

NMAC

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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 Dept. of Health is made in accordance with the following authorities: Sections 9-7-6, 24-1-2, 24-1-3, 24-1-5, 14-4-5.6 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.

The findings in support of this rule adoption are as stated in the attached letter from Cabinet Secretary Patrick Allen dated January 17, 2024, 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:

New Mexico Dept. of Health Acting General Counsel

Signature: (BLACK ink only OR Digital Signature)

Date signed:

Christopher
Woodward

Digitally signed by
Christopher Woodward
Date: 2024.01.17 15:45:37
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1/17/2024

This is an amendment to 7.30.13 NMAC, Sections 7, 9, 24 & 29 effective, 1/30//2024.

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7.30.13.7 DEFINITIONS:

— **A.** — **“Administrator”** means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the crisis triage center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the CTC and all of the services provided at the CTC including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.

— **B.** — **“Advanced practice registered nurse”** means a registered nurse that includes a certified nurse practitioner, or a clinical nurse specialist as defined and licensed under the Nursing Practice Act, as amended, and related regulations, and is currently in good standing.

— **C.** — **“Applicant”** means the individual or legal entity that applies for a CTC license to provide services in a particular facility. If the applicant is a legal entity, the individual signing the license application on behalf of the legal entity must have written legal authority from the legal entity to act on its behalf and execute the application. The license applicant must be the legal owner of the entity providing services, but not necessarily the facility.

— **D.** — **“Basic life support” (BLS)** means training and current certification in adult cardiopulmonary resuscitation equivalent to American heart association class C basic life support and in emergency treatment of a victim of cardiac or respiratory arrest through cardiopulmonary resuscitation and emergency cardiac care.

— **E.** — **“Caregivers criminal history screen”** means pursuant to the criminal history screening for Caregivers Act, Section 29-17-1 through Section 29-17-5 NMSA 1978, the process for health facilities and medicaid home and community-based waiver providers to complete a caregiver criminal history screening for all caregivers no later than 20 calendar days after the employment hire date. The screening or background check includes the submission of fingerprints required for obtaining state and federal criminal history used to conduct the fitness determination. The caregiver’s criminal history screening program receives and processes background check applications for criminal history screenings from care providers in the state of New Mexico. Caregivers may be prohibited from employment if the caregiver has a disqualifying condition.

— **F.** — **“Chemical restraint”** means a drug or medication when it is used as a restriction to manage a client’s behavior or restrict a client’s freedom of movement and is not a standard treatment or dosage for a client’s condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

— **G.** — **“CLIA”** means clinical laboratory improvement amendments of 1988 as amended.

— **H.** — **“Client”** means any person who receives care at a crisis triage center.

— **I.** — **“Compliance”** means the CTC’s adherence to these regulations, as well as all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the CTC license.

— **J.** — **“Crisis stabilization services”** means behavioral health services that are provided to help the client return his baseline level of functioning before the crisis.

— **K.** — **“CYFD”** means the New Mexico children youth and families department.

— **L.** — **“CYFD criminal records and background checks”** means pursuant to the Criminal Offender Employment Act, Section 28-2-1 to Section 28-2-6 NMSA 1978, the New Mexico Children’s and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to Section 32A-15-4 NMSA 1978, amended, and Section 8.8.3 NMAC, the process of conducting a nationwide criminal history records check, background check and employment history verification on all operators, staff and employees and prospective operators, staff and employees of treatment facilities and programs with the objective of protecting children/youth and promoting the children’s/youth’s safety and welfare while receiving service from the facilities and programs. The process shall include submission of electronic fingerprints for those individuals to the department of public safety and the federal bureau of investigation for the purpose of conducting a criminal history and background check; identification of information in applicants’ background bearing on whether they are eligible to provide services; a screening of CYFD’s information databases in New Mexico and in each state where the applicant resided during the preceding five years; and any other reasonably reliable information about an applicant in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply.

— **M.** — **“Deficiency”** means a violation of or failure to comply with any provision(s) of these regulations.

— **N.** — **“Department”** means the New Mexico department of health.

— **O.** — **“Employee”** means any person who works at the CTC and is a direct hire of the owner entity or management company, if applicable.

