very oppressive, as 7.1.2 has 4 days.

6) Hearing Venue: A proposed change, at 7.1.30.8.B would allow the DOH, and the DOH appointed Hearing Officer, to hold the hearing via telephone or live video. The proposed change eliminates the right of appellant in this decision. Very oppressive.

7) at 7.1.30.8.F a proposed change would: "require the parties to submit proposed findings of fact and conclusions of law, as well as written closing arguments;". This is not required in 7.1.2 and it imposes a very real burden on those who represent themselves, or are represented by a lay person. No reason given for this change, which is quite oppressive.

8) 7.1.30.8.M does not allow for Pro Se representation; 7.1.2.20 does. No reason given.

9) 7.1.2.39 provides for Judicial Review; 7.1.30.8.Y has the DOH Secretary's decision as final.

In summary, the DOH proposes an extremely oppressive hearing procedure, where they appoint the Hearing Officer, they can choose to have a video hearing, they allow for no Stay, and they allow very long deadlines which, coupled with the lack of a Stay, could make the appellant's position impossible. It also makes the DOH decision final.

This seems extremely punaitive, esp as it was imposed as an Emergency Rule, without public input. I suggest that it should be abandoned, as an example of how NOT to govern.

The clear alternative is simply to adapt the existing, well used, 7.1.2 hearing procedure, which allows for reasonable appellant rights. Stripping those rights from 7.1.30 suggests a malevolent intent on the part of the DOH, and calls into question their position in New Mexico government. It seems palpably evil, an attack on our Democracy.

Installing the proposed 7.1.30 as a Rule would demand an appeal to the Courts, and reflect very poorly on the DOH and our Governor.

Regards,

Chris Mechels
505-982-7144

From: Chris Mechels
To: Apodaca, Sheila, DOH
Cc: Chris Goad; stcyr, peter
Subject: [EXT] Mechels comment #3 on NMAC 7-1-30 Rules Hearing
Date: Friday, July 17, 2020 2:43:34 PM

Dear Ms. Apodaca,

This is the third of a number of comments on this hearing.

It concerns whether the proposed Rule meets the intent of the Legislature in passing the PHERA Act. Following are portions of the Act which serve to establish that intent.

12-10A-19. Enforcement; civil penalties.
A. The secretary of health, the secretary of public safety or the director may enforce the provisions of the Public Health Emergency Response Act by imposing a civil administrative penalty of up to five thousand dollars ($5,000) for each violation of that act. A civil administrative penalty may be imposed pursuant to a written order issued by the secretary of health, the secretary of public safety or the director after a hearing is held in accordance with the rules promulgated pursuant to the provisions of Section 12-10A-17 NMSA 1978.

12-10A-17. Rulemaking.
The secretary of public safety, the secretary of health, the state director and, where appropriate, other affected state agencies in consultation with the secretaries and state director, shall promulgate and implement rules that are reasonable and necessary to implement and effectuate the Public Health Emergency Response Act.

History: Laws 2003, ch. 218, § 17; 2007, ch. 291, § 24.

At 12-10A-19 the Legislature that the penalty could be imposed only "after a hearing is held". They "could" have simply not allowed for a hearing, and simply imposed the penalty on a written order, but they didn't, and they refer to 12-10A-17 "rules promulgated pursuant to the provisions".

Looking then to 12-10A-17 Rulemaking it seems that the promulgated rules must be "reasonable and necessary to implement and effectuate the Public Health Emergency Response Act". The rules must be "reasonable and necessary".

I suggest that a standard for "reasonable and necessary" for the Dept of Health, would be their existing NMAC 7.1.2, which has served define their hearing process for many years and is well tested.

By direct comparison of NMAC 7.1.2 with the proposed NMAC 7.1.30, we find that many of the appellant rights defined within 7.1.2 have been stripped out of 7.1.30. The result seems to be that the Dept of Health can "railroad" an appellant through the hearing, be their selection of the Hearing Officer, their sole definition of the hearing format, and the Secretary's decision without appeal.

In effect the proposed 7.1.30 may well make a successful appeal IMPOSSIBLE, should the DOH Secretary choose to do so, with no Judicial Appeal at the end. The intent seems to be the imposition of such a draconian hearing process, as to totally discourage appeals, even though such appeals are allowed in the statute, and are the intent of Legislature.

This is the worst form of hypocrisy, totally out of bounds, in a Democracy. The parties who suggest this outrageous hearing sham should be disciplined, perhaps terminated.

The obvious "solution" to this problem is to simply use a slightly modified version of 7.1.2 as a hearing procedure for complaints under NMSA 12-10A-19.

This is SO obvious, that I suggest the current Rules Hearing be abandoned, esp as it has many procedural violations

of the Rules Act, as I detailed in my Comment #1.

The Legislative intent that the Hearing Rule be "reasonable and necessary" has clearly not been met.

Regards,

Chris Mechels
505-982-7144

From:	Chris Mechels
To:	Apodaca, Sheila, DOH
Cc:	aimfull; Chris Goad; Mim Chapman; Wirth, Peter; Heather Ferguson; New Mexico Foundation for Open Government
Subject:	[EXT] Mechels comment #4 on NMAC 7-1-30 Rules Hearing
Date:	Sunday, July 19, 2020 5:57:36 PM

Dear Ms. Apodaca,

This is the fourth of a number of comments on this hearing.

It concerns even more procedural violations of the Rules Act, sufficient to cancel the Rules Hearing. Details follow.

1) Per the Rules Act you are required (you shall) post comments as follows;

D. The agency shall post all written comments on its website, if one exists, as soon as practicable, and no more than 3
business days following receipt to allow for public review. All written comments received by the agency shall also be available for
public inspection at the main office of the agency.

You have failed your obligation as my Comment #1, emailed at 1433 on 13 July, posted on the SunshinePortal on 18 July. Five days.

2) Furthermore, you failed to post that, and other, comments on your DOH website as required, and your notice makes no mention of the Portal, so this failure is important. How are the comments to be found?

3) The purpose of posting these comments, to enable those interested to inform, and learn from, each other, before the Rules Hearing, has been thwarted.

