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REGULAR MEETING OF THE BOARD OF DIRECTORS



**October 5, 2021
9:30 AM**

**Online: <https://global.gotomeeting.com/join/635741893>
Telephone: 1-408-650-3123/ Access Code: 635-741-893**

New Mexico Retiree Health Care Authority
Regular Meeting

BOARD OF DIRECTORS

ROLL CALL

October 5, 2021

	Member in Attendance		
Mr. Crandall, President			
Ms. Saunders, Vice President			
Ms. Larranaga-Ruffly, Secretary			
Mr. Scroggins			
Mr. Linton			
Mr. Salazar			
Mr. Eichenberg			
Mr. Cushman			
Mr. Bhakta			
Mr. Pyle			
Ms. Madrid			

NMRHCA BOARD OF DIRECTORS

October 2021

Mr. Greg Trujillo
Interim Executive Director
Public Employees Retirement Association
33 Plaza La Prensa
Santa Fe, NM 87507
greg.trujillo@state.nm.us
505-476-9301

Mr. Sanjay Bhakta
NM Municipal League
100 Marquette Ave, 11th Floor
City/County Building
Albuquerque, NM 87102
sbhakta@cabq.gov

Mr. Rick Scroggins
Interim Executive Director
Educational Retirement Board
PO Box 26129
Santa Fe, NM 87502-0129
rick.scroggins@state.nm.us
505-476-6152

Mr. Terry Linton
Governor's Appointee
PO Box 25485
Albuquerque, NM 87125
terry.linton@hubinternational.com
505-250-4070

Mr. Tomas E. Salazar, PhD
NM Assoc. of Educational Retirees
PO Box 66
Las Vegas, NM 87701
salazarte@plateautel.net
505-429-2206

Mr. Lance Pyle
NM Association of Counties
Curry County Administration
417 Gidding, Suite 100
Clovis, NM 88101
lpyle@currycounty.org
575-763-3656

Mr. Doug Crandall, President
Retired Public Employees of New Mexico
14492 E. Sweetwater Ave
Scottsdale, AZ 85259
dougcinaz@gmail.com

The Honorable Mr. Tim Eichenberg
NM State Treasurer
2055 South Pacheco Street
Suite 100 & 200
Santa Fe, NM 87505
tim.eichenberg@state.nm.us
505-955-1120

Ms. Therese Saunders, Vice President
NEA-NM, Classroom Teachers Assoc., & NM
Federation of Educational Employees
5811 Brahma Dr. NW
Albuquerque, NM 87120
tsaunders3@mac.com
505-934-3058

Mr. Loren Cushman
Superintendents' Association of NM
#1 Panther Boulevard
Animas, NM 88020
lrcushman@animask12.net
575-548-2299

Ms. Leane Madrid
Classified State Employee
2600 Cerrillos Rd.
Santa Fe, NM 87505
leanemadrid@state.nm.us
505-629-3365

Ms. Leanne Larranaga-Ruffy, Secretary
Alternate for PERA Executive Director
33 Plaza La Prensa
Santa Fe, NM 87507
leanne.larranaga@state.nm.us
505-476-9332

Regular Meeting of the
NEW MEXICO RETIREE HEALTH CARE AUTHORITY
BOARD OF DIRECTORS

October 5, 2021

9:30 AM

Online: <https://global.gotomeeting.com/join/635741893>

Telephone: 1-408-650-3123 / Access Code: 635-741-893

AGENDA

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13. Other Business	Mr. Crandall, President	
14. Executive Session	Mr. Crandall, President	
Pursuant to NMSA 1978, Section 10-15-1(H)(7) Pertaining to Threatened or Pending Litigation		
15. Date & Location of Next Board Meeting	Mr. Crandall, President	
November 2, 2021 – 9:30AM		
CNM Workforce Training Center/GoToMeeting		
5600 Eagle Rock Ave NE, Room 101		
Albuquerque, NM 87113		
16. Adjourn		

MINUTES OF THE
NEW MEXICO RETIREE HEALTH CARE AUTHORITY/BOARD OF DIRECTORS
REGULAR MEETING/VIA TELECONFERENCE

August 31, 2021

1. CALL TO ORDER

A Regular Meeting of the Board of Directors of the New Mexico Retiree Health Care Authority was called to order on this date at 9:30 a.m. via teleconference.

2. ROLL CALL TO ASCERTAIN A QUORUM

A quorum was present.

Members Present:

Mr. Doug Crandall, President
Ms. Therese Saunders, Vice President
Ms. LeAnne Larrañaga-Ruffy, Secretary
The Hon. Tim Eichenberg, NM State Treasurer
Mr. Sanjay Bhakta
Mr. Loren Cushman [joining 10:15 a.m.]
Ms. Leane Madrid
Mr. Lance Pyle
Dr. Tomas Salazar
Mr. Rick Scroggins

Members Excused:

Mr. Terry Linton

Staff Present:

Mr. David Archuleta, Executive Director
Mr. Neil Kueffer, Deputy Director
Mr. Michael Bebeau, General Council
Ms. Judith S. Beatty, Board Recorder

3. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

4. APPROVAL OF AGENDA

Mr. Pyle moved approval of the agenda, as published. Ms. Larrañaga-Ruffy seconded the motion, which passed unanimously by roll call vote.

5. **APPROVAL OF REGULAR ANNUAL MEETING MINUTES: July 15 & 16, 2021**

Dr. Salazar moved approval of the July 15 & 16 meeting minutes, as submitted. Mr. Pyle seconded the motion, which passed unanimously by roll call vote.

6. **PUBLIC FORUM AND INTRODUCTIONS**

None.

7. **COMMITTEE REPORTS**

- Executive Committee met last week and discussed items on today's agenda.
- Investment Committee discussed several issues that will be covered later in the agenda.

8. **COMMITTEE ASSIGNMENTS**

Chairman Crandall announced committee assignments as follows:

- Finance & Investment: Doug Crandall, Chair; LeAnne Larrañaga-Ruffy; Rick Scroggins; Terry Linton
- Audit: Sanjay Bhakta, Chair; Tomás Salazar; Leane Madrid; Terry Linton; Loren Cushman
- Wellness: Terry Linton, Chair; Therese Saunders; Lance Pyle; Loren Cushman; Leane Madrid
- Legislative: Tomás Salazar, Chair; Lance Pyle; LeAnne Larrañaga-Ruffy; Loren Cushman; Rick Scroggins

9. **EXECUTIVE DIRECTOR'S UPDATES**

a. **Operations**

- Mr. Archuleta reported on HR updates. In addition, NMRHCA's engagement with PERA to provide HR services has been finalized.

b. **Rule Change Update**

- A copy of the proposed rulemaking is in the packet. Notice has gone out. The deadline for accepting comments is September 23, and NMRHCA is holding the rulemaking hearing on September 24 from 3:00 to 5:00 p.m. At the conclusion of the meeting, NMRHCA will forward the record to board members for action at the October 5 regular board meeting.

c. **Summer/Fall Newsletter**

- The Summer/Fall Newsletter includes a message from the Executive Director stating that, as long as public health conditions permit, members can again meet with customer services representatives in person at the Albuquerque and Santa Fe locations.

d. Wise and Well Event

- The Wise and Well Virtual Health Fair will take place on September 29.

e. Legislative

- Mr. Archuleta reported on the presentation he made to the Investments & Pensions Oversight Committee (IPOC) on July 28. There were no questions from the committee.

Mr. Archuleta stated that the state's projected revenues were reported last week at \$1.4+ billion. He suggested that the Legislative Committee meet to discuss possible proposals for next year's legislature. Mr. Archuleta said NMRHCA has several options in terms of an attempt to capture some of those one-time dollars. While the Governor and legislature have been reluctant to grant employer-employee contribution increases in recent years, he feels the NMRHCA is fully justified in pursuing some supplemental (for costs already incurred) or special appropriations (for anticipated costs). A special appropriation, for example, could be for costs associated with COVID testing and treatment, which is more than \$9 million on the self-insured side. In addition, there are costs associated with the unfunded requirements in Senate Bill 317 (elimination of cost-sharing for behavioral health and substance abuse treatment).

Mr. Archuleta stated that IPOC typically endorses legislative requests at its November meeting. He said the next session is 30 days, so everything introduced is expected to be budget related. Based on conversations he has had with the analyst, however, there might be an opportunity for the NMRHCA to pursue one-time funding through a special or supplemental appropriation.

Mr. Archuleta said another item the NMRHCA might want to consider is capturing some of the monies that were given up during the 2016 special session.

Dr. Salazar said he felt Mr. Archuleta was right to pursue these options given the size of the projected surplus.

f. Lopez v. NMRHCA, N.M. Ct. App. No. A-1-CA-39121

- The New Mexico Court of Appeals has upheld the determination that none of Ms. Lopez's constitutional rights had been violated by the NMRHCA.

g. Updated Solvency Projection

Mr. Archuleta referred to an updated solvency report reflecting the actions taken by the board at its July meeting to also include the reduction in the assumed investment returns from 7.25 percent to 7.00 percent. The report also includes the Medicare Advantage rates, which were not available at the time the report was prepared. Given the favorable rating the NMRHCA experienced, including reductions from BCBS, holding rates flat through UnitedHealthcare, a minor increase from Humana, and an increase from Presbyterian, it shortened the deficit spending window by one year. Ultimately, the reduction in the discount rate has resulted in a \$200 million in the trust fund balance projected in 2052.

Responding to Chairman Crandall, Mr. Archuleta said the NMRHCA has 92,000 active members contributing in the program; 65,000 retirees and eligible dependents currently receiving a benefit; 55,000 on the medical plans; and 10,000 that have one of the voluntary benefits. These are individuals who have elected to participate only in the life insurance or only in the dental or vision insurance because they either gone back to work or are getting their health insurance benefit through a spouse's plan or their other employer. He added a census is currently underway and those numbers will be included in the next GASB valuation, which will be produced in October. The total number currently is at 155,000.

h. June 30 and July 31, 2021 SIC Investment Reports

- As of August 17, 2021, the trust fund balance was at \$1,055,685,724.

i. June 30, 2021 Investment Performance

- The RV Kuhns report shows a 1-year return at 24.98 percent; 3 years at 10.08 percent; and 10 years at 7.87 percent.
- The CYTD (June 30, 2021) return is at 9.07 percent.

10. FY23 APPROPRIATION REQUEST

Mr. Archuleta reviewed a summary of the NMRHCA's FY22 budget and FY23 appropriation request:

- Healthcare Benefits Administration: \$23.6 million increase, for a total request of \$380.5 million, or 6.6%
- Program Support: \$221,700 increase, for a total request of \$3.502 million, or 6.8%
- Agency Total: \$23,869,500 increase, or 6.6%.

Mr. Archuleta noted that the request under Personal Services and Employee Benefits includes a \$129.8 thousand (6.3%) increase compared to the FY22 approved operating budget. This was previously reported as a \$127.8 thousand, or a 6.2% increase. At the time, the agency did not have the final numbers.

Mr. Scroggins moved for approval of the FY23 appropriation request, as amended. Mr. Eichenberg seconded the motion, which passed unanimously by roll call vote.

11. GENERIC DRUG LITIGATION

Mr. Archuleta said the NMRHCA staff is requesting the authority to explore filing an independent lawsuit against generic drug manufacturers to recoup damages for alleged price fixing behavior. The NMRHCA was given the green light by the Attorney General's Office in July to pursue this on its own. Specifically, the agency is requesting authority to inform the NM Attorney General's Office that NMRHCA intends to proceed independently and to begin preparing a Request for Proposal for legal services.

Ms. Saunders moved to accept staff's proposal, as presented. Mr. Cushman seconded the motion, which passed unanimously by roll call vote.

12. PHARMACY BENEFIT MANAGER PROCUREMENT

Mr. Kueffer said staff is requesting approval to issue an RFP for pharmacy benefit management services in cooperation with the other members of the Interagency Benefits Advisory Committee and potentially other public purchasers.

Chairman Crandall said the Executive Committee has reviewed this and recommends approval to the full board.

Mr. Pyle moved for approval. Ms. Larrañaga-Ruffy seconded the motion, which passed unanimously by roll call vote. [Mr. Bhakta was not present for the vote.]

13. FY22 SMALL PURCHASE CONTRACTS

Mr. Kueffer noted that the NMRHCA has been without a CFO for several months and needs assistance to close out its financial records for FY21 in preparation for the annual financial audit. The agency solicited bids from Moss Adams, CliftonLarsonAllen, Kubiack Melton & Associates, and Javier Machuca. Based on availability, cost, and extensive experience performing similar tasks and duties for other state agencies, staff selected Javier Machuca to assist with this project. The proposed contract amount is \$16,266.

Mr. Kueffer also noted that the NMRHCA needs to upgrade/migrate its current ApplicationXtender (version AX 6.5) to version 20.x, which is the latest version. This will require a new virtual machine server infrastructure because the current application and SQL server is near or at the end of support life. AX is the system used to scan and record documents received from program participants. The NMRHCA is seeking this from SHI International Group through a state price agreement, at \$15,250.

Chairman Crandall Chairman Crandall said the Executive Committee has reviewed this and recommends approval to the full board.

Mr. Pyle moved for approval of the proposed contracts. Ms. Saunders seconded the motion, which passed unanimously by roll call vote.

14. EXECUTIVE DIRECTOR COMPENSATION

Ms. Madrid stated that, at the July board meeting, the board proposed an increase for Director Archuleta. Because her team was providing HR services for the NMRHCA through July 31, they looked at other similar positions with like responsibilities and developed a proposal to reclassify the position to Grade 42 (from Grade 36) and to create the title of Executive Director of Other Post Employment Benefits. In addition, the board had proposed an 8 percent salary increase, moving Mr. Archuleta's hourly rate to \$69.8827 per hour, or \$145,356 annually.

Ms. Madrid said that, if the board approves this proposal, she would forward the board minutes and paperwork to the GovEx administrator and then work with HR at PERA to complete the process.

Mr. Cushman moved for approval. Dr. Salazar seconded the motion, which passed unanimously by roll call vote.

15. OTHER BUSINESS

None.

16. EXECUTIVE SESSION

- a. **Pursuant to NMSA 1978, Section 10-15-1(H)(7) Pertaining to Threatened or Pending Litigation**
-

None.

17. DATE AND LOCATION OF NEXT BOARD MEETING

October 5, 2021 – 9:30 A.M.
CNM Workforce Training Center/GoToMeeting
5600 Eagle Rock Avenue NE, Room 101
Albuquerque NM 87113

18. ADJOURN

Meeting adjourned at 10:45 a.m.

Accepted by:

Doug Crandall, President



BOARD OF DIRECTORS:

DOUG CRANDALL
PRESIDENT

THERESE SAUNDERS
VICE PRESIDENT

LEANNE LARRAÑAGA-RUFFY
SECRETARY

DAVID ARCHULETA
EXECUTIVE DIRECTOR

September 23, 2021

State Controller
State of New Mexico
Department of Finance and Administration
Financial Control Division
407 Galisteo Street
Bataan Memorial Building, Room 166
Santa Fe, NM 87501

Re: Agency 34300
Fiscal Year 2021

Dear State Controller:

We confirm that we are responsible for conforming to U.S. generally accepted accounting principles. We are also responsible for adopting sound accounting policies, establishing and maintaining effective internal control, and preventing and detecting fraud.

