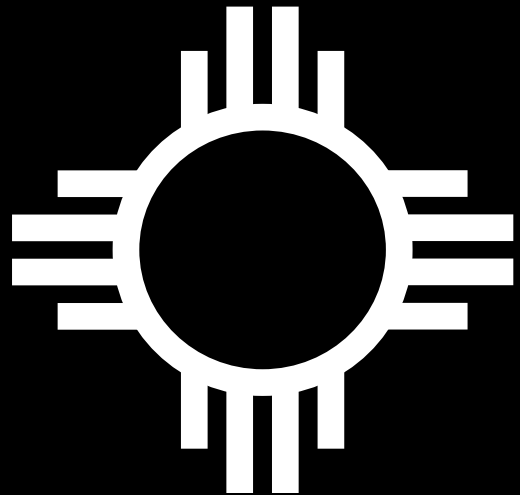


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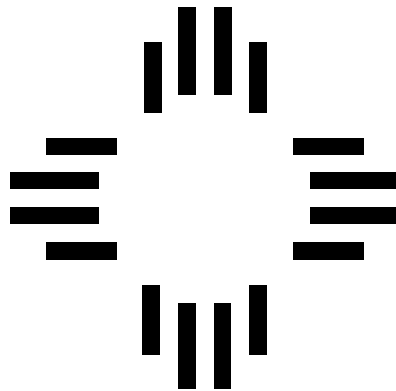
Volume XVI  
Issue Number 3  
February 14, 2005



# **New Mexico Register**

**Volume XVI, Issue Number 3**

**February 14, 2005**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2005

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# New Mexico Register

Volume XVI, Number 3

February 14, 2005

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#### 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." Section 14-4-5 NMSA 1978.

#### *A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

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***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 published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. 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).

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

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## Notices of Rulemaking and Proposed Rules

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### NEW MEXICO MANUFACTURED HOUSING COMMITTEE

#### LEGAL NOTICE NOTIFICATION OF PUBLIC HEARING RULEMAKING

#### Manufactured Housing Committee

The Manufactured Housing Committee has **re-scheduled** the Public Hearing from January 24, 2005 to March 21, 2005 for the purpose of Rulemaking, at 9:00 a.m., at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico.

The public is invited to attend and comment on the Division's proposed Rules and Regulation (rules), specifically, New Mexico Administrative Code, Part 14.12.2 NMAC. The Committee will receive recommendations and written comments on **all Sections of 14.12.2 NMAC**. Written recommendations, including draft language should be addressed to the Manufactured Housing Committee at the address listed below. These recommendations must be submitted no later than March 7, 2005, to be considered for inclusion in the proposed rule. Written and oral comments will be received on the proposed rule at the Public Hearing. Immediately following the Public Hearing, the State of New Mexico Manufactured Housing Committee will hold its Bimonthly Committee Meeting, and the adoption of the proposed rule changes will be on the agenda for that meeting. At the meeting the Committee will vote to approve or disapprove the recommended rule changes. The meeting will be held pursuant to the Open Meetings Act.

Copies of written comments received by March 9, 2005, and the AGENDA may be obtained by making a written or faxed request to the Manufactured Housing Division (MHD), 2550 Cerrillos Rd, P.O. Box 25101, Santa Fe, New Mexico 87504, Phone: (505) 476-4770 or Fax: (505) 476-4702.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than March 7, 2005.

John Alejandro Sr., Director  
Manufactured Housing Division  
P.O. Box 25101  
Santa Fe, New Mexico 87504

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### NEW MEXICO RACING COMMISSION

#### NEW MEXICO RACING COMMISSION AMENDED NOTICE OF RULEMAKING AND PUBLIC HEARING

#### NOTICE IS HEREBY GIVEN

that a rulemaking and public hearing will be held in the Mt. Cristo Rey Room, Sunland Park Racetrack, 1200 Futurity Drive, Sunland Park, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Thursday, February 24, 2005. The public session will begin at 9:30 o'clock a.m. on Thursday, February 24, 2005. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. Subsections F, G, and O of 15.2.7.12 NMAC, and incorporation by reference of the RCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule and other matters of general business.