This failure can't be recovered in the time available before Thursday, so I suggest that the Rules Hearing be canceled and rescheduled. The problems I noted in Comment #1 support that conclusion.

Regards,

Chris Mechels
505-982-7144

From:	Jeanne Tatum
To:	Apodaca, Sheila, DOH
Subject:	[EXT] comment regarding proposed rule amendments 7.1.30 NMAC, "Administrative Hearing for Civil Monetary Penalties Issued Pursuant to PHERA"
Date:	Tuesday, July 21, 2020 1:18:28 AM

I disagree with the proposed rule amendments other than the correction of the typographical error on page 3, paragraph Q correcting the capitalization of New Mexico.

As to 7.1.30.8, paragraph B, number (3), notice of hearing, I disagree with changing the five day to twenty days. The appellant has only five days to request the hearing (as stated in Paragraph A). There is no legitimate reason to allow the department twenty days to inform the appellant of the date, time and place of hearing and the identity of the hearing officer. Quid pro quo-five days each side or twenty days each side, especially considering the size of the monetary penalty and in light of the methodology that these penalties are currently being imposed.

As to 7.1.30.8, paragraph B, number (4), hearing venue, I disagree with changing this item at all. There is no fairness in the change and no purpose for the change.

As to 7.1.30.8, paragraph F, Powers of the hearing office, again, I disagree with changing this item at all. The changes put more burden on the appellant, who is more likely a layman, who cannot afford council and according to this entire procedure, the burden of proof is on the department. This proposed change contradicts paragraph O, burden of proof.

These changes seem to be unnecessary and will only serve to cause more hardship and undue burden on the appellant and seem to me to be the result of issues discovered during the imposition of civil penalties currently being contested in court.

Also, I agree with the comments from Ms. Dunlap, this entire procedure is being rushed through without enough public notification (published only in the Albuquerque newspaper is not public notice when over half of the state doesn't have access to delivery of the Albuquerque paper except by mail subscription, which in itself is not timely) or debate. I also believe the legislative process should be included in any decision involving the Public Health Emergency Response Act, especially in light of the manner in which this Act can and is currently being abused.

These rule amendments should not be adopted.

Jeanne Tatum
Ute Park, NM

From:	Chris Mechels
To:	Apodaca, Sheila, DOH
Cc:	Heather Ferguson; New Mexico Foundation for Open Government; Chris Goad
Subject:	[EXT] Re: Mechels comment #5 on NMAC 7-1-30 Rules Hearing
Date:	Tuesday, July 21, 2020 1:52:39 PM
Attachments:	1.24.25 NMAC Default Procedural Rule for Rulemaking.pdf

Dear Ms. Apodaca,

This is the fifth of a number of comments on this hearing.

It concerns even more procedural violations of the Rules Act, sufficient to cancel the Rules Hearing. Details follow.

It seems that you are now posting comments of both the DOH website and SunshinePortal, as the law requires. However failing to properly post comments until chided on the matter, means you have not met the requirement to post them within 3 days, of both those sites; thus the public involvement is impaired, and the Rules Act violated. The remedy is to cancel and reschedule.

Further problems, as I continue my examination.

1) The proposed 7.1.30 is actually "amended" 7.1.30, with the original established via the Emergency Rulemaking in March. The amendments must be explained, per NMSA 14-4-5.2. No such explanation is provided, so the Rules Act is violated. Furthermore the original 7.1.30 was never explained as the law requires. The remedy is to cancel and reschedule.

2) Examining other, concluded, DOH Rules Hearings, example 7.9.2, I find that a Concise Explanatory Statement (NMAC 1.24.25.14) was never submitted, thus violating the Rules Act. It seems THAT hearing could be legally challenged. Is the DOH even AWARE of the "Default Procedural Rule for Rulemaking" 4/10/2018. You have not been complying with it, or the Rules Act. We established, in your 6 July email, that DOH does not have a hearing procedure. Thus DOH MUST use the Default Procedural Rule, NMAC 1.24.25.8 but, on the record of recent hearings, has not been doing so. This compromises THOSE hearings. Please make a copy of this Default Procedure available as part of the record, and call it to the attention of those participating. I have attached it for your convenience.

3) I note that, since Monday, I find the March 2020 DOH Emergency Rulemakings on the Sunshine Portal. My experience is that they weren't there before, though they were required by law. The content of those emergency rulemaknngs is very strange, with much required information missing, as if they were suddenly created in a rush, to meet my Comment #1. Is that the case? I have copied the current versions, to keep them safe.

In closing, from DOH actions, and failures, in this Rulemaking, and the records of earlier recent rulemakings, it seems that the DOH has never incorporated the 2017 HB58 requirements into your procedures. This had led to many violations of the Rules Act, Rule Hearings, and Emergency Rulemaking, with some attendant legal exposure.

These failures can't be recovered in the time available before Thursday, so I suggest that the Rules Hearing be canceled and rescheduled. The problems I noted in Comment #1 support that conclusion.

Regards,

Chris Mechels
505-982-7144

From: Dana Dunlap
To: Apodaca, Sheila, DOH; Amy Dunlap (aimfull@outlook.com)
Subject: [EXT] 7.1.30-Administrative Hearings for Civil Monetary Penalties Issued Per PHERA
Date: Tuesday, July 21, 2020 3:19:26 PM

BLANTANT overreach by the Governor and her staff. This is a LEGISLATIVE action, period. Executive and Judicial entities making up laws, for ANY excuse, is UNCONSTITUTIONAL and a VIOLATION OF OUR CIVIL AND VOTING RIGHTS.

STOP this hearing and let the Legislature consider this, next session, with ACCOUNTABILITY to our citizens. The onslaught of Shenanigans pulled by Governor Grisham and her Cohorts are UNACCEPTABLE.

This "Secret" hearing is more evidence of rampant corruption in Michelle's State Government.

Thank you.

