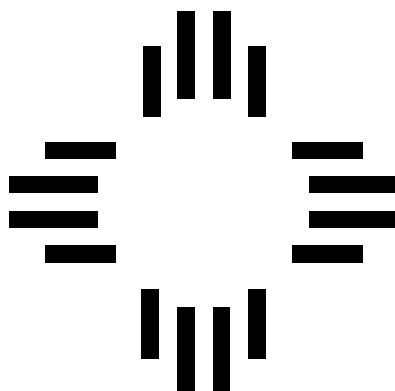


# **New Mexico Register**

**Volume XIII, Issue Number 20**  
**October 31, 2002**



The official publication for all notices of rulemaking and filings of  
adopted, proposed and emergency rules in New Mexico

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2002

COPYRIGHT © 2002  
BY  
THE STATE OF NEW MEXICO

---

ALL RIGHTS RESERVED

# New Mexico Register

Volume XIII, Number 20

October 31, 2002

## Table of Contents

### Notices of Rulemaking and Proposed Rules

<b>Acupuncture and Oriental Medicine, Board of</b>	
Notice of Rule Hearing and Regular Meeting on Proposed New Rule and Amendments . . . . .	787
<b>Albuquerque / Bernalillo County Air Quality Control Board</b>	
Notice of Hearing and Regular Meeting . . . . .	788
<b>Architects, Board of Examiners for</b>	
Regular Meeting and Public Rules Hearing . . . . .	788
<b>Environmental Improvement Board</b>	
Notice of Public Meeting and Hearing on SIP, Grant County. . . . .	788
<b>Oil Conservation Commission</b>	
Notice of Rulemaking . . . . .	788
Notice of Rulemaking . . . . .	788
<b>Public Safety, Department of</b>	
Training and Recruiting Division - Law Enforcement Academy	
Notice of Board Meeting and Public Hearing . . . . .	789

### Adopted Rules and Regulations

#### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." 14-4-5 NMSA 1978.

#### A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

##### Children, Youth and Families Department

###### Prevention and Intervention Division

*	8.15.2 NMAC	R	Requirements for Child Care Assistance Programs for Clients and Child Care Providers. . . . .	791
*	8.16.2 NMAC	R	Child Care Centers, Before/After School Programs, Family Child Care Homes, and Other Early Care and Education Programs . . . . .	791
*	8.17.2 NMAC	R	Requirements Governing Registration of Non-Licensed Family Child Care Homes . . . . .	791
*	8.15.2 NMAC	N	Requirements for Child Care Assistance Programs for Clients and Child Care Providers. . . . .	791
*	8.16.2 NMAC	N	Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs. . . . .	799
*	8.17.2 NMAC	N	Requirements Governing Registration of Non-Licensed Family Child Care Homes . . . . .	824

###### Protective Services Division

	SSD 5.5.0	R	Foster Care Child Placement Agency Licensing Regulations . . . . .	827
	SSD 7.5.0	R	Adoption - Child Placement Agency Regulations. . . . .	827
*	8.27.6 NMAC	N	Child Placement Agency Licensing Standards . . . . .	827

##### Educational Retirement Board

*	2.82.2 NMAC	A	Membership . . . . .	838
*	2.82.3 NMAC	A	Member and Administrative Unit Contributions. . . . .	838
*	2.82.4 NMAC	A	Service Credit . . . . .	839
*	2.82.5 NMAC	A	Retirement Benefits . . . . .	840
*	2.82.9 NMAC	Rn & A	Administrative Unit Reports and Remittances . . . . .	841

##### Environmental Improvement Board

*	20.2 NMAC	Rn	Notice of Renumber of Multiple State Air Quality rules in Title 20 Chapter 2 . . . . .	842
---	-----------	----	--	-----

##### Game and Fish, Department of

*	19.31.4 NMAC	A	Fisheries . . . . .	842
*	19.31.10 NMAC	A / E	Hunting and Fishing-Manner and Method of Taking . . . . .	844
*	19.31.10 NMAC	A	Hunting and Fishing-Manner and Method of Taking . . . . .	844

<b>Gaming Control Board</b>			
*	15.1.26 NMAC	N	Temporary Possession of Gaming Devices by Public Post-Secondary Educational Institutions and Trade Shows . . . . . 845
*	15.1.17 NMAC	A	Schedule of Penalties Under the Gaming Control Act . . . . . 847
<b>Health, Department of</b>			
*	7.7.2 NMAC	A	Requirements for General and Special Hospitals . . . . . 848
<b>Human Services Department</b>			
Medical Assistance Division			
*	8.320.6 NMAC	Rn & A	School Based Services for Recipients Under Twenty-one Years of Age . . . . . 849
<b>Livestock Board</b>			
*	21.32.10 NMAC	A	Livestock Board Fees . . . . . 854
<b>Public Safety, Department of</b>			
Training and Recruiting Division - Law Enforcement Academy			
*	10.29.9 NMAC	A	Police Officer . . . . . 854

Please note that the (*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00
---

**The New Mexico Register**  
 Published by  
 The Commission of Public Records  
 Administrative Law Division  
 1205 Camino Carlos Rey  
 Santa Fe, NM 87507

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00, except the first subscription from each New Mexico state agency may be ordered at \$85.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto:rules@rain.state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

#### NEW MEXICO BOARD OF ACUPUNCTURE & ORIENTAL MED- ICINE

#### NOTICE OF RULE HEARING AND REGULAR MEETING ON PROPOSED NEW RULE AND AMENDMENTS

The New Mexico Board of Acupuncture and Oriental Medicine will convene a public rule hearing on Wednesday, December 11, 2002. The hearing will begin at 9 a.m. at the State Capitol Building, 3rd Floor, Room 305 in Santa Fe, New Mexico. The purpose of the rule hearing is to hear public testimony and comments regarding the proposed amendments to the rules and regulations: PART 1 General Provisions, PART 2 Scope of Practice, PART 3 Application for Licensure, PART 4 Examinations, PART 5 Temporary Licensing, PART 7 Approval of Educational Programs, PART 8 License Renewal, PART 9 Continuing Education, PART 10 Fees, PART 14 Externship Certification and new rule PART 15 Inactive Status.

A board meeting will follow the hearing. The board may go into executive session to discuss pending litigation, personnel or licensee matters. A final agenda for the board meeting will be available at the board office on December 10, 2002. Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. on November 22, 2002, to the board office, P.O. Box 25101, Santa Fe, NM, 87504. Copies of the proposed rule changes will be available on November 11, 2002 through the board office and on the Board's website which is [www.rld.state.nm.us/b&c/acupuncture](http://www.rld.state.nm.us/b&c/acupuncture) (click on the "News" link).

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the board administrator at 476-7124 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the board administrator if a summa-

ry or other type of accessible format is needed.

### ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGU- LAR MEETING.

On December 11, 2002, at 5:15 PM, the Albuquerque/Bernalillo County Air Quality Control Board (Board) will hold a public hearing in the Council/Commission Chambers of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearings will address:

\* Proposal to repeal and replace 20 NMAC 11.20, Airborne Particulate Matter with 20.11.20 NMAC Visible Fugitive Dust Control.

\* Proposal to incorporate the revised 20.11.20 NMAC into the New Mexico State Implementation Plan (SIP) for air quality.

\* Proposal to incorporate a revised 20.11.42 NMAC, Operating Permits, into the New Mexico State Implementation Plan (SIP) for air quality

The purpose of the first hearing is to receive testimony on proposed changes to the Airborne Particulate Matter regulation, including: the repeal and replacement of 20 NMAC 11.20, changing the title to Visible Fugitive Dust Control, increasing filing and inspection fees based on acreage, incorporating Reasonable Available Control Measures (RACMs) that will be required during active dirt operations and on unpaved public roadways and parking lots, prohibiting the construction of new unpaved public roadways in Bernalillo County without stabilizing the roadbed, requiring a bond to be posted for construction projects over 25 acres, requiring proper use of leaf blowers, providing for programmatic permits for routine maintenance of public facilities, establishing penalties for violations of the Part, creating reseeding specifications for native plants, and providing for the ability to address related indoor air problems and complaints. Immediately after the Part 20 hearing closes a second hearing will begin during which the Board will be asked to adopt the revised regulation into the SIP. The final hearing will consid-

er the proposal to incorporate a revised 20.11.42 NMAC, Operating Permits, into the SIP. Following these hearings, the Board will hold its regular monthly meeting and will consider approval of the proposed regulation changes and incorporating these changes into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons wishing to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony should submit a written notice of intent to: Attn: December Hearing Record, Mr. Dan Warren, Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW, in advance of the hearing. The notice shall include:

- \* Name and qualifications of each technical witness;
- \* Identification of whether the witness is a proponent, opponent or interested party;
- \* Description of the nature of the anticipated testimony;
- \* Anticipated length of each witness' presentation;
- \* Identification of the specific aspects of the proposed action to which testimony will be directed and provide any alternative language proposals, where appropriate;
- \* List and describe technical exhibits you anticipate submitting in connection with the witness' testimony.

In addition, written comments to be incorporated into the public record must be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on December 4th, 2002, and must identify the individual submitting the statement. Interested persons may obtain a

copy of the proposed regulation at the Environmental Health Department Office, or call Mr. Neal Butt at (505) 768-2600.

**NOTICE TO PERSONS WITH DISABILITIES:** If you have a disability and require special assistance to participate in this meeting, please contact Mr. Neal Butt, Environmental Health Department, Room 3023, A/BCGC, 768-2600 (Voice); 768-2617 (FAX); or 768-2482 (TTY); as soon as possible prior to the meeting date. Public documents, including agendas and minutes, can be provided in various accessible formats.

## NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for Architects

PO Box 509  
Santa Fe, NM  
505-827-6375

### Regular Meeting and Public Rules Hearing

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Albuquerque, New Mexico on Friday, November 15, 2002. Disciplinary matters may also be discussed. The meeting will be held at the University of New Mexico School of Architecture, 2414 Central SE at 9:00 a.m. in Room 117.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND HEARING

*Grant County, New Mexico Sulfur Dioxide Nonattainment Area*

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on January 10, 2003, in conjunction with their regular January meeting. The hearing will begin at 9:30 a.m. at the Community Center Auditorium located at 290 Hurley Avenue in Bayard, New Mexico. At this hearing, the Board will consider proposed changes to the New Mexico State Implementation Plan (SIP) revision for the Grant County, New Mexico sulfur dioxide nonattainment area.

The purpose of the public hearing is to consider and take possible action on a petition from the New Mexico Environment Department (NMED) regarding proposed changes to the above-listed SIP revision. These proposed changes are intended to redesignate the Grant County, New Mexico sulfur dioxide nonattainment area to attainment/maintenance status. The NMED proposal includes a maintenance plan and a redesignation request for the Grant County sulfur dioxide nonattainment area.

The proposed changes may be reviewed during regular business hours at the NMED Silver City District Field office located at 1302 A East 32nd Street, Silver City, New Mexico. A full text of the NMED's proposed changes are also available on the NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Gail Cooke by phone at (505) 955-8022 or by e-mail at [Gail\\_Cooke@nmenv.state.nm.us](mailto:Gail_Cooke@nmenv.state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 72-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical wit-

ness and state the anticipated duration of the testimony of that witness;

(4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and

(5) attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on December 30, 2002, and should reference the name of the SIP revision and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid-Chavez  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150  
Santa Fe, NM 87502

A member of the general public who wants to submit a written non-technical statement for the record in lieu of providing oral non-technical testimony at the hearing shall file such statement prior to the close of the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by December 30, 2002. Mr. Hawley can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access his number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may deliberate and rule on the proposed amendments at the close of the hearing or the Board may convene a meeting after the hearing to consider action on the proposal.

cc: Dr. Hilary A. Noskin, Chair

## NEW MEXICO OIL CONSERVATION COMMISSION

### NOTICE OF RULE MAKING

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION  
SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on November 22, 2002 in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico concerning the repeal of 19.15.1.18, 19.15.3.105 and 19.15.3.313 NMAC, adoption of a replacement regulation to be codified in the New Mexico Administrative Code as 19.15.2.53 NMAC, and adoption of amendments to 19.15.1.7 NMAC adding thereto additional definitions. The proposed regulation and amendments are designed to regulate the construction, operation and closing of pits the interest of protection of ground and surface water and public health, safety and the environment. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Florene Davidson at 505-476-3458 or through the New Mexico Relay Network, 1-800-659-1779 immediately. Copies of the text of proposed regulation and amendments are available from Ms. Davidson at 505-476-3458 or from the Division's Internet web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm>

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 15th day of October, 2002.**

**STATE OF NEW MEXICO  
OILCONSERVATION DIVISION**

**Lori Wrotenbery, Director**

**S E A L**

**NEW MEXICO OIL  
CONSERVATION  
COMMISSION**

**NOTICE OF RULE MAKING**

**STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION  
SANTA FE, NEW MEXICO**

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at its regular monthly meeting on November 22, 2002, in Porter Hall, 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning adoption of proposed amendments to 19.15.E.303 and 309-

A NMAC, repeal of 19.15.E.309-B and 309-C NMAC and adoption of a replacement regulation to be codified in the New Mexico Administrative Code as 19.15.E.315 NMAC. The proposed regulations concern surface commingling of oil and gas from different pools and leases and off-lease measurement and storage of production. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Florene Davidson at 505-476-3458 or through the New Mexico Relay Network, 1-800-659-1779 immediately. A copy of the text of proposed amendments and proposed new regulations is available from Ms. Davidson at 505-476-3458 or from the Division's Internet web site at <http://www.emnrd.state.nm.us/ocd/what-snew.htm>

**Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 15th day of October, 2002.**

**STATE OF NEW MEXICO  
OILCONSERVATION DIVISION**

**Lori Wrotenbery, Director**

**S E A L**

**NEW MEXICO  
DEPARTMENT OF  
PUBLIC SAFETY**

**TRAINING AND RECRUITING  
DIVISION  
LAW ENFORCEMENT ACADEMY**

**NOTICE  
NM LAW ENFORCEMENT  
ACADEMY BOARD MEETING AND  
PUBLIC HEARING**

The New Mexico Law Enforcement Academy Board will hold its next regularly scheduled Board meeting on Tuesday, December 10th, 2002, at 1:00 p.m., at the Marriott Albuquerque, 2101 Louisiana Boulevard NE, Albuquerque, NM 87110.

Curriculum Project Review, Twelve Month Grace Period Discussion, Retired Officer Certification as well as other law enforcement matters will be on the meeting agenda.

Copies of proposed plans, standards, requirements, or rules may be obtained by calling (505) 827-9255. If you

are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Darrel Hart, (505) 827-9255, as soon as possible. Public documents can be provided in various accessible formats.

Please contact Darrel Hart if additional information is needed.

---

**End of Notices and Proposed  
Rules Section**

---

**This Page Intentionally Left Blank**



## Adopted Rules and Regulations

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PREVENTION AND INTERVENTION DIVISION

#### Notice of Repeal

8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, is repealed effective 11/01/02 and repromulgated as 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers effective 11/01/02.

#### Notice of Repeal

8.16.2 NMAC Child Care Centers, Before/After School Programs, Family Child Care Homes, and Other Early Care and Education Programs, is repealed effective 11/01/02 and repromulgated as 8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs effective 11/01/02.

#### Notice of Repeal

8.17.2 NMAC Requirements Governing Registration of Non-Licensed Family Child Care Homes, is repealed effective 11-01-02 and repromulgated as 8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes effective 11-01-02.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PREVENTION AND INTERVENTION DIVISION

#### TITLE 8            SOCIAL SERVICES CHAPTER 15      CHILD            CARE ASSISTANCE PART 2            REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

**8.15.2.1            ISSUING AGENCY:**  
Children, Youth and Families Department.  
[8.15.2.1 NMAC - Rp 8.15.2.1 NMAC, 11-01-02]

**8.15.2.2            SCOPE:** This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility

for child care assistance benefits. (See 8.15.2.8 NMAC for detailed list.)  
[8.15.2.2 NMAC - Rp 8.15.2.2 NMAC, 11-01-02]

**8.15.2.3            S T A T U T O R Y**  
**AUTHORITY:** NMSA {9-2A-7 (1991)}  
[8.15.2.3 NMAC - Rp 8.15.2.3 NMAC, 11-01-02]

**8.15.2.4            D U R A T I O N :**  
Permanent  
[8.15.2.4 NMAC - Rp 8.15.2.4 NMAC, 11-01-02]

**8.15.2.5            E F F E C T I V E   D A T E:**  
November 1, 2002, unless a later date is cited at the end of section.  
[8.15.2.5 NMAC - Rp 8.15.2.5 NMAC, 11-01-02]

**8.15.2.6            O B J E C T I V E:**  
A. To establish standards and procedures for the provision of child care assistance benefits to eligible clients and to establish the rights and responsibilities of child care providers who receive payment for providing child care services to clients receiving benefits. To establish minimum requirements for eligibility for program participation and for the provision of child care services to children whose families are receiving benefits and to allow children receiving these benefits access to quality child care settings that promote their physical, mental, emotional, and social development in a safe environment.

B. Permissive language such as "may or may be" when referring to actions taken by the department, address situations where it is not always prudent or practical to apply these actions. It is not meant to reduce the weight of these actions nor should the intent of the policies be circumvented due to this wording. This language is intended to be construed in a fiscally responsible and/or equitable manner, keeping in mind that consistency in application is the ultimate goal.

[8.15.2.6 NMAC - Rp 8.15.2.6 NMAC, 11-01-02]

**8.15.2.7            D E F I N I T I O N S:**  
A. "Attending a job training or educational program" means being physically present and actively participating in a job training or educational program.

B. "Child with special needs" means a child with a medically documented condition, which results in physical or mental incapacity requiring care and supervision by an adult.

C. "Closure" means the

child care case is closed due to the client no longer having a need for child care assistance in accordance with program policy, being determined ineligible due to receipt of income in excess of the income guideline, moving out of state, failing to recertify in accordance with program procedures, completing or withdrawing from an educational or training program or being disqualified from participation in the program.

D. "Co-payment" means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department's payment to the provider is reduced by the co-payment amount.

E. "Department" means the New Mexico children, youth and families department.

F. "Earned income" means income received as wages from employment or as profit from self-employment.

G. "Incidental money" means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

H. "Infant, toddler, pre-school, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

- (1) Infant: 0-23 months
- (2) Toddler: 24 -35 months
- (3) Preschool: 3 to 5 year olds
- (4) School Age: 6 year olds and older

I. "Job training and educational program" means participation in a short or long term educational or training program which provides specific job skills which allow the participant to enter the workforce and/or directly relate to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, Literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post secondary institutions.

J. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds

the standards of one of the following national accrediting bodies: the National Association for the Education of Young Children (NAEYC); the National Early Childhood Program Accreditation (NECPA); the American Montessori Society (AMS); the Montessori School Accreditation Commission (MSAC); the National Association of Family Child Care (NAFCC), the National Child Care Association (NCCA); the National School Age Care Alliance (NSACA); or the Association of Christian Schools International (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

K. "Non-traditional hours of care" means care provided between the night time hours of 7 p.m. and 7 a.m.

L. "Open case" means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

M. "Overpayment" means a payment of child care assistance benefits received by client or provider which they are ineligible for based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

N. "Protective services child care" means child care services for children placed in the custody of the protective services division of the department.

O. "Provider types" means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) "In-home" care means care provided in the child's own home.

(2) "Registered home" means child care provided in the home of a provider who is registered with the department's child and adult care food program to care for up to four (4) children.

(3) "Licensed family child care home" means child care provided in the home of a provider who is licensed by the department to care for up to six (6) children.

(4) "Licensed group child care home" means child care provided in the home of a provider who is licensed by the department to care for up to twelve (12) children.

(5) "Licensed center" means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) "Out of school time care" means child care provided to a school age child up to age thirteen immediately before

and/or immediately after a regularly scheduled school day and/or when regular school is not in session.

(7) "Provisional provider" means a child care provider selected by the parent who is not already registered or licensed. The provider is allowed a 90 calendar day grace period in which to become registered or licensed.

P. "Recertification" means the process by which a client's eligibility to continue to receive child care assistance benefits are determined.

Q. "Registration/Educational fee" means a fee charged to private pay and families receiving child care assistance for materials and supplies.

R. "Residing with" means living in a household which provides shelter and care to a child during the non-working hours of the child's parent or guardian.

S. "Suspension" means that the child care case is kept open, but benefits are not paid.

T. "TANF" means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

U. "Teen parent" means a biological parent under the age of 20 who is attending high school or working towards a general equivalency diploma (GED).

V. "Termination" means the child care case is terminated due to cause.

W. "Underpayment" means a payment made by the department for services provided which did not fully reimburse the client or provider.

X. "Unearned income" means income in the form of benefits such as TANF, workmen's compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, and grants which does not meet the definition of earned income.

Y. "Waiting list" means a list of families who have applied for child care services during a period of lack of funding.

Z. "Working" means employment of any type, including self-employment. For TANF recipients, this includes work experience and/or community service or any other activity that meets the TANF work activity requirements.

[8.15.2.7 NMAC - Rp 8.15.2.7 NMAC, 11-01-02]

#### 8.15.2.8

#### TYPES OF CHILD

**CARE:** These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents have a variety of child care services from which to choose:

A. child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;

B. child care programs administered by tribal entities;

C. child care programs administered by church or religious organizations;

D. in-home care;

E. child care in licensed centers;

F. child care in registered family childcare homes;

G. child care in licensed family and group childcare homes;

H. out of school time programs;

I. programs operated by employers for their employees; and

J. provisional providers.  
[8.15.2.8 NMAC - Rp 8.15.2.8 NMAC, 11-01-02]

#### 8.15.2.9 PRIORITIES FOR

**ASSISTANCE:** Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority One and Priority One A: Clients receiving temporary assistance to needy families (TANF) benefits are considered priority one clients. Clients participating in the food stamp employment and training (E&T) program as determined and administered by the human services department (HSD) are considered priority one A clients.

(1) Participation exemption: The human services department grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant's inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a) The unavailability of appropriate child care within a reasonable distance from the individual's home or work site, or;

(b) The unavailability or unsuitability of informal child care by a relative or under other arrangements, or;

(c) The unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any and/or all

of the above reasons is referred to the children, youth & families department training and technical assistance (T&TA) contractor for that area. The T&TA assists the client with location of child care. The final validation/verification of a client's inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with the human services department (HSD). HSD is responsible for providing notice of the approval and/or denial of a participation exemption.

**B. Priority One B:** Child care assistance for income eligible families whose income is at or below 100% of the federal poverty level. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority one B for children with special needs and for teen parents. If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds 100% of the federal poverty level but is at or below 200% of the federal poverty level to the priority four category.

**C. Priority Two:** Child care assistance for a consecutive 12-month period for families transitioning off TANF. Clients must have received TANF for at least one (1) month in the past twelve (12) months in order to qualify for priority two. Only clients whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their twelve (12) consecutive month period of eligibility for priority two child care.

**D. Priority Three:** No new families will be enrolled in priority three. This category will be eliminated through attrition as priority three families become ineligible for any reason including but not limited to: income exceeding 200% of the federal poverty level; failure to re-certify in a timely manner; and/or loss of employment which results in loss of benefits.

**E. Priority Four:** Child care assistance for families whose income is above 100% of the federal poverty level but at or below 200% of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a six month block of time subject to the availability of funds and renewable subject to the availability of funds. The depart-

ment reserves the right to expand the eligibility requirement up to 200% of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority four for children with special needs and for teen parents.

**F. CPS Child Care:** In addition to these priorities, the department pays for protective services child care (CPS) as determined by the protective services division of the department.  
[8.15.2.9 NMAC - Rp 8.15.2.9 NMAC, 11-01-02]

#### **8.15.2.10 APPLICATION**

**PROCESS:** Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person, or by mail, at the local child care office:

**A.** a completed signed application form;

**B.** proof of earned income or participation in the temporary assistance to needy families (TANF) program or the food stamp employment and/or training (E&T) program;

**C.** school schedule, if applicable;

**D.** social security numbers for all members of the household;

**E.** birth certificates for all applicant children;

**F.** proof of unearned income;

**G.** proof of residency;

**H.** and the name, address, phone number, and social security number of the provider selected to care for the children.

**I.** Assistance is provided effective the first day of the month of application if all of the following apply:

(1) the client is utilizing child care services;

(2) the client is employed, attending school or a training program; and

(3) the provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp 8.15.2.10 NMAC, 11-01-02]

#### **8.15.2.11 ELIGIBILITY**

**REQUIREMENTS:** Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

**A.** The Household: The

household includes biological parents, step-parents, and legal guardians living in the household, thereby constituting an economic unit, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and/or are applying for child care benefits on behalf of the children.

**B. Allowed Exclusions from the Household:** Excluded from the household for co-pay calculation purposes are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents and/or legal guardians in this situation are required to qualify for child care assistance as per Subsection D below and, upon qualification, have the required co-pay waived.

**C. Adult Dependent Children:** Eighteen (18) year old dependent children must be attending school to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.

**D. Household Income:** Income eligibility for benefits is determined by the number of members in the household and the total countable earned and unearned income.

**E. Countable Earned and Unearned Income:** The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable). These include, but are not limited to: Income from employment by working for others or from self-employment; child support payments; alimony payments; veterans administration (VA) payments except VA payments for educational purposes; union payments; unemployment or workman's compensation; social security benefits for dependent children; railroad retirement benefits; pensions; work study income; TANF benefits, including diversionary payments; royalties; cash gifts, and income from rental property.

**F. Exempt Income:** The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of a dependent child who is under 18 and in school; food stamps, military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001;" third party payments; energy assistance benefits; foster care payments; sup-

plemental security income (SSI); loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the VISTA program; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts.

**G. Verification of Income:** Clients applying for child care assistance benefits are required to verify income by providing proof of income for all members of the household who receive income. Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.

**H. Residency requirement:** A recipient of child care assistance or a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

**I. Citizenship:** A recipient of child care assistance must be a citizen of the United States; or a qualified alien as determined by applicable federal laws. If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship and/or alien status of the child's parent or parents.

**J. Age requirement:** Child care benefits are paid for children between the ages of six (6) weeks up to the month in which the child turns 13 years old.

**K. Teen Parent:** A teen parent who is attending a high school or a GED program or attending any other job skills training and/or educational programs directly related to enhancing employment opportunities is prioritized relative to budget availability.

**L. Failure to use authorized child care:** If authorized child care has not been used for 10 consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, child care assistance services may be terminated. The department notifies the client and requests contact within fourteen (14) calendar days of the mailing date of the notification. If there is no contact by the final day of the expiration of the fourteen (14) calendar day notice, the case will be

closed. The provider will be issued a fourteen (14) calendar day notice of the date of the closure and payment will be made through the final day of the expiration of the provider's fourteen (14) calendar day notice, if the provider has reported the non-attendance in a timely manner. Clients in cyclical employment are exempted.

**M. Work/Education Requirement:** Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity. Work, educational or community service activities must be approved by HSD for food stamp E&T clients. Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses.

**N. Special Supervision:** Child care benefits may be provided to children between the ages of thirteen and eighteen who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.

**O. Children enrolled in head start, kindergarten, school or other programs:** Child care benefits are not paid during the hours that children are attending head start, kindergarten, school or other programs.  
[8.15.2.11 NMAC - Rp 8.15.2.11 NMAC, 11-01-02]

**8.15.2.12 RECERTIFICATION:** Clients must recertify for services at least once every six (6) months and must provide continued proof of eligibility. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, and/or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification.  
[8.15.2.12 NMAC - Rp 8.15.2.12 NMAC, 11-01-02]

**8.15.2.13 CLIENT RESPONSIBILITIES:** Clients must abide by the regulations set forth by the department and uti-

lize child care assistance benefits only while they are working, attending school or participating in a training program. Using child care for recreational or other purposes is considered fraud and sanctions may be imposed, including recoupment.

**A. Co-payments:** co-payments are paid by all clients receiving child care assistance benefits, except for child protective services (CPS). Co-payments are based upon the size and income of the household.

**B. Co-payments for each additional child** are determined at one half of the co-payment for the previous child.

**C. Co-payments for children in part-time care** are determined based upon the block of time that the child is in care.

**D. Clients pay co-payments directly to their child care provider and must remain current in their payments.** A client who does not pay co-payments may be subject to sanctions.

**E. In-Home Providers:** Parents who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent.

**F. Notification of changes:** Clients must notify the department of changes in income or other factors affecting the receipt of child care benefits, and report any change(s) in circumstances that affect benefits within 14 calendar days of the change, including increase in earnings, losing or changing employment, increase or decrease in work hours, change in school or training status, change in address or residency status, or household composition. priority one clients whose TANF cases are closed by the human services department at the time of their TANF recertification, must contact the department immediately. Clients who do not comply with this requirement may be sanctioned, and may be subject to the recoupment process.

[8.15.2.13 NMAC - Rp 8.15.2.13 NMAC, 11-01-02]

**8.15.2.14 CASE SUSPENSIONS:** Clients who are engaged in cyclical educational programs or cyclical employment, such as students, public school employees, and school bus drivers may request temporary suspension, not to

exceed three months per occurrence, of the use of child care assistance benefits without losing eligibility for benefits. Pregnant women in the third trimester of their pregnancy or whose doctor determines that continued employment before birth jeopardizes the mother or the unborn child's health may request suspension of their case. A client may request suspension of a case for maternity leave after the birth or adoption of a child for up to three months. The case may be suspended for longer than three months if there are documented medical complications for either the mother or the child. In addition, a case may be suspended for up to three months for a medically documented condition. A case may also be suspended with child care benefits being paid for up to 30 calendar days in a situation of lost employment, providing the client is making a bona fide effort to secure new employment, and the client reports the change in a timely manner. Case suspensions due to lost employment are not to exceed two occurrences per calendar year.

[8.15.2.14 NMAC - Rp 8.15.2.14 NMAC, 11-01-02]

**8.15.2.15 PROVIDER REQUIREMENTS:** Child care providers must abide by all department regulations and provide child care paid for by the department to clients only while such clients are working, attending school or participating in a training program or participating in a TANF or food stamp E&T program approved activity/component. Child care provided for recreational or other purposes, or at times other than those outlined in the child care agreement, are paid for by the client. Knowingly accepting payment from the department for child care provided for recreational and other purposes is considered fraud and sanctions may be imposed.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands. First time registered home providers have up to a 90 consecutive calendar day grace period in which to comply with the registration requirement. A 90 calendar day grace period is issued one time only. A child protective services screen will be conducted on all new registered providers and at their annual registration renewal. Evidence of a substantiated refer-

ral for child abuse and/or neglect for a provider, a second caregiver, or any persons age 18 or over residing in the provider's home and/or working in a licensed child care center/home will result in the ineligibility of that provider to receive payments under the child care assistance program. The only exception is when a custodial parent has a substantiated referral but resides with the child care provider who does not have a substantiated referral.

B. Child care providers collect required co-payments from clients and provide child care according to the terms outlined in the child care agreement.

C. New child care providers must participate in at least one orientation session within the first six months of becoming a child care vendor for the department. Providers are notified of this requirement. Providers who do not comply with this requirement are not paid past this six month grace period and are provided notice that payment may be suspended until this requirement is met.

D. Child care providers must notify the department if the child is disenrolled or is absent for 10 consecutive scheduled days. Absences totaling ten or more consecutive scheduled days must be approved by the client's caseworker. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate.

(1) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(2) Providers may charge a registration/educational fee to a child care assistance family comparable to but not to exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

F. Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend and/or terminate assistance payments to a licensed or registered provider.

[8.15.2.15 NMAC - Rp 8.15.2.15 NMAC, 11-01-02]

#### **8.15.2.16 DEPARTMENT RESPONSIBILITIES:**

A. The Department pays child care providers who provide child care services to department clients in a timely manner.

B. Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

C. Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

D. Child care assistance workers determine eligibility for all child care assistance programs except for TANF and E&T. Eligibility for TANF and food stamp E&T program is determined by the New Mexico human services department.

E. Child care assistance workers must inform parents of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

F. The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents and providers.

G. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent and provider responsibilities, licensing and registration requirements, payment issuance and criminal records check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp 8.15.2.16 NMAC, 11-01-02]

#### **8.15.2.17 PAYMENT FOR SERVICES:**

The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time dur-

ing the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the fourteen (14) calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Out of School Time Care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (Part time 1).

F. Out of School Time Care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (Full time).

G. Out of School Time Care provided for 5 hours or less per week are paid at the 25% rate (Part time 3) regardless of provider type.

H. Monthly Reimbursement Rates

Licensed Child Care Centers								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$467.84	\$352.60	\$350.88	\$264.45	\$233.92	\$176.30	\$116.96	\$88.15
Toddler	\$417.19	\$345.00	\$312.89	\$258.75	\$208.60	\$172.50	\$104.30	\$86.25
Pre-School	\$386.48	\$322.50	\$289.86	\$241.88	\$193.24	\$161.25	\$96.62	\$80.63
School Age	\$337.11	\$311.75	\$252.83	\$233.81	\$168.56	\$155.88	\$84.28	\$77.94
Licensed Group Homes (Capacity: 7-12)								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$370.48	\$324.38	\$277.86	\$243.29	\$185.24	\$162.19	\$92.62	\$81.10
Toddler	\$335.40	\$320.00	\$251.55	\$240.00	\$167.70	\$160.00	\$83.85	\$80.00
Pre-School	\$329.55	\$315.00	\$247.16	\$236.25	\$164.78	\$157.50	\$82.39	\$78.75
School Age	\$325.00	\$305.00	\$243.75	\$228.75	\$162.50	\$152.50	\$81.25	\$76.25

Licensed Family Homes (Capacity: 6 or less)								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$365.20	\$320.00	\$273.90	\$240.00	\$182.60	\$160.00	\$91.30	\$80.00
Toddler	\$325.08	\$315.00	\$243.81	\$236.25	\$162.54	\$157.50	\$81.27	\$78.75
Pre-School	\$324.17	\$310.00	\$243.13	\$232.50	\$162.09	\$155.00	\$81.04	\$77.50
School Age	\$319.28	\$300.00	\$239.46	\$225.00	\$159.64	\$150.00	\$79.82	\$75.00
Registered Homes and In-Home Child Care								
	Full Time		Part Time 1		Part Time 2		Part Time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-School	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School Age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider. Providers located in the three metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos and Dona Ana counties. All other providers receive the rural rate.

J. The department pays a differential rate to former gold and silver licensed providers and providers holding national accreditation status. Former gold and silver licensed providers receive an additional \$66.00 per month and \$33.00 per month, respectively, for full time care above the base reimbursement standard. In order to continue at these reimbursement rates a provider must meet and maintain former gold and silver licensing requirements. If a former gold or silver licensed provider fails to meet the former gold and silver licensing requirements this could result in the provider reimbursement reverting to a lower level of reimbursement. Providers holding national accreditation status receive an additional \$66.00 per month for full time care above the base reimbursement standard. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimburse-

ment reverting to a lower level of reimbursement.

K. AIM HIGH is a voluntary quality child care improvement pilot program that is open to all registered and licensed child care providers. The department pays a differential rate to providers achieving AIM HIGH levels as follows: Level 3 at \$16.50 per month per child for full time care above the base reimbursement rate; Level 4 at \$33.00 per month per child for full time care above the base reimbursement rate, and Level 5 at \$66.00 per month per child for full time care above the base reimbursement rate.

L. The department pays a differential rate equivalent to 10% of the applicable full-time rate to providers who provide full-time care during non-traditional hours. Providers who provide part-time care during non-traditional hours will be paid a differential rate subject to the proration schedule delineated in 8.15.2.17 (D) NMAC.

M. If a significant change occurs in the client's circumstances, (for example, an increase or decrease in income or a change in work schedule) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.  
[8.15.2.17 NMAC - Rp 8.15.2.17 NMAC, 11-01-02]

#### **8.15.2.18 UNDER PAYMENTS:**

If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the department's knowledge or receipt of notification. Notification of the department by the client or provider must occur within 90 calendar days of the occurrence of alleged underpayment.  
[8.15.2.18 NMAC - Rp 8.15.2.18 NMAC, 11-01-02]

#### **8.15.2.19 OVER PAYMENT AND RECOUPMENT:**

If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the director of the prevention and intervention division deems otherwise in exceptional circumstances. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider

to repay the amount over a payment period, usually not to exceed four months. The department arranges with the client or provider to make regular payments over the agreed-upon payment period or establishes a schedule of deductions from future payments issued over the agreed-upon payment period. Failure to make regular payments may result in sanctions including termination of benefits and/or referral of the account to a collection agency and/or legal action.

[8.15.2.19 NMAC - Rp 8.15.2.19 NMAC, 11-01-02]

**8.15.2.20 FRAUD:** The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility is fraud and appropriate sanctions are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined.

[8.15.2.20 NMAC - Rp 8.15.2.20 NMAC, 11-01-02]

**8.15.2.21 SANCTIONS:** Sanctions may be imposed on clients/providers for failing to meet programmatic requirements which affect benefits and result in an overpayment. Sanctions are imposed according to the severity of the infraction as determined by the department and as detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments are disqualified from the program until payment is brought current.

B. Providers or clients who fail to report in a timely manner that a child is not in attendance for ten consecutive, scheduled days will have the payment recoupment process initiated.

