

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:

This rulemaking by the Secretary of the Department of Health is made in accordance with the following authorities: Sections 9-7-6, 24-1-3, and 24-5-1 NMSA 1978.

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

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.

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The findings in support of this amendment are as stated in the attached Statement of Reasons for Adoption of the rule, which is hereby incorporated by reference.

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 OR Digital Signature)

Date signed:

Christopher
Woodward

Digitally signed by Christopher
Woodward
Date: 2023.08.17 08:27:34 -06'00'

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STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH

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IN THE MATTER OF AMENDMENTS TO 7.5.3 NMAC, SECTIONS 6, 7, 8, AND 9

**STATEMENT OF REASONS
FOR ADOPTION OF RULE AMENDMENTS**

The Cabinet Secretary for the New Mexico Department of Health (“Department”), Patrick M. Allen, hereby adopts amendments to the following rule sections:

1. 7.5.3.6 NMAC (“Objective”);
2. 7.5.3.7 NMAC (“Definitions”);
3. 7.5.3.8 NMAC (“Requirements for Approval of Exemptions from Immunization”); and
4. 7.5.3.9 NMAC (“Review Criteria”).

This decision is based on the entire record in this matter, which includes the proposed rule amendments, the report of the Hearing Officer, written public comments, and the recording of the public rule hearing. The Cabinet Secretary has familiarized himself with the rulemaking record, and finds as follows:

1. The Department of Health is authorized to promulgate rules as may be necessary to carry out the duties of the Department and its divisions. NMSA 1978, § 9-7-6(E).
2. The Department is also responsible for promulgating rules governing immunization against diseases deemed to be dangerous to the public health, to be required of children attending public, private, home or parochial schools in the state. NMSA 1978, § 24-5-1.
3. A public rule hearing concerning the proposed amendments was held via the Microsoft Teams online video conferencing platform on July 7, 2023.
4. In accordance with the Department of Health Act at NMSA 1978, Section 9-7-6(E), notice of the public hearing for the proposed rule amendments was published in the Albuquerque

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Journal newspaper on May 31, 2023, as more fully described in the Affidavit at Exhibit 3 (Affidavit of Publication, Abq. Journal).

5. In accordance with NMSA 1978, Section 14-4-5.2, notice of the public hearing for the proposed rule amendments was also published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on May 31, 2023, as more fully described in the Affidavit at Exhibit 4 (Affidavit of Publication in the New Mexico Register).

6. Notice of the rulemaking was also provided to the public pursuant to NMSA 1978, Section 14-4-5.2, as more fully described in the Affidavit at Exhibit 5 (Affidavit of Notice to the Public).

7. By a letter dated July 3, 2023, the Cabinet Secretary, Patrick M. Allen, designated Mr. Jared D. Najjar, Esq. to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding the proposed rule amendments.

8. Members of the public were afforded an opportunity to comment on the proposed rules at the hearing, and in writing prior to the hearing.

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; and the Secretary hereby adopts and incorporates all of the findings and recommendations of the Hearing Officer that are stated in Hearing Officer's Report, issued by the Hearing Officer on August 2, 2023.

10. The Cabinet Secretary finds that the amendments are in harmony with the agency's express statutory authorities and/or spring from those powers that may fairly be implied therefrom, and that the amendments are consistent with the statutory purposes of the Department of Health.

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Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 106 (internal citations omitted).

11. The Acting Cabinet Secretary finds that the rule amendments fall within the scope of the rulemaking proceeding, that they 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 final plan. *See* 1.24.25.14(C) NMAC; *see also* N.M. Att’y Gen. Op. 87-59 (1987) (*citing BASF Wyandotte Corp. v. Costle*, 598 F.2d 637, 642 (1st Cir. 1979)).

12. The purpose of the amendments is as follows, and as detailed in the Notice of Public Hearing at Exhibit 2:

- a) Expand the list of medical practitioners who may issue a certificate or affidavit attesting that a required immunization would seriously endanger the life or health of a child, in accordance with a recent statutory amendment. The healthcare professionals who are qualified to issue an exemption certificate or affidavit are expanded from a “duly licensed physician”, to “a licensed physician, a physician assistant or a certified nurse practitioner”;
- b) Include new definitions for “physician assistance” and “certified nurse practitioner”, and make certain edits to existing definitions;
- c) Change certain existing references to the Immunization Program Manager, to Immunization Program staff;
- d) Expand the exemption approval period by 3 months, from nine months to one year; and
- e) Remove provisions authorizing the agency to provide a signed copy of a request for exemption, and denial of an exemption request, to the administrative authority of a school, pre-school, or daycare center at which the affected child has been conditionally enrolled.

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13. The Cabinet Secretary finds that the proposed rule amendments are appropriate and consistent with authorizing laws; and for each of the reasons stated, the rule amendments, as identified at Exhibit 1, are hereby adopted.

NEW MEXICO DEPARTMENT OF HEALTH

DocuSigned by:

Patrick Allen

Aug 15, 2023 | 11:26 AM MDT

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Patrick M. Allen, Cabinet Secretary

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This is an amendment to 7.5.3 NMAC, Sections 6, 7, 8, and 9 effective 8/29/2023.

7.5.3.6 OBJECTIVE: The objective is to establish standards and procedures for obtaining exemptions to required immunizations as allowed by Section 24-5-3 NMSA 1978; specifically for children whose:

A. ~~[duly licensed physician]~~ licensed physician, a physician assistant, or a certified nurse practitioner provides a certificate stating that any of the required immunizations would seriously endanger the life or health of the child; or

B. parent or legal guardian attests via affidavit or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

C. parent or legal guardian attests via affidavit or written affirmation that their religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent. [7.5.3.6 NMAC - Rp, 7 NMAC 5.3.6, 11/27/2013; A, 8/29/2023]

7.5.3.7 DEFINITIONS:

A. "ACIP" means advisory committee on immunization practice.

B. "Administrative authority" means the superintendent, principal, or the designee of such person.

C. "Certified nurse practitioner" means a registered nurse licensed by the New Mexico board of nursing for advanced practice as a certified nurse practitioner.