We confirm, to the best of our knowledge and belief as of June 30, 2021, the following:


1. All transactions for our agency have been properly recorded in SHARE in conformity with U.S. generally accepted accounting principles.
2. The financial transactions recorded in SHARE accurately reflect the results of our operations for the accounting period.
3. All revenue has been properly recognized and classified in SHARE in conformity with U.S. generally accepted accounting principles.
4. Expenses have been properly recorded and classified in SHARE in conformity with U.S. generally accepted accounting principles.
5. We have no plans or intentions that would materially affect the carrying value or classification of assets, liabilities or fund equity.
6. Provisions for uncollectible receivables have been properly identified and recorded.
7. All non-timing difference reconciling items for our agency identified by the FCD Cash Control Bureau or the State Treasurer's Office have been cleared with the following exceptions:

8. Interfund, internal, and intra-entity activity and balances have been appropriately recorded, classified and reported.
9. Capital assets, including infrastructure and intangible assets, are properly capitalized, reported, and, if applicable depreciated.
10. We have properly classified all funds and activities with the following exceptions:
11. All material transactions have been properly recorded in our accounting records contained within SHARE with the following exceptions:
12. We have included the schedule of deliverables and agreed to milestones as required in Subsection A (1) 2.2.2.12 NMAC. As required, if we become aware of any changes to the schedule of audit deliverables and milestones we will immediately notify FCD in writing.
13. We certify that our general ledger in SHARE accurately reflects our agency's activity for the fiscal year ended June 30, 2021 and we are ready for the year-end audit by our selected Independent Public Accountants.
14. Our auditor has agreed with the dates in the schedule of deliverables and milestones and received our certification that our books are ready for the year-end audit as evidenced by their signature below.

Signature 
David Arduleta
 Agency CFO

Date 9/23/21

The Independent Public Auditor is not certifying to any representations made within this management representation letter EXCEPT FOR ACKNOWLEDGING SCHEDULE AND DELIVERY DATES IN ITEM 14.

Signature 
 Date September 24, 2021
 Name Kory Hoggan
 Firm Moss Adams LLC
 Independent Public Accountant

II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule of events, the descriptions of each event, and the conditions governing this procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	SPD	October 1, 2021
2. Acknowledgement of Receipt Form	Potential Offerors	3:00 PM MST October 8, 2021
3. Deadline to submit Written Questions	Potential Offerors	3:00 PM MST October 11, 2021
4. Response to Written Questions	Procurement Manager	October 18, 2021
5. Submission of Proposal	Potential Offerors	3:00 PM MST October 29, 2021
6.* Proposal Evaluation	Evaluation Committee	November 1, 2021 to December 16, 2021
7.* Selection of Finalists	Evaluation Committee	December 17, 2021
8.* Best and Final Offers	Finalist Offerors	January 10, 2022
9.* Oral Presentation(s)	Finalist Offerors	January 10, 2022
10.* Finalize Contractual Agreements	Agency/Finalist Offerors	February 9, 2022 to March 31, 2022 (December 31, 2022 for APS)
11.* Contract Awards	Agency/ Finalist Offerors	July 1, 2022 (January 1, 2023 for APS)
12.* Protest Deadline	SPD	+15 days

*Dates indicated in Events 6 through 12 are estimates only, and may be subject to change without necessitating an amendment to the RFP.

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II.A., above.

1. Issue RFP

This RFP is being issued on behalf of the State of New Mexico IBAC and UNM on the date indicated in Section II.A, Sequence of Events.

2. Acknowledgement of Receipt Form

V. EVALUATION

A. EVALUATION POINT SUMMARY

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

Evaluation Factors <i>(Correspond to section IV.B and IV C)</i>	Points Available
B. Technical Specifications	
B. 1. Organizational Experience	30
B. 2. Organizational References	30
B. 3. Mandatory Specifications	Pass/Fail
B. 4. Desirable Specifications	
Member Service and Account Management	15
Formulary Management	20
Clinical Programs	15
Retail Network Management	20
Copay Assistance Program	30
Fraud Waste and Abuse	10
Medicare Part D – Employer Group Waiver Plan (EGWP)	10
C. Business Specifications	
C.1. Financial Stability	Pass/Fail
C.2. Performance Surety Bond	N/A
C.3. Letter Of Transmittal	Pass/Fail
C.4. Campaign Contribution Disclosure Form	Pass/Fail
C.5. Other Business Specifications	
General Bid Requirements	15
Required Contract Provisions	30
Minimum Bid Qualifications	30
Term/Termination	15
Financial Contractual Requirements	30
Financial Definitions and Assumptions	30
Audit Rights	30
Implementation	10
Legal Responsibilities	15
Implementation and Ongoing Service Performance Guarantees	15
C.6. Oral Presentations	100
C.7. Cost	500
TOTAL POINTS AVAILABLE	1,000
C.8.A. New Mexico Preference - Resident Vendor Points per Section IV C. 7	50
C.8.B. New Mexico Preference - Resident Veterans Points per Section IV C.7	100

Table 1: Evaluation Point Summary



BOARD OF DIRECTORS:
TOM SULLIVAN
CHAIR
JOE MONTAÑO
VICE CHAIR
DOUG CRANDALL
SECRETARY
DAVID ARCHULETA
EXECUTIVE DIRECTOR

September 24, 2021

Debbie Romero
Cabinet Secretary
State of New Mexico
Department of Finance and Administration
407 Galisteo Street
Bataan Memorial Building, Room 180
Santa Fe, NM 87501

Re: FEMA Funding for COVID-19 Testing

Dear Ms. Romero:

The New Mexico Retiree Health Care Authority (NMRHCA) currently serves more than 65,000 retired public employees and their eligible dependents with regard to access to medical testing and treatment for all conditions. Over the past year, costs associated with testing and treatment for COVID-19 have exceeded \$9 million for the program and will continue to have an impact on the organization in the future.

As I understand, the Federal Emergency Management Agency has, or will be issuing grants to government organizations to assist with the cost of testing for COVID-19. If there is an opportunity for NMRHCA to receive reimbursement for incurred costs or funding to support future claim activity, I would like to respectfully request your consideration.

If you have any questions or concerns, please contact me at 505-222-6416.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Archuleta".

David Archuleta
Executive Director

Cc: Paula Flores, Chief, Federal Grant Bureau



Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim) FEMA Policy 104-21-0003, Version 2

BACKGROUND

This interim policy supersedes version 1 of the *Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim)* published on April 5, 2021, and extends the applicable period of eligibility to the beginning of the incident period and the period of 100 percent federal cost share from the beginning of the incident period to December 31, 2021.

Under the March 13, 2020, COVID-19 nationwide emergency declaration¹ and subsequent major disaster declarations for COVID-19, state, local, tribal, and territorial (SLTT) government entities and certain private nonprofit (PNP) organizations are eligible to apply for assistance under the FEMA Public Assistance (PA) Program.² On January 21, 2021, the President issued the “Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States,”³ which authorized FEMA to provide funding to all PA Applicants for the safe opening and operation of eligible facilities. Such assistance “may include funding for the provision of personal protective equipment and disinfecting services and supplies.” On August 17, 2021, the President issued the “Memorandum on Maximizing Assistance to Respond to COVID-19,”⁴ which directed FEMA to “provide a 100 percent Federal cost share for all work eligible for assistance under PA Category B, pursuant to sections 403 (42 U.S.C. 5170b), 502 (42 U.S.C. 5192), and 503 (42 U.S.C. 5193) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq. (Stafford Act) , including work described in section 3(a) of the Presidential Memorandum of January 21, 2021.

PURPOSE

This updated interim policy retroactively extends the period of work eligibility to the beginning of the incident period. It also specifies that work conducted from the beginning of the incident period through December 31, 2021 will be reimbursed at a federal cost share of 100 percent. Work conducted after December 31, 2021 will be reimbursed at the federal cost share established at that time.

¹ www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration.

² See www.fema.gov/assistance/public/program-overview for more information.

³ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/extend-federal-support-to-governors-use-of-national-guard-to-respond-to-covid-19-and-to-increase-reimbursement-and-other-assistance-provided-to-states/>

⁴ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/17/memorandum-on-maximizing-assistance-to-respond-to-covid-19/>



This interim policy also defines the framework, policy details, and requirements for determining the eligibility of safe opening and operation work and costs under the PA program. The purpose of this policy is to ensure consistent and appropriate implementation across all COVID-19 emergency and major disaster declarations.

PRINCIPLES

- A. FEMA will provide support to meet emergency needs during the COVID-19 pandemic.
- B. FEMA will implement this policy and any assistance provided in a consistent manner through informed decision making and review of an Applicant's supporting documentation.
- C. FEMA will engage with interagency partners, including the U.S. Department of Health and Human Services (HHS), Office of the Assistant Secretary for Preparedness and Response (ASPR), the Administration for Children and Families (ACF), the Centers for Disease Control and Prevention (CDC), the Centers for Medicare & Medicaid Services (CMS), the Health Resources and Services Administration (HRSA); the Indian Health Service; the U.S. Department of Agriculture (USDA); the U.S. Department of Housing and Urban Development (HUD); and the U.S. Department of Education, among others, to ensure any PA assistance is provided in a coordinated manner without duplicating assistance.

REQUIREMENTS

A. APPLICABILITY

Outcome: To define the declarations, eligible Applicants, and work to which the safe opening and operation provisions of this interim policy applies.

1. This policy applies to:
 - a. All emergency and major disaster declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (Stafford Act), as amended, issued by the President for the COVID-19 pandemic.
 - b. Eligible PA Applicants under the COVID-19 emergency declaration or any subsequent COVID-19 major disaster declaration.⁵
 - c. Work conducted from the beginning of the incident period until the end of the period of performance. See section E, Work Completion Deadlines, of this policy for more information.
2. This policy does not apply to any other emergency or major disaster declaration.
3. This policy applies to safe opening and operation work conducted from the beginning of the incident period through the end of the period of performance, notwithstanding Section C.3 of FEMA Policy 104-009-19 *Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)* (effective September 15, 2020).
4. Assistance for eligible costs will be provided at a federal cost share of 100 percent from

⁵ See *Coronavirus (COVID-19) Pandemic: Private Nonprofit Organizations* (April 2, 2020), www.fema.gov/fact-sheet/coronavirus-covid-19-pandemic-private-nonprofit-organizations, for more information on PNP Applicant eligibility.



the beginning of the incident period through December 31, 2021. Work conducted after that date will be subject to the cost share established at that time.

5. Work that is otherwise eligible under FEMA Policy 104-009-19 *Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance* (Interim) remains eligible for assistance.
6. Except where specifically stated otherwise in this policy and other disaster specific COVID-19 policies, assistance is subject to PA program requirements as defined in Version 3.1 of FEMA Policy 104-009-2 *Public Assistance Program and Policy Guide* (PAPPG).⁶

B. ELIGIBILITY CONSIDERATIONS

Outcome: To define the overarching framework for eligible work related to safe opening and operations in COVID-19 declarations.

1. **Legal Responsibility:** To be eligible for PA, an item of work must be the legal responsibility of an eligible Applicant.⁷
 - a. Measures to protect life, public health, and safety are generally the responsibility of SLTT governments.
 - b. Legally responsible SLTT governments may enter into formal agreements or contracts with private organizations, including PNP organizations, when necessary to carry out eligible emergency protective measures in response to the COVID-19 pandemic. In these cases, PA funding is provided to the legally responsible government entity, which would then pay the private entity for the provision of services under the formal agreement or contract.
 - c. For PNP facilities and for COVID-19 declarations only, FEMA is waiving the primary use and primary ownership policies normally applicable to PNP entities that own or operate mixed-use facilities.⁸
2. **Allowability of Costs:** To be eligible, claimed costs must be allowable under 2 C.F.R. Part 200.⁹ In considering the allowability of costs, FEMA will evaluate, among other factors:
 - a. Whether the cost was necessary and reasonable to respond to the COVID-19 pandemic. A cost is considered reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.¹⁰
 - b. Whether the cost conforms to standard PA program eligibility and other federal requirements.¹¹

⁶ Version 3.1 of the PAPPG is applicable to all COVID-19 declarations and is available on the FEMA website at https://www.fema.gov/sites/default/files/documents/fema_pappg-v3.1-archived_policy_5-4-2018.pdf.

⁷ 44 CFR § 206.223(a)(3).

⁸ See PAPPG V3.1 (2018), at page 16.

⁹ 2 CFR § 200.403.

¹⁰ 2 CFR §§ 200.403(a) and 404.

¹¹ See 2 CFR §§ 200.403(b),(d),(e),(f) and (h) and PAPPG V3.1 (2018), and www.fema.gov/grants/procurement for additional guidance.



- c. Whether the Applicant followed its established policies and procedures that apply when federal funding is not available, including standard billing and fee collection.¹²
 - d. Whether the cost is documented with sufficient detail for FEMA to evaluate its compliance with federal laws, rules, and other PA program requirements.¹³
3. Equitable Pandemic Response and Recovery
- a. As stated in the [Executive Order on Ensuring an Equitable Pandemic Response and Recovery](#), dated January 21, 2021, COVID-19 has a disproportionate impact on communities of color and other underserved populations, including members of the LGBTQI+ community, persons with disabilities, those with limited English proficiency, and those living at the margins of our economy.
 - b. As a condition of receiving this financial assistance, Recipients and Subrecipients must focus the use of FEMA funding on the highest-risk communities and underserved populations as determined by established measures of social and economic disadvantage (e.g., the CDC Social Vulnerability Index)¹⁴. Recipients and Subrecipients must prioritize resources to ensure an equitable pandemic response. Failure to adhere to this policy could result in funding reductions and/or delays.
 - c. FEMA will monitor compliance with this grant condition in conjunction with the stipulations set forth in 44 C.F.R. part 7 and Title VI of the Civil Rights Act of 1964 that no person on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from FEMA; and the requirement of Stafford Act Section 308 (42 U.S.C. § 5151, 44 C.F.R. § 206.11) that distribution of disaster relief be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, limited English proficiency, or economic status.

C. WORK ELIGIBILITY

Outcome: To establish parameters for eligible safe opening and operation work under COVID-19 declarations.

1. In accordance with Sections 403 and 502 of the Stafford Act, emergency protective measures necessary to save lives and protect public health and safety may be reimbursed under the PA program.
2. All work must be required as a direct result of the emergency or major disaster in accordance with 44 CFR § 206.223(a)(1).
3. All work must be done in accordance with CDC guidance or that of an

¹² 2 CFR § 200.403(c).

¹³ 2 CFR § 200.302(a).

¹⁴ <https://www.atsdr.cdc.gov/placeandhealth/svi/index.html>



appropriate public health official available at the time the work was completed.

4. Safe Opening and Operation work performed from the beginning of the incident period:
 - a. FEMA may provide assistance to all eligible PA Applicants, including SLTTs and eligible PNPs, for the following measures implemented to facilitate the safe opening and operation of all eligible facilities in response to COVID-19 declared events:
 - i. Purchase and distribution of face masks¹⁵, including cloth face coverings, and personal protective equipment (PPE).¹⁶
 - ii. Cleaning and disinfection, including the purchase and provision of necessary supplies and equipment in excess of the Applicant's regularly budgeted costs.¹⁷
 - iii. COVID-19 diagnostic testing.¹⁸
 - iv. Screening and temperature scanning, including, but not limited to, the purchase and distribution of hand-held temperature measuring devices or temperature screening equipment.
 - v. Acquisition and installation of temporary physical barriers, such as plexiglass barriers and screens/dividers, and signage to support social distancing, such as floor decals.
 - vi. Purchase and storage of PPE and other supplies listed in this section should be based on projected needs for the safe opening and operation of the facility.

D. COORDINATION OF FUNDING

Outcome: To provide information on coordinating PA and other sources of federal funding and ensure FEMA avoids any duplication of benefits.

1. Congress has authorized funding to multiple federal agencies to address the effects of the COVID-19 pandemic.
2. FEMA is coordinating closely with other federal agencies about the eligible uses of various COVID-19 funding resources and will continue to provide guidance to eligible

¹⁵ For this policy, face masks, such as cloth face coverings, that are not regulated by the U.S. Food and Drug Administration (FDA) are not considered PPE. Per FDA guidance, these face masks are not PPE, but may be used to prevent or slow the spread of COVID-19. See <https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-surgical-masks-and-face-masks> and <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-emergency-use-authorization-face-masks-non-surgical>.

