

TITLE 7 HEALTH
CHAPTER 5 VACCINATIONS AND IMMUNIZATIONS
PART 3 EXEMPTION FROM SCHOOL, CHILDCARE, AND PRE-SCHOOL IMMUNIZATION

7.5.3.1 ISSUING AGENCY: Public Health Division, Department of Health.
[7.5.3.1 NMAC - Rp, 7 NMAC 5.3.1, 11/27/13]

7.5.3.2 SCOPE: These regulations govern the procedures for seeking exemptions from any of the immunizations required for public, private, home, parochial, elementary, and secondary schools, as well as early childhood education facilities under the New Mexico public education department and licensed preschool or child care centers.
[7.5.3.2 NMAC - Rp, 7 NMAC 5.3.2, 11/27/13]

7.5.3.3 STATUTORY AUTHORITY: This regulation has been promulgated by the secretary of the department of health under the authority of Sections 9-7-6, 24-1-3(N), 24-5-1, and Section 24-5-3 NMSA, 1978. Enforcement of this regulation is the responsibility of the public health division of the New Mexico department of health.
[7.5.3.3 NMAC - Rp, 7 NMAC 5.3.3, 11/27/13]

7.5.3.4 DURATION: Permanent.
[7.5.3.4 NMAC - Rp, 7 NMAC 5.3.4, 11/27/13]

7.5.3.5 EFFECTIVE DATE: November 27, 2013, unless a later date is cited at the end of a section or paragraph.
[7.5.3.5 NMAC - Rp, 7 NMAC 5.3.5, 11/27/13]

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 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, 11/27/13]

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.** “**Denial**” means a denial of a request for exemption from immunizations.
- D.** “**Department**” means the department of health.
- E.** “**Licensed physician**” means physician licensed to practice medicine or osteopathic medicine.
- F.** “**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.
- G.** “**Public health division**” means a division of the department of health within which the immunization program is located.
- H.** “**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.** “**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 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.** “**Satisfactory evidence of immunization**” means a statement, certificate, or record signed by a

duly 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. “Secretary” means the secretary for the department of health.

[7.5.3.7 NMAC - Rp, 7 NMAC 5.3.7, 11/27/13]

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 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.

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 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 shall determine approval status of all requests for exemption:

(1) exemption requests shall be approved for a nine-month 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 manager 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 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, 11/27/13]

7.5.3.9 REVIEW CRITERIA:

A. The department of health immunization program manager 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 will be reviewed for the following:

(1) an original document signed by a duly-licensed doctor of medicine or doctor of osteopathic medicine, 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, 11/27/13]

7.5.3.10 CHILDREN EXPERIENCING HOMELESSNESS: Children experiencing homelessness: Pursuant to the McKinney-Vento Homeless Assistance Act (42 USC § 11432(g)(3)(C)), children experiencing homelessness must be able to enroll in school immediately, even if they are unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation. If the child needs to obtain immunizations, or medical or immunization records, the enrolling school must immediately refer the parent or guardian of the child or youth to the designated local educational agency liaison, who must assist in obtaining necessary immunizations, or immunization or medical records.

[7.5.3.10 NMAC - Rp, 7 NMAC 5.3.10, 11/27/13]

7.5.3.11 ADMINSTRATIVE REVIEW OF DENIALS: In the case of a denial, the parent or guardian shall have the right to request an administrative review. Criteria for administrative review 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 of health. Any hearing process under 7.5.3.12 NMAC can only be commenced after the administrative review pursuant to 7.5.3.11 NMAC is completed and the parent or guardian receives notification by mail that the administrative review was denied.

A. The parent or guardian may submit a letter requesting administrative review and any supporting documents to the public health division director or designee within 30 days of receipt of notice of the initial denial from the department of health immunization program manager.

B. Within 10 working days of receipt of the request for administrative review, the department of health's public health division director shall review the request for administrative review and any supporting documents and make a determination of approval or denial as to the underlying request for exemption. After the administrative review is complete the department's public health division director shall notify the parent or guardian and the child's school, by certified mail, if the administrative review of the request for exemption was approved or denied.

C. If approved, the child shall be considered exempt from immunizations for a nine-month period.

D. If the appeal is denied, and the parent or guardian desires further review or consideration, the parent or guardian may request a hearing pursuant to 7.5.3.12 NMAC.

[7.5.3.11 NMAC - Rp, 7 NMAC 5.3.11, 11/27/13]

7.5.3.12 RIGHT TO HEARING AFTER ADMINSTRATIVE REVIEW:

A. Right to appeal: A parent or guardian may request a hearing to appeal a decision of the public health division director only after a denial of an administrative review. A hearing may not be requested at the same time as an administrative review is underway pursuant to 7.5.3.11 NMAC.

B. Right to hearing: A parent or guardian may request a hearing before a hearing officer appointed by the secretary to contest a denial of an immunization exemption under this rule, by mailing a certified letter, return receipt requested, to the public health division director within 30 days after the denial resulting from the administrative review. If the parent or guardian fails to request a hearing in the time and manner required by this section, the parent or guardian shall forfeit the right to a hearing, and the denied immunization exemption shall become final and not subject to judicial review.

C. Scheduling the hearing:

(1) **Appointment of hearing officer:** Upon the public health division director's receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing.

(2) **Hearing date:** The hearing shall be held not more than 60 days and not less than 15 days from the date of service of the notice of the hearing.

(3) **Notice of hearing:** The department shall notify the parent or guardian of the date, time, and place of the hearing and the identity of the hearing officer, and shall identify the statute(s) and regulation(s) authorizing the department to deny the immunization exemption, within 20 days of the public health division director's timely receipt of the request for hearing.

(4) **Hearing venue:** The hearing shall be held in Santa Fe, New Mexico.

D. Method of service: Any notice or decision required to be served under this section may be served either personally or by certified mail, return receipt requested directed to the parent or guardian at the last known

mailing address (or, if service is made personally, by the last known physical address) shown by the records of the department immunization program. If the notice or decision is served personally, service shall be made in the same manner allowed by the rules of civil procedure for the state district courts of New Mexico. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery, or the date of the last attempted delivery of the notice or decision, or the date of the addressee's refusal to accept delivery.

E. Hearing officer duties: The hearing officer shall conduct the hearing, rule on any motions or other matters that arise prior to the hearing, and issue a written report and recommendation(s) to the secretary following the close of the hearing.

F. Official file: Upon appointment, the hearing officer shall establish an official file which shall contain all notices, hearing requests, pleadings, motions, written stipulations, evidence, briefs, and correspondence received in the case. The official file shall also contain proffered items not admitted into evidence, which shall be so identified and shall be separately maintained. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall tender the complete official file to the department for its retention as an official record of the proceedings.

G. Powers of hearing officer: The hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to:

- (1) administer oaths or affirmations;
 - (2) schedule continuances;
 - (3) direct discovery;
 - (4) examine witnesses and direct witnesses to testify;
 - (5) subpoena witnesses and relevant books, papers, documents, and other evidence;
 - (6) limit repetitious and cumulative testimony;
 - (7) set reasonable limits on the amount of time a witness may testify;
 - (8) decide objections to the admissibility of evidence or receive the evidence subject to later ruling;
 - (9) receive offers of proof for the record;
 - (10) take notice of judicially cognizable facts or take notice of general, technical, or scientific facts within the hearing officer's specialized knowledge (provided that the hearing officer notifies the parties beforehand and offers the parties an opportunity to contest the fact so noticed);
 - (11) direct parties to appear and confer for the settlement or simplification of issues, and otherwise conduct pre-hearing conferences;
 - (12) impose appropriate evidentiary sanctions against a party who fails to provide discovery or who fails to comply with a subpoena;
 - (13) dispose of procedural requests or similar matters;
 - (14) enter proposed findings of fact and conclusions of law, orders, reports and recommendations;
- and
- (15) utilize his or her experience, technical competence, or specialized knowledge in the evaluation of evidence presented.

H. Minimum discovery; inspection and copying of documents: Upon written request to another party, any party shall have access to documents in the possession of the other party that are relevant to the subject matter of the appeal, except confidential or privileged documents.

I. Minimum discovery; witnesses: The parties shall each disclose to each other and to the hearing officer, either orally or in writing, the names of witnesses to be called, together with a brief summary of the testimony of each witness. In situations where written statements will be offered into evidence in lieu of a witness's oral testimony, the names of the persons making the statements and a brief summary of the statements shall be disclosed.

J. Additional discovery: At the hearing officer's discretion, upon a written request by a party that explains why additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, interviews, depositions or written interrogatories may be ordered. In exercising his or her authority to determine whether further discovery is necessary or desirable, the hearing officer should consider whether the complexity of fact or law reasonably requires further discovery to ensure a fair opportunity to prepare for the hearing, and whether such request will result in unnecessary hardship, cost, or delay in holding the hearing. Depositions shall not be allowed, except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or who will not be able to attend the hearing.

K. Subpoena limits; service: Geographical limits upon the subpoena power shall be the same as if the hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service shall be the same as that under the Rules of Civil Procedure for the district courts, except that rules requiring the tendering of fees shall not apply to the department.

L. Pre-hearing disposition: The subject matter of any hearing may be disposed of by stipulation, settlement, or consent order, unless otherwise precluded by law. Any stipulation, settlement, or consent order reached between the parties shall be written and shall be signed by the hearing officer and the parties or their attorneys.

M. Postponement or continuance: The hearing officer, at his or her discretion, may postpone or continue a hearing upon his or her own motion, or upon the motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

N. Conduct of hearing: These hearings will be closed to prevent the disclosure of confidential information, including but not limited to health information protected by state and federal laws.

O. Telephonic testimony: Upon timely notice to the opposing party and the hearing officer, and with the approval of the hearing officer, the parties may present witnesses by telephone or live video (if available).

P. Legal representation: The department may appear by an officer or employee and parent or guardian may appear pro se or either the department or parent or guardian may be represented by an attorney licensed to practice in New Mexico.

Q. Recording: The hearing officer or a designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription.

R. Burden of proof: Except as otherwise provided in this rule, the department has the burden of proving by a preponderance of the evidence the basis for the denied immunization exemption.

S. Order of presentation; general rule: Except as provided in this rule, the order of presentation for hearings in all cases shall be:

- (1) **appearances:** Opening of proceeding and taking of appearances by the hearing officer;
- (2) **pending matters:** Disposition by the hearing officer of preliminary and pending matters;
- (3) **opening statements:** The opening statement of the department, and then the opening statement of the party challenging the department's action or proposed action;
- (4) **cases:** The department's case-in-chief, and then the case-in-chief of the party challenging the department's action;
- (5) **rebuttal:** The department's case-in-rebuttal;
- (6) **closing argument:** The department's closing statement, which may include legal argument; and then the closing statement of the party opposing the department's action or proposed action, which may include legal argument;
- (7) **close:** Close of proceedings by the hearing officer.

T. Admissible evidence; rules of evidence not applicable: The hearing officer may admit evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent persons in the conduct of serious affairs. Rules of evidence, such as the New Mexico Rules of Evidence for the district courts, shall not apply but may be considered in determining the weight to be given any item of evidence. The hearing officer may at his or her discretion, upon his or her motion or the motion of a party or a party's representative, exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence, including testimony, and may exclude confidential or privileged evidence.

U. Objections: A party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds for the objection. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

V. Official notice: The hearing officer may take notice of any facts of which judicial notice may be taken, and may take notice of general, technical, or scientific facts within his or her specialized knowledge. When the hearing officer takes notice of a fact, the parties shall be notified either before or during the hearing of the fact so noticed and its source, and the parties shall be afforded an opportunity to contest the fact so noticed.

W. Record content: The record of a hearing shall include all documents contained in the official file maintained by the hearing officer, including all evidence received during the course of the hearing, proposed findings of fact and conclusions of law, the recommendations of the hearing officer, and the final decision of the secretary.

X. Written evidence from witnesses: The hearing officer may admit evidence in the form of a written statement made by a witness, when doing so will serve to expedite the hearing and will not substantially prejudice the interests of the parties.

Y. Failure to appear: If a party who has requested a hearing or a party's representative fails to appear on the date, time, or location announced for a hearing, and if no continuance was previously granted, the hearing officer may proceed to hear the evidence of such witnesses as may have appeared or may accept offers of proof regarding anticipated testimony and other evidence, and the hearing officer may further proceed to consider the matter and issue his report and recommendation(s) based on the evidence presented; and the secretary may subsequently render a final decision. Where a person fails to appear at a hearing because of accident, sickness, or other cause, the person may within a reasonable time apply to the hearing officer to reopen the proceeding, and the hearing officer may, upon finding sufficient cause, fix a time and place for a hearing and give notice to the parties.

Z. Hearing officer written report and recommendation(s): The hearing officer shall submit a written report and recommendation(s) to the secretary that contains a statement of the issues raised at the hearing, proposed findings of fact and conclusions of law, and a recommended determination. Proposed findings of fact shall be based upon the evidence presented at the hearing or known to all parties, including matters officially noticed by the hearing officer. The hearing officer's recommended decision is a recommendation to the secretary of the New Mexico department of health and is not a final order.

AA. Submission for final decision: The hearing officer's report and recommendation(s) shall be submitted together with the complete official file to the secretary of the New Mexico department of health for a final decision no later than 30 days after the hearing.

BB. Secretary's final decision: The secretary shall render a final decision within 45 calendar days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested within 15 days after the final decision is rendered and signed. A copy shall be provided to legal counsel for the public health division.
[7.5.3.12 NMAC - Rp, 7 NMAC 5.3.12, 11/27/13]

HISTORY OF 7.5.3 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the state records center: HSSD 76-1, Religious Exemption From School Immunization, 1/14/76.

History of Repealed Material: 7 NMAC 5.3, Religious Exemption from School Immunization, filed 10/18/96 – Repealed effective 11/27/13.