~~[C.]~~ **D.** "Denial" means a denial of a request for exemption from immunizations.

~~[D.]~~ **E.** "Department" means the department of health.

~~[E.]~~ **F.** "Licensed physician" means a physician licensed by the New Mexico board of medicine to practice medicine or osteopathic medicine.

~~[F.]~~ **G.** "NMSIIS" means the New Mexico Statewide Immunization Information System; a secured, confidential, population-based, computerized registry for recording vaccination information established pursuant to Sections 24-5-7 through 24-5-15 NMSA 1978.

H. "Physician assistant" means a health care practitioner licensed by the New Mexico board of medicine to practice as a physician assistant and to provide services to patients with the supervision of or in collaboration with a licensed physician.

~~[G.]~~ **I.** "Public health division" means a division of the department of health within which the immunization program is located.

~~[H.]~~ **J.** "Required immunizations" means those immunizations against diseases deemed to be dangerous to the public health by the public health division, and set forth in its immunization requirements, which are within recommendations of the ACIP.

~~[I.]~~ **K.** "Satisfactory evidence of commencement of immunization" means satisfactory evidence of a person having begun the process of immunizations, such as a certificate, or record signed by a ~~[duly]~~ licensed physician or other recognized public or private health provider ~~[facility]~~ stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule.

~~[J.]~~ **L.** "Satisfactory evidence of immunization" means a statement, certificate, or record signed by a licensed physician or other recognized licensed health provider stating that the required immunizations have been given to the person or record of receipt of immunization in the NMSIIS registry.

~~[K.]~~ **M.** "Secretary" means the secretary for the department of health.

[7.5.3.7 NMAC - Rp, 7 NMAC 5.3.7, 11/27/2013; A, 8/29/2023]

7.5.3.8 REQUIREMENTS FOR APPROVAL OF EXEMPTIONS FROM IMMUNIZATION:

A. Any minor child through his parent or guardian may file a request for exemption from required immunization with the director of the public health division by providing the following:

(1) certificate or affidavit from a ~~[duly licensed physician]~~ licensed physician, a physician assistant, or a certified nurse practitioner attesting that any of the required immunizations would seriously endanger the life or health of the child; or

(2) an affidavit or written affirmation from an officer of a recognized religious denomination stating that the parents or guardians are bona fide members of the recognized denomination, whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(3) an affidavit or written affirmation by a parent or guardian whose religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agents.

2023 AUG 17 PM 4:07

B. The original request for approval of any exemptions from immunization must be mailed to the department of health, public health division, immunization program. The address is P.O. Box 26110, Suite S-1250, Santa Fe, NM, 87502. Request forms can be found at the immunization program offices 1190 St. Francis Drive, Suite South 1250 or on the program's website.

C. Within 60 days of receipt of a request for exemption from immunization, the department of health immunization program ~~manager~~ staff shall review the request to determine whether the certificate has been duly completed. Incomplete requests shall be returned to the requester with information regarding what elements are missing.

D. The department of health immunization program ~~manager~~ staff shall determine approval status of all requests for exemption:

(1) exemption requests shall be approved for a ~~nine-month~~ one-year period indicated by the public health division director or designee;

(2) in the case of approval of a request for exemption, an approved, signed copy of the request shall be provided to the parents or guardian of the child ~~[and to the administrative authority of the school or director of the pre-school or childcare center at which the child has been conditionally enrolled];~~

(3) in the case of a denial, the department of health immunization program staff shall state the reasons for denial in a letter of notification to the parents or guardian of the child ~~[and to the administrative authority of the school or director of the pre-school or childcare center at which the child has been conditionally enrolled].~~ The notice to the parents or guardians shall also include information about the review process in 7.5.3.9 NMAC.

[7.5.3.8 NMAC - Rp, 7 NMAC 5.3.8, 11/27/2013; A, 8/29/2023]

7.5.3.9 REVIEW CRITERIA:

A. The department of health immunization program ~~manager~~ staff will consider the requirements and allowances of the law and the completeness and clarity of the requests for exemption in his or her review. Written criteria for review of exemption from immunization shall be available on the department of health website, included in documents required for submission of immunization exemptions, and provided upon request made to the department.

B. Requests for exemption based on a certificate or affidavit from a ~~[duly licensed physician]~~ licensed physician, a physician assistant, or a certified nurse practitioner will be reviewed for the following:

(1) an original document signed by a ~~[duly licensed doctor of medicine or doctor of osteopathic medicine]~~ licensed physician, a physician assistant, or a certified nurse practitioner, which

(2) contains a statement that immunizations would seriously endanger the health of the child.

C. Requests for religious exemption based on an affidavit or written affirmation from an officer of a religious denomination will be reviewed for the following:

(1) an original document signed by an officer of the denomination, which

(2) contains a statement affirming that the parent or guardian of the child are members of the religious denomination; and

(3) that the religious teachings of the denomination require reliance on prayer or spiritual means alone for healing.

D. Requests for exemption based on an affidavit or written affirmation from a parent will be reviewed for the following:

(1) an original, signed, complete, properly notarized form, which

(2) contains a statement of affirmation from the parent or guardian that their personal religious belief, or jointly-held religious belief does not permit immunization of their child.

[7.5.3.9 NMAC - Rp, 7 NMAC 5.3.9, 11/27/2013; A, 8/29/2023]