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

D. Clients who fail to pay co-payments may be disqualified until the co-payment is paid and/or until an agree-

ment is made between the client and the provider to bring the co-payment current. The department assists the provider in collecting the co-pay only if the co-pay has been in arrears 30 calendar days or less.

E. Clients who fail to report changes that affect their eligibility resulting in an overpayment will be sanctioned and payment recoupment will be sought. A first offense results in a written warning and recoupment; a second offense results in a 3-month suspension and recoupment; and a subsequent offense results in permanent disqualification.

[8.15.2.21 NMAC - Rp 8.15.2.21 NMAC, 11-01-02]

**8.15.2.22 FAIR HEARINGS:** Clients who have been denied benefits, whose benefits have been reduced, suspended, or terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

A. The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone is permitted. The claimant may request a change of date, provided that the 60 calendar day time limit is not exceeded.

B. The department appoints a hearing officer. The department is not responsible or liable for a claimant's travel costs, legal costs, or any other costs associated with the claimant's request for a fair hearing.

C. The hearing officer reviews all of the relevant information and makes a final decision within 30 calendar days of the hearing. The final decision is binding upon the department and claimant and implemented within 14 calendar days of the hearing decision. The claimant is notified in writing of the hearing officer's decision within 14 calendar days of the hearing decision.

D. At the claimant's option the case may remain open at the same ben-

efit level until disposition. If the decision is in favor of the department, the claimant is responsible for repayment of all monies received to which the claimant was not entitled, unless the hearing decision provides otherwise or the director of the prevention and intervention division authorizes otherwise in exceptional circumstances. The fair hearing process is not intended as a means to extend the time for receipt of child care assistance payments to which the recipient is not otherwise entitled, and therefore exceptional circumstances must be explicitly stated.

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF and E&T. Eligibility for TANF and food stamp E&T program is determined by the New Mexico human services department. If TANF and E&T benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp 8.15.2.22 NMAC, 11-01-02]

**8.15.2.23 COMPLAINTS:** Clients or providers who are dissatisfied with the services provided by the department may express their complaints orally or in writing to the local field office, the central office, the division director's office or the office of the department secretary. The department's toll free number is posted in each office and made available to clients and providers upon request. The local supervisor, bureau chief, division director or secretary responds to complaints by clients or providers orally or in writing as is deemed appropriate in each case.

[8.15.2.23 NMAC - Rp 8.15.2.23 NMAC, 11-01-02]

**8.15.2.24 CO - PAYMENT SCHEDULE:** The department will develop and publish an annual co-payment schedule based on the federal poverty guidelines.

[8.15.2.24 NMAC - Rp 8.15.2.25 NMAC, 11-01-02]

**8.15.2.25 CONFIDENTIALITY:** Client files are established and maintained solely for use in the administration of the child care assistance program. Information contained in the records is confidential and is released only in the following limited circumstances:

A. To the client upon request.

B. To an individual who has written authorization from the client.

C. To department employees and agents who need it in connection with program administration, including pro-



gram auditors.

D. To other agencies or individuals including law enforcement officers who satisfy the following conditions:

(1) Agency or individual is involved in the administration of a federal or a federally-assisted program, which provides assistance in cash, in kind or in services directly to individuals on the basis of need.

(2) Information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients.

(3) Agency or individual is subject to standards of confidentiality comparable to those contained herein.

(4) Agency or individual has actual or implied consent of the applicant or recipient to release the information. In an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter. Consent may be considered as implied if the client has made application to the inquiring agency for a benefit of service.

E. As requested in a subpoena or subpoena duces tecum.  
[8.15.2.25 NMAC - N, 11-01-02]

#### **HISTORY OF 8.15.2 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records B State Records Center and Archives:

ISD CCAP 200, Child Care Assistance Programs, 11/4/91

ISD CCAP 300, Hours Of Child Care, 11/4/91

ISD CCAP 700, Working Family Child Care Assistance Eligibility, 11/4/91

ISD CCAP 800, Income Eligible Child Care Assistance, 2/10/92.

#### **HISTORY OF REPEALED MATERIAL:**

8 NMAC 15.2, Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/99.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/00.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/01.

8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 11/01/02.

## **NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PREVENTION AND INTERVENTION DIVISION**

### **TITLE 8 SOCIAL SERVICES CHAPTER 16 CHILD CARE LICENSING**

#### **PART 2 CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS**

**8.16.2.1 ISSUING AGENCY:**  
Children, Youth and Families Department (CYFD).  
[8.16.2.1 NMAC - Rp 8.16.2.1 NMAC, 11/01/02]

**8.16.2.2 SCOPE:** All child care centers, out of school time programs, family child care homes, and other early care and education programs within the state of New Mexico.  
[8.16.2.2 NMAC - Rp 8.16.2.2 NMAC, 11/01/02]

**8.16.2.3 STATUTORY AUTHORITY:** The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico children, youth and families department, by authority of the Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, and Sections 24-1-2 (D), 24-1-3 (I) and 24-1-5 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.  
[8.16.2.3 NMAC - Rp 8.16.2.3 NMAC, 11/01/02]

**8.16.2.4 DURATION:**  
Permanent.  
[8.16.2.4 NMAC - Rp 8.16.2.4 NMAC, 11/01/02]

**8.16.2.5 EFFECTIVE DATE:**  
November 1, 2002 unless a later date is cited at the end of section.  
[8.16.2.5 NMAC - Rp 8.16.2.5 NMAC, 11/01/02]

**8.16.2.6 OBJECTIVE:** The objective of 8.16.2 NMAC is to establish standards and procedures for the licensing of facilities and providers who provide child care to children within New Mexico. These standards and procedures are intended to: establish minimum requirements for licensing facilities providing non-residential care to children in order to protect the health,

safety, and development of the children; monitor facility compliance with these Regulations through surveys to identify any areas that could be dangerous or harmful to the children or staff members; monitor and survey out of school time programs; and encourage the establishment and maintenance of child care centers, homes and facilities for children that provide a humane, safe, and developmentally appropriate environment. These regulations apply during all hours of operation for child care centers, homes and out of school time programs.

[8.16.2.6 NMAC - Rp 8.16.2.6 NMAC, 11/01/02]

#### **8.16.2.7 DEFINITIONS:**

A. "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(1) Physical contact that harms or is likely to harm a child.

(2) Inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child.

(3) An unlawful act, a threat or menacing conduct directed toward a child that results and/or might be expected to result in fear or emotional or mental distress to a child.

B. "Activity area" means space for children's activities where related equipment and materials are accessible to the children.

C. "Adult" means a person who has a chronological age of 18 years or older.

D. "Attended" means the physical presence of a caregiver supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Subsection PP., 8.16.2.7 NMAC).

E. "Capacity" means the maximum number of children a licensed child care facility can care for at any one time.

F. "Caregiver" means an adult who directly cares for, serves, and supervises children in a licensed child care facility.

G. "Child" means a person who is under the chronological age of eighteen (18) years.

H. "Child care center" means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safe-

ty codes.

I. "Class A deficiency" means any violation or a group of violations, which have potential to cause injury or harm if not corrected.

J. "Class B deficiency" means any substantiated abuse or neglect of a child or staff or exploitation which results in injury or harm; or a violation or group of violations which presents direct substantial risk of harm.

K. "Class C deficiency" means any substantiated abuse or neglect of a child or staff or violation which results in death, great physical or psychological harm.

L. "Core hours" means the daily hours of operation of the center.

M. "Deficiency" means a violation of these regulations.

N. "Director" means the person in charge of the day-to-day operation and program of a Child Care Center.

O. "Discipline" means guidance, which fosters the child's ability to become self-disciplined. Disciplinary measures will be consistent and developmentally appropriate (See Punishment).

P. "Drop-in" means a child who attends a child care facility on an occasional or unscheduled basis.

Q. "Facility" means any premises licensed under these regulations where children receive care, services, and supervision (can be a center, home, program, or other site where children receive childcare).

R. "Family child care home" means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than twenty-four (24) hours of any day for at least five (5) but no more than six (6) children. The licensee will reside in the home and be the primary care giver.

S. "Group child care home" means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven (7) but not more than twelve (12) children. The licensee will reside in the home and be the primary care giver.

T. "Home" means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary care giver.

U. "Infant" means a child age six (6) weeks to twelve (12) months.

V. "License" means a document issued by CYFD to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed

one year.

W. "Licensee" means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

X. "Licensing authority" means the child care services bureau - licensing section of the prevention and intervention division of the New Mexico children, youth and families department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.

Y. "Moral turpitude" means conduct defined as such in the most current version of the Criminal Records Checks and Employment History Verification Provisions pursuant to 8.8.3 NMAC.

Z. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds the standards of one of the following national accrediting bodies: the national association for the education of young children (NAEYC); the national early childhood program accreditation (NECPA); the American Montessori society (AMS); the Montessori school accreditation commission (MSAC); the national association of family child care (NAFCC), the national child care association (NCCA); the national school age care alliance (NSACA); or the association of Christian schools international (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

AA. "Night care" means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

BB. "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in

harm to the child.

CC. "Notifiable diseases" means confirmed or suspected diseases/conditions as itemized by the New Mexico Department of Health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

DD. "Pest" means any living organism declared a pest pursuant to the Pesticide Control Act.

EE. "Pesticide" means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

FF. "Plan of correction" means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

GG. "Premises" means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

HH. "Program administrator" means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. (This definition applies only to the out of school time programs child care regulations.)

II. "Punishment" means the touching of a child's body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

JJ. "Requirements" means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

KK. "Restriction" means to control enrollment, service type, capacity, activities, or hours of operation.

LL. "Revocation" means the act of making a license null and void through its cancellation.

MM. "Sanction" means a measure imposed by the licensing authority for a violation(s) of these standards.

NN. "Suspension" means a temporary cancellation of a license pending an appeal hearing and/or correction of deficiencies.

OO. "Out of school time program" means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

PP. "Site director" means the person at the site having responsibility for program administration and supervision of an out of school time program. This applies to out of school time programs only.

QQ. "Substantiated complaint" means a complaint determined to be factual, based on an investigation of events.

RR. "Supervision" means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

SS. "Survey" means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

TT. "Toddler" means a child age twelve (12) months to twenty-four (24) months.

UU. "U/L" means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

VV. "Unattended" means a caregiver is not physically present with a child or children under care.

WW. "Unsubstantiated complaint" means a complaint not determined to be factual based on an investigation of events.

XX. "Variance" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

YY. "Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority. [8.16.2.7 NMAC - Rp 8.16.2.7 NMAC, 11/01/02]

**8.16.2.8 RELATED REGULATIONS AND CODES:** Facilities subject to these regulations are also subject to the current versions of the following regulations and codes:

A. New Mexico health and environment department regulations Control of Disease and Conditions of Public Health Significance, 7.4.3 NMAC.

B. New Mexico health and environment department regulations, Control of Communicable Disease in Health Facility Personnel, 7.4.4 NMAC.

C. New Mexico health and environment department regulations, Governing Public Access to information in the Department Records, 7.1.3 NMAC.

D. New Mexico children, youth and families department regulations Health Facility Licensure Fees and Procedures, 7.1.7 NMAC.

E. New Mexico children, youth and families department regulations Adjudicatory Hearings, 7.1.2 NMAC.

F. New Mexico children, youth and families department regulations Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

G. New Mexico children, youth and families department regulations Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, 7.1.10 NMAC.

H. New Mexico health and environment department Food Service and Food Processing, 7.6.2 NMAC.

I. Latest edition adopted by the New Mexico state fire board of the National Fire Protection Association Life Safety Code Handbook 101.

J. Latest edition of the Uniform Fire Code.

K. Latest edition adopted by the New Mexico construction industries division of the Uniform Building Code enacted by the international conference of building officials.

L. Latest edition of the New Mexico Building, Plumbing/Mechanical and Electrical codes adopted by the New Mexico construction industries division.

M. New Mexico department of health Regulations Governing Immunizations Required for School Attendance Immunization Requirement, 7.5.2 NMAC.

N. New Mexico health and environment department Regulations, governing CCFP Family Day Care Home Registration, effective October 8, 1986, 8.17.2 NMAC.

O. Federal Americans with Disabilities Act (ADA).

P. New Mexico department of agriculture Regulations Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 and 21.17.50 NMAC.

[8.16.2.8 NMAC - Rp 8.16.2.8 NMAC, 11/01/02]

**8.16.2.9 APPLICATION:** These regulations apply to public or private

facilities and homes that provide care, education, services, and supervision to children less than twenty-four (24) hours of any day, come within the statutory definition of "health facilities" set out in Section 24-1-2 (D) of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority. These regulations do not apply to any of the following:

A. Facilities providing child care for twenty-four (24) hours on a continuous basis. Such facilities are covered by other regulations promulgated by the children, youth and families department that are available upon request from the licensing authority.

B. Child cares facilities operated by the federal government or a tribal government.

C. Child care facilities operated by a public school system and governed by the local school board.

D. Private schools accredited or recognized by the New Mexico department of education, operated for educational purposes only for children age five (5) years or older.

E. Child care facilities provided exclusively for children of parents who are simultaneously present in the same premises.

F. Summer religious schools held on a church, religious building or house of worship premises.

G. Summer camps, wilderness camps, and programs operated for recreational purposes only by recognized organizations such as churches, schools, and the boy and girl scouts, provided such camps and programs are not conducted in private residences.

H. Any individual who in their own home provides care, services and supervision to four (4) or fewer nonresident children.

I. Parent's day out programs held in a church, religious building or house of worship, or public building operating for no more than two (2) days per week and no more than four (4) hours per day. The program will be staffed by parents participating in the program, or by others who are members of the church or public affiliation. [8.16.2.9 NMAC - Rp 8.16.2.9 NMAC, 11/01/02]

**8.16.2.10 LICENSING AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY):** The child care services bureau, licensing section, of the prevention and intervention division of the New Mexico children, youth and families department,

hereafter called the Licensing Authority, has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16, NMSA 1978, as amended. [8.16.2.10 NMAC - Rp 8.16.2.10 NMAC, 11/01/02]

### **8.16.2.11 LICENSING:**

#### **A. TYPES OF LICENSES:**

(1) **ANNUAL LICENSE:** An annual license is issued for a one-year period to a child care facility that has met all requirements of these regulations.

(2) **TEMPORARY LICENSE:** The licensing authority will, at its discretion, issue a temporary license when it finds the child care facility in partial compliance with these regulations.

(a) A temporary license can, at the discretion of the licensing authority, be issued for up to one-hundred-twenty (120) days, during which time the child care facility will correct all specified deficiencies.

(b) The licensing authority will not issue more than two (2) consecutive temporary licenses.

(3) **AMENDED LICENSE:** A child care facility will submit a new application to the licensing authority before modifying information required to be stated on the license; such as dates, capacity, director, address, etc.

(a) A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application (Fee \$20.00) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and 3 yrs of experience. The temporary acting director's appointment is valid for 30 days.

(b) A notarized application must be submitted for a change of capacity. (Fee \$20.00) Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

#### **(4) RENEWAL OF LICENSE:**

(a) A licensee will submit a notarized renewal application on forms provided by the licensing authority, along with the

required fee, at least thirty (30) days before expiration of the current license. Gold and CYFD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application.

(b) The Licensing authority will conduct an annual children's protective services division screening for all center owners and directors, and all licensed homes caregivers and any other adults over the age of 18 living in the licensed homes. Centers must maintain an original CRC clearance letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would not be disqualified as a direct provider of care under the most current version of the Criminal Records Checks and Employment History Verification Provisions pursuant to 8.8.3 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence.

(c) Upon receipt of a notarized renewal application, the required fee and the completion of an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the child care facility is in compliance with these regulations.

(d) If a licensee fails to submit a notarized renewal application with the required fee before the current license expires, the licensing authority may require the agency to cease operations until all licensing requirements are completed.

**B. GRANDFATHERED SILVER & GOLD LICENSES:** A silver level licensee must meet and maintain the following indicators of quality in addition to the minimum licensing requirements:

(1) The director, site director (if applicable), and at least one care giver in each class will verify successful completion of the forty-five (45) hour entry level course or a higher level of training, e.g. child development associate (CDA), certified child care professional credential (CCP), a Montessori teacher certification, a national administrator credential (NAC) or an associates of arts, bachelors or higher degree.

(2) A child care center must be in self-study for CYFD approved national accreditation or have a well developed and written program curriculum document reflecting developmentally appropriate practices. There must be daily written curriculum plans that reflect the implementation of the curriculum.

(3) Program and operational goals will be developed, published and posted at least

(4) Staff/Child Ratios Where Children are Grouped by Age:

Age in Group	Staffing
Six (6) weeks through twenty-four (24) months	One (1) adult for every five (5) children or fraction of group thereof.
Two (2) years	One (1) adult for every eight (8) children or fraction of group thereof.
Three (3) years	One (1) adult for every ten (10) children or fraction of group thereof.
Four (4) years	One (1) adult for every ten (10) children or fraction of group thereof.
Five (5) years	One adult for every twelve (12) children or fraction of group thereof.
Six (6) years	One (1) adult for every twelve (12) children or fraction of group thereof.

## (5) Staff/Child Ratios Where Age Groups Are Combined:

AGE IN GROUP	STAFFING
Six (6) weeks through twenty-four (24) months	One (1) adult to every five (5) children or fraction thereof.
Two (2) Three (3) and Four (4) years	One (1) adult to every ten (10) children or fraction thereof.
Three (3) Four (4) and Five (5) years	One (1) adult to every twelve (12) children or fraction thereof.
Six (6) years	One (1) adult to every twelve (12) children or fraction thereof.

(6) Group size is the number of children in an area supervised by a care giver(s). The definition of area as it pertains to group size is a space delineated by a structure consisting of, but not limited to, a wall, folding door, shelving or other barriers. Barriers do not need to limit an adult's view of a larger area, but should provide children with a sense of separation from other groups, including sound attenuation, visual barriers, and physical barriers which would limit free movement of children to other group areas.

## (7) Maximum Group:

- |                              |    |
|------------------------------|----|
| (a) 6 weeks to 24 months old | 10 |
| (b) 2 year olds              | 16 |
| (c) 3, 4 & 5 year olds       | 24 |
| (d) 6 years +                | 24 |

(8) Children must be in the same group on a consistent basis. They will not be moved from group to group during the day except during the early morning and late afternoon, a maximum of two (2) hours in the morning and two (2) hours in the afternoon. Staff/child ratios must be met for each group.

(9) A grandfathered gold level licensee must provide a copy of current accreditation awarded by the national association for the education of young children (NAEYC), the national early childhood program accreditation commission (NECPA), affiliation with a nationally recognized Montessori Association, the national child care association (NCCA), the national association for family child care (NAFCC), the national school age care alliance (NSACA), the association of Christian schools international (ACSI) or a comparable body which has been approved by the children, youth and families department.

(10) A grandfathered gold licensee must meet the staff/child and group size ratios specified above for silver licensees.

C. POSTING OF LICENSE: A child care facility will post the license on the licensed premises in an area readily visible to parents, staff members, and visitors.

D. NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A licensee will not transfer a license by assignment or otherwise to any other person or location. The license will be void and the licensee will return it to the licensing authority when.

- (1) The owner of the child care facility changes;
- (2) The child care facility moves;
- (3) The licensee of the child care facility changes; or
- (4) The child care facility closes.

E. AUTOMATIC EXPIRATION OF LICENSE: A license will expire automatically at midnight on the expiration date noted on the license unless earlier suspended or revoked, or:

- (1) On the day a child care facility closes;
- (2) On the day a child care facility is sold, leased, or otherwise changes ownership or licensee;
- (3) On the day a child care facility moves.

F. REVOCATION OR SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Section 24-1-5 NMSA 1978, the licensing authority will suspend or revoke a license immediately if action is required to protect human health and safety. Under emergency circumstances, when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, the licensing authority may immediately revoke or suspend a license. The licensing authority will hold a hearing within three (3) working days of the emergency suspension unless a hearing is waived by the licensee. Otherwise, the licensing authority may revoke a license pursuant to the procedure set forth in 7.1.2. NMAC. Upon a determination that a child care facility is not in compliance with any licensing requirement of the department, the department may impose sanctions or civil monetary penalties as established and in accordance with 24-1-5.2 NMSA 1978 Amended. Intermediate sanctions; civil penalty may consist of:

- (1) Emergency suspension or revocation of license or emergency intermediate sanction(s) for a class C deficiency.
- (2) Sanction with the issuance of a temporary license for a class B deficiency.
- (3) Temporary license with a directed plan of correction for a class A deficiency.

G. GROUNDS FOR ACTIONS AGAINST LICENSEE OR APPLICANT: The licensing authority may revoke, suspend or restrict a license or deny an initial or renewal application, or impose monetary or other sanctions, or reduce to a base level of child care assistance reimbursement those providers who are in receipt of a higher than base level of child care assistance reimbursement, pursuant to procedures after notifying the licensee and providing them with the opportunity for a hearing, for any of the following reasons:

- (1) Violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk;
- (2) Failure to allow access to the licensed premises by authorized representatives of the licensing authority;
- (3) Misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;
- (4) Allowing any person to be active in the child care facility who would be disqualified as a direct provider of care under the

most current version of the Criminal Records Checks and Employment History Verification Provisions pursuant to 8.8.3 NMAC. This will include all adults and teenaged children living in a family child care or group child care home operated in a private residence;

(5) Hiring or continuing to employ any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(6) Allowing the number of children in the child care facility to exceed its licensed capacity;

(7) Failure to comply with provisions of the other related regulations listed in these regulations;

(8) Discovery of repeat violations of the regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous licensure periods;

(9) Discovery of prior revocations or suspensions that may be considered when reviewing a facility's application for licensure or license renewal;

(10) Loss of accreditation as defined in Subsection Z of 8.16.2.7 NMAC, regardless of reason, will result in a lower level of reimbursement; or

(11) Possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be possessed and/or sold on the premises at any time, regardless of whether children are present. [8.16.2.11 NMAC - Rp 8.16.2.11 NMAC, 11/01/02]

#### **8.16.2.12 HEARING PROCEDURES:**

A. Unless otherwise specified in these regulations, hearing procedures for adverse action taken by the licensing authority against a child care facility license are held in accordance with children, youth and families department Regulations Adjudicatory Hearings, 7.1.2 NMAC.

B. The licensing authority will provide the child care facility with a copy of the relevant regulations when an adverse action is taken against its license or a child care facility may request a copy at any time from the licensing authority. [8.16.2.12 NMAC - Rp 8.16.2.12 NMAC, 11/01/02]

#### **8.16.2.13 WAIVERS:**

A. Programs, facilities or homes licensed under these regulations may request a waiver from any of the requirements of these regulations by applying, in writing, to the licensing authority for a waiver. The request should identify the regulatory requirement for which a waiver is

requested, the reason for the waiver, and any action proposed to meet the intent of the regulation.

B. Requests for waivers that involve construction of any type on a current licensed premise must be reviewed and approved by the licensing authority prior to the initiation of the construction.

C. Requests for waivers will be reviewed and approved or denied within 30 calendar days of receipt by the licensing authority.

[8.16.2.13 NMAC - Rp 8.16.2.13 NMAC, 11/01/02]

#### **8.16.2.14 VARIANCES - CURRENTLY LICENSED FACILITIES:**

A. If a child care facility licensed on the date these regulations are promulgated provides the services prescribed but fails to meet all building requirements, the licensing authority will grant a variance, provided that the variances granted:

(1) Will not create a hazard to the health, safety, or welfare of children and staff members; and

(2) Is for building requirements that cannot be corrected without an unreasonable expense to the child care facility.

B. Variances granted will continue in force as long as the child care facility continues to provide services pursuant to these regulations and will not violate the criteria of Subsection A. of this Section.

C. The licensing authority will grant a variance for those requirements contained in Section 8 (Related Regulations and Codes) if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.16.2.14 NMAC - Rp 8.16.2.14 NMAC, 11/01/02]

#### **8.16.2.15 VARIANCES - NEW CHILD CARE FACILITY:** A new child care facility may be located in an existing building or a newly constructed building.

A. If opened in an existing building, the licensing authority may grant a variance for those building requirements the child care facility cannot meet provided any variance is not in conflict with existing building and fire codes.

B. A new child care facility opened in a newly constructed building will meet all requirements of these regulations.

C. The licensing authority will make all variances granted a permanent part of the child care facility file.

D. The licensing authority may grant a variance for those requirements contained in 8.16.2.8 NMAC (Related Regulations and Codes) if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.16.2.15 NMAC - Rp 8.16.2.15 NMAC, 11/01/02]

#### **8.16.2.16 SURVEYS FOR CENTERS, HOMES, AND PROGRAMS:**

A. The licensing authority will conduct a survey at least once a year in each child care facility, home, and program using these regulations as criteria. For purposes of this section, child care facility shall include both homes and programs. The licensing authority will conduct additional surveys or visit the child care facility additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate complaints.

B. Upon the completion of a survey, the licensing authority will discuss the findings with the licensee or their representative and will provide the child care facility with an official written report of the findings and a request for a plan or plans of correction, if appropriate.

C. The licensee, director, or operator, will submit within ten (10) working days after the date of the survey, a plan of correction to the licensing authority for deficiencies found during the survey. The plan of correction will be specific on how and when the child care facility will correct the deficiency or deficiencies.

D. The licensing authority may accept the plan of correction as written or require modifications of the plan.

E. By applying for either a new license or a license renewal, the licensee grants the licensing authority representative the right to enter the premises and survey the child care facility, including inspection and copying of child care facility records, both while the application is being processed and, if licensed, at any time during the licensure period.

F. The licensing authority may or may not announce a survey. At all times, a person who is knowledgeable in the daily operations, has access to all records and locked areas, and can represent the licensee or director for survey purposes will be present in the child care facility.

[8.16.2.16 NMAC - Rp 8.16.2.16 NMAC, 11/01/02]

#### **8.16.2.17 COMPLAINTS:**

A. The licensing authority will process any complaint regarding any child care facility licensed or required to be licensed under these regulations. The investigatory authority of the licensing authority is limited to matters pertaining to these regulations.

B. A licensing authority representative receiving complaints will ask complainants to identify themselves and provide all information necessary to document the complaint.

C. The licensing authority will investigate any complaint in which the health, safety, or welfare of a child could be in danger. The complaint will be reviewed and prioritized immediately according to the nature and severity of the complaint. The licensing authority follows established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows:

(1) Priority 1 complaints: investigation will be initiated within 24 hours

(2) Priority 2 complaints: investigation will be initiated within three working days.

(3) Priority 3 complaints: investigation will be initiated within five working days.

(4) Initiation timeframes for investigations may be shortened based on the severity and nature of the complaint, but timeframes may not be extended.

D. Action by the licensing authority:

(1) The licensing authority will provide a written letter on the results of the investigation to both the licensee of the child care facility that is the subject of the complaint and the complainant.

(2) If the licensing authority finds the complaint is unsubstantiated, it will be so designated and the licensing Authority will take no further action.

(3) If the licensing authority finds that a complaint is substantiated, it will make the complaint a part of the licensing authority's file on the child care facility. The following additional actions will, at the discretion of the licensing authority, be taken:

(a) The licensing authority will require the child care facility to submit and comply with a written plan of correction; and/or

(b) The licensing authority will sanction the child care facility administratively including, without limitation, suspension, revocation, or restriction of a license; and/or

(c) The licensing authority will file criminal charges and/or pursue civil

remedies.

E. The licensing authority will report all cases of suspected child abuse and neglect to both children's protective services and the local law enforcement agency.

[8.16.2.17 NMAC - Rp 8.16.2.17 NMAC, 11/01/02]

#### **8.16.2.18 CRIMINAL RECORDS BACKGROUND CHECKS:**

Criminal background checks will be conducted in accordance with the most current regulations related to "Criminal Records and Employment History Verification Provisions" as promulgated by the children, youth and families department pursuant to 8.8.3 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status.

[8.16.2.18 NMAC - Rp 8.16.2.18 NMAC, 11/01/02]

#### **8.16.2.19 CHILD CARE CENTER REGULATIONS:**

A. **APPLICABILITY TO CHILD CARE CENTERS:** A center required to be licensed under regulations in 8.16.2.20 NMAC through 8.16.2.28 NMAC is one that provides care, education, services and supervision to children for less than twenty four (24) hours a day to children in a non-residential setting, and is not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

B. **NEW OR INNOVATIVE PROGRAMS FOR PROVIDING CHILD CARE TO CHILDREN:** A new or innovative service for child care that is typically not governed by these regulations will be licensed if there is a substantiated need for the service and if it meets all requirements outlined in Subsection C, Paragraphs (1), (2) and (3) below.

C. **SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE CHILD-CARE SERVICES:** Applicants for new or innovative child-care services that do not fit under these regulations will submit a proposal to the licensing authority for review and approval. The proposal will include:

(1) An explanation of any special needs or modifications for the children who will be receiving these services;

(2) Identification of those portions of the proposed program that would conflict with these regulations;

(3) Statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations.

D. **SPECIAL REQUIREMENTS FOR CENTERS LOCATED ON OR NEAR THE PREMISES OF CORREC-**

TIONAL FACILITIES: Applicants for centers located on or near correctional facilities will submit a proposal to the licensing authority for review and approval. The proposal will include:

(1) An explanation of security modifications that are deemed necessary to ensure the safety of the staff, parents, and children using the child care center;

(2) Statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations if the proposed program is in conflict with these regulations.

[8.16.2.19 NMAC - Rp 8.16.2.19 NMAC, 11/01/02]

#### **8.16.2.20 LICENSURE:**

A. **LICENSING REQUIREMENTS:**

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the Licensing Authority and include payment for the non-refundable application fee.

(2) **CRIMINAL RECORDS CHECK:** The licensing authority will provide a copy of the most current version of the department's Criminal Records Check and Employment History Verification Provisions, fingerprint cards and instructions for completing them, and forms for recording an employment history. The licensee will be responsible for obtaining criminal records checks on all staff, volunteers, and prospective staff as per the requirements outlined in the department's most current version of the Criminal Records Check and Employment History Verification Provisions. All requirements of the current Criminal Records Check and Employment History Verification Provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(3) **ZONING, BUILDING AND OTHER APPROVALS:** An applicant will have: current written zoning approval from the appropriate city, county or state authority; current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority; current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; current written approval from the New Mexico environment department or other environmental health authority for:

(a) A kitchen, if meals are prepared on site and served in the center;

(b) Private water supply, if applicable;

(c) Private waste or sewage disposal, if applicable; and,

(d) A swimming pool, if applicable.

**(4) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW CENTERS:**

(a) Accessibility to individuals with disabilities is provided in all new centers and will include the following:

(i) Main entry into the center is level or has a ramp to allow for wheelchair access;

(ii) Building layout allows for access to the main activity area;

(iii) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius;

(iv) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise;

(v) Ramps exceeding a six-inch rise are provided with handrails.

(b) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the center.

**(5) SCHEDULE:** All applications for a new license will include a description of the center's proposed activities and schedule.

**(6) INITIAL SURVEY:** The licensing authority will schedule a survey for a center when it receives a complete application with all supporting documents.

**B. CAPACITY OF CENTERS:**

(1) The number of children in a center, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed facility, including school-age children and the children of staff members and volunteers, in the capacity of the facility, even if the children are on a field trip or other outing outside the licensed premises. The licensed capacity must not be exceeded by the presence of school-age children.

(3) A center must meet the following space requirements:

(a) Thirty-five (35) square feet of indoor activity space measured wall to wall on the inside for each child in a center, excluding single-use areas, such as restrooms, kitchens, halls and storage areas, and excluding offsets and built-in fixtures; and

(b) Seventy-five (75) square feet of outdoor activity space for each child using the area at one time. The center will post the maximum capacity of the playground on the premises.

**C. INCIDENT REPORTING REQUIREMENTS:** A center will

report immediately by phone to the licensing authority and follow-up in writing any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(1) A lost or missing child;

(2) The death of a child;

(3) The abuse or neglect of a child;

(4) Accidents, illness, or injuries that require medical care beyond on-site first aid;

(5) Fire, flood, or other natural disaster that creates structural damages to a center or poses a health hazard;

(6) Any of the illnesses on the current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the New Mexico department of health; or

(7) Any legal action against a center or staff members related to the care and custody of children.

(8) Any declaration of intention or determination to inflict punishment, loss, injury or pain on child or staff member by the commission of an unlawful act, such as, but not limited to, a bomb threat.

**D.** A center will notify parents or guardians in writing of any incident including, notifiable illnesses, that have threatened or could threaten the health or safety of children in the center. Incidents include, but are not limited to those listed in Subsection C of 8.16.2.20 NMAC.

**E.** Incident reports involving suspected child abuse and neglect must be reported immediately by the licensing authority to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.16.2.20 NMAC - Rp 8.16.2.20 NMAC, 11/01/02]

**8.16.2.21 ADMINISTRATIVE REQUIREMENTS:**

**A. ADMINISTRATION RECORDS:** A licensee will display in a prominent place:

(1) All licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the center;

(2) The current child care regulations;

(3) Dated weekly menus for meals and snacks;

(4) The discipline policy; and,

(5) The current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the

New Mexico department of health.

**B. POLICY AND PROCEDURES:** All facilities using these regulations must have written policies and procedures covering the following areas:

(1) Actions to be taken in case of accidents or emergencies involving a child, parents or staff members.

(2) Policies and procedures for admission and discharge of children.

(3) Policies and procedures for the handling of medications.

(4) Policies and procedures for the handling of complaints received from parents or any other person.

(5) Policies and procedures for actions to be taken in case a child is found missing from the center.

(6) Policies and procedures for the handling of children who are ill.

(7) An up to date emergency evacuation and disaster preparedness plan approved annually by the Licensing Authority. The Department will provide guidance on developing these plans.

**C. CHILDREN'S RECORDS:** A center will maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records will be kept at the center for twelve (12) months after the child's last day of attendance. Records will contain at least:

**(1) PERSONAL INFORMATION:**

(a) Name of the child; date of birth, sex; home address, mailing address and telephone number;

(b) Names of parents or guardians, parents or guardians current places of employment, addresses, pager, cellular and/or work telephone numbers;

(c) A list of people authorized to pick up the child and an authorization form signed by parent or guardian;

(d) Date the child first attended the center and the date of the child's last day at the center;

(e) A copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement;

(f) A record of any accidents, injuries or illnesses which require first aid or medical attention and any observations of recent bruises, bites or signs of potential abuse or neglect which must be reported to the parent or guardian.

(g) Written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities;

(h) A record of the time the child arrived and left the center and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;



and

(i) An enrollment agreement form which must be signed by a parent or guardian with an outline of the services and the costs being provided by the facility.

(2) EMERGENCY INFORMATION:

(a) Information on any allergies or medical conditions suffered by the child;

(b) The name and telephone number of two (2) people in the local area to contact in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

(c) The name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency; and

(d) A document giving a center permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian.

(e) Documentation of the legal status of the child, if applicable, such as, but not limited to: restraining orders, guardianship, powers of attorney, court orders, custody by children's protective services, etc.

**D. PERSONNEL RECORDS:**

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers working more than eight (8) hours of any week and having direct contact with the children. A center will keep the file for one (1) year after the caregiver's last day of employment. Records will contain at least the following:

(a) Name, address and telephone number;

(b) Position;

(c) Current and past duties and responsibilities;

(d) Dates of hire and termination;

(e) Certification by a physician or recognized health center stating the person is free from tuberculosis in a transmissible form prior to working in the center;

(f) Documentation of a criminal records check and employment history verification. All persons providing care are required to sign a statement that they have, or have never had, an arrest or substantiated referral to a child protective services agency. If the person has had an arrest or a substantiated referral, they must provide the licensing authority with a written statement concerning the circumstances and disposition of the arrest and/or substantiated referral. An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the Criminal Records Check and Employment

History Verification Provisions pursuant to 8.16.3 NMAC to continue to work directly and/or unsupervised with children;

(g) Documentation of current first-aid and cardiopulmonary resuscitation training;

(h) Documentation of all appropriate training by date, time, hours and area of competency, and

(i) Emergency contact number.

(2) A center will maintain dated weekly work schedules for the director, all staff, all care givers and volunteers and keep the records on file for at least twelve (12) months. The record will include the time the workers arrived at and left work and include breaks and lunch.

[8.16.2.21 NMAC - Rp 8.16.2.21 NMAC, 11/01/02]

#### **8.16.2.22 PERSONNEL AND STAFFING:**

**A. GENERAL PERSONNEL AND STAFFING REQUIREMENTS:**

(1) All care givers will have the capability to care for and supervise children.

(2) In addition to the basic requirements in 8.16.2.18 NMAC of the general provisions the licensee will be responsible for obtaining criminal records checks on all staff, volunteers, and prospective staff and volunteers. The licensing authority will provide a copy of the regulations, fingerprint cards and instructions, and forms for recording an employment history. Care givers who work directly with children and who are counted in the staff/child ratios must be eighteen (18) years of age or older.

(3) Clerical, cooking and maintenance personnel who also care for children and are included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Care givers counted in the staff/child ratios will not have as their primary responsibility cooking, clerical or cleaning duties while caring for children.

(4) Substitutes, volunteers, and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes, volunteers, and care givers routinely employed in a center but working twenty (20) hours or fewer a week will complete half the required training hours. Such employees working more than twenty (20) hours a week will meet full training requirements. See, Paragraph (2) of Subsection B of 8.16.2.32 NMAC for additional training requirements.

