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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  Renumber  (ALD Use) 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:

Subsection E of Section 9-7-6 NMSA 1978, Section 24-17B-1 through Section 24-17B-4 NMSA, 1978.

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

*[Handwritten signature]*  
7/21/2021

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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 Long-Term Care Facility Dementia Training, Rule 7.1.32 NMAC.

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

Name:

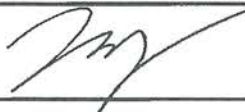
Billy Jimenez

Check if authority has been delegated

Title:

New Mexico Department of Health General Counsel

Signature: (BLACK ink only OR Digital Signature)



Date signed:

12/15/21

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

**IN THE MATTER OF PROPOSED  
ADOPTION OF DEPARTMENT  
RULE PART 7.1.32 NMAC**

**STATEMENT OF REASONS FOR ADOPTION OF PROPOSED  
LONG-TERM CARE FACILITY DEMENTIA TRAINING RULE  
PURSUANT TO THE LONG-TERM CARE FACILITY DEMENTIA TRAINING  
ACT, 24-17B-1, et seq. NMSA**

David R. Scrase, M.D., Acting Secretary for the New Mexico Department of Health, following a public hearing conducted on December 10, 2021, on the proposed adoption of a Long-Term Care Facility Dementia Training rule, part 7.1.32 NMAC, hereby adopts the proposed rule. 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 December 14, 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 24-17B-1 through Section 24-17B-4 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 9, 2021.
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 9, 2021.

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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 October 20, 2021, the Acting Secretary of the Department, David R. Scrase, M.D., 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 Albuquerque, New Mexico via the Internet-based video conference platform Cisco WebEx and by telephone on December 10, 2021 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 hearing until 5:00pm the date of the hearing.

8. The purpose of the proposed rule is to comply with 24-17B-1 et seq. requiring the Department of Health to promulgate rules for evaluation and continuing education on the training topics for treatment and care of persons with Alzheimer's disease or dementia; and as necessary to carry out the Long-Term Care Facility Dementia Training Act.

9. Written comments from members of the public were received prior to the rule hearing and oral comments from the public were received during the rule hearing. One additional written comment was received from the public after the hearing and prior to the close of business on December 10, 2021. Typographical corrections were made to the final version.

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10. The Acting Secretary finds that the Hearing Officer has appropriately considered the comments received, and finds that the recommendations of the Hearing Officer are appropriate.

11. The Acting Secretary further finds that the proposed rule is 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.

12. The Acting Secretary further finds that all written and oral public comments were reviewed and considered, and that the comments were not accepted due to the fact that those matters were inconsistent with or were not supported by statute. (A more detailed rationale for consideration given the suggestions made in the comment process, along with answers to comments consisting of questions, is contained in the record in the December 10, 2021, and December 13, 2021, letters from Ann H. Washburn, Esq. responding to public comments, addressed to the Hearing Officer and marked DOH Exhibit 7g and DOH Exhibit 7h, which are hereby incorporated by reference as if set forth in full).

13. The Acting Cabinet Secretary has familiarized himself with the rulemaking record, including the Report and Recommendation of the Hearing Officer, and finds that the Hearing Officer has appropriately considered the entire record and substantive comments made through public comments, and finds that the recommendations of the Hearing Officer are appropriate.

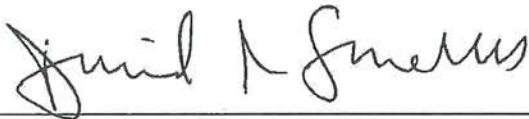
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14. The Acting Cabinet Secretary hereby adopts the Hearing Officer's recommendations concerning the proposed rule.

15. The Acting Cabinet Secretary finds that the rule promulgation process met the requirements of the State Rules Act and the New Mexico Attorney General's Default Procedural Rule for Rulemaking at 1.24.25 NMAC. The effective date of the rule will be December 28, 2021.

16. The Acting Cabinet Secretary finds that the proposed 7.1.32 NMAC, as recommended by the Hearing Officer, is appropriate and consistent with the authorizing law, and accordingly, the proposed rule 7.1.32 NMAC is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH



David R. Scrase, M.D., Acting Cabinet Secretary

12/15/21  
Date

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**TITLE 7           HEALTH**  
**CHAPTER 1       HEALTH-GENERAL PROVISIONS**  
**PART 32          LONG-TERM CARE FACILITY DEMENTIA TRAINING**

**7.1.32.1           ISSUING AGENCY:**   New Mexico Department of Health, Division of Health Improvement.  
[7.1.32.1 NMAC - N, 12/28/2021]

**7.1.32.2           SCOPE:**           These regulations apply to any long-term care facility and long-term care facility contractor in the state of New Mexico or licensed by the New Mexico department of health, division of health improvement.  
[7.1.32.2 NMAC - N, 12/28/2021]