¹⁶ For this policy, PPE is defined to include items such as N95 and other filtering respirators, surgical masks, gloves, protective eyewear, face shields, and protective clothing (e.g., gowns). Eligibility includes necessary training for proper use of PPE.

¹⁷ Work should be consistent with current PAPPG and public health guidance as it relates to disinfection recommendations. CDC provides disinfection guidance online at <https://www.cdc.gov/coronavirus/2019-ncov/community/clean-disinfect/index.html>.

¹⁸ A diagnostic test determines if an active coronavirus infection is present and if an individual should take steps to quarantine or isolate from others. <https://www.fda.gov/consumers/consumer-updates/coronavirus-disease-2019-testing-basics>.



Applicants about where they can seek funding.¹⁹

- a. A list of available federal funding for COVID-19 support is located at: www.usa.gov/coronavirus. General information about available federal funding programs may be found at www.grants.gov.
3. FEMA may provide PA funding to Applicants for eligible work under the COVID-19 declarations that may also be eligible for funding under another federal agency's authorities.
 - a. Potential PA Applicants may have the flexibility to determine which source of funding to use for their costs, subject to the purpose and eligibility requirements of each of the federal programs and funding sources.
 - b. If an eligible Applicant applies for PA funding and then determines it will instead seek funding from another federal agency, the Applicant should notify FEMA as soon as possible and no later than 30 days from the date the decision to seek funding from another federal agency is made. Failure to notify FEMA accordingly may result in de-obligation of funding or collections owed.
 - i. If FEMA has not awarded PA funding, the Applicant should withdraw or amend its PA project application as soon as possible and no later than 30 days from the date the agency decides to seek funding from another federal agency.
 - ii. If FEMA has already awarded PA funding, the Applicant should request an updated version of its project application to amend its PA project as soon as possible and no later than 30 days from the date the agency decides to seek funding from another federal agency.
 - c. PA funding should not be considered funding of last resort. PA funding should be considered concurrently with other federal agency programs and sources.
4. For certain types of work that may be eligible for funding under multiple agencies' authorities, but most appropriately funded under a specific source of funding, FEMA, in coordination with other federal agencies and after close examination of available funding (including the Coronavirus Aid, Relief, and Economic Security Act, American Rescue Plan Act, and other supplemental appropriations for COVID-19), has determined that it will not provide reimbursement for such work through the FEMA PA program.

For example, COVID-19 contact tracing may be an emergency protective measure otherwise eligible for PA funding. However, in coordination with other federal agencies, FEMA has determined that PA is not the appropriate source of funding for COVID-19 contact tracing as there are other more appropriate sources of funding.

¹⁹ FEMA has posted a [COVID-19 Resource Summary Report](#) that is a list of resources provided by the federal government since the start of the response to COVID-19. This list is provided as a point of reference and partners should directly consult with each agency to verify the applicability of a specific program. Additional information on COVID-19 supplemental resources is available at www.fema.gov/disasters/coronavirus/supplemental-resources. FEMA also developed [COVID-19 Resource Roadmaps](#) to assist stakeholders in navigating some of the challenges and resources available to address the COVID-19 pandemic.



5. Section 312 of the Stafford Act prohibits all federal agencies from duplicating benefits for disaster relief.
 - a. Multiple agencies having authority to expend funds for the same purpose is not, by itself, a duplication of benefits under Section 312.²⁰ However, all federal agencies are prohibited by Section 312 from paying Applicants for the same work twice.
 - b. Recipients and Applicants are ultimately responsible for ensuring that they do not receive payment for the same item of work twice. FEMA Applicants must certify in the PA application process that assistance is not being duplicated.

E. WORK COMPLETION DEADLINES

Outcome: To provide for future deadlines for the completion of eligible work.

1. For all COVID-19 declarations, FEMA has extended the deadline for completing emergency work indefinitely and will make notification of changes to this (i.e. establishing a deadline) no later than 30 days prior to the deadline.

Keith Turi
Assistant Administrator
Recovery Directorate

9/8/21

Date

²⁰ See FEMA Fact Sheet *Coronavirus Disease 2019 (COVID-19) Public Health Emergency: Coordinating Public Assistance and Other Sources of Federal Funding* (July 1, 2020) at <https://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations> for more information.

ADDITIONAL INFORMATION

REVIEW CYCLE

FEMA Policy 104-21-0003 *Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim), Version 2*, will be reviewed and evaluated regularly throughout the duration of the COVID-19 pandemic. The Assistant Administrator for the Recovery Directorate is responsible for authorizing any changes or updates. This policy will sunset with the closure of the national emergency declaration for COVID-19 and any subsequent major disaster declarations for COVID-19.

AUTHORITIES AND REFERENCES

Authorities

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207, as amended
- Title 44 of the Code of Federal Regulations, Part 7 and Part 206, Subpart H
- Title 2 of the Code of Federal Regulations, Part 200

References

- FEMA Policy 104-009-2 *Public Assistance Program and Policy Guide*, Version 3.1

DEFINITIONS

To establish consistent terminology for purposes of implementing this policy, the following definitions are provided below. These definitions are specific to this policy and may differ from definitions prescribed for the same or similar terms in other policies.

1. Personal Protective Equipment (PPE): PPE refers to items such as N95 and other filtering respirators, surgical masks, gloves, protective eyewear, face shields, and protective clothing (e.g. gowns).

MONITORING AND EVALUATION

FEMA will closely monitor the implementation of this policy through close coordination with regional and field staff, as appropriate, as well as interagency partners and SLTT stakeholders.

QUESTIONS

Applicants should direct questions to their respective FEMA regional office.

FEMA Public Assistance (PA) Grant



What you need to know before starting

State Government

- The State, Territorial, or Tribal government that receives funding under the disaster declaration and disburses funding to approved subrecipients.



PNP Applicant Eligibility

To be eligible for Public Assistance, a PNP applicant must show that it has:

- A ruling letter from the Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954; or
- Documentation from the state substantiating that the non-revenue producing organization or entity is a nonprofit entity organized or doing business under state law.¹

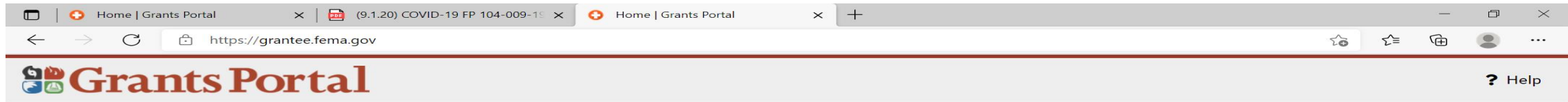
Eligible PNPs must also own or operate an eligible facility.² For PNPs, an eligible facility is one that provides an eligible service, which includes education, utilities, emergency, medical, custodial care, and other essential social services.³

Private entities, including for profit hospitals or restaurants, are not eligible for assistance from FEMA under Public Assistance. However, state, local, tribal, and territorial government entities may contract with private entities to carry out eligible emergency protective measures. In these cases, FEMA will reimburse the eligible applicant for the cost of eligible work, and the applicant will then pay the private entity for the provision of services.

How to get started

Register at the following website:

<https://grantee.fema.gov>



This Portal Is for Governments and Non-Profits Use Only

Individuals looking for Individual Assistance, please visit disasterassistance.gov for assistance.

Businesses looking for assistance should visit the [Small Business Administration's disaster assistance website](#).



Sign in to Your Account

USERNAME

[Forgot your username?](#)

PASSWORD

[Forgot your password?](#)

SIGN IN

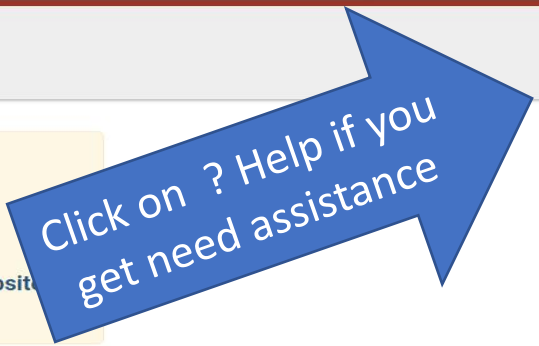
[Register Your Organization for Public Assistance](#)



⚠ This Portal Is for Governments and Non-Profits Use Only

Individuals looking for Individual Assistance, please visit disasterassistance.gov for assistance.

Businesses looking for assistance should visit the **Small Business Administration's disaster assistance website**



🔑 Sign in to Your Account

USERNAME [Forgot your username?](#)

PASSWORD [Forgot your password?](#)

SIGN IN

[+ Register Your Organization for Public Assistance](#)



Representative for your Agency

The representative should be someone who can be available to answer question and be able to submit documents when requested. An ideal person is someone in finance or Leadership. Identify that person before registering and find an alternate person to help.



Starting the process

- After clicking the register your organization, the next screen will be a Welcome Screen.



PLEASE KEEP in Mind you will only have an hour to complete the registration.

- Next screen is Organization information (there are 5 tabs)
 1. Organization Information, 2. contact Info, 3. Location, 4. PNP, and
 5. Submit



Organization Info Tab

Need this information

- State
- Organization Name (Like Sandoval Regional Medical Center)
- Organization Type (Nonprofit with 501C3 IRS Status) (Government agencies like city, state or county agencies)
- EIN number
- DUNS number
- **All these are required**
- Click Next in the top right corner to go to the next tab



Contact Info & Location Info Tabs

Need for Contact info

- Primary point of contact
- Alternate point of contact

- Click Next in the top right corner to go to the next tab

Need for Location Info

- Primary Location
- Mailing address

- Click Next in the top right corner to go to the next tab



PNP (Private nonprofit)

Need

- Answer the questions
 1. Do you want to submit a request?
 2. Which emergency/disaster do you want to request (New Mexico COVID 4529DR-NM)
 3. Add any additional info

Click Next in the top right corner to go to the next tab

Review and Submit



What Happens Next

- Department Homeland Security and Emergency Management will approve the application.
- FEMA will approve the application

After approvals

- You will receive an email stating you are approved and please log in using the following username and temporary password on Grants Portal.

You log in and then you can start creating your account

- Follow the prompting to get you account started



Next Step

Congratulation you created your account

- Log back into your account and read the alerts and accept

On the upper right screen there might be a bell with a number next to it in red. This is an alert for you. Click on the bell and click on the review in blue pop up. (it might that you need to do your impact survey. In the Yellow banner there will be a blue hyperlink click on it. Click on complete survey on the top right corner. Follow the promptings.

If you need any help, call Rachel Bingham at 505-660-9717 or email Rachel.bingham2@state.nm.us or call FEMA help desk.



After approval in Grants Portal

- Start your project-personnel, signs, sticker or Plexiglas and many other reimbursements
- Documents-invoices, proof of payments, payroll, procurement policy, insurance policy, and purchase orders and bids
- Cost estimate

After all documents are submitted-what happens next

- Submit the project for approval
- Project gets approved by FEMA then by DHSEM



Reimbursement Process

After FEMA and DHSEM approves the Project, and all documents are uploaded then what

- The project will be obligated for the amount the cost estimate was approved for
- DHSEM will start the process for reimbursement
- If the cost comes out under the cost estimate you will have to do amendment

What if it's a retroactive reimbursement?

- Follow the same process as regular project process with all documentation



Any question or
concern

Please feel free to call me and I am here
to assist through the process

Please call Rachel Bingham at 505-660-
9717 or email
Rachel.bingham2@state.nm.us or call
FEMA help desk.





NEW MEXICO
RETIREE
HEALTH CARE
AUTHORITY

Legislative Finance Committee

Representative Patricia A. Lundstrom, Chair
Senator George K. Munoz, Vice Chair

FY23 Appropriation Request
September 23, 2021

Doug Crandall, President
Therese Saunders, Vice President
LeAnne Larranaga-Ruffy, Secretary
David Archuleta, Executive Director

Retiree Health Care Act and Board Membership

Laws of 1990, Chapter 6, Sections 1 – 16

- Purpose: Provide eligible retirees, their spouses, and dependents with affordable health insurance.
- Board of Directors has broad authority to set plan parameters i.e., subsidy levels, participation requirements, cost sharing arrangements (copays, deductibles, and coinsurance).
- Created in July 1990 (No appropriation / No material prefunding period).
- Began paying full benefits for over 16,000 members in January 1991. Statutes limited premium increases until 2008.
- Findings and declaration of policy: *“The legislature does not intend to create contract rights which may not be modified or extinguished in the future.”*

Board Membership

- **Doug Crandall**, President -- Retired Public Employees of New Mexico
- **Therese Saunders**, Vice President -- NEA, Teachers Association
- **LeAnne Larranaga-Ruffy**, Secretary -- Public Employees Retirement Association Designee
- **Rick Scroggins** -- Educational Retirement Board, Acting Executive Director
- **Tomas Salazar** -- New Mexico Association of Educational Retirees
- **Tim Eichenberg** -- State Treasurer
- **Terry Linton** -- Governor Appointee
- **Leane Madrid** -- State Classified Employee, State Personnel Office
- **Loren Cushman** -- Superintendents Association, Animas Schools Superintendent
- **Sanjay Bhakta** -- Municipal League, Chief Financial Officer, City of Albuquerque
- **Lance Pyle** -- Association of Counties, Curry County Manager

Current Agency Operations

- **Two Office Locations**

6300 Jefferson Street NE, Suite 150
Albuquerque, NM 87109

33 Plaza La Prensa
Santa Fe, NM 87505

- **COVID-19 Update**

- Employees working in-office and remote
- Currently making appointments for in-person meetings with customers
- Monthly Board and Committee meetings held via GoToMeeting

- **Fall 2021 Priorities**

- Pharmacy Benefit Manager RFP 2022
 - Purpose: Provide continued prescription medication coverage for participants.
 - RFP includes other public purchasers – State of New Mexico, Public Schools Insurance Authority, Albuquerque Public Schools and the University of New Mexico.
- Generic Drug Litigation
 - Purpose: Attempt to recoup funds from alleged price fixing in the generic drug industry.
 - Currently developing RFP and draft contract.
- Develop Web Portal
 - Purpose: Improve customer service and automate some manual processes.
 - Allows members to access their account, billing information, and enable direct communications.

Membership, Budget, and Investments

Membership and Demographics

Public Employer Groups - 302

- Schools – 50%
- State agencies – 25%
- Local government – 25%

Total Plan Membership – 154,177 (6/30/20)

- Retirees/Surviving Spouses – 52,179
- Inactive/Eligible – 10,916
- Currently Active – 91,082

Current Participation – 65,270 (9/1/21)

- Retirees – 42,047
 - Pre-Medicare – 10,040
 - Medicare – 32,007
- Spouses/DP – 11,501
 - Pre-Medicare – 2,862
 - Medicare – 8,639
- Dependent Children – 1,605

Retirees Under Age 55 – 2,130

Retirees' Average Age – 70

Average Age at Retirement – 60

Healthcare Benefits Administration

• Uses

- Benefits - \$353.5 Million.
- ACA Fees - \$43.9 Thousand.
- Other Financing Uses - \$3.3 Million (Operations).

• Sources

- EE/ER Contributions - \$114.6 Million.
- Retiree Contributions - \$175 Million.
- Tax & Rev Suspense Fund - \$36.8 Million.
- Misc. Revenue - \$30 Million.
- Interest - \$400 Thousand.

Program Support (26 FTE)

• Uses

- Salaries & Benefits - \$2.1 Million.
- Contractual Services - \$621.4 Thousand.
- Other Costs - \$548.6 Thousand.

