

# 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:

The regulations set forth herein are promulgated by 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 NMSA 1978, and Sections 24-14-1 through 24-14-31 NMSA 1978, of the Vital Statistics Act.

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

# Concise Explanatory Statement For Rulemaking Adoption:

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NMTL 12/15/2022

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## 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 Amended Rule 7.2.2 NMAC, Vital Records and Statistics.

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

Name:

Billy J. Jimenez

Check if authority has been delegated

Title:

General Counsel/Acting Deputy Cabinet Secretary

Signature: (BLACK ink only OR Digital Signature)

Date signed:



12/15/2022

STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF HEALTH

**IN THE MATTER OF PROMULGATION  
OF RULE 7.2.2 NMAC, VITAL RECORDS AND STATISTICS**

**STATEMENT OF REASONS FOR ADOPTION OF PROPOSED RULE 7.2.2 NMAC,  
VITAL RECORDS AND STATISTICS**

The Acting Cabinet Secretary for the New Mexico Department of Health (“Department,”) David R. Scrase, M.D., following a public hearing conducted on September 20, 2022, hereby adopts the proposed repeal and replacement, as revised after the hearing in response to public comments received. This decision is based on the entire record in this matter, which includes a recording of the hearing and the Report and Recommendation of the Hearing Officer, Craig T. Erickson, dated November 7, 2022.

The Acting Cabinet Secretary has familiarized himself with the rulemaking record, and finds as follows:

1. The Department is authorized to promulgate rules as may be necessary to carry out the duties of the Department and its divisions, NMSA 1978, Section 9-7-6(E) NMSA 1978, and to enact this rule pursuant to NMSA 1978, Section 24-1-3, and Sections 24-14-1 through 24-14-31 of the Vital Statistics Act.
2. By a letter dated August 1, 2022, the Acting Secretary of the Department, David R. Scrase, M.D. designated Craig T. Erickson to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed rules.
3. In accordance with NMSA 1978, Section 14-4-5.2, notice of the public hearing for the proposed rule adoption was provided to the public, through the following:
  - a. In accordance with NMSA 1978, Section 14-4-5.2, more than 30 days prior to the date of the rule hearing, notice of the public hearing and proposed rule text was

posted to the agency website at <http://www.nmhealth.org>, as well as to the New Mexico Sunshine Portal at [Home - New Mexico Sunshine Portal \(nm.gov\)](http://www.nm.gov).

- b. In accordance with NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule was published in the Albuquerque Journal newspaper on August 9, 2022.
  - c. In accordance with NMSA 1978, 14-4-5.2, notice of the public hearing for the proposed rule was published in the New Mexico Register on August 9, 2022.
  - d. In accordance with the State Rules Act at NMSA 1978, § 14-4-2(E), the Notice of Public Hearing was emailed on August 9, 2022, to the following persons who have made a written request for notice from the department of announcements addressing the subject of rulemakings and who have provided the department an electronic mail address: Tom Gardner at Disability Rights New Mexico (DRNM); Marilyn Wolf at Disability Rights New Mexico (DRNM); Crystal Hodges at New Mexico Attorney General's Office; Jennifer R. James, Senior Associate University Counsel at UNM OUC-Health Sciences Section.
  - e. In accordance with NMSA 1978, § 14-4-2(E), the Notice of Public Hearing was emailed to the New Mexico Legislative Counsel Service at [lcs@nmlegis.gov](mailto:lcs@nmlegis.gov) on August 9, 2022.
  - f. In accordance with NMSA 1978, § 14-4A-4, the Notice of Public Hearing was emailed to Westlee Painter at the New Mexico Small Business Advisory Commission on August 9, 2022.
4. A public rule hearing was held via Cisco Webex Online and by telephone in Santa Fe, New Mexico, on September 20, 2022 pursuant to NMSA 1978, Section 9-7-6(E).

5. Members of the public were afforded an opportunity to comment on the proposed rule at the hearing, in writing prior to the hearing and via email through the close of business on the date of the hearing.

6. Oral and written comments from members of the public were received prior to the rule hearing, at the rule hearing, and by email through the close of business on the day of the hearing, and the written comments are described in the October 31, 2022 letter from the Department to the Hearing Officer, responding to certain public comments.

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

8. The Secretary finds that the Hearing Officer has appropriately considered the comments received, and finds that the recommendations of the Hearing Officer are appropriate; and, by this reference, the Secretary hereby adopts and incorporates all of the findings and recommendations of the Hearing Officer that are stated in the Hearing Officer's Report, issued by the Hearing Officer on November 7, 2022 and received by the Secretary on November 10, 2022.

9. The Secretary, upon review of the entire record finds the following additional amendments to the final proposed draft rule are necessary:

- a. Section 7.2.2.26(A) will read as follows: "A healthcare provider who prescribes medical aid in dying medication to an individual must fully complete the designated online form as soon as possible but in no case later than 30 days of issuing the prescription. The submitted form will be assigned a number for administrative purposes, and the form number will be sent to the healthcare provider who completed the designated form. The current version of the medical

aid in dying reporting forms will be available for completion on the department website.”

- b. Section 7.2.26(B) will read as follows: “If after making reasonable efforts within 30 days of issuing the prescription, the healthcare provider is not aware of whether the prescription has been ingested, or if the prescription has not yet been ingested, the provider must complete the designated online form and mark either “not yet ingested” or “unknown”.
- c. Section 7.2.26(C) will read as follows: “If a healthcare provider marks “not yet ingested” or “unknown” on the form, the healthcare provider must update that information online using the number assigned on the original form within 6 months of issuing the prescription. “Unknown” will not be accepted on the updated form. The department will send a reminder to the healthcare provider if an update has not been provided within 4 months of the initial online form submission.”

10. The Acting Cabinet Secretary finds that the proposed rule 7.2.2 NMAC, as revised by public comment received, the response of the Department, and the Hearing Officer’s recommendations, and the changes outlined in paragraph 9 above, is appropriate and consistent with the authorizing law, and the proposed revised rule, a copy of which is attached hereto, is hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH

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

12/14/2022  
Date