**B. STAFF QUALIFICATIONS AND TRAINING:**

(1) DIRECTOR QUALIFICATIONS:

(a) Unless exempted under Subparagraph (b) below, a child care center will have a director who is at least twenty-one (21) years old and has proof of a current: 1) child development associate (CDA) certificate, certified child care professional credential (CCP), Montessori teacher certification, national administrator credential (NAC), one-year vocational certificate, or an associate of arts (AA) or applied science (AAS) degree in child development or early childhood education, and at least two (2) years of experience in an early childhood growth and development setting; or 2) a Bachelor's degree or higher in early childhood education or a related field with at least one (1) year of experience in an early childhood growth and development setting. Early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as a director. Current directors having a break in employment of more than one (1) year must meet the requirements as specified in Subparagraph (a) above.

(2) TRAINING:

(a) The director will develop and document an orientation and training plan for new staff members and volunteers and will provide information on training opportunities. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following:

(i) Scope of services, activities, and the program offered by the center;

(ii) Emergency first aid procedures, recognition of childhood illness and indicators of child abuse;

(iii) Fire prevention measures and emergency evacuation plans;

(iv) Review of licensing regulations;

(v) Policies regarding discipline, child abuse reporting, and handling of complaints;

(vi) Review of written policies and procedures as defined in Subsection B of 8.16.2.21 NMAC;

(vii) Center/parental agreement;

(viii) Sanitation procedure.

(b) All staff members working directly with children and more than 20 hours per week, including the director will have at least twenty-four (24) hours of train-

ing each year. Training must address first aid, CPR, infection control and at least three (3) competency areas within one year and all seven areas within two (2) years. The competency areas are 1) child growth, development, and learning; 2) health, safety, nutrition, and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism. Training must be delivered by people who have relevant education or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department.

(c) Directors may count hours in personnel and business training toward the training requirement.

(d) Infant and toddler care givers must have at least four (4) hours of training in infant and toddler care within six (6) months of starting work. The four (4) hours will count toward the 24-hour requirement.

(e) A center will keep a training log on file with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate. A college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours. See Subsection A, Paragraph (4) of 8.16.2.22 NMAC for requirements for centers that operate less than 20 hours per week.

#### C. STAFFING REQUIREMENTS:

(1) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of 50% of the center's core hours of operation.

(2) During any absence, the director will assign a person to be in charge and will post a notice stating the assignment.

(3) A program will maintain staff/child ratios at all times. Children must never be left unattended whether inside or outside the facility. Staff will be onsite, available and responsive to children during all hours of operation.

(4) A center will have a minimum of two staff members present at all times. If the center has less than 7 children, the second caregiver may conduct other activities such as cooking, cleaning, or bookkeeping, etc. A center will keep a list of at least two (2) people who can substitute for any staff member. The list will include the people's

names, telephone numbers, criminal records check, health certificates and record of orientation.

#### D. STAFF/CHILD RATIOS:

(1) Centers where children are grouped by age:

(a) Age in Group: Six (6) weeks through twenty-four (24) months. - Staffing: One (1) adult for every six (6) children or fraction of group thereof.

(b) Age in Group: Two (2) years. - Staffing: One (1) adult for every ten (10) children or fraction of group thereof.

(c) Age in Group: Three (3) years. - Staffing: One (1) adult for every twelve (12) children or fraction of group thereof.

(d) Age in Group: Four (4) years. B Staffing: One (1) adult for every twelve (12) children or fraction of group thereof.

(e) Age in Group: Five (5) years. B Staffing: One (1) adult for every fifteen (15) children or fraction of group thereof.

(f) Age in Group: Six (6) years. B Staffing: One (1) adult for every fifteen (15) children or fraction of group thereof.

#### (2) CENTERS WHERE AGE GROUPS ARE COMBINED

(a) Age In Group: Six (6) weeks through twenty-four (24) months. B Staffing: One (1) adult to every six (6) children or fraction of group thereof.

(b) Age In Group: Two (2) through Four (4) years. B Staffing: One (1) adult to every twelve (12) children or fraction of group thereof.

(c) Age in Group: Three (3) through Five (5) B Staffing: One (1) adult to every fourteen (14) children or fraction thereof.

(d) Age in Group: Six (6) years and older. B Staffing: One (1) adult to every fifteen (15) children or fraction of group thereof.

(i) A center will schedule staff to minimize the number of primary care givers a child has during the day and the week. A child will have no more than three (3) primary, consecutive care givers in any day including care givers in the early morning and late afternoon.

(ii) The same staff member who cares for the children under age two (2) years will supervise those children when they play with older children.

(iii) If a center groups toddlers ages eighteen (18) to twenty-four (24) months with children ages twenty-four (24) through thirty-five (35) months, the staff/child ratio shall be maintained at 1 staff per 6 children.

[8.16.2.22 NMAC - Rp 8.16.2.22 NMAC, 11/01/02]

#### 8.16.2.23 SERVICES AND CARE OF CHILDREN

##### A. DISCIPLINE:

(1) A center will have written policies and procedures clearly outlining disciplinary practices. Centers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Discipline will be consistent and age appropriate.

(3) Discipline will include positive guidance, redirection, and clear limits that encourage the child's ability to become self-disciplined.

(4) A center will not use the following disciplinary practices:

(a) Physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) Withdrawal of food, rest, bathroom access, or outdoor activities;

(c) Abusive or profane language, including yelling;

(d) Any form of public or private humiliation, including threats of physical punishment, and/or

(e) Unsupervised separation.

##### B. NAPS OR REST PERIOD:

A center will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(1) Children under the age of six (6) years in the centers for more than five (5) hours will have a rest period.

(2) A center will allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Cribs, cots or mats will be spaced at least 30 inches apart to permit easy access by adults to each child without moving cribs, cots or mats.

(4) Each child will have an individual bed, cot, mat or linens clearly labeled to ensure each child uses the same items between washing.

(5) Cots or mats will have a non-absorbent, cleanable surface. Mats will be at least three-fourths (3/4) of an inch thick. Mats, cots and linens will be laundered before being used by another child.

(6) The center will provide a crib for each infant and, when appropriate, for a toddler. No child will be allowed to sleep in a playpen, car seat, stroller or swings. Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician justifying the sleeping arrangement.

(7) Staff must be physically avail-

able to sleeping children at all times. Children must not be isolated for sleeping or napping in an unilluminated room unless attended by a caregiver.

(8) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping.

#### C. EQUIPMENT AND PROGRAM:

(1) A child care center will provide activities that encourage children to be actively involved in the learning process and to experience a variety of developmentally appropriate activities and materials.

(2) A center will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(3) Each child at a center will have a designated space for storage of clothing and personal belongings.

(4) A center will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A center will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(5) A center will provide children with toys and other materials that are safe and encourage the child's creativity, social interaction, and a balance of individual and group play.

(6) A center will post a daily activity schedule. A center will follow a consistent pattern for routine activities such as meals, snacks and rest.

(7) Children will not watch television, videotapes, or play video games for more than one (1) hour a day.

(8) Equipment and program requirements apply during all hours of operation of the licensed facility.

#### D. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment will be safe and securely anchored.

(2) A center will enclose the outdoor play area with a fence at least four (4) feet high and with at least one (1) latched gate available for an emergency exit.

(3) A center will place energy absorbing surfaces beneath climbing structures, swings and slides.

(4) An outdoor play area for children under age two (2) years will have an area protected from the general traffic where the children can crawl in safety.

#### E. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters the pool.

(2) If a center has a portable wading pool:

(a) A center will drain and fill the wading pool with fresh water daily and disinfect pool before and after each use;

(b) A center will empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) A center will not use a portable wading pool placed on concrete or asphalt.

(3) If a center has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) The fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) The fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) When in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

[8.16.2.23 NMAC - Rp 8.16.2.23 NMAC, 11/01/02]

#### 8.16.2.24 FOOD SERVICE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the center will conform to the schedule for meal patterns and supplemental feedings of the USDA's child and adult care food program.

#### B. MEALS AND SNACKS:

(1) A center will provide a child a meal or snack at least every three (3) hours except when the child is sleeping at night.

(2) A center will serve, if necessary, a child a therapeutic or special diet with written prescription/diet orders from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the center staff.

(3) A center will serve on a daily basis:

(a) Full-strength, 100-percent natural juice. The use of fruit drinks containing less than 100% juice or artificially flavored drinks for meals and/or snacks is prohibited;

(b) Only whole, pasteurized fluid milk shall be served to children younger than 24 months of age who are not on formula or breast milk. Reduced fat, low fat, or skim milk may be served to children who are 2 years and older;

(c) A center will include a variety of fruits and vegetables on their menus. Centers serving main meals must include a vitamin C rich fruit/vegetable or juice daily and a vitamin A rich fruit/vegetable or juice at least 3 times a week; and

(d) A center will vary snacks each day and will include a selection of two (2) different food group components from the four (4) food group components.

#### C. MENUS:

(1) The same menu must not be served twice in one week.

(2) Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.

#### D. KITCHENS:

(1) A center will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A center will serve food promptly and refrigerate immediately after use.

(4) A center will protect food and drink by properly storing items in an airtight container or by wrapping them. A center will label and date all leftover food.

(5) If food is brought from the child's home, a center will label it with the child's name and refrigerate if necessary. A center will label and refrigerate bottles of infant formula or breast milk.

(6) A center's refrigerators and separate freezers will have working thermometers and keep food requiring refrigeration, including formula, at 41 degrees (fahrenheit) or below, and frozen food at 0 degrees (fahrenheit) or below.

(7) A center will protect all food from insects, rodents and other vermin.

(8) A center will discard any leftover milk or formula, rinse bottles after use and disinfect bottles before reuse.

(9) A center will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize using two ounces of bleach to one gallon of water or a bleach-equivalent product approved by CYFD. Disposable plates and cups and plastic utensils of food-grade, medium weight may be used for single service, but Styrofoam cups may not be used.

(10) A center will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

#### E. MEAL TIMES:

(1) A center will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and disinfect the areas before and after use.

(2) Staff/child ratios must be maintained at meal times.

(3) Adults must sit with the children at meal and snack times.

(4) Time allowed for meals shall enable the children to eat at reasonable rate.

(5) A center will provide sanitary cups or glasses or a drinking fountain for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A center will not allow children to share drinking or eating utensils.

[8.16.2.24 NMAC - Rp 8.16.2.24 NMAC, 11/01/02]

#### **8.16.2.25 HEALTH AND SAFETY REQUIREMENTS:**

##### **A. HYGIENE:**

(1) Children and staff members will wash their hands with soap and warm running water as needed. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) After using a toilet, assisting a child with toilet use, or changing a diaper;

(b) Before and after caring for a sick child;

(c) Before any food service activity, including setting the table;

(d) Before and after eating;

(e) Before and after feeding a child; and

(f) After handling pets or animals.

(2) A center will label with the child's name and store separately any item used for an individual child's personal hygiene.

(3) If a center promotes tooth brushing activities, the center will store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

##### **B. FIRST AID REQUIREMENTS:**

(1) A center will have on duty at all times one (1) staff member or caregiver currently certified in first aid and cardiopulmonary resuscitation (CPR).

(2) A center will keep a first-aid kit and a first-aid manual together in the center in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum, band aids, gauze pads, adhesive tape, scissors, soap, nonporous latex gloves, Ipecac syrup and a thermometer.

(3) A center will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A center will clean contaminated surfaces first with hot soapy water then with

a disinfecting solution effective against HIV and hepatitis B.

##### **C. MEDICATION:**

(1) All staff and children's medications must be labeled. A center will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Facilities will give medication only with written permission from a parent or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the center. A center will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep and sign a written record of the dosage, date and time a child is given medication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The center shall not administer expired medication. [8.16.2.25 NMAC - Rp 8.16.2.25 NMAC, 11/01/02]

#### **8.16.2.26 ILLNESS:**

A. Children or staff members absent due to any notifiable disease will not return to the center without a signed statement from a physician.

B. A center will separate and constantly observe a child who becomes sick at the center and promptly notify a parent or guardian of the child's illness.

C. A center will send a child home when:

(1) The child's oral temperature is 100.4 degrees (fahrenheit) or greater or armpit temperature is 99.4 degrees (fahrenheit) or greater and the child shows signs of illness; or

(2) A caregiver observes signs of contagious disease or severe illness.

D. The center will have a cot or mat available for sick children and it will be disinfected thoroughly after each use.

[8.16.2.26 NMAC - Rp 8.16.2.26 NMAC, 11/01/02]

#### **8.16.2.27 OTHER:**

##### **A. TRANSPORTATION:**

(1) When a center provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A center will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows:

(a) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag;

(b) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards; and

(c) Children five years of age through twelve years of age shall be secured in a child passenger restraint device or by a seat belt.

(3) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

(4) Vehicles operated by the center to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees fahrenheit. If the outside air temperature falls below 50 degrees fahrenheit the center will ensure the vehicle is heated.

(5) A center will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The center will ensure children do not cross a street unsupervised after leaving the vehicle.

(6) No one will smoke in a vehicle used for transporting children.

(7) A second adult will accompany the driver of the vehicle when a center

transports five (5) or more children under age five (5) years.

(8) Drivers must have a valid New Mexico driver's license. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

#### B. FIELD TRIPS:

(1) A center will ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection C of 8.16.2.21 NMAC for requirements for permission slips.

(2) Children will not go to a private residence unless accompanied by two (2) adults.

#### C. PETS:

(1) A center will inform parents or guardians before pets are allowed in the center.

(2) A center will not allow pets in the kitchen, food serving, food storage areas, bathrooms, or infant room.

(3) A center will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the center.

(4) A center will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious.

#### D. CARE AND SERVICES FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five (5) years as well as those of school age. If a child is suspected of having a disability, at the director's discretion, staff must inform parents of possible resources for referral and assistance. Family Education Right and Privacy Act (FERPA) will be respected in that no referral for special needs services to an outside agency will be made without a parent's written informed consent.

(2) A child with a known disability may be admitted to a center as instructed by parents, service, educational and/or medical plans that address emergency situations under the guidance of a primary service provider (early interventionist, school, or licensed specialist).

#### E. INFANTS AND TODDLERS:

(1) A center will not admit any child under the age of six (6) weeks except with the written approval of a licensed physician.

(2) A center will care for children under age two (2) years in rooms separate

from those used by older children. Children age six (6) weeks to twelve (12) months may be in the same room with children age thirteen (13) to twenty-four (24) months, when they are physically separated from the older children. A center may group toddlers ages eighteen (18) to twenty-four (24) months with children ages twenty-four (24) through thirty-five (35) months.

(3) Throughout the day, a caregiver will give each infant and toddler physical contact and attention. A caregiver will hold, talk to, sing to and take inside and outside walks with the child. A caregiver will respond immediately to all cries of infants and to the cries of all children within two (2) minutes.

(4) A caregiver will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(5) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping and waking periods.

(6) A center will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(7) Infants shall either be held or fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Bottle propping or allowing a child to sleep with a bottle in their mouth shall not be permitted. The carrying of bottles and sipper cups by young children throughout the day and/or night shall not be permitted.

(8) Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

#### F. DIAPERING AND TOILETING:

(1) A caregiver will plan toilet training with a parent so the toilet routine is consistent. A center will not attempt to toilet train a child who is not developmentally ready.

(2) A center will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single-use gloves when changing a diaper and wash their hands after changing a diaper.

(3) A center will have a change of clothes on hand, including dry, clean clothing and diapers sufficient to meet the needs of each child. A center will label diapers and diapering supplies for each child and store them properly. Diaper bags will be inaccessible to children. Soiled diapers will be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

(4) A caregiver will change a child's diaper on a clean, safe, waterproof

surface and discard any disposable cover and disinfect the surface after each diaper change.

#### G. EQUIPMENT:

(1) Cribs will meet federal standards and be kept in good repair. The center will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs.

(2) Toys and equipment must be safe, durable, and easy to clean, non-toxic and disinfected daily. Toys that are mouthed by infants and toddlers will be cleaned after mouthing by one child before other children do the same.

(3) A center will not use accordion-style baby gates.

#### H. NIGHT CARE:

(1) A center that provides night care will have fifty (50) square feet of activity area per child for night care.

(2) Staff will be awake and immediately available to children who need attention during the night.

(3) The beds and cots provided for children shall be completely furnished with mattress, waterproof mattress protectors, sheets under and over the child, blanket, pillow and pillowcase.

(4) Linens shall be changed immediately in case of soiling.

(5) The same menu shall not be used for lunch and supper.

I. SILVER AND GOLD CENTERS: Silver and Gold centers must meet all basic licensing standards. Providers that had silver and gold licenses with no sanctions on June 30, 1999 must continue to conform to the standards for silver and gold licensing dated March 31, 1997 in order to receive augmented child care reimbursement rates.

J. ACCREDITED CENTERS: Accredited centers must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the center's accrediting body of the center's failure to meet and maintain licensing standards. [8.16.2.27 NMAC - Rp 8.16.2.27 NMAC, 11/01/02]

#### 8.16.2.28 BUILDING, GROUNDS AND SAFETY REQUIREMENTS:

##### A. HOUSEKEEPING:

(1) A center will keep the premises, including furniture, fixtures, floors, drinking fountains, toys and equipment clean, safe, disinfected and in good repair. The center and premises will be free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles will be durable, constructed of materials that will not absorb liquids and have tight fitting lids.

#### B. PEST CONTROL:

(1) All licensed child care centers must use a New Mexico licensed applicator whenever applying pesticides on the center's buildings or grounds.

(2) The licensed applicator may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

#### C. MECHANICAL SYSTEMS:

(1) A center will maintain comfortable temperatures (68 degrees through 82 degrees fahrenheit) in all rooms used by children. A center may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a center exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A center must maintain all heating and cooling equipment so that it is in good working order.

(3) A center will not use un-vented heaters, open flame heaters or portable heaters. A center will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees fahrenheit, fireplaces, fireplace inserts and wood stoves.

(4) A center will provide fresh air and control odors by either mechanical or natural ventilation. If a center uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water stored in a water heater will be above 124 degrees (fahrenheit) and water coming from a faucet will be below 110 degrees (fahrenheit). A center will install a tempering valve ahead of all domestic water-heater piping.

#### D. WATER AND WASTE:

All food preparation areas, sinks, washrooms, laundries, bathrooms and any self-contained area for infants and toddlers in diapers will have hot and cold running water pressure.

#### E. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs;

(2) A center will have emergency lighting that turns on automatically when electrical service is disrupted;

(3) Use of electrical cords and outlets;

(a) A center will use U/L approved equipment only and will properly maintain this equipment;

(b) All electrical outlets within reach of children will be safety outlets or will have protective covers; and

(c) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

#### F. EXITS AND WINDOWS:

(1) When an activity area does not have a door directly to the outside, at least one (1) window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be twenty-four (24) inches. The minimum net clear opening width dimension must be twenty (20) inches, and the finished sill height must not be more than forty-four (44) inches above the floor.

(2) There must be at least two (2) exits remote from each other on each floor of the center.

(a) All exits must be marked, including fire exits, by signs having letters at least six inches (6") high whose principal strokes are at least three-fourths (3/4) of an inch wide.

(b) When illuminated exit signs are installed they must be maintained in operable condition.

(3) Exit ways must be kept free from obstructions at all times.

(4) Activity areas for children must have windows and/or skylight area of at least 1/20th of the floor area.

#### G. TOILET AND BATHING FACILITIES:

(1) A center will have one (1) sink with hot and cold running water in any self-contained room for infants and one (1) toilet and one (1) sink for a self-contained toddler room or a combination toddler/infant room. This sink will not be used for food preparation. The toilet designated for the self-contained toddler room or combination toddler/infant room shall be used exclusive-

ly by these children.

(2) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A center will not use a common towel or wash cloth.

(3) All closets and bathroom locks must have an outside release. A center will enclose all bathrooms. Bathrooms must be accessible and functional.

(4) Toilets and lavatories must be provided in the following ratios:

(a) One (1) toilet and one (1) lavatory for one (1) to twelve (12) children.

(b) Two (2) toilets and two (2) lavatories for thirteen (13) through twenty-five (25) children.

(c) One (1) toilet and one (1) lavatory for each additional fifteen (15) children or fraction thereof.

(d) When a center's capacity exceeds 30 children a separate toilet room must be provided for staff.

#### H. SAFETY COMPLIANCE:

(1) A center will conduct at least one (1) fire drill each month.

(2) A center will:

(a) Hold the drills at different times of the day;

(b) Use the fire alarm or detector system; and

(c) Emphasize an orderly rather than a speedy evacuation;

(d) A center will keep a record of the fire drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill on file for at least 12 months;

(e) A center shall request an annual fire inspection from the fire authority having jurisdiction over the center. If the policy of the fire authority having jurisdiction does not provide for an annual inspection of the center, the center must document the date the request was made and to whom. A copy of the latest inspection must be posted in the center;

(f) A center will post an evacuation plan in each room used by children;

(g) A center will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. A center will not use a pay phone to fulfill this requirement;

(h) A center must be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction;

(i) A center must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement;

(j) A center must have a minimum of two (2) 2A10BC fire extinguishers, one (1) located in the kitchen or food preparation area, and one (1) centrally located in the center; and

(k) Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting must be properly maintained and inspected on a least yearly basis. Fire extinguishers must be tagged noting the date of inspection. See Paragraph (2) of Subsection E of 8.16.2.28 NMAC for emergency lighting requirements.

**I. S M O K I N G , FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES:** A center will prohibit smoking in all areas, including vehicles, and will not allow any alcoholic beverages, firearms, or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.  
[8.16.2.28 NMAC - Rp 8.16.2.28 NMAC, 11/01/02]

**8.16.2.29 FAMILY CHILD CARE HOME REGULATIONS: APPLICABILITY:** A private dwelling required to be licensed under regulations in 8.16.2.30 NMAC through 8.16.2.38 NMAC which meets one of the following criteria:

**A. Family Day Care Home--**A private dwelling required to be licensed pursuant to these regulations which provides care, services, and supervision to at least five (5) but no more than six (6) children for a period of less than twenty-four (24) hours of any day. The licensee will reside in the home and be the primary caregiver. A family day care home intending to provide care for more than two (2) but not to exceed four (4) children under the age of two must be specifically licensed for this purpose.

**B. Group Day Care Home--**A private dwelling or other building on the premises required to be licensed pursuant to these regulations which provides care, services, and supervision for at least seven (7) but not more than twelve (12) children for a period of less than twenty-four (24) hours of any day. The licensee will reside in the home and be the primary caregiver. A group day care home intending to provide care for more than two (2) but not to exceed four (4) children under the age of two must be specifically licensed for this purpose.  
[8.16.2.29 NMAC - Rp 8.16.2.29 NMAC, 11/01/02]

#### **8.16.2.30 LICENSURE:**

##### **A. L I C E N S I N G REQUIREMENTS:**

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the Licensing Authority and include payment for the non-refundable application fee.

(2) A home will submit a new application to the licensing authority before changing anything required to be stated on the license such as dates, capacity, operator, address, etc.

(3) **CRIMINAL RECORDS CHECK:** In addition to the basic requirements at 8.16.2.18 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's Criminal Records Check and Employment History Verification Provisions (8.8.3 NMAC), regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining criminal records checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home as per the requirements outlined in the department's most current version of the Criminal Records Check and Employment History Verification Provisions. All requirements of the current Criminal Records Check and Employment History Verification Provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(4) **ZONING AND OTHER APPROVALS:** An applicant will have:

(a) Current written zoning approval from the appropriate city, county or state authority;

(b) Current written approval of the state fire marshal Office or other appropriate city, county or state fire-prevention authority if applicable;

(c) Current written approval from the New Mexico environment department or other environmental health authority for:  
1. Private water supply, if applicable; 2. Private waste or sewage disposal, if applicable; and 3. A swimming pool, if applicable.

(5) **SCHEDULE:** All applications for a new license will include a description of the home's proposed activities and schedule.

(6) **INITIAL SURVEY:** The licensing authority will schedule a survey for a home when it receives a complete application with all supporting documents.

##### **B. CAPACITY OF A HOME:**

(1) The number of children in a home, either in total or by age, will not

exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed home, including the caregiver's own children under the age of six (6), in the capacity of a home, even if the children are on a field trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of school age children.

(3) A home may be licensed for up to twelve (12) children.

(4) A home licensed as a family day care home under these regulations providing care for a maximum capacity of six (6) children may care for up to four (4) children under the age of two (2) providing a second caregiver is present in the home and the home is licensed to provide such care. A home licensed as a group day care home under these regulations providing care for a maximum of twelve (12) children may care for up to four (4) children under age two (2) providing a second caregiver is present in the home and the home is licensed to provide such care.

(5) A home must have thirty-five (35) square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than twelve (12) children. A home must have at least one bathroom with a toilet and sink.

(6) The home will have an outdoor play area, which must be fenced in.

##### **C. NOTIFICATIONS:**

(1) **INCIDENT REPORTS:** A home will report immediately by phone to the licensing authority and follow-up in writing any incident that has or could threaten the health and safety of children and staff members, such as but not limited to:

(a) A lost or missing child;

(b) The death of a child;

(c) The abuse or neglect of a child;

(d) Accidents, illness, or injuries that require medical care beyond on-site first aid;

(e) Fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;

(f) Any of the illnesses on the current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the New Mexico department of health; or,

(g) Any legal action against a home or staff members related to the care and custody of children.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that will or could threaten the health or safety of children in the home. Incidents include, but are not

limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.30 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately by the licensing authority to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.16.2.30 NMAC - Rp 8.16.2.30 NMAC, 11/01/02]

#### **8.16.2.31 ADMINISTRATIVE REQUIREMENTS:**

A. ADMINISTRATIVE RECORDS: A licensee will post the child care home license in an area readily visible to parents and visitors. The licensee will also keep on file:

(1) All licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;

(2) The current child care regulations;

(3) The discipline policy; and

(4) The current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the New Mexico department of health.

(5) An up to date emergency evacuation and disaster preparedness plan approved annually by the licensing authority. The department will provide guidance on developing these plans.

B. CHILDREN'S RECORDS: A home will maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for twelve (12) months after the child's last day of attendance. Records will contain at least:

(1) PERSONAL INFORMATION:

(a) Name of the child, date of birth, sex, home address, mailing address and telephone number;

(b) Names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and/or work telephone numbers;

(c) A list of people authorized to pick up the child and an authorization form signed by parent or guardian;

(d) Date the child first attended the home and the date of the child's last day at the home;

(e) A copy of the child's up-to-date immunization record or a public health division-approved exemption from the requirement;

(f) A record of any accidents,

injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or potential signs of abuse or neglect, both of which must be reported to a parent or guardian;

(g) Written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities;

(h) A record of the time the child arrived and left the home and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child; and

(i) An enrollment agreement must be signed by a parent or guardian with an outline of the services and the costs being provided by the home.

(2) EMERGENCY INFORMATION:

(a) Information on any allergies or medical conditions suffered by the child;

(b) The name and telephone number of two (2) people to contact in the local area in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

(c) The name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency; and

(d) A document giving a home permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian;

(e) Documentation of the legal status of the child, if applicable, such as, but not limited to: restraining orders, guardianship, powers of attorney, court orders custody by children's protective services, etc.

C. PERSONNEL RECORDS: A home will keep the following records on file and make them available to the licensing authority.

(1) Certification by a physician or recognized health facility stating all care givers are free from tuberculosis in a transmissible form.

(2) Documentation of a criminal records check and employment history verification for all care givers and all adults living in the home. All persons providing care are required to sign a statement that they have or have never had an arrest or substantiated referral to a child protective services agency. If the person has had an arrest or a substantiated referral, they must provide the licensing authority with a written statement concerning the circumstances and disposition of the arrest and/or substantiated referral. An employer will not allow any employee or any other adult living in the home to be involved in an incident which would disqualify that employee under the

department's most current version of the Criminal Records Check and Employment History Verification Provisions pursuant to 8.8.3 NMAC to continue to work directly and/or unsupervised with children.

(3) A record of the time the second care givers arrived at and left work, to include breaks and lunch.

[8.16.2.31 NMAC - Rp 8.16.2.31 NMAC, 11/01/02]

#### **8.16.2.32 PERSONNEL AND STAFFING REQUIREMENTS:**

A. GENERAL PERSONNEL AND STAFFING REQUIREMENTS:

(1) All care givers will have the capability to care for and supervise children.

(2) In addition to the basic requirements in 18.16.2.18 NMAC of the general provisions, the licensee will be responsible for obtaining criminal records checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home. The licensing authority will provide a copy of the regulations, fingerprint cards and instructions, and forms for recording an employment history. Care givers who work directly with children and who are counted in the staff/child ratios must be eighteen (18) years of age or older.

(3) Substitutes, volunteers, and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and care givers routinely employed in a home but working twenty (20) hours or less a week will complete half the required training hours. Such employees working more than twenty (20) hours a week will meet full training requirements.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) A home will keep a training log on file including the date of the training, name of caregiver, hours earned, subject/competency area, source of training, and training certificates.

(2) Care givers working for a home will receive at least twelve (12) documented hours of training during each year, including six (6) hours in child growth and development and three (3) hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven competency areas. The competency areas are: 1) child growth, development and learning; 2) health, safety, nutrition and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism. A caregiver



cannot count more than three (3) hours in first aid or CPR training toward the total hours required. Training must be delivered by people who have education and/or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department. See Paragraph (3) of Subsection A of 8.16.2.32 NMAC for requirements for part-time employees.

(3) A home must have at least one (1) person on duty at all times who is certified in first aid and cardio-pulmonary resuscitation (CPR).

#### C. STAFFING REQUIREMENTS:

(1) A home licensed to provide care for six (6) or fewer children will have at least one (1) caregiver in the home at all times. A home licensed to provide care for more than two (2) children under the age of two (2) will have at least two (2) caregivers in the home at all times.

(2) A home licensed for seven (7) to twelve (12) children will have at least two (2) care givers at the home when more than six (6) children are present or when more than two (2) children under the age of two (2) are present.

(3) Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Providers will be onsite, available and responsive to children during all hours of operation.

[8.16.2.32 NMAC - Rp 8.16.2.32 NMAC, 11/01/02]

### 8.16.2.33 SERVICES AND CARE OF CHILDREN:

#### A. DISCIPLINE:

(1) A home will have written policies and procedures clearly outlining disciplinary practices. Care-givers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Discipline will be consistent and age appropriate.

(3) Discipline will include positive guidance, redirection, and clear limits that encourage the child's ability to become self-disciplined.

(4) A home will not use the following disciplinary practices:

(a) Physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) Withdrawal of food, rest, bathroom access, or outdoor activities;

(c) Abusive or profane language, including yelling;

(d) Any form of public or private humiliation, including threats of physical punishment; and

(e) Unsupervised separation.

#### B. NAPS OR REST PERIOD:

(1) A home will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(2) Each child will have an individual bed, cot, mat or linens.

(3) Cribs, cots or mats will be spaced at least 30@ apart to permit easy access by adults to each child. Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths (3/4) of an inch thick. Mats, cots and linens must be laundered before being used by another child.

(4) The home will provide a crib for each infant and, when appropriate, for a toddler. No child will be allowed to sleep in a playpen, car seat, stroller or swing. Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician justifying the sleeping arrangement.

(5) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping.

#### C. EQUIPMENT AND PROGRAM:

(1) A home will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(2) A home will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A home will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(3) A home will provide children with toys and other materials that are safe, developmentally appropriate, and encourage the child's creativity, social interaction, and a balance of individual and group play.

(4) A home will post a daily activity schedule. A home will follow a consistent pattern for routine activities such as meals, snacks and rest.

(5) Children will not watch television, videotapes, or play video games for more than one (1) hour a day.

(6) Equipment and program requirements apply during all hours of operation of the licensed facility.

#### D. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment will

be safe and securely anchored.

(2) A home will enclose the outdoor play area with a fence at least four (4) feet high and with at least one (1) latched gate available for an emergency exit.

(3) A home will place energy absorbing surfaces beneath climbing structures, swings and slides.

#### E. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters a pool.

(2) If a home has a portable wading pool:

(a) A home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) A home will empty a wading pool when it is not in use and remove it from areas accessible to children.

(c) A home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) The fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) The fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) When in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.

[8.16.2.33 NMAC - Rp 8.16.2.33 NMAC, 11/01/02]

### 8.16.2.34 FOOD SERVICE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home will conform to the schedule for meal patterns and supplemental feedings of the USDA's child care food program.

#### B. MEALS AND SNACKS:

(1) A home will provide a child a meal or snack at least every three (3) hours except when the child is sleeping at night.

(2) A home will serve if necessary a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the care givers.

(3) A home will serve on a daily basis:

(a) Full-strength, 100-percent natural juice. The use of fruit drinks containing less than 100% juice or artificially flavored drinks for meals and/or snacks is prohibited;

(b) Only whole, pasteurized fluid milk shall be served to children younger than 24 months of age who are not on formula or breast milk. Reduced fat, low fat, or skim milk may be served to children who are 2 years and older; and

(c) A home will include a variety of fruits and vegetables on their menus. Homes serving main meals must include a vitamin C fruit/vegetable or juice daily and a vitamin A rich fruit/vegetable or juice at least 3 times a week.

(4) A home will vary snacks each day and will include a selection of two (2) different food group components from the four (4) food group components.

C. MENUS: Weekly menus must be dated and posted in an area easily visible to parents.

#### D. KITCHENS:

(1) A home will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A home will serve food promptly and refrigerate immediately after use. Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

(4) A home will protect food and drink by properly storing items in an airtight container or by wrapping them. A home will label and date all leftover food.

(5) If food is brought from the child's home, a home will label it with the child's name and refrigerate if necessary. A home will label and refrigerate bottles of infant formula or breast milk.

(6) A home will keep food requiring refrigeration, including formula, at 41 degrees (fahrenheit) or below, and frozen food at 0 degrees (fahrenheit) or below.

(7) Refrigerators and separate freezers will have working thermometers.

(8) A home will protect all food from insects, rodents and other vermin.

(9) A home will discard any leftover milk or formula, rinse bottles after use and disinfect bottles before reuse.

(10) A home will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize using two ounces of bleach to one gallon of water or a bleach-equivalent product approved by CYFD.

(11) A home will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

#### E. MEAL TIMES:

(1) A home will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served. Areas will be disinfected before and after each use.

(2) A home will provide sanitary cups or glasses or a drinking fountain for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home will not allow children to share drinking or eating utensils.

(3) Time allowed for meals shall enable children to eat at a reasonable rate. [8.16.2.34 NMAC - Rp 8.16.2.34 NMAC, 11/01/02]

### 8.16.2.35 HEALTH AND SAFETY REQUIREMENTS:

#### A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) After using a toilet, assisting a child with toilet use, or changing a diaper;

(b) Before and after caring for a sick child;

(c) Before any food service activity, including setting the table;

(d) Before and after eating or feeding a child; and

(e) After handling pets or animals.

(2) A home will label with the child's name and store separately any item used for an individual child's personal hygiene.

#### B. FIRST AID REQUIREMENTS:

(1) A home will keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, Ipecac syrup, and a thermometer.

(2) A home will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A home will clean contaminated surfaces first with hot soapy water then with a disinfecting solution, which is effective against HIV and hepatitis B.

#### C. MEDICATION:

(1) A home will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked contain-

er in the refrigerator.

(2) Homes will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the home. A home will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep and sign a written record of the dosage, date and time a child is given medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The home shall not administer expired medication.

#### D. ILLNESS AND NOTIFIABLE DISEASES:

(1) Children or staff members absent due to any notifiable disease will not return to the home without a signed statement from a physician.

(2) A home will separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.

(3) A home will send a child home when:

(a) The child's oral temperature is 100.4 degrees fahrenheit, or greater or armpit temperature is 99.4 degrees fahrenheit, or greater and the child shows signs of illness; or

(b) The caregiver observes signs of contagious disease or severe illness.

[8.16.2.35 NMAC - Rp 8.16.2.35 NMAC, 11/01/02]

### 8.16.2.36 OTHER:

#### A. TRANSPORTATION:

(1) When a home provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A home will license all vehicles used for transporting children and will

meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows:

(a) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag;

(b) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards; and

(c) Children five years of age through twelve years of age shall be secured in a child passenger restraint device or by a seat belt.

(3) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

(4) A home will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home will ensure children do not cross a street unsupervised after leaving the vehicle.

(5) No one will smoke in a vehicle used for transporting children.

(6) Drivers must have a valid New Mexico driver's license. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

#### B. FIELD TRIPS:

(1) A home will ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection B of 8.16.2.31 NMAC for information on permission slips.

(2) Children will not go to a private residence other than the licensed home unless accompanied by two (2) adults.

#### C. PETS:

(1) A home will inform parents or guardians before pets are in the home.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the home.

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious.

[8.16.2.36 NMAC - Rp 8.16.2.36 NMAC,

11/01/02]

### 8.16.2.37 SPECIAL REQUIREMENTS:

#### A. INFANTS AND TODDLERS:

(1) A home will not admit any child under the age of six (6) weeks except with the written approval of a licensed physician.

(2) Throughout the day, a caregiver will give each infant and toddler physical contact and attention. A caregiver will hold, talk to, sing to and take inside and outside walks with the child. A caregiver will respond immediately to all cries of infants and to the cries of all children within two (2) minutes.