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- _____ **P.** ——— “**Facility**” means the physical premises, building(s) and equipment where the crisis, diagnosis, and treatment services are provided, whether owned or leased and which is licensed pursuant to these regulations.
- _____ **Q.** ——— “**High risk behavior**” means behaviors that place clients, staff or visitors’ physical and mental health and safety at risk.
- _____ **R.** ——— “**HSD**” means the NM human services department.
- _____ **S.** ——— “**Incident**” means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.
- _____ **T.** ——— “**Incident management system**” means the written policies and procedures adopted or developed by the CTC for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.
- _____ **U.** ——— “**Incident report form**” means the reporting format issued by the department for the reporting of incidents or complaints.
- _____ **V.** ——— “**Level III, 7-D: Medically Monitored Inpatient Detoxification**” means the types of detoxification services described by American Society of Addiction Medicine (ASAM) in its *Patient Placement Criteria, Second Edition, Revised (PPC-2R)* Level III & D includes 24-hour medically supervised detoxification services requiring 24-hour nursing care and physician visits as necessary, unlikely to complete detox, without medical, nursing monitoring and more intensive detoxification services.
- _____ **W.** ——— “**Licensee**” means the person(s) or legal entity that operates the CTC and in whose name the CTC license has been issued and who is legally responsible for compliance with these regulations.
- _____ **X.** ——— “**Licensing authority**” means the New Mexico department of health.
- _____ **Y.** ——— “**Licensed mental health professional**” means a psychologist, social worker, physician, psychiatrist, physician assistant, registered nurse, practical nurse, advanced practice registered nurse, each shall have behavioral health training and shall be licensed in the state of New Mexico.
- _____ **Z.** ——— “**Management company**” means the legal entity that manages the CTC program, if different from the legal owner of the facility.
- _____ **AA.** ——— “**NFPA**” means the national fire protection association which sets codes and standards for fire and life safety. NFPA 101 and related standards, current edition as required by the department.
- _____ **BB.** ——— “**NMSA**” means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.
- _____ **CC.** ——— “**Outpatient services**” means immediate crisis stabilization services provided to clients who are not admitted to the residential setting. Outpatient crisis stabilization services are not ongoing behavioral health treatment services.
- _____ **DD.** ——— “**Physical restraint**” means the use of physical force, consistent with State and Federal laws and regulations, without the use of any device or material that restricts the free movement of all or a portion of a body, but does not include: briefly holding a client in order to calm or comfort the client; holding a client’s hand or arm to escort the client safely from one area to another; or intervening in a physical fight.
- _____ **EE.** ——— “**Physician**” means a licensed individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Section 61-6-1 to Section 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Section 61-10-1 to Section 61-10-22 NMSA 1978, as amended, and related regulations.
- _____ **FF.** ——— “**Physician’s assistant**” means an individual, currently in good standing, who is licensed and authorized to provide services to patients under the supervision and direction of a licensed physician under the Physician Assistant Act, Section 61-6-7 to Section 61-6-10 NMSA 1978, as amended and related regulations, or is authorized and licensed to provide services to patients under the supervision and direction of a licensed osteopathic physician under the Osteopathic Physicians’ Assistants Act, Section 61-10A-1 to Section 61-10-7 NMSA 1978 as amended, and related regulations.
- _____ **GG.** ——— “**Plan of correction**” (POC) means the plan submitted by the licensee or its representative(s) addressing how and when deficiencies identified through a survey or investigation will be corrected. A plan of correction is a public record once it has been approved by the regulatory authority and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a CTC license, including to prove licensee compliance violations or failures.
- _____ **HH.** ——— “**Policy**” means a written statement that guides and determines present and future CTC decisions and actions.
- _____ **II.** ——— “**Premises**” means all of the CTC including buildings, grounds and equipment.
- _____ **JJ.** ——— “**Primary source verification**” means the act of obtaining credentials directly from the original or primary source(s).
- _____ **KK.** ——— “**Procedure**” means the action(s) that must be taken in order to implement a written policy.