Dana Dunlap
Independent and Proud

From:	Chris Mechels
To:	Apodaca, Sheila, DOH
Cc:	Heather Ferguson; New Mexico Foundation for Open Government; Chris Goad; Mim Chapman; stcyr, peter; Haywood, Phaedra; Amanda Martinez; Proctor, Jeff
Subject:	[EXT] Mechels comment #6 on NMAC 7-1-30 Rules Hearing
Date:	Wednesday, July 22, 2020 10:55:37 PM

Dear Ms. Apodaca,

This is the sixth of a number of comments on this hearing.

It concerns even more procedural violations of the Rules Act, sufficient to cancel the Rules Hearing. Details follow.

First, and a central issue, is that Rules Act information is NO LONGER a part of the SunshinePortal, since they "took down" the Portal on 8 July. I reported this to, via email, and you apparently did nothing. I finally contacted the Portal folks, and told them the import of what they had done, that "Posting" Rules information on the Portal was required under the Rules Act. After a couple of days, they patched together the current arrangement, which links to Rules information, but IS NOT part of the Portal. Check it out at; ssp.nm.gov

This means that even though you began posting information on the "Portal" again after about a 5 day lapse, you were not posting it, as required, on the SunshinePortal, because the Rules Making is NO LONGER a part of the Portal. You must, per the Rules Act, post a good deal of information on the Portal, but you can't, because the Portal no longer includes Rules Act information. This error is not of your making of course, but the New Mexico Government has made it impossible to comply with the Rules Act, and this must be fixed. Until it is fixed it is legally impossible to comply with the Rules Act. The failure of you, and the Dept of Health, and other Departments, was in allowing the SunshinePortal folks to make this error. This was NOT an act of God, is was a failure of governance.

This can't be resolved at this time, so this hearing should be canceled.

Second, the actions of the Secretary of Health, Ms. Kunkel, seem deplorable, and illegal. It seems she took advantage of the March 2020 declaration of a "State of Emergency", to create four "Emergency" Rules. This allows NO INPUT from the public, and no notification, and the result can be very ugly, like the NMAC 7.1.30 under consideration. The only Fair and Reasonable way to evaluate the content of this Rule is against what a "reasonable" rule would look like. Such a "reasonable" is at hand, NMAC 7.1.2, which could actually be used, as is, to process the PHERA concerns. Comparing the two rules we find that 7.1.30 is a "stripped down" version of 7.1.2. What is "stripped out" are all the appellant rights, leaving the appellant NO CHANCE to prevail. This reflects very poorly on Ms. Kunkel, who has chosen an illegal process, which bars public input, to install a hearing procedure which leaves the appellant with NO CHANCE to prevail, or to appeal the outcome. I believe Ms. Kunkel is guilty of Malfeasance, and that she should be prosecuted, and should forfeit her performance bond, for violating our laws, and willfully depriving her "constituents" of their rights.

That this criminal behavior by Ms. Kunkel is not unusual, is born out in the records. She used not one but FOUR emergency rule makings in March. Two of them involved changing the minimum age of hire from 18 to 17 years of age. Failure to do so, Ms. Kunkel declared, would "cause an imminent peril to the public health, safety or welfare". What an outright lie, which

she does not support, simply declares. Malfeasance!! The use of Emergency Rulemaking ought to be rare, as it puts the public at great risk, as the current 7.1.30 demonstrates so well. Looking to the records; in the seven years prior to Ms. Kunkel's appointment there were NO Emergency Rulemakings in the Dept of Health, and an average of seven (7) in the whole state government. In 2019, there were 23 Emergency Rulemakings, with two of those by Ms. Kunkel. In 2020, to date, 20 Emergency Rulemakings with six by Ms. Kunkel. Clearly she has no regard for our laws, or our rights.

Extending these tendencies of Ms. Kunkel, it should make us wonder about her leading the Covid efforts. Her penchant for operating "in the dark", with illegal Emergency Rulemakings, and creating a 7.1.30 which denies all rights to the appellant, when 7.1.2 could have been used, with slight modifications. All these tendencies seem on display with her handling of Covid also.

I have long experience with NM Rulemaking, since 2014, mostly at the LEA Board. It was a brutal struggle, with some success. They chose to simply STOP rulemaking, though the law required it, as they found it inconvenient, and it took too long. Like Kunkel's use of Emergency Rulemaking, as its faster, and eliminates that "pesky" public input. It took 3 years, and a lawsuit, to get the LEA back to rulemaking, and even yet their curriculum is illegal. Three years of ILLEGAL CERTIFICATIONS of police officers by the LEA Board. A cloud over NM police training which persists. It may take a lawsuit to address Ms. Kunkel's mischief.

Ms. Kunkel, like many others, and the LEA Board, simply "can't be bothered" to follow our laws, and does not respect our rights. It is good that she is retiring, but has she left a culture of corruption?? That question should trouble us, and the Governor. I wonder if it does.

Rulemaking is always interesting, as it brings out the worst, and occasionally the best. in management. Rulemaking exists to protect the right of citizens to be involved in creating the laws that affect them. Too many managers, including Ms. Kunkel, seem to resent that public input, and violate both the Rules Act law, and the process itself. Power corrupts, and must be constrained, but who's to constrain it?? New Mexico ranks dead last in most measures of government, because of the Kunkels, who violate our laws and our rights.

If the Rules Act is followed NMAC 7.1.30 will be abandoned, due to many violations of the Rules Act, and the failure to describe its content as what it is, a direct attack on the rights of the appellant. Now we are left to wonder about the integrity of the Hearing Officer, who was, after all, chosen by Kunkel. We will soon find out.

Regards,

Chris Mechels
505-982-7144

From:	Zach Cook
To:	Apodaca, Sheila, DOH
Subject:	[EXT] Public Comment
Date:	Wednesday, July 22, 2020 9:51:35 PM
Attachments:	Anaheim Jack"s Public Comments.pdf Papa"s Pawn Public Comments on Proposed Rulemaking.pdf

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Dear Ms. Apodaca,

Please see the attached public comments on behalf of my clients, Papa's Pawn, LLC, and Anaheim Jacks, LLC for the hearing tomorrow morning. Thank you.

--
Sincerely,

Zach Cook, Esq.