(3) A caregiver will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(4) A home will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(5) Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Bottle propping or allowing a child to sleep with a bottle in their mouth shall not be permitted. The carrying of bottles and sipper cups by young children throughout the day and/or night shall not be permitted.

(6) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping, and waking periods.

#### B. DIAPERING AND TOILETING:

(1) A caregiver will plan toilet training with a parent so the toilet routine is consistent. A home will not attempt to toilet train a child who is not developmentally ready.

(2) A home will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single use gloves when changing a diaper and wash their hands after changing a diaper.

(3) A home will have a supply of dry, clean clothing and diapers sufficient to meet the needs of the child. A home will label diapers and diapering supplies for each child and store them separately. Diaper bags will be inaccessible to children.

(4) A care giver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change.

#### C. EQUIPMENT:

(1) Cribs will meet federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not

use pillows in cribs.

(2) A home will not use accor-dion-style baby gates.

(3) Toys and equipment must be safe, durable, and easy to clean, non-toxic and disinfected daily.

D. NIGHT CARE: In addition to all other requirements, a home providing night care will have a care giver onsite, physically available and responsive to children who need attention during the night.

E. SILVER AND GOLD HOMES: Silver and gold homes must meet all basic licensing standards. Providers that had silver and gold licenses with no sanctions on June 30, 1999 must continue to conform to the standards for silver and gold licensing dated March 31, 1997 in order to receive augmented child care reimbursement rates.

F. ACCREDITED HOMES: Accredited homes must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the home's accrediting body of the home's failure to meet and maintain licensing standards.

[8.16.2.37 NMAC - Rp 8.16.2.37 NMAC, 11/01/02]

### 8.16.2.38 BUILDING, GROUND AND SAFETY REQUIREMENTS:

#### A. HOUSEKEEPING:

(1) A caregiver will keep the premises, including furniture, fixtures, toys and equipment clean, safe, disinfected and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles will have a tight fitting lid, be durable and constructed of materials that will not absorb liquids.

#### B. PEST CONTROL:

(1) All licensed child care homes must use a New Mexico licensed pest applicator whenever applying pesticides on the home's buildings and grounds.

(2) The pest control company may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides and insecticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesti-

cides.

#### C. MECHANICAL SYSTEMS:

(1) A home will maintain comfortable temperatures (68 degrees through 82 degrees fahrenheit) in all rooms used by children. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a center exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A home will not use unvented heaters, open flame heaters or portable heaters. A home will install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees (fahrenheit), fireplaces, fireplace inserts and wood stoves.

(3) A home must maintain all heating and cooling equipment so that it is in good working order.

(4) A home will provide fresh air and control odors by either mechanical or natural ventilation. If a home uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Stored water in a water heater will be above 124 degrees (fahrenheit) and tap water coming from a faucet will be below 110 degrees (fahrenheit). A home will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

#### D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) A home will use U/L approved equipment only and will properly maintain this equipment.

(2) All electrical outlets within reach of children will be safety outlets or will have protective covers.

(3) The use of multi-prong or gang plugs is not allowed.

E. EXITS: When an activity area does not have a door directly to the outside, at least one (1) window in each activity area must be useable for an emergency exit.

#### F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a

height accessible to children. A home will not use a common towel or wash cloth.

(2) All closets and bathroom locks must have an outside release. A home will enclose all bathrooms.

#### G. SAFETY COMPLIANCE:

(1) A home will have an operating smoke detector in each child-activity room and in each room in which a child sleeps.

(2) A home will have a 2A10BC extinguisher mounted in the kitchen in a visible and easily accessible place. A professional will inspect each fire extinguisher once a year and fire extinguishers will have official tags noting the date of inspection.

(3) A home will conduct at least one (1) fire drill each month, will hold the drills at different times of the day and will keep a record of the fire drills with the date, time, number of adults and children participating, and any problems.

(4) A home will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone.

H. S M O K I N G , FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home will prohibit smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. A home will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

[8.16.2.38 NMAC - Rp 8.16.2.38 NMAC, 11/01/02]

#### 8.16.2.39 REGULATIONS FOR PROGRAMS OFFERING ONLY OUT OF SCHOOL TIME CARE:

**APPLICABILITY:** A child care program required to be licensed under 8.16.2.40 NMAC through 8.16.2.46 NMAC of this regulation provides a variety of developmentally appropriate activities that are both educational and recreational at a specific site, usually a school, on a regular basis before and/or after school or when school is not in regular session to children age five (5) to eighteen (18) years, and not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

[8.16.2.39 NMAC - Rp 8.16.2.39 NMAC, 11/01/02]

#### 8.16.2.40

#### LICENSURE:

#### A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee.

(2) A program will submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3) **CRIMINAL RECORDS CHECK:** In addition to the basic requirements in 8.16.2.18 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's Criminal Records Check and Employment History Verifications Provision, regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining criminal records checks on all staff, volunteers, and prospective staff and volunteers per the requirements of the most current version of the department's Criminal Records Check and Employment History Verifications Provision. All requirements of the Current Criminal Records Check and Employment History Verification Provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(4) **ZONING, BUILDING AND OTHER APPROVALS:** An applicant will use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department's requirements. Acceptable documents will be provided to the licensing authority before licensure. Otherwise, an applicant will have:

(a) Current written zoning approval from the appropriate city, county or state authority;

(b) Current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

(c) Current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; and

(d) Current written approval from the New Mexico environment department or other environmental health authority for:

(i) A kitchen, if meals are prepared and served on site in the program;

(ii) Private water supply, if applicable;

(iii) Private waste or sewage disposal, if applicable; and,

(iv) A swimming pool, if applicable.

(5) **ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES:** Accessibility for individuals with disabilities is provided in all new facilities and will include the following:

(a) Main entry into the facility is level or has a ramp to allow for wheelchair access.

(b) Building layout allows for access to the main activity area.

(c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.

(d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.

(e) Ramps exceeding a six-inch rise are provided with handrails.

(f) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the facility.

(6) **SCHEDULE:** All applications for a new license will include a description of the programs proposed activities and schedule.

(7) **INITIAL SURVEY:** The licensing authority will schedule a survey for a program when it receives a complete application with all supporting documents.

**B. CAPACITY OF A PROGRAM:**

(1) The number of children in a program, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site.

(3) A program must meet the following space requirements:

(a) Thirty-five (35) square feet of indoor activity space measured wall to wall on the inside for each child in a program, excluding single-use areas, such as restrooms, kitchens, halls and storage areas, and excluding offsets and built-in fixtures.

(b) A program must have an outdoor activity space.

**C. NOTIFICATIONS:**

(1) **INCIDENT REPORTS:** A program will report immediately by phone to the licensing authority and follow-up in writing any incident that has or could threaten the health and safety of children and staff members, such as but not limited to:

(a) A lost or missing child;

(b) The death of a child;

(c) The abuse or neglect of a child;

(d) Accidents, illness, or injuries that require medical care beyond on-site first aid;

(e) Fire, flood, or other natural disaster that creates structural damages to a program or poses a health hazard;

(f) Any of the illnesses on the current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the New Mexico department of health; or

(g) Any legal action against a program or staff members related to the care and custody of children.

(2) A program will notify parents and guardians in writing of any incident, including notifiable illnesses that has or could threaten the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.40 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately by the licensing authority to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.16.2.40 NMAC - Rp 8.16.2.40 NMAC, 11/01/02]

#### **8.16.2.41 ADMINISTRATIVE REQUIREMENTS:**

**A. ADMINISTRATION RECORDS:** A licensee will keep on file, post in a clearly visible location and make available to the licensing authority:

(1) All licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the program;

(2) The current child care regulations;

(3) Dated weekly menus for meals and snacks;

(4) The discipline policy; and

(5) The current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the New Mexico department of health.

**B. CHILDREN'S RECORDS:** A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program for twelve (12) months after the child's last day of attendance. Records will contain at least:

(1) **PERSONAL INFORMATION:**

(a) Name of the child; date of birth, sex; home address, mailing address

and telephone number;

(b) Names of the parents or guardians, the parents or guardian's current places of employment, addresses, and pager, cellular and/or work telephone numbers;

(c) A list of people authorized to pick up the child and an authorized form signed by parent or guardian;

(d) Date the child first attended the program and the date of the child's last day at the program;

(e) A record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian;

(f) Written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities;

(g) A record of the time the child arrived and left the program and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;

(h) An enrollment agreement: This form will be signed by a parent or guardian with an outline of the services and the costs.

(2) **EMERGENCY INFORMATION:**

(a) Information on any allergies or medical conditions suffered by the child; The name and telephone number of two (2) people in the local area to contact in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

(b) The name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency; and

(c) A document giving a program permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian.

(d) Documentation of the legal status of the child, if applicable, such as, but not limited to: restraining orders, guardianship, powers of attorney, court orders, custody by children's protective services, etc.

(e) All licensed child care programs must maintain an up to date emergency evacuation and disaster preparedness plan approved annually by the licensing authority. The department will provide guidance on developing these plans.

**C. PERSONNEL RECORDS:**

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct

contact with the children. A program will keep the file for one (1) year after the caregiver's last day of employment. Records will contain at least the following:

(a) Name, address and telephone number;

(b) Position;

(c) Current and past duties and responsibilities;

(d) Dates of hire and termination;

(e) Certification by a physician or recognized health program stating the person is free from tuberculosis in a transmissible form;

(f) Documentation of a criminal records check and employment history verification. All persons providing care are required to sign a statement that they have or have never had an arrest or substantiated referral to a child protective services agency. If the person has had an arrest or a substantiated referral, they must provide the licensing authority with a written statement concerning the circumstances; an employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the Criminal Records Check and Employment History Verification Provisions pursuant to 8.8.3 NMAC to continue to work directly and/or unsupervised with children; and

(g) Documentation of first-aid and cardiopulmonary resuscitation training;

(h) Documentation of all appropriate training by date, time, hours and area of competency; and

(i) Emergency contact number.

(2) A program will maintain dated weekly work schedules for the director, all staff and all care givers and keep the records on file for at least twelve (12) months. The record will include the time the employee arrived at and left work and include breaks and lunch.

[8.16.2.41 NMAC - Rp 8.16.2.41 NMAC, 11/01/02]

#### **8.16.2.42 PERSONNEL AND STAFFING:**

##### **A. PERSONNEL AND STAFFING REQUIREMENTS GENERAL:**

(1) All care givers will have the capability to care for and supervise children.

(2) In addition to the basic requirements in 8.16.2.18 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining criminal records

checks on all staff, volunteers, and prospective staff and volunteers. Care givers (staff members) who work directly with children and who are counted in the staff/child ratios must be eighteen (18) years of age or older.

(3) Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Care givers counted in the staff/child ratios will not be responsible for cooking, clerical or cleaning duties while caring for children.

(4) Substitutes, volunteers and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and care givers routinely employed in a facility but working twenty (20) hours or fewer a week will complete half the required training hours. Such employees working more than twenty (20) hours a week will meet full training requirements. Subsection C. Paragraph (3) 8.16.2.42 NMAC for additional training requirements.

##### **B. STAFF QUALIFICATIONS:**

(1) Unless exempted under paragraph.3 below, an out of school time program will have an administrator/director who is at least twenty-one (21) years old and has proof of a current copy of:

(a) A child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC) or an associate of arts or applied science degree in child development or early childhood education and at least two (2) years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b) A Bachelor's degree or higher in early childhood education or a related field with at least one (1) year of experience in an early childhood growth and development setting or a school-age child care growth and development setting. Early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three (3) years of experience working with children.

(3) Program administrators and site directors employed in a licensed program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as

they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one (1) year must meet the requirements.

##### **C. TRAINING:**

(1) The program administrator will develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following areas: a) scope of services and activities offered by the program; b) emergency first aid procedures; c) indicators of child abuse and neglect; d) fire prevention measures and emergency evacuation plan; e) review of licensing regulations; f) review of policies regarding discipline; g) child abuse and neglect reporting; h) handling of incidents and complaints; i) health and safety, including infection and injury prevention and control.

(2) A program will keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(3) All care givers will have at least twenty-four (24) hours of training each year. Training must address at least three (3) competency areas within one (1) year and all seven areas within two (2) years. The competency areas are:

(a) child growth, development, and learning;

(b) health, safety, nutrition, and infection control;

(c) family and community collaboration;

(d) developmentally appropriate content;

(e) learning environment and curriculum implementation;

(f) assessment of children and programs; and

(g) professionalism.

(4) Training must be delivered by people who have education and/or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department. See Paragraph (4) of Subsection A of this Section for requirements for part-time employees.

(5) Program administrators may count hours in personnel and business training toward the training requirement.

##### **D. STAFFING REQUIREMENTS:**

(1) Each site will have a site director.

(2) A program will maintain

staff/child ratios at all times. Children must never be left unattended whether inside or outside the facility.

(3) A program will have a minimum of 2 staff members present at all times. If the program has less than 7 children, the 2nd caregiver may be engaged in other duties.

(4) Each site will have one (1) adult for every fifteen (15) children age five (5) or older.

[8.16.2.42 NMAC - Rp 8.16.2.42 NMAC, 11/01/02]

### **8.16.2.43 SERVICES AND CARE OF CHILDREN:**

#### **A. DISCIPLINE:**

(1) A program will have written policies and procedures clearly outlining disciplinary practices. Facilities will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Discipline will be consistent and age appropriate.

(3) Discipline will include positive guidance, redirection, and clear limits that encourage the child's ability to become self-disciplined.

(4) A program will not use the following disciplinary practices:

(a) Physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child's mouth;

(b) Withdrawal of food, rest, bathroom access, or outdoor activities;

(c) Abusive or profane language, including yelling;

(d) Any form of public or private humiliation, including threats of physical punishment; or

(e) Unsupervised separation.

#### **B. EQUIPMENT AND PROGRAM:**

(1) A program will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(2) Each child at a program will have a designated space for storage of clothing and personal belongings.

(3) A program will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A program will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(4) A program will provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate,

and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.

(5) A program will post a daily activity schedule. A program will follow a consistent pattern for routine activities such as meals, snacks and rest.

(6) Children will not watch television, video tapes or play video games for more than one (1) hour a day.

(7) Equipment and program requirements apply during all hours of program operation.

#### **C. OUTDOOR PLAY AREAS:**

(1) Outdoor play equipment will be safe and securely anchored.

(2) A program will place energy absorbing surfaces beneath climbing structures, swings and slides.

#### **D. SWIMMING, WADING AND WATER:**

(1) Each child will have written permission from a parent or guardian before the child enters the pool.

(2) If a program has a portable wading pool:

(a) A program will drain and fill the wading pool with fresh water daily and disinfect the pool regularly.

(b) A program will empty a wading pool when it is not in use and remove it from areas accessible to children.

(c) A program will not use a portable wading pool placed on concrete or asphalt.

(3) If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) The fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) The fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) When in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

[8.16.2.43 NMAC - Rp 8.16.2.43 NMAC, 11/01/02]

### **8.16.2.44 FOOD SERVICE:**

**A. MEAL PATTERN REQUIREMENTS:** All foods prepared by the program will conform to the schedule for supplemental feedings of the USDA's child care food program.

#### **B. MEALS AND SNACKS:**

(1) A program will provide a child

a meal or snack at least every three (3) hours.

(2) A program will serve a child a therapeutic or special diet with a written prescription/diet order from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the program staff.

(3) A program will serve snacks each day and will include a selection of two (2) different food group components from the four (4) food group components.

(4) The use of fruit drinks that contain less than 100% juice or artificially flavored drinks for meals and/or snacks is prohibited.

(5) The same menu must not be served twice in one week.

#### **C. KITCHENS:**

(1) A program will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving

(3) A program will serve food promptly and refrigerate immediately after use.

(4) A program will discard any leftover milk.

(5) A program will keep food requiring refrigeration, at 41 degrees (fahrenheit) or below and frozen food at 0 degrees (fahrenheit) or below.

(6) Refrigerators and separate freezers will have working thermometers.

(7) A program will protect food and drink by properly storing items in an airtight container or by wrapping them. A program will label and date all leftover food.

(8) A program will protect all food from insects, rodents and other vermin.

(9) A program will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize using two ounces of bleach to one gallon of water or a bleach-equivalent product approved by CYFD.

(10) A program will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(11) A program will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and disinfect the areas before and after use.

(12) A program will provide sanitary cups or glasses or a drinking fountain for drinking water. A program will not allow children to share drinking or eating

utensils.

[8.16.2.44 NMAC - Rp 8.16.2.44 NMAC, 11/01/02]

### **8.16.2.45 HEALTH AND SAFETY REQUIREMENTS:**

A. **HYGIENE:** Children and staff members will wash their hands with soap and warm running water as needed. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

- (1) After using a toilet;
- (2) Before and after caring for a sick child;
- (3) Before any food service activity, including setting the table;
- (4) Before and after eating; and
- (5) After handling pets or animals.

### **B. FIRST AID REQUIREMENTS:**

(1) A program will have on duty at all times one (1) staff member or caregiver currently certified in first aid and cardiopulmonary resuscitation (CPR).

(2) A program will keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, as a minimum, band aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, Ipecac syrup and a thermometer.

(3) A program will treat blood spills cautiously and promptly decontaminate the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program will clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

### **C. MEDICATION:**

(1) A program will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Programs will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's

name and the date the medication was brought to the program. A program will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep a written record of the dosage, date, and time a child is given medication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of the information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The program shall not administer expired medication.

### **D. ILLNESSES:**

(1) Children or staff members absent due to any notifiable disease will not return to the program without a signed statement from a physician.

(2) A program will separate and constantly observe a child who becomes sick at the program and promptly notify a parent or guardian of the child's illness.

(3) A program will send a child home when:

(a) The child's oral temperature is 100.4 degrees (fahrenheit) or greater or armpit temperature is 99.4 degrees (fahrenheit) or greater and the child shows signs of illness; or

(b) A caregiver observes signs of contagious disease or severe illness.

(4) The program will have a cot or mat available for sick children and it will be cleaned and disinfected thoroughly after use.

[8.16.2.45 NMAC - Rp 8.16.2.45 NMAC, 11/01/02]

### **8.16.2.46 OTHER:**

#### **A. TRANSPORTATION:**

(1) All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A program will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program will ensure children do not cross a street unsupervised after leaving the vehicle.

(3) No one will smoke in a vehicle used for transporting children.

(4) A program will license all vehicles used for transporting children and will meet all applicable state vehicle laws. Children five years of age through eighteen years of age shall be secured in a child pas-

senger restraint device or by a seat belt.

(5) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

(6) Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees fahrenheit. If the outside air temperature falls below 50 degrees fahrenheit the program will ensure the vehicle is heated.

(7) Drivers must have a valid New Mexico driver's license. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

### **B. FIELD TRIPS:**

(1) A program will ensure the children's safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection B of 8.16.2.41 NMAC for requirements concerning field trip permission slips.

(2) Children will not go to a private residence unless accompanied by two (2) adults.

### **C. PETS:**

(1) A program will inform parents or guardians before pets are at the program site.

(2) A program will not allow pets in the kitchen, food serving, food storage areas, or bathrooms.

(3) A program will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the program.

(4) A program will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious.

### **D. HOUSEKEEPING:**

(1) A program will keep the premises, including furniture, fixtures, toys and equipment clean, safe, disinfected, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles will have a tight fitting lid, be durable, and constructed of materials that will not absorb liquids.

### **E. PEST CONTROL:**

(1) All licensed programs must use a New Mexico licensed applicator whenever applying pesticides in or on the program's buildings and grounds.

(2) The applicator may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff



must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

#### F. MECHANICAL SYSTEMS:

(1) A program will maintain comfortable temperatures (68 degrees fahrenheit through 82 degrees fahrenheit) in all rooms used by children. A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A program must maintain all heating and cooling equipment so that it is in good working order.

(3) A program will not use unvented heaters, open flame heaters or portable heaters. A program will install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees (fahrenheit), fireplaces, fireplace inserts and wood stoves.

(4) A program will provide fresh air and control odors by either mechanical or natural ventilation. If a program uses a window for ventilation, it will have a screen. If a door is used for ventilation, it must have a screen door.

(5) Water stored in a water heater will be above 124 degrees (fahrenheit) and water coming from a faucet will be below 110 degrees (fahrenheit). A program will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

#### G. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A program will have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A program will use U/L approved equipment only and will properly maintain this equipment;

(b) The use of multi-prong or gang plugs is prohibited.

H. EXITS AND WINDOWS: When an activity area does not have a door directly to the outside, at least one (1) window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be twenty-four (24) inches. The minimum net clear opening width dimension must be twenty (20) inches, and the finished sill height must not be more than forty-four (44) inches above the floor.

(1) Activity areas for children must have windows and/or skylight area of at least 1/20th of the floor area

(2) There must be at least two (2) exits remote from each other on each floor of the program.

(3) Exit ways must be kept free from obstructions at all times.

(4) If a door is used for fresh air ventilation it must have a screen door.

#### I. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A program will not use a common towel or wash cloth.

(2) All closets and bathroom locks must have an outside release. A program will enclose all bathrooms.

(3) Toilets and lavatories must be provided in the following ratios:

(a) One (1) toilet and one (1) lavatory for one (1) to twelve (12) children.

(b) Two (2) toilets and two (2) lavatories for thirteen (13) through twenty-five (25) children.

(c) One (1) toilet and one (1) lavatory for each additional fifteen (15) children or fraction thereof.

(d) When a program's capacity exceeds (30) children the program must have a separate toilet room for staff.

#### J. SAFETY COMPLIANCE:

(1) A program will conduct at least one (1) fire drill each month.

(a) A program will:

(b) Hold the drills at different times of the day;

(c) Use the fire alarm or detector system;

(d) Emphasize an orderly evacuation rather than speedy; and

(e) A program will keep on file a record of the fire drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill. Records will be kept for one year.

(2) A program shall request an annual fire inspection from the fire authori-

ty having jurisdiction. If the policy of the fire authority having jurisdiction does not provide for an annual inspection of the program, the program must document the date the request was made and to whom. A copy of the latest inspection must be posted in the program.

(3) A program will post evacuation plans for each room used by children in the appropriate room.

(4) A program will keep a working telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. A pay phone will not fulfill this requirement.

K. S M O K I N G , FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A program will prohibit smoking in all areas, including vehicles, and will not allow any alcoholic beverages, firearms or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

L. ACCREDITED PROGRAMS: Accredited programs must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.16.2.46 NMAC - Rp 8.16.2.46 NMAC, 11/01/02]

#### HISTORY OF 8.16.2 NMAC:

Pre-NMAC HISTORY: The material in this Part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives:

HSSD 76-8, Child Care Facilities, Licensing Rules, Regulations And Standards, 12-1-76

HED-82-4 (HSD), Regulations Governing Child Care Center Licensing, 8-11-82

HED-81-2 Regulations Governing Family Day Care Licensing, 6-16-81

HED 82-6 (HSD), Regulations Governing Family Day Care Licensing, 8-11-82

HED 87-1 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care to Children, 6-16-87

HED 87-3 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care To Children, 6-19-87.

#### HISTORY OF REPEALED MATERI-

**AL:**

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-99  
 8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-00.  
 8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-01.  
 8.16.2 NMAC, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 11-01-02

**NEW MEXICO CHILDREN,  
 YOUTH AND FAMILIES  
 DEPARTMENT  
 PREVENTION AND  
 INTERVENTION DIVISION**

**TITLE 8 SOCIAL SERVICES  
 CHAPTER 17 NON-LICENSED  
 CHILD CARE  
 PART 2 REQUIREMENTS  
 GOVERNING REGISTRATION OF  
 NON-LICENSED FAMILY CHILD  
 CARE HOMES**

**8.17.2.1 ISSUING AGENCY:**  
 Children, Youth and Families Department.  
 [8.17.2.1 NMAC - Rp 8.17.2.1 NMAC,  
 11/01/02]

**8.17.2.2 SCOPE:** All non-licensed family child care homes within the state of New Mexico who are intending to participate in the child and adult care food program or the child care assistance program.  
 [8.17.2.2 NMAC - Rp 8.17.2.2 NMAC,  
 11/01/02]

**8.17.2.3 STATUTORY AUTHORITY:** The requirements (regulations) set forth herein, are established pursuant to the state and federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, Parts 255, 256, 257 Title 4-E. These regulations are promulgated by authority of Section 9-7-7 and 9-7-12 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) are not health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978.  
 [8.17.2.3 NMAC - Rp 8.17.2.3 NMAC,

11/01/02]

**8.17.2.4 DURATION:**  
 Permanent.  
 [8.17.2.4 NMAC - Rp 8.17.2.4 NMAC,  
 11/01/02]

**8.17.2.5 EFFECTIVE DATE:**  
 November 1, 2002, unless a later date is cited at the end of a section.  
 [8.17.2.5 NMAC - Rp 8.17.2.5 NMAC,  
 11/01/02]

**8.17.2.6 OBJECTIVE:** The objective of 8.17.2 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulations to participate in the federal child and adult care food program (CACFP) and the state and federal child care assistance programs (CCAP) through self-certification and registration.  
 [8.17.2.6 NMAC - Rp 8.17.2.6 NMAC,  
 11/01/02]

**8.17.2.7 DEFINITIONS:**  
 A. "Child" means any person twelve (12) years old or younger; children of migrant workers fifteen (15) years old or younger, any person with certain disabilities who is eligible under federal child and adult care food program standards; or any person eligible under state and federal child-care assistance programs standards.

B. "Child Care Assistance Program (CCAP)" means the state of New Mexico's child care services bureau which administers the federal child care and development fund (CCDF).

C. "Child and Adult Care Food Program (CACFP)" means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.

D. "Emergency caregiver" means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, 48 hours or less, on behalf of the primary caregiver.

E. "Infant" means a child from birth to one-year-old.

F. "Nonresident child" means any child who does not reside in the caregiver's home.

G. "Notifiable diseases" means confirmed or suspected diseases/conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

H. "Primary caregiver" means a family day care home provider 18 years of age or older who is personally providing care to non-resident children, less than 24 hours a day, in his/her own residence and has completed a self certification registration form and paid the required fee.

I. "Registered Family Child Care Home" means the residence of an independent caregiver who registers the home under these regulations to participate in the child and adult care food program or as a vendor in the state and federal child care assistance programs.

J. "Resident child" means any child who resides in the home, such as provider's own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the residential unit.

K. "Second caregiver" means someone 18 years of age or older who is authorized by the primary caregiver and the day care home sponsoring organization to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including TB tests, CRC fingerprint clearance, annual training hours and initial orientation and training for participation in the CACFP and/or the child care assistance program.  
 [8.17.2.7 NMAC - Rp 8.17.2.7 NMAC,  
 11/01/02]

**8.17.2.8 APPLICATION:** An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must register as a family child care home provider by submitting a completed self-certification and registration agreement and paying the processing charge.  
 [8.17.2.8 NMAC - Rp 8.17.2.8 NMAC,  
 11/01/02]

**8.17.2.9 COMPLIANCE:** By completing and submitting the self-certification registration agreement, the independent caregiver certifies the caregiver's home complies with these regulations. The caregiver also agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

A. All caregivers, and all adults over 18 years of age residing in a caregiver's home will undergo a protective services division screening for a history of substantiated child abuse or neglect referrals.

B. Complaints received by

CYFD shall be investigated within ten days by family nutrition bureau staff or by the sponsoring organization.

[8.17.2.9 NMAC - Rp 8.17.2.9 NMAC, 11/01/02]

#### **8.17.2.10 STATE AND FEDERAL CRIMINAL RECORDS CHECKS:**

A. Criminal records checks (CRC) are required for all providers caring for children not related to them. Federal criminal records checks are not required for providers who care only for children related to them up to the fourth degree of consanguinity. The sponsoring organizations who register family child care home providers shall provide CRC fingerprint cards to all providers, including their employees, second caregivers, or volunteers, who care for children who are not related to the provider. A request for federal background checks, along with the appropriate fee, must be submitted within one week of registration to the children, youth and families department.

(1) Providers caring only for related children shall undergo a state department of public safety clearance check by submitting the required forms and the required fee.

(2) Providers receiving subsidy from CYFD shall submit their finger print cards at the time of registration.

B. In situations where requests for state criminal records checks have been submitted but clearance letters have not yet been issued, those providers, second caregivers and volunteers who are providing service to children may provide care if federal clearance has been received.

C. A provider shall not be eligible for continued registration upon notification that a federal background check has revealed information that would disqualify an individual from receiving a letter of clearance.

D. Any provider, second caregiver or volunteer who has received state and federal clearance through another child care facility or sponsoring organization within one year of application for registration as a family child care provider, is not required to undergo an additional federal background check unless the children, youth and families department believes it has cause to request it.

E. Criminal background checks will be conducted in accordance with the most current previsions of 8.3.3 NMAC, Criminal Records and Employment History Verification Provisions as promulgated by the children, youth and families department.

[8.17.2.10 NMAC - Rp 8.17.2.10 NMAC, 11/01/02]

#### **8.17.2.11 R E N E W A L :**

Caregivers must renew registration annually, and only after receiving an onsite inspection by the sponsoring organization, by submitting a self-certification registration agreement and paying the processing charge with cashier's check or a money order. Providers who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.

[8.17.2.11 NMAC - Rp 8.17.2.11 NMAC, 11/01/02]

#### **8.17.2.12 V I S I T A T I O N :**

Caregivers must consent to visits by the children, youth and families department or the child and adult care food program sponsoring agency any time nonresident children are present and/or, for relative care only providers, during the provider's stated normal hours of operation.

[8.17.2.12 NMAC - Rp 8.17.2.12 NMAC, 11/01/02]

#### **8.17.2.13 N O N - C O M P L I -**

**ANCE:** The children, youth and families department may deny, suspend or revoke registration at any time if the caregiver is not in compliance with the registration standards.

A. CYFD may revoke or suspend the registration of a provider for serious violations such as:

(1) Failure to comply with the group size and/or capacity requirement

(2) Health and safety violations which place the children in immediate danger, including:

(a) A dwelling infested with vermin, including rodents, with no effort to correct the problem;

(b) Lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface;

(c) Unlocked or unsecured firearms in the home.

(3) Criminal records check denial;

(4) Substantiated fraudulent activity in the CACFP or the child care assistance programs;

(5) Substantiated non-compliance with provider requirements to care for children in the registered home as defined in the enrollment documents;

Substantiated abuse and/or neglect of children as determined by the protective services division of CYFD or a law enforcement agency;

(6) Situations where the children in care are placed in eminent danger, including but not limited to; evidence of illegal drug use in the home, when a convicted sex

offender maintains residence in the home, when a household member is accused of sexual child abuse or when the outcome of a child protective services referral is pending.

B. CYFD notifies all providers in writing when registration is to be revoked or suspended and affords appeal rights to any provider whose registration is revoked or suspended, as described in 8.17.2.27 of this policy.

C. The family nutrition bureau notifies the child care services bureau of any revocation or suspension of registration for a provider participating in the child care assistance programs.

D. Providers may be eligible for reinstatement of registration upon written request to CYFD and upon written approval by the family nutrition bureau or the child care services bureau.

[8.17.2.13 NMAC - Rp 8.17.2.13 NMAC, 11/01/02]

#### **8.17.2.14 A N N U A L C E R T I F I -**

**CATION:** Independent caregivers shall certify upon renewal that they, or any other adult living in the home, have not been convicted of a disqualifying offense during the last twelve months.

[8.17.2.14 NMAC - N, 11/01/02]

#### **8.17.2.15 I N C I D E N T**

**REPORTS:** Registered providers shall notify CYFD immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger, such as but not limited to:

A. A lost or missing child;

B. The death of a child;

C. The abuse or neglect of a child;

[8.17.2.15 NMAC - N, 11/01/02]

#### **8.17.2.16 - 19 [RESERVED]**

#### **8.17.2.20 R E Q U I R E D S T A N -**

**DARDS:** Independent caregivers will certify when they apply for registration that they comply with and maintain the standards in 8.17.2.21 through 8.17.2.24 NMAC.

[8.17.2.20 NMAC - Rp 8.17.2.20 NMAC, 11/01/02]

#### **8.17.2.21 G R O U P C O M P O S I -**

**TION REQUIREMENTS:**  
A. A caregiver will care for no more than four (4) non-resident children at any one time.

B. A caregiver will care for no more than two (2) children under two (2) years old at any one time, including the provider's own children.

C. A caregiver will care for no more than six (6) children under six

(6) years old at any one time, including the provider's own children.

D. Shifts are allowed provided there are never more than four (4) non-resident children present at any one time, including change of shifts.

E. The primary caregiver will be physically present and actively involved in the care of nonresident children during the designated hours of child care as noted in the child enrollment forms, except for short absences when another approved caregiver is present. Regular outside employment is not considered a short absence.

[8.17.2.21 NMAC - Rp 8.17.2.21 NMAC, 11/01/02]

### **8.17.2.22 HEALTH AND SAFETY REQUIREMENTS:**

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees (fahrenheit).

E. The home must be adequately ventilated at all times.

F. All gas-fired equipment and water heaters must have a 100% cutoff valve.

G. A caregiver must provide safe playing areas inside and outside the home.

H. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, and sharp and pointed objects in a storage area inaccessible to children.

I. The home must have a telephone or the caregiver must have applied for installation of a telephone. The caregiver must have the telephone within sixty (60) days of registration. The CYFD may waive the telephone requirement if the caregiver lives in a rural area where phone service is not available or for other circumstances as approved by CYFD.

J. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center by the telephone.

K. A caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, or other hazardous area. The fence will have

one latched gate for emergency exits.

L. A caregiver will install at least one working smoke detector in an appropriate area in the home.

M. A caregiver will store all firearms, such as rifles and handguns, in a locked area inaccessible to children.

N. A caregiver will prohibit smoking and the consumption of alcoholic beverages or illegal drugs when non-resident children or, for relative care only providers, when related children are present.

O. The home will have at least one 2A-10BC fire extinguisher mounted near the exit of the kitchen. It must be visible and readily available for use and in operable condition at all times.

P. A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, or laundry rooms.

Q. In case of fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available.

R. A home will have two (2) major exits readily accessible to children.

S. Toys and objects (including high chairs) are safe, durable, easy to clean and nontoxic.

T. Children will not use a common towel or wash cloth.

U. The home will have a first aid kit stored in a convenient place inaccessible to children. The kit will contain at least band-aids, gauze pads, adhesive tape, scissors, soap, non porous latex gloves, Ipecac syrup, and a thermometer.

V. A caregiver will ensure that all pets in the home are inoculated as required by law and will keep proof of inoculations.

W. A caregiver will not change a diaper in a food preparation area. Caregivers will disinfect the diaper-changing surface and wash their hands after every diaper change.

[8.17.2.22 NMAC - Rp 8.17.2.22 NMAC, 11/01/02]

### **8.17.2.23 MEAL REQUIREMENTS:**

A. Children will not use common eating or drinking utensils.

B. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.

C. Meals must meet age-appropriate USDA requirements, including the following meal components: one (1) serving of meat or alternate; two (2) servings of fruits or vegetables; one (1) serving

of bread or alternate and one (1) serving of fluid milk. A caregiver must serve whole milk to children one to two years old.

D. A caregiver must keep a daily menu.

E. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.

F. Caregivers will feed children a meal or snack every three (3) hours.

G. Caregivers and children will wash their hands regularly and before each meal time.

H. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees fahrenheit or below.

I. Refrigerators shall have working thermometers.

[8.17.2.23 NMAC - Rp 8.17.2.23 NMAC, 11/01/02]

### **8.17.2.24 RECORD KEEPING REQUIREMENTS:**

A. Caregivers must maintain evidence of tuberculosis screening to show that TB is not active.

B. Caregivers must keep an information card for each child with;

(1) The child's full name;

(2) The child's birth date;

(3) Any known food or drug allergies or unusual physical condition;

(4) The name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;

(5) The name and telephone number of the child's physician;

(6) Authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;

(7) Written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent; and,

(8) An immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health.

[8.17.2.24 NMAC - Rp 8.17.2.24 NMAC, 11/01/02]

### **8.17.2.25 QUALIFICATIONS AND RESPONSIBILITIES:**

A. Caregivers must be at least 18 years of age. All primary and second caregivers must have documentation of criminal records clearance in accordance with Section 10 of these regulations.

B. All caregivers must be free of any mental, emotional and physical health problems that would interfere with the appropriate care of the children.

C. The caregiver is responsible for immediately reporting to the appropriate authorities any symptoms of child abuse or neglect.

D. A caregiver will use discipline that is positive, consistent and age-appropriate. The caregiver will NOT use:

- (1) Physical punishment of any type;
- (2) Withdrawal of food;
- (3) Restriction of rest or bathroom opportunities;
- (4) Any form of public or private humiliation, including yelling or threats of physical punishment;
- (5) Isolation or unsupervised separation; or
- (6) Any other type of punishment that is hazardous to the physical, emotional or mental state of the child.

E. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play.

F. Caregivers of infants will allow them to creep, crawl or toddle and will hold them for bottle-feeding and at other times. Caregivers will allow infants to eat and sleep on their own schedules.