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- LL. “Quality assurance” means the CTC’s on-going comprehensive self-assessment of compliance with these regulations and other applicable statutes and regulations.
- MM. “Quality committee” means a committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, and psychiatrist. Other committee members may be specified by rules governing payor requirements. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients.
- NN. “Quality improvement system” means systematic and continuous actions that lead to measurable improvement in services and focus on reduction and stabilization of crises for clients.
- OO. “Registered nurse” means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Section 61-3-1 to Section 61-3-30 NMSA 1978, as amended, and related regulations.
- PP. “Residential services” means any crisis stabilization services provided to a client admitted to the residential setting.
- QQ. “Restraint clinician” means a New Mexico licensed medical doctor, doctor of osteopathy, advanced practice registered nurse, clinical nurse specialist, physician assistant or doctoral level psychologist (Psy.D., Ph.D., or E.D.), who is trained in the use of emergency safety interventions.
- RR. “Sanitize clothes” means the use of water at a temperature of 212 degrees or use of a disinfectant agent to wash clothes.
- SS. “Scope of practice” means the procedures, actions, and processes that a healthcare practitioner is permitted to undertake under the terms of their professional license. The scope of practice is limited to that which the applicable law allows for specific education, training, experience and demonstrated competency.
- TT. “Seclusion” means the involuntary confinement of a client alone in a room where the client is physically prevented from leaving.
- UU. “Short-term residential stay” means the limit of a client’s stay is eight days for the residential setting.
- VV. “Staff” means any person who works at the CTC, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the CTC.
- WW. “U/L approved” means approved for safety by the national underwriter’s laboratory.
- XX. “Violation” means all actions or procedures by the CTC or licensee that are not in compliance with these regulations and all other applicable state and federal statutes and regulations.
- YY. “Variance” means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a period that expires upon remodel of the CTC or change of ownership, providing the variance does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A variance can be renewed upon approval of the licensing authority. A variance may be revoked at the discretion of the licensing authority due to changes in state or federal regulations and statutes, or change of circumstances that may jeopardize the health, safety or welfare of clients.
- ZZ. “Waiver” means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a limited and specified time period not to exceed the duration of the license, providing the waiver does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A waiver can be renewed on an annual basis upon approval of the licensing authority. A waiver may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of clients.
- AAA. “Withdrawal management” means the immediate psychological stabilization, diagnosis and treatment of a client who is intoxicated, incapacitated, or experiencing withdrawal of alcohol or drugs.
- BBB. “Youth” means residents 14 years of age and older up to age 18.
- CCC. “Youth Staff” means a person who has contact with youth in a licensed facility and includes the owner, operator or director of a program, volunteers, full-time, part-time, and contract employees.]
- A. **Definitions beginning with “A”:**
- (1) “Administrator” means the person who is delegated the administrative responsibility for interpreting, implementing, and applying policies and procedures at the crisis triage center. The administrator is responsible for establishing and maintaining safe and effective management, control and operation of the CTC and all of the services provided at the CTC including fiscal management. The administrator must meet the minimum administrator qualifications in these regulations.

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(2) “Advanced practice registered nurse” means a registered nurse that includes a certified nurse practitioner, or a clinical nurse specialist as defined and licensed under the Nursing Practice Act, as amended, and related regulations, and is currently in good standing.

(3) “Applicant” means the individual or legal entity that applies for a CTC license to provide services in a particular facility. If the applicant is a legal entity, the individual signing the license application on behalf of the legal entity must have written legal authority from the legal entity to act on its behalf and execute the application. The license applicant must be the legal owner of the entity providing services, but not necessarily the facility.

B. Definitions beginning with “B”: “Basic life support” (BLS) means training and current certification in adult cardiopulmonary resuscitation equivalent to American heart association class C basic life support and in emergency treatment of a victim of cardiac or respiratory arrest through cardiopulmonary resuscitation and emergency cardiac care.

C. Definitions beginning with “C”:

(1) “Caregivers criminal history screen” means pursuant to the criminal history screening for Caregivers Act, Section 29-17-1 through Section 29-17-5 NMSA 1978, the process for health facilities and medicaid home and community-based waiver providers to complete a caregiver criminal history screening for all caregivers no later than 20 calendar days after the employment hire date. The screening or background check includes the submission of fingerprints required for obtaining state and federal criminal history used to conduct the fitness determination. The caregiver’s criminal history screening program receives and processes background check applications for criminal history screenings from care providers in the state of New Mexico. Caregivers may be prohibited from employment if the caregiver has a disqualifying condition.

(2) “Chemical restraint” means a drug or medication when it is used as a restriction to manage a client’s behavior or restrict a client’s freedom of movement and is not a standard treatment or dosage for a client’s condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.

(3) “CLIA” means clinical laboratory improvement amendments of 1988 as amended.

(4) “Client” means any person who receives care at a crisis triage center.

(5) “Compliance” means the CTC’s adherence to these regulations, as well as all other applicable state and federal statutes and regulations. Compliance violations may result in sanctions, civil monetary penalties and revocation or suspension of the CTC license.

(6) “Crisis stabilization services” means behavioral health services that are provided to help the client return his baseline level of functioning before the crisis.

(7) “Crisis triage center” means a health facility that:

(a) is licensed by the department of health; and

(b) provides stabilization of behavioral health crises and may include residential and nonresidential stabilization.

(8) “CYFD” means the New Mexico children youth and families department.

(9) “CYFD criminal records and background checks” means pursuant to the Criminal Offender Employment Act, Section 28-2-1 to Section 28-2-6 NMSA 1978, the New Mexico Children’s and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to Section 32A-15-4 NMSA 1978, amended, and 8.8.3 NMAC, the process of conducting a nationwide criminal history records check, background check and employment history verification on all operators, staff and employees and prospective operators, staff and employees of treatment facilities and programs with the objective of protecting children/youth and promoting the children’s/youth’s safety and welfare while receiving service from the facilities and programs. The process shall include submission of electronic fingerprints for those individuals to the department of public safety and the federal bureau of investigation for the purpose of conducting a criminal history and background check; identification of information in applicants’ background bearing on whether they are eligible to provide services; a screening of CYFD’s information databases in New Mexico and in each state where the applicant resided during the preceding five years; and any other reasonably reliable information about an applicant in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply.