Copies of the proposed rules may be obtained from India Hatch, Agency Director, New Mexico Racing Commission, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87108, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

\_\_\_\_\_  
India Hatch

Agency Director

Dated: January 28, 2005

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES DIVISION

**Notice of Repeal**

8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, is repealed effective 2/14/05 and repromulgated as 8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers effective 2/14/05.

**Notice of Repeal**

8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs, is repealed effective 2/14/05, 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 2/14/05.

**Notice of Repeal**

8.17.2 NMAC Requirements Governing Registration of Non-Licensed Family Child Care Homes, is repealed effective 2/14/05, and repromulgated as 8.17.2 NMAC Requirements Governing Registration of Non-Licensed Family Child Care Homes effective 2/14/05.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES 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, 02/14/05]

**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, 02/14/05]

**8.15.2.3 STATUTORY AUTHORITY:** NMSA section 9-2A-7 (1991). [8.15.2.3 NMAC - Rp, 8.15.2.3 NMAC, 02/14/05]

**8.15.2.4 DURATION:** Permanent [8.15.2.4 NMAC - Rp, 8.15.2.4 NMAC, 02/14/05]

**8.15.2.5 EFFECTIVE DATE:** February 14, 2005, unless a later date is cited at the end of section. [8.15.2.5 NMAC - Rp, 8.15.2.5 NMAC, 02/14/05]

**8.15.2.6 OBJECTIVE:**  
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, 02/14/05]

**8.15.2.7 DEFINITIONS:**

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 assis-

tance 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. "Star level" means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality. The AIM HIGH essential elements, as approved by the child development board, are the criteria that will be used for determining the number of stars.

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

I. "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;

and

- (4) school age: 6 year olds and older.

J. "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.

K. "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 mini-

mum, 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 council of accreditation (COA); the national after school association (NAA); 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.

L. "Non-traditional hours of care" means care provided between the after hours of 7 p.m. and 7 a.m. Monday through Friday and/or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

M. "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.

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

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

P. "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. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are ineligible.

(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.

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

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

S. "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.

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

U. "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.

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

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

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

Y. "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.

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

AA. "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.

BB. "CACFP" means the child and adult care food program, administered by the children, youth and families department. [8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC, 02/14/05]

#### 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, 02/14/05]

#### 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 (effective July 1, 2005, is at or below 175% 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 175% 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. Effective July 1, 2005, priority four is child care assistance for families whose income is above 100% of the federal poverty level but at or below 175% 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 department reserves the right to expand the eligibility requirement up to 200% of the federal poverty level based on budget availability. Effective July 1, 2005, the department reserves the right to expand the eligibility requirement up to 175% 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 of the department.  
[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 02/14/05]

#### **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; and

H. 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, 02/14/05]

#### **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; supplemental 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 volunteers in service to America (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, 02/14/05]

#### 8.15.2.12 RECERTIFICATION

CLIENTS: 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, 02/14/05]

#### 8.15.2.13 CLIENT RESPONSIBILITIES

CLIENTS: Clients must abide by the regulations set forth by the department and utilize 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, 02/14/05]

**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, 02/14/05]

**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. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are ineligible. All registered homes receiving child care assistance subsidies who register after July 1, 2006 must complete, within six

months of registration, an 18-hour course or an equivalent approved by the department. The 18-hour course will count toward the 6-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP. All licensed providers receiving child care assistance subsidies must have a 2-Star level by July 1, 2006. 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 45 consecutive calendar day grace period in which to comply with the registration requirement. A 45 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 referral 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 addi-

tional 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, 02/14/05]

#### **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 inter-

est 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, 02/14/05]

**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 during 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	\$410.22	\$350.88	\$307.67	\$233.92	\$205.11	\$116.96	\$102.56
Toddler	\$417.19	\$381.10	\$312.89	\$285.82	\$208.60	\$190.55	\$104.30	\$95.27
Pre-school	\$386.48	\$354.49	\$289.86	\$265.87	\$193.24	\$177.25	\$96.62	\$88.62
School age	\$337.11	\$324.43	\$252.83	\$243.32	\$168.56	\$162.22	\$84.28	\$81.11

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	\$347.43	\$277.86	\$260.57	\$185.24	\$173.72	\$92.62	\$86.86
Toddler	\$335.40	\$327.70	\$251.55	\$245.78	\$167.70	\$163.85	\$83.85	\$81.93
Pre-school	\$329.55	\$322.28	\$247.16	\$241.71	\$164.78	\$161.14	\$82.39	\$80.57
School age	\$325.00	\$315.00	\$243.75	\$236.25	\$162.50	\$157.50	\$81.25	\$78.75