Zach Cook, LLC
1703 Sudderth # 425
Ruidoso, New Mexico 88345
Tele: (575) 258-2202
Cell: (575) 937-7644
zach@zachcook.com

Public Comment on the Proposed Rulemaking – Proposed Rule 7.30.1

Zach Cook, Esq. on behalf of Anaheim Jack's, LLC – a New Mexico restaurant

The Proposed Rule and Department's Actions exceed the Department's Statutory Authority

On May 23, 2020, the Department of Health issued a Notice of Contemplated Action to the Commenter Anaheim Jack's which stated in part:

> By this Notice, the Department gives notice that, pursuant to the Public Health Emergency Response Act ("PHERA"), at NMSA 1978, § 12-10A-19, the Department intends to impose upon Anaheim Jack's, LLC a civil administrative penalty of $5,000 per day that the business has continued in operation in violation of the Public Health Orders." As of the date of this Notice, Anaheim Jack's, LLC has operated on May 16 through 22, 2020, in violation of the Public Health Orders, for a total of 7 business days and a combined total administrative penalty of $35,000.00."

The Proposed Rule, Scope, provides:

> 7.1.30.2 SCOPE: This rule applies to all persons who receive a notice of contemplated action for imposition of a civil monetary penalty pursuant to the Public Health Emergency Response Act ("Act"), Section 12-10A-19 NMSA 1978.

Section 12-10A-19 of the Public Health Emergency Response Act ("PHERA") provides that the Secretary of the Department may enforce the provisions of the Act by imposing administrative penalties. But the Notice of Contemplated Action issued by the Department on April 29, 2020 does not seek to enforce any provision of the PHERA. Instead, the Department is seeking to improperly and illegally use the penalty provisions of the PHERA to enforce the Governor's Public Health Orders.

Commenter Anaheim Jack's is not covered by any of the definitions contained in the PHERA. It is not a health facility and does not provide healthcare supplies. The Department is improperly seeking to apply the provisions of the PHERA to entities not governed by the Act through the improper adoption of the proposed administrative rule.

The definitions contained in the rule are overly broad and exceed the Department's statutory authority

Commenter Anaheim Jack's is not covered by any of the definitions contained in the PHERA. They are not a health facility and they do not provide healthcare supplies. Anaheim Jack's is a restaurant and does not come under the provisions of the PHERA.

The PHERA provides "special powers" for the Secretary of the Department of Health during a public health emergency under NMSA 1978, § 12-10A-6.

Those powers are specific and limited as follows:

(1) utilize, secure or evacuate health care facilities for public use;

(2) inspect, regulate or ration health care supplies by controlling, restricting or regulating the allocation, sale, dispensing or distribution of health care supplies. Under that Section the state medical investigator, after consultation with the secretary of health, the secretary of public safety, the director and the chair of the board of funeral services, may implement and enforce measures to provide for the safe disposal of human remains.

The Act also allows the Secretary to seek a court order for the isolation or quarantine of a person, subject to extensive restrictions to protect the rights of the person under quarantine. In that case, the Secretary cannot unilaterally impose quarantine and isolation and then impose civil penalties upon a person. The Secretary must obtain a district court order after presentation of sufficient evidence, in order to have a person isolated or quarantined. If the Secretary determines that an emergency situation requires the immediate quarantine of a person without a court order, the Secretary is required to implement the due process procedures otherwise provided within 24 hours. A person who is subject to isolation or quarantine has the right to request a hearing in court, as provided in § 10 of the Act, for remedies regarding treatment or the terms and condition of the isolation or quarantine. If the court finds that the isolation or quarantine of a person is not in compliance with the provisions of the Public Health Emergency Response Act, the court may fashion remedies appropriate to the circumstances of the public health emergency

Anaheim Jack's, the recipient of a Notice of Contemplated Action governed by the proposed rule, has not been afforded any of the due process rights provided by the Act for persons who are subject to quarantine or isolation. Further, since it is not in the health care business, the Act does not subject Anaheim Jack's to forfeiture and use of their facilities. While the Act provides for liberal interpretation of these specific enforcement provisions, those provisions may be applied only to specifically delineated businesses. It does not give the Secretary authority to impose fines on other types of businesses. It does not allow the Secretary to invest herself with a completely new set of powers and authorities never mentioned in the Act through the adoption of the Proposed Rule.

The PHERA does not contain provisions which allow for the issuance of a Notice of Contemplated Action to a business such as Anaheim Jack's, LLC. The Proposed Rule should redefine "recipient" to mean only those categories of individuals or businesses governed by the PHERA.

There is nothing found in the PHERA which allows the Secretary to use its provisions to impose civil penalties on a business which is operating as a restaurant.

The extreme civil penalties under the PHERA of $5,000 per occurrence can only be imposed in conjunction with the specific due process and eminent domain provisions that the PHERA require of the State in that Act. Those provisions act as a check on the power of the State in a public health emergency under the Act. The State cannot choose to rely upon some portions of the PHERA such as the $5,000 per day penalty, while ignoring the requirements to obtain district court orders, protect civil liberties and individual civil rights or provide compensation for the taking of property. The Department's attempt to adopt the Proposed Rule in order to move forward with an illegal application of the PHERA is invalid and illegal.

The Issue of Whether the State Has Authority to Impose Fines under the PHERA for alleged violations of the Governor's Public Health Orders is currently pending before the New Mexico Supreme Court in Michelle Lujan Grisham et al. v. Reeb and Strebeck et al. , No. S-1-SC-38336. The Department should stay the adoption of the Proposed Rule pending the outcome of the that Supreme Court proceeding. The Department is acting in bad faith in attempting to implement the Proposed Rule during the pendency of the referenced action in the state supreme court.

Respectfully submitted:

ZACH COOK, LLC

*_electronically signed_*

Zach Cook
1703 Sudderth # 425
Ruidoso, New Mexico 88345
Attorney for Anaheim Jacks, LLC

Public Comment on the Proposed Rulemaking – Proposed Rule 7.30.1

Zach Cook, Esq. on behalf of Papa's Pawn, LLC

The Proposed Rule and Department's Actions exceed the Department's Statutory Authority

On April 29, 2020, the Department of Health issued a Notice of Contemplated Action to the Commenter which stated in part:

> By this Notice, the Department gives notice that, pursuant to the Public Health Emergency Response Act ("PHERA"), at NMSA 1978, § 12-10A-19, the Department intends to impose upon Papa's Pawn, LLC a civil administrative penalty of $5,000 per day that the business has continued in operation in violation of the Public Health Orders." As of the date of this Notice, the business has remained in operation for at least 12 days in violation of the Public Health Orders, for a combined total administrative penalty of $60,000.00."

