

NOTICE OF PUBLIC HEARING

The New Mexico Health Care Authority Division of Health Improvement is finalizing repeal and replacement of the temporary emergency rule 8.370.3 NMAC Health Facility Licensing Fees and Procedures.

These regulations apply to any health facility as defined by Subsection D of 24-1-2 NMSA 1978, as amended, which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding. The purpose of these regulations is to set licensing fees for health facilities, add the ability to accept electronic payment of fees, update language, incorporate standardized rule language, correcting citation format. Fees are charged in order to partially defray the cost to the state of New Mexico of the licensing process, including the cost of on-site facility surveys by the licensing authority.

Specifically, the changes include:

8.370.3 NMAC

Repeal/replace the expiring emergency rule to establish new update rule to comply with federal regulations as well as NMAC rule requirements. (Specifically, updated sections include: 7, 10, 11 & 12)

A public hearing to receive testimony on this proposed rule will be held on December 20, 2024, 11:00 a.m-12:00 p.m. The public hearing will be a Hybrid, via Zoom as well as in person, pursuant to Section 14-4-5.6 NMSA 1978.

Join on your computer, mobile app, or room device

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81506490208?pwd=p9Uir30rxDyxPUxIGHQPVEuOtEAvoa.1>

Passcode: 566614

Or One tap mobile :

+13462487799,,81506490208#,,, *566614# US (Houston)

+16694449171,,81506490208#,,, *566614# US

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 346 248 7799 US (Houston)

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 719 359 4580 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 646 931 3860 US

+1 689 278 1000 US

+1 929 436 2866 US (New York)

Webinar ID: 815 0649 0208

Passcode: 566614

International numbers available: <https://us02web.zoom.us/j/81506490208?pwd=p9Uir30rxDyxPUxIGHQPVEuOtEAvoa.1>

All written comment may be dropped off during the scheduled hearing time (see above) at the Division of Health Improvement offices, at the Hozho conference room #109, 5300 Homestead Rd. NE, Albuquerque NM 87110.

Individuals wishing to testify may contact the Division of Health Improvement (DHI), P.O. Box H, Santa Fe, NM 87504, or by calling (505) 476-9093.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, December 20, 2024. Please send comments to: Division of Health Improvement P.O. Box H Santa Fe, NM 87504, Recorded comments may be left at (505) 476-9093. You may send comments electronically to: dhi.hearingrequest@doh.nm.gov. Written and recorded comments will be posted to the agency's website within 3 days of receipt. All comments will be given the same consideration as oral testimony made at the public hearing.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at Office-505-709-5468, Fax-505-827-6286 or through the New Mexico Relay system, toll free at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED
WAIVER PROGRAMS
PART 3 HEALTH FACILITY LICENSURE FEES AND PROCEDURES

8.370.3.1 ISSUING AGENCY: New Mexico Health Care Authority, Division of Health Improvement, Health Facility Licensing and Certification Bureau.
[8.370.3.1 NMAC - Rp, 8.370.3.1 NMAC, 1/28/2025]

8.370.3.2 SCOPE: These regulations apply to any health facility as defined by 24-1-2(D) NMSA 1978, as amended, which is licensed or is required to be licensed, or any health facility which by federal regulations must be licensed to obtain or maintain federal funding.
[8.370.3.2 NMAC - Rp, 8.370.3.2 NMAC, 1/28/2025]

8.370.3.3 STATUTORY AUTHORITY: The regulations set forth herein have been promulgated by the secretary of the New Mexico health care authority (authority), pursuant to the general authority granted under Subsection E of Section 9-8-6 of the Health Care Authority Act, NMSA 1978, as amended; and the authority granted under Subsection D of Section 24A-1-2, Subsection I of Section 24A-1-3, and Section 24A-1-5 of the Health Care Code, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.3.3 NMAC - Rp, 8.370.3.3 NMAC, 1/28/2025]

8.370.3.4 DURATION: Permanent.
[8.370.3.4 NMAC - Rp, 8.370.3.4 NMAC, 01/28/2025]

8.370.3.5 EFFECTIVE DATE: January 28, 2025, unless a later date is cited at the end of a section.
[8.370.3.5 NMAC - Rp, 8.370.3.5 NMAC, 1/28/2025]