G. Primary and secondary caregivers are required to attend six (6) hours of training annually. Training documentation must be maintained for three (3) years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

H. All providers are required to attend first aid training during their first year of registration.

I. Remaining hours of training shall be within the seven competency areas. The competency areas are: a) child growth, development and learning; b) health, safety, nutrition and infection control; c) family and community collaboration; d) developmentally appropriate content; e) learning environment and curriculum implementation; f) assessment of children and programs; and g) professionalism.

[8.17.2.25 NMAC - Rp 8.17.2.25 NMAC, 11/01/02]

#### **8.17.2.26 TRANSFERABILITY OF REGISTRATION:**

A. The caregiver's registration agreement is personal, and not transferable to any other person or location.

B. If the caregiver moves to a new location or has a change of name, the caregiver must register again and pay the processing charge.

[8.17.2.26 NMAC - Rp 8.17.2.26 NMAC, 11/01/02]

#### **8.17.2.27 APPEAL RIGHTS:**

Any registered provider who is sanctioned pursuant to these regulations or has their registration revoked or suspended may appeal that decision to the children, youth and family department. The request for hearing shall be made within fifteen calendar days of the date of notice of action.

[8.17.2.27 NMAC - Rp 8.17.2.27 NMAC, 11/01/02]

#### **HISTORY OF 8.17.2 NMAC:**

Pre-NMAC History: The material in this Part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

ISD CCAP 400, Provider Registration, 11-4-91

ISD CCAP 500, Provider Selection and Payment, 11-4-91

#### **History of Repealed Material:**

8 NMAC 17.2, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8-1-00

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/30/01

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/01/02

### **NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

#### **PROTECTIVE SERVICES DIVISION**

SSD 5.5.0, Foster Care Child Placement Agency Licensing Regulations, filed 12-7-89 and SSD 7.5.0, Adoption - Child Placement Agency Regulations, filed 8-22-88 are hereby repealed effective November 1, 2002 and will be replaced by 8.27.6 NMAC, Child Placement Agency Licensing Standards, effective November 1, 2002.

### **NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

#### **PROTECTIVE SERVICES DIVISION**

#### **TITLE 8 SOCIAL SERVICES CHAPTER 27 FOSTER CARE PART 6 CHILD PLACE- MENT AGENCY LICENSING STANDARDS**

**8.27.6.1 ISSUING AGENCY:**  
Children, Youth and Families Department  
Protective Services Division

[8.27.6.1 NMAC - N, 11-1-2002]

**8.27.6.2 SCOPE:** Any individual, partnership, association or corporation, resident of New Mexico, undertaking to place a child in a home in this or any other state for the purpose of foster care or adoption of the child.

[8.27.6.2 NMAC - N, 11-1-2002]

**8.27.6.3 STATUTORY AUTHORITY:** The Children, Youth and Families Department is authorized to promulgate regulations for the Child Placement Agency Licensing Act, NMSA 1978, Section 40-7A-1 et seq. (1981, 1998, 1999) pursuant to NMSA 1978 Section 9-2A-2 (A), the Act establishing CYFD.  
[8.27.6.3 NMAC - N, 11-1-2002]

**8.27.6.4 DURATION:**  
Permanent  
[8.27.6.4 NMAC - N, 11-1-2002]

**8.27.6.5 EFFECTIVE DATE:**  
November 1, 2002  
[8.27.6.5 NMAC - N, 11-1-2002]

**8.27.6.6 OBJECTIVE:** These standards supplement and are used in conjunction with the Child Placement Licensing Act. The purposes of the regulations are to:

**A.** Authorize CYFD to license and monitor agencies that place children in adoptive homes or in foster care so that the safety, permanency, and well being interests of the child are served.

**B.** Authorize CYFD to prescribe standards for application and operation of the agency to set forth the rights of children in foster/adoptive placement and compliance with the New Mexico Adoption act and regulations, the New Mexico Children's Code, the Indian Welfare Act, the Adoption and Safe Families Act, the Hague Convention, the Interstate Compact on Placement of Children, the Multi-ethnic Placement Act, the Uniform Child Custody Act, and all other applicable

statutes, compacts and regulations.  
[8.27.6.6 NMAC - N, 11-1-2002]

#### 8.27.6.7 DEFINITIONS:

**A. "Abuse and Neglect Check (A/N check)"** means a check of the Family Automated Client Tracking System (F.A.C.T.S.) to determine if the individual has a history of substantiated abuse and/or neglect.

**B. "Act"** means the Child Placement Agency Licensing Act, NMSA 1978, Section 40-7A-1 et. seq.

**C. "Adoption Agency"** means an agency licensed by CYFD to facilitate the adoption of a child or performs a function with in the adoption process.

**D. "ASFA"** means the Adoption and Safe Families Act, Public Law 103-89.

**E. "Advisory Board"** means that group of persons who make programmatic recommendations to the governing body of the agency.

**F. "Applicant"** means an individual, partnership, unincorporated association or corporation who makes written application to become a licensed child placement agency in the state of New Mexico.

**G. "Application"** means the submission of information to an agency which prompts the agency to begin the licensing or certification process of the family, i.e., gathering of information, fingerprinting, beyond the initial review of an application form.

**H. "Audit"** means the review of an agency, as prescribed in these standards, for the purpose of determining if the standards outlined in these regulations are met.

**I. "Child Placement Agency" or "Agency"** means any CYFD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services.

**J. "Client"** means an individual or individuals who receives services from an agency, including a child pending adoption.

**K. "Corrective Action"** means action taken by CYFD with regard to the agency to correct deficiencies or non-compliance to CYFD's policies, procedures and standards and/or the Child Placement Agency Licensing Act.

**L. "Criminal Records Check (CRC)"** means federal, state and local checks for criminal offenses.

**M. "CYFD"** means the children, youth and families department of the state of New Mexico.

**N. "Foster Care Agency"** means an agency licensed by CYFD for the purpose of supervising foster care homes, treatment foster care homes, foster care and treatment foster care homes, and/or other levels of foster care as developed by CYFD.

**O. "Full Disclosure"** means mandatory and continuous disclosure of all known non-identifying information regarding the child to the adoptive or foster parent(s) by the agency prior to and throughout the placement of the child.

**P. "Governing Body"** means a group of five or more persons in which the ultimate authority and legal responsibility are vested, and execute and bind any decision for an agency. A governing body may also be known as the board of directors.

**Q. "Home Study" or "Pre-Placement Study"** means the development of a comprehensive assessment to be used in preparation of licensing a foster home or certification of an adoptive home, as described in the Adoption Act regulations, 8 NMAC 26.3.18.2.

**R. "Hague Convention"** means the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption.

**S. "Inter-country Adoption"** means any adoption in which the sending country and receiving country are different.

**T. "Legal Risk"** means an adoptive placement where birth parents or other individuals may have legal rights that have not been fully extinguished at the time of placement. The prospective adoptive parents are fully informed of the legal circumstances prior to the placement.

**U. "Matching"** means the process by which a placement is selected to best meet the needs of the child.

**V. "Minor Deficiencies"** means those deficiencies that do not impair the safety, permanency or well being of a child in the agency's care.

**W. "Permanency Plan"** means a plan of intervention for the permanent placement of a child, as defined under ASFA.

**X. "Placement"** means the point in time when the child is legally placed in the foster or adoptive home.

**Y. "Post Placement"** means the period of time between the placement of a child in an adoptive home and the issuance of a decree signed by a judge ordering the adoption.

**Z. "Post-adoption"** means any time following the entry of an adoption decree by the court.

**AA. "Pre-adoption"** means the period of time before the entry of the

adoption decree by the court.

**BB. "Provider of Services"** means anyone, agency or individual, providing a service to an individual or family.

**CC. "Substantial Compliance"** means all licensing standards have been complied with and that only minor deficiencies exist which do not impair the safety, permanency or well being of a child in the agency's care and that the agency is in compliance with New Mexico Adoption act and regulations, the New Mexico Children's Code, the Indian Child Welfare Act, the Adoption and Safe Families Act, the Hague Convention, the Interstate Compact on Placement of Children, the Uniform Child Custody Act, or any other applicable statutes, compacts and regulations.

**DD. "Variance"** means to refrain from pressing or enforcing compliance with a portion(s) of these regulations for an unlimited period of time provided the health and safety of children, families, and/or staff are not compromised. Variances are issued at the sole discretion of CYFD.

**EE. "Waive/Waiver"** means to refrain from pressing or enforcing compliance with a portion(s) of these regulations for a limited period of time provided the health and safety of children, families, and/or staff are not compromised. Waivers are issued at the sole discretion of CYFD.  
[8.27.6.7 NMAC - N, 11-1-2002]

#### 8.27.6.8 RULES OF CONSTRUCTION:

**A.** The definitions in the Act shall apply to the Child Placement Agency Standards.

**B.** The words "shall" and "will" are mandatory and "may" is permissive or discretionary.

**C.** Words importing the singular number may be extended to several persons or things. Words importing the plural number may be applied to one person or thing.

**D.** The Adoption Act Regulations, 8 NMAC 26.3, Licensing Standards for Foster Care, 8 NMAC 27.3, and the Child Placement Agency Licensing Standards, 8.27.6 NMAC, are applicable and are cross referenced, unless otherwise noted. The Child Placement Agency Licensing Standards are first when conflict may occur between regulations or standards.

**E.** Adoption and foster care agencies are not permitted to interpret parts of these regulations as being inapplicable to their organization or the services they provide to children and families.  
[8.27.6.8 NMAC - N, 11-1-2002]

**8.27.6.9 TYPES OF AGENCIES AND LICENSES:**

**A.** Types of Agencies: An applicant may be licensed as an adoption agency and/or foster care agency.

**B.** Types of Licenses:

(1) Standard License: A license is granted to an agency when CYFD verifies that the applicant/agency is in substantial compliance with the licensing requirements. An agency in substantial compliance is directed to correct minor deficiencies. A license may be issued for a period of one (1) to three (3) years.

(2) Six Month License: A six (6) month license may be issued when CYFD determines the agency is in compliance with licensing requirements with regard to the safe provision of services to children, but has substantial documented deficiencies, and

(a) The agency submits a written work plan, approved by CYFD, to correct the deficiencies;

(b) Deviations from the licensing requirements do not substantially affect the agency's ability to provide services that are required under applicable standards for issuing and maintaining a license, and children are otherwise safe; and

(c) The applicant can meet the licensing requirements within six (6) months from the date of issuance of the six (6) month license. CYFD makes a site visit at least (2) two months prior to the expiration of the six (6) month license, or more frequent visits, to determine that the agency is moving toward correcting the deficiencies.

**C.** Duration of Standard License: An applicant's first license may only be issued for a maximum of one (1) year. If the agency continues to meet all licensing requirements, CYFD may elect to license the agency for a standard license. A standard license may be issued for one (1) to three (3) years. If all regulations have been met during the current audit, a license may be issued for two years, and up to three years when the agency's most recent license was issued for two years.

**D.** License Extensions: If an agency requests to be re-licensed, and holds a current standard license, and an audit is not conducted prior to or on the date of expiration of the present license, the most recent license may remain in effect for a period of up to three (3) months. The extension allows for the completion of the audit and determination if a new license is issued or, in the case of an agency closure, to allow for the timely transfer of families and/or children. Upon the request of the agency, CYFD issues a letter extending the license for the determined amount of time, not to

exceed three (3) months.

[8.27.6.9 NMAC - N, 11-1-2002]

**8.27.6.10 INITIAL LICENSE:**

**A.** Application: Any individual, group or organization requesting consideration for a license as a child placement agency submits a completed application to CYFD. When reapplying, the applicant fully addresses all issues upon which any past denial is based and provides an outline of how each issue has been addressed.

**B.** Any individual, group or organization intending to conduct inter-country adoptions shall comply with the Hague Convention and all New Mexico laws, standards and regulations.

**C.** The signed application from the governing body shall include:

(1) The proposed name and location of the agency;

(2) A statement of purpose including:

(a) The type(s) of child placements the applicant agency intends to provide;

(b) The geographic area the applicant agency expects to place in and/or serve;

(c) The type(s) of services provided pertinent to the placement process; and

(d) The type(s) of services to be offered outside of the placement process.

(3) Copies of the qualifications for all staff and contract providers shall be included in the application and shall include the following current employee information:

(a) Name(s), address(s) and telephone number(s);

(b) Resume(s);

(c) Criminal Records Checks: the applicant conducts a records check and abuse and neglect check on all potential employees. The criminal records check and abuse neglect standards for foster home licensing applies for all employees;

(d) References: at least three references are obtained, including previous employer and/or professional colleagues, for each applicant hired. The applicant agency documents all telephone and/or in-person contacts. Each letter of references is followed up by a phone call by the agency. Documentation of references, with date and type of contact, are included in the employee's personnel file, and

(e) Abuse and Neglect Checks: the applicant conducts abuse and neglect checks on all employees through applicable CYFD regulations and policies as set forth in 8.8.3 NMAC. The standards for foster home licensing apply to all employees.

(4) The applicant agency provides

a brief history of the existing organization, if the agency existed prior to the present application, including geographic areas of operation, services provided and any applicable current accreditation and affiliations.

(5) The applicant agency provides in the application a copy of the policies and procedures for families and staff that address the following:

(a) Profit or non-profit status;

(b) Reports of abuse or neglect on children in the agency's care;

(c) 24 hour coverage in cases of emergency;

(d) Procedures to address medical care of children and adults;

(e) A complete list of fees for services;

(f) Procedures for refunds;

(g) Rights of clients;

(h) Grievance process and resolution;

(i) Affiliations and philosophy of the organization;

(j) Procedure for filing complaints with regulatory agencies;

(k) Discipline of children in the care of the agency;

(l) Discipline/corrective action of foster or adoptive families;

(m) Gifts to staff;

(n) Family applicant process; and

(o) Personnel policies (conflicts of interest, conflict resolution between staff; and families).

(6) Policies and procedures that address the following:

(a) Protecting Children: Acknowledgment of responsibility to protect the safety of children and the rights of families and for requiring that agency staff report, as mandated by the New Mexico Children's Code NMSA 1978, 32A-4-1 et. seq., all suspected incidents of abuse and neglect involving children in the agency's care. The agency shall also advise the child's social worker when the child is in the department's custody;

(b) Right of Confidentiality: Acknowledgment of responsibility not to disclose the identity or the name of a client, including photo images, location, or any other specific information concerning the client's personal, medical or social history, or any information the disclosure of which might be detrimental to a client. An agency complies with CYFD's request to review, in advance of public distribution, copies of materials intended for public distribution, if the child is in CYFD's custody or subject to Children's Mental Health and Developmental Disabilities Act;

(c) Fees: How the schedule of fees charged is changed by the agency and distribution to CYFD following issuance of

the license;

(d) Rights for Families: How the applicant meets the requirements set forth in Subsection F of 8.27.6.14 NMAC and that the agency maintains an acknowledgment of rights, with original signatures, in the foster or adoptive parent file;

(e) Certification and Licensing: Criteria for initial certification and licensing and re-certification and licensing of families;

(f) Full Disclosure: The informed consent form for client signature that explains the client's rights, as out lined in Paragraph (8) of Subsection E of 8.27.6.16 NMAC;

(g) Training: A plan for training of staff and foster parents and the method of tracking that the training is accomplished;

(h) Review Process: How grievances and incidents of risk are reviewed for correction;

(i) Detailed Services: Subsections A and B of 8.27.6.13 NMAC are applicable and shall be included; and

(j) Emergency Plans: Procedures which address the safety of children who may be harmed while in the care and control of the agency or its providers. The plan states the course of action followed in the event a child is harmed, without regard to how the incident occurred, and states the lines of authority and the decision making process to assist in the reporting and investigation of these matters.

(7) Compliance with the following personnel requirements:

(a) Minimum Staff: The application includes a list of staff positions which, at a minimum, identifies one staff member who is designated as the executive director. The executive director may also fulfill the role of placement supervisor and placement worker;

(b) Executive Director: The executive director of a placement agency meets the requirements set forth in Paragraph (1) of Subsection A of 8.27.6.17 NMAC.

(c) Placement Supervisor: A placement supervisor meets the requirements set forth in Paragraph (2) of Subsection A of 8.27.6.17 NMAC; and

(d) Placement Worker: The placement worker meets the requirements set forth in Paragraph (3) of Subsection A of 8.27.6.17 NMAC.

(8) A plan for 24 hours a day agency accessibility to CYFD's social workers for agencies with foster homes.

(9) Personnel Policy and Procedures: The applicant agency maintains a written personnel policy and procedure manual. The personnel policies, at a minimum, address the following information;

(a) Job descriptions which outline

the duties and responsibilities of all staff;

(b) Job qualifications for all positions;

(c) Job benefits, work hours, and leave policies for each position;

(d) Conflicts of interest;

(e) Confidentiality, including the requirement for a signed acknowledgment of confidentiality by each employee, contractor, or volunteer, as set forth in Paragraph (6) of Subsection C of 8.27.10 NMAC;

(f) Background and criminal records checks;

(g) The organizational structure, demonstrating sufficient ratios of personnel, consultants, providers or contracted personnel, with the appropriate qualifications and availability, to enable it to provide all elements of the required service, including clerical services necessary to maintain correspondence, records, bookkeeping, and files current and in an organized order;

(h) The ratio of full time placement supervisors to placement workers supervised is a maximum of 1:7; and

(i) How clerical services, to keep correspondence, records, bookkeeping, and files current and organized, are maintained.

(10) Documentation concerning financial operations:

(a) A statement of financial responsibility from a certified or registered public accountant which demonstrates that the applicant has access to sufficient funds to provide services for a minimum of six months;

(b) A letter from a certified or registered public accountant stating that a bookkeeping system is in place and a process of financial review or audit is completed at the end of each fiscal year; and

(c) A projected six (6) month operating budget.

(11) A signed statement from the governing body acknowledging responsibility for placement and monitoring of children in homes approved by the agency for such placement and that they are responsible for:

(a) Monitoring risks that may expose the organization to liability;

(b) Risks that may expose the organization to liability; and

(c) Risks that may reveal unsatisfactory service.

(12) Rules governing the governing body, advisory boards and all sub-committees.

(13) Copies of any applicable legal documents, constitution, by-laws and articles of incorporation.

(14) Disclosure of affiliations and parent holding companies, to include financial, religious, professional and political

affiliations. Disclosure of such state how services are rendered and to whom the services are made available.

(15) The names and addresses of the governing body and the advisory board.

(16) Any other relevant information CYFD requests.

**D. Agency License:** A license is granted or denied based upon the application and upon the Division's review, assessment and determination that the applicant is, or is not, in compliance with these regulations and the requirements outlined in the Act. Inter-country adoption agencies comply with all requirements of the Hague Convention. As a condition of receiving a license, the applicant's proposed policies and procedures and proposed manner of operation shall be in compliance with all applicable laws, regulation and standards and are in writing. Contemplated changes, additions and revisions to the original application are sent to CYFD for approval before implementation. CYFD may request, in writing and by certified mail, additional information to support the application. The requested information shall be submitted within thirty (30) calendar days of notification. An application is not complete until all information requested is received.

(1) Approval: CYFD notifies the applicant, in writing, of approval of the application for a license. Notice is by registered mail sent to the address shown on the application within ninety (90) calendar days after receipt of the completed application.

(2) Denial: CYFD notifies the applicant, in writing, of denial of the license. Notice is sent by registered mail to the address shown on the application within ninety (90) calendar days after receipt of the completed application. The applicant may be denied a license if the requirements for licensing are not met or if a history of license revocation, suspension, denial or penalties or other corrective actions which are based on complaints substantiated by the regulatory body or by a court of competent jurisdiction in any state where the agency has operated exists. A notice denying the license states the reasons for the denial, informs the applicant of the right to appeal and informs the applicant of the appeal process, 8.27.6.20 NMAC, Appeal Rights.

[8.27.6.10 NMAC - N, 11-1-2002]

**8.27.6.11 OFFICE IN NEW MEXICO:** CYFD does not issue a license unless the applicant or agency maintains an office and sufficient staff, as described in Subparagraph (g) of Paragraph (9) of Subsection C of 8.27.6.10 NMAC, in New Mexico. Both the executive director and placement supervisor must work in the New



Mexico office. An agency must operate from a street address in New Mexico and have sufficient office space to protect and maintain confidentiality of client information and agency operation. The agency must have established and posted hours of operation.

[8.27.6.11 NMAC - N, 11-1-2002]

#### **8.27.6.12 AGENCY OPERATIONS:**

**A.** The licensed agency complies with applicable federal and state statutes and acts, compacts, conventions, and regulations, and with applicable licensing regulations of CYFD.

**B.** The governing body approves written policies for the agency and provides a copy of any changes to CYFD that impact on the licensing and maintenance of adoption and/or foster home procedures. The notifications to CYFD of the proposed changes are in writing regarding the specific revisions for which approval from CYFD is sought. Implementation of policy revisions without CYFD approval which conflict with any part of CYFD's policies, procedures, regulations or standards or applicable laws may result in the emergency suspension of the agency's license and revocation of the agency's license as per 8 27.6.18 NMAC. Changes to the operations as covered in the licensing process, Subsection D of 8.27.6.10 NMAC, are submitted to CYFD.

**C.** An agency operates in an ethical manner and according to any standards a relevant licensing board promulgates, including, but not limited to the following:

(1) **Favoritism:** The licensed child placement agency determines if the governing body, advisory board, staff and consultants are favored when applying for or receiving the services of the agency, and if a placement is made with a staff member or board member or consultant, the pre-placement study is conducted by an unrelated licensed placement agency or private person meeting the qualifications set out by CYFD's Adoption Regulations or Licensing Standards for foster care.

(2) **Referral Compensation:** An agency neither receives nor provides referral fees or other forms of consideration from or to another provider of services.

(3) **Conflict of Interest:** An agency prohibits its staff, consultants, governing body members or advisory board members to provide private practice services to its applicants, clients or their families. CYFD may review restrictions and suspend the applicability of this restriction if the services were in place sixty (60) days prior

to the date of application or intake and the record reflects a finding that it is in the best interest of the individual(s) and why it is in their best interest to maintain the professional relationship. No one may provide foster care services or adopt a child for whom he/she has any case management responsibility.

(4) **Gifts:** Gifts are not given or received between clients and staff and agencies that exceed \$50.00.

(5) **Continuity of Services:** An agency provides continuity of services for the children in their care. Care is not interrupted as a result of fiscal considerations:

(a) A foster family may move from one agency to another when both agencies agree it is in the best interest of the children in the home. If children are in the home, both agencies provide written documentation, to CYFD social worker in the case of children in the custody of CYFD or the legal guardian when the child is not in the custody of CYFD, that the transfer of the home is in the best interests of the child (ren) currently in the home, Paragraph (3) of Subsection E of 7.20.11.29 NMAC. To maintain continuity of services, applicable documentation for issuing a license by the new agency is provided by the old agency. Each agency sets a fee schedule, to be filed with CYFD and made available to foster parents and other child placement agencies, for each item of documentation. Such costs may not be more than the actual cost incurred in development and copying the documentation and is not the responsibility of the foster family. The charges are the same, or lower, than fees the agency would charge if the service were provided on a private basis.

(b) **Movement of an adoptive family** from one agency to another is at the discretion of the adoptive parents prior to a child's placement. In cases of inter-country adoption, movement of the adoptive family does not occur after an agency has identified and sponsored a child for the family. The request to transfer from one agency to another is made in writing to the agency that initially certified the family. When the adoptive parents have paid the applicable fees for each item and when written notice of the transfer has been filed with the original agency, documentation leading to certification is sent to the new agency. A service fee may be charged by the agency that initially certified the home for processing a request for the information to be sent to another agency. Release of any documentation to the prospective parents is at the discretion of the agency under applicable laws.

(c) No foster care home may be licensed or certified for placement by more than one agency and/or CYFD.

(d) All foster care and adoption agencies use the format for home studies or pre-placement studies outlined in the Adoption Act regulations.

#### **D. Fiscal Accountability:**

(1) **Financial statement availability:** An agency maintains complete financial records. A copy of an agency's financial statements, which demonstrates the financial condition of the agency, is submitted to CYFD with the agency's license renewal request.

(2) **Donations and Charitable Contributions:** An agency maintains complete records of any donations of money or property received by the agency. The records shall include representations made by the solicitor concerning how such donations would be used and documentation that the funds are spent according to the stated purposes. The agency also documents unsolicited donations and how the donations are utilized or spent.

(3) **Independent Accountability:** The agency has an annual review conducted by an independent certified public accountant. Such records are submitted to CYFD with the agency's license renewal request.

(4) **Audit:** CYFD may conduct an unannounced audit of any agency, as deemed necessary. Such audit may be conducted or contracted by CYFD. The agency fully cooperates with CYFD.

#### **E. Advisory Board/Governing Board/Board of Directors:**

(1) The governing board membership:

(a) For an adoption agency: An adoptee, a biological parent of an adoptee, or an adoptive parent; an individual with a degree in social work or associated field of behavioral science and development and a minimum of two years of paid full-time experience in family evaluation and child behavior and development; and a person who resides in the community in which the agency is located.

(b) For a foster care agency: A person who is currently, or who has been, a licensed foster parent; a person with a degree in social work or associated field of behavioral science and has a minimum of two years of paid full-time experience in family evaluation and child behavior and development; and a person who resides in the community in which the agency is located. It is also recommended that a biological parent of a child that has been in foster care be included or an adult who remembers the experience an out of home placement as a child.

(c) For an agency licensed as both an adoption and foster care agency: The membership designated for an adoption

agency and a currently licensed foster parent or person who has been a licensed foster parent.

(d) No voting member of a board shall be an employee or have a financial interest in the agency.

(e) Each member of the governing board shall sign a statement of responsibility, as outlined in Paragraph (11) of Subsection C of 8.27.6.10 NMAC, at the beginning or renewal of their term.

(2) An advisory board may be constituted as a committee of the governing body. An advisory board acts in an advisory capacity only. The advisory board membership may be as designated by the governing board, but does not have any supervisory or policy decision making authority. [8.27.6.12 NMAC - N, 11-1-2002]

### **8.27.6.13 DESCRIPTION OF CHILD PLACEMENT AGENCY SERVICES:**

**A. Adoption Services:** The agency maintains a detailed description of the agency's adoption services and procedures applicable to those services. The description includes, but is not limited to, adoptive and foster home assessments; relinquishment procedures; matching procedures; provision for medical services for the birth mother and the child, and post-relinquishment medical services for the child until adoptive placement occurs; services for adoption applicants and biological parents; placement and post-placement services; management of adoption disruptions; finalization procedures; and post decree services.

**B. Foster Care Services:** The agency maintains a detailed description of the services provided to the children and families who are served by the agency, as well as the agency's foster care services. The description includes, but is not limited to: recruitment, training and assessment of foster parents; the placement process; documentation of contacts between child and biological family; the interaction of the agency with the child's family of origin and with the foster home; documentation of efforts made to reunite the child with his/her family when appropriate, and the permanent plan. All services to be rendered shall comply with the court order, if the child is not in the custody of the parent(s).

**C. Relinquishments of parental rights:**

(1) Relinquishments taken by an agency comply with the provisions of the New Mexico Children's Code, NMSA 1978, 32A-5-17 through 32A-5-24.

(2) If an individual contacts an agency to relinquish his or her parental

rights, the agency shall make diligent efforts to locate and obtain consent of the non-presenting parent. Diligent efforts include attempts to locate any court records pertaining to a divorce, separation, paternity, or custody action, a search of the putative father registry and a search of CYFD's record and all other efforts that may be reasonable under the circumstances. The agency also obtains and maintains documentation establishing the parental rights of the presenting parent. A signed release of information allowing the agency to conduct searches is obtained to allow the agency to determine that an outstanding custody order which prohibits the parent(s) from acting independently is not in effect. Such a search shall be diligent and encompassing of all jurisdictions in which the child has resided since birth. The agency does not take any action to place the child for adoption until such time as the agency has determined that parental rights or court jurisdiction do not exist or have been legally removed. This does not preclude the agency from placing the child in a legal risk adoption home. Should there be concern for the welfare of the child due to the parents' inability to care for and protect the child, the agency notifies CYFD's Statewide Central Intake.

(3) An agency does not use coercion or deception to obtain a relinquishment of parental rights from a parent. The relinquishment is freely and voluntarily given by the biological parent(s).

(4) A consent/relinquishment of parental rights is taken before a court of competent jurisdiction if there is any reason to believe:

(a) that the parent does not understand the meaning or consequences of the consent/relinquishment; or,

(b) that the consent/relinquishment may not be voluntary.

(5) An agency's payment to, or in behalf of, a relinquishing parent is limited to the actual costs associated with the adoption and conform to all provisions of New Mexico law. If any agency becomes aware of an illegal payment by any agency or individual, the agency notifies the court hearing the adoption petition and/or CYFD.

**D. Placements:** An agency establishes minimum criteria for selecting and studying prospective adoptive and foster families, which comply with the Child Placement Agency Act, Adoption Act, adoption act regulations and/or licensing standards for, foster care.

**E. Change in Placement:** When a change in a child's placement is contemplated, the agency works with the guardian and/or parents to determine if the placement change is in the best interest of

the child.

(1) An agency does not make a change in placement, except in cases of an emergency, of the child without the concurrence of the guardian and/or parents, and the Guardian ad Litem, if applicable. If the placement change is agreed upon, the agency placement worker arranges for:

(a) All of the child's belongings to be transferred with him/her, including clothing, personal belongings, the child's medical and educational records, and the child's life book;

(b) Notification of Placement Change: When the child's placement is changed, including a return to the child's home for a trial home visit, the agency, in addition to concurrence by the guardian and/or parents, notifies the Guardian ad Litem (GAL) at least ten days prior to the change of placement. If the child in question is in state custody, the child's social worker will also notify the children's court attorney, the child's CASA, any interveners in the legal case, and the court, as indicated in the New Mexico Children's Code, and

(c) Documentation of the change in placement in the child's agency record.

(2) The placement worker notifies the child of the placement change. The guardian and/or parents may choose to be a part of the disclosure to the child. The placement worker is responsible to give medical, education, and psychological information to any subsequent placement provider.

(3) An emergency change in placement may occur only when mental health issues of the child or caretaker require the immediate change and/or for the safety of the child due to a referral of abuse or neglect against the caretaker/s. In the case of the child's mental health issues, this may require placement in a more restrictive setting due to identified safety risks to the child in the current placement. The agency notifies the guardian and/or parents concurrently with the change of placement, unless circumstances preclude such and are documented in the child's record. For children in state custody, if the removal occurs after regular working hours, the agency notifies Statewide Central Intake.

**F. Movement of Homes between Agencies:** A foster or adoptive home may move from one agency to another, but conforms with continuity of services as in Paragraph (5) of Subsection C of 8.27.6.12 NMAC. Such movement is not considered a transfer. The license issued by the new agency is considered a new license and conforms to all licensing standards. It is the responsibility of the receiving agency to review the existing file and incorporate copies, if provided, of all required informa-

tion in the receiving agency's file. All missing information must be developed and the home study is updated prior to issuance of the foster home license or adoption approval. Treatment foster home moves conform to the Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11 NMAC.

[8.27.6.13 NMAC - N, 11-1-2002]

#### **8.27.6.14 AGENCY PROTOCOL:**

It is the responsibility of each agency to be aware of and conform to the following:

**A.** Interstate Compact on the Placement of Children: An agency shall comply with the Interstate Compact on the Placement of Children (ICPC) for all placements that are covered by the ICPC.

**B.** Indian Child Welfare Act: An agency shall comply with the Indian Child Welfare Act.

**C.** Multi-Ethnic Placement Act: An agency shall comply with the Multi-Ethnic Placement Act (MEPA).

**D.** Adoption and Safe Families Act: An agency complies with the Adoption and Safe Families Act (ASFA) with regards to children in the custody of CYFD and as otherwise described in these standards.

**E.** Inter-ethnic Placement Act: An agency shall comply with the Inter-ethnic Placement Act (IEPA).

**F.** Rights for Families: An agency establishes an administrative review process available to any family or individual whom the agency refuses a license, relicense or approval for adoption. As part of the denial notification, the agency provides the specific reasons for the denial decision in writing to the family or individual. The agency's administrative review process reflects the process established for foster and adoptive homes licensed by CYFD. Complaints that the agency is not following the administrative review process are investigated by CYFD.

[8.27.6.14 NMAC - N, 11-1-2002]

#### **8.27.6.15 INTER-COUNTRY ADOPTIONS:**

**A.** An agency conducting inter-country adoptions adheres to all requirements of the state of New Mexico as well as the requirements of the sending country. These requirements are made a part of the policy and procedures of the agency and include, but are not limited to:

- (1) Pre-adoption requirements
- (2) Post-placement requirements
- (3) Post-adoption requirements

**B.** Requirements and conditions of the Hague Convention, as ratified by Congress, are incorporated into the poli-

cies of the agency within time frames as set by Congress, or with in ninety (90) days from ratification if no time frame is given.

[8.27.6.15 NMAC - N, 11-1-2002]

#### **8.27.6.16 RECORDS AND REPORTS**

**A.** Separate records are kept for foster parents, adoptive parents, and the child/family of origin. The child's record may be combined with the family of origin until such time as an adoptive placement is made. At the time of the adoptive placement, the child's record is separated, removing all identifying information of the family of origin. Case records are continuously updated and easily accessible to the agency staff and CYFD.

**B.** All client case records are confidential and are to be used and released according to applicable provisions of New Mexico law.

**C.** Adoptive parent and foster parent records are kept in accordance with standards set forth in the Adoption Act Regulations, 8 NMAC 26.3, and/or Licensing Standards for Foster Care, 8 NMAC 27.3, including, but not limited to:

(1) The agency maintains in the file the annual clean well water certification if the home uses well water as a water source.

(2) The agency maintains in each file the home safety checklist. The home safety checklist is updated annually at recertification. This form may be requested from CYFD, but is, at a minimum, to reflect each safety category as developed by CYFD and outlined in foster care licensing standards and adoption regulations.

(3) The agency maintains a current copy of all criminal record checks and abuse/neglect checks. Requests for abuse/neglect checks are made to CYFD using the authorized form and are signed by the potential adoptive or foster parent, and are notarized. The agency renews state and local criminal records checks annually, and the FBI fingerprint check and abuse/neglect check every two years.

(4) The agency is to maintain in each file the original home or pre-placement study and all subsequent updates or addendum. These are filed in sequence. In addition, the foster or adoptive parent record contains a separate documentation section which lists each placement in the home including the name of child, dates of placement, the reason for a child's removal from the home, and, if a disruption occurs, the foster or adoptive parent's analysis of what occurred. The highest-ranking clinical supervisor to the social worker for the case includes his/her analysis of the placement and the reasons for the disruption, if appli-

cable. This will be used during the matching of the foster or adoptive parent to prospective foster or adoptive children.

**D.** In accordance with ASFA requirements for the reporting and tracking of abuse and neglect in foster homes, all foster homes are registered with CYFD.

(1) Registration is immediate upon the licensing of the home and prior to the agency placing a child in the home.

(2) The agency notifies CYFD with in 10 days of a home being delicensed.

(3) All homes licensed prior to the effective date of the regulations are registered with CYFD with in 30 days of promulgation.

**E.** Child's Record: The record of the adoptive and/or foster child contains the information required by the Adoption Act, Licensing Standards for Foster Care, the Adoption Act Regulations, for inter-country adoptions, the Hague Convention, and the following:

(1) These requirements apply to all children in the care of a licensed child placement agency and are not restricted to children in the custody of Department.

(2) Placement History Section: A placement history section containing a chronological summary of the child's placements, including the name(s) and address(es) of the foster home(s) of all the child's placements, the dates of each placement and the child's adjustment to each placement, including progress, problems and their resolution, and reasons for removal, disruption, and/or replacement. The placement history records all formal and informal placements since birth:

(a) For children placed in foster homes, this section shall record in detail the reason a child is moved from one home to another, i.e., specifics regarding the child's behavior, family problems.

(b) For children placed in adoptive homes, this section contains the name and address of the adoptive parents and a description of the child's adjustment in the home up to the time of filing of the post-placement report.

(c) For foster and adoptive homes, this section includes all documented efforts to secure the all placement information, such as letters, telephone calls to the social worker or parents.

(3) Placement Plan: If a child is in an alternate placement for over six (6) months awaiting adoptive placement, that child's placement plan may be reviewed every six (6) months by CYFD. Such review is documented in the child's case record.

(4) Progress Report for Foster

**Children:** The notes reflect the child's activities, behaviors, school issues, medical issues and emotional state and the foster parent's observations of the child. Progress notes are, at a minimum, updated on a weekly basis.

**(5) Education:** The agency compiles and maintains documentation of the child's education status, needs and history. The documentation includes information provided by the school to the agency and is updated, at a minimum, each semester and the signed confidentiality statement of the surrogate parents.

**(6) Medical:** The agency compiles and maintain documentation of the child's medical needs, medications and history.

**(7) Matching:** The agency documents in the child's file the process used to determine that the child was being placed appropriately, including the care givers' attributes and deficits as they relate to the child's needs.

**(8) Full Disclosure:** The agency documents in all child records, information required by 32A-5-3(J). The disclosure of information shall be documented on a form developed by the agency consistent with Adoption Act Regulations, 8 NMAC 26.3.18.4. The form documents that information is available, given and understood, or what information is not available, to the foster or adoptive parent.

