

This is an amendment to 8.26.4 NMAC, Sections 8, 10, 15 and 21, effective 6/25/2019.

8.26.4.8 ELIGIBILITY:

A. Any adult age 18 or older who is a legal resident of the United States and who is a resident of New Mexico can apply to become a licensed foster parent.

B. Any person wishing to adopt a child in PSD custody shall be a licensed foster parent and shall obtain approval for adoption from PSD.

C. CYFD employees and their families who have met all licensing requirements may serve as foster or adoptive parents. A CYFD employee and their family members shall not be allowed to foster or adopt any child with whom the employee is working with in an official capacity.

D. A foster or adoptive parent may be a single parent, a married couple or an unmarried couple.

E. No persons shall be licensed as foster parents whose own children are currently in foster care. No person shall be licensed as a foster parent whose parental rights have been terminated. Persons whose children have been formerly in foster care placement may be licensed if the assessment of their application determines that the problems leading to the placement have been resolved.

F. To be considered for foster care, applicants shall have sufficient income or resources, apart from the reimbursement, to support themselves and their families, which includes shelter, food, utility cost, clothing, and other household expenses;

G. Applicants must be able to communicate with the child, the licensing agency, health care providers and other service providers.

[G]H. At least one applicant in the home must have functional literacy such as having the ability to read medication labels.

[8.26.4.8 NMAC - N, 5/29/2009; A, 8/15/2011; A, 6/25/2019]

8.26.4.10 CRIMINAL RECORDS CHECKS (CRC): All persons wishing to become licensed foster care providers for PSD or for a child placement agency must complete a CRC.

A. CRCs are required for all applicants and adults living in the home. Applicants who have a completed homestudy by a private agency must complete the CRC requirement for foster care providers.

B. CRC clearance letter for all adults living in the home must be received by PSD or the child placement agency (CPA) prior to issuing a license and prior to a child being placed in a home. The CRC unit conducts federal and state criminal record checks for all adults living in the home.

C. PSD staff and CPA staff shall register applicants to be fingerprinted.

D. PSD staff and CPA staff shall complete the CRC application and submit to the PSD CRC Unit.

E. PSD and CPA staff shall conduct a search of the applicant and all adults living in the applicant's home through www.nmcourts.gov.

F. Licensure shall not be approved in any case in which the CRC results for the applicant or any adult living in the applicant's home reveal any of the following federally mandated automatic disqualifiers:

(1) a felony conviction for child abuse or neglect;

(2) a felony conviction for spousal abuse;

(3) a felony conviction for a crime against a child, including child pornography;

(4) a felony conviction for any crime involving violence, including rape, sexual assault, homicide, robbery, and aggravated assault, but not including other types of assault (not aggravated) or battery; or

(5) a felony conviction within the past five years for assault, battery, or a drug or alcohol related offense.

G. Applicants who have a conviction for crimes other than those noted above are not automatically disqualified, however this information shall be used to determine suitability for licensure. All police or court records relating to the applicant or other adult living in the home shall be considered in determining suitability for licensure.

H. The home study process for any applicant or adult living in the home with a pending criminal charge and no disposition shall be closed. The applicant may reapply after disposition of the charge.

[8.26.4.10 NMAC - Rp, 8.27.2.16 NMAC, 5/29/2009; A, 8/15/2011; A, 6/25/2019]

8.26.4.15 FOSTER CARE PROVIDER TRAINING:

A. All foster care applicants licensed by PSD and all foster care applicants licensed by child placement agencies shall successfully complete the required pre-service training prior to being licensed in New Mexico.

B. All foster care providers licensed by PSD and child placement agencies shall obtain first aid training which must include cardiopulmonary resuscitation (CPR) certification [~~or show proof of current CPR certification~~].

C. All foster care providers licensed by PSD and all foster care providers licensed by child placement agencies shall participate in at least 12 hours of PSD or agency approved training each year.

(1) Foster care providers licensed by PSD: Six of the 12 required training hours shall be determined by the PSD foster care and adoption bureau. The remaining hours shall be determined by the placement worker in collaboration with the foster family and approved by the county office manager or designee. The PSD worker shall document training hours in FACTS prior to annual re-licensure.

(2) Foster care providers licensed by child placement agencies: Child placement agencies shall provide a minimum of 12 hours of training annually to their licensed families. PSD may in its sole discretion mandate the specific topics in those twelve hours.

[8.26.4.15 NMAC - Rp, 8 NMAC 27.3.12 & 8.27.2.15 NMAC, 5/29/2009; A, 8/15/2011; A, 6/25/2019]

8.26.4.21 DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF A LICENSE:

A. Denial of a license:

(1) PSD or child placement agency staff may deny an applicant's request for licensure based on a documented professional assessment that the applicant cannot adequately provide safety, permanency, and well-being for children or when in the professional opinion of the licensing agent, conditions in the prospective foster home are not conducive to the fostering of children.

(2) Applicants may be denied licensure at any point in the licensing process. The applicant shall be notified in writing of the denial within 10 business days of PSD or child placement agency's final decision.

