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September 22, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Adopted Rules:

The August 29, 2014 contained the final adoption of two rules:

- **6.29.5 NMAC, English Language Development; and**
- **6.50 NMAC, Primary and Secondary Education, Insurance (Includes Parts 6.50.1 through 6.50.18, although *substantive* revision is not proposed for all parts).**

The Notice of Proposed Rulemaking for English Language Development was published by the Public Education Department (PED) in the June 30, 2014 issue of the *New Mexico Register* and, soliciting comments on the proposed rule, noted that PED would conduct a public hearing on July 31, 2014 in Mabry Hall of the Jerry Apodaca Education Building in Santa Fe.

The Notice of Proposed Rulemaking for Primary and Secondary Education Insurance was published by the New Mexico Public Schools Insurance Authority (NMPSIA) in the March 14, 2014 issue of the *Register*, soliciting comments on the rule, and announcing a public hearing that was held May 1, 2014, at the NMPSIA Board meeting in Albuquerque.

Adopted Rule

6.29.5 NMAC. English Language Development

The rulemaking (see **Attachment, *Adopted Rule, English Language Development, 8/29/14***) identical to the rule as proposed, adopted amendments to several sections of the rule, including:

- the rule’s objective (6.29.5.6), which changed the reference to the “New Mexico content standards for English language development,” or NMELD, to “department-approved English language development standards”;
- English language development standards grade spans (6.29.5.8), which were seven grade spans (PreK-K, 1, 2, 3, 5, 6-8, and 9-12), and under the adopted rule now total 11 grade spans (PreK-K, 1, 2, 3, 4, 5, 6, 7, 8, 9-10, and 11-12);
- the removal of language referring to the assessment of “comprehension skills . . . through the analysis of student performance on reading and listening assessments from both sections 6.29.5.9, “English Language Development Standards Proficiency Levels and Language Domains,” and 6.29.5.10, “Content Standards for English Language Development, Grades Pre-K-12.”

More notably, the rulemaking also adopted two new sections, specifically dealing with English language learners (ELLs):

- 6.29.5.11, “Identification of English Language Learner”; and
- 6.29.5.12, “Exit Criteria for English Language Learner Status.”

6.29.5.11, “Identification of English Language Learner”

A home language survey shall be completed for all students initially enrolling in a public school:

- Initial identification of the student’s home or heritage language or influence, with parental notification, is to occur within 30 days from the beginning of the school year.
- The survey is to remain in the student’s permanent file.
- Those students identified as having a language influence other than English shall be screened with the department-approved English proficiency assessment. Students identified by the assessment as ELLs shall be eligible to receive English language development services and, annually, shall be administered the department’s language development assessments.

6.29.5.12, “Exit Criteria for English Language Learner Status”

- ELL students who achieve a composite score determined sufficient by the department shall be deemed proficient in the English language.
- ELL students so identified as proficient shall nevertheless be monitored for two subsequent years by the school district.

Adopted Rules

6.50 NMAC, Primary and Secondary Education, Insurance

These rules were repealed and replaced in their entirety¹. A brief synopsis of the final changes adopted by the rulemaking follows:

In all parts:

- certain sections were revised for clarity and concision without substantive change to the provisions themselves;
- definitions and provisions for “charter schools” were added, as these rules originally were adopted before NMPSIA offered coverage to charter schools; and
- “Due Process Reimbursement Coverage”² has been included, as that coverage has been made available since last the rules were revised.

6.50.1, General Provisions

- all references to “pre-existing conditions” were removed because, under the *Affordable Care Act* (ACA), insurers may no longer limit coverage due to prior conditions or treatment; and
- “eligible dependents” was changed to include dependent children under the age of 26, and the requirement that step-children be a resident of the same household as the primary employee was eliminated.

6.50.2, Contracts for Purchase of Professional Services and Insurance

Definitions for “group health insurance” and “risk-related coverage” were removed. “Risk-related coverage” is now defined in Part 6.50.1, as is “employee benefits coverage,” which replaces “group health insurance.”