The Proposed Rule, Scope, provides:

> 7.1.30.2 SCOPE: This rule applies to all persons who receive a notice of contemplated action for imposition of a civil monetary penalty pursuant to the Public Health Emergency Response Act ("Act"), Section 12-10A-19 NMSA 1978.

Section 12-10A-19 of the Public Health Emergency Response Act ("PHERA") provides that the Secretary of the Department may enforce the provisions of the Act by imposing administrative penalties. But the Notice of Contemplated Action issued by the Department on April 29, 2020 does not seek to enforce any provision of the PHERA. Instead, the Department is seeking to improperly and illegally use the penalty provisions of the PHERA to enforce the Governor's Public Health Orders.

Commenter Papa's Pawn is not covered by any of the definitions contained in the PHERA. It is not a health facility and does not provide healthcare supplies. The Department is improperly seeking to apply the provisions of the PHERA to entities not governed by the Act through the improper adoption of the proposed administrative rule.

The definitions contained in the rule are overly broad and exceed the Department's statutory authority

Commenter Papa's Pawn is not covered by any of the definitions contained in the PHERA. They are not a health facility and they do not provide healthcare supplies.

The PHERA provides "special powers" for the Secretary of the Department of Health during a public health emergency under NMSA 1978, § 12-10A-6.

Those powers are specific and limited as follows:

(1) utilize, secure or evacuate health care facilities for public use;

(2) inspect, regulate or ration health care supplies by controlling, restricting or regulating the allocation, sale, dispensing or distribution of health care supplies. Under that Section the state medical investigator, after consultation with the secretary of health, the secretary of public safety, the director and the chair of the board of funeral services, may implement and enforce measures to provide for the safe disposal of human remains.

The Act also allows the Secretary to seek a court order for the isolation or quarantine of a person, subject to extensive restrictions to protect the rights of the person under quarantine. In that case, the Secretary cannot unilaterally impose quarantine and isolation and then impose civil penalties upon a person. The Secretary must obtain a district court order after presentation of sufficient evidence, in order to have a person isolated or quarantined. If the Secretary determines that an emergency situation requires the immediate quarantine of a person without a court order, the Secretary is required to implement the due process procedures otherwise provided within 24 hours. A person who is subject to isolation or quarantine has the right to request a hearing in court, as provided in § 10 of the Act, for remedies regarding treatment or the terms and condition of the isolation or quarantine. If the court finds that the isolation or quarantine of a person is not in compliance with the provisions of the Public Health Emergency Response Act, the court may fashion remedies appropriate to the circumstances of the public health emergency

Papa's Pawn, the recipient of a Notice of Contemplated Action governed by the proposed rule, has not been afforded any of the due process rights provided by the Act for persons who are subject to quarantine or isolation. Further, since it is not in the health care business, the Act does not subject Papa's Pawn to forfeiture and use of their facilities. While the Act provides for liberal interpretation of these specific enforcement provisions, those provisions may be applied only to specifically delineated businesses. It does not give the Secretary authority to impose fines on other types of businesses. It does not allow the Secretary to invest herself with a completely new set of powers and authorities never mentioned in the Act through the adoption of the Proposed Rule.

The PHERA does not contain provisions which allow for the issuance of a Notice of Contemplated Action to a business such as Papa's Pawn, LLC. The Proposed Rule should redefine "recipient" to mean only those categories of individuals or businesses governed by the PHERA.

There is nothing found in the PHERA which allows the Secretary to use its provisions to impose civil penalties on a business which is offering gun, pawn and check-cashing services.

The extreme civil penalties under the PHERA of $5,000 per occurrence can only be imposed in conjunction with the specific due process and eminent domain provisions that the PHERA require of the State in that Act. Those provisions act as a check on the power of the State in a public health emergency under the Act. The State cannot choose to rely upon some portions of the PHERA such as the $5,000 per day penalty, while ignoring the requirements to obtain district court orders, protect civil liberties and individual civil rights or provide compensation for the taking of property. The Department's attempt to adopt the Proposed Rule in order to move forward with an illegal application of the PHERA is invalid and illegal.

The Issue of Whether the State Has Authority to Impose Fines under the PHERA for alleged violations of the Governor's Public Health Orders is currently pending before the New Mexico Supreme Court in Michelle Lujan Grisham et al. v. Reeb and Strebeck et al. , No. S-1-SC-38336. The Department should stay the adoption of the Proposed Rule pending the outcome of the that Supreme Court proceeding. The Department is acting in bad faith in attempting to implement the Proposed Rule during the pendency of the referenced action in the state supreme court.

Respectfully submitted:

ZACH COOK, LLC

*_electronically signed_*

Zach Cook
1703 Sudderth # 425
Ruidoso, New Mexico 88345
Attorney for Papa's Pawn, LLC

From:	Chris Mechels
To:	Apodaca, Sheila, DOH
Cc:	Chris Goad; Heather Ferguson; New Mexico Foundation for Open Government
Subject:	[EXT] Mechels comment #7 on NMAC 7-1-30 Rules Hearing
Date:	Thursday, July 23, 2020 2:55:33 PM

Dear Ms. Apodaca,

This is the seventh of a number of comments on this hearing.

I closed out my comments in #6 wondering about the integrity of the Hearing Officer who chosen by Kunkel.

That question seems answered on the record. He has none... and showed little to no knowledge of the Rules Act, and the 2017 changes wrought by HB58. He seemed utterly unprepared for the hearing.

I questioned him about the procedure for the Rules Hearing. He provided none. I advised him, as I had advised in my earlier comments, that NM law requires the use of the Default Procedure, NMAC 1.24.25, and that we should obtain it to guide the hearing, a legal requirement. He refused, and seemed to have no knowledge of 1.24.25, even though it IS, since April 2018, NM law. Apparently this does not concern him.