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	\$342.60	\$273.90	\$256.95	\$182.60	\$171.30	\$91.30	\$85.65
Toddler	\$325.08	\$320.04	\$243.81	\$240.03	\$162.54	\$160.02	\$81.27	\$80.01
Pre-school	\$324.17	\$317.09	\$243.13	\$237.81	\$162.09	\$158.54	\$81.04	\$79.27
School age	\$319.28	\$309.64	\$239.46	\$232.23	\$159.64	\$154.82	\$79.82	\$77.41

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, Star level 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 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, Dona Ana, and San Juan 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 \$100.00 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 \$100.00 per child per month for full time care above the metro rate for type of child care

(licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. 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 reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher Star levels as follows: 2-Star at \$25.00 per month per child for full time care above the base reimbursement rate; 3-Star at \$50.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$75.00 per month per child for full time care above the base reimbursement rate, and 5-Star at \$100.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

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, 02/14/05]

**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 departments 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, 02/14/05]

**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 family services director 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, 02/14/05]

**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, 02/14/05]

**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 agreement 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, 02/14/05]

#### **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 benefit 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 family services director authorizes otherwise in exceptional circum-

stances. 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, 02/14/05]

#### **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 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, 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, 02/14/05]

#### **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, 8.15.2.24 NMAC, 02/14/05]

#### **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 program 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; and;

(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 - Rp, 8.15.2.25 NMAC, 02/14/05]

#### **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.

8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 2/14/05.

**NEW MEXICO  
CHILDREN, YOUTH AND  
FAMILIES DEPARTMENT  
FAMILY SERVICES 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, 02/14/05]

**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, 02/14/05]

**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, 02/14/05]

**8.16.2.4 DURATION:** Permanent.  
[8.16.2.4 NMAC - Rp, 8.16.2.4 NMAC, 02/14/05]

**8.16.2.5 EFFECTIVE DATE:** February 14, 2005 unless a later date is cited at the end of section.  
[8.16.2.5 NMAC - Rp, 8.16.2.5 NMAC, 02/14/05]

**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, 02/14/05]

**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; and

(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. "AIM HIGH" is a voluntary quality child care improvement program that is open to all registered and licensed child care providers.

E. "Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations). Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

F. "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).

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

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

facility.

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

J. "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 safety codes.

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

L. "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.

M. "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.

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

O. "Curriculum" is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program's mission statement, philosophy (which, in turn, is based on assumptions about young children's development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

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

Q. "Director" means the person in charge of the day-to-day operation and program of a child care center.

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

S. "Environment" means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

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

U. "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).

V. "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.

W. “Star level” means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

X. “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.

Y. “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.

Z. “Infant” means a child age six (6) weeks to twelve (12) months.

AA. “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.

BB. “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.

CC. “Licensing authority” means the child care services bureau - licensing section of the family services 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.

DD. “Mission statement,” describes what the program aspires to do and whom the program aspires to serve.

EE. “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.

FF. “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 council of accreditation (COA); the national after-school association (NAA); 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.

GG. “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.

HH. “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.

II. “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.

JJ. “Orientation” means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

KK. “Parent handbook” is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

LL. “Pest” means any living organism declared a pest pursuant to the Pesticide Control Act.

MM. “Pesticide” means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

NN. “Philosophy statement” describes how the program’s mission will be carried out. It reflects the values, beliefs,

and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program’s perspective on early care and education and the nature of how children learn. The program’s philosophy is implemented through the curriculum.

OO. “Plan of correction” means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

PP. “Policy” is a written directive that guides decision-making. Policies form the basis for authoritative action.

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

RR. “Procedure” is a series of steps to be followed, usually in a specific order, to implement policies.

SS. “Professional development” is an on-going plan for continued professional development for each staff member, including the director.

TT. “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.)

UU. “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.

VV. “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.

WW. “Restriction” means to control enrollment, service type, capacity, activities, or hours of operation.

XX. “Revocation” means the act of making a license null and void through its cancellation.

YY. “Sanction” means a measure imposed by the licensing authority for a violation(s) of these standards.