6.50.3, Procurement of Coverage for Risk-Related Exposures, Employee Benefits Programs and Due Process Reimbursement Coverage

Changes to this part reflect coverage that is currently available and, as noted above, add due process reimbursement coverage.

¹ Please see <http://www.nmcpr.state.nm.us/nmregister/xxv/xxv16/xxv16adopted.htm> for adopted rules in 6.50 NMAC, “Primary and Secondary Education, Insurance.”

² “Due Process Reimbursement Coverage” means the reimbursement of a school district’s or charter school’s expenses incurred as a result of a due process hearing under 22-29-12 NMSA 1978.

6.50.4, Other Educational Entities³ Participation

This part updates changes in requirements for joining the Authority, requiring:

- the submission of financial and benefit information that meets board standards;
- payment of an excess premium deposit of 10 percent of the total first annual premium for selected coverage; and
- other educational entities wishing to participate in only some of the authority's coverage to apply for waivers, as currently is required of charter schools and school districts.

Other changes to this part include:

- disallowing other educational entities to voluntarily leave the authority after less than three years of membership;
- the addition of procedures for:
 - other educational entities to request to exit the authority; and
 - dealing with violators of authority rules or policies, or those who have poor loss histories, or entities which evidence clear signs of fiscal irresponsibility; and
- the consolidation of penalties that may be imposed upon other educational entities that fail to participate after joining the authority.

Part 6.50.5, Notice of Risk Related, Employee Benefits and Due Process Reimbursement Coverages

Changes to this part include:

- requiring members to report exposure information in December of each year, to include:
 - property values;
 - vehicle counts;
 - payroll;
 - average daily attendance;
 - budgets; and
 - new or hazardous exposure;
- the imposition of a final deadline for filing amended or additional exposure information of the second Friday in February;
- the addition of penalties for over- or underreporting exposure information; and
- the inclusion of due process reimbursement coverage.

³ "Other educational entities" means those institutions of higher learning listed in Article 12, Section 11 of the Constitution of New Mexico, the New Mexico Military Institute, the New Mexico School for the Blind and Visually Impaired, the New Mexico School for the Deaf, as well as other state diploma, degree-granting and certificate-granting postsecondary educational institutions and regional cooperatives.

Part 6.50.6, Determination of Premiums for Employee-Benefits, Risk-Related and Due Process Reimbursement Coverages

In this part, the rulemaking clarifies that the terms of the insurance policy or memorandum of coverage control any disputes over coverage, not the notice of coverage outlining benefits.

Part 6.50.7, Determination of Premiums for Employee-Benefits, Risk-Related and Due Process Reimbursement Coverages

The changes in this section consist of the renumbering of paragraphs, for the sake of clarity.

6.50.8, Employee-Benefit and Risk-Related Premium Payments

The changes to this section:

- eliminate the rule for payment of premiums for workers' compensation risk-related coverage, currently due by July 31 of the billing year;
- add provisions regarding the payment of premiums for employee benefits coverage, so that each member or individual participant is invoiced for premiums that are due, in full, within 10 days after billing, and no later than the 10th day of the month for which coverage is intended; and
- require full payment of a disputed bill before the filing of a statement requesting reimbursement.

6.50.10, Employee Benefit Coverage Enrollment Policy

Changes to this section include:

- in Section 6.50.10.6, "Objective," the detailed list of rules governing enrollment policies and conflicts between contracts, school policies, local policies has been removed and replaced with this simple statement of objective:

"The objective of this part is to establish the enrollment policy for all persons or entities authorized to participate in the authority's employee benefits coverage."

- the addition of definitions for:
 - "actively at work," which means:
 - performing the material duties of one's occupation at your employer's usual place of business;
 - being absent from work for a regularly scheduled day off, holiday, or vacation day; or
 - being capable of active work on the day before the effective date of our insurance or increase in insurance; and

- “employee,” which, pertaining to this part only, means a full-time employee, or a person employed and paid by, and working for, the participating entity for 20 or more hours per week during the academic school term or terms, and includes board and governing body members of participating entities and the authority;
- disallowing late enrollment for medical benefits;
- allowing part-time employees who work between 15 and 20 hours per week to enroll if the authority member has passed a resolution agreeing to provide benefits to part-time employees;
- allowing evidence other than a birth certificate for permission to enroll a newborn infant, which must be submitted within 31 days from the first day of the month following the birth;
- allowing an employee to drop a dependent who is 18 years or older without dropping any other eligible dependents;
- limitation of coverage offered to retirees to voluntary life, only; and
- removal of references to pre-existing conditions.

