

TITLE 7 HEALTH
CHAPTER 1 GENERAL PROVISIONS
PART 11 HEALTH FACILITY RECEIVERSHIP REQUIREMENTS

7.1.11.1 ISSUING AGENCY: The New Mexico Department of Health.
[7.1.11.1 NMAC – N, 1/15/02]

7.1.11.2 SCOPE: This rule applies to the Department in actions taken pursuant to the Health Facility Receivership Act, Chapter 24, Article 1E, NMSA 1978.
[7.1.11.2 NMAC – N, 1/15/02]

7.1.11.3 STATUTORY AUTHORITY: Section 24-1E-3.1, NMSA 1978 (2001).
[7.1.11.3 NMAC – N, 1/15/02]

7.1.11.4 DURATION: Permanent.
[7.1.11.4 NMAC – N, 1/15/02]

7.1.11.5 EFFECTIVE DATE: January 15, 2002, unless a later date is cited in a section.
[7.1.11.5 NMAC – N, 1/15/02]

7.1.11.6 OBJECTIVE: This rule implements provisions of the Health Facility Receivership Act and sets out the conditions for the Department to petition for appointment of a health facility receiver; the duties, authority and responsibility of the health facility receiver; the authority for imposing financial conditions on the facility; the minimum qualifications for the deputy receiver; and the provisions which the secretary will request for inclusion in district court orders.
[7.1.11.5 NMAC – N, 1/15/02]

7.1.11.7 DEFINITIONS: As used in this rule, unless the context requires otherwise:

A. “Abandonment” means the elimination of, or the failure to provide, one or more essential support services for all or a portion of the residents of a health facility, including but not limited to appropriate personnel, shelter, medical care, sustenance, assistance with the activities of daily living, habilitation or individual treatment plan activities and support.

B. “Closure Plan” means the health facility’s written plan, including any amendments, detailing the manner in which the health facility will satisfy all applicable legal or contractual requirements, including any requirements that the Department may request be included in such written plan, and which at a minimum sets forth the discharge planning and transfer of the residents, and the manner in which the health facility will fully meet the needs of the residents during the period of the facility closure.

C. “Constructive Abandonment” means a situation in which abandonment of the residents of a health facility can be inferred from the totality of circumstances, as, for example, the health facility’s untimely payment or nonpayment of suppliers or staff resulting in the lack of necessary supplies or services.

D. “Department” means the New Mexico Department of Health.

E. “Facility” means:

(1) a health facility as defined in Subsection D of Section 24-1-2 NMSA 1978 other than a child-care center or facility, whether or not licensed by the State of New Mexico; or,

(2) a community-based program providing services funded, directly or indirectly, in whole or in part, by the home and community-based Medicaid waiver program or by developmental disabilities, traumatic brain injury or other medical disabilities programs.

F. “Imminent danger” means a significant, foreseeable jeopardy, risk or threat existing at the present time or in the immediate future.

G. “Receivership” means, pursuant to a court order, the condition or occurrence of the legal vesting of authority in the Secretary, acting as a receiver, and vesting of authority in the deputy receiver, to exercise management and control over all of, or a portion of, a facility, in derogation of the rights of the facility owner or operator.

H. “Receivership estate” means the totality of the property, accounts, assets, rights and obligations over which the receiver has authority to manage and control in accordance with a court’s order.

I. “Secretary” means the Secretary of the New Mexico Department of Health.

[7.1.11.7 NMAC – N, 1/15/02]

7.1.11.8 CONDITIONS FOR FILING RECEIVERSHIP PETITION: When any of the following situations exist, the secretary may petition the district court seeking appointment as a health facility receiver.

A. Facility closure. The health facility will close, or cease all or part of its operations, within sixty days; and, the health facility has failed to provide the secretary with, and obtained written approval from the secretary for, the health facility's detailed closure plan. The closure plan must demonstrate that the health facility will maintain and safeguard the health and safety of the care recipients. Upon receipt of a facility closure plan, the secretary will respond within 10 days to the facility with written notice of the secretary's approval or rejection of the closure plan. At a minimum, the closure plan will specify the facility's:

- (1) Procedures and arrangements to insure that the health facility's care recipients obtain, or continue to receive, accessible, appropriate and affordable care; and
- (2) The method of protecting all legal rights of the care recipients as such rights are affected by the closure; and
- (3) Staffing; and
- (4) Transfer planning and procedures with respect to the care recipients, including the funds, accounts, and property of the care recipients, medical and financial authorizations, and any other relevant documents executed by or on behalf of the care recipient in the possession of the health facility; and
- (5) Other arrangements which the secretary may specify for inclusion in the closure plan.