**(9) Permanency Plan:** The child's permanency plan is documented clearly, and is described in accordance with CYFD policy, 8.10.8.8 NMAC. It is the agency's responsibility to know the plan and document accordingly. Department children shall have the plan as designated by the court. In the case of children not in department custody, the agency shall staff and designate the plan.

**(10) Quarterly Report:** A report of services is included in the record. The report summarizes the services provided, home and office visits, treatment needs, issues, and prognosis, relationship with foster parents, current medical and school information, and the child's progress toward discharge. If the child is dually diagnosed, the plan to address both diagnoses is included. Any written report covering these topics applies, but must be identified as such. Each report includes the permanency plan, using CYFD's definitions. The reports shall be subdivided into the identified sections. The report is provided to CYFD social worker at least quarterly and includes dates of all professional staff visits to the child and the location of the visit.

**F. Children in Department Custody:** Treatment foster care case planning is reflective of the case plan developed by CYFD and is never in conflict with

CYFD case plan or current court orders. Whenever possible, the treatment foster care coordinator attends staffing meetings with department staff to determine that the case plans are consistent.

**G. Closed Files:** Adoption and foster care records are retained at the agency in locked files for at least five (5) years from the date of case closure. All records are preserved either through micro-filming, electronic retention, or by forwarding the cross-referenced or combined records to CYFD for permanent storage in state archives, or by retaining such records within the agency. In the event an agency is closed or goes out of business, the agency will deliver to CYFD all copies of its client and administrative records. Contents and organization of case materials within each record are kept in accordance with all applicable laws, regulations and conventions.

**H. Administrative Records:** Administrative records are current, readily accessible, and show the location and identity of all children and families being served. Any and all portions of such files pertaining to the identity of the child are confidential.

**I. Quarterly Reports:** An agency submits to CYFD a quarterly statistical report of the services provided by the agency for the first year of operation. After renewal of the agency's standard license, the agency submits semi-annual reports to CYFD. These reports are prepared on forms provided by CYFD and shall include:

- (1) Foster home statistics:**
  - (a)** The number of applications received.
  - (b)** The number and types of foster home applicants licensed by type.
  - (c)** The number of applicants denied.
  - (d)** The number of licenses revoked.
  - (e)** The number of applications pending at the end of the reporting period.
  - (f)** The number of applications withdrawn.
  - (g)** The names of all family members of all homes transferring to other agencies and the receiving agency and the reason for the transfer. Should foster children reside in the home, the report shall also document how continuity of care was maintained.
  - (h)** The number of foster homes operating under the agency's supervision at the end of the reporting period.
  - (i)** All complaints, incidents and abuse neglect reports, with complainant's identifying information, made regarding specific homes or the agency and information regarding resolution of such.
  - (j)** Any other specific data

requested by CYFD.

**(2) Adoptive home statistics** to be included in the quarterly report:

**(a)** The number of applications received from prospective adoptive parents during the reporting period.

**(b)** The number of applications denied.

**(c)** The number of applications withdrawn.

**(d)** The number of adoptive studies pending.

**(e)** The number of agency adoptive studies approved and waiting.

**(f)** The number of agency adoptive studies not approved.

**(g)** The number of agency adoptive studies withdrawn.

**(h)** All complaints, with complainant's identifying information, made regarding the agency.

**(i)** The names of homes transferring to other agencies and the reasons given.

**(j)** Any other specific data requested by CYFD.

**(3) Foster children statistics** included in the quarterly report:

**(a)** Number of children placed in foster care during the reporting period.

**(b)** The number of foster children discharged from placement during the reporting period.

**(c)** The number of foster children remaining in foster care placement at the end of the reporting period.

**(d)** The number of children removed from one foster home and placed in a different foster home licensed by the agency.

**(e)** The number of children removed from one foster home and placed with another agency's foster home.

**(f)** The number of children removed from one foster home and placed in a hospital, RTC, group home, or shelter during the reporting period.

**(g)** The identity (first name and last initial) and date of placement of those children who have been in foster care for more than six months.

**(h)** The legal custodian(s) of those who have been in foster care for more than six (6) months.

**(i)** Any other child-specific data requested by CYFD.

**(4) Adoptive Children Statistics** included in the quarterly report:

**(a)** The number of children freed for adoption.

**(b)** The number of children physically placed with adoptive parents;

**(c)** The number of adoption disruptions.

**(d)** The number of adoptions finalized.

(e) Any other child-specific data requested by CYFD.

(5) Inter-country adoptive home statistics to be included in the quarterly report:

(a) Number of children identified for placement.

(b) Names of children and adoptive families and identifying information of children physically placed.

(c) Number of children referred and waiting for physical placement.

(d) Names of children and families where there has been a report of abuse/neglect, the disposition of the investigation and if the report resulted in the child being removed from the adoptive home.

(e) Names of children and families where a disruption has occurred or is in the process, the plans for the child, the new adoptive home, if any, and what efforts were made to assist in avoiding the disruption.

(f) Any other child-specific data requested by CYFD.

(6) Each agency attaches to their quarterly report a list of applicants and their status and a separate list of foster parents or adoptive parents who maintain a license or certificate for adoption.

**J. Independent Services Statistics:** The relevant statistics as described in Subsection I of 8.27.6.16 NMAC shall be submitted for all services provided by the agency. The types of services, include, but are not limited to, adoptive and foster home assessments, matching procedures, parent training, placement, and adoption post-placement and post-decree services.

**K.** The treatment foster care agencies, adoptive agencies and CYFD only may access information in 8.27.6.16 NMAC, Records and Reports.  
[8.27.6.16 NMAC - N, 11-1-2002]

## **8.27.6.17 PERSONNEL QUALIFICATIONS AND PROCEDURES:**

**A.** The staff of an agency includes, at a minimum an executive director and a placement supervisor, and may include placement workers. The positions of executive director and placement supervisor may be held by the same individual that provided the person meets the minimum qualifications for the higher position.

(1) Executive Director: The executive director of a placement agency works in the New Mexico office and is able to demonstrate through documentation, knowledge of child welfare services and the circumstances which children and families experience in the substitute care or adoptive process. The minimum acceptable requirements of the executive director of an agency

are:

(a) A graduate degree from an accredited college or university program in one of the following fields: social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling, or counseling. Another related degree may be accepted by CYFD provided the applicant can demonstrate, through certified transcripts, that the degree is equivalent to one of those named.

(b) A minimum of two years experience providing social services in a licensed child placement agency or a state child placement agency with at least one (1) year of supervisory experience.

(2) Placement Supervisor: A placement supervisor is required to possess a bachelors degree from an accredited college or university program in the following fields; social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling, or counseling. Another related degree may be accepted by CYFD provided the applicant can demonstrate, through certified transcripts, that the degree is equivalent to one of those named. The placement supervisor works in New Mexico. A placement supervisor has at least one (1) year of experience providing social services in a licensed child placement agency or a state child welfare agency.

(3) Placement Worker: The placement worker has a minimum of a bachelor's degree from an accredited college or university in social work, psychology, family studies, guidance and counseling, or counseling. Another related degree may be accepted by CYFD provided the applicant can demonstrate through certified transcripts that the degree is equivalent to one of those named.

**B. References:** At least three (3) professional/character references are obtained by an agency for each potential professional employee prior to his or her employment. One of these references is from the previous employer and/or a professional colleague who has direct knowledge of the qualifications of the potential employee. The agency documents in the personnel file all telephone or in person contacts.

**C. Criminal Records Check:** An agency conducts a criminal record check and abuse and neglect check on all potential employees. The standards for foster home licensing apply to all employees. The complete criminal records check is conducted every fifth year of continuous service thereafter. The criminal records check is conducted in accordance with procedures set forth in the Adoption Act Regulations, 8 NMAC 26.3. The agency takes appropriate action with regard

to a criminal record discovered during the five-year period between criminal records checks.

**D. Employment History:** An agency obtains a relevant employment history on each potential employee prior to employment and verifies requisite experience or document attempts to accomplish such in the personnel file.

**E. Not Retroactive:** The educational and experience requirements contained herein do not apply to individuals continuously employed by an agency on or before the effective date of these regulations.

**F. Personnel Policy:** A copy of the agency's personnel policy is given to each employee at the time of employment. Documentation that the policy was given to the employee is maintained in the personnel file.

**G. Staff Training:** An agency documents a minimum of 15 hours of training relevant to the position, per year, for each of the agency's full-time professional employees, and ten hours of training relevant to the position, per year, for each of the agency's part-time (20 hours or less) professional employees. All applicable licensing requirements apply, which may lead to more hours than the requirements of CYFD, but shall not be less. The agency maintains in the contract employee file proof of license that reflects the level of work contracted for with the individual.

**H. Employee Personnel File:** A personnel file is maintained for all employees of the agency, and shall be available to CYFD for inspection. Each file includes, at a minimum:

(1) Application: The employee's employment application showing qualifications and experience.

(2) Academic Transcripts: The official academic transcripts.

(3) Disciplinary Actions: Documentation of any disciplinary action taken with respect to any employee.

(4) Evaluations: Any evaluations of work performance.

(5) Criminal Record Check Results: The results of the criminal records check as issued by CYFD.

(6) Abuse and Neglect Checks: The results of a check of CYFD's management information system.

(7) Training: Documentation of training name, where held, purpose/content and hours.

(8) License: A copy of an employee's professional license when applicable.

(9) Abuse and neglect reporting: A signed statement of understanding by the employee of the requirements to report suspected abuse and neglect.

**(10) Child Placement Agency Standards:** A signed statement by the employee of their receipt of the standards, laws, and conventions pertaining to the operation of a child placement agency.

**(11) Confidentiality:** Any individual who is employed by agency shall sign a statement acknowledging the confidentiality rights of the children and families that are or may become clients of the agency. The written confidentiality statement shall be kept in the individuals file.

**I. Volunteer and Contractor File:** A separate file is maintained on each individual or agency not employed by the agency, but conducting business on their behalf and includes, but is not limited to:

**(1) Contract:** The contract, which outlines the specific requirements, qualifications and experience and limitations of the contract.

**(2) Academic Transcripts:** The official academic transcripts of individuals working under the contract, if required under the contract.

**(3) Disciplinary Actions:** The agency documents all problems in the file and all actions taken regarding the contracted agency or individual.

**(4) Evaluations:** Any evaluations of work performance.

**(5) Criminal Record Check Results:** The results of the criminal records check as issued by CYFD.

**(6) Abuse and Neglect Checks:** The results of a check of CYFD's management information system.

**(7) License:** A copy of the current professional license, if required under the contract.

**(8) Abuse and neglect reporting:** A signed statement of understanding by the contractor of the requirements to report suspected abuse and neglect.

**(9) Child Placement Agency Standards:** A signed statement by the contractor of their receipt of the standards, regulations, laws, and conventions pertaining to the operation of a child placement agency.

**(10) Confidentiality:** Any individual or agency who volunteers for or is contracted by the agency signs a statement acknowledging the confidentiality rights of the children and families that are being served by or may become clients of the agency.

[8.27.6.17 NMAC - N, 11-1-2002]

## **8.27.6.18 CYFD SUPERVISION**

**A. CYFD retains the right to call meetings and/or training for adoption**

agencies, foster care agencies or foster care and adoption agencies. The agency is responsible for all information given out during the meeting. Not attending the meeting is not construed as reason for not having the information.

**B.** All information regarding licensed agencies is available to other state departments and divisions and other states conducting licensing of agencies and the placement of children.

**C. Investigation Authority:** In order to evaluate the safety and continuity of care for children placed with the agency, CYFD can:

**(1)** Enter, inspect, and photograph the agency's or applicant's offices and physical facilities.

**(2)** Inspect and copy all agency financial records, files, papers, and correspondence which pertain directly or indirectly to the issuance and maintenance of the license and the issuance and maintenance of foster home licences and/or adoption certificates.

**(3)** Interview, as CYFD deems appropriate, agency staff, consultants, contractors, foster parents, adoptive parents, governing body and advisory board members, and any other agency personnel, volunteers and clients.

**D. Scope of Supervision and Investigation:** Inspections and interviews relate to referrals of abuse/neglect, licensing requirements, or complaints received by CYFD related to the operation of the agency, and may be conducted at any required time, with or without prior notice or agreed upon appointment.

**E. Investigations of Abuse/Neglect Referrals:**

**(1)** CYFD investigates all accepted reports of allegations of abuse or neglect involving foster parents and pre-adoption parents regarding children placed in their home, when the home is licensed or approved by CYFD or is a home of a child placement agency licensed by CYFD. When the report is accepted for investigation, the priority is an emergency.

**(2)** All reports of abuse and/or neglect are considered exigent in nature. Allegations not appropriate for investigation by CYFD are referred to law enforcement and the prevention and intervention division, with notification to the assigned social worker or legal guardian for a safety assessment.

**(3)** An assigned referral for investigation regarding a home that is licensed by an agency is regarded as a referral on the home. Decisions regarding the allegation of abuse or neglect are made regarding the home.

**(4)** No new placement may be

made in the home during a pending investigation. Existing placements in the home are evaluated for safety, with a decision for maintaining the placement dependent on the continued safety of the child.

**(5)** All referrals regarding homes licensed by an agency are also referred to the licensing and certification unit in the prevention and intervention division and to licensing in the protective services division.

**F. Allegations of Abuse or Neglect and/or Complaints Regarding an Agency:** CYFD investigates allegations of violations of policy, procedures and/or licensing regulations. Complaints are only investigated when directly related to violations of these regulations. Allegations of abuse and/or neglect regarding an agency (agency staff) are considered a possible policy violation. Dependent on the allegations, an investigation of the agency by CYFD licensing personnel may ensue. CYFD determination may result in:

**(1)** No action being taken.

**(2)** A corrective action plan.

**(3)** Suspension of the license pending the completion of a corrective action plan.

**(4)** Closure of the agency.

**G. Notification and Release of Information on Abuse and Neglect Investigations and Complaints:**

**(1)** Allegations of abuse and/or neglect of a child in CYFD custody are handled in accordance with division policy and procedures. Notification to the parties of a referral and subsequent decisions follow investigation policy and procedures.

**(2)** CYFD, absent an emergency, provides an agency notice of a complaint within 10 working days from receipt of the complaint. The notice contains the nature of the complaint via certified mail to the licensed agency's current address or by personal contact with the executive director of the licensed agency.

**(3)** A listing of the complaints and the findings of such are kept in each agency's file. Confidentiality is maintained regarding specific individuals who make complaints and any children involved. The nature of a complaint and the finding is released. No specifics or details of an investigation are released, except as requested under the Public Records Act.

**(4)** CYFD may, upon written request, release to third parties the number of and years of the complaints and substantiated reports of allegations of abuse/neglect against the agency or one of the licensed homes, the number of complaints or allegations that were substantiated, the nature of the complaints or allegations, and compliance by the agency with a corrective action plan.

**H. Corrective Action:** A corrective action plan may be instituted by CYFD when the agency is out of compliance with the state regulations or as a result of a substantiated complaint. Corrective action is not progressive. At CYFD's discretion depending on the severity of an agency's non-compliance, any of the following actions may be taken:

(1) When there are no safety issues to the children:

(a) Letter of Correction: CYFD licensing staff issues information to the agency outlining the deficiencies, instructing the agency to correct the deficiencies and gives warning of potential division actions. The agency develops a corrective action plan and returns it to CYFD within 10 working days for review.

(b) Corrective Action Plan: CYFD licensing staff directs a program to correct deficiencies within the time frame specified by PSD. The agency submits a written corrective action plan, which addresses the deficiencies and follow the time frame given by CYFD. At its discretion, CYFD may work with the program in the development of the corrective action plan.

(c) Probation, with Restricted Admissions: In addition to a corrective action plan, CYFD licensing staff restricts the program from accepting any new clients or expanding into additional services until the identified deficiencies are corrected. CYFD notifies a licensee when it intends to sanction the agency by placement on probation with restricted admissions in writing. Notice is by certified mail sent to the current address shown on the license, or by personal delivery to the person authorized to accept service on behalf of the agency, at least (10) working days prior to the beginning of the probation. The notice states the reasons for the action, its effective date, and informs the licensee of its right to appeal within ten (10) working days from notice.

(2) When safety issues for children in care exist:

(a) Emergency Suspension of Agency license: CYFD licensing staff temporarily prohibits the operation of the agency by withdrawal of the license when immediate action is required to protect health and safety. This may take place prior to a hearing on the matter and/or correction of deficiencies. Transfer of children and/or licensed homes to other agencies may be required.

(b) Renewal Denial or Revocation of Agency license: CYFD licensing staff may revoke a current license or deny renewal of a license based upon deficiencies related to one or all of the following:

(i) Abuse, neglect or exploitation, as defined in NMSA 1978, 32A-4-2, of a child or client by a licensed home or staff of the agency.

(ii) Presence of, and/or history of, health and safety deficiencies as found by the regulatory/licensing body in current or previous surveys or on-site visits.

(iii) Presence of, and/or history of, license revocation, suspension or denial or penalties or other similar corrective actions taken by a regulatory body or court of competent jurisdiction in New Mexico or another state.

(iv) Noncompliance with state, county and municipality health and safety regulations.

(v) Records which are out of compliance with the prescribed record content or deficiencies that were present in the last review and have not been corrected.

(c) Any action taken against an agency which requires correction are in writing and outline a specific amount of time with in which the correction(s) must be completed.

**I. Suspension or revocation of license:** CYFD may suspend or revoke an agency's license if at any time during the license period a licensee fails to meet or maintain the licensing requirements or fails to provide information requested by CYFD.

(1) Notice: CYFD notifies a licensee whose license it intends to suspend or revoke in writing. Notice is by certified mail sent to the current address shown on the license, or by personal delivery to the person authorized to accept service on behalf of the agency, at least (10) working days prior to suspension or revocation. In the case of safety concerns for children, immediate removal shall occur, with CYFD then following each step regarding the suspension or revocation. The notice states the reasons for the action, its effective date, and informs the licensee of its right to appeal within ten (10) working days from notice.

(2) Agency Responsibility: When an agency's license is revoked by CYFD for any reason, the agency assists CYFD in arranging for the care, custody and control of any children currently being served, and for the preservation and transfer of records. The agency assists in the transfer of a licensed home, in good standing, to another agency when such would be in the best interest of the child (ren) placed in a different home.

[8.27.6.18 NMAC - N, 11-1-2002]

#### **8.27.6.19 LICENSE RENEWAL PROCESS**

**A.** A license is renewed or

terminated based on the agency's written request for renewal and CYFD's review and assessment of agency operations. Lack of a written request, with the required documents attached, shall be interpreted as a voluntary closure.

**B.** The agency requests renewal of its license by certified letter at least ninety (90) calendar days before the expiration of the current license.

**C.** Upon request for license renewal, the agency submits to CYFD its financial review or audit, agency board minutes, agency advisory board minutes, and agency statistics for the current licensing period. If changes have occurred with respect to personnel or other operations, the agency submits documentation reflecting such changes with the renewal request. All applicable attachments are included with the request or the request is not considered valid and CYFD shall advise the agency of such.

**D.** If an agency fails to file a renewal request letter, the license may automatically be terminated thirty (30) days from the expiration date shown on the face of the existing license. The agency will assist in the smooth transfer of the children and families to other agencies, so that there is no disruption in the care of the children.

**E.** Before renewing an agency's license, CYFD determines that the agency is in compliance with all applicable requirements by conducting an on site visit which includes interviews, case record reviews and visits to the facilities maintained by the agency. CYFD is not responsible for locating documents when files are not kept organized and up to date.

**F.** If CYFD has received a request for license renewal and fails to decide and notify the agency prior to the expiration date of the present license, a license extension may be issued to the agency for a maximum of ninety (90) calendar days.

**G.** CYFD notifies the agency in writing of its licensing decision before the expiration date of the existing license or the expiration of the license extension. Notice is by certified mail sent to the current address shown on the license, or by personal delivery to the person authorized to accept service on behalf of the agency, at least (10) working days prior to the action. Arrangements is be made for the immediate removal of children from the agency and placement in an alternate setting. The notice states the reasons for the action, its effective date, and informs the licensee of its right to appeal within ten (10) working days from notice.

[8.27.6.19 NMAC - N, 11-1-2002]

**8.27.6.20 APPEAL RIGHTS**

**A. Appeal Rights:** An applicant for initial license or renewal of a license or a holder of a license sought to be denied, suspended, revoked or placed on probation has the right to appeal proposed actions by CYFD regarding the license, as per NMSA 1978, Section 40-7A-6 (1999) and department guidelines.

**B. Standing to Appeal:** Only the applicant or agency whose license is affected may appeal the division's action regarding the license.

[8.27.6.20 NMAC - N, 11-1-2002]

**8.27.6.21 AGENCY VOLUNTARY CLOSURE:**

When a licensee voluntarily closes its agency, the licensee notifies CYFD in writing at least thirty (30) calendar days before the licensee's closure date. The licensee provides CYFD a written plan summarizing the preparation and arrangements for the care, custody and control of any children currently being served, and makes arrangements for the preservation and transfer of records to CYFD.

[8.27.6.21 NMAC - N, 11-1-2002]

**HISTORY OF 8.27.6 NMAC:****Pre-NMAC History:**

HSSD 75-7, Minimum Requirements for Licensing of Child Placement Agencies, 9/15/75.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 8/22/86.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 1/29/87.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 6/18/87.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 11/18/87.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 8/22/88.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 3/28/89.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 3/20/90.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 9/18/90.

SSD 5.4.0, Substitute Care for Children, Licensing Standards for Foster Homes, 3/15/91.

SSD 7.5.0, Adoption - Child Placement Agency Regulations, 8/22/86.

SSD 7.5.0, Adoption - Child Placement Agency Regulations, 6/18/87.

SSD 7.5.0, Adoption - Child Placement

Agency Regulations, 8/22/88.

SSD 5.5.0, Foster Care Child Placement Agency Licensing Regulations, 12/7/89.

**NMAC History:**

8 NMAC 27.3, Licensing Standards for Foster Care, 1/13/97.

8 NMAC 27.2, Foster Parenting, 6/16/97.

8.27.2 NMAC, Foster Parenting, 2/1/2001.

**History of Repealed Material:**

8 NMAC 27.2, Foster Parenting - Repealed 2/14/2001.

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

### This is an amendment to 2.82.2 NMAC Section 11.

#### 2.82.2.11 EMPLOYEES EXCLUDED FROM COVERAGE:

**A.** Any person enrolled as a student in any of the administrative units outlined in Subsection A of 2.82.2.8 NMAC, and who is also employed by the administrative unit in which he is enrolled, shall be considered a student and not eligible for either "regular" or "provisional" membership under the ERA, except that members of the faculty or full-time staff, who may be incidentally enrolled in classes, shall not be affected by this rule. Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the ERA. This includes any and all participation in the Teacher Enhancement Program or participation in similar graduate programs.

**B.** Any person whose full time equivalency is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. Any person employed on the effective date of this rule and who is currently covered under the Act shall continue to be covered for the duration of that employment.

(1) An ERA retiree may return to employment (includes "substitution") and earn up to \$10,000, adjusted by the annual change in the Consumer Price Index of the previous calendar year, beginning with the fiscal year which starts on July 1, 2002 or the amount possible under the .25 or less FTE provision, whichever is greater, without effect to the retirement benefit if:

(2) In the event a retired member enters into an agreement which provides for or actually has earnings in excess of the above limits, the retirement benefit will be suspended for the duration of the employ-

ment, and the member will be returned to an active status.

**C.** Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a "substitute" and shall not be covered under the ERA. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a "substitute" and must be covered under ERA.

**D.** Independent contractors who perform services for administrative units on a fee basis are not eligible for membership under the ERA as a result of having performed such service, and sums paid for such service shall not be covered for contributory purposes. To be classified as an independent contractor a person must meet at least the following criteria:

(1) Registered with the New Mexico Department of Taxation and Revenue to pay gross receipts tax;

(2) Contract must have been bid in accordance with the State Procurement Code;

(3) The person is not eligible for fringe benefits afforded regular employees of the local administrative unit and is not paid through the unit's payroll system;

(4) Consultants must meet the criteria for an independent contractor established by FICA.

(5) The Board shall provide each local administrative unit with Employee vs. Independent Contractor (IC) Determination form for their use.

(6) The Board shall further reserve the right to examine such completed forms and copies of contracts or other agreements that exist between employers and individuals for the purpose of determining the relationship.

**E.** All students enrolled in any public school, grade 1-12.

**F.** Employees who have a portion of their salaries paid through the Comprehensive Employment and Training Act (Public Law 95-524), shall not be covered for contributions on that portion except those employees who have vested.

[6-30-99; 2.82.2.11 NMAC - Rn, 2 NMAC 82.2.11, 11-30-2001; A, 10-31-2002]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

### This is an amendment to 2.82.3 NMAC Section 9.

#### 2.82.3.9 REFUNDS OF CONTRIBUTIONS:

**A.** In the event of the death of a member, who does not qualify for the



automatic Option B coverage or who has rejected that coverage, prior to the effective date of retirement or disability, the deceased member's contributions, together with interest at the rate earned by the fund during the preceding year, shall be paid to the member's surviving beneficiary or estate.

B. In the event that a member should terminate employment for reasons other than retirement, disability, or death, he shall be entitled to a refund of his contributions, plus interest, less any disability benefits which he might have previously received.

C. Notwithstanding the provisions of Section 22-11-29, NMSA 1978, and under the provisions of Options B and C, if death should occur to both the member and the designated beneficiary prior to the combined retirement benefits received by the member and/or the beneficiary equaling total contributions by the member the difference shall be paid to the member's or beneficiary's estate less any disability benefits previously received by the member.

D. Any provisional member who is qualified to elect coverage under PERA and who does so after having contributed to the Educational Retirement Fund, shall be entitled to a refund of his contributions, with interest, if applicable.

E. In order to obtain a refund of contributions, the eligible member or his beneficiary, if the member is deceased, must file a written request with the Director of Educational Retirement on forms provided by the Board. Except for refunds due to death, forms are made available in the local administrative unit for the convenience of terminating employees. These forms are entitled "Request for Refund of Member's ERA Contributions", Form 3A. If the member is deceased, the beneficiary must notify the Director and furnish a copy of the death certificate, or other proof of death, whereupon the Director shall furnish the proper forms in order to make disbursement in the appropriate manner.

F. A refund of a terminated member's contributions shall be made as soon as practical after receipt of a fully executed refund request form in the office of the Educational Board. If the terminated member's last employer has certified the member's termination on the last ~~quarterly~~ employer report filed in the ERB office, or if the member's record is inactive, the refund may be processed without further certification of termination by the last employer. If the member requesting a refund has an active record, and is not certified to be terminated on the last quarterly report filed by his employer, the refund

request cannot be processed without the last employer's certification of termination on the refund request form.

G. Whenever a member's refund request is properly filed, with the appropriate certification of termination, and the member's termination date has passed, the Director shall refund the amount of contributions on deposit with the ERB through the date of the last quarterly reporting period, if the member desires, and any balance owing to the member shall be paid when received by the Educational Retirement Board.

H. Refund of contributions for any period of service performed subsequent to July 1, 1957, will cancel all "prior service" credit which may have been credited to the member at the time of the refund. Restoration of all contributions withdrawn, together with interest, will cause the prior service to be restored.

I. Member contributions which have been withdrawn from the Educational Retirement Fund by a member who has terminated employment, may be returned to the fund, together with appropriate interest, without the member being required to return to employment.

J. Whenever a terminated member leaves a balance of \$500.00 or less in his account, the account shall be closed into "unallocated income" after the following has occurred:

(1) The member shall have been terminated for a period of two years and;

(2) One or more attempts have been made to locate the member and refund the balance.

(3) If such balance is closed into "unallocated income" and the member subsequently returns to employment, the balance shall be restored to the member.

(4) If the member should claim the amount transferred, such amount shall be restored to his account and refunded to the member.

K. Whenever a terminated member shall have received a refund in excess of the amount due him, such excess shall be closed into "unallocated income" if it does not exceed \$100.00 after the following has occurred:

(1) The excess refund has been outstanding for a period of three years;

(2) One or more separate attempts have been made to collect the excess refund, at least one of which has been made through the office of the Attorney General, or the courts.

(3) If the member having had an excess refund closed into "unallocated income" should return to employment, such excess shall be charged to the member's account.

L. If a terminated member shall have received a refund in excess of \$100.00 over the amount due him and if the amount shall be deemed uncollectible by the Director of Educational Retirement, the matter shall be brought before the Educational Retirement Board for disposition.

M. Member contributions which have been withheld and paid to the Educational Retirement Fund, in error, for a member who is not eligible to receive service credit for the time covered by the withholding, shall be returned to the member, without interest, upon his written request. [6-30-99; 2.82.3.9 NMAC - Rn, 2 NMAC 82.3.9, 11-30-2001; A, 10-31-2002]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.4 NMAC Section 9.

### 2.82.4.9 ALLOWED SERVICE CREDIT:

A. For the purpose of granting allowed service credit, pursuant to Section 22-11-34A(4) a "public school or public institution of higher learning" in another state, territory, or possession of the United States shall be taken to mean one that is open to the public without regard to race, creed, or color, and such school or institution need not be tax supported. The out-of-state public school shall be accredited by the state in which it is located or another accrediting organization which is recognized by the state. Service credit purchasable pursuant to Section 22-11-34, Paragraph A (4a) shall not include employment as a graduate assistant, teaching assistant or teaching fellow or in any position of a similar nature while the member was enrolled as a student in that institution.

B. The Director shall use the salary information on file with the Board in determining "average annual salary" under Section 22-11-34, Paragraph A (3). If there have been years of service performed by the member for which there are no salaries recorded with the Board, the applicant for military service credit shall be required to furnish reasonable evidence, if such is available, satisfactory to the Director of the salaries earned during such years. If reasonable evidence of the salaries earned is not available, the Director shall set amounts to be used which, in his opinion, are representative of reasonable annual salaries for periods of time involved for the position held by the applicant at that time.

C. When the actual cost of purchase of military service credit is calcu-

lated under Section 22-11-34, Paragraph A (3), the member's last full quarter earned salary and length of service through the last calendar quarter prior to the date on which he makes payment, shall be the last salary annualized and included in determining the overall "average annual salary".

D. Members who were not employed on the effective date of Section 22-11-34, Paragraph A (3), but who have earned service credit and military service, shall have three years after the date of their re-employment in which to consummate purchase of the service credit provided under that section.

E. Members who were employed on the effective date of Section 22-11-34, Paragraph A (3), having no previous military service and who later terminate employment and subsequently serve in the military service and are then re-employed, have three years from the date of such re-employment in which to consummate purchase of the service credit provided under that section.

F. No retirement service credit shall be allowed for military service except for regular active duty in the armed forces of the United States.

G. Purchase of allowed service credit as provided in Section 22-11-34, Paragraph A (3), may be carried out ~~[while the member is either employed or unemployed, but may not be carried out while the member is retired.]~~ only while the member is currently employed by an Administrative Unit.

H. Notwithstanding the provisions of Subsection A of 2.82.3.8 NMAC the "annual salary" to be used in calculating the cost of allowed service credit described in section 22-11-34 (4) shall be an annualized salary. For the purpose of this rule, employment shall be viewed as either full-time or part-time employment, and an annualized salary shall be defined as follows:

(1) For full-time employees: The annual salary as defined in Subsection A of 2.82.3.8 NMAC.

(2) For part-time employees: The total remuneration for the part-time employment divided by the full-time equivalency.

(3) For employees on sabbatical leave: The amount that would have been earned during the entire year had the member been on regular assignment. In determining the full-time equivalency of an employee, the Director may refer to the administrative unit's approved budget for the fiscal year under consideration.

I. Prior to the purchase of allowed service credit under Section 22-11-34, Paragraph 4(d), NMSA, 1978, a mem-

ber must provide satisfactory evidence that the private school was accredited by the State Board of Education at the time of the member's employment.

J. The Board may accept rollover and employer pickup payroll deduction contributions for the purchase of allowed service credit if the following conditions are met:

(1) The payments must be all or a portion of the member's interest qualified under Section 401(a) of the Internal Revenue Code.

(2) The payments shall contain only tax-deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases or indemnifications to the Board against any and all liabilities that may be connected with the transfer, verifying that the proposed transfer is a qualifying contribution under the Internal Revenue Code.

(3) Payroll deductions and employer pickups are authorized by the governing body of the ERA employer.

(4) The Board may not accept rollover or employer pickup payroll deduction contributions in excess of the amount required to purchase the allowed service credit.

K. For payments to purchase allowed service credit which commence on and after January 1, 2002, the Board may accept rollover and transfers if the following conditions are met:

(1) Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of Internal Revenue Code sections 402(c), 403(b)(8), 408(d) or 457 (e)(16).

(2) Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Internal Revenue Code section 401(a) or 403(a), an annuity contract described in Internal Revenue Code section 403(b) to the extent permitted by Internal Revenue Code section 403(b)(13), or an eligible plan under Internal Revenue Code section 457(b) to the extent permitted by Internal Revenue Code section 457(e)(13).

(3) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases, or indemnification to the Board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

(4) Payroll deduction contributions shall no longer be allowed for the purchase of allowed service credit if the contri-

butions would commence on or after July 1, 2002.

(5) The Board may not accept rollovers or transfers in excess of the amount required to purchase the allowed service credit.

[6-30-99; 2.82.4.9 NMAC - Rn, 2 NMAC 82.4.9, 11-30-2001; A, 4-15-2002; A, 10-31-2002]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.5 NMAC Sections 10 and 15.

### 2.82.5.10 COMPUTATION AND COMMENCEMENT OF RETIRE- MENT BENEFITS:

A. Upon retirement, the following procedures shall apply with regard to commencement of the member's benefit:

(1) If the retiring member's employment terminated at least 90 days prior to the effective date of retirement, the benefit may be commenced at the end of the month following the effective date of retirement.

(2) If the retiring member's employment terminated within 90 days prior to the effective date of retirement, the retiring member's benefit may be estimated by the Director and commenced at the end of the month following the effective date of retirement.

(3) After the ~~[quarterly]~~ employer report is received from the administrative unit, reporting the retiring member's final earnings, the Director shall determine whether or not the estimated benefit is correct. If the estimated benefit is incorrect, the Director shall make the appropriate adjustment to the member's benefit, retroactive to the effective date of the benefit. This adjustment, if required, shall be made at the earliest practical date. The retiring member shall be advised regarding the nature of any such adjustment. An adjustment will be made in this manner if and only if the adjustment based upon the member's actual earnings would result in a monthly benefit which differs more than \$1 from the estimated benefit.

B. Whenever a retiring member completes the academic or fiscal year prior to July 1, he shall not be entitled to retirement benefits for the months of July or August if he returns to employment at the beginning of the next following academic or fiscal year. If a member shall have received benefits for such months, he shall be required by the Director to return the sums

received, to the Educational Retirement Fund, in accordance with Section 22-11-40, NMSA, 1978 Compilation.

C. The retiring member shall be furnished with copies of all computations including a listing of his service credit, and he shall have 90 days after receipt of same in which to file notice of correction with the Director, after which time the computations and service may not be corrected by the member.

D. A member's average annual salary as defined in Section 22-11-30 shall be the average annual earnings of the member in the twenty calendar quarters in which there were earnings preceding retirement or the average annual earnings of any twenty consecutive calendar quarters in which there were earnings, whichever is greater.

E. No member covered under the Educational Retirement Act prior to July 1, 1957 may receive a benefit computed under the terms of Section 22-11-44 unless such member shall have fulfilled all of the requirements of the retirement law repealed by the Educational Retirement Act; however, in determining whether the member has five years of service consecutive and immediately prior to the date of retirement, the Director may allow an interruption of such service of not to exceed one calendar quarter.

F. In determining a member's last five-year average annual salary, the Director shall use the reported earnings on which contribution has been made by the member during the twenty quarters of employment immediately preceding the member's date of termination, except that if a member's last employment terminated at least one month prior to the close of the calendar quarter (or one month prior to the close of the academic year if such ends in May), his last five years' earnings shall be the reported earnings upon which contributions have been made by the member during the five years of employment preceding the end of the month in which termination occurs. In such cases, any earnings in a calendar quarter shall be considered as earnings for the full quarter, except for the first quarter and the last quarter of the last five years of employment.

G. When the member's application for benefits has been approved and his effective date of retirement has been reached, the member shall then be retired.

H. Benefits shall not be commenced until the retiring member has elected the retirement benefit as provided in Section 22-11-30, or an optional benefit pursuant to Section 22-11-29.

I. Re-retirement benefits shall be computed in the following manner:

(1) The re-retirement benefit will be calculated in the same way as his last benefit and will be based on the last five-year average or the highest consecutive five-year average, whichever is greater, for which contributions were made, and his total service at re-retirement. The retirement benefit formula will be the same as at last retirement unless the member returns to employment for at least four quarters after the effective date of change in the formula. If this occurs, the benefit computation will be based on the benefit formula in effect at the time of re-retirement.

(2) The re-retirement benefit calculated above is reduced under the following conditions:

(a) At re-retirement the member's retirement age shall be his chronological age less any period of time(s) during which benefits were received while in retirement. If this age is under 60 and his total service is under 25 years, his benefit is reduced by .6% for each quarter year under 60, down to age 55, plus 1.8% for each quarter year this age is under 55.

(b) If the last benefit was payable as a reduced benefit under the terms of an option, the same terms and reduction shall apply to the re-retirement benefit.