6.50.14, Participating Entity Workers’ Compensation Policy Statement

Previously, this part contained a reference/link to a Form Policy Statement that has been removed in favor of including the language from the Form Policy Statement directly into this part of the rule. This Form Policy Statement will also be included on the authority’s website.

While the rules as adopted are substantively identical to the rules as proposed, LESC staff identified a few minor differences:

- In **Section 6.50.1.7, Definitions**, Paragraph U:
 - in the proposed rule, defined the term, “**Employee benefits coverages**” as coverages which include, but are not limited to, life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined to be necessary by the authority; however
 - in the adopted rule, replaced that term with the newly defined term “**Employee benefits minimum standards**” meaning the minimum coverages, minimum limits and other factors as specified in authority rules for which insurance is offered.
- In **Section 6.50.2.24, Protests Regarding Health Care Contract Purchasing**, the proposed rule provided that such protests be resolved by the executive director, while the rule as adopted indicates that these protests be resolved by the procurement manager.
- In **Section 6.50.10.8, Requirements for Enrollment of Full Time Employees**, the adopted rule added a 14th condition to the list, that eligibility for basic life coverage is 15 hours or more per week.

This is an amendment to 6.29.5 NMAC, amending Sections 6, 8 thru 10 and adding Sections 11 and 12, effective August 29, 2014.

6.29.5.6 OBJECTIVE: ~~[The New Mexico content standards for English language development (NMELD)]~~ The department-approved English language development standards ~~[provides]~~ provide companion piece to the New Mexico content standards for English language arts (6.29.4 NMAC). ~~[This document]~~ The approved standards shall guide second-language instruction for PreK-12 English language learner students. The English language learner population falls into three basic categories: students whose primary or home language (L1) is other than English including recent immigrants; students from heritage language groups needing enrichment and further development of academic English, some of whom maintain degrees of fluency in their heritage language; and any other students needing enrichment and further development of academic English. Because instruction must address the appropriate proficiency level of the individual student, which may vary greatly for any age, some consideration must be made for the student's maturity level.
[6.29.5.6 NMAC - N, 08-31-2009; A, 08-29-2014]

6.29.5.8 ENGLISH LANGUAGE DEVELOPMENT STANDARDS GRADE SPANS: ~~[The New Mexico English language development standards are organized into five grade spans: PreK-K, 1-2, 3-5, 6-8, and 9-12.]~~ The English language development standards established by the department are organized in grade levels as follows: PreK-K, 1, 2, 3, 4, 5, 6, 7, 8, 9 - 10 and 11 - 12.
[6.29.5.8 NMAC - N, 08-31-2009; A, 08-29-2014]

6.29.5.9 ENGLISH LANGUAGE DEVELOPMENT STANDARDS PROFICIENCY LEVELS AND LANGUAGE DOMAINS:
A. The English language development standards have five general levels of English language proficiency: "entering" (level 1)," "emerging" (level 2)," "developing" (level 3)," "expanding" (level 4), "bridging" (level 5)."
B. Reading, writing, listening and speaking skills are addressed at each proficiency level.
~~[Comprehension skills are assessed through the analysis of student performance on reading and listening assessments.]~~
[6.29.5.9 NMAC - N, 08-31-2009; A, 08-29-2014]

