

**TITLE 7           HEALTH**  
**CHAPTER 9       NURSING HOMES AND INTERMEDIATE CARE FACILITIES**  
**PART 2           REQUIREMENTS FOR LONG TERM CARE FACILITIES**

**7.9.2.1           ISSUING AGENCY:** New Mexico Department of Health, Public Health Division, Health Facility Licensing and Certification Bureau.  
[10-31-96; 7.9.2.1 NMAC – Rn, 7 NMAC 9.2.1, 8-31-00]

**7.9.2.2           SCOPE:**

**A.**       Services for residents shall be provided on a continuing twenty-four (24) hour basis and shall maintain or improve physical, mental and psychosocial well-being under plan of care developed by a physician or other licensed health professional and shall be reviewed and revised based on assessment.

**B.**       All facilities licensed as nursing homes pursuant to Section 24-1-5 (A) NMSA 1978, are subject to all provisions of these regulations.  
[7-1-60, 5-2-89; 7.9.2.2 NMAC – Rn, 7 NMAC 9.2.2, 8-31-00]

**7.9.2.3           STATUTORY AUTHORITY:** The regulations set forth herein are promulgated by the Secretary of the New Mexico Department of Health, pursuant to the general authority granted under Section 9-7-6 (E) of the Department of Health Act, NMSA 1978, as amended; and the authority granted under Sections 24-1-2 (D), 24-1-3 (I) and 24-1-5 of the Public Health Act, NMSA 1978, as amended.  
[7-1-60, 5-2-89; 7.9.2.3 NMAC – Rn, 7 NMAC 9.2.3, 8-31-00]

**7.9.2.4           DURATION:** Permanent  
[10-31-96; 7.9.2.4 NMAC – Rn, 7 NMAC 9.2.4, 8-31-00]

**7.9.2.5           EFFECTIVE DATE:** October 31, 1996, unless a different date is cited at the end of a Section or Paragraph.  
[10-31-96; 7.9.2.5 NMAC – Rn, 7 NMAC 9.2.5, 8-31-00]

**7.9.2.6           OBJECTIVE:**

- A.**       Establish minimum standards for long term care facilities in the State of New Mexico.  
**B.**       Monitor long term care facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the residents or staff.  
**C.**       Encourage the maintenance of long term care facilities that will provide quality services which maintain or improve the health and quality of life to the residents.  
[7-1-60, 7-1-64, 5-2-89; 7.9.2.6 NMAC – Rn, 7 NMAC 9.2.6, 8-31-00]

**7.9.2.7           DEFINITIONS:** For purposes of these regulations the following shall apply:

**A.**       "ABUSE" means any act or failure to act performed intentionally, knowingly, or recklessly that causes or is likely to cause harm to a resident, including but not limited to:

- (1) Physical contact that harms or is likely to harm a resident of a care facility.
- (2) Inappropriate use of physical restraint, isolation, or medication that harms or is likely to harm a resident.
- (3) Inappropriate use of a physical or chemical restraint, medication or isolation as punishment or in conflict with a physicians order.
- (4) Medically inappropriate conduct that causes or is likely to cause physical harm to a resident.
- (5) Medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident.
- (6) An unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