The next hurdle, also illegal, is that he was intent of restricting comments to proposed amendments to 7.1.30. This would be normal if 7.1.30 had been established in a "normal" Rules Hearing, with public input. But, 7.1.30 was established with an Emergency Rulemaking, which allow NO public input, therefore public comment should have been taken on the WHOLE RULE, in detail. This was not allowed. Therefore the public has NEVER been allowed a proper Rules Hearing, due to his ignorance. I offered to address the rule point by point, which would have been correct procedure, but he did not allow that. He seems ignorant of the Rules Act, and our rights as citizens, and cares little. A very poor choice as a Hearing Officer, esp has he has no respect for the law, though he's sworn to uphold it.

He blocked adequate comments allowing an examination in depth of 7.1.30, which is what seemed warranted, esp vs 7.1.2, an existing rule which serves as the basis of 7.1.30. This would have allowed adequate questioning of why all the appellant "rights", apparent in 7.1.2, had been stripped out in 7.1.30. Perhaps they didn't wish this question.

He arbitrarily limited comments to 3 minutes, which he then "extended" by 5 minutes for me. Not nearly enough time to examine 7.1.30 properly. This violated 1.24.25, the procedure he chose to ignore, which allows a more generous examination of the materials.

We are left with a very ugly picture. A Hearing Officer intent on "blocking" public input on 7.1.30, a very ugly procedure, adopted in an illegal Emergency Rulemaking. This calls the DOH Secretary"s excessive use of Emergency Rulemaking into question. Emergency, in past practice, is for EMERGENCIES, not changing 18 years old, to 17 years old. Failure to change 18 to 17, was, per the Secretary, putting us into "imminent danger", though what that danger is she did not identify. An outrage, simple abuse of power, and violating our rights to input the process.

He shows no knowledge, or interest, in the legal requirements of the Rules Act, esp since HB58, and the Default Procedure. Looking to the record of his previous hearings, the same failures are apparent, calling the legality of THOSE hearings into question.

The current hearing on 7.1.30 shows how NOT to run a Rules Hearing, and could be used to instruct potential hearing officers on what NOT to do.

Today's hearing is illegal on very many fronts, procedural, content, legislative intent and being reasonable. It obviously cannot stand a legal challenge.

A sad example of poor, and illegal, governance. It shows why we rank LAST in the nation in most measures. Our

government won't follow the law, and the result is mayhem.

Regards,

Chris Mechels
505-982-7144

PS. You MUST get the Sunshine Portal FIXED. Any Rules Hearings require posting ON the Portal, and today that is impossible.

Regards,

Chris Mechels
505-982-7144

From:	Chris Mechels
To:	Woodward, Chris, DOH; Kunkel, Kathy, DOH; Apodaca, Sheila, DOH
Cc:	craig; Chris Goad; aimfull; jbetatum; zach; carter
Subject:	[EXT] A Response to Mr. Woodward"s letter of July 29, 2020
Date:	Tuesday, August 4, 2020 12:58:22 PM

Dear Mr. Erickson,

Forward: This addition is added after I had an opportunity today to examine the hearing video. It explains why Woodward sent the letter to you, which seemed odd. From your comments on the video your role included "making a recommendation to the Secretary" concerning the proposed rule. This was a surprise, as 1.24.25 does not allow that role. It defines a more impartial role, which involves create a hearing record. It also requires that the Secretary "shall familiarize themselves" with that hearing record before rendering a decision.

From the video record, it seems that the procedure used for this hearing, over my objections, was simply ad hoc, as it was not provided on my request. It has Woodward bringing forth the proposal, to this undocumented hearing procedure, which supported your making a "recommendation" to the Secretary. for her approval. Woodward's letter was to "assist" you, with his very adversarial analysis, in preparing the recommendation. As you were chosen as Hearing Officer, by the Secretary, we must assume that you could be relied upon to produce a "satisfactory" recommendation. Why else choose you?

This whole scheme is obviously corrupt, and undermines the whole purpose of having a Rules Hearing. Sadly, it is also common across the State Agencies, including the Law Enforcement Academy Board, which on my first encounter, also used an ad hoc procedure. A lawsuit changed that.

How could there be a better argument for the 2017 HB58 Rules Act Reforms, which includes 1.24.25?

Now that it is established, beyond argument and acknowledged by DOH Counsel, Mr. Woodward, that the 1.24.25 MUST be the Hearing Procedure, and that you failed to do this, in spite of being cautioned, on the record, of that fact, is there any reason NOT to cancel this hearing, and reschedule it? Persisting in violation of 1.24.25 would seem to expose Woodward and the Secretary to charges of Malfeasance, and to what end? I trust you will make the right decision.

End of Forward.

I am pleased to have an opportunity to respond to Mr. Woodward. As would be expected in our adversarial legal system, he represents only part of the argument, and leaves out inconvenient facts, leaving it up to me to complete the picture.

For clarity, I will proceed to address his letter from the top, which should make the arguments easier to follow.

His first paragraph refers to my Comment #1. In response to my comment, he does dispute my claim, because it is true. Examine it. He simply tries to distract us. An examination of all the listed Department of Health (DOH) rules information on the Portal shows other instances of Emergency Rule Making, followed by a Rules Hearing, and none of those, including the 5/5/2020 hearing on 7.9.2, with you as Hearing Officer, made the error of calling a Rules Hearing for an "Emergency Rule". It seems a clerical error, but a significant one, as it could easily mislead. DOH shows bad faith in not simply correcting the error when it was identified, on 13 July, as this extended the effect of the error. Woodward also shows bad faith in attempting distraction.

His second paragraph also refers to my Comment #1. He falsely states my concern, at 2.b. My claim was that the hearing announcement posted was incorrect, and I even provided material copied directly from the document. A simple examination supports this. He didn't understand my comment, so his reply to it is useless.

His third paragraph, also concerning Comment #1, is wrong on its face. I made no claim that the Rule was not posted on the DOH website, as it clearly was. My concern was with the posting on the SunshinePortal. My concern with Portal posting of Emergency Rules is well taken, as the Comment details at some length.