ZZ. “Staff evaluation” means that each staff member is evaluated by the director, using criteria from the individual’s

job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual's professional development plan.

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

BBB. "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.

CCC. "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.

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

EEE. "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.

FFF. "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.

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

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

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

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

KKK. "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.

LLL. "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,

02/14/05]

**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 depart-

ment 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, 02/14/05]

**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 care 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, 02/14/05]

**8.16.2.10 LICENSING AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY):** The child care services bureau, licensing section, of the family services 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, 02/14/05]

**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.

(a) 1-star level requires meeting minimum licensing requirements.

(b) 2-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH level 2 criteria at all times.

(c) 3-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH levels 2 and 3 criteria at all times.

(d) 4-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH levels 2, 3, and 4 criteria at all times.

(e) 5-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH levels 2, 3, and 4 criteria at all times, and having national accreditation status.

(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, number of stars, 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.

(c) A child care facility will apply to the licensing authority for an amended license in order to change the number of stars. An application for a different Star level will not be approved nor an amended license issued until on-site visits have been made and it has been determined that the child care facility meets all applicable criteria.

**(4) RENEWAL OF LICENSE:**

(a) A licensee will submit a notarized renewal application, indicating the number of stars requested, 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 criminal record check (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 AND GOLD LICENSES:** Effective July 1, 2006, the department will not recognize grandfathered gold and silver licenses. Those currently holding grandfathered silver licenses have the option to become accredited through a nationally recognized body on their own and receive the accredited rate by July 2006, join AIM HIGH as a priority participant and strive for whichever level desired to be reimbursed at the level they are performing on July 1, 2006; or revert to the base rate as of July 1, 2006. Grandfathered gold licenses will be designated as AIM HIGH level five as long as accreditation is maintained. 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. Up until June 30, 2006 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 all care givers working with children in a 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 annually.

(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 NAEYC, NECPA, affiliation with a nationally recognized Montessori association, NCCA, NAFCC, the council of accreditation; NAA, 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 chil-

dren 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, 02/14/05]

#### **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, 02/14/05]

#### **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, 02/14/05]

#### **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, 02/14/05]

#### **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, 02/14/05]

#### **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, 02/14/05]

#### **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 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, 02/14/05]

#### **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,

02/14/05]

#### **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 Paragraphs (1), (2) and (3) of Subsection C.

C. **SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE CHILD CARE CENTERS:** 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; and

(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 CORRECTIONAL 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; and

(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, 02/14/05]

#### **8.16.2.20 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) **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; and
- (v) ramps exceeding a six-inch rise are provided with handrails.

- (b) Requirements contained here-

in 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.

(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;
- (7) any legal action against a center or staff members related to the care and custody of children; and
- (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, 02/14/05]

### **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. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT:** All licensed facilities must have a:

- (1) mission statement that describes:
  - (a) services the program aspires to provide; and
  - (b) whom the program aspires to serve.
- (2) philosophy statement that includes:
  - (a) beliefs about children's growth, development and behavior;
  - (b) what and how children learn;
  - (c) adults roles in children's learning, specifically how adults guide or control the teaching and learning process; and
  - (d) a description of the environment and how it contributes to learning.
- (3) curriculum statement which includes:
  - (a) play as the primary mode of learning;
  - (b) active engagement of children;
  - (c) opportunities to make choices;
  - (d) opportunities to experiment and explore; and

(e) promotion of children's social emotional development.

C. **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.

D. **PARENT HANDBOOK:** All facilities using these regulations must have a parent handbook which includes the following:

(1) **GENERAL INFORMATION:**

(a) mission statement;

(b) philosophy statement;

(c) program information (location, licensing status, days and hours of operation, services offered);

(d) name of director and how he/she may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) expectations for parent involvement (e.g. participating as a volunteer in classroom, home visits, parent conferences, meetings/speakers, parent library or other information, etc.);

(h) appropriate dress for children, including request for extra change of clothes; and

(i) celebrating holidays, birthdays and parties.

(2) **POLICIES AND PROCEDURES:**

(a) enrollment procedures;

(b) disenrollment procedures;

(c) fee payment procedures, including penalties for tardiness;

(d) notification of absence;

(e) fee credits, if any (e.g. for vacations, absences, etc.);

(f) field trip policies;

(g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) copies of all forms identified in sections E and F below.