8.370.3.6 OBJECTIVE: The purpose of these regulations is to set licensing fees for health facilities. Fees are charged in order to partially defray the cost to the state of New Mexico of the licensing process, including the cost of on-site facility surveys by the licensing authority.
[8.370.3.6 NMAC - Rp, 8.370.3.6 NMAC, 1/28/2025]

8.370.3.7 DEFINITIONS: For purposes of these regulations the following shall apply:
A. Definitions beginning with "A"
(1) "amended license" means a license issued by the licensing authority to reflect a non-substantive change which does not result in the voiding of the original license, for example, a change in the name of the facility or a change in the operator or administrator;

(2) **"annual license"** is a license granting permission to operate a facility for the one-year period stated on the face of the document; the annual license is issued on an initial and renewal basis following submission of an acceptable application for license and survey of the facility;

(3) **"application for license"** means the forms, attachments and other writings and drawings required by the licensing authority, under the authority of the regulations listed in 8.370.3.14 NMAC, of these regulations to be submitted for review by the licensing authority as part of the process of granting or denying an annual license;

B. Definitions beginning with "B": **"bed"** means an assembly for sleeping, whether or not the bed is in actual use and for which "bed capacity" the facility is licensed;

C. Definitions beginning with "C"

(1) **"capacity"** means the total number of persons or beds for which the facility is licensed;

(2) **"certificate of compliance (COC) & certificate of accreditation (COA)"** are all tests performed are moderate or high complexity and must meet the non-waived requirements under 42 CFR part 493. These laboratories are inspected every 2 years.

(3) **"certificate for provider performed microscopy (PPMP)"** are tests performed under this certificate type are limited to 9 tests using a light microscope and the tests categorized as waived by the FDA. The microscopy tests are not waived because they require training and skill. These tests may only be performed by a licensed Medical Doctor, Doctor of Osteopathy, Dentist, Doctor of Podiatry, Physician's Assistant or a Certified Nurse Practitioner. These tests must also be performed during the patient's visit. All requirements for moderate complexity testing must be met.

(4) **"certificate of waiver"** are laboratories, such as your physician office, performs simple tests cleared by the Food & Drug Administration as "waived." Most of these tests require samples that do not require processing such as whole blood, throat swab, saliva or urine. These laboratories must follow all instructions by the manufacturer

(5) **"change of ownership"** licenses are **non-transferable**; a change of ownership licensure will follow the initial application and licensure fee schedule process;

(6) **"clinical laboratory improvement amendments (CLIA)"** of 1988 are United States Federal Regulatory standards that apply to all clinical laboratory testing performed on humans in the United States, except clinical trials and basic research.

D. Definitions beginning with "D": **"denial of the license"** means action by the licensing authority refusing to grant an annual license on the basis of non-compliance with applicable laws and regulations, and specifically under these regulations, nonpayment of the prescribed fee;

E. Definitions beginning with "E" [RESERVED]

F. Definitions beginning with "F"

(1) **"facility and health facility"** means any health facility required to be licensed by the licensing authority by authority of the Health Care Code, Sections 24A-1-1 et. seq. NMSA 1978, as amended, and the regulations listed in 8.370.3.14 NMAC of these regulations;

(2) **"facility inspections or survey and inspection survey"** means an entry into a facility and examination of the facility premises, inspection of records and interview of staff and clientele;

(3) **"for profit facility"** means a facility whose primary goal is to earn a profit.

G. Definitions beginning with "G" [RESERVED]

H. Definitions beginning with "H" [RESERVED]

I. Definitions beginning with "I" [RESERVED]

J. Definitions beginning with "J" [RESERVED]

K. Definitions beginning with "K" [RESERVED]

L. Definitions beginning with "L"

(1) **"license"** means the document issued by the licensing authority which authorizes the operation of a facility. The term license may mean an annual license or a time-limited temporary license;

(2) **"licensing authority"** means the division of health improvement of the New Mexico department of health;

M. Definitions beginning with "M" [RESERVED]

N. Definitions beginning with "N": **"non-profit facility"** means a facility that operates for charitable or socially beneficial purposes rather than to make a profit.