His fourth paragraph, related to Comment #1, is also factually incorrect. His "information and belief" is simply wrong. From 9 July to 13 July, the Portal had NO Rules information shown on their webpage. My 9 July email to Sheila Apodaca produced NO results on that score. I was finally able to reach Lorenzo Ornelas (505-670-2839) and advised him that the Rules Act, and other laws, required posting data on the SunshinePortal, and they could not just "leave it off", as they had done. The current situation, with links at the bottom of the Portal webpage, resulted. Note this has little in common with Woodward's description, which it seems he just "made up". Please note that the Rules Act requires "posting it on the sunshine portal", not "near" the Portal. The Portal webpage (https://ssp.nm.gov/) clearly lists Rule Making as "Outside the Portal", and "Launching the Portal" results in no sign of Rule Making. Clearly this Rules Hearing does not comply with the Rules Act requirement, and is thus illegal. Woodward's dismissal of any DOH responsibility to resolve that problem seems quite irresponsible.

Woodward's fifth paragraph addresses my Comment #2, and it consists of unsupported argumentation. These arguments could have been useful, and interesting, if brought up at the Rules Hearing, which is intended to air the various positions and examine them. Woodward chose NOT to make these arguments at the hearing, and the comment window closed on the 23rd. This letter is thus an ex parte communication, which is not allowed for in 1.24.25, and is thus illegal. Ignore it. It also shows ignorance of the Rule Making process, which does not have the Hearing Officer making recommendations, only as a neutral gatherer of input, and preparation of the record. Approaching him with arguments is inappropriate, and seems to be an attempt to undermine the Rules Act. But perhaps the earlier "ad hoc" DOH hearings allowed such interference?

His sixth paragraph concerns 'hand delivery" of notice. He claims this a problem with Covid. Why is it NOT a problem with 7.1.2, which is used more often?

His paragraphs 7,8,9, and 10 share a common concern, which he does not identify. The concern is related to having a fair hearing, with a hostile Hearing Officer, such as Mr. Woodward. My use of the word "oppressive", which he makes light of, relates, as clearly identified in my comments, to lack of a provision to "stay" the penalty. With a stay provision, the lengthy times are not oppressive. Woodward offers that inserting "impartial" would not be a problem. Perhaps because it would have no effect? Needed, at minimum, such language as 7.1.2 has; though even that is rather weak. The problem is dealing with a HOSTILE hearing officer, and getting a fair hearing. The Secr of Health imposes the $5,000 fine, for ignoring her mandates. She is not likely to be fair minded enough to appoint a neutral Hearing Officer. The evidence is before us, an extremely unbalanced 7.1.30. All fairness has been stripped out. Brought in an Emergency Hearing with no public input. We must assume Hostility.

His 11th paragraph deals with video hearings. No problem with consent "of the parties". The consent of "either party", with Hearing Officer approval, simply allows the DOH to do as they please, as they "own" the hearing officer.

His 12th paragraph relates to the proposed amendment for "findings of fact". His "reasons" conceal his hostile intent. We must assume a hostile Hearing Officer, such as Mr. Woodward, who can create a very real burden for the appellant, further blocking access to a fair hearing. I represented six terminated LANL employees in 1995 grievance hearings, and I assure you it is very intimidating, even for Phds, to go up against attorneys, in a strange venue. Woodward downplays this, of course, because his whole intent is to make the appellant's lot worse. Note that 7.1.2 has no such provision.

At the 13th paragraph, if Pro Se is not a problem, put it in the Rule; to avoid having a hostile hearing officer MAKE it a problem. 7.1.2 allows Pro Se.

His 14th and 15th paragraph deal with the "final decision" and judicial review. 7.1.2 allows, by Statute, for Judicial Review. It is even MORE important for 7.1.30 where the assumption MUST BE a hostile environment. For "justice" to be even possible, oversight must be available to offset the hostility. As Woodward states, appeal of the final decision to the courts is possible, but very difficult and expensive. That is WHY the statutes established Judicial Review at 7.1.2.39. The New Mexico Legislature, not the Dept of Health, saw fit to impose these rights on the DOH hearing process, 7.1.2. For PHERA we have, at NMSA 12-10A-17, a Legislative requirement that rules be "reasonable and necessary", to implement NMSA 12-10A-19. Having found it necessary to impose standards on DOH, leading to 7.1.2, I suggest that "reasonable and necessary" is defined by this rule, well tested in long use. With 7.1.30 being established for a much more HOSTILE environment, as well exhibited in Woodward's letter. such safeguards are even more necessary.

Much of the above, concerning the "content" of the proposed rule, is inappropriate for

this venue, and arguably illegal. But, after Woodward's "out of channels" letter to the Hearing Officer, there's no way to ignore its content, thus my response. But, remember, this whole exchange is illegal under the Rules Act, and 1.24.25, and that suggests a new hearing.

The Hearing Officer, per 1.24.25, does not make recommendations, simply gathers the materials and builds the hearing record.

What may be of more concern to the Hearing Officer, and open to his action, are the legal issues, which are many;

The Hearing was NOT held in compliance with the Default Hearing Procedure 1.24.15, though Woodward agrees that DOH must comply "this is a matter of law and not in dispute", that simple fact, which he does not acknowledge, is that 1.24.25 WAS NOT followed, even though I raised this issue with the Hearing Officer, as the record will show. He very carefully states that the Hearing Officer identified the laws governing the hearing, but 1.24.25 WAS NOT one of those laws, as he refused my advice. Woodward clearly withholds that key information. In fact AFTER the hearing the Attorney General's office contacted DOH counsel and informed them that 1.24.25 is required. The Hearing Officer, it seems, was not properly advised by DOH concerning the law, which had changed in 2018.

The fact that 1.24.25 was NOT followed compromised the hearing greatly, as it, in my direct experience, allows a much more productive exchange, with the parties able to question testimony, and get answers, on the record. Woodward claims this is "duplicative", but that is false. The written comments simply "set up" the hearing process. Going though the proposal, in detail, allows for a dialogue to fully develop the issue. That is WHY HB58 was passed by the Legislature, to allow fully informed Rules Hearings. By simply taking comments, without exchange, the whole purpose of HB58 and 1.24.25 is blocked, as Woodward seems to prefer.