• Sources

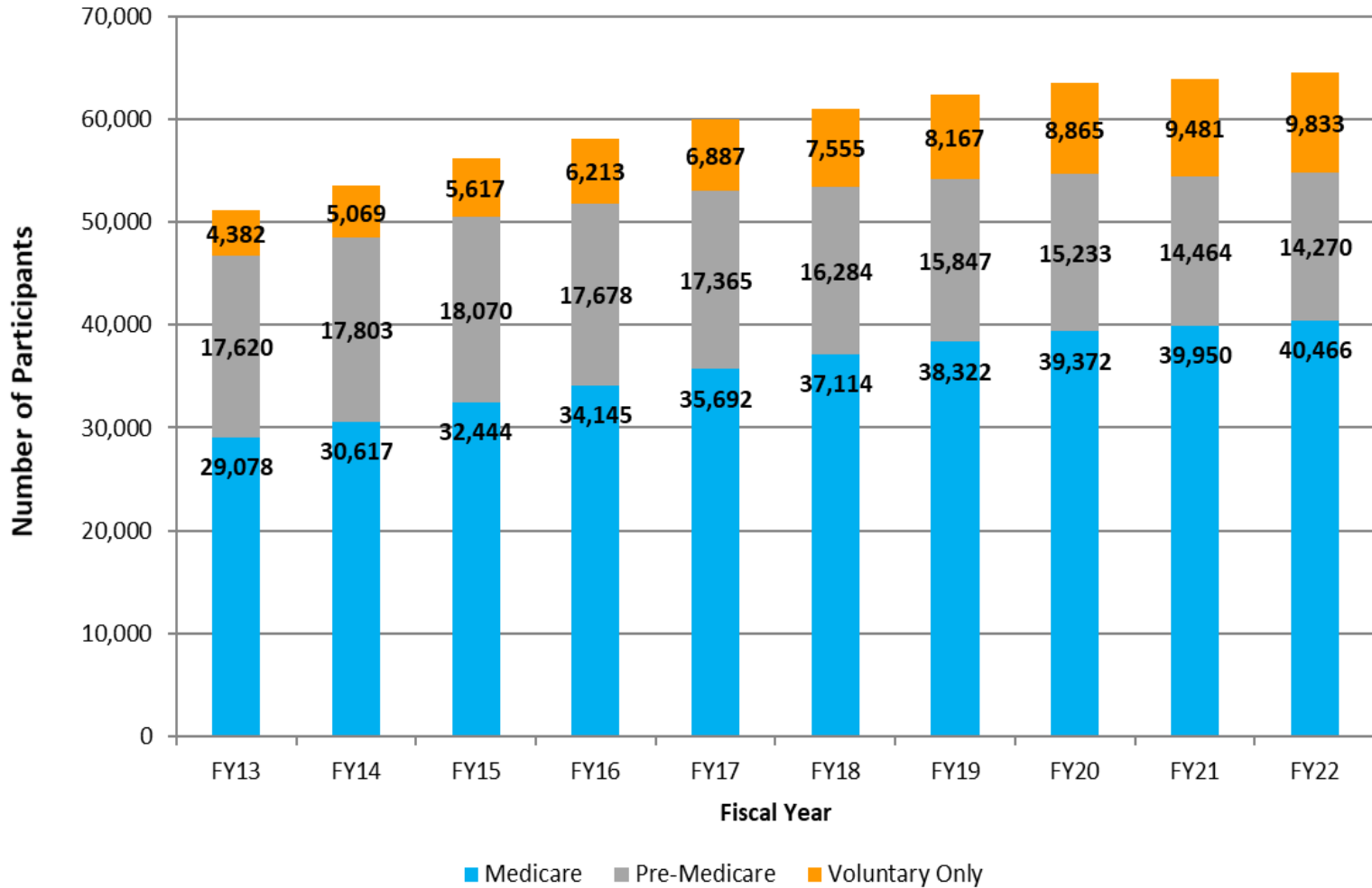
- Other Financing Uses - \$3.3 Million.

Investments

- Held by State Investment Council.
 - Fees Paid on Prorated Basis.
- Biennial Asset Allocation Study Performed.

Retiree Plan Participation

Fiscal Years 2013 - 2022



2022 Plan Changes

- **Board Approved Changes and Updates**
 - **Self-Insured Plan Rate Changes**
 - Premier and Value Plans: + 6%
 - Medicare Supplement Plan: + 4%
 - **Hinge Health – BCBS Value and Premier Plans**
 - Digital Musculoskeletal (MSK) Care and Services for Back and Joint Pain.
 - Sensor Technology with Clinical Team to Provide Health Coaching and Anytime Access.
 - **Broad Performance Network (Medicare Supplement Rx)**
 - **Delta Dental Network Change – Point of Service Network**
 - Increase in NM Provider Access by 7.8%.
- **Medicare Advantage Rate Changes**
 - Blue Cross Blue Shield Plan I: - 25%
 - Blue Cross Blue Shield Plan II: - 100%
 - UnitedHealthcare Plans I & II: 0%
 - Humana Plan I: + 4%
 - Humana Plan II: + 7%
 - Presbyterian Plans I & II: +10%

Solvency Study

Strategic Planning Tool

- **Projected Revenues**

- Employee and Employer Contributions (Set by Statute).
- Retiree Medical Premiums (Set by Board of Directors).
- Retiree Ancillary Premiums (Not Subsidized/Pass-Through).
- Tax Suspense Fund (Set by Statute).
- Miscellaneous (Medicare Subsidies, Drug Rebates, Performance Guarantees) (Varies).

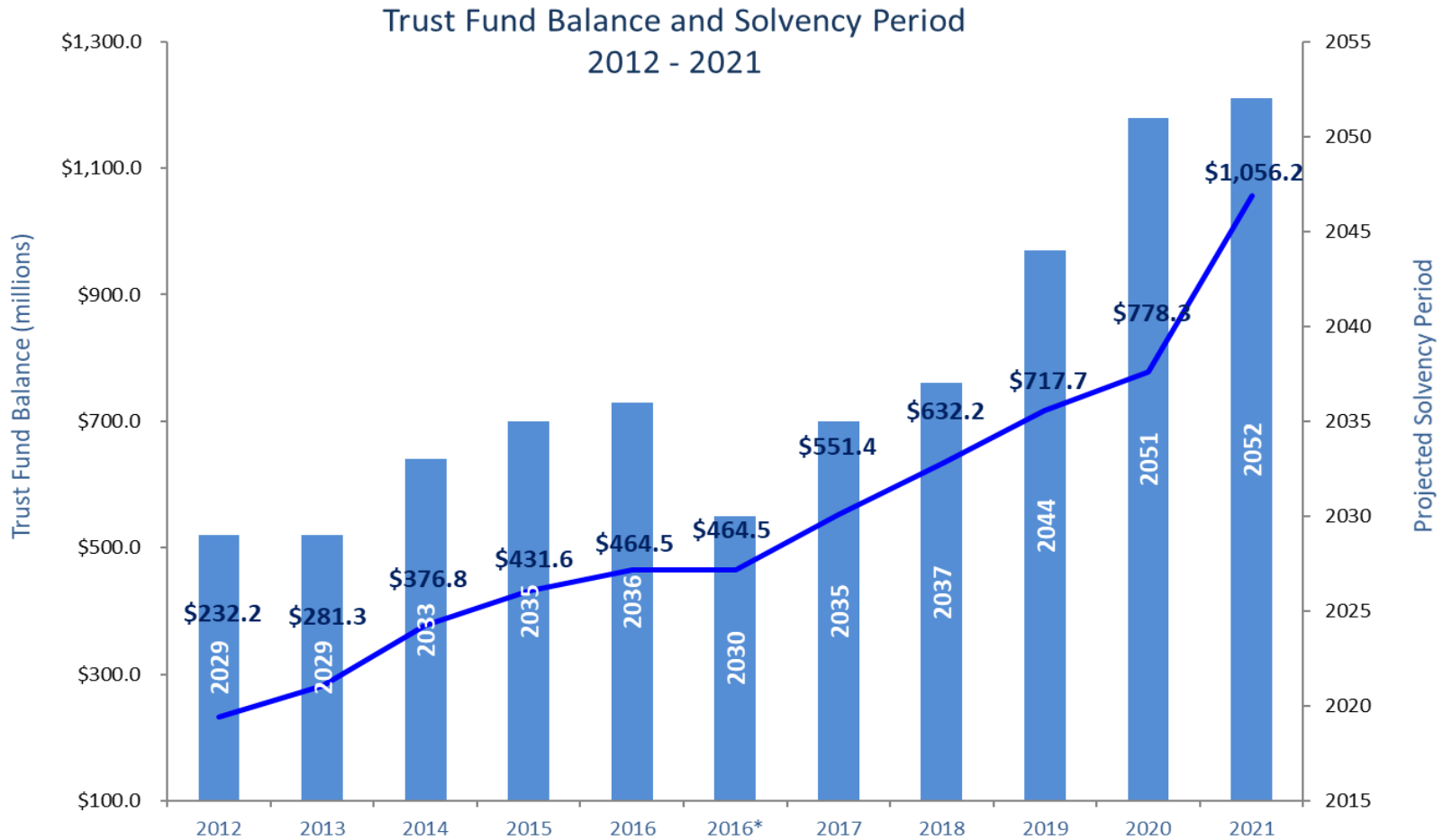
- **Projected Expenses**

- Medical and Prescription.
- Retiree Ancillary Premiums.
- Administrative Fees.
- Agency Operating Expenses.

- **Major Assumptions**

- Payroll Growth: 2.75%
- Discount Rate: 7.00%
- Medical Trend: 8% pre-Medicare / 6% Medicare
- Plan Selection: Migration to Lower Costing Plans.
- Plan Design Changes: Increased Copays, Coinsurance and Deductibles.
- Plan Rates: Continue to Grow in Accordance With Medical Trend.

Solvency Update

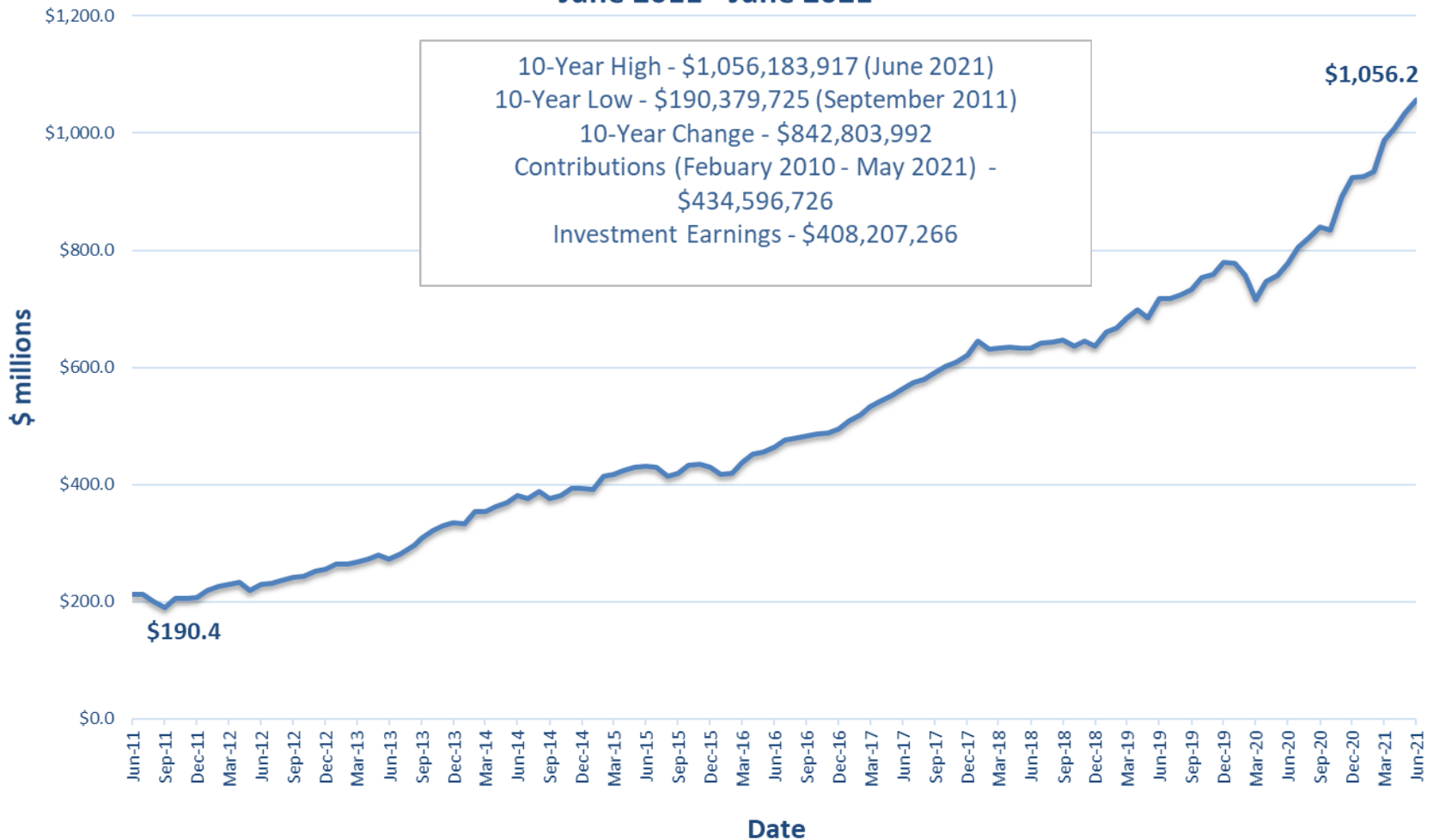


*Post 2016 Special Session
Action

■ Solvency Period — Trust Fund Balance

Investments

**NMRHCA Trust Fund Balance History
June 2011 - June 2021**

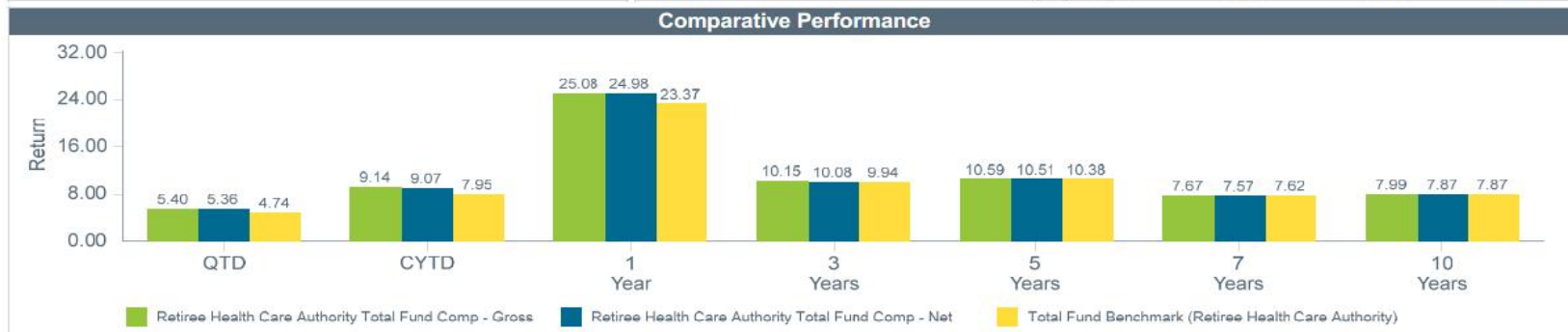


Investment Performance

New Mexico State Investment Council Retiree Health Care Authority Total Fund Comp