- B.** "AMBULATORY" means able to walk without assistance.
- C.** "APPLICANT" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.
- D.** "DEPARTMENT" means the New Mexico Department of Health.
- E.** "DEVELOPMENTAL DISABILITY" means mental retardation or a related condition, such as cerebral palsy, epilepsy or autism, but excluding mental illness and infirmities of aging, which is:
- (1) Manifested before the individual reaches age twenty-two (22).
  - (2) Likely to continue indefinitely; and
  - (3) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:
    - (a) Self-care;
    - (b) Understanding and use of language;
    - (c) Learning;
    - (d) Mobility;
    - (e) Self-direction;
    - (f) Capacity for independent living; and
    - (g) Economic self-sufficiency.
- F.** "DIETITIAN" means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American Dietetic Association under its requirements in effect on January 17, 1982.
- G.** "DIRECT SUPERVISION" means supervision of an assistant by a supervisor who is present in the same building as the assistant while the assistant is performing the supervised function.
- H.** "EXPLOITATION" of a patient/client/resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using a patient/client's property, including any form of property, for another persons, profit, advantage or benefit. Exploitation includes but is not limited to:
- (1) Manipulating the patient/client resident by whatever mechanism to give money or property to any facility staff and/or management member.
  - (2) Misappropriation or misuse of monies belonging to a resident or the unauthorized sale, or transfer or use of a patient/client/residents property.
  - (3) Loans of any kind from a patient/client/resident to family, operator or families of staff or operator.
  - (4) Accepting monetary or other gifts from a patient /client/resident or their family with a value in excess of \$25 and not to exceed a total value of \$300 in one year. All gifts received by facility operators, their families or staff of the facility must be documented and acknowledged by person giving the gift and the recipient. Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.
- I.** "FACILITY" means a nursing home subject to the requirements of these regulations.
- J.** "FULL-TIME" means at least an average of 37.5 hours each week devoted to facility business.
- K.** "INTERMEDIATE CARE FACILITY" means a nursing home, which is licensed by the Department as an intermediate care facility to provide intermediate nursing care.
- L.** "INTERMEDIATE NURSING CARE" means a basic care consisting of physical, emotional, social and other rehabilitative services under periodic medical supervision. This nursing care requires the skill of a licensed nurse for observation and recording of reactions and symptoms, and for supervision of nursing care. Most of the residents have long-term illnesses or disabilities which may have reached a relatively stable plateau. Other residents whose conditions are stabilized may need medical and nursing services to maintain stability. Essential supportive consultant services are provided in accordance with these regulations.
- M.** "LICENSED PRACTICAL NURSE" means a person licensed as a licensed practical nurse under the Nursing Practice Act Section 61-3-1 through 61-3-30 NMSA 1978.
- N.** "LICENSEE" means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the long term care facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.
- O.** "MOBILE NON-AMBULATORY" means unable to walk without assistance, but able to move from

place to place with the use of a device such as a walker, crutches, a wheelchair or a wheeled platform.

**P.** "NON-AMBULATORY" means unable to walk without assistance.

**Q.** "NON-MOBILE" means unable to move from place to place.

**R.** "NURSE" means registered nurse or licensed practical nurse.

**S.** "NURSE PRACTITIONER (CERTIFIED)" means a registered professional nurse who meets the requirements for licensure as established under the Nursing Practice Act, Sections 61-3-1 through 61-3-30 NMSA 1978.

**T.** "PERSONAL CARE" means personal assistance, supervision and a suitable activities program. In addition:

(1) The services provided are chiefly characterized by the fact that they can be provided by personnel other than those trained in medical or allied fields. The services are directed toward personal assistance, supervision, and protection.

(2) The medical service emphasizes a preventive approach of periodic medical supervision by the resident's physician as part of a formal medical program that will provide required consultation services and also cover emergencies; and

(3) The dietary needs of residents are met by the provision of adequate general diet or by therapeutic, medically prescribed diets.

**U.** "PHARMACIST" means a person registered as a pharmacist under the Pharmacy Act, Section 61-11-9 NMSA 1978.

**V.** "PHYSICAL THERAPIST" means a person licensed to practice physical therapy under the Physical Therapy Act, Sections 61-12-1 to 61-12-21 NMSA 1978.

**W.** "PHYSICIAN" means a person licensed to practice medicine or osteopathy as defined by the New Mexico Board of Medical Examiners, Section 61-6-10 NMSA 1978 and Osteopathic Medicine and Surgery, Sections 61-10-1 through 61-10-21 NMSA 1978.

**X.** "PHYSICIAN'S EXTENDER" means a person who is a physician's assistant or a nurse practitioner acting under the general supervision and direction of a physician.

**Y.** "PHYSICIAN'S ASSISTANT" means a person certified under the New Mexico Board of Medical Examiners Section 61-6-6 NMSA 1978, to perform as a physician's assistant.

**Z.** "PRACTITIONER" means a physician, dentist or podiatrist or other person permitted by New Mexico law to distribute, dispense and administer a controlled substance in the course of professional practice.

**AA.** "REGISTERED NURSE" means a person who holds a certificate of registration as a registered nurse under the Nursing Practice Act, Section 61-3-1 to 61-3-30 NMSA 1978.