D. Definitions beginning with “D”:

(1) “Deficiency” means a violation of or failure to comply with any provision(s) of these regulations.

(2) “Department” means the New Mexico department of health.

E. Definitions beginning with “E”: “Employee” means any person who works at the CTC and is a direct hire of the owner entity or management company, if applicable.

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F. Definitions beginning with “F”: **“Facility”** means the physical premises, building(s) and equipment where the crisis triage center services are provided, whether owned or leased and which is licensed pursuant to these regulations.

G. Definitions beginning with “G”: [RESERVED]

H. Definitions beginning with “H”:

(1) **“High risk behavior”** means behaviors that place clients, staff or visitors’ physical and mental health and safety at risk.

(2) **“HSD”** means the New Mexico human services department.

I. Definitions beginning with “I”:

(1) **“Incident”** means any known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(2) **“Incident management system”** means the written policies and procedures adopted or developed by the CTC for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

(3) **“Incident report form”** means the reporting format issued by the department for the reporting of incidents or complaints.

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“Level III.7-D: Medically monitored inpatient detoxification”** means the types of detoxification services described by American Society of Addiction Medicine (ASAM) in its *Patient Placement Criteria, Second Edition, Revised* (PPC-2R) Level III &-D includes 24-hour medically supervised detoxification services requiring 24-hour nursing care and physician visits as necessary, unlikely to complete detox, without medical, nursing monitoring and more intensive detoxification services.

(2) **“Licensee”** means the person(s) or legal entity that operates the CTC and in whose name the CTC license has been issued and who is legally responsible for compliance with these regulations.

(3) **“Licensing authority”** means the New Mexico department of health.

(4) **“Licensed mental health professional”** means a psychologist, social worker, physician, psychiatrist, physician assistant, registered nurse, practical nurse, advanced practice registered nurse, each shall have behavioral health training and shall be licensed in the state of New Mexico.

M. Definitions beginning with “M”: **“Management company”** means the legal entity that manages the CTC program, if different from the legal owner of the facility.

N. Definitions beginning with “N”:

(1) **“NFPA”** means the national fire protection association which sets codes and standards for fire and life safety. NFPA 101 and related standards, current edition as required by the department.

(2) **“NMSA”** means the New Mexico Statutes Annotated 1978 compilation and all subsequent amendments, revisions and compilations.

O. Definitions beginning with “O”:

(1) **“Onsite medical professional”** means in this regulation a registered nurse, emergency medical service provider, emergency medical technician, licensed practical nurse, medical assistant, mental health technician, and certified nurse assistant.

(2) **“Outpatient services”** means immediate crisis stabilization services provided to clients who are not admitted to the residential setting. Outpatient crisis stabilization services are not ongoing behavioral health treatment services.

P. Definitions beginning with “P”:

(1) **“Physical restraint”** means the use of physical force, consistent with state and federal laws and regulations, without the use of any device or material that restricts the free movement of all or a portion of a body, but does not include: briefly holding a client in order to calm or comfort the client; holding a client's hand or arm to escort the client safely from one area to another; or intervening in a physical fight.

(2) **“Physician”** means a licensed individual, currently in good standing, authorized to practice medicine as defined and licensed under the New Mexico Medical Practice Act, Section 61-6-1 to Section 61-6-34 NMSA 1978, as amended, and related regulations or osteopathic medicine as defined and licensed under Section 61-10-1 to Section 61-10-22 NMSA 1978, as amended, and related regulations.

(3) **“Physician's assistant”** means an individual, currently in good standing, who is licensed and authorized to provide services to patients under the supervision and direction of a licensed physician under the Physician Assistant Act, Section 61-6-7 to Section 61-6-10 NMSA 1978, as amended and related regulations, or is

authorized and licensed to provide services to patients under the supervision and direction of a licensed osteopathic physician under the Osteopathic Physicians' Assistants Act, Section 61-10A-1 to Section 61-10-7 NMSA 1978 as amended, and related regulations.

(4) **“Plan of correction”** (POC) means the plan submitted by the licensee or its representative(s) addressing how and when deficiencies identified through a survey or investigation will be corrected. A plan of correction is a public record once it has been approved by the regulatory authority and is admissible for all purposes in any adjudicatory hearing and all subsequent appeals relating to a CTC license, including to prove licensee compliance violations or failures.

(5) **“Policy”** means a written statement that guides and determines present and future CTC decisions and actions.