As of June 30, 2021

Overview	Asset Allocation vs. Target Allocation				
The New Mexico Retiree Health Care Authority (NMRHCA) was established in 1990 to provide health care coverage to retirees of state agencies and eligible participating public entities. Approximately 300 public entities including cities, counties, universities and charter schools participate in NMRHCA. The agency provides medical plans for both non Medicare and Medicare eligible retirees and their dependents as well as dental, vision and life insurance. The Authority currently provides coverage to approximately 58,000 retirees and their dependents.	Market Value (\$)	Allocation (%)	Target (%)	Difference (%)	
	Large Cap US Equity Index	176,755,158	16.74	14.00	2.74
	Small/Mid Cap US Equity Index	25,118,981	2.38	2.00	0.38
	Non-US Developed Markets Index	146,223,309	13.84	14.00	-0.16
	Non-US Emerging Markets Active	111,487,412	10.56	10.00	0.56
	US Core Bonds	190,451,533	18.03	20.00	-1.97
	Credit & Structured Finance	142,946,052	13.53	15.00	-1.47
	Private Equity	129,949,548	12.30	10.00	2.30
	Real Estate	91,249,224	8.64	10.00	-1.36
	Real Return	42,002,682	3.98	5.00	-1.02
Total Fund	1,056,183,900	100.00	100.00	0.00	



Comparative Performance

	QTD	CYTD	1 Year	3 Years	5 Years	7 Years	10 Years	2020	2019	2018
Retiree Health Care Authority Total Fund Comp - Gross	5.40	9.14	25.08	10.15	10.59	7.67	7.99	9.88	13.27	-1.24
<i>Total Fund Benchmark (Retiree Health Care Authority)</i>	<i>4.74</i>	<i>7.95</i>	<i>23.37</i>	<i>9.94</i>	<i>10.38</i>	<i>7.62</i>	<i>7.87</i>	<i>10.21</i>	<i>14.34</i>	<i>-1.86</i>
Difference	0.66	1.19	1.71	0.21	0.21	0.05	0.12	-0.33	-1.07	0.62
Retiree Health Care Authority Total Fund Comp - Net	5.36	9.07	24.98	10.08	10.51	7.57	7.87	9.83	13.21	-1.32
<i>Total Fund Benchmark (Retiree Health Care Authority)</i>	<i>4.74</i>	<i>7.95</i>	<i>23.37</i>	<i>9.94</i>	<i>10.38</i>	<i>7.62</i>	<i>7.87</i>	<i>10.21</i>	<i>14.34</i>	<i>-1.86</i>
Difference	0.62	1.12	1.61	0.14	0.13	-0.05	0.00	-0.38	-1.13	0.54

Schedule of Investable Assets

Periods Ending	Beginning Market Value (\$)	Net Cash Flow (\$)	Gain/Loss (\$)	Ending Market Value (\$)	% Return
CYTD	924,474,338	45,000,000	86,709,561	1,056,183,900	9.07

Allocations shown may not sum up to 100% exactly due to rounding. Performance shown is net of fees, except where noted otherwise. Performance includes receipt of additional units of the US Large Cap Index Pool effective July 1, 2020.

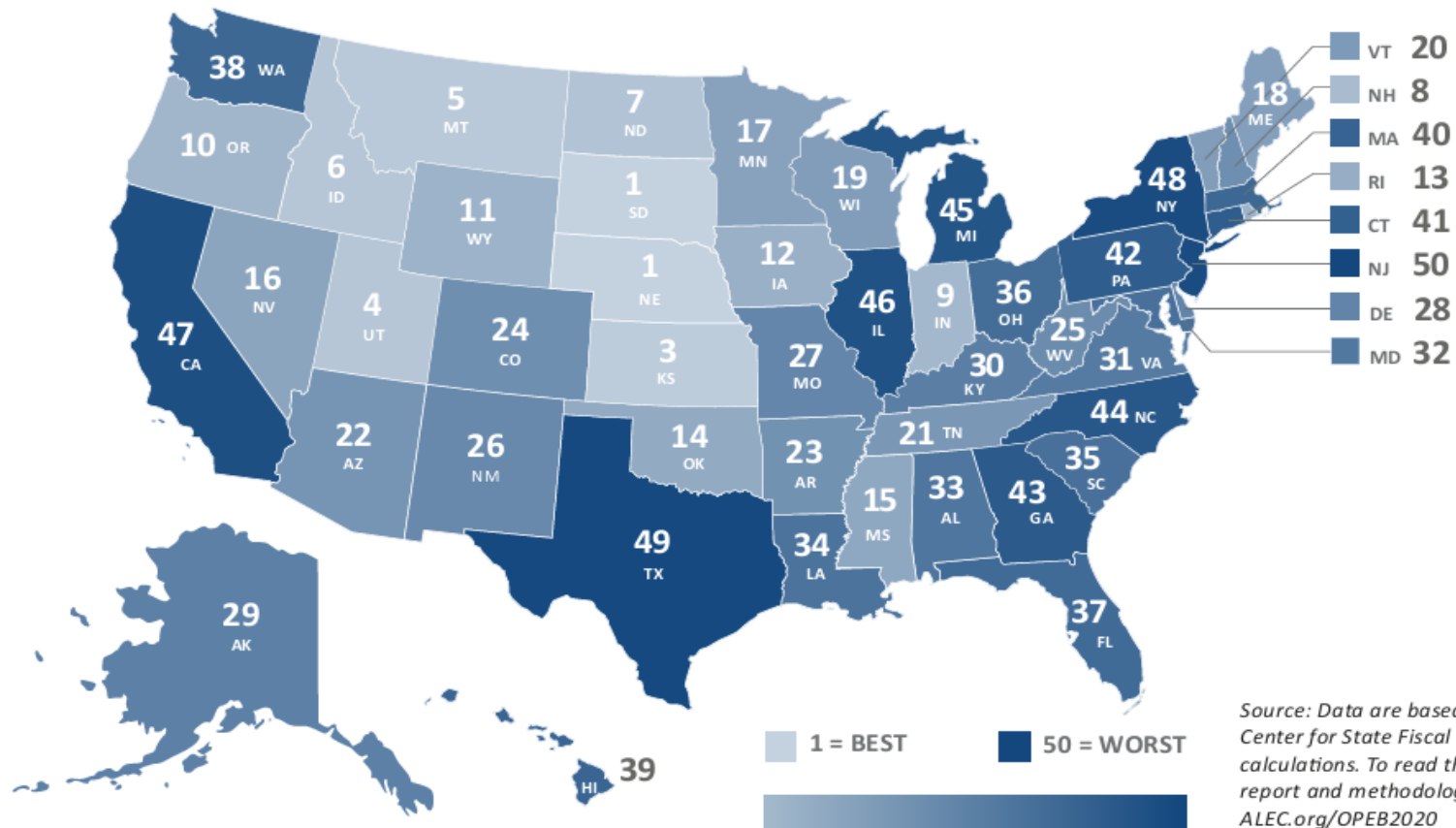
GASB Updates

- GASB 74 – Actuarial Valuation Review of Other Postemployment Benefits (OPEB) (June 30, 2020)
 - Completed November 4, 2020.
 - Total OPEB Liability: \$5,028,579,923 (2020) / \$3,999,137,737 (2019).
 - Net OPEB Liabilities (NOL) Increased \$989.9 million (Driven by Decrease in Blended Discount Rate/Lower Bond Index Rates).
 - 2.86% in 2020 vs 4.16% in 2019.
 - Applicable Discount Rate = Blend of Assumed Investment Return on Plan Assets – 7.25% and the Rate for 20-Year, Tax-Exempt General Obligation Municipal Bonds with an Average Rate of AA/Aa or Higher (e.g. 2.21% as of June 30, 2020 Compared to 3.50% as of June 30, 2019).
 - NOL: \$4,198,908,018 (2020) / \$3,242,388,746 (2019).
 - Funded Status: 16.50% (2020) / 18.92% (2019).
 - The Coronavirus (COVID-19) Pandemic is Rapidly Evolving and may have a Significant Financial Impact on Future Expenditures. The Report does not Attempt to Measure:
 - Direct or Indirect Effects of COVID-19 on Short-Term Health Plan Costs.
 - Short-Term or Long-Term Impacts on Mortality of the Covered Population.
 - The Potential for Federal or State Fiscal Relief.

Other Postemployment Benefits Continued

FIGURE 1 TABLE 1
Total Unfunded OPEB Liabilities

This metric shows the total OPEB liabilities in each state. It is important to note that Nebraska and South Dakota implemented defined-contribution healthcare benefits, eliminating unfunded liabilities in these states.



Source: Data are based on ALEC Center for State Fiscal Reform's calculations. To read the full report and methodology, see ALEC.org/OPEB2020

Healthcare Benefits Administration

Health Benefit Fund Expenditure Summary						
	FY21	FY21	FY22	FY23	FY23	%
Contractual Services	OPBUD	ACTUALS	OPBUD	INC/DEC	REQUEST	CHANGE
1 Prescriptions	\$ 115,000.0	\$ 105,407.6	\$ 116,800.7	\$ 6,500.0	\$ 123,300.7	5.6%
2 Medical - Supplement/Self- Insured	\$ 170,651.7	\$ 147,789.0	\$ 168,000.0	\$ 10,500.0	\$ 178,500.0	6.3%
3 Medicare Advantage	\$ 30,750.0	\$ 23,596.8	\$ 29,951.0	\$ 4,075.0	\$ 34,026.0	13.6%
4 Voluntary Coverages	\$ 38,750.0	\$ 36,119.2	\$ 38,750.0	\$ 2,350.0	\$ 41,100.0	6.1%
5 Total Contractual Services	\$ 355,151.7	\$ 312,912.6	\$ 353,501.7	\$ 23,425.0	\$ 376,926.7	6.6%
Other						
6 PCORI Fee	\$ 39.9	\$ 35.8	\$ 43.9	\$ 1.1	\$ 45.0	2.5%
7 Total Other	\$ 39.9	\$ 35.8	\$ 43.9	\$ 1.1	\$ 45.0	2.5%
Other Financing Uses						
8 Program Support	\$ 3,306.7	\$ 3,306.7	\$ 3,280.7	\$ 221.7	\$ 3,502.4	6.8%
9 Total Other Financing Uses	\$ 3,306.7	\$ 3,306.7	\$ 3,280.7	\$ 221.7	\$ 3,502.4	6.8%
10 Total Expenditures	\$ 358,498.3	\$ 316,255.1	\$ 356,826.3	\$ 23,647.8	\$ 380,474.1	6.6%

- NMRHCA Requests a \$23.6 Million Increase in Spending Authority for FY23.
- This Request Includes the Following Assumptions:
 - Modest growth in pre-Medicare plan participant numbers and an increase in the number of members electing lower premium/higher out-of-pocket expense plans.
 - Continued migration and election of lower costing Medicare Advantage Plans compared to Medicare Supplement.
 - Growth in prescription plan costs resulting from increases in cost and utilization of specialty medications.
 - Participation in the voluntary plans are expected to continue growing at nearly 9 percent per year, given the average growth rate from FY17 to the Present.

Program Support

Program Support Expenditure Summary									
			FY21	FY21	FY22	FY23	FY23	PERCENT	
	Uses		OPBUD	ACTUALS	OPBUD	INC/DEC	REQUEST	CHANGE	
1	200	Personal Services/ Employee Benefits	2,026.8	1,908.8	2,110.7	129.8	2,240.5	6.4%	1
2	300	Contractual Services	713.7	672.3	621.4	53.5	674.9	7.5%	2
3	400	Other Costs	566.2	492.4	548.6	38.4	587.0	6.8%	3
4		TOTAL	3,306.7	3,073.5	3,280.7	221.7	3,502.4	6.7%	4

- Personal Services and Employee Benefits Includes \$129,800 (6.4%) Increase, above FY22 Approved Operating Levels to Include Full Funding for 26 FTE.
- Contractual Services Includes \$53,500 (7.5%) Increase for Actuarial and Benefits Consulting Services, Investment Advisory Services, Human Resource and Legal Services, IT Programing Charges, and Board Reporting and Recording Services.
- This Request Includes \$38,400 (6.8%) Increase in the Other Category Spread Across Multiple Line Items.
- Special Appropriation Request --- NMRHCA will Submit a Special/Supplemental Appropriation Request to Cover Costs Associated with COVID Testing and Treatment.

New Mexico Retiree Health Care Authority

David Archuleta, Executive Director

505-222-6416

david.archuleta@state.nm.us

NMRHCA Office: 800-233-2576 / 505-222-6400

8:00AM – 5:00PM (Monday - Friday)

www.nmrhca.org or www.facebook.com/nmrhca

Offices Remain Closed Except by Appointment



Mark Reynolds

**IN THE COURT OF APPEALS
STATE OF NEW MEXICO**

VICTORIA LOPEZ,

Plaintiff-Appellant,

v.

Case No. A-1-CA-39121

NEW MEXICO RETIREE HEALTHCARE AUTHORITY,

Defendant-Appellee.

PLAINTIFF-APPELLANT MEMORANDUM IN OPPOSITION

Submitted by:

Jason C. Gordon
Disability Rights of New Mexico
3916 Juan Tabo Blvd., NE
Albuquerque, NM 87111
(505) 256-3100
Attorney for Plaintiff-Appellant Victoria Lopez

COMES NOW Plaintiff-Appellant Victoria Lopez), by and through undersigned counsel; and submits her Memorandum in Opposition pursuant to 12-210 NMRA. In support thereof, Ms. Lopez states as follows:

I. STATEMENT OF ISSUES

Did NMRHCA violate Ms. Lopez's substantive and procedural due process rights by terminating her health insurance coverage, when:

- i. It terminated her coverage without providing adequate notice of the basis for termination?**
- ii. It terminated her coverage for purportedly failing to meet eligibility requirements, when it does not enforce those alleged requirements against other, similarly situated individuals?**
- iii. It failed to reinstate coverage prior to conducting a hearing?**

II. SUMMARY OF THE CASE

A. FACTS

Ms. Victoria Lopez has been diagnosed with mitochondrial disease, a rare, genetic life threatening disorder. This disability has had a drastic impact on her life since her birth. Diagnosis took place later in life, long after the age of 26. Symptoms of this disorder generally include neurological manifestations, muscle weakness, fatigue, immune dysfunction, memory problems, a lack of endurance, and difficulties with general health. (RP at 337). Ms. Lopez has also developed

Mitral Valve Prolapse, a heart condition that has required significant and invasive treatment. Mitochondrial disease is uncommon, highly dangerous, and extremely difficult to treat.

Mitochondrial disease is a “rare, life-threatening metabolic disorder caused by dysfunctional mitochondria which affects multiple organ systems.” Record Proper (“RP”) at 246, letter from Dr. Patricia L. Kapsner. During the administrative proceedings in this case, Ms. Lopez testified that this condition has a significant impact on her daily life. Mitochondrial Disease affects most of her organs, causing weakness, fatigue, and ongoing problems with her lungs and heart. (RP at 337-338). As a result of Mitochondrial Disease, Ms. Lopez has developed Mitral Valve Prolapse, a heart condition that has required significant and invasive treatment including cardiac surgery. Further, in July 2018, Ms. Lopez suffered an eye stroke in her left eye. (RP at 159). Her health care providers have advised that she is now at greater risk for suffering another eye stroke. (RP at 164). Mitochondrial disease is uncommon, highly dangerous, and extremely difficult to treat. During her testimony, Ms. Lopez emphasized that Mitochondrial Disease is a very rare condition that requires specialized treatment that is impossible for her to find in the state of New Mexico. (RP at 338).

Because her condition is so rare, Ms. Lopez must seek treatment at out-of-state health care facilities. (RP at 158). She has received care at The Cleveland

Clinic in Cleveland, Ohio; the Mayo Clinic in Rochester, Minnesota; Columbia New York Presbyterian in New York, New York; and John Hopkins in Baltimore, Maryland. (RP at 163). In Ms. Lopez’s experience, she cannot have coverage through a “Health Maintenance Organization” or HMO because it relies on New Mexico doctors to provide care, and New Mexico doctors do not have the expertise or familiarity with mitochondrial disease to provide the care she needs. (RP at 159).