E. **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.

(j) a signed acknowledgment that the parent or guardian has read and understands the parent handbook.

(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 num-

ber of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency.

(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.

F. **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) 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 8.8.3 NMAC to continue to work directly and/or unsupervised with children;

(f) documentation of current first-aid and cardiopulmonary resuscitation training;

(g) documentation of all appropriate training by date, time, hours and area of competency;

(h) emergency contact number;

(i) universal precaution acknowledgment form;

(j) personnel action form;

(k) confidentiality form;

(l) W-4 and I-9;

(m) results of performance evaluations;

(n) administrative actions or reprimands;

(o) professional development plan;

(p) signed acknowledgment that

the staff have read and understand the personnel handbook; and

(q) a written plan for each staff member, based on the seven areas of competency that is consistent with the career lattice based on the individual's goals.

(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.

**G. PERSONNEL HANDBOOK:** The center will give each employee a personnel handbook that covers all matters relating to employment and includes the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title;

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.

(4) yearly calendar, including meetings, holidays, professional development, etc.

(5) code of conduct;

(6) training requirements, career lattice, professional development opportunities;

(7) procedures and criteria for performance evaluations;

(8) policies on absence from work;

(9) grievance procedures;

(10) procedures for resignation or termination;

(11) copy of licensing regulations;

(12) policy on parent involvement;

(13) health policies related to both children and staff; and

(14) policy on sexual harassment. [8.16.2.21 NMAC - Rp, 8.16.2.21 NMAC, 02/14/05]

### **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. The director will have on file a signed acknowledgment of completion of orientation by employees, volunteers and

substitutes as well as the director. 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 C of 8.16.2.21 NMAC;

(vii) center/parental agreement;

(viii) sanitation procedure;

(ix) written goals of the program;

(x) personnel handbook;

(xi) parent handbook;

(xii) names and ages of children;

(xiii) names of parents;

(xiv) tour of the facility; and

(xv) introduction to other staff and parents.

(b) Effective July 1, 2005, new staff members working directly with children regardless of the number of hours per week will complete the 45-hour entry level course or approved 3-credit early care and education course or an equivalent approved by the department prior to or within six months of employment. Existing staff will meet this requirement by December 31, 2005.

(c) 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 training 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.

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

(e) 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.

(f) 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 Paragraph (4) of Subsection A of 8.16.2.22 NMAC for requirements for centers that operate less than 20 hours per week.

#### C. S T A F F I N G 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. S T A F F / C H I L D 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, 02/14/05]

#### 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 available 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. ENVIRONMENT:

(1) Environment is organized into identifiable learning centers/spaces.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.

##### D. EQUIPMENT AND PROGRAM:

(1) A child care center will pro-

vide 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.

#### E. 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.

#### F. 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;

(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;

(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, 02/14/05]

#### 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 thorough-

ly 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, 02/14/05]

#### 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, 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, 02/14/05]

#### 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 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 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, 02/14/05]

#### 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.

(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) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. 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 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 protec-

tors, 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, 02/14/05]

#### 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.

(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 exclusively 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, 02/14/05]

**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, 02/14/05]

### 8.16.2.30 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 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, 02/14/05]

### 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;

(4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and

(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. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

(1) mission statement that describes:

(a) services the program aspires to provide; and

(b) whom the program aspires to serve.

(2) philosophy statement that includes:

(a) beliefs about children's growth, development and behavior;

(b) what and how children learn;

(c) adults roles in children's learning, specifically how adults guide or control the teaching and learning process; and

(d) a description of the environment and how it contributes to learning.

(3) curriculum statement which includes:

(a) play as the primary mode of learning;

(b) active engagement of children;

(c) opportunities to make choices;

(d) opportunities to experiment and explore; and

(e) promotion of children's social emotional development.

**C. PARENT HANDBOOK:** All facilities using these regulations must have a parent handbook which includes the following:

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, licensing status, days and hours of operation, services offered);

(d) name of director and how he/she may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) expectations for parent involvement (e.g. participating as a volunteer in classroom, home visits, parent conferences, meetings/speakers, parent library or other information, etc.);

(h) appropriate dress for children, including request for extra change of clothes; and

(i) celebrating holidays, birthdays and parties.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) fee payment procedures, including penalties for tardiness;

(d) notification of absence;

(e) fee credits, if any (e.g. for vacations, absences, etc.);

(f) field trip policies;

(g) health policies (program's policies on admitting sick children, when children can return after an illness, adminis-

tering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) copies of all forms identified in sections D and E below.