(c) In no case can his re-retirement benefit be less than he was receiving when he returned to employment. [6-30-99; 2.82.5.10 NMAC - Rn, 2 NMAC 82.5.10, 11-30-2001; A, 10-31-2002]

#### **2.82.5.15 RETURN TO WORK:**

A. The twelve month consecutive break in service required under the return to work program of the Act shall mean that no service shall be rendered to any administrative unit by the retired member for this period. Such service shall be defined as including all employment whether full time, part-time including service ~~[of less than .25 FTE, or the \$10,000 per year limit, substitute teaching,]~~ allowed under Rule 82.2.11 B(1), substitute teaching, volunteering in a normally paid position, or services rendered as an independent contractor, an employee of an independent contractor or any other employment as described in 82.2.11.A through 82.2.11.D.

B. The consecutive twelve month break in service shall be calculated from the effective date of retirement until the first day of re-employment. To qualify for the return to work program, the break in service may have commenced at anytime, but must be at least 12 consecutive months directly preceding the retired member's return to work, as long as such re-employment commences on or after January 1, 2002.

C. Any and all time that a retired member has provided service to an administrative unit under the return to work program cannot be used in the calculation of retirement benefits.

D. No retired member is eligible for the return to work program of this act until they submit a signed and notarized return to work form as supplied by ERB, verifying their eligibility for the return to work program of the Act.

E. The date of suspension for any retired member shall be the last day of the month in which the member suspended retirement.

F. A retired member who was participating in the return to work program must wait a minimum of ninety (90) days from the date of suspension before he or she can purchase any withdrawn service.

G. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required form as described in 82.5.15(D) or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the Educational Retirement Fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the Board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to the ERB that they have terminated any and all employment that would disqualify them from retirement under the Act. To requalify for the return to work program, he or she must complete the minimum twelve month break in service as described in 82.5.15 calculated from the date of reinstatement of retirement

[2.82.5.15 NMAC - N, 11-30-2001; A, 12-14-2001; A, 10-31-2002]

### **NEW MEXICO EDUCATIONAL RETIREMENT BOARD**

**This is an amendment to 2.82.9 NMAC Section 8. This rule is being renumbered and reformatted to comply with current NMAC requirements.**

#### **2.82.9.8 [QUARTERLY] EMPLOYER REPORTS:**

A. Instructions for the preparation and handling of ~~[quarterly]~~ employer reports and monthly remittances by the administrative units shall be outlined in detail once each year and mailed to each administrative unit by the director.

B. Forms shall be prepared

for all regular reports and made available to the administrative units by the director.

C. Monthly contributions from employees and local administrative units shall be postmarked no later than the fifteenth (15th) day of the month following the month for which contributions are withheld.

(1) ~~Quarterly~~ Employer reports and contributions shall be postmarked no later than the fifteenth (15th) of the ~~month following the end of the calendar quarter~~ following month. The director may enter into an agreement with a local administrative unit for an extension of this deadline for the ~~quarterly~~ employer report. No such extension is available for submission of the contributions.

(2) When the fifteenth (15th) of the month is on a Saturday, reports and contributions are due the previous work day. If the fifteenth (15th) of the month falls on a Sunday or holiday, the report and contributions are due on the next workday.

(3) Local administrative units shall be assessed late charges for not submitting reports or contributions in accordance with the above schedule. Upon a written statement of hardship, the director may waive charges to the local administrative unit for reports. No such waiver of charges is available for contributions. The charges, if applicable, will be calculated at a rate equal to the state treasurer's overnight investment program rate plus one (1) percent. The rate will be applied daily and cumulatively for the period of time from the fifteenth (15th) to the date of postmark. The late charge shall be the greater amount calculated by applying the foregoing rate or ten dollars (\$10). The director shall report any and all such assessments and waivers to the board.

D. The director shall prepare forms, or make available other means for such regular reports from the administrative units as may be required in the administration of the Educational Retirement Act.

[6-30-99; 2.82.9.8 NMAC – Rn & A, 2 NMAC 82.9.8, 10-31-2002]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### NOTICE OF RULE RENUMBERING

The following rules in NMAC Title 20, Chapter 2, were renumbered and reformat-  
ted to comply with current NMAC require-

ments, effective 10-31-02:

FROM	TO
20 NMAC 2.1	20.2.1 NMAC
20 NMAC 2.2	20.2.2 NMAC
20 NMAC 2.3	20.2.3 NMAC
20 NMAC 2.5	20.2.5 NMAC
20 NMAC 2.7	20.2.7 NMAC
20 NMAC 2.8	20.2.8 NMAC
20 NMAC 2.10	20.2.10 NMAC
20 NMAC 2.11	20.2.11 NMAC
20 NMAC 2.12	20.2.12 NMAC
20 NMAC 2.13	20.2.13 NMAC
20 NMAC 2.14	20.2.14 NMAC
20 NMAC 2.15	20.2.15 NMAC
20 NMAC 2.16	20.2.16 NMAC
20 NMAC 2.17	20.2.17 NMAC
20 NMAC 2.18	20.2.18 NMAC
20 NMAC 2.19	20.2.19 NMAC
20 NMAC 2.20	20.2.20 NMAC
20 NMAC 2.21	20.2.21 NMAC
20 NMAC 2.22	20.2.22 NMAC
20 NMAC 2.30	20.2.30 NMAC
20 NMAC 2.31	20.2.31 NMAC
20 NMAC 2.32	20.2.32 NMAC
20 NMAC 2.33	20.2.33 NMAC
20 NMAC 2.34	20.2.34 NMAC
20 NMAC 2.35	20.2.35 NMAC
20 NMAC 2.36	20.2.36 NMAC
20 NMAC 2.37	20.2.37 NMAC
20 NMAC 2.38	20.2.38 NMAC
20 NMAC 2.39	20.2.39 NMAC
20 NMAC 2.40	20.2.40 NMAC
20 NMAC 2.41	20.2.41 NMAC
20 NMAC 2.42	20.2.42 NMAC
20 NMAC 2.43	20.2.43 NMAC
20 NMAC 2.60	20.2.60 NMAC
20 NMAC 2.61	20.2.61 NMAC
20 NMAC 2.62	20.2.62 NMAC
20 NMAC 2.63	20.2.63 NMAC
20 NMAC 2.64	20.2.64 NMAC
20 NMAC 2.71	20.2.71 NMAC
20 NMAC 2.74	20.2.74 NMAC
20 NMAC 2.79	20.2.79 NMAC
20 NMAC 2.80	20.2.80 NMAC
20 NMAC 2.98	20.2.98 NMAC
20 NMAC 2.99	20.2.99 NMAC

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.4 NMAC Sections 9, 11, and 14.

### 19.31.4.9 SEASON DATES:

#### A. General Seasons:

All trout and warm waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:

#### (1) Special Waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: McAllister Lake, Upper

and Lower Charette Lakes, Maxwell Lakes 13 and 14, and Clayton Lake.

(b) All waters in the Valle Vidal (Vermejo Tract of the Carson National Forest) shall be open from July 1 through December 31.

(c) Bonito Lake shall be open from April 1 through November 30.

(d) ~~Burns Canyon Lake at Parkview Trout Hatchery and~~ Santa Cruz Lake shall be open from April 1 through October 31.

(e) Burns Canyon Lake at Parkview Trout Hatchery shall be open from May 1 through October 31.

(2) Waters on National Wildlife Refuges Waters on U. S. National Wildlife Refuges shall be open for the taking of game fish in accordance with regulations of the U. S. Fish and Wildlife Service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the Fish and Wildlife Service has not regulated season dates.

### B. Special Kokanee Salmon Seasons, Dates, and Location

(1) The following waters shall be open October 1 through December 31 for the special kokanee salmon season: Abiquiu Reservoir, Chama River from El Vado Lake upstream to the west boundary of the Rio Chama Wildlife and Fishing Area, Eagle Nest Lake, El Vado Lake, and Navajo Lake.

(2) Heron Lake and the Pine River shall be open for the special kokanee salmon season from November 15 through December.

(3) Heron Lake, including the Willow Creek tributary, and the Pine River shall be closed to kokanee salmon fishing between October 1 and November 14.

[19.31.4.9 NMAC - Rp 19.31.4.9 NMAC, 4-15-02; A, 10-31-02]

### 19.31.4.11 DAILY BAG AND POSSESSION LIMITS:

#### A. Trout

(1) Waters with Reduced Bag Limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, Rainbow, Cutthroat, Lake, Brook Trout and Kokanee Salmon

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in 19.31.4.11(A. 2.a) NMAC (above).

(3) Special Kokanee Salmon Season: During the special kokanee

salmon season, the daily bag limit shall be 12 kokanee salmon in addition to the daily bag limit for trout, and no more than 24 kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess kokanee salmon at Heron Lake and Pine River during the closed kokanee salmon season (October 1 through November 14).

(4) Special Trout Waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(a) On those sections of the following waters, where only barbless lures or flies may be used, the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached: In Rio Arriba County: all waters lying within or adjacent to the Little Chama Valley Ranch (Edward Sargent Wildlife Area) including the Rio Chamito, Sexton Creek, and Rio Chama, excluding Nabor Creek and Nabor Lake; In Colfax County: the Shuree Lakes on the Valle Vidal; In Taos County: a posted portion of the Rio Pueblo between the bridge at Mile Marker 55 on State Hwy. 518 upstream approximately 1 mile to the Canon Tio Maes Trailhead; In San Miguel County: an approximately 1-1/2 mile posted portion of the Pecos River beginning approximately 1/2 mile above the confluence of the Mora River (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba County: a posted portion of the Chama River approximately 2.9 miles within the boundaries of the Rio Chama Wildlife and Fishing Area; In Catron County: a posted portion of Gilita Creek from the Gila Wilderness boundary downstream approximately 5 miles to its confluence with Snow Creek; In Rio Arriba County: a posted portion of the Rio De Los Pinos from USFS Boundary 24 at the junction of Forest Road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos County: a posted portion of Red River from the confluence of Goose Creek 1 mile upstream.

(b) The limit on the following section of the San Juan River where only barbless lures or flies may be used shall be: In San Juan County, in a posted portion of the San Juan River, from a point beginning approximately 1/4 mile downstream of Navajo Dam and extending downstream 3.5 miles to the east side of Section 16: the daily bag limit shall be 1 trout and no more than 1 trout shall be in possession except in the catch-and-release section. The angler must stop fishing in the section defined once the daily bag limit is reached.

(c) On those sections of the following waters, where only barbless lures or

flies may be used, no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan County: a posted portion of the San Juan River from Navajo Dam downstream approximately 1/4 mile; In Sandoval County: a posted portion of the Rio Cebolla from the Seven Springs Day Use Area upstream to its headwaters; In Sandoval County: a posted portion of the San Antonio River from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval County: a posted portion of the Rio Guadalupe from the Porter Landing Bridge downstream approximately 1.3 miles to Llano Loco Spring; In Taos County: a posted portion of the Rio Costilla from the Valle Vidal tract of the Carson National Forest downstream for approximately 2.4 miles to the confluence of Latir Creek; In Sierra County: the Rio las Animas within the Gila National Forest, Black Range Ranger District; In Mora County: the Pecos River in the Pecos Wilderness, above Pecos Falls; In Rio Arriba County: Nabor Creek and Nabor Lake on the Edward Sargent Wildlife Area; In San Miguel and Santa Fe Counties: Doctor Creek from 1/4 mile above its confluence with Holy Ghost Creek upstream to its headwaters; In Mora County: Rio Valdez in the Pecos Wilderness from 1/4 mile below Smith Cabin upstream to its headwaters; In San Miguel and Mora Counties: Jack's Creek from the water falls located 1/4 mile downstream of NM Highway 63 crossing upstream to its headwaters; In Taos and Colfax Counties: any stream on the Valle Vidal (Vermejo Tract - Carson National Forest).

(d) In Colfax County: on a posted section of the Cimarron River from the lower end of Tolby Campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession. Terminal gear shall be restricted to barbless lures and flies.

(5) On the following waters, the daily bag limit shall be 3 trout and no more than 3 trout may be in possession, although there are no special restrictions regarding the use of legal gear.

(a) In Taos County: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos Junction Bridge.

(b) In Taos County: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River State Fish Hatchery downstream to its confluence with the Rio Grande.

(c) In Taos County: the designated fishing pond at Red River State Fish

Hatchery.

(d) In Rio Arriba County: on a posted portion of the Rio Chama from the base of Abiquiu Dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu.

(e) In Sierra County: the Rio Grande from the power line crossing upstream of the confluence with Cuchillo Creek downstream to and including Caballo Lake.

(f) In Lincoln County: The Rio Ruidoso from the boundary between the Mescalero Apache Reservation and the City of Ruidoso downstream to Fridenbloom Drive.

(g) In Rio Arriba County: Burns Canyon Lake at Parkview Hatchery.

(6) Gila Trout: It shall be unlawful for any person to possess Gila trout (*Oncorhynchus gilae*).

#### **B. Warm-Water Fishes:**

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

(1) Striped bass 2 fish

(2) Largemouth, smallmouth, and spotted bass 5 fish

(3) Walleye 5 fish

(4) Crappie 20 fish

(5) White bass and white bass x striped bass hybrid 25 fish

(6) Northern pike 10 fish

(7) Catfish (all species, except bullheads) 15 fish

(8) All other warm-water game species 20 fish

**C. The following exception shall apply:**

(1) At Tingley Beach in Albuquerque; Lake Van (Chaves County); Oasis State Park; Greene Acres Lake (Curry County); Burn Lake (Dona Ana County); Escondida Lake (Socorro County); Aztec Pond (San Juan County); McGaffey Lake (McKinley County); Bataan Lake (Eddy County); Chaparral Lake (Lea County); Bosque Redondo (De Baca County); Carrizozo Lake (Lincoln County); Green Meadow Lake; Eunice Lake; and Jal Lake (Lea County): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan County, in the San Juan and Animas Rivers, not including Navajo Lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02]

**19.31.4.14 WATERS WITH AGE OR HANDICAPPED USE RESTRICTIONS:**

**A. Only persons under 12 years of age** may fish in the following waters: Shuree Kids' Ponds on Valle Vidal (Vermejo Tract-Carson National Forest); Valley Improvement Association ponds at Belen, Young Pond in Las Cruces, Harris Pond in Las Vegas, Spring River Park [at] in Roswell, and the Brood Pond at Seven Springs State Fish Hatchery.

**B. Only persons under 12 years of age, those 65 years and over, and handicapped persons** may fish in the designated Red River Hatchery Pond located at the Red River State Fish Hatchery, Blue Hole Park Pond (formerly Santa Rosa Seniors Pond), Estancia Park Lake at Estancia, and in ponds located in Harry McAdams Park.

**C. Only handicapped persons and those under 12 years of age** may fish in the Red River City ponds, and in the posted small Pond at Cowles.

**D. Olympic Pond:** Only persons under 12 years of age and those 65 years and over may fish in Olympic Pond located at Angel Fire.

**E. Burns Canyon Lake:** Only persons 14 years of age and under, those 65 years and over, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Burns Canyon Lake located near Parkview Hatchery. [19.31.4.14 NMAC - Rp 19.31.4.14 NMAC, 4-15-02; A, 10-31-02]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

**This an Emergency amendment to 19.31.10 NMAC, Section 20**

**19.31.10.20 AREAS CLOSED TO HUNTING, FISHING AND TRAPPING:** The following areas shall remain closed to hunting, fishing, and trapping, except as permitted by regulation.

**A. All State Game Refuges.**

**B. Sugarite Canyon State Park.**

**C. Rio Grande Wild and Scenic River Area.**

**D. All Wildlife Management Areas.**

**E. Valle Vidal Area.**

**F. Animas-Gray Peak Area.**

**G. Region M.**

**H. Sub-Unit 6B (Valles Caldera)**

[4-1-95; 1-29-99; 19.31.1.20 NMAC - Rn, 19 NMAC 31.1.20, 4-14-2000; 19.31.10.20

NMAC - Rn, 19.31.1.20 NMAC, 9-29-00; A, 10-11-02]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

**This is an amendment to 19.31.10 NMAC Sections 8, 9, and 18.**

**19.31.10.8 UNLAWFUL SUBSTANCE IN PUBLIC WATERS:** It shall be unlawful for any person, firm, corporation or municipality to introduce, directly or indirectly, into any public water of this state any substance that may stupefy, injure, destroy, or drive away from such water any protected ~~[mollusk, crustacean, fish, amphibian, reptile, bird, or mammal,]~~ species or may be detrimental to the growth and reproduction of those ~~[animals or their natural foods]~~ protected species except as exempted in 17-2-20 NMSA 1978.

[6-25-90; 19.31.1.8 NMAC - Rn, 19 NMAC 31.1.8, 4-14-2000; 19.31.10.8 NMAC - Rn, 19.31.1.8 NMAC, 9-29-00; A, 10-31-02]

**19.31.10.9 POSSESSION OR SALE OF PROTECTED SPECIES:** It shall be unlawful to possess, sell, or offer for sale all or part of any protected species except as provided below:

**A. License or Permit:** A person may possess protected species or parts thereof that they have lawfully taken (killed) under license or permit.

**B. Game Taken by Another:** Any person may have in their possession or under their control any protected species or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the protected species, or parts thereof, and which shall contain the following:

(1) The kind and number of game~~[-bullfrog,]~~ or furbearer parts donated;

(2) The date and county where the game~~[-bullfrog,]~~ or furbearer was lawfully taken;

(3) The donor's name, address, and the number of the hunting or fishing or trapping license under which the game~~[-bullfrog,]~~ or furbearer was lawfully taken;

(4) The date and place of the donation.

**C. Retention of Live Animals:** It shall be unlawful to retain protected species in a live condition except under permit or license issued by the Director for the following purposes:

(1) Zoos open for public display;

(2) In Class A parks;

(3) In projects for scientific

research and propagation;

(4) A rehabilitation permit;

(5) Under a falconry permit, only those birds listed on the permit;

(6) Under a protected mammal permit, only those mammals listed on the permit;

(7) Under a scientific collection permit, one may collect and possess only those species listed on the permit;

(8) In transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected animal being transported.

**D. Sale of Game Animal Parts:** Only skins, heads, antlers, horns, or claws of legally taken protected species and feathers from non-migratory game birds may be bartered or sold. (Internal organs of protected species may not be sold). The disposer must supply to the recipient a written statement which shall contain the following:

(1) Description of the skin, head, antlers, horns or claws, or feathers involved;

(2) The date and county where the game was taken;

(3) The disposer's name, address and hunting license number under which the game was taken;

(4) The date and place of the transaction.

**E. Possession of Game Animal Parts Found in the Field:** It shall be unlawful to possess heads, horns, or antlers of protected species found in the field without invoice or permit from the Department of Game and Fish, with the exception of obviously shed antlers.

[4-1-95; 6-25-90; 19.31.1.9 NMAC - Rn, 19 NMAC 31.10.9, 4-14-2000; 19.31.10.9 NMAC - Rn, 19.31.1.9 NMAC, 9-29-00; A, 10-31-02]

**19.31.10.18 FISHING:**

**A. Angling:** Game fish may be taken by angling in all waters that are open for fishing.

**B. Trotlines:**

(1) It shall be unlawful for any person to set more than one trotline at a time. It shall be unlawful to tie or join together trotlines belonging to two or more persons.

(2) It shall be unlawful for trotlines to have more than 25 hooks.

(3) A person fishing with a trotline shall personally visit and inspect the trotline at least once every 24 hours. Failure to check a trotline every 24 hours is a violation of this paragraph.

(4) It shall be unlawful for anyone to tamper with another's trotline.

(5) A person fishing with a trotline shall attach to it an identification tag

that is visible above the water line. The identification tag shall bear the fisherman's name, address, fishing license number, and the date the trotline was set. An unlicensed fisherman under 12 years of age shall also list his date of birth.

(6) It shall be unlawful to set or use a trotline in trout waters, with the following exceptions: Abiquiu Lake, Chama River downstream from the northern boundary of the Monastery of Christ in the Desert, Gila River downstream from its junction with its east fork, Navajo Lake and the Rio Grande downstream from its junction with the Chama River.

(7) Any conservation officer or other officer authorized to enforce the game laws may seize and confiscate any trotlines not set in accordance with this subsection.

**C. Illegal Device or Substance:** It shall be unlawful to use any device or substance capable of catching, stupefying, or killing fish except as permitted by regulation.

**D. Bait:** It shall be unlawful to use protected fish, bullfrogs, or bullfrog tadpoles as bait in any waters containing protected species. EXCEPTION: the genus *Lepomis* and roe, viscera, and eyes of legally taken game fish may be used as bait.

**E. Bait Fish:** It shall be unlawful to use or possess live fish as bait on or in any trout waters with the following exceptions: Animas River, Rio Grande River, Pecos River downstream of N.M. St. RD. 63 bridge at Pecos, Abiquiu Lake, Laguna Madre, Clayton Lake, Maxwell Lake 13, Navajo Lake, Jackson Lake, Springer Lake, and Power Dam.

**F. Release of Bait Fish:** It shall be unlawful to release any bait fish into any water containing game fish.

**G. Eradication of Fish:** In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers, the Director may permit licensed fishermen and unlicensed persons under 12 years of age to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission, the Director may specify bag and possession limits and manner and method of taking for such waters.

**H. Bait Fish for Personal Use:** Licensed fishermen and unlicensed persons under 12 years of age may take minnows and nongame fish for personal use only. They may use angling, nets, traps, and seines. All protected species of fish taken in seines, nets, and traps shall be immediately returned to the water.

**I. Illegal Taking of Bait Fish:** It shall be unlawful for licensed minnow dealers to take bait fish for sale from waters not specified on their licenses. They

may take these fish only by use of traps, seines, and/or cast nets, as specified on their licenses. All protected species of fish taken in such traps, seines, or nets shall be immediately returned to the water from which they were taken.

**J. Methods for Taking Bait Fish:** Bait fish may be taken in waters containing game fish by angling, spears, and arrows.

**K. Permits for Taking Bait Fish:** The Director may issue permits for the use of nets, seines, traps, or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking, and duration of the permit. The permittee shall report monthly the species, numbers and poundage of nongame fish taken during the preceding month.

**L. [Taking of Bullfrogs:** ~~During open season, bullfrogs (*Rana catesbeiana*) may be taken by angling and grappling and by the use of spears, gigs, and arrows that are not driven by explosives, gas, air, or crossbow; however, bows and arrows may not be used or possessed when taking bullfrogs by use of artificial light.]~~ **[Reserved]**

**M. Trout Validation Required:** It shall be unlawful to angle in designated trout waters within the state without having a current trout validation or stamp affixed on their current license.

**N. Number of Fishing Poles:** It shall be unlawful to angle with more than one pole in any trout water unless excepted in Title 19, Chapter 31, Part 4.

**O. Exceeding Daily Bag Limit:** It shall be unlawful to exceed the daily bag limit and/or possession limit of any protected fish species, as specified in Title 19, Chapter 31, Part 4.

**P. Snagging Game Fish:** It shall be unlawful to snag game fish except during the special kokanee salmon season as specified in Title 19, Chapter 31, Part 4.

**Q. Chumming:** It shall be unlawful to "CHUM" except in the following waters: All waters designated as warm waters; Gila River downstream from its junction with its East Fork; Rio Grande downstream from its junction with the Chama River.

[6-25-90; 4-1-95; 19.31.1.18 NMAC - Rn, 19 NMAC 31.1.18, 4-14-2000; 19.31.10.18 NMAC - Rn, 19.31.1.18 NMAC, 9-29-00; A, 10-31-02]

## NEW MEXICO GAMING CONTROL BOARD

### TITLE 15 GAMBLING AND LIQUOR CONTROL

#### CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS

#### PART 26 TEMPORARY POSSESSION OF GAMING DEVICES BY PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS AND TRADE SHOWS

**15.1.26.1 ISSUING AGENCY:** New Mexico Gaming Control Board.  
[15.1.26.1 NMAC - N, 10/31/02]

**15.1.26.2 SCOPE:** This rule applies to public post-secondary educational institutions and persons participating in trade shows who are seeking to temporarily possess gaming devices for limited purposes permitted under the New Mexico Gaming Control Act.  
[15.1.26.2 NMAC - N, 10/31/02]

**15.1.26.3 STATUTORY AUTHORITY:** Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act. Section 60-2E-8(C)(19) authorizes the board to establish criteria and conditions for allowing temporary possession of gaming devices by public post-secondary educational institutions and for trade shows.  
[15.1.26.3 NMAC - N, 10/31/02]

**15.1.26.4 DURATION:** Permanent.  
[15.1.26.4 NMAC - N, 10/31/02]

**15.1.26.5 EFFECTIVE DATE:** October 31, 2002, unless a later date is cited at the end of a section.  
[15.1.26.5 NMAC - N, 10/31/02]

**15.1.26.6 OBJECTIVE:** This rule establishes criteria and conditions for possession of gaming devices by public post-secondary educational institutions and persons participating in trade shows.  
[15.1.26.6 NMAC - N, 10/31/02]

**15.1.26.7 DEFINITIONS:** Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

**A. "Act"** means the New Mexico Gaming Control Act.

**B. "authorized personnel"** means persons permitted to teach

courses of instruction at public post-secondary educational institutions or other activities requiring access to the gaming devices;

**C.** "board" means the Gaming Control Board or its designee.

**D.** "person" means a legal entity or an individual.

**E.** "State" means the State of New Mexico.

**F.** "trade show" means a gaming industry related event where vendors of gaming devices exhibit, demonstrate and market gaming devices at a premises other than a licensed premise.

**G.** "vendor" means a person licensed in any legal jurisdiction authorized to manufacture, sell, lease or otherwise distribute gaming devices.

[15.1.26.7 NMAC – N, 10/31/02]

#### **15.1.26.8 POSSESSION OF GAMING DEVICES:**

**A.** A public post-secondary educational institution upon registration with the board may temporarily possess gaming devices for the limited purposes provided for under the Act.

**B.** A vendor upon registration with the board may temporarily possess unlicensed gaming devices for the limited purpose of exhibiting, demonstrating and marketing the gaming devices at a trade show approved by the board.

**C.** Gaming devices possessed pursuant to the requirements of this rule are not required to be connected to the State's central monitoring system.

[15.1.26.8 NMAC – N, 10/31/02]

#### **15.1.26.9 REGISTRATION; GAMING MACHINE LICENSES; TRADE SHOW PERMITS:**

**A.** All public post-secondary educational institutions no less than 30 days prior to possessing any unlicensed gaming device must register with the board on forms supplied or approved by the board and must provide all information and documents requested. Registration will only be for the institution and specific gaming devices listed in the registration form. The registration form will require the following information:

(1) the full name and address of the public post-secondary educational institution registering with the board;

(2) the full name, address and title of a contact person;

(3) a course description for each course of instruction that the gaming devices will be utilized;

(4) address where the gaming devices will be shipped;

(5) the beginning and ending dates for the courses; and

(6) any other information deemed necessary by the board.

**B.** The public post-secondary institution must obtain a license from the board for each gaming machine in accordance with the requirements of the Act and board rules. The board may waive, at the board's discretion, all applicable gaming machine license fees.

**C.** Gaming devices to be exhibited, demonstrated or marketed at a trade show must be registered with the board no less than 30 days prior to opening of the trade show on forms supplied or approved by the board and must provide all information and documents requested. Registration will only be for the vendor and the specific gaming devices listed in the registration form. The registration form will require the following information:

(1) the full name, address and title of contact person who will be responsible for the gaming devices while at the trade show;

(2) the trade show name, trade show date, and trade show address or location;

(3) the sponsor name, address, phone number, and contact person;

(4) method of shipment or transport of the unlicensed gaming devices, including the name of the carrier, if any;

(5) the number of gaming devices in the shipment;

(6) the manufacturer and serial number of each gaming device in the shipment;

(7) the model number and description of each gaming device;

(8) the expected arrival and departure date of the gaming devices from the destination location within the State; and

(9) any other information deemed necessary by the board.

**D.** The board will issue each registered vendor a permit which will authorize the possession of the specific gaming devices listed on the registration form for the specific trade show date. The permit holder must display its permit at its exhibit in full view of the public at all times during the operation of the trade show.

[15.1.26.9 NMAC – N, 10/31/02]

#### **15.1.26.10 RESTRICTION ON USE, ACCESS AND MOVEMENT OF GAMING DEVICES BY PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS:**

**A.** All courses of instruction or other activities requiring access to the gaming devices must be conducted in a secured classroom.

**B.** Gaming devices may be

used and operated only for the purpose of providing instruction as authorized under the Act.

**C.** Public post-secondary institutions must submit, or ensure submission of, all EPROMS to the board for testing and approval prior to installation and use in any gaming device.

**D.** Access to gaming devices must be restricted to authorized personnel and to students enrolled in courses that require access to the gaming devices.

**E.** Gaming devices may not be moved, modified, disposed of or otherwise tampered with except with the express written consent of the board.

**F.** Upon board request, the board and its employees or agents must be given access to the classroom or storage room where gaming machines, gaming devices, and related records are located.

**G.** Storage security measures will include, at a minimum, providing and maintaining:

(1) classroom doors or storage room doors that lock so that access to the classroom or storage room is limited to only authorized personnel;

(2) adequate security personnel; and

(3) electrical shut off to the classroom or storage room.

[15.1.26.10 NMAC – N, 10/31/02]

#### **15.1.26.11 RESTRICTION ON USE, ACCESS AND MOVEMENT OF GAMING DEVICES AT TRADE SHOWS:**

**A.** Gaming devices may be used and operated only for the purpose of exhibit, demonstration and marketing at a trade show event.

**B.** Gaming devices must be shipped in demonstration mode with demonstration software.

**C.** Participants in trade shows must submit, or ensure submission of, within 10 days of the trade show, all demonstration EPROMS or software to the board for testing and approval prior to installation and use in any gaming device.

**D.** Access to the gaming devices at the end of the trade show event is restricted to authorized persons participating in or hosting the event.

**E.** Gaming devices may not be moved from the trade show location, modified, disposed of or otherwise tampered with except with the express written consent of the board.

**F.** Upon board request, a trade show vendor must allow the board and its employees or agents access to the trade show event, gaming devices, and related records.



[15.1.26.11 NMAC – N, 10/31/02]

**15.1.26.12 FAILURE TO COMPLY WITH REGISTRATION, TRANSPORT, POSSESSION AND USE REQUIREMENTS:**

**A.** Failure to comply with registration, transport, possession and use requirements of this rule will subject the person to a fine or penalty.

**B.** If after investigation the board determines that sufficient grounds exist to assess a fine or penalty the board will initiate a hearing on the matter in accordance with the Act and board rules.

[15.1.26.12 NMAC – N, 10/31/02]

**HISTORY OF 15.1.26 NMAC: [RESERVED]**

**NEW MEXICO GAMING CONTROL BOARD**

This is an amendment to 15.1.17.9 NMAC.

**15.1.17.9 SCHEDULE OF FINES AND PENALTIES:**

**A.** Penalties to be imposed for violations of the Act or this title will be determined by the board depending upon the facts and circumstances of each case. The penalty for a first violation will include the imposition of administrative fines within the ranges shown below, unless circumstances warrant enhancement of the fine. The maximum fine for each subsequent violation is \$50,000. The penalty for any violation may also include suspension or revocation of the license or denial of license renewal.

**B.** Licensing violations include:

(1) Engaging in gaming activity without valid license---\$10,000 to \$25,000 fine (Code 201).

(2) Possession of illegal gaming device---\$1,000 to \$5,000 fine (Code 202).

(3) Failure to apply for certification of finding of suitability---\$500 to \$1,000 fine (Code 203).

(4) Employing persons without work permits or key person certifications---\$500 to \$1,000 fine (Code 204).

(5) Expired work permit---\$250 to \$500 fine (Code 205).

(6) Unlicensed gaming machine---\$1,000 to \$5,000 fine (Code 206).

(7) Selling, offering to sell, or distributing a gaming device to other than a gaming operator licensee---\$10,000 to \$25,000 fine (Code 207).

(8) Purchasing, leasing, or otherwise receiving a gaming machine from other than an authorized licensee---\$5,000

to \$10,000 fine (Code 208)

(9) Association with distributor or manufacturer with revoked license---\$1,000 to \$5,000 fine (Code 209).

(10) Unauthorized transfer of license---\$5,000 to \$10,000 (Code 210).

**C.** Operating violations include:

(1) Permitting play on an unauthorized gaming machine---\$5,000 to \$10,000 fine (Code 301).

(2) Permitting play of an unauthorized game---\$1,000 to \$5,000 fine (Code 302).

(3) Possessing or installing a gaming machine at other than an authorized location---\$2,500 to \$10,000 fine (Code 303).

(4) Engaging in dishonest or deceptive practices involving gaming activity---\$5,000 to \$10,000 fine (Code 304).

(5) Public nuisance---\$5,000 to \$10,000 fine (Code 305).

(6) Minor playing a gaming machine---\$5,000 to \$10,000 fine (Code 306).

(7) Unauthorized person on licensed premises---\$2,500 to \$7,500 fine (Code 307).

(8) Unauthorized person playing a gaming machine---\$5,000 to \$10,000 fine (Code 308).

(9) Sale, service, delivery or consumption of alcoholic beverage on licensed premises---\$5,000 to \$10,000 fine (Code 309).

(10) Operating or permitting the playing of gaming machine on unauthorized days or times---\$2,500 to \$5,000 fine (Code 310).

(11) Operating or permitting the operation of more than maximum number of gaming machines allowed---\$5,000 to \$10,000 fine (Code 311).

(12) Failure to pay winnings or award prizes---\$1,000 to \$5,000 fine (Code 312).

(13) Failure to maintain adequate security---\$1,000 to \$5,000 fine (Code 313).

(14) Unauthorized or improper use of tokens---\$500 to \$1,000 fine (Code 314).

(15) Unauthorized or improper disposition of tokens---\$500 to \$1,000 fine (Code 315).

(16) Unauthorized or improper disposal of gaming device---\$500 to \$1,000 fine (Code 316).

(17) Unauthorized modification of gaming device where the modification changes the manner of operation from that approved by the board or from that represented to patrons---\$1,000 to \$5,000 fine (Code 317).

(18) Knowingly associating with, employing, or assisting, directly or indirectly, persons or businesses of disreputable character---\$5,000 to \$10,000 fine (Code 318).

(19) Employing a person who has been denied, or failed or refused to apply for, a gaming license, work permit or finding of suitability in any jurisdiction---\$5,000 to \$10,000 fine (Code 319).

(20) Failing to comply with all federal, state and local laws and rules governing gaming activity, including payment of fees and taxes due---\$5,000 to \$10,000 fine (Code 320).

(21) Conducting, operating, or dealing with any cheating game or device---\$5,000 to \$10,000 fine (Code 321).

(22) Unauthorized modification of licensed premises---\$1,000 to \$5,000 fine (Code 322).

(23) Facilitating, participating in, or allowing the issuance of any loans or extending credit to a gaming patron for gaming purposes---\$1,000 to \$5,000 fine (Code 323).

(24) Misleading or deceptive payoff schedule---\$500 to \$1,000 fine (Code 324).

(25) Failure to make payments in accordance with payoff schedule---\$1,000 to \$5,000 fine (Code 325).

(26) Failure to install or maintain adequate surveillance system---\$1,000 to \$5,000 fine (Code 326).

(27) Insufficient funds in gaming tax transfer account---\$5,000 to \$10,000 fine (Code 327).

(28) Failure to comply with minimum accounting standards---\$1,000 to \$5,000 fine (Code 328).

(29) Commingling of gaming receipts with other monies of nonprofit organization gaming operator licensee---\$500 to \$7,500 fine (Code 329).

(30) Failure to maintain minimum bankroll required or to notify board of deficiencies---\$1,000 to \$10,000 fine (Code 330).

(31) Failure to request excluded person to leave or to prohibit entry on licensed premises or to properly notify board of excluded person on licensed premises---\$5,000 to \$10,000 fine (Code 331).

(32) Failure to implement or maintain adequate internal controls for gaming operations---\$1,000 to \$10,000 fine (Code 332).

(33) Unlawful or unauthorized operation of progressive system---\$5,000 to \$10,000 fine (Code 333).

(34) Unlawful or unauthorized promotion or additional payout---\$250 to \$5,000 fine (Code 334).

(35) Shipment of unapproved

gaming device---\$1,000 - \$5,000 fine (Code 335).

(36) Unauthorized change in minimum internal controls---\$250 - \$2,500 fine (Code 336).

(37) Engaging in other unsuitable method of operation---\$1,000 to \$10,000 fine (Code 337).

**D.** Miscellaneous violations include:

(1) Interference with investigation, including denying the board or its agent or other authorized person access to, or inspection of, a gaming establishment---\$10,000 to \$25,000 fine (Code 401).

(2) Providing false or misleading information to the board or the board's agent---\$1,000 to \$10,000 fine (Code 402).

(3) Failure to file required report or disclose information---\$500 to \$10,000 fine (Code 403).

(4) Failure to renew license while continuing to conduct licensed activity---\$500 to \$1,000 fine (Code 404).

(5) Unlawful gaming operations contract---\$1,000 to \$5,000 fine (Code 405).

(6) ATM on licensed premises---\$500 to \$1,000 fine (Code 406).

(7) Failure to implement or maintain compulsive gambling assistance plan---\$1,000 to \$5,000 fine (Code 407).