**7.1.32.3           STATUTORY AUTHORITY:**   The regulations set forth herein are promulgated by the secretary of the department of health by authority of Subsection E of Section 9-7-6 NMSA 1978, Section 24-17B-1 through Section 24-17B-4 NMSA 1978. The division of health improvement (“divison”) of the department of health shall administer and enforce these regulations.  
[7.1.32.3 NMAC - N, 12/28/2021]

**7.1.32.4           DURATION:**       Permanent.  
[7.1.32.4 NMAC - N, 12/28/2021]

**7.1.32.5           EFFECTIVE DATE:**   December 28, 2021, unless a later date is cited at the end of a section.  
[7.1.32.5 NMAC - N, 12/28/2021]

**7.1.32.6           OBJECTIVE:**       The regulations establish policy, standards, and criteria relating to: the educational and certification requirements, issuing of certifications, and continuing education of persons who provide direct care service to long-term care facility residents in order to maintain or improve the health and quality of life of the residents.  
[7.1.32.6 NMAC - N, 12/28/2021]

**7.1.32.7           DEFINITIONS:**

**A.           “Act”** shall mean the Long-Term Care Facility Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

**B.           “Certificate”** shall mean the training certificate issued by the provider of training pursuant to 7.1.32 NMAC and the Long-Term Care Facility Dementia Training Act Section 24-17B-1, et seq NMSA 1978.

**C.           “Continuing education”** means participation in a formal learning experience of which the course topics have been approved by the department as set forth in 7.1.32.9 NMAC.

**D.           “Department”** means the department of health.

**E.           “Direct care service”** means services provided to long-term care facility residents that maintain or improve the health and quality of life of the residents.

**F.           “Direct care service staff member”** means a person:  
(1)       employed by or contracted with a long-term care facility, either directly or through a third-party agreement, to provide in-person direct care services to long-term care facility residents; or  
(2)       contracted with a long-term care facility, either directly or through a third-party agreement, to provide at least ten hours per week in direct care services by video, audio or telephonic means.

**G.           “DCSSM”** means direct care service staff member.

**H.           “Division”** means the division of health improvement of the department of health.

**I.           “In-person instructor”** means the in-person dementia training instructor who will conduct dementia training pursuant to the requirements of 7.1.32 NMAC.

**J.           “Long-term care facility”** means every long-term care facility licensed by the state of New Mexico.

**K.           “Long-term care facility contractor”** as used within this regulation means an entity that employs direct care service staff members.

[7.1.32.7 NMAC - N, 12/28/2021]

**7.1.32.8           TRAINING REQUIREMENT:**

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**A.** Every direct care service staff member shall complete the requirements for and obtain certification as provided in 7.1.32.9 NMAC.

**B.** Every direct care service staff member is required to complete the training and written examination set forth in 7.1.32.9 NMAC pursuant to the following requirements:

- (1) if hired after January 1, 2022, shall complete the training required within 60 days of the start of employment;
- (2) if hired prior to January 1, 2022, shall complete the training required if the direct care service staff member has not received training in the past 24 months equivalent to the training set forth in 7.1.32.9 NMAC within sixty days of January 1, 2022;
- (3) if the direct care service staff member had successfully obtained a training certificate but has had a lapse of dementia-related direct care service employment for 24 consecutive months or more then the direct care service staff member shall complete the training and examination set forth in 7.1.32.9 NMAC within 60 days of the start of employment.

**C.** Exception to initial training: A direct care service staff member (DCSSM) hired prior to January 1, 2022, who received equivalent training within the past 24 months equivalent to the requirements set forth in Subsection A of 7.1.32.9 NMAC shall be issued a training certificate by the department upon receipt from a facility of a written attestation that the DCSSM has received such training within the 24 months prior to January 1, 2022. A direct care service staff member (DCSSM) hired after January 1, 2022, who received equivalent training within the 24 months prior to the hiring date equivalent to the requirements set forth in Subsection A of 7.1.32.9 NMAC shall be issued a training certificate by the department upon receipt from a facility of a written attestation that the DCSSM has received such training within the 24 months prior to the date of hire. The facility attestation shall be provided to the department's train division email at: DOH-TRAIN.Support@state.nm.us for issuance of a training certificate by the department.

[7.1.32.8 NMAC - N, 12/28/2021]

**7.1.32.9 COURSE OF EDUCATION:** New Mexico requires a state training education process to become a certified direct care staff member. The education program shall provide knowledge on the skills and abilities necessary to perform as a competent direct care service staff member; this is established through training education, provided either on-line or in person, followed by successful completion of a division-approved written examination. The in-person instructor will conduct the course of education for the direct care staff member as set out below. Each long-term facility and long-term care facility contractor shall provide training either on-line or in-person as set forth in this section to each DCSSM that it employs.

