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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: (ALD Use Only)
New Amendment Repeal Emergency Renumber 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 24-1-3, Section 24-14A-3 (D)(5) and Section 24-14A-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 Statewide Health Care Claims Database Rule Pursuant to the New Mexico Health Information Systems Act

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

Name:

Chris D. Woodward

Check if authority has been delegated

Title:

Assistant General Counsel

Signature: (BLACK ink only)



Date signed:

4/6/21

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

**IN THE MATTER OF PROPOSED
ADOPTION OF DEPARTMENT
RULE PART 7.1.31 NMAC**

**STATEMENT OF REASONS FOR ADOPTION OF PROPOSED
STATEWIDE HEALTH CARE CLAIMS DATABASE RULE
PURSUANT TO THE NEW MEXICO HEALTH INFORMATION SYSTEMS ACT**

Dr. Tracie C. Collins, M.D., Secretary for the New Mexico Department of Health, following a public hearing conducted on January 6, 2021, on the proposed adoption of a Statewide Health Care Claims Database rule, part 7.1.31 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, Analysis and Recommendation of the Hearing Officer, Craig T. Erickson, dated February 26, 2021.

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. Section 9-7-6 (E), NMSA 1978, and to enact this rule pursuant to Section 24-1-3, Section 24-14A-3 (D)(5) and Section 24-14A-5, NMSA 1978.
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 November 24, 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 November 24, 2020.

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4. In accordance with Section 14-4-5.2, NMSA 1978, prior to the date of the rule hearing, notice of the public hearing for adoption of the proposed rule 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 November 17, 2020, the Acting Secretary of the Department, Billy J. Jimenez, designated Mr. Erickson to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed rule.
6. A public rule hearing was held in Santa Fe, New Mexico on January 6, 2021 pursuant to Section 9-7-6 (E), NMSA 1978.
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 the written comments are described in the January 13, 2021 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 Epidemiology and Response Division 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 Epidemiology and

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Response Division 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 7.1.31 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 that those matters were inconsistent or incompatible with other DOH rules or were not supported by statute. (A more detailed rationale for not accepting suggestions made in the comment process is contained in the record in the February 19, 2021 letter from Joey Wright, Esq. responding to public comments listed and addressed in the February 26, 2021 Report from Hearing Officer Erickson, which is hereby incorporated by reference as if set forth in full).

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15. The Secretary finds that the proposed rule 7.1.31 NMAC, as revised by public comment received, the response of the Epidemiology and Response Division 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

 *Tracie C. Collins, MD, MPH, MHCDS*

Dr. Tracie C. Collins, M.D., Cabinet Secretary

4/1/2021

Date