6.29.5.10 CONTENT STANDARDS FOR ENGLISH LANGUAGE DEVELOPMENT, Grades PreK-12: The New Mexico English language development content standards distinguish five general standards: "Social and instructional language," "The language of language arts," "the language of mathematics," "the language of science," and "the language of social studies." Reading, writing, listening and speaking skills are addressed in each standard. ~~[Comprehension skills are assessed through the analysis of student performance on reading and listening assessments.]~~
A. English language proficiency standard 1: PreK- 12. Social and instructional language: English language learners communicate for social and instructional purposes within the school setting.
(1) Listening: Process, understand, interpret and evaluate spoken language in a variety of situations.
(2) Speaking: Engage in oral communication in a variety of situations for a variety of purposes and audiences.
(3) Reading: Process, understand, interpret and evaluate written language, symbols, and text with understanding and fluency.
(4) Writing: Engage in written communication in a variety of situations for a variety of purposes and audiences.
B. English language proficiency standard 2: PreK-12. The language of language arts: English language learners communicate information, ideas and concepts necessary for academic success in the content area of language arts.
(1) Listening: Process, understand, interpret and evaluate spoken language in a variety of situations.
(2) Speaking: Engage in oral communication in a variety of situations for a variety of purposes and audiences.
(3) Reading: Process, understand, interpret and evaluate written language, symbols, and text with understanding and fluency.
(4) Writing: Engage in written communication in a variety of situations for a variety of purposes and audiences.

Adopted Rule, English Language Development, 8/29/14
New Mexico Register / Volume XXV, Number 16 / August 29, 2014

C. English language proficiency standard 3: PreK-12. The language of mathematics: English language learners communicate information, ideas and concepts necessary for academic success in the content area of mathematics.

- (1) Listening: Process, understand, interpret and evaluate spoken language in a variety of situations.
- (2) Speaking: Engage in oral communication in a variety of situations for a variety of purposes and audiences.
- (3) Reading: Process, understand, interpret and evaluate written language, symbols, and text with understanding and fluency.
- (4) Writing: Engage in written communication in a variety of situations for a variety of purposes and audiences.

D. English language proficiency standard 4: PreK-12. The language of science: English language learners communicate information, ideas and concepts necessary for academic success in the content area of science.

- (1) Listening: Process, understand, interpret and evaluate spoken language in a variety of situations.
- (2) Speaking: Engage in oral communication in a variety of situations for a variety of purposes and audiences.
- (3) Reading: Process, understand, interpret and evaluate written language, symbols, and text with understanding and fluency.
- (4) Writing: Engage in written communication in a variety of situations for a variety of purposes and audiences.

E. English language proficiency standard 5: PreK-12. The language of social studies: English language learners communicate information, ideas and concepts necessary for academic success in the content area of social studies.

- (1) Listening: Process, understand, interpret and evaluate spoken language in a variety of situations.
- (2) Speaking: Engage in oral communication in a variety of situations for a variety of purposes and audiences.
- (3) Reading: Process, understand, interpret and evaluate written language, symbols, and text with understanding and fluency.
- (4) Writing: Engage in written communication in a variety of situations for a variety of purposes and audiences.

[6.29.5.10 NMAC - N, 08-31-2009; A, 08-29-2014]

6.29.5.11 IDENTIFICATION OF ENGLISH LANGUAGE LEARNER: A home language survey shall be completed for all new students initially enrolling in a public school.

A. Initial identification of students' home/heritage language(s) or language influence and parent notification must occur not later than 30 days after the beginning of the school year.

B. The home language survey shall be kept in each student's cumulative file.

C. Students for whom the home language survey indicates a language or language influence other than English shall be screened with the department-approved English language proficiency screening assessment.

D. Students receiving scores below the composite score established by the department to be used to determine English language proficiency will be classified as English language learners and are eligible to receive English language development services.

E. Students classified as English language learners must be assessed annually with the department-approved language development assessment.

[6.29.5.11 NMAC - N, 08-29-2014]

6.29.5.12 EXIT CRITERIA FOR ENGLISH LANGUAGE LEARNER STATUS:

A. English language learners attaining a composite score as determined by the department on the department-approved English language proficiency assessment will be deemed English language proficient.

B. Students attaining the composite score identified in Subsection A, above, must be monitored for two subsequent school years by the school district.

[6.29.5.12 NMAC - N, 08-29-2014]