**A. Instruction:** Instruction by the on-line provider or in-person instructor must be at least four hours in length, either in-person or on-line, and include these department-approved areas of study:

- (1) identify cognitive, functional, and behavioral changes of normal aging and those associated with mild cognitive impairment and dementia;
- (2) identify and understand the various types of dementia;
- (3) identify the prevalence, risk factors, signs and symptoms, and rate of progression of dementia;
- (4) identify and understand the stages of dementia;
- (5) describe and understand when to refer people living with dementia (PLwD) to a neurologist, geriatric psychiatrist, neuropsychologist, or a national Alzheimer's disease center;
- (6) diagnosing dementia & discussing dementia diagnosis;
- (7) patient centered care;
- (8) activities of daily living in people living with dementia and Alzheimer's disease;
- (9) identify common components of an individualized primary care plan for persons with middle stage dementia;
- (10) identify common components of an individualized primary care plan for persons with late stage dementia;
- (11) identify and understand common medical issues related to early-stage dementia,
- (12) identify and understand common medical issues related to middle-stage dementia;
- (13) identify and understand common medical issues related to late-stage dementia;
- (14) effective care transitions to and from acute care hospitals;
- (15) interprofessional team roles and dementia;
- (16) describe how responsibilities may evolve as the disease progresses;



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(17) list legal and financial considerations to discuss with a patient and appropriate care partner(s) upon a diagnosis of dementia;

(18) identify domains that are included in a capacity assessment for a person living with dementia;

(19) ethics and capacity issues;

(20) responding to abuse, neglect & exploitation of people living with dementia and Alzheimer's disease.

(21) identify signs and symptoms of end-stage dementia;

(22) identify and understand barriers to optimal care among various ethnic groups;

(23) identify and understand techniques for effective communications with diverse populations;

(24) pain assessment in people living with dementia;

(25) resident rights;

(26) palliative care & end of life care.

**B. Trainer requirements:** A person conducting training of the required topics set forth in 7.1.32.9 NMAC shall have:

(1) at least two years of work experience related to Alzheimer's disease, dementia, health care, gerontology or other related field; and

(2) successfully completed training requirement to the requirements provided in Subsection A of 7.32.1.9 NMAC, including passage of the knowledge test required in Subsection D of 7.1.32.9 NMAC; and

**C. Training on-line:** Training on-line shall be provided by the department through the train program at [www.train.org/nm](http://www.train.org/nm) or through a department -approved on-line curriculum and knowledge test which shall include the department-approved areas of study set forth in Subsection A of 7.1.32.9 NMAC and shall be at least four hours in length. After completion of the on-line training and successful passage of a knowledge test, a certificate shall be issued to the DCSSM.

**D. Evaluation of training topics:** The department shall review and evaluate the training areas of study in Subsection A of 7.1.32.9 NMAC every two years or as determined necessary by the department based upon current research and best practices.

**E. Testing:** The in-person or on-line training must be followed by successful completion of a division-approved written examination which shall cover the areas of study set forth in Subsection A of 7.1.32.9 NMAC before a training certificate will be issued by the in-person or on-line training program.

**F. Training certificates:** The provider of on-line or in-person training conducted pursuant to 7.1.32.9 NMAC shall issue a certificate to the DCSSM upon completion of initial training, or the department shall issue a certificate upon receipt of facility attestation of exemption from training as set forth in Subsection D of 7.1.32.8 NMAC. The certificate shall be valid so long as the certificate holder meets the continuing education requirement set forth in 7.32.1.9 NMAC and the certificate holder has not had a lapse of dementia-related direct care service employment for 24 consecutive months or more. The certificate shall be valid among long-term care facilities.

**G. Continuing education:** Proof must be maintained by the facility of four hours of training by the DCSSM every two years on topics set forth in 7.1.32.9 NMAC for treatment and care of persons with Alzheimer's disease or dementia, in order to maintain the certificate issued to the individual DCSSM.

**H. Maintenance of certification records:** Each long-term care facility and long-term care facility contractor subject to 7.1.32.1 et.seq NMAC shall be responsible for maintaining documentation regarding completed long-term care facility dementia training, evaluation and continuing education for each DCSSM. Each long-term care facility contractor subject to 7.1.32.1 et.seq NMAC shall provide a copy of each DCSSM'S dementia training certificate to every long-term care facility where the DCSSM provides direct care service, pursuant to Subsection F of Section 24-17B-3 NMSA 1978.

[7.1.32.9 NMAC - N, 12/28/2021]

**7.32.1.10 SEVERABILITY:** If any part or application of the long-term care facility dementia training regulation is held invalid, the remainder or its application to other situations or persons shall not be affected.

[7.1.32.10 NMAC - N, 12/28/2021]

**HISTORY OF 7.32.10 NMAC: [RESERVED]**