**D. 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;

(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; and

(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.

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

(1) 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.

(2) A record of the time the second care givers arrived at and left work, to include breaks and lunch.

**F. PERSONNEL HANDBOOK:** The provider will give each non-resident employee a personnel handbook that covers all matters relating to employment and includes the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(4) yearly calendar, including meetings, holidays, professional development, etc.;

(5) code of conduct;

(6) training requirements, career lattice, professional development opportunities;

(7) procedures and criteria for performance evaluations;

(8) policies on absence from work;

(9) grievance procedures;

(10) procedures for resignation or termination;

(11) copy of licensing regula-

tions;

(12) policy on parent involvement;

(13) health policies related to both children and staff; and

(14) policy on sexual harassment. [8.16.2.31 NMAC - Rp, 8.16.2.31 NMAC, 02/14/05]

### **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 expe-

rience 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) Infant and toddler care givers must have at least two (2) hours of training in infant and toddler care within six (6) months of starting work. The two (2) hours will count toward the 12-hour requirement in subsection (2).

(4) Effective July 1, 2005, the primary caregiver will complete the 45-hour entry level course or approved 3-credit early care and education course or an equivalent approved by the department prior to or within six months of employment.

(5) 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, 02/14/05]

### **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 inches 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. ENVIRONMENT:**

(1) Environment is organized into identifiable learning centers/spaces.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members, and visitors.

#### **D. 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.

#### E. 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.

#### F. 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, 02/14/05]

### 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, 02/14/05]

### 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, 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 container 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 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 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, 02/14/05]

**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.

(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) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. 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, 02/14/05]

**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 accordion-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, 02/14/05]

**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 insecti-

cides.

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

**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. SMOKING, 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, 02/14/05]

**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, 02/14/05]

**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, 02/14/05]

### 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. **MISSION, PHILOSOPHY AND CURRICULUM STATEMENT:** All licensed facilities must have a:

(1) mission statement that describes:

(a) services the program aspires to provide; and

(b) whom the program aspires to serve.

(2) philosophy statement that includes;

(a) beliefs about children's growth, development and behavior;

(b) what and how children learn;

(c) adults roles in children's learning, specifically how adults guide or control the teaching and learning process; and

(d) a description of the environ-

ment and how it contributes to learning.

(3) curriculum statement which includes:

(a) play as the primary mode of learning;

(b) active engagement of children;

(c) opportunities to make choices;

(d) opportunities to experiment and explore; and

(e) promotion of children's social emotional development.

C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following.

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, licensing status, days and hours of operation, services offered);

(d) name of director and how he/she may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) expectations for parent involvement (e.g. participating as a volunteer in classroom, home visits, parent conferences, meetings/speakers, parent library or other information, etc.);

(h) appropriate dress for children, including request for extra change of clothes; and

(i) celebrating holidays, birthdays and parties.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) fee payment procedures, including penalties for tardiness;

(d) notification of absence;

(e) fee credits, if any (e.g. for vacations, absences, etc.);

(f) field trip policies;

(g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) copies of all forms identified in sections D and E below.

D. 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 pro-

gram 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; and

(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;

(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.; and

(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.

E. 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) 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;

(f) documentation of first-aid and cardiopulmonary resuscitation training;

(g) documentation of all appropriate training by date, time, hours and area of competency; and

(h) 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.

F. PERSONNEL HANDBOOK: The provider will give each non-resident employee a personnel handbook that covers all matters relating to employment and includes the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(4) yearly calendar, including meetings, holidays, professional development, etc.;

(5) code of conduct;

(6) training requirements, career lattice, professional development opportunities;

(7) procedures and criteria for performance evaluations;



- (8) policies on absence from work;
  - (9) grievance procedures;
  - (10) procedures for resignation or termination;
  - (11) copy of licensing regulations;
  - (12) policy on parent involvement;
  - (13) health policies related to both children and staff; and
  - (14) policy on sexual harassment.
- [8.16.2