This appeal arises out of a dispute over Appellant’s eligibility to receive health insurance benefits through Defendant-Appellee New Mexico Retiree Health Care Authority (“NMRHCA”). The NMRHCA was created in 1990 by the New Mexico Legislature to provide affordable health insurance to retirees from public employment in New Mexico, and their dependents.

Ms. Lopez’s late father was a firefighter and paramedic for the City of Albuquerque who retired in the mid-1980s and began participating in the NMRHCA program upon its creation in 1990. In 2015, Ms. Lopez’s father submitted the paperwork so that the NMRHCA would add Ms. Lopez as his dependent so that she could begin receiving health insurance through the agency. In support of the application, he also submitted a letter from Ms. Lopez’s primary care physician, Dr. Kapsner, who concluded that that Ms. Lopez is disabled. (RP at 246). Ms. Lopez’s application was approved by Mark Tyndall, who was

NMRHCA's Executive Director at the time of the application, (RP at 244; RP at 224). Ms. Lopez began receiving coverage through NMRHCA's health insurance on January 1, 2016. (RP at 244). Her application was accepted, and she began participating in NMRHCA's health insurance program on January 1, 2016.

In 1990, the New Mexico Retiree Health Care Authority was created by the New Mexico Legislature under the New Mexico Retiree Health Care Act. NMSA 1978, § 10-7C-1. The purpose of the Act is "to provide comprehensive core group health insurance for persons who have retired from certain public service in New Mexico" and "to provide eligible retirees, their spouses, dependents and surviving spouses and dependents with health insurance consisting of a plan or optional plans of benefits[.]" NMSA 1978, § 10-7C-2. The Act defined an "eligible dependent" as, *inter alia*: a dependent child over nineteen who is wholly dependent on the eligible retiree for maintenance and support who is incapable of self-sustaining employment by reason of mental retardation or physical handicap; provided that proof of incapacity and dependency shall be provided within thirty-one days after the child reaches the limiting age and at such times thereafter as may be required by the board[.]

Her coverage continued without issue until January 10, 2019, when she received a telephone call from the current Executive Director of the NMRHCA, David Archuleta. (RP 166 to 167). During that call, Mr. Archuleta for the first time

advised Ms. Lopez that to continue participating in NMRHCA's health insurance, she needed to be found disabled by the Social Security Administration ("SSA"). (RP at 258). The requirement that a disabled dependent be found disabled by the SSA is not found anywhere in the Act or any regulation promulgated by the NMRHCA. See NMSA 1978, §§ 10-7C-1 through -7C-19; 2.81.8 NMAC. At the time of this call, Ms. Lopez was out of state at The Cleveland Clinic receiving care for her stroke. (RP at 166). Mr. Archuleta advised that he needed to move Ms. Lopez to a Medicare plan, and that she needed to qualify for Medicare to continue participating in the NMRHCA health insurance program. (RP at 258). During a subsequent telephone call, on January 15, 2019, he further restricted her ability to continue participating by demanding that she apply for disability benefits with SSA by February 15, 2019, and that she be eligible for Medicare by June 30, 2019, to continue participating in NMRHCA's health insurance program. (RP at 259). Again, none of these requirements are found in the Act or NMRHCA's regulations. See NMSA 1978, §§ 10-7C-1 through -7C-19; 2.81.8 NMAC. Ms. Lopez said she would try to do whatever she could to meet these requirements, but quickly learned this would be impossible to do. The SSA was scheduling appointments three to four months out, which meant it would be impossible to meet Mr. Archuleta's deadlines. Despite her efforts, Mr. Archuleta refused to grant her more time, and in fact advised her coverage would terminate on March 31, 2019 by letter dated

February 25, 2019. Moreover, he advised she could not continue her health insurance coverage through COBRA. (Id.).

A hearing was subsequently held before Hearing Officer Cynthia Maestas Archuleta (hereinafter, “Hearing Officer Maestas”) to contest the termination of Appellant’s benefits. (RP at 146 to 241). The parties prepared and jointly submitted a Joint Pre-Hearing Statement, which listed the parties’ exhibits. (RP at 60 to 68). Counsel for the parties were permitted to submit written closing statements, which were submitted to Hearing Officer Maestas on August 9, 2019. (RP at 239; 122 to 131, and 132 to 141). The question of whether to uphold Mr. Archuleta’s decision to terminate benefits was scheduled to be heard and decided by the Board of Directors of NMRHCA at its August 27, 2019 meeting. (RP at 79 to 114).

At the administrative hearing, Mr. Archuleta testified that under certain circumstances, eligible retirees with disabled dependents over the age of 26 are not denied participation in the program for failing to submit written notice of disability within 31 days of their 26th birthday. (RP at 211 to 214). In her Findings and Conclusions, Hearing Officer Maestas compared this situation to a “continuation of coverage.” (RP at 119). Mr. Archuleta also stated that during “initial enrollment” or “open enrollment,” applicants over the age of 26 are permitted to participate without providing notice of disability within 31 days of their 26th birthday. (RP at

215). Mr. Archuleta acknowledged these requirements are “not codified by rule or in law[.]” (RP at 215).

Ten days after the submission of closing statements, on August 19, 2019, the counsel for NMRHCA who participated in the hearing emailed undersigned counsel for Ms. Lopez with a proposed “offer” to reinstate her health insurance pending the decision of the Board. (RP at 142). As the Board placed Ms. Lopez’s appeal on the agenda for its August 27, 2019 meeting, this offer essentially consisted of eight days of health insurance coverage. Counsel for Ms. Lopez responded on August 21, 2019, with questions regarding the offer. (RP at 142 to 143). The email from NMRHCA’s hearing counsel was subsequently emailed to NMRHCA’s outside counsel, who then forwarded the email exchange to Hearing Officer Maestas. NMRHCA’s outside counsel subsequently forwarded this email exchange to hearing counsel for NMRHCA and Ms. Lopez, at 2:10 P.M. on August 23, 2019. Shortly thereafter, at 3:01 P.M. on August 23, 2019, the Hearing Officer’s decision was forwarded to NMRHCA’s outside counsel. As set forth in Hearing Officer Maestas’s decision, the August 19, 2019 alleged offer of reinstatement was relied upon by her to find “it unnecessary to evaluate Ms. Lopez’s due process claims.”(RP at 120).

Appellant was not granted continuation of her health insurance benefits while the administrative proceedings were pending; NMHCRA first offered

continuation of those benefits after written closing statements had already been submitted. Further, Ms. Lopez alleges that the formal letter denying her coverage did not specify the reason for her termination from the program. (RP at 265). Ms. Lopez was never told that she needed to provide written notice of her disability during that time frame until after her termination from the program. (RP at 265).

On August 27, 2019, the Board voted to adopt Hearing Officer Maestas's Findings and Conclusions in their entirety. (RP at 72 to 78). The Board's decision included the conclusion that the purported "offer of reinstatement" made "it unnecessary to evaluate Ms. Lopez's due process claims." (RP at 78).

B. Procedural Background

Initially, NMRHCA denied Ms. Lopez any appeal at all, claiming there was no right to appeal the abrupt and wrongful termination of her health insurance. Subsequently, notice was sent to Ms. Lopez advising she could pursue an appeal, but her appeal would consist solely of placing the appeal on the agenda of a meeting of the NMRHCA Board of Directors, and publicly pleading her case. Eventually, NMRHCA agreed that it would appoint a hearing officer to conduct an administrative hearing and prepare Findings of Fact and Conclusions of Law. The NMRHCA Board of Directors would then have a chance to review the Findings and Conclusions, and vote to reject or accept them.

The administrative hearing was held before Hearing Officer Maestas on August 7, 2019. Her Findings and Conclusions were issued on August 23, 2019. The Board of Directors voted to uphold the Hearing Officer's Findings and Conclusions during their August 27, 2019 meeting. On September 6, 2019, the Board of Directors issued their final decision upholding the Findings and Conclusions of Hearing Officer Maestas. (RP 3-9). Ms. Lopez contested the result by appealing to the First Judicial District Court; on June 24, 2020, the Honorable Judge Bryan Biedscheid issued a decision that found in favor of NMRHCA on each of the claims raised by Ms. Lopez.

Ms. Lopez appealed the adverse decision of the District Court by filing a Petition for Writ of Certiorari with the Court on July 24, 2020. On January 19, 2021, the Court entered an Order declining to consider numerous arguments made before the District Court in this case and partially denying Certiorari, but stating that it would consider the arguments Appellant made alleging violations of her rights under the New Mexico and United States Constitutions. The Order mandated that the Record Proper from the proceedings below be sent to the Court for review, with a Calendar Notice to follow. On August 25, 2020, the Court filed a Calendar Notice proposing that the above captioned case be placed on the Summary Calendar for disposition. This Memorandum in Opposition filed by Plaintiff-

Appellant and authorized by 12-210 NMRA following the Calendar Notice is timely filed on September 14, 2021.

III. ARGUMENT AND AUTHORITY

A. Standard of Review

The standard of review to determine whether an administrative decision was in accordance with law, including due process violations, is de novo. *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 18, 137 N.M. 161. “When engaging in whole record review, we review legal questions de novo, including whether the agency misinterpreted or misapplied its statutory or administrative governing provisions.” *Narvaez v. New Mexico Dep't of Workforce Sols.*, 2013-NMCA-079, ¶ 7. The required standard of review for an agency’s interpretation of its own regulation is de novo. *Town of Taos v. Wisdom*, 2017-NMCA-066, ¶ 6. “‘It is the function of the courts to interpret the law,’ and courts are in no way bound by the agency's legal interpretation.” *Rio Grande Chapter of Sierra Club v. New Mexico Mining Comm'n*, 2003-NMSC-005, ¶ 13, 133 N.M. 97 (citations omitted).

While the courts will generally defer to an agency’s interpretation of its own regulations, the New Mexico Supreme Court stated, “we are not bound by the agency's interpretation and we may substitute our own independent judgment for that of the agency ‘if the agency's interpretation . . . is unreasonable or unlawful.’”

Alb. Bernalillo Co. Water Util. Auth. v. NMPRC, 2010-NMSC-013, ¶ 51, 148 N.M. 21 (citations omitted). Review of agency interpretation is guided by the rules for statutory interpretation and requires de novo review.

B. NMRHCA violated Ms. Lopez’s constitutional rights by terminating her health insurance coverage.

NMRHCA’s termination of Ms. Lopez’s health insurance coverage consisted of several violations of her constitutional rights. The violations arose both in how NMRHCA went about terminating her coverage, and in the basis and alleged justification for doing so. For the reasons set forth herein, Ms. Lopez respectfully requests the Court reverse the termination of her coverage, and reinstate her health insurance through NMRHCA.

- i. NMRHCA failed to provide constitutionally-adequate notice of the basis for terminating Ms. Lopez’s health insurance and the Board’s decision should be reversed as a result.

The issue of adequate notice was outlined in the Petition for Certiorari filed in this case on July 24, 2020, pgs. 13-15. The argument concerning that issue was also put forward on pgs. 19-23 of the Statement of Appellant Issues, attached to the Petition for Certiorari as Exhibit 3.

Administrative agencies are required to maintain a hearing system that meets the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970). Rudimentary due process demands that “a recipient have timely and adequate

notice detailing the reasons for a proposed termination . . .” *Goldberg v. Kelly*, 397 U.S. 254, 268 (1970). Requirements for specific notice are a bedrock feature of termination hearings under federal law: For example: To provide adequate notice to a recipient of Medicaid, federal regulations require that the “specific regulations that support . . . the action” be included in the denial of services. 42 C.F.R. § 431.210(c); 42 C.F.R. § 431.205(d). “Notice ‘should be more than a mere gesture; it should be reasonably calculated, depending upon the practicalities and peculiarities of the case, to apprise interested parties of the pending action and afford them an opportunity to present their case.’” *Alb. Bernalillo Co. Water Util. Auth. v. NMPRC*, 2010-NMSC-013, ¶ 21, 148 N.M. 21 (citations omitted).

To be constitutionally adequate, an agency’s notice of the basis for denying or terminating a participant’s public benefits must specify the reason for the denial. “The purpose of notice is to ‘clarify what the charges are in a manner adequate to apprise the individual of the basis for the government’s proposed action.’” *Rodriguez by and through Corella, v. Chan*, 985 F.Supp. 1189, 1194 (D.Ct. Ariz., 1996), citing *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974). In *Rodriguez*, the U.S. District Court for Arizona found a notice deficient when it merely advised the recipient he “is now in a new category for his age and no longer eligible due to household excess income.” *Id.* The Court determined the reasons stated in the

notice were “so vague in as much as they fail to provide any basis upon which to test the accuracy of the decision.” Id.

In the instant matter, the notice from NMRHCA dated February 25, 2019 merely stated that “the previous executive director allowed for your enrollment outside of our eligibility guidelines[.] However, as of February 25, 2019 you do not meet the eligibility requirements to participate as a disabled dependent on our plan.” This notice failed to indicate how, if at all, she purportedly did not satisfy the eligibility requirements. No formal additional information was provided on this question until the administrative hearing, when Mr. Archuleta testified that the sole basis for terminating Ms. Lopez’s participation was the alleged failure of Ms. Lopez or her family to provide proof of her disability within 31 days of her 26th birthday. Mr. Archuleta admitted in his testimony that NMRHCA’s practice is not to advise potential retirees, such as Ms. Lopez’s father, of this requirement until they affirmatively reach out to NMRHCA for information on retirement benefits. (RP at 215-218). Thus, potential participants are in constant jeopardy of losing their benefits because NMRHCA does not advise them of the requirement that proof of disability be submitted within 31 days of the disabled dependent’s 26th birthday. As Ms. Lopez and her mother testified, this information was never requested of the Lopez family.

Through this action, Ms. Lopez advances the position that the written notice provided to her that did not outline the specific reason for her denial did not constitute reasonable due process. The emphasis on the importance of the contents of each notice in cases such as *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974) is not simply to ensure that each participant knows when and where the hearing is, or that the claimant has the opportunity to be represented by counsel. It is to let the claimant know the exact grounds for the removal of a previously held benefit so that he or she can devise the best way to contest it. In this case, the written denial provided to Ms. Lopez did not meet due process requirements because it contained no reason for denial. Without that basic knowledge, it is not possible for a program participant to contest requested benefits that are denied to them. Ms. Lopez asserts that the absence of good notice from the start of the case adversely impacted her ability to prepare for the case, and that this violation is not cured by revealing the reason for the denial during testimony when the hearing is already underway, or via informal email exchanges leading up to the hearing.

In this case, a claimant with complex medical needs was proceeding in a complicated hearing with the insurance she relied upon for years to treat a life-threatening disability on the line. She was doing so within a system where appeals are highly uncommon. (RP at 383-384). Although the record shows that Ms. Lopez had email contact with Defendant-Appellee to clarify the nature of the denial

(contact that was only necessary because the initial written denial was so unclear), those communications were informal, not sufficiently detailed, and cited no regulations or laws that claimant or her counsel could cite to when preparing for this essential hearing. The email, dated February 27, 2019 did discuss and link to the NMRHCA eligibility guidelines, which were put forward in that informal document as the reason for denial. (RP at 269). Constitutional due process required that Ms. Lopez be given a clearer formal notice containing specific reasons for denial, tied to regulation that would enable her to contest the sudden withdrawal of her state provided health insurance.