(6) **“Premises”** means all of the CTC including buildings, grounds and equipment.

(7) **“Primary source verification”** means the act of obtaining credentials directly from the original or primary source(s).

(8) **“Procedure”** means the action(s) that must be taken in order to implement a written policy.

Q. Definitions beginning with “Q”:

(1) **“Quality assurance”** means the CTC’s on-going comprehensive self-assessment of compliance with these regulations and other applicable statutes and regulations.

(2) **“Quality committee”** means a committee comprised at a minimum of the administrator, clinical director, director of nursing, licensed mental health professional, and psychiatrist. Other committee members may be specified by rules governing payor requirements. The committee shall establish and implement quality assurance and quality improvement systems that monitor and promote quality care to clients.

(3) **“Quality improvement system”** means systematic and continuous actions that lead to measurable improvement in services and focus on reduction and stabilization of crises for clients.

R. Definitions beginning with “R”:

(1) **“Registered nurse”** means an individual, currently in good standing, who is licensed and authorized to provide nursing services under the Nursing Practice Act, Section 61-3-1 to Section 61-3-30 NMSA 1978, as amended, and related regulations.

(2) **“Residential services”** means any crisis stabilization services provided to a client admitted to the residential setting.

(3) **“Restraint clinician”** means a New Mexico licensed medical doctor, doctor of osteopathy, advanced practice registered nurse, clinical nurse specialist, physician assistant or doctoral level psychologist (Psy.D., Ph.D., or E.D.), who is trained in the use of emergency safety interventions.

S. Definitions beginning with “S”:

(1) **“Sanitize clothes”** means the use of water at a temperature of 212 degrees or use of a disinfectant agent to wash clothes.

(2) **“Scope of practice”** means the procedures, actions, and processes that a healthcare practitioner is permitted to undertake under the terms of their professional license. The scope of practice is limited to that which the applicable law allows for specific education, training, experience and demonstrated competency.

(3) **“Seclusion”** means the involuntary confinement of a client alone in a room where the client is physically prevented from leaving.

(4) **“Short-term residential stay”** means the limit of a client’s stay is eight days for the residential setting.

(5) **“Staff”** means any person who works at the CTC, and includes employees, contracted persons, independent contractors and volunteers who perform work or provide goods and services at the CTC.

T. Definitions beginning with “T”: [RESERVED]

U. Definitions beginning with “U”: **“U/L approved”** means approved for safety by the national underwriter’s laboratory.

V. Definitions beginning with “V”:

(1) **“Variance”** means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a period that expires upon remodel of the CTC or change of ownership, providing the variance does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A variance can be renewed upon approval of the licensing authority. A variance may be revoked at the discretion of the licensing authority due to changes in state or federal regulations and statutes, or change of circumstances that may jeopardize the health, safety or welfare of clients.

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(2) **“Violation”** means all actions or procedures by the CTC or licensee that are not in compliance with these regulations and all other applicable state and federal statutes and regulations.

W. Definitions beginning with “W”:

(1) **“Waiver”** means a written decision, made at the licensing authority’s sole discretion, to allow a CTC to deviate from a portion(s) or a provision(s) of these regulations for a limited and specified time period not to exceed the duration of the license, providing the waiver does not jeopardize the health, safety or welfare of the CTC’s clients, visitors and staff and is not in violation of other applicable state and federal statutes and regulations. A waiver can be renewed on an annual basis upon approval of the licensing authority. A waiver may be revoked at the discretion of the licensing authority due to changes in state or federal regulations, or change of circumstances that may jeopardize the health, safety or welfare of clients.

(2) **“Withdrawal management”** means the immediate psychological stabilization, diagnosis and treatment of a client who is intoxicated, incapacitated, or experiencing withdrawal of alcohol or drugs.

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”:

(1) **“Youth”** means residents 14 years of age and older up to age 18.

(2) **“Youth staff”** means a person who has contact with youth in a licensed facility and includes the owner, operator or director of a program, volunteers, full-time, part-time, and contract employees.

Z. Definitions beginning with “Z”: [RESERVED]

[7.30.13.7 NMAC - N, 10/30/2018; A/E, 8/3/2023; A, 1/30//2024]

7.30.13.9 SCOPE OF SERVICES:

A. General scope of services: These regulations apply to crisis triage centers (CTC) which are health facilities offering youth and adult outpatient and residential care services. A CTC provides stabilization of behavioral health crises as outpatient stabilization or short-term residential stabilization in a residential rather than institutional setting, which may provide an alternative to hospitalization or incarceration. The CTC services may vary in array of services offered to meet the specific needs of different communities in New Mexico. A CTC may provide limited detoxification services but is differentiated from a detoxification center in that it does treat individuals who require treatment beyond Level III.7-D: Medically Monitored Inpatient Detoxification. The CTC provides emergency behavioral health triage and evaluation [~~and on a voluntary basis~~]. The CTC may serve individuals 14 years of age or older who meet admission criteria. The CTC shall offer services to manage individuals at high risk of suicide or intentional self-harm. The CTC shall not refuse service to any individual who meets criteria for services.