(8) Failure to disclose gaming contracts---\$1,000 to \$5,000 fine (Code 408).

(9) Failure to retain required records---\$500 to \$2,500 fine (Code 409).

(10) Felony conviction of licensee, employee or other agent of licensee---\$5,000 to \$25,000 fine (Code 410).

(11) Failure to be in possession of work permit---\$250 to \$500 fine (Code 411).

(12) Failure to post gaming license---\$250 to \$500 fine (Code 412).

(13) Failure to post required signs---\$250 to \$500 fine (Code 413).

(14) Failure to provide required notice---\$250 to \$1,000 fine (Code 414).

(15) Failure to comply with gaming machine registration, transport, possession and use requirements by a public post-secondary educational institution or a trade show vendor---\$1,000 to \$5,000 fine (Code 415).

(16) Other violation---\$250 to \$10,000 fine (Code 999).

## NEW MEXICO DEPARTMENT OF HEALTH

This is an amendment to 7.7.2.7 NMAC.

### 7.7.2.7 GENERAL DEFINITIONS: For purposes of these regulations,

the following shall apply:

**A. "abuse"** means injury, sexual misuse, or neglect resulting in harm of an individual patient.

(1) **"physical abuse"** means damaging or potentially damaging acts or incidents that result in bodily injury or death.

(2) **"emotional abuse"** means verbal behavior, harassment, or other actions that result in emotional or behavioral problems, physical manifestations, disordered or delayed development.

(3) **"exploitation"** means an act or process, performed intentionally, knowingly or recklessly, of using a resident's property for another person's profit, advantage or benefit without legal entitlement to do so.

**B. "applicant"** means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization must have the authority to sign for the organization.

**C. "audiologist"** means a person licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978, to practice audiology.

**D. "automated medication management system"** means an automatic device that compounds, measures, counts, packages and delivers a specified quantity of dosage units for a designated product and which collects, controls and maintains all transaction information.

**E. "allied health personnel"** means persons who are not physicians, podiatrists, psychologists or dentists who may be admitted to practice in the hospital through the medical staff credentialing process, and includes:

(1) **"licensed independent practitioner"** means an advanced practice professional registered nurse permitted by law to provide care without direction or supervision within the scope of the individual's license and consistent with individually granted privileges. This includes certified nurse midwives, certified nurse practitioners and clinical nurse specialists;

(2) **"certified registered nurse anesthetist"** means an advanced practice professional registered nurse permitted by law to provide anesthesia care ~~under the direction and in collaboration with a licensed physician, osteopathic physician, dentist, or podiatrist licensed to practice in the state of New Mexico;~~ in an independent role as a member of a health care team in which medical care of the patient is directed by a medical physician, osteopathic physician, dentist or podiatrist licensed in

the state of New Mexico. The certified registered nurse anesthetist shall collaborate with the medical physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care or the patient; collaboration means the process in which each health care provider contributes their respective expertise; and

(3) **"physician assistant"** means a person licensed as a physician assistant by the New Mexico Board of Medical Examiners, pursuant to Section 61-6-6, NMSA 1978.

**F. "consultant pharmacist"** means a person licensed in New Mexico under the Pharmacy Act, Section 61-11-2 (D), NMSA 1978, as a consultant pharmacist.

**G. "dentist"** means a person licensed to practice dentistry under the Dental Act, Sections 61-5-1 to 61-5-22, NMSA 1978.

**H. "department"** means the New Mexico Department of Health.

**I. "dietician"** means a person who is eligible for registration as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association, or who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

**J. "dietetic service supervisor"** means a person who:

(1) Is a qualified dietitian with one year of supervisory experience in the dietetic service of a health care institution; or

(2) Is a graduate of a dietetic technician or dietetic assistant training program, approved by the American Dietetic Association and has consultation from a qualified dietitian, or;

(3) Is a graduate of a state-approved course that provided 90 or more hours of classroom

instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian. If the supervisor is not a qualified dietitian then consultation from a qualified dietitian must be provided.

**K. "hcfa"** means the health care financing administration of the U.S. Department of Health and Human Services.

**L. "health physicist"** means a person holding a master's degree or doctorate in an appropriate discipline of radiologic physics or who has equivalent education and experience.

**M. "hospital"** means any place offering in-patient, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three (3) or more

separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant. Use of the term "hospital" for any facility not duly licensed according to these regulations is prohibited.

(1) **"critical access hospital"** means a hospital with special characteristics, duly certified as such by the Health Care Financing Administration and is in compliance with the Conditions of Participation for such facilities. Such Critical Access Hospitals are deemed as meeting the intent of these regulations and may be licensed accordingly by the Licensing Authority.

(2) **"general hospital"** means a hospital providing emergency services, inpatient medical and nursing care for acute illness, injury, surgery or obstetrics. Ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for General Hospitals.

(3) **"long term acute care hospital"** means a hospital providing long term, in-patient

medical care for medically-complex patients whose length of stay averages greater than 25 days. Ancillary support services such as pharmacy, clinical laboratory, radiology, and dietary are required for long term acute care hospitals.

(4) **"psychiatric hospital"** means a special hospital that primarily provides psychological and/or psychiatric care to inpatients.

(5) **"rehabilitation hospital"** means a special hospital that primarily provides rehabilitative care to inpatients.

**N. "legally authorized person"** means a parent of a minor, a court appointed guardian or a person authorized by the patient in accordance with law to act on the patient's behalf.

**O. "licensed practical nurse"** means a person licensed as a practical nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

**P. "licensee"** means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospital and in whose name a license has been issued and who is legally responsible for compliance with these regulations.

**Q. "licensing authority"** means the agency within the Department vested with the authority to enforce these regulations.

**R. "medical staff"** means the hospital's organized component of physicians, podiatrists, psychologists, dentists and allied health personnel who have been appointed by the governing body of the hospital and granted specific privileges

for the purpose of providing care for the patients of the hospital.

**S. "nosocomial"** means an infection pertaining to or originating in a hospital; not present or incubating prior to admittance to a hospital.

**T. "occupational therapist"** means a person licensed as an occupational therapist under the Occupational Therapy Act, Sections 61-12A-1 to 61-12A-20, NMSA 1978.

**U. "pharmacist"** means a person licensed in New Mexico under the Pharmacy Act, 61-11-1 to 61-11-29, NMSA 1978.

**V. "pharmacy"** means a place where drugs are compounded or dispensed that is licensed by the New Mexico Board of Pharmacy.

**W. "physical therapist"** means a person licensed to practice physical therapy under the Physical Therapy Act, Sections 61-12-1 to 61-12-21, NMSA 1978.

**X. "physician"** means a person licensed to practice medicine or osteopathy by the New Mexico Board of Medical Examiners, pursuant to Section 61-6-10, NMSA 1978 or the Osteopathic Medical Examiners Board pursuant to Sections 61-10-1 through 61-10-21, NMSA 1978.

**Y. "podiatrist"** means a person licensed to practice podiatry or podiatric medicine and surgery under the Podiatry Act, Sections 61-8-1 to 61-8-16, NMSA 1978.

**Z. "privileges"** means the authorization of the medical staff members to provide care to hospital patients in the area in which the person has expertise as a result of education, training and experience.

**AA. "psychologist"** means a person licensed to practice psychology under the Professional Psychologists' Act, Sections 61-9-1 through 61-9-18, NMSA 1978.

**BB. "registered nurse"** means a person licensed as a professional registered nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

**CC. "respiratory care practitioner"** means a person who is licensed under the Respiratory Care Act, Sections 61-12B-1 to 61-12B-16, NMSA 1978.

**DD. "speech pathologist"** means a person who is licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978 to practice speech language pathology.

**EE. "standard of compliance"** means the degree of compliance required throughout these regulations as

designated by the use of the words "shall" or "must" or "may." Shall" or "must" means mandatory. "May" means permissive. The use of the words "adequate," "proper," and other similar words means the degree of compliance that is generally accepted throughout the applicable professional field.

**FF. "variance"** means an act on the part of the Licensing Authority to refrain from enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of patients or staff of a hospital and is at the sole discretion of the Licensing Authority.

**GG. "waive/waiver"** means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these regulations for a limited period of time less than one (1) year, provided the health, safety, or welfare of patients and staff are not in danger. Waivers are issued at the sole discretion of the Licensing Authority.

[7.7.2.7 NMAC - Rp, 7 NMAC 7.2.7, 06-01-00; A, 10-31-02]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.320.6 NMAC, sections 9 through 15 and 17 that will be effective November 1, 2002. The Medical Assistance Division amended language to add licensed marriage and family therapists, licensed professional clinical counselors, and psychiatric clinical nurse specialists as providers of school-based mental health services. Nursing services provided by licensed registered nurses as part of school-based health services was also added. Also, in some sections language was changed to clarify parts.

This rule was also renumbered and reformatted from MAD 747 to comply with current NMAC requirements.

**8.320.6.9 SCHOOL-BASED SERVICES FOR RECIPIENTS UNDER TWENTY-ONE YEARS OF AGE:** The New Mexico Medicaid program (Medicaid) pays for medically necessary services furnished to eligible Medicaid recipients ~~[including payment for Tot to Teen Healthcheck screens and follow up treatment furnished through Local Education Agencies (LEAs) to recipients]~~ under twenty-one years of age when the services are part of the recipient's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP) for treatment (correction, amelioration, or prevention of deterioration) of an identified medical con-

dition. This section describes eligible providers, provider responsibilities, covered services, service limitations, and general reimbursement methodology for school-based services.

[1/1/94; 8.320.6.9 NMAC - Rn, MAD.747 & A, 11-1-02]

### **8.320.6.10 ELIGIBLE PROVIDERS:**

A. Upon approval of New Mexico Medical Assistance Provider Participation Applications by MAD, Local Education Agencies (LEAs) ~~[which] and Regional Educational Cooperatives (RECs)~~ that meet specified requirements are eligible to be reimbursed for furnishing services to recipients. The LEA or REC must develop a collaborative plan with the community [and have a written agreement with a physician to oversee the provision of services]. Requirements for such plans will be described in written guidelines by MAD. The LEA or REC must have oversight by the Department of Health's District Health Officer as provided by state statute (NMSA24-1-4).

B. The following individual service providers must be employed by or under contract to the [LEA's, must be eligible to sign separate Medicaid participation agreement] LEA or REC when furnishing treatment, and meet other specified qualification criteria:

(1) ~~[Certified nurse practitioners;]~~ Physical therapists licensed by the Physical Therapists Board under the State of New Mexico Regulation and Licensing Department and meeting licensure requirements of the Department of Education.

(2) ~~[Licensed physician assistants;]~~ Occupational therapists licensed by the Occupational Therapy Board under the State of New Mexico Regulation and Licensing Department and meeting licensure requirements of the Department of Education.

(3) ~~[Physical and occupational therapists licensed by the physical therapists board under the State of New Mexico Regulation and Licensing Department and certified by the Department of Education;]~~ Speech pathologists licensed by the Board of Speech-Language Pathology and Audiology under the New Mexico Regulation and Licensing Department and meeting licensure requirements of the Department of Education.

(4) ~~[Master's level social work practitioners who meet one of the following requirements:~~

(a) ~~Licensed by the Social Work Examiners Board as a Licensed Master's Level Independent Social Work Practitioner~~

~~(LISW); or~~

~~(b) Master's level practitioners licensed by the New Mexico Psychologist Examiners Board as psychologist associates or licensed by the State Department of Education as school psychologists and supervised by a psychiatrist or a Ph.D., Psy.D., or Ed.D. licensed as a psychologist by the New Mexico Psychologist Examiners Board.] Audiologists licensed by the Board of Speech-Language Pathology and Audiology under the Regulation and Licensing Department and meeting licensure requirements of the Department of Education.~~

(5) ~~[Speech pathologists and audiologists licensed by the Board of Speech-Language Pathology and Audiology under the Department of Regulation and Licensing.] Master's level social work practitioners who meet one of the following requirements:~~

(a) ~~Licensed by the Social Work Examiners Board as a Licensed Master's Level Independent Social Work Practitioner; or~~

~~(b) Licensed by the Social Work Examiners Board and supervised by a licensed Ph.D., Psy.D., Ed.D. or LISW; and~~

~~(c) Meeting licensure requirements of the Department of Education.~~

(6) Psychologists meeting one of the following requirements:

(a) Psychologists (Ph.D., Psy.D., or Ed.D.) licensed by the New Mexico Psychologist Examiners Board and meeting licensure requirements of the Department of Education; or

(b) Master's level practitioners licensed by the New Mexico Psychologist Examiner's Board as psychologist associates or licensed by the State Department of Education as school psychologists and supervised by a psychiatrist or a Ph.D., Psy.D., or Ed.D. who is licensed as a psychologist by the New Mexico Psychologist Examiners Board, and meeting licensure requirements of the Department of Education.

(7) Physicians and psychiatrists licensed by the Board of Medical Examiners and meeting licensure requirements of the Department of Education.

(8) Case managers who meet ~~[the]~~ one of the following requirements:

(a) Bachelor's degree in social work, counseling, psychology, ~~[sociology, education, special education,]~~ nursing, ~~[cultural anthropology,]~~ or a related health or social services field from an accredited institution and have one year experience serving medically-at-risk children or adolescents. [Individuals with a bachelor's degree in another field can substitute two years of direct experience in serving the

medically at risk population.]

(b) Licensed registered or practical nurse. ~~[Case managers must have one year experience serving medically at risk children or adolescents. Case managers of individuals who are developmentally disabled or severely emotionally disturbed must be certified by the Department of Health. Recipients have the freedom to choose a case management service provider. Medicaid only pays for one case management provider to furnish services during a given time period. If a recipient has a case manager or chooses to use a case manager who is not employed or under contract to the LEA, the LEA must coordinate with the case manager in the development of the individualized treatment plan.]~~

~~(9) Licensed nutritionists or licensed dietitians:~~

~~(a) A LEA can also employ or contract with school nurse (RN) who meets the following requirements to furnish services. A school nurse is not required to sign a separate provider participation agreement:~~

~~(i) Licensed by the New Mexico Board of Nursing and the State Department of Education;~~

~~(ii) Completed a college-level physical assessment course and a State Department of Education workshop on EPSDT screening procedures, Medicaid program requirements and community medical source referrals; and~~

~~(iii) Meet requirements specified by District Health Officers of the New Mexico Department of Health.~~

~~(b) Once enrolled, providers receive a packet of information, including Medicaid program policies, certification standards, and other pertinent material from MAD and/or the Department of Education.]~~

(c) Individuals with a bachelor's degree in another field can substitute two years of direct experience in serving medically-at-risk children or adolescents.

(9) Licensed professional clinical counselors (LPCC) licensed by the New Mexico Counseling and Therapy Practice Board and meeting licensure requirements of the Department of Education.

(10) Licensed marriage and family therapists (LMFT) licensed by the New Mexico Counseling and Therapy Practice Board and meeting licensure requirements of the Department of Education.

(11) Psychiatric clinical nurse specialists (CNS) licensed by the New Mexico Board of Nursing and meeting licensure requirements of the Department of Education.

(12) Licensed nutritionists or registered dietitians licensed by the New Mexico Nutrition and Dietetics Practice Board and meeting licensure requirements

of the Department of Education.

(13) Registered nurses licensed by the New Mexico Board of Nursing and meeting licensure requirements of the Department of Education.

[1/1/94; 8.320.6.10 NMAC - Rn, MAD.747.1 & A, 11-1-02]

### 8.320.6.11 PROVIDER RESPONSIBILITIES:

#### A. General Responsibilities:

(1) Providers who furnish services to Medicaid recipients must comply with all specified Medicaid participation requirements. See Section 8.302.1 NMAC, General Provider Policies.

(2) Providers must verify that individuals are eligible for Medicaid at the time services are furnished and determine if Medicaid recipients have other health insurance.

#### B. Documentation Requirements:

(1) Providers must maintain ~~[records which are sufficient to fully disclose the extent and nature of the services furnished to recipients.]~~ all records necessary to fully disclose the nature, quality, amount and medical necessity of services furnished to recipients who are currently receiving or have received medical services in the past. Services billed to MAD not substantiated in the recipient's records are subject to recoupment. See Section 8.302.1, GENERAL PROVIDER POLICIES.

(2) For services covered under this policy complete copies of the IEPs or IFSPs with the ITP portions of the IEPs or IFSPs signed by the primary care provider (PCP) must be maintained as part of the required records.

C. **Record Availability:** The provider must, on request, promptly furnish to the Medicaid Agency, the Secretary of Health and Human Services or the State Medicaid Fraud Control Unit any information under Documentation Requirements stated above, including patient and employee records and any information regarding payments claimed by the provider furnishing services. Failure to provide records on request may result in a denial of claims.

[1/1/94; 8.320.6.11 NMAC - Rn, MAD.747.2 & A, 11-1-02]

### 8.320.6.12 ELIGIBLE RECIPIENTS:

Medicaid covers ~~[Tot to Teen Healthcheck screens and treatment]~~ medically necessary treatment furnished to recipients under twenty-one (21) years of age ~~[Recipients and their families have the freedom to choose where these Medicaid services are furnished.]~~ who have a

Medicaid reimbursable service identified in their IEP or IFSP.

[1/1/94; 8.320.6.12 NMAC - Rn, MAD.747.3 & A, 11-1-02]

### 8.320.6.13 COVERED SERVICES:

Medicaid covers the following services when medically necessary and furnished by specified providers in school settings. ~~[For services furnished to recipients enrolled in the Primary Care Network (PCN), the PCN provider must perform or arrange for the performance of required services. Services furnished in school settings must be arranged with the recipient's PCN provider. Notice of completion of screens and any conditions identified during the screen must be furnished to the PCN provider or primary care physician.]~~

(1) ~~Tot to Teen Healthcheck Screens~~ Medicaid covers ~~Tot to Teen Healthcheck~~ screens, the screening portion of the New Mexico's Early and Periodic Diagnosis, Screening and Treatment program. The New Mexico periodicity schedule allows for a total of twenty (20) ~~Tot to Teen Healthcheck~~ screens. Additional medical and other partial screenings may be done as medically necessary to complete components of the screen not previously completed at the appropriate age and to put the child on a regular periodicity schedule when possible. See Section 741, Tot to Teen Healthchecks.

(2) ~~Referrals and Treatment:~~ Medicaid covers referrals and subsequent treatment for conditions identified during ~~Tot to Teen Healthcheck~~ screens.

(3) ~~Therapy Services:~~ Medicaid covers physical, occupational, and speech evaluations and therapy required to treat ~~ment of and identified condition.~~

(a) Therapy must be ordered by a physician and must meet needs specified in the individualized treatment plan. The services must be reasonable and necessary for the treatment of the recipient's specific condition.

(b) The treatment plan must be signed by a physician and be developed by the physician in conjunction with qualified physical, occupational, or speech therapists.

(c) Services do not require prior approval if all the following requirements are met:

(i) ~~Services are ordered by a physician;~~

(ii) ~~Services are performed in accordance with the individualized treatment plan signed by the physician;~~

(iii) ~~Frequency and duration of services furnished do not exceed that specified in the individualized treatment plan; and~~

(iv) ~~Therapy providers~~

~~furnish services under contract to the LEA and reimbursement is made directly to the LEA. If these requirements are not met, the services require prior approval from MAD or its designee.]~~

A. **Therapy Services:** Medicaid covers physical, occupational, audiological and speech evaluations, and therapy required for treatment of an identified medical condition.

(1) Services must be medically necessary, must be ordered or authorized by the child's primary care provider (PCP), and must meet the needs specified in the Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). The services must be necessary for the treatment of the recipient's specific identified condition.

(2) The Individualized Treatment Plan (ITP) portion of the IEP or IFSP must be signed by the child's PCP and be developed in conjunction with qualified physical therapists, occupational therapists, speech therapists, audiologists, nurses or behavioral health providers.

(3) Services require prior approval by the PCP. The requirement for prior approval is met when the PCP signs the ITP portion of the IEP or IFSP. For Medicaid reimbursement, services must be performed in accordance with the IEP or IFSP that has been signed by the PCP. Frequency and duration of services furnished may not exceed that specified in the IEP or IFSP. Reimbursement is made directly to the LEA or REC when therapy providers furnish services under contract to the LEA or REC.

(4) If all the requirements of this section are not met, the services require prior approval from MAD or its designee.

B. **Mental Health Services:** Medicaid covers counseling, evaluation, and therapy ~~[furnished by social work practitioners, psychiatrists, or psychologists]~~ required for treatment of an identified medical condition when furnished by a Licensed Independent Social Worker (LISW), Licensed Marriage and Family Therapist (LMFT), Licensed Professional Clinical Counselor (LPCC), Psychiatric Clinical Nurse Specialist (CNS), psychiatrists, psychologists, or Licensed Master's Level Social Worker (LMSW) supervised by a Ph.D., Psy.D., Ed.D. or a LISW. Services include regularly scheduled, structured counseling or therapy sessions for recipients under twenty-one (21) years of age, recipients and their parents, or multi-family groups.

(1) Services must be medically necessary, ~~[and must meet specified need identified in the individualized treatment plan.]~~ must be ordered or authorized by the

child's primary care provider (PCP), and must meet the needs specified in the Individualized Education Plan (IEP) or the Individualized Family Service Plan (IFSP).

(2) The Individualized Treatment Plan (ITP) portion of the IEP or IFSP ~~[The plan]~~ must be signed by ~~[a physician]~~ the child's primary care provider (PCP) and be developed in conjunction with a qualified therapist. The services must be necessary for the treatment of the recipient's specific identified condition. Facilitation of the development of age-appropriate social skills may be part of the treatment plan.

~~[(2) Prior approval is not required for these services if all the following requirements are met:~~

~~(a) Services are furnished in accordance with a treatment plan signed by a physician and developed in conjunction with qualified practitioners;~~

~~(b) Frequency and duration of services furnished do not exceed the amount specified in the treatment plan; and~~

~~(c) Practitioners are under contract to the LEA and reimbursement is made directly to the LEA.]~~

(3) Services require prior approval by the PCP. The requirement for prior approval is met when the PCP signs the ITP portion of the IEP or IFSP. For Medicaid reimbursement, services must be performed in accordance with the IEP or the IFSP that has been signed by the PCP. Frequency and duration of services furnished may not exceed that specified in the IEP or IFSP. Reimbursement is made directly to the LEA or REC when mental health providers furnish services under contract to the LEA or REC.

(4) If ~~[these requirements]~~ all the requirements of this section are not met, the services require prior approval from MAD or its designee.

**C. Nutritional Assessment and Counseling:** Medicaid covers nutritional assessment and counseling when furnished by licensed nutritionists or dietitians for recipients ~~[under twenty-one]~~ who have been referred for a nutritional need. A nutritional assessment consists of an evaluation of the nutritional needs of individuals based upon appropriate biochemical, anthropometric, physical, and dietary data, including a recommendation on appropriate nutritional intake. ~~[See Section 340.34, NUTRITIONAL SERVICES.]~~

(1) Services must be medically necessary, must be ordered or authorized by the child's primary care provider (PCP) and must meet the needs specified in the Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP).

(2) The Individualized Treatment

Plan (ITP) portion of the IEP or IFSP must be signed by the child's primary care provider (PCP) and developed in conjunction with licensed nutritionists or registered dietitians.

(3) Services require prior approval by the PCP. The requirement for prior approval is met when the PCP signs the ITP portion of the IEP or IFSP. For Medicaid reimbursement, services must be performed in accordance with the IEP or IFSP that has been signed by the PCP. Frequency and duration of services furnished may not exceed that specified in the IEP or IFSP. Reimbursement is made directly to the LEA or REC when licensed nutritionists or registered dietitians furnish services under contract to the LEA or REC.

(4) If all the requirements of this section are not met, the services require prior approval from MAD or its designee.

**D. Transportation Services:** Medicaid covers transportation services for recipients ~~[under twenty-one (21) years of age]~~ who must travel from the school to receive a covered service from a Medicaid provider when the service is unavailable in the school setting and when the service is medically necessary and is identified in the recipients Individualized Education Plan (IEP) or the Individualized Family Service Plan (IFSP). Medicaid covers transportation to and from the school on the date a medically necessary service is furnished in the school setting for recipients who have disabilities, ~~[or are dysfunctional]~~ if all the following conditions are met:

~~[(1) Medical services are furnished at the school on the specific day on which transportation is furnished;~~

~~(2) Medical services furnished on that date are specified in the medical care needs portion of the Individualized Education Plan (IEP); and~~

~~(3) Transportation needs are identified in the IEP.]~~

(1) Services must be medically necessary, must be ordered or authorized by the child's primary care provider (PCP), and must meet the needs specified in the IEP or the IFSP.

(2) The Individualized Treatment Plan (ITP) portion of the IEP or IFSP must be signed by the child's primary care provider (PCP).

(3) Services require prior approval by the primary care provider (PCP). For Medicaid reimbursement, services must be performed in accordance with the IEP or IFSP that has been signed by the PCP. The requirement for prior approval is met when the PCP signs the ITP portion of the IEP or IFSP. Frequency and duration of services furnished may not exceed that specified in the IEP or IFSP.

Reimbursement is made directly to the LEA or REC when transportation services are furnished under contract to the LEA or REC.

(4) Medical services are furnished on the specific day on which transportation is furnished.

(5) Medical services furnished on that date are specified in the ITP portion of the IEP or IFSP.

(6) The recipient requires transportation in a vehicle adapted to serve the needs of the recipient.

(7) If all the requirements of this section are not met, the services require prior approval from MAD or its designee.

**E. Case Management:** Medicaid covers case management services furnished in school settings to recipients ~~[under twenty-one (21) years of age]~~ who are medically at risk. Medicaid pays for services furnished by a single case management service provider during a given time period. "Medically at risk" refers to individuals who have a diagnosed physical or mental health condition which has high probability of impairing cognitive, emotional, neurological, social, or physical development.

~~[(1) The need for case management services must be included in the medical portion of the IEP, Individualized Family Service Plan (IFSP), or individualized treatment plan. The plan must be signed by the physician.~~

~~(2) Medicaid covers the following case management services:~~

~~(a) Assessment of the recipient's medical, social, and functional abilities at least every six (6) months, unless more frequent reassessment is indicated by the recipient's condition;~~

~~(b) Development and implementation of a comprehensive plan of care that helps the recipient retain or achieve the maximum degree of independence; All medical services identified in the plan of care must be specified in the individualized treatment plan.~~

~~(c) Mobilization of the use of "natural helping" networks, such as family members, church members, community organizations, support groups, friends, and the school, if the recipient is able to attend; and~~

~~(d) Coordination and monitoring of the delivery of services, evaluation of the effectiveness and quality of the services, and revision of the plan of care as necessary.]~~

(1) Services must be medically necessary, must be ordered or authorized by the child's primary care provider (PCP) and must meet specified needs identified in the Individualized Education Plan (IEP) or

Individualized Family Service Plan (IFSP).

(2) The Individualized Treatment Plan (ITP) portion of the IEP or IFSP must be signed by the child's primary care provider (PCP) and developed in conjunction with a qualified case manager.

(3) Services require prior approval by the PCP. For Medicaid reimbursement, services must be performed in accordance with the IEP or IFSP that has been signed by the PCP. The requirement for prior approval is met when the PCP signs ITP portion of the IEP or IFSP. Frequency and duration of services furnished may not exceed that specified in the IEP or IFSP. Reimbursement is made directly to LEA or REC when case management providers furnish services under contract to LEA or REC.

(4) Services must be coordinated with the child's Medicaid managed care organization (MCO) if the child is enrolled in managed care.

(5) Medicaid covers the following case management services:

(a) Assessment of the recipient's medical, social and functional abilities at least every six (6) months, unless more frequent reassessment is indicated by the recipient's condition.

(b) Development and implementation of a comprehensive plan of care that helps the recipient retain or achieve the maximum degree of independence.

(c) Mobilization of the use of "natural helping" networks, such as family members, church members, community organizations, support groups, friends, and the school, if the recipient is able to attend.

(d) Coordination and monitoring of the delivery of services, evaluation of the effectiveness and quality of the services, and revision of the plan of care as necessary.

(e) All services must be delivered to be eligible for Medicaid reimbursement.

(6) If all the requirements of this section are not met, the services require prior approval from MAD or its designee.

(7) Recipients have the freedom to choose a case management service provider. Medicaid pays for only one case management provider to furnish services during a given time period. If a recipient has a case manager or chooses to use a case manager who is not employed or under contract to the LEA or REC, the LEA or REC must coordinate with the case manager in the development of the Individualized Treatment Plan (ITP).

**F. Nursing:** Medicaid covers nursing services required for treatment of an identified medical condition which qualifies a child for an Individualized Education Plan (IEP) or

Individualized Family Service Plan (IFSP) when provided by a licensed registered nurse.

(1) Services must be medically necessary, must be ordered or authorized by the child's primary care provider (PCP), and must meet the needs specified in the Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP).

(2) The Individualized Treatment Plan (ITP) portion of the IEP or IFSP must be signed by the child's PCP and developed in conjunction with a registered nurse. The services must be necessary for the treatment of the recipient's specific identified condition.

(3) Services require prior approval by the PCP. The requirement for prior approval is met when the PCP signs the ITP portion of the IEP or IFSP. For Medicaid reimbursement, services must be performed in accordance with the IEP or IFSP that has been signed by the PCP. Frequency and duration of services furnished may not exceed that specified in the IEP or IFSP. Reimbursement is made directly to the LEA or REC when registered nurses furnish services under contract to the LEA or REC.

(4) Nursing services require professional nursing expertise and are provided by a licensed registered nurse. Only those skilled nursing tasks that are approved by the Medical Assistance Division (MAD) may be eligible for reimbursement.

(5) If all the requirements of this section are not met, the services require prior approval from MAD or its designee.

[1/1/94; 8.320.6.13 NMAC - Rn, MAD.747.4 & A, 11-1-02]

#### **8.320.6.14 INDIVIDUALIZED TREATMENT PLAN:**

A. The objectives, duration, and provider of medical treatment furnished to all Medicaid recipients [~~under twenty-one (21) years of age~~] in school settings must be specified in an Individualized Treatment Plan (ITP). [~~The plan must be signed by the recipient's PCN provider or primary care physician.~~] The plan is developed by the LEA or REC in conjunction with [~~PCN providers or primary care physicians, school employees,~~] recipients, recipients' families, [~~and/or~~] and applicable service providers. [~~Individualized treatment plans must be reviewed annually. If the recipient is disabled or dysfunctional, an IEP or IFSP is developed by the school. The IEP or IFSP incorporates a health history, medical and educational evaluations, recommendations by the family physician, if applicable, a plan of care agreed upon by the parents, evaluation therapists, the IEP or IFSP committee, and the recipient's teacher.~~

If medical needs are identified in the IEP or IFSP, the medical portion of the IEP or IFSP is the recipient's individualized treatment plan. This portion must be reviewed and signed by the recipient's PCN or primary care provider.] The ITP portion of the IEP or IFSP must be reviewed and signed at least annually by the PCP to meet requirements for prior approval of services provided to the recipient. If this review and PCP signature are not performed annually, the service requires prior approval by MAD or its designee.

B. The ITP utilizes the recipient's health history, medical and educational evaluations and recommendations by the PCP and other medical providers as applicable. The ITP is a plan of care agreed upon by the parents or legal guardians, evaluating therapists, the IEP or IFSP committee, and the recipient's teacher, all of whom are included in the IEP or IFSP. If medical needs are identified in the IEP or IFSP, the medical portion of the IEP or IFSP is the recipient's Individualized Treatment Plan. The ITP must be incorporated into the IEP or IFSP.

[1/1/94; 8.320.6.14 NMAC - Rn, MAD.747.7 & A, 11-1-02]

**8.320.6.15 NON COVERED SERVICES:** Services furnished in school settings are subject to the limitations and coverage restrictions which exist for other Medicaid services. See 8.301.3 NMAC [MAD-602], GENERAL NONCOVERED SERVICES. Medicaid does not cover the following specific services:

A. Services classified as educational;

B. Services to non-Medicaid eligible individuals;

C. Services furnished by practitioners outside their area of expertise;

D. Vocational training which is related solely to specific employment opportunities, work skills or work settings;

E. Services which duplicate services furnished outside the school setting, unless determined to be medically necessary and are prior authorized by the Medical Assistance Division or its designee;

F. Services not identified in the recipient's IEP or IFSP, and not authorized by the recipient's PCP.

G. Transportation which a recipient would otherwise receive in the course of attending school is not covered by Medicaid.

H. Transportation for a recipient with special education needs under the Individuals Disabilities Education Act (IDEA) who rides the regular school

bus to and from school with other non-disabled children is not covered by Medicaid. [1/1/94; 8.320.6.15 NMAC - Rn, MAD.747.5 & A, 11-1-02]

#### **8.320.6.17 REIMBURSEMENT:**

A. The LEA or REC must submit claims for reimbursement on the HCFA 1500 or its successor form. See 8.302.2 NMAC [MAD-702], BILLING FOR MEDICAID SERVICES. Once enrolled, providers receive instructions on documentation, billing, and claims processing.

B. Reimbursement to the LEA or REC for covered services furnished by individual practitioners is made at the lesser of the following:

(1) The specific practitioner's billed charge; or

(2) The MAD fee schedule for the specific service.

(a) The practitioner's billed charge must be their usual and customary charge for services.

(b) "Usual and customary" charge refers to the amount which an individual practitioner charges the general public in the majority of cases for a specific procedure or service.

[1/1/94; 8.320.6.17 NMAC - Rn, MAD.747.8 & A, 11-1-02]

## **NEW MEXICO LIVESTOCK BOARD**

This is an amendment to: 21.32.10.8 NMAC and 21.32.10.12 NMAC:

**21.32.10.8 LIVESTOCK INSPECTION FEES:** Effective ~~July 9, 2001~~ October 31, 2002, the following are the inspection charges for services of the New Mexico Livestock Board, pursuant to Sections 77-2-29 and 77-2-7, NMSA 1978:

A. Cattle and Bison inspection fee \$ 0.50 per head

B. Horse inspection fee \$ ~~0.55~~ 0.50 per head

C. Hide inspection fee \$ 0.50 per hide

D. Sheep and goat inspection fee \$ 0.16 per head

E. Pelt inspection fee \$ 0.12 per pelt

F. Swine inspection fee \$ 1.00 per head

G. Service charge for field inspection

(1) 1 to 10 head \$ 5.00 per inspection

(2) 11 head and more \$ 10.00 per inspection

H. Service charge at livestock market \$ 0

I. The payment, in lieu of fees, on the receipt of livestock at an auction market, pursuant to Sections 77-10-4 and 77-2-29, NMSA 1978, shall be the same as the amounts listed in this paragraph.

J. Impoundment fee \$10.00 per head per day, pursuant to Section 7-14-36 and Sub-section J of Section 77-2-29 NMSA 1978.

[3-1-99; 21.32.10.8 NMAC - Rn & A, 21 NMAC 32.10.8, 7-31-2000; A, 05-15-2001; A, 07-09-2001; A, 10-31-2002]

#### **21.32.10.12 COPY SERVICES**

A. The fee for making copies of any documents using the agency's copiers, shall be fifty cents per page, either 8 1/2 by 11 or 8 1/2 by 14 plus postage.

B. No documents of the Livestock Board will be surrendered to anyone, other than employees of the board, for the purpose of removing the documents from the office of the board in order to have copies made.

C. The fee for making certified copies shall be Three Dollars (\$3.00) for certification and fifty cents (\$0.50) per page plus postage.

D. The fee for re-producing 3x5 inch or 4x6 inch photographs shall be ten dollars (\$10.00) for each copy, and larger sizes will be the cost of re-producing plus a ten dollar (\$10.00) office fee per request plus postage.

E. The fee for providing an electronic copy on compact disk of brand owners names and address shall be one hundred dollars (\$100.00) per copy plus postage.

[3-1-99, 21.32.10.12 NMAC - Rn, 21 NMAC 32.10.12, 7-31-2000; A, 07-09-2001; A, 10-31-2002]

## **NEW MEXICO DEPARTMENT OF PUBLIC SAFETY**

### **TRAINING AND RECRUITING DIVISION LAW ENFORCEMENT ACADEMY**

This is an amendment to 10.29.9 NMAC, Section 19.

#### **10.29.9.19 CONTINUATION OF CERTIFICATION AFTER SEPARATION**

A. Eligibility - In the event a New Mexico certified law enforcement officer, with five years or more of commissioned law enforcement employment, leaves his position in good standing; he will be eligible to continue his New

Mexico certification status provided he complies with the procedures outlined below.

#### **B. Procedure -**

(1) Every eligible law enforcement officer separating from commissioned law enforcement service may continue their New Mexico certification by successfully completing each year and approved twenty hour In-Service training program offered by the Academy. This program will comply with the provisions of 10.29.7 NMAC In-Service Training Requirements and 10.29.9.14 NMAC Entry Level and Recertification Firearms Training.

(2) The Officer must successfully complete the first approved training program within two years of separation and then once each year during the calendar year in subsequent years.

(3) The requirements of 10.29.9.16 Renewal of Certification After Absence will apply to those officers not in compliance with the provisions of this section.

[10.29.9.19 NMAC - N, 10/31/2002]

## **End of Adopted Rules Section**



## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2002

Volume XIII	Submittal Deadline	Publication Date
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

### 2003

Volume XIV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.