**BB.** "RESIDENT" means a person cared for or treated in any facility on a 24-hour basis irrespective of how the person has been admitted to the facility.

**CC.** "SKILLED NURSING FACILITY" means a nursing home which is licensed by the Department to provide skilled nursing services.

**DD.** "SKILLED NURSING CARE" means those services furnished pursuant to a physician's orders which:

(1) Require the skills of professional personnel such as registered or licensed practical nurses; and

(2) Are provided either directly by or under the supervision of these personnel.

(3) In determining whether a service is skilled nursing care, the following criteria shall be used:

(a) The service would constitute a skilled service where the inherent complexity of a service prescribed for a resident is such that it can be safely and effectively performed only by or under the supervision of professional personnel;

(b) The restoration potential of a resident is not the deciding factor in determining whether a service is to be considered skilled or unskilled. Even where full recovery or medical improvement is not possible, skilled care may be needed to prevent, to the extent possible, deterioration of the condition or to sustain current capacities; and

(c) A service that is generally unskilled would be considered skilled where, because of special medical complications, its performance or supervision or the observation of the resident necessitates the use of skilled nursing personnel.

**EE.** "SPECIALIZED CONSULTATION" means the provision of professional or technical advice, such as systems analysis, crisis resolution or in-service training, to assist the facility in maximizing service outcomes.

**FF. "SUPERVISION"** means at least intermittent face-to-face contact between supervisor and assistant, with the supervisor instructing and overseeing the assistant, but does not require the continuous presence of the supervisor in the same building as the assistant.

**GG. "TOUR OF DUTY"** means a portion of the day during which a shift of resident care personnel are on duty.

**HH. "UNIT DOSE DRUG DELIVERY SYSTEM"** means a system for the distribution of medications in which single doses of medications are individually packaged and sealed for distribution to residents.

**II. "VARIANCE"** means an act on the part of the Licensing Authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of residents or staff of a long term care facility, and is at the sole discretion of the Licensing Authority.

**JJ. "WAIVE/WAIVERS"** means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of residents and staff are not in danger. Waivers are issued at the sole discretion of the Licensing Authority.

[7-1-60, 5-2-89, 10-31-96, 6-15-98; 7.9.2.7 NMAC – Rn, 7 NMAC 9.2.7, 8-31-00]

#### **7.9.2.8 LICENSURE:**

##### **A. APPLICATION/REQUIREMENTS FOR LICENSURE:**

- (1) All initial applications shall be made on forms provided by the Licensing Authority.
  - (a) All information requested on the application must be provided.
  - (b) The application must be dated and signed by the person who shall be the licensee.
  - (c) The application must be notarized.
- (2) In every application, the applicant shall provide the following information:
  - (a) The identities of all persons or business entities having the authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;
  - (b) The identities of all persons or business entities having five percent (5%) ownership interest whatsoever in the facility, whether direct or indirect, and whether the interest is in the profits, land or building, including owners of any business entity which owns any part of the land or building, and
  - (c) The identities of all creditors holding a security interest in the premises, whether land or building; and
  - (d) In the case of a change of ownership, disclosure of any relationship or connection between the old licensee and the new licensee, and between any owner or operator of the new licensee, whether direct or indirect.
- (3) The applicant shall provide to the Department, information including, but not limited to, information regarding felony convictions, civil actions involving fraud, embezzlement or misappropriation of property, any state or federal adverse action resulting in suspension or revocation of license or permit.
- (4) The new licensee shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of six (6) months.
- (5) No license may be issued unless and until the applicant has supplied all information requested by the Department.
- (6) Fees: All applications for initial licensure must be accompanied by the required fee.
  - (a) Current fee schedules may be requested from the Licensing Authority.
  - (b) Fees must be in the form of a certified check, money order, personal or business check made payable to the State of New Mexico.
  - (c) Fees are non-refundable.

##### **B. ACTION BY THE DEPARTMENT:**

- (1) After receiving complete application, the Department shall investigate the applicant to determine the applicant's ability to comply with these regulations.
- (2) Within sixty (60) days after receiving a complete application for a license, the Department shall either approve the application and issue a license or deny the application. If the application for a license is denied, the Department shall give the applicant reasons, in writing, for the denial.