B. Type of services:

(1) a CTC structured for less than 24-hour stays providing only outpatient withdrawal management or other stabilization services;

(2) a CTC providing outpatient and residential crisis stabilization services; and

(3) a CTC providing residential crisis stabilization services.

C. Limitations on scope of services:

(1) the CTC may accept voluntary admissions, individuals who are voluntarily seeking treatment, involuntary admissions and individuals who are not voluntarily seeking treatment [~~shall not accept involuntary commitments or individuals who are not voluntarily seeking treatment~~];

(2) the CTC shall not provide detoxification services beyond Level III.7-D: Medically Monitored Inpatient Detoxification services;

(3) the CTC shall not provide medical care not related to crisis triage intervention services beyond basic medical care of first aid and CPR;

(4) the CTC shall not provide residential services in excess of 14 calendar days, unless an involuntary admission is accepted and the CTC shall comply with all hearing and treatment provisions of Section 43-1-1 et al. NMSA;

(5) the CTC shall not provide ongoing outpatient behavioral health treatment;

(6) the CTC shall not exceed the capacity for which the CTC is licensed;

(7) a CTC with both adult and youth occupants must locate youth rooms and restrooms in a unit or wing that is physically separated from the adult facilities;

(8) A CTC shall not administer emergency psychotropic medications as described in Subsection M of Section 43-1-15 NMSA 1978 if admitting only voluntary admissions. Any use of emergency psychotropic medications for involuntary admissions shall only be done in accordance with Subsection M of Section 43-1-15 NMSA 1978.

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D. License required:

- (1) a CTC shall not be operated without a license issued by the department;
 - (2) any facility providing the services described in these regulations on the effective date of these regulations, shall apply for a CTC license within 180 days;
 - (3) a CTC licensed under these regulations shall not assert, represent, offer, provide or imply that the CTC is or may render care or services other than the services it is permitted to render under these regulations and within the scope of all applicable professional license(s);
 - (4) if an unlicensed CTC is found to be providing services for which a license is required under these regulations, the secretary may issue a cease-and-desist order, to protect human health or safety or welfare. The unlicensed facility may request a hearing that shall be held in the manner provided under these regulations and all other applicable regulations.
- [7.30.13.9 NMAC - N, 10/30/2018; A/E, 8/3/2023; A, 1/30//2024]

7.30.13.24 RISK ASSESSMENT:

- A.** The CTC shall develop policies and procedures addressing risk assessment and mitigation including, but not limited to: assessments, crisis intervention plans, treatment, approaches to supporting, engaging, and problem solving, staffing, levels of observation and documentation. The policies and procedures must prohibit seclusion and address physical restraint, if used, and the CTC's response to clients that present with imminent risk to self or others, assaultive and other high-risk behaviors.
- B.** Use of seclusion is prohibited unless the facility is joint commission accredited, and unless the facility has obtained a prior waiver from the department authorizing the facility to use seclusion. The use of physical restraint or seclusion must be consistent with federal and state laws and regulation (e.g., Section 32A-6A-10 NMSA 1978, concerning physical restraint and seclusion of minors).
- C.** Physical restraint, as defined in these regulations, shall be used only as an emergency safety intervention of last resort to ensure the physical safety of the client and others, and shall be used only after less intrusive or restrictive interventions have been determined to be ineffective.
- D.** Physical restraint shall not be used as punishment or for the convenience of staff.
- E.** Physical restraint is implemented only by staff who have been trained and certified by a CYFD or HSD recognized program in the prevention and use of physical restraint. This training emphasizes de-escalation techniques and alternatives to physical contact with clients as a means of managing behavior and allows only the use of reasonable force necessary to protect the client or other person from imminent and serious physical harm. Clients and youth do not participate in the physical restraint of other clients and youth.
- F.** Crisis intervention plans must document the use of physical restraints and address: the client's medical condition(s); the role of the client's history of trauma in their behavioral patterns; specific suggestions from the client regarding prevention of future physical interventions.
- G.** All clients physically restrained shall be afforded full privacy away from other clients receiving services.
- H.** A chemical restraint shall not be utilized under any circumstance. A chemical restraint is a drug or medication when it is used as a restriction to manage the client's behavior or restrict the client's freedom of movement, and is not a standard treatment or dosage for the client's condition. If a drug or medication is used as a standard treatment to address the assessed current symptoms and needs of a client with a particular medical or psychiatric condition, its use is not considered a chemical restraint.
- I.** Mechanical restraint shall not be utilized under any circumstances unless the facility is joint commission accredited, and unless the facility has obtained a prior waiver from the department authorizing it to utilize mechanical restraint. Mechanical restraint is the use of a mechanical device(s) to physically restrict a client's freedom of movement, performance of physical activity or normal access to ~~his or her~~ their body and is distinct from physical restraint. The use of mechanical restraint must be consistent with federal and state laws and regulation (e.g., Section 32A-6A-10 NMSA 1978, concerning mechanical restraint of minors).
- J.** The staff implementing the physical restraint shall conduct a debriefing, with the client present if possible, immediately following the incident to include the identification of the precipitating event, unsafe behavior and preventive measures with the intent of reducing or eliminating the need for future physical restraint. The debriefing shall be documented in the client's record.
- K.** The client's crisis intervention plan shall be updated: within 24 hours of admission or prior to discharge, whichever comes first; and following physical restraint use to incorporate the debriefing and changes needed to lessen the chance of the situation reoccurring.
- L.** Each incident of physical restraint shall be documented in the client's record including:

- (1) the less intrusive interventions that were attempted or determined to be inappropriate prior to the incident;
- (2) the precipitating event immediately preceding the behavior that prompted the use of physical restraint;
- (3) the behavior that prompted the use of a physical restraint;
- (4) the names of the mental health professional who observed the behavior that prompted the use of the physical restraint;
- (5) the names of the staff members implementing and monitoring the use of physical restraint; and
- (6) a description of the of the physical restraint incident, including the type and length of the use of physical restraint, the client's behavior during and reaction to the physical restraint and the name of the supervisor informed of the use of physical restraint.

M. Physical restraints orders are issued by a restraint/clinician within one hour of initiation of physical restraint and include documented clinical justification for the use of physical restraint.

(1) if the client has a treatment team physician or advanced practice registered nurse and he or she is available, only he or she may order physical restraint;

(2) if physical restraint is ordered by a restraint clinician, not the client's treatment team physician or advanced practice registered nurse, the restraint clinician will contact the client's treatment team physician or advanced practice registered nurse as soon as possible to inform him or her of the situation requiring the physical restraint, and document in the client's record the date and time the treatment team physician or advanced practice registered nurse was consulted and the information imparted;

(3) if the order for physical restraint is verbal, the verbal order must be received by a restraint/clinician or a New Mexico licensed registered nurse (RN) or practical nurse (LPN). The restraint/ clinician must verify the verbal order in a signed, written form placed in the client's record within 24 hours after the order is issued;

(4) each order for physical restraint must be documented in the client's record and must include:

- (a) the name of the restraint/clinician ordering the physical restraint;
- (b) the date and time the order was obtained;
- (c) the emergency safety intervention ordered, including the length of time;
- (d) the time the emergency safety intervention began and ended;
- (e) the time and results of one-hour assessment(s), if ordered;
- (f) the emergency safety situation that required the client to be physically

restrained; and

(g) the name, title, and credentials of staff involved in the emergency safety intervention.

N. Suicide risk interventions must include the following:

(1) a registered nurse or other licensed mental health professional may initiate suicide precautions and must obtain physician or advanced practice registered nurse order within one hour of initiating the precautions;

(2) modifications or removal of suicide precautions shall require clinical justification determined by an assessment and shall be ordered by a physician or advanced practice registered nurse and documented in the clinical record;

(3) staff and client shall be debriefed immediately following an episode of a suicide attempt or gesture, identifying the circumstances leading up to the suicide attempt or gesture;

(4) an evaluation of the client by a medical, psychiatric or independently licensed mental health provider must be done immediately, or the client must be transferred to a higher level of care immediately. [7.30.13.24 NMAC - N, 10/30/2018; A, 1/30//2024]

7.30.13.29 STAFFING REQUIREMENTS:

A. Minimum staffing requirements:

(1) The CTC shall have an on-site administrator, which can be the same person as the clinical director.

(2) The CTC shall have a full time clinical director appropriately licensed to provide clinical oversight.

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(3) The CTC shall have an RN present on-site 24 hours a day, seven days a week or as long as clients are present in programs that do not offer residential services, to provide direct nursing services. This requirement does not apply to CTCs offering 23 hours or less non-residential services; instead these CTCs may have onsite medical professionals who have access to immediate support and supervision by an RN or a higher-level provider in accordance with Section 24-25-1 et al. NMSA 1978 New Mexico Telehealth Act.

(4) An on-call physician or advanced practice registered nurse shall be available 24 hours a day by phone, and available on-site as needed or through telehealth.

(5) Consultation by a psychiatrist or prescribing psychologist may be provided through telehealth.