O. Definitions beginning with "O" [RESERVED]

P. Definitions beginning with "P": **"private equity facility"** is a healthcare facility that has been purchased by a private equity firm or investment management company using investor money and debt that provides

financial backing and makes investments in the private equity of startup or operating companies through a variety of loosely affiliated investment strategies including leveraged buyout, venture capital, and growth capital.

Q. Definitions beginning with “Q” [RESERVED]

R. Definitions beginning with “R” [RESERVED]

S. Definitions beginning with “S”: “state owned facility” means a health facility licensed by the division of health improvement which is owned by the state

T. Definitions beginning with “T”: “temporary license” means a provisional license granting permission to operate a facility for any period of time not to exceed one hundred twenty (120) days; not more than two (2) consecutive temporary licenses may be granted by the licensing authority.

[8.370.3.7 NMAC - Rp, 8.370.3.7 NMAC, 1/28/2025]

8.370.3.8 STANDARD OF COMPLIANCE: Strict compliance is required of health facilities subject to these regulations. Payment of the licensing fee is a condition precedent to licensure of the health facility by the licensing authority.

[8.370.3.8 NMAC - Rp, 8.370.3.8 NMAC, 1/28/2025]

8.370.3.9 BASIS: Licensing fees for inpatient health facilities providing professional medical or nursing services on a 24 hour basis are based upon a maximum fee per bed set by statute. Licensing fees are based upon the maximum fee for health facilities as set by statute.

[8.370.3.9 NMAC - Rp, 8.370.3.9 NMAC, 1/28/2025]

8.370.3.10 LICENSURE FEE SCHEDULE: Rates shall be charged, as indicated in the fee schedule shown in this section, upon initial and renewal application for an annual license and prior to issuance of a second temporary license. The fee for the first temporary license is included in the initial application fee. This rule applies to both initial and renewal of health facility licenses.

A. hospitals: general hospitals, limited hospitals, children’s psychiatric hospitals, special hospitals to include orthopedic, children’s, psychiatric, alcohol & drug abuse treatment, rehabilitation, and other special hospital as identified

Facility Types:	Rate Per License	Term limit
Hospital bed rate	\$12.00 per bed	Annually

B. Assisted living facilities

Facility Types:	Rate Per License	Term limit
Assisted living base assessment rate	\$300.00	Annually

C. Long-term care facilities

Facility Types:	Rate Per License
skilled nursing facilities	\$12.00 per bed
intermediate care facilities	\$12.00 per bed
intermediate care facilities for mentally retarded	\$12.00 per bed

D. Outpatient health facilities:

Facility Types:	Rate Per License
Health facilities providing outpatient medical services	\$300.00
community mental health centers	\$300.00
free standing hospice	\$300.00
home health agency	\$300.00
diagnostic and treatment center	\$300.00
limited diagnostic and treatment center	\$300.00
rural health clinic	\$300.00
Infirmery	\$300.00
new or innovative clinic	\$300.00
ambulatory surgical center	\$300.00

E. Other health facilities

Facility Types:	Rate Per License
Facilities providing services for end stage renal disease	\$300.00
services for end state renal disease	\$300.00
renal transplantation center	\$300.00
renal dialysis center	\$300.00
renal dialysis facility	\$300.00
self dialysis unit	\$300.00
special purpose renal dialysis facility	\$300.00
In home and inpatient hospice care	\$300.00
Home health agencies	\$300.00
Rural emergency hospital	\$300.00
Freestanding birth centers	\$300.00
Adult accredited residential treatment center	\$600.00 bi-annually + \$25 per bed
Boarding homes	\$300.00

F. Adult Day Care: Facilities providing adult day care and services for less than 24 hours a day for three or more clients in accordance with 8.370.20 NMAC

Facility Types:	Rate Per License
Adult day care facilities	\$300.00

[8.370.3.10 NMAC - Rp, 8.370.3.10 NMAC, 1/28/2025]

8.370.3.11 FEES FOR AMENDED LICENSES: The licensing fee for each amended license issued shall be \$300.00 as follows:

Amendment Type:	Amended License Fee:
Change of administrator or director	\$300.00
Change of capacity (additional \$25.00 per bed if fee is rate per bed)	\$300.00
Change of facility name	\$300.00
Change of physical address	\$300.00

[8.370.3.11 NMAC - Rp, 8.370.3.11 NMAC, 1/28/2025]

8.370.3.12 METHOD OF PAYMENT FOR LICENSE FEES: All applications for license and requests for amended license shall be accompanied by the prescribed fee in the form of a check or money order or state approved electronic payment process payable to the State of New Mexico or the health care authority.

[8.370.3.12 NMAC - Rp, 8.370.3.12 NMAC, 1/28/2025]

8.370.3.13 NON-REFUNDABLE PRE-PAYMENT OF FEES: All fees are prepaid and are not refundable.

[8.370.3.13 NMAC - Rp/E, 8.370.3.13 NMAC, 1/28/2025]

8.370.3.14 RELATED REGULATIONS: The following is a list of regulations regarding licensure of health facilities within the jurisdiction of the licensing authority.

- A. Requirements for acute care, limited services and special hospitals, New Mexico health care authority, 8.370.12 NMAC.
- B. Requirements for long term care facilities, New Mexico health care authority, 8.370.16 NMAC
- C. Requirements for facilities providing outpatient medical services and infirmaries, New Mexico health care authority, 8.370.18 NMAC.
- D. Requirements for in-home and inpatient hospice care, New Mexico health care authority, 8.370.19 NMAC
- E. Requirements for adult day care facilities, New Mexico health care authority, 8.370.20 NMAC.
- F. Requirements for intermediate care facilities for the mentally retarded, New Mexico health care authority, 8.371.2 NMAC.
- G. Requirements for end stage renal disease facilities, New Mexico health care authority, 8.370.24 NMAC.
- H. Requirements for assisted living facilities for Adults, New Mexico health care authority, 8.370.14 NMAC.

- I. Requirements for home health agencies, New Mexico health care authority, 8.370.22 NMAC.
- J. Requirements for rural emergency hospitals, New Mexico health care authority, 8.370.13 NMAC.
- K. Requirements for boarding homes, New Mexico health care authority, 8.370.15 NMAC.
- L. Requirements for clinical laboratory improvement amendments, 42 CFR, Part 493, New Mexico health care authority.
- M. Requirements for community mental health centers, New Mexico health care authority, 8.321.6 NMAC
- N. Requirements for freestanding birth centers, New Mexico health care authority, 8.370.17 NMAC
- O. crisis triage centers, New Mexico health care authority, 8.321.11 NMAC

[8.370.3.14 NMAC - Rp, 8.370.3.14 NMAC, 1/28/2025]

History of 8.370.3 NMAC: [RESERVED]

HISTORY OF 7.1.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center: HED-85-7 (HSD), Regulations Governing Licensing Fees for Health Facilities, filed 11/20/1985. DOH 91-3 (PHD), New Mexico Regulations Governing Licensing Fees for Health Facilities, filed 10/18/1991. DOH 93-3 (PHD), Regulations Governing Licensing Fees for Health Facilities in New Mexico, filed 4/30/1993.

History of Repealed Material:

7.1.7 NMAC, Health Facility Licensure Fees and Procedures (filed 2/15/2006) repealed effective 12/01/2010.
 8.370.3.1 NMAC, Health Facility Licensure Fees and Procedures (filed 8/1/2024) repealed effective 1/28/2025.

Other History:

DOH 93-3 (PHD), Regulations Governing Licensing Fees for Health Facilities in New Mexico (filed 4/30/1993) was renumbered, reformatted, amended and replaced by 7 NMAC 1.7, Health Facility Licensure Fees and Procedures, effective 10/31/1996.
 7 NMAC 1.7, Health Facility Licensure Fees and Procedures (filed 10/18/1996) was renumbered, reformatted, amended and replaced by 7.1.7 NMAC, Health Facility Licensure Fees and Procedures, effective 2/28/2006.
 7.1.7 NMAC, Health Facility Licensure Fees and Procedures (filed 2/15/2006) was replaced by 7.1.7 NMAC, Health Facility Licensure Fees and Procedures, effective 12/01/2010.
 8.370.3 NMAC, Health Facility Licensure Fees And Procedures filed 8/1/2024 was replaced by 8.370.3 NMAC, Health Facility Licensure Fees And Procedures, effective 1/28/2025.