B. No License. The health facility is operated without such license as otherwise may be required.

C. Abandonment. The health facility is abandoned, care recipients of the health facility are abandoned or constructively abandoned, or such abandonment is imminent.

D. Imminent Danger. The health facility presents an imminent danger of death or significant mental or physical harm to the care recipients of the health facility. Such imminent danger may arise from:

- (1) A single factor, or combination of factors, adversely affecting the health or safety of the facility's care recipients; or
- (2) A physical condition of a service location for the health facility's care recipients; or
- (3) A practice or method of operation of the health facility.

[7.1.11.8 NMAC – N, 1/15/02]

7.1.11.9 QUALIFICATIONS OF THE DEPUTY RECEIVER: Unless otherwise permitted by order of the district court, the secretary will seek appointment of a deputy receiver who possesses the following qualifications:

A. Free of conflicts of interest. The deputy receiver may not have a financial interest which conflicts with:

- (1) Carrying out any of the duties and responsibilities imposed by the district court on the receiver or deputy receiver; or
- (2) Fully protecting the persons receiving care from the health facility; or
- (3) The management and operation of the receivership estate.

B. Experience. The deputy receiver must have relevant experience in health care management appropriate to the health facility. Such experience preferably would reflect successful management experience similar to that reasonably required to manage and operate the facilities within the receivership estate. Experience or licensure as a clinician is discretionary unless otherwise required by law.

C. Education and licensure. The deputy receiver must have achieved such educational level and have such licensure as customarily is held by persons managing and operating health care facilities similar to the facility or facilities within the receivership estate.

[7.1.11.9 NMAC – N, 1/15/02]

7.1.11.10 DUTIES, AUTHORITY & RESPONSIBILITIES OF THE DEPUTY RECEIVER: Unless otherwise ordered by the district court the deputy receiver generally will carry out the duties of the Receiver, as established in the Health Facility Receivership Act, NMSA 1978, Sections 24-1E-1 to 24-1E-7 (2001), including the following.

A. Removal of care recipients from settings or situations within the receivership estate which threaten the care recipients with imminent danger of death or significant mental or physical harm.

B. All necessary actions needed to:

- (1) Correct or remedy each condition on which the receiver's appointment was based.

(2) Ensure adequate care and services, in accordance with applicable authority, law, regulations, and accrediting requirements, for each care recipient of the health facility.

(3) Manage and operate the health facility, including, where deemed appropriate in the judgment of the receiver or deputy receiver, any of the following:

- (a) Closing the health facility.
- (b) Expanding existing and initiating new services and operations.
- (c) Hiring and firing officers and employees.
- (d) Contracting for necessary services, personnel, supplies, equipment, facilities, and all other appropriate things.
- (e) Reasonably expending funds of the health facility.
- (f) Paying the health facility's obligations, borrowing money and property and giving security as necessary for such.
- (g) Purchasing, selling, marshalling and otherwise managing the health facility's property and assets.

[7.1.11.10 NMAC – N, 1/15/02]

7.1.11.11 FINANCIAL OBLIGATIONS AND CONDITIONS: The deputy receiver, unless granted prior approval from the district court, will not obligate the health facility to the purchase of real property, the sale of the health facility's real property, or the long-term lease of real property.

[7.1.11.11 NMAC – N, 1/15/02]

7.1.11.12 PROVISIONS SOUGHT IN AN ORDER GRANTING PETITION FOR HEALTH

FACILITY RECEIVERSHIP: The secretary will seek provisions in the Order granting the Petition pertaining to:

- A.** Prior approval from the district court for the sale or purchase of real property;
- B.** Periodic accounting to the court and the parties;
- C.** The posting of bond for the deputy receiver and the waiver of any such bonds;
- D.** Allocation of income and assets of the health facility to the receiver to carry out the purposes of the receivership;
- E.** Expansion and restrictions on the statutory authority granted to the receiver or deputy receiver;
- F.** The scope of the receivership estate; and,
- G.** Any other provisions deemed necessary to carry out the duties, authority and responsibilities of the deputy receiver, including provisions that may limit or expand the duties, authority and responsibilities.

[7.1.11.12 NMAC – N, 1/15/02]

History of 7.1.11 NMAC: [RESERVED]