The risk of issuing ambiguous notices, such as NMRHCA's February 25, 2019 letter, is that an applicant cannot effectively appeal a denial or termination because they are without information on the specific grounds for denial or termination. In the instant matter, the Board's decision relied on alternate grounds to terminate Ms. Lopez's health insurance. Without constitutionally-appropriate notice, an appellant lacks the ability and opportunity to pursue a robust appeal. The notice at issue is in the record of the hearing below (RP at 265) and has been fully briefed by both parties (RP at 398-399), making the issue of notice ripe for appellate review. Ms. Lopez asserts that she was entitled to constitutionally adequate notice of denial in this case, which she did not receive, and that the

failure by NMRHCA to provide that notice should result in a reversal of the determination against her.

- ii. NMRHCA’s selective enforcement of eligibility criteria against Ms. Lopez denied her equal protection of the law.

Under the New Mexico and U.S. Constitutions, “[e]qual protection . . . guarantees that the government will treat individuals similarly situated in an equal manner.” *Breen v. Carlsbad Mun. Schools*, 2005-NMSC-028, ¶ 7. It “prohibit[s] the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or are not based on real differences.” *Madrid v. St. Joseph Hosp.*, 1996-NMS-064, ¶ 34.

To show a violation of the equal protection clause, a party must first show “they should be treated equally with another group but they are not because of a legislative classification.” *Breen*, 2005-NMSC-028, ¶ 7. Once this is shown, the Court must determine the level of scrutiny to apply in evaluating the state’s purported justification for promulgating the category. *Id.* In the instant matter, NMRHCA admits it does not enforce the notice requirement against disabled dependents over the age of 26 *if* those dependents are currently receiving health insurance coverage from their parents’ public employers. Because Ms. Lopez was not covered by her father’s employer-provided health insurance at the time of her application in 2015, she was not afforded the same courtesy. Thus, NMRHCA has established two categories of disabled dependents over 26 who have not provided

notice of their disability within 31 days of their 26th birthday: those who are insured by their parents' employer-provided health care; and those who are not.

The lowest level of scrutiny is rational basis scrutiny, which allows a policy to be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Spragens v. Shalala*, 36 F.3d 947 n.3 (10th Cir. 1994). Under rational basis scrutiny, however, "[t]he state may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne, Tex., v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985).

Even under this minimal amount of scrutiny, NMRHCA's classification of disabled dependents over 26 who have not submitted proof of disability cannot prevail. Whether the individual is covered by a parent's employer-provided insurer or not, disabled dependents seeking coverage are representing to NMRHCA that they are disabled, unable to secure gainful employment, and wholly dependent on their parents for support and maintenance. The only evidence submitted to NMRHCA to support these claims would be the representations of the eligible retiree and the disabled dependent. The mere fact that Ms. Lopez did not provide NMRHCA with proof of her disability within 31 days of her 26th birthday does nothing to change that truth. Similarly, the fact that the disabled dependent over 26

of a public employee is covered under their parents' employer-provided insurance does nothing to increase the veracity of their claims.

Ms. Lopez continues to assert that the testimony advanced by Director Archuleta in the course of these proceedings impermissibly establishes two categories of dependents with a disability who have not provided notice, with very different treatment for each. Further, that same testimony establishes that these policies are not codified in rule or law. This lack of codification, along with the NMRHCA admission that it does not provide this information to program participants unless they ask for it, makes it difficult for Ms. Lopez and the public to understand what is expected of them as they utilize this program. It also makes it difficult to assess these policies with certainty, as their validity is not often tested through administrative or court proceedings. However, Ms. Lopez asserts that the information in the record establishes unequal treatment of two separate groups of potential dependents for no rational reason.

For these reasons, NMRHCA's termination of Ms. Lopez's health insurance coverage violated her equal protection of the laws. As a result, the decision should be reversed.

- iii. NMRHCA violated Ms. Lopez's constitutional rights by refusing to continue Ms. Lopez's health insurance prior to conducting an administrative hearing.

Under the principles established by *Goldberg v. Kelly* and its progeny, when a recipient is threatened with the termination of a public benefit “only a pre-termination evidentiary hearing provides the recipient with procedural due process.” 397 U.S. 254, 264 (1970). In *Goldberg*, the U.S. Supreme Court was evaluating whether a participant’s welfare benefits could be terminated prior to conducting a fair hearing. *Id.* The Court reasoned that “[f]or qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care.” *Id.* Under those circumstances, “termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits,” and the recipient’s “situation becomes immediately desperate.”

In the matter *sub judice*, this is exactly what happened to Ms. Lopez and exactly what *Goldberg* was intended to prevent. Ms. Lopez needs coverage from a PPO health insurance plan to access the care she needs to treat Mitochondrial Disease. Until March 31, 2019, NMRHCA was the only option for accessing that care. When NMRHCA contacted her, she was in the hospital receiving life-saving treatment for her condition. NMRHCA was aware of this. Despite these facts, NMRHCA terminated her coverage as of March 31, 2019, and outright refused to continue her coverage while she appealed the termination, and rejected her request to COBRA the coverage. This was a violation of her constitutional rights.

This violation was in no way cured by NMHCRA's offer to reinstate coverage for Ms. Lopez after the administrative hearing in this case concluded but before the decision was made. Appellant was not granted continuation of her health insurance benefits while the administrative proceedings were pending; NMHCRA first offered continuation of those benefits after written closing statements had already been submitted. Ten days after the submission of closing statements, on August 19, 2019, the counsel for NMRHCA who participated in the hearing emailed undersigned counsel for Ms. Lopez with a proposed "offer" to reinstate her health insurance pending the decision of the Board. (RP at 00071). As the Board placed Ms. Lopez's appeal on the agenda for its August 27, 2019 meeting, this offer essentially consisted of eight days of health insurance coverage.

As a result of the wrongful termination of her benefits on March 31, 2019, without the benefit of a prior termination hearing, Ms. Lopez was without access to health insurance for approximately eight months. The retroactive reinstatement of coverage cannot cure the time Ms. Lopez had to spend without medical coverage while awaiting the resolution of this issue, the exact kind of injury that rulings in cases like *Goldberg* which require hearings before the termination of benefits are designed to prevent.

In this case, NMHCRA's tardy offer to extend health insurance coverage pending a decision in the case did have one tangible impact: it wrongfully

persuaded the hearing officer that the offer made it unnecessary to rule on the constitutional claims raised by Ms. Lopez during the administrative hearing. (RP at 120)

What it did not do is cure the rights violation itself, a violation which resulted in Ms. Lopez going without coverage by NMHCRA for approximately eight months.

- iv. The Record of this case clearly establishes that Ms. Lopez did not receive the due process she was entitled to during the administrative proceedings that resulted in the termination of her health insurance through the NMHCRA.*

In the case of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the United States Supreme Court established the test for determining whether the requirements of due process had been satisfied during an administrative hearing. According to the Court, the following factors must be balanced: “the private interest that will be affected by the official action”; “the risk of erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional substitute procedural safeguards”; and “the government’s interest, including the functions involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail”.

These factors all weigh heavily in favor of Ms. Lopez in this case, and demand a high level of due process safeguards during these proceedings. To begin,

the risk of erroneous deprivation of rights during these proceedings was very high. NMRHCA admits that disputes and appeals are not at all common within its history. Initially, the NMRHCA denied that Ms. Lopez had any right to appeal the termination of her health insurance at all. (RP at 342). Further, the governing regulations for the NMRHCA don't provide for any procedures with which to conduct the administrative hearings to resolve any disputes that are required when disputes such as the one at issue arise. (RP at 384). It is clear from the record that even the idea of an administrative hearing to safeguard due process in the case of a dispute over eligibility for insurance was a novel one, and there were no established procedures for Defendant-Appellee to conduct one when Ms. Lopez contested the abrupt termination of her health insurance. Ms. Lopez asserts that the hearing that resulted was full of procedural error, including lack of proper notice of the reasons for her termination and failure to properly provide her with continuation of benefits. Considering that the NMHCRA was implementing hearing procedures as this case went along, the risk of erroneous deprivation of Ms. Lopez rights was extremely high, and she asserts that such deprivation did in fact occur.

Ms. Lopez acknowledges that the NMRHCA has an interest in this case both as to whether eligibility guidelines are followed and continuation of benefits provided while a case is pending. NMRHCA is charged with being a good steward

of the funds that are placed under its care to provide health insurance for retirees who worked in public service positions in the state of New Mexico and their eligible family members and dependents. However, this factor must be balanced against the interest of Ms. Lopez in a proceeding that would fully continue her health insurance benefits while the result is pending and provide all of the process due while resolving the issue of the termination of insurance. The interest of Ms. Lopez dwarfs that of the NMRHCA in this matter; Ms. Lopez has extremely complex medical needs, and limited option for treatment and coverage related to those needs. Without proper insurance an access to care, Ms. Lopez's life is in danger. This far outweighs the comparatively small financial burden that the NMHCRA would incur by properly continuing her benefits during the hearing and providing proper notice.

In its Response to the First Judicial District Court, NMRHCA argues that Ms. Lopez cannot establish any entitlement to a constitutionally protected private right because she is ineligible for coverage. (RP at 394-395). This argument is both unavailing and completely circular: the purpose of the administrative hearing under appeal is to determine eligibility, and Ms. Lopez asserts there were due process violations that tainted that hearing. NMRHCA's assertion that it should win that hearing is both unsurprising and irrelevant to the issue of whether Ms. Lopez has a valid claim to make.

The hearing at issue involves a health insurance coverage provided by the state that Ms. Lopez utilized for years that was abruptly taken away, and she has a right to contest that denial through a hearing that observes proper due process. The notice that Ms. Lopez contests is part of the record of the proceedings below, and so is ripe for examination by this Court. Further, the factors outlined in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976) weigh heavily in favor of Ms. Lopez. The hearing at issue in this case did not implement constitutionally adequate due process, and the results of that hearing should be overturned.

IV. RELIEF SOUGHT

The outcome of this case is of critical importance to Victoria Lopez. Her disability life threatening, her medical needs complex, and her needs acute. Without comprehensive medical coverage through NMRHCA, which she utilized for years without incident, she will have great difficulty accessing the care that she requires to safeguard her health and safety. Through this appeal, Ms. Lopez is asking that the administrative decision that wrongfully terminated her health insurance coverage through NMRHCA be overturned. Therefore, for the foregoing reasons, Ms. Lopez respectfully requests that:

1. The Court overturn the administrative decision that terminated her health care coverage through the NMRHCA;

2. In the alternative, that the Court transfer this case from the Summary Calendar to a calendar where the full briefing of all issues is possible, including those previously raised in addition to the constitutional and due process claims discussed herein;
3. Any further relief this Court deems just and proper.

Respectfully submitted,

DISABILITY RIGHTS NEW MEXICO

/s/ Jason C. Gordon
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CERTIFICATE OF COMPLIANCE

I certify that this response complies with Rule 12-210 (3)(c) NMRA, in that the response uses a proportionately-spaced typeface and does not exceed eleven thousand (11,000) words.

/s/ Jason C. Gordon
Jason C. Gordon

I hereby certify that a true and correct copy of the foregoing pleading was served by email this 14th day of September, 2021, to the following counsel of record:

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Rodey Law Firm
Attorneys for Defendant-Appellee
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/s/ Jason C. Gordon
Jason C. Gordon

New Mexico Retiree Health Care Authority (CP)

Change in Market Value

For the Month of Aug 2021

(Report as of September 17, 2021)

Investment Name	Prior Ending Market Value	Contributions	Distributions	Fees	Income	Gains - Realized & Unrealized	Market Value
Core Bonds Pool	193,012,886.60	-	-	-	439,535.26	(497,970.82)	192,954,451.04
Credit & Structured Finance	144,097,651.20	-	-	-	366,604.10	(137,657.98)	144,326,597.32
NM Retiree Health Care Authority Cash Account	-	-	-	-	-	-	-
Non-US Developed Markets Index Pool	147,384,812.52	-	-	-	309,134.01	2,145,973.55	149,839,920.08
Non-US Emerging Markets Active Pool	103,510,379.24	-	-	-	180,055.01	1,965,479.48	105,655,913.73
Private Equity Pool	129,907,448.11	-	-	-	793,331.01	(834,647.86)	129,866,131.26
Real Estate Pool	91,236,209.88	-	-	-	135,746.94	(182,294.99)	91,189,661.83
Real Return Pool	41,774,415.44	-	-	-	184,496.63	(237,336.73)	41,721,575.34
US Large Cap Index Pool	180,428,242.21	-	-	-	237,189.47	4,982,035.83	185,647,467.51
US SMID Cap Alternative Weighted Index Pool	24,513,679.59	-	-	-	50,725.09	444,174.82	25,008,579.50
Sub - Total New Mexico Retiree Health Care Auth	1,055,865,724.79	-	-	-	2,696,817.52	7,647,755.30	1,066,210,297.61
Total New Mexico Retiree Health Care Auth	1,055,865,724.79	-	-	-	2,696,817.52	7,647,755.30	1,066,210,297.61

Special Appropriation Requests (Action Item)

Background

NMRHCA is contemplating making two Special Appropriation Requests to cover costs related to COVID-19 claims and claims related to behavioral health under Senate Bill 317 and additional BAR authority for FY23.

COVID-19 Claims

Since the COVID-19 pandemic began in March 2020, NMRHCA has paid over \$9 million in claims. The specific breakdown of costs through August 31, 2021 by plan is as follows:

Plan	Distinct Patients	Plan Paid
BCBS	3,427	\$4,270,130.91
PHS	2,988	\$3,419,228.45
SUPP	5,228	\$1,548,506.77
Total	11,643	\$9,237,866.13

Senate Bill 317

Senate Bill 317 eliminates cost sharing (copays, coinsurance, and deductibles) for mental and behavioral health services starting January 1, 2022. The provision sunsets on December 31, 2026. This change is projected to result in a \$15 million increase in costs over the next 5 years. The breakdown is as follows:

	2022	2023	2024	2025	2026	Total
Elimination of cost share on medical	\$ 762,932.77	\$ 793,450.08	\$ 825,188.08	\$ 858,195.61	\$ 892,523.43	\$ 4,132,289.97
Elimination of cost share on prescription drugs	\$ 1,247,501.83	\$ 1,334,826.96	\$ 1,428,264.85	\$ 1,528,243.38	\$ 1,635,220.42	\$ 7,174,057.44
Increased utilization on medical	\$ 634,785.95	\$ 660,177.39	\$ 686,584.48	\$ 714,047.86	\$ 742,609.78	\$ 3,438,205.46
Increased utilization on prescription drugs	\$ 54,802.37	\$ 58,638.54	\$ 62,743.23	\$ 67,135.26	\$ 71,834.73	\$ 315,154.13
Total Cost	\$2,700,022.92	\$2,847,092.96	\$3,002,780.65	\$3,167,622.11	\$3,342,188.36	\$15,059,707.00

This estimate was developed using the RAND Health Insurance Experiment (HEI) with calendar year 2019 costs as the baseline. Under the HEI model, individuals who pay less for healthcare will utilize more healthcare resources.

BAR Authority

The healthcare benefits administration program of the retiree health care authority may request budget increases from other state funds for claims.

Requested Action

NMRHCA staff respectfully requests approval to submit two (2) Special Appropriation Requests.

The first request is for \$9,237,866.13 plus the cost of September's claims to cover expenses related to COVID-19 testing and treatment.

The second request is for \$15 million to cover the costs associated with behavioral health cost sharing elimination between January 1, 2022 and December 31, 2026.

Lastly, a request for additional budget adjustment authority in fiscal year 2023 to cover claim costs in excess of appropriated amounts.