(6) The CTC shall maintain sufficient staff including direct care and mental health professionals to provide for supervision and the care of residential and non-residential clients served by the CTC, based on the acuity of client needs.

(7) At least one staff trained in basic cardiac life support (BCLS) and first aid shall be on duty at all times. In addition, one staff trained in the use of the automated external defibrillator (AED) equipment shall also be on duty.

B. Other staff requirements:

(1) The CTC shall ensure that the type and number of professional staff are:

(a) licensed, certified or credentialed in the professional field as required, and practice within the scope of the license;

(b) present in numbers to provide services, supports, care, treatment and supervision to clients as required; and

(c) experienced and competent in the profession they are licensed or practice.

(2) The CTC shall comply with all applicable laws, rules and regulations governing caregivers' criminal history screen requirements and employee abuse registry requirements.

(3) The CTC shall ensure that, within the first sixty days of providing direct care to individuals, all staff, volunteers and contractors having direct contact with clients shall receive required training.

(4) The CTC shall be staffed to ensure the safety of clients when staff are accused of abuse, neglect or exploitation.

(5) In instances of involuntary admission as allowed under amendments to Section 43-1-1 NMSA, Mental Health and Developmental Disabilities Code, adequate staffing must be provided to ensure patient and staff safety, and the CTC must meet medical records requirements for licensure of psychiatric hospitals as set forth, in 7.7.2.40 NMAC.

[7.30.13.29 NMAC - N, 10/30/2018; A/E, 8/3/2023; A, 1/30//2024]

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STATE OF NEW MEXICO
BEFORE THE SECRETARY OF HEALTH

IN THE MATTER OF AMENDMENTS TO 7.30.13 NMAC,
SECTIONS 7, 9, 24, AND 29

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. 7.30.13.7 NMAC (“Definitions”);
2. 7.30.13.9 NMAC (“Scope of Services”);
3. 7.30.13.24 NMAC (“Risk Assessment”); and
4. 7.30.13.29 NMAC (“Staffing Requirements”).

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 authorized to “maintain and enforce rules for the licensure of health facilities”, including Crisis Triage Centers. NMSA 1978, §§ 26-2b-7; 24-2-1(F).
3. An emergency rule was adopted on August 2, 2023; and a public rule hearing concerning the amendments was held via the Cisco Webex online video conferencing platform on December 14, 2023, in accordance with NMSA 1978, § 14-4-5.6, which provides that “[a]n emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process”, and which requires that a permanent rule be adopted within one-hundred and eighty days from the effective date of the emergency rule in order for the rule to continue in effect.

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4. In accordance with NMSA 1978, Section 14-4-5.2, notice of the public hearing for the proposed rule changes was published in the New Mexico Register, the official publication for notices of all rulemaking in New Mexico, on November 7, 2023, as more fully described in the Affidavit at Exhibit 4 (Affidavit of Publication in the New Mexico Register).

5. 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 changes was also published in the Albuquerque Journal, newspaper on November 7, 2023, as more fully described in the Affidavit at Exhibit 3 (Affidavit of Publication, Abq. Journal).

6. Notice of the rulemaking was also provided to the public in accordance with 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 November 27, 2023, the Cabinet Secretary designated Mr. Jared D. Najjar, Esq. to serve as hearing officer for the purpose of conducting the hearing and submitting a recommendation regarding 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 and until 5:00 p.m. on the date of the public 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 January 11, 2024 and received by the Secretary on the same date.

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10. The Cabinet Secretary also adopts certain revisions to Section 7.30.13.21 NMAC that were requested in public comment at the hearing, including specifically, requirements that facilities that seek to engage in seclusion or to utilize mechanical restraint must be accredited by the Joint Commission and must follow applicable state and federal laws. *See* Exhibit 7 (E-mail dated 12/13/23 from the Dona Ana County Crisis Triage Center).

11. The Cabinet Secretary finds that the rule amendments are within the Department of Health's statutory authority.

12. The Cabinet Secretary finds that the rule 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. *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 2003-NMSC-005, ¶ 25, 133 N.M. 97, 106 (internal citations omitted).

13. The 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)).

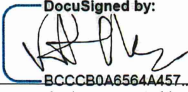
14. The purpose of the amendments is to modify certain licensing requirements for Crisis Triage Centers, as stated in the rule hearing notice and at the rule hearing, and as described herein.

15. The Cabinet Secretary finds that the proposed rule amendments are appropriate and consistent with authorizing laws; and for each of the reasons stated, the attached amendments to 7.30.13, Sections 7, 9, 24, and 29 NMAC, are hereby adopted.

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NEW MEXICO DEPARTMENT OF HEALTH

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Patrick M. Allen, Cabinet Secretary