(3) Applicants who have been denied an initial foster care provider license may request an administrative review of the reasons for the denial of the initial license. The request must be in writing and within 10 days of date of the notice of denial. This review is an informal process completed by the licensing agent, which may include an informal conference or record review. The administrative review does not create any substantive rights for the family.

B. Revocation or non-renewal of a license: A foster home license may be revoked or not renewed by the licensing agent at any time for reasons which may include but are not limited to:

(1) disqualifying criminal records check results as described herein at Subsection D, E, [~~and~~] or F of 8.26.4.10 NMAC;

(2) disqualifying abuse and neglect check results as described herein at Subsection C, D, E, [~~and~~] or F of 8.26.4.11 NMAC;

(3) failure to comply with 8.26.2, 8.26.4, 8.26.5 NMAC, [~~and~~] or agency policies;

(4) failure to immediately report any arrests to PSD or agency;

(5) failure to report changes in the family, including the addition of new adult household members;

(6) willful misrepresentation of any information during the home study process;

(7) failure to comply with health and safety measures, including those requirements described herein at 8.26.4.13 NMAC;

(8) returning a child to PSD or an agency without seeking support services provided by PSD or the agency or community service providers in order to preserve the placement;

(9) refusal to comply with case plan;

(10) inability to adequately meet the needs of the child;

(11) failure to include children in family activities;

(12) overuse or inappropriate use of respite care and reasonable and prudent parenting;

(13) failure to actively preserve connections with foster children and their birth families and community of origin such as:

(a) siblings or other birth relatives;

(b) church community; and

(c) fictive kin, or the child's friends;

(14) failure to demonstrate the ability to provide emotional support during fundamental times of a child's life;

- (15) repeated refusals by the family to accept children who have been matched for placements;
- (16) failure to participate in required training;
- (17) failure to comply with PSD decisions regarding the child's safety, permanency, and well-being;
- (18) misuse or abuse of substances including but not limited to:
 - (a) alcohol;
 - (b) illegal substances;
 - (c) legal prescription and non-prescription drugs;
- (19) exposure of the child to cigarette smoke and tobacco products; and
- (20) a documented professional assessment that continued licensure would be contrary to the safety, permanency, and well-being of the child, or in the opinion of the licensing agent that conditions in the foster home are not conducive to the fostering of children.

C. Corrective Action Plan (CAP): Corrective action plans may be implemented as an alternative to revocation of a license when, in PSD or the child placement agency's assessment, the foster care provider is capable of resolving the violations within a period of six months.

- (1) It shall be PSD or the child placement agency's sole discretion whether a foster care provider may continue to have children placed in their home during the pendency of a CAP;
- (2) A CAP must be in writing, signed and dated by the foster care provider and the licensing agent.
- (3) The CAP shall set forth the policy violations of the foster care provider as described herein at Paragraphs (1) - (21) of Subsection B of 8.26.4.21 NMAC;
- (4) The CAP shall set forth the conditions the foster care provider must meet in order to rectify the policy violations and the deadline within which they must meet the conditions. Conditions may include, but are not limited to the following:
 - (a) additional training;
 - (b) increased scheduled or unscheduled home visits by PSD or the child placement agents;
 - (c) compliance with the case plan for the child;
 - (d) participation in therapeutic, parenting, or other services.
- (5) Failure of the foster care provider to agree to the terms of a CAP shall result in revocation for the policy violations that led to the proposed CAP;
- (6) Failure to comply with the conditions of the CAP may result in revocation of the foster care license.

D. Suspension of a license: Suspension of a license can be voluntary or involuntary and last not more than six months.

- (1) Voluntary reasons for suspension must be approved by the licensing agency and may include, but not limited to:
 - (a) medical conditions;
 - (b) adoption; or
 - (c) life changes within the household.
- (2) Involuntary reasons for suspension may include all the reasons described herein at Paragraphs (1) - (21) of Subsection B of 8.26.4.21 NMAC, as well as:
 - (a) screened-in abuse or neglect referrals; or
 - (b) during the period of a corrective action plan.

E. Notification: The foster care provider shall be notified in writing, by return of receipt mail, of the reason for revocation, involuntary suspension or non-renewal of the license and shall provide the foster care provider the opportunity to request an appeal before an impartial hearing officer appointed by or approved by the CYFD secretary where the family has the opportunity to present evidence on their behalf and to be assisted by counsel. The foster family shall request an appeal within 10 business days of receipt of the notification of the proposed action. If the family does not request an appeal within the 10 business days, then the decision to revoke, suspend or not renew a license shall be final. Administrative hearings are conducted in accordance with 8.8.4 NMAC.

F. Reinstatement of license: A foster care provider whose license has been revoked, suspended, or not renewed may petition the licensing agency that issued the license to have the license reinstated upon proof that the noncompliance with the policies has ceased. The best interest of children shall be the primary consideration in

determining whether reinstatement is appropriate. PSD or the child placement agency must ensure that all licensing requirements are met prior to reinstatement. A PSD decision to reinstate a license must be approved by the PSD regional managers.

[8.26.4.21 NMAC - Rp, 8.27.2.25 & 26 NMAC, 5/29/2009; A, 3/31/2010; A, 8/15/2011; A, 6/25/2019]