Woodward claims that I was offered "substantial" time to speak, and that was extended. He fails to mention that "substantial" was 3 minutes, with a 5 minute extension when I complained. What I requested, and was denied, was enough time to approach the proposal "De Novo", as is commonly done, comparing it against 7.1.2, a well established standard in use at DOH, to establish whether 7.1.30 was indeed "reasonable", as required by statute. This should have been allowed, under 1.24.25, but we didn't use 1.24.25, so the Hearing Officer cut me off. By way of contrast, the same Hearing Officer, at the 7.9.2 Rules Hearing on 5/6/2020, sat with an open mike, awaiting input, for some 45 minutes. I could have made good use of those 45 minutes. It appears that they are "open for testimony" if no one wishes to testify, but will "cut you off" if you actually have substantive input that they oppose. Sad.

This whole, rather sad, affair is far too typical of our State Government. As clearly seen in Woodward's letter, he adopts an "adversarial" stance, which involves picking some points to attack, and concealing others which do not support his argument. Not uncommon for attorneys. However, Woodward, as a government attorney, has a duty

to act "in the public interest", and a duty to the law. It is unclear that his letter meets that "duty". The other looming issue is that many other State Agencies, also fail to follow the Rules Act, which violates their duty to the law and the public interest.

I suggest that the current Rules Hearing, with its far too numerous legal issues, can best be terminated. That would allow time to proceed with a legal hearing, and an improved proposal, within the 180 days allowed for the Emergency Rule.

I hope this is taken as a chance to clean up the Rule Making at the Dept of Health, esp involving their use, and overuse, of Emergency Rulemaking.

Regards,

Chris Mechels
505-982-7144

From:	Amy Dunlap
To:	craig@uttonkery.com; Apodaca, Sheila, DOH; Kunkel, Kathy, DOH; Woodward, Chris, DOH
Cc:	Chris Mechels
Subject:	[EXT] Additional Comments from Rule Hearing on Proposed 7.1.30 NMAC
Date:	Tuesday, August 4, 2020 2:26:00 PM

Dear Mr. Erickson:

I had provided public comment on this hearing, but my comments were not summarized by DOH General Counsel Woodward. I am providing additional comment based on his July 29, 2020 letter to you.

Related to Chris Mechels comments about the availability of public notice, Mr. Woodward responded: "The emergency rule was posted by the Department on both the Sunshine Portal at http://statenm.force.com/public/SSP_RuleHearingSearchPublic and the NMDOH regulations website at http://nmhealth.org/about/asd/cmo/rules/, in accordance with the State Rules Act." As a member of the public, I can tell you that I had a hard time finding this notice. In the notice itself, it states: "A free copy of the full text of the proposed rule can be obtained from the Department's website at https://nmhealth.org/publication/regulation/. " I don't know when that information was posted on the NMDOH website, because I couldn't find it. Also, the actual webpage to be cited should be https://nmhealth.org/publication/rules&regulations . I had then looked on the NMDOH website under "Newsroom" and did not find anything. I next looked under "Events" and from there "Public Meetings," and again could not find anything. It wasn't until Chris Mechels sent me the link to the Sunshine portal on July 19, 2020 that I was able to find the hearing information. This clearly seems to violate the notification requirement. Also, I don't see how publishing this notice in just the Albuquerque Journal and NM Commission of Public Records is enough notice for the average citizen to be aware of this meeting. Again, I tried searching for this notice in the online ABQ Journal site, and was unable to locate it. Most people do not read the printed Journal and may only view online, such as myself. I don't make it a habit of reading the Public Notices though. My suggestion is any further changes to the rules should include ways to make sure the public is informed of these meetings.

My final comment on NMAC 7.1.30 is there is no avenue for further appeal. Section Y reads: "Secretary's final decision: The secretary shall render a final decision within 45 calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested, within 15 days after the final decision is rendered and signed. [7.1.30.8 NMAC – N/E, 3/20/2020]." There doesn't seem to be any form of appeal after this ruling by the Secretary of Health. NMAC 7.1.2.39 allows for a judicial review. Again, these proposed changes to 7.1.30 do not. As a member of the public, I feel there should always be a channel for appeal to a higher body that may be more impartial than the Secretary of Health over a public health ruling.

Finally, I do not see the need to make these changes at this time, and certainly not without significant public input in the process.

Thank you for your time.

Sincerely,

Amy Dunlap

Sent from Mail for Windows 10

From: Dana Dunlap <new4cycles2@outlook.com>
Sent: Sunday, August 02, 2020 3:27 PM
To: Craig Erickson <craig@uttonkery.com>
Subject: Response to NMAC-20200729-DOH Comments: Regarding 7.1.30 Rules Hearing

Thank you for the opportunity to respond to NMAC-20200729-DOH. My retort, specifically related to page 6 comments, Dana Dunlap, follows:

First, if "rulemaking is indeed an exercise of legislative power" then why not let the LEGISLATURE do their job. Delegation does not mean do! The timing of this effort is highly suspect. Stop!

Second, if "the rule at issue in this rulemaking is purely procedural", then why bother doing it? Why are you WASTING TAXPAYER DOLLARS if this is merely a procedural hearing and the LEGISLATURE can do the work? The whole process smells of corruption, misrepresentation and is NOT NECESSARY.

Third, regarding Secrecy Allegation, the phrase "significant opportunity for public input" is meaningless. The word "significant" has no tangible value, and, when used in an argument, reeks of DECEPTION. The response did not outline specific requirements for public notification, such as 20 day comment period, and associated item-by-item compliance. This process was RUSHED. Prove the State was compliant. I do not trust DOH in any matter at this time.

Finally, denying the link between this Procedural Ruling Hearing and Health Department overreach is hogwash. *We The People* can see POLITICAL GAMESMANSHIP and AUTOCRACY becoming the norm. Please stop this process immediately!

Dana Dunlap

Sent from Mail for Windows 10