Exhibit A

NEW MEXICO RETIREE HEALTH CARE AUTHORITY STATE OF NEW MEXICO

RESOLUTION INITIATING RULEMAKING PROCEEDINGS

WHEREAS, NMSA 1978, Section 10-7C-2 (1990) of the Retiree Health Care Act, NMSA 1978, Sections 10-7C-1 to -16 (1990, as amended through 2009) (the “Act”), provides that the purpose of the Act “is to provide comprehensive core group health insurance for persons who have retired from certain public service in New Mexico[,]” and to “provide eligible retirees, their spouses, dependents and surviving spouses and dependents with health insurance consisting of a plan or optional plans of benefits that can be purchased by funds flowing into the retiree health care fund and by co-payments or by out-of-pocket payments by insureds[;]” and

WHEREAS, the Act, at NMSA 1978, Section 10-7C-5 (2002), created the New Mexico Retiree Health Care Authority (the “NMRHCA”) “to provide for comprehensive group health insurance programs” under the Act; and

WHEREAS, the Act, at NMSA 1978, Section 10-7C-6 (2003), created the board of directors of the NMRHCA (the “Board”), which shall be composed of no more than twelve members who represent certain constituencies receiving benefits under the Act or who are otherwise designated or deemed eligible to serve on the Board, to, among other things, implement the Act and determine the duties of its employees; and

WHEREAS, the Act, at NMSA 1978, Section 10-7C-7 (1998), provides that in order to achieve the purposes of the Act, the Board, among other things, “may take all actions reasonably necessary to implement” the Act, including, but not limited to: (i) Employing or contracting for persons to assist it in carrying out the Act; (ii) Promulgating and adopting necessary rules, regulations and procedures for implementation of the Act; and (iii) Promulgating and adopting rules and regulations governing eligibility, participation, enrollment, length of service and any other conditions or requirements for providing substantially equal treatment to participating employers; and

WHEREAS, the Act, at NMSA 1978, Section 10-7C-15 provides for contributions from participating employers and employees based on an employee’s salary; and

WHEREAS, the Board has previously promulgated its rule establishing a definition of “salary” and “annual salary” for the purpose of calculating the participating employer, employee contributions, codified at 2.81.5.7 NMAC (4/30/03) (the “Existing Rule”);

WHEREAS, the Existing Rule was consistent with the definition for salary established by the Legislature in the Public Employees Retirement Act at NMSA 1978, Section 10-11-2 (“PERA Definition”); and

WHEREAS, the Legislature recently amended the Public Employees Retirement Act to amend the PERA Definition; and

WHEREAS, the Executive Director of the NMRHCA (the “Executive Director”) has proposed that the Board consider amending the Existing Rule to modify the definition of salary and annual salary to be consistent with the PERA Definition (the “Proposed Rule”), and to adopt the Proposed Rule, after conducting public rule hearings concerning the proposal to amend the Existing Rule and the adoption of the Proposed Rule (the process required to effectuate the proposed amendments to the Existing Rule and adoption of the Proposed Rule under the Rules Act (defined below) and the Default Procedural Rule (defined below) is referred to herein as the “Rulemaking Proceedings”), in conformity with the Act and the Rules Act (defined below); and

WHEREAS, in April 2018, the New Mexico Attorney General’s Office promulgated its Default Procedural Rule for Rulemaking, codified at 1.24.25 NMAC (4/10/2018) (the “Default Procedural Rule”), which provides default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017) (the “Rules Act”), and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner; and

WHEREAS, the Default Procedural Rule provides that: (i) Agencies that have not adopted their own rules consistent with the Rules Act shall apply the Default Procedural Rule until such time as they have adopted their own rules; (ii) Agencies may adopt the Default Procedural Rule, in whole or in part as their own, or continue to use their existing rules, so long as those rules satisfy the requirements of the Rules Act and provide as much opportunity for public participation as provided by the Default Procedural Rule; and (iii) Agencies that adopt their own rules must submit a copy to the Attorney General’s Office within 30 calendar days of adoption, and post a copy of those rules on the agency’s website, if one exists; and

WHEREAS, as of this date, the Board has not adopted procedural rules for public rule hearings consistent with the Rules Act for the NMRHCA, and therefore, the Default Procedural Rule applies with respect to rulemakings by the Board for the NMRHCA, including the Rulemaking Proceedings;

WHEREAS, the Default Procedural Rule provides that: (i) The rulemaking process may be initiated by an agency when a notice for rule hearing is publicly posted pursuant to the Default Procedural Rule; (ii) The agency shall proceed with the rulemaking process by posting public notice, publishing the proposed rule for comment, and setting a public rule hearing in accordance with the Rules Act and any other applicable law; (iii) If the agency is a public body subject to the Open Meetings Act, NMSA 1978, Section 10-15-1 to -4 (1974, as amended through 2013) (the “OMA”), the decision to initiate the rulemaking process must be an action taken by vote of the public body in open session; and (iv) Once the agency initiates the rulemaking process, the agency must maintain a record as prescribed in NMSA 1978, Section 14-4-5.4 (2017); and

WHEREAS, the Board of the NMRHCA is a public body subject to the OMA, and therefore, any decision by the Board to initiate the Rulemaking Proceedings must be an action taken by vote of the Board in open session; and

WHEREAS, the Board, having considered the Executive Director's proposal to undertake the Rulemaking Proceedings, desires to initiate the Rulemaking Proceedings in full conformity with the Act, the Rules Act, the Default Procedural Rule, the OMA and any other applicable law in a transparent, organized and fair manner; and

WHEREAS, on this date, the Board convened a regular meeting at which it considered the adoption of this Resolution Initiating Rulemaking Proceedings (the "Resolution") and voted to adopt said Resolution, all in full conformity with the OMA.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NEW MEXICO RETIREE HEALTH CARE AUTHORITY THAT:

1. The Board's adoption of this Resolution shall memorialize its decision to initiate the Rulemaking Proceedings.

2. The Executive Director, or his/her designee, is hereby authorized and directed to initiate the Rulemaking Proceedings by publicly posting a notice for a rule hearing concerning the proposed revisions to the Existing Rule and the adoption of the Proposed Rule pursuant to, and in conformity with, the Act, the Rules Act and the Default Procedural Rule.

3. The Executive Director, or his/her designee, is hereby authorized and directed to post public notice concerning the Rulemaking Proceedings, substantially in the form attached hereto as Exhibit A, publish the proposed revisions to the Existing Rule and the Proposed Rule for public comment, and to set a public rule hearing on the proposed revisions to the Existing Rule and the proposed adoption of the Proposed Rule, in accordance with the Act, the Rules Act, the Default Procedural Rule and any other applicable law.

4. The Executive Director, or his/her designee, is hereby authorized and directed to act as the Board's hearing officer and to preside over the Rulemaking Proceedings, including the public hearing contemplated in this Resolution, as required and in accordance with, the Act, the Rules Act, the Default Procedural Rule and any other applicable law.

5. The Executive Director, or his/her designee, shall maintain a record of the Rulemaking Proceedings contemplated in this Resolution, as prescribed in Section 14-4-5.4 of the Rules Act.

6. The Executive Director, or his/her designee, is hereby authorized and directed to do all acts and things necessary or desirable to effectuate the provisions of this Resolution and to undertake the Rulemaking Proceedings in full conformity with the Act, the Rules Act, the Default Procedural Rule, the OMA and any other applicable law.

7. This Resolution shall take effect immediately upon its adoption.

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PASSED, ADOPTED AND APPROVED ON June 1, 2021.

Doug Crandall, President
New Mexico Retiree Health Care Authority
Board of Directors

ATTEST:

LeAnne Larranaga, Secretary
New Mexico Retiree Health Care Authority
Board of Directors

[Signature Page for Resolution Initiating Rulemaking Proceedings]

Exhibit B

NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Retiree Health Care Authority (NMRHCA) is considering amending the existing Rule 2.81.5.7 NMAC - DEFINITIONS. The purpose of the amendment of the rule is to amend the definition of "Salary" to reflect recent changes to the complement definition of salary under the Public Employees Retirement Act, NMSA 1978 Section 10-11-1 et seq. ("PERA Act"). A summary of the full text of the amendment and proposed rule follows:

The existing Rule 2.81.5.7 NMAC provides for a definition of salary for the purpose of calculating employee and employer contributions. The existing rule follows a definition provided under the PERA Act and excludes overtime from the definition. The PERA Act was amended in the most recent legislative session to include overtime. The amendment changes the definition of salary to refer to the amended definition of salary in the PERA Act. Thus, the proposed rule would follow any subsequent changes that the Legislature makes to the definition of salary in the PERA Act.

The NMRHCA is authorized to promulgate rules to implement the Retiree Health Care Act, NMSA 1978, Sections 10-7C-1 to -16 (1990, as amended through 2009) ("Act") by NMSA 1978, Section 10-7C-7 (1998). By resolution dated June 1, 2021, the NMRHCA resolved to undertake the rulemaking in conformity with the Act, the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (1967, as amended through 2017), the Default Procedural Rule for Rulemaking, 1.24.25 NMAC (4/10/2018) and the Open Meetings Act, NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013).

The full text of the amendment and proposed rule may be obtained by contacting Neil Kueffer, Deputy Director, New Mexico Retiree Health Care Authority, 6300 Jefferson St. NE, Suite 150, Albuquerque, New Mexico 87109; telephone 505-222-6408, to request a copy of the rule. The full text and this notice are also available on NMRHCA's website: <http://www.nmrhca.org/>.

A person may submit, by mail or electronic form, written comments on the amendment and proposed rule through the end of the public comment period, which ends September 23, 2021. Written comments should be submitted to Neil Kueffer, Deputy Director, New Mexico Retiree Health Care Authority, 6300 Jefferson St. NE, Suite 150, Albuquerque, New Mexico 87109. Written comments also will be accepted by email: neil.kueffer@state.nm.us or by fax: (505) 884-8611. All written comments received by the agency will be posted on <http://www.nmrhca.org/> no more than 3 business days following receipt to allow for public review. Written comments will also be available for public inspection at New Mexico Retiree Health Care Authority, 6300 Jefferson St. NE, Suite 150, Albuquerque, New Mexico 87109.

A public rule hearing on the amendment and proposed rule will be held before Neil Kueffer, Deputy Director, NMRHCA, on September 24, 2021 from 3:00 p.m. - 5:00 p.m. at the NMRHCA Board Room, located at 6300 Jefferson St. NE, in Albuquerque, NM, 87109. Individuals may submit data, views or arguments orally or in writing to the amendment and proposed rule at the public rule hearing. Persons offering written comments at the hearing must have 2 copies for the hearing officer.

Any individual with a disability in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the amendment and proposed rule in an accessible form may contact Neil Kueffer at 505-222-648 at least 10 days before the hearing.

Exhibit C

This is an amendment to 2.81.5 NMAC, Section 7, effective 01/01/2022.

2.81.5.7 DEFINITIONS:

- A. "Act" means the Retiree Health Care Act (Sections 10-7C-1 et seq. NMSA 1978)
B. "Salary"

(1) For those independent public employers and participating employers affiliated with the Public Employees Retirement Act (PERA), "salary" [~~means the base salary or wages paid for personal services rendered to the employer by the employee, including longevity pay, shift differentials, wages paid the employee for purposes of continuing the employee on the regular payroll while absent from work on account of vacation, holiday or illness. Salary shall not include overtime pay, allowances for housing, clothing, equipment or travel, or payments for unused sick leave unless the unused sick leave payment is made through continuation of the employee on the regular payroll for the period represented by that payment. Salary shall not include lump sum payments which are not part of the employee's fixed periodical compensation such as lump sum annual and sick leave not paid for purposes of continuation of the employee on the regular payroll. Salary shall not include any other form of remuneration not specifically designated by law as included in salary for PERA purposes. Lump sum or payments over time made to an employee where services are not rendered are not included in the definition of salary such as where the employer "buys-out" the employee's contract. Included is any sums due the employee but withheld and paid for benefits of a voluntary "cafeteria" plan.] has the meaning ascribed to it as set forth in the Public Employees Retirement Act, Section 10-11-2 NMSA 1978, and as amended from time to time.~~

(2) For those participating employers affiliated with the Educational Retirement Act (ERA) "salary" means the total remuneration paid for personal services rendered to the employer by the employee for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30. This includes payment made directly to the employee of a third party on behalf of or for the benefit of the employee except that lump sum payment to the employee for accrued sick leave shall not be included. Bonuses or incentive pay for early retirement during the four quarters preceding the member's retirement shall not be included. Lump sum payment for up to thirty days of accrued annual or vacation leave shall be included. Sixty percent of the amount paid to an employee under a school bus owner/driver contract shall be included. Lump sum or payments over time made to an employee where services are not rendered are not included in the definition of annual salary such as where the employer "buys-out" the employee's contract. Included is any sums due the employee but withheld and paid for benefits of a voluntary "cafeteria" plan.

[6/15/1998; 2.81.5.7 NMAC - Rn, 2 NMAC 81.5.7, 1/1/2010; A, 01/01/2022]

FY22 Healthcare Benefits Administration Program Contract Amendments – Action Item*

The chart below includes a list of existing contracts and proposed amendments for fiscal year 2022. The proposed amendments are specific to the Medicare Advantage contracts in order to reflect the approved rates and plans for the 2022 calendar year.

Health Care Benefits Administration Program – FY22 Proposed Contract Amendments

The proposed contracts administered through Healthcare Benefits Administration Fund are as follows:

FY22 Approved Operating Budget		\$353,501,700		
		Proposed		
		Contract	Contract	Amendment
Vendor		Amount	Term	Type
1	Express Scripts	\$115,000,000	July 1, 2018 - June 30, 2022	NA
2	The Standard	\$13,250,000	July 1, 2019 - June 30, 2023	NA
3	BCBS -- Self Insured	\$112,500,000	July 1, 2020 - June 30, 2024	NA
4	Prebyterian -- Self Insured	\$52,500,000	July 1, 2020 - June 30, 2024	NA
5	Presbyterian MA	\$15,750,000	July 1, 2020 - June 30, 2024	2022 Plan
6	BCBS MA	\$3,750,000	July 1, 2020 - June 30, 2024	2022 Plan
7	Humana MA	\$1,450,000	July 1, 2020 - June 30, 2024	2022 Plan
8	UnitedHealthcare MA	\$8,000,000	July 1, 2020 - June 30, 2024	2022 Plan
9	Delta	\$22,500,000	July 1, 2020 - June 30, 2024	NA
10	Davis Vision	\$2,750,000	July 1, 2020 - June 30, 2024	NA
Total		\$347,450,000	NA	NA
Unencumbered Balance		\$6,051,700	Available for mid/end-year adjustments	

The proposed contract amendments will reflect updates to performance guarantees, program descriptions, gain share agreements and benefit summary documentation. The amendments also reflect the premium changes applied to the upcoming calendar year. The changes are listed below:

	2022	2021	Monthly Difference	% Change	Annual Difference
UHC Plan I	\$ 75.00	\$ 75.00	\$ -	0%	\$ -
UHC Plan II	\$ 25.00	\$ 25.00	\$ -	0%	\$ -
PHP Plan I	\$ 113.00	\$ 124.30	\$ 11.30	10%	\$ 135.60
PHP Plan II	\$ 88.00	\$ 96.80	\$ 8.80	10%	\$ 105.60
BCBS Plan I	\$ 60.00	\$ 45.00	\$ (15.00)	-25%	\$ (180.00)
BCBS Plan II	\$ 5.00	\$ -	\$ (5.00)	-100%	\$ (60.00)
Humana Plan I	\$ 84.94	\$ 88.26	\$ 3.32	4%	\$ 39.84
Humana Plan II	\$ 10.76	\$ 11.54	\$ 0.78	7%	\$ 9.36

Conclusion: NMRHCA staff respectfully requests approval to amend the UnitedHealthcare, Presbyterian Health Plan, Blue Cross Blue Shield and Humana Medicare Advantage contracts to reflect the monthly charges, plan summaries, performance guarantees and gain share agreements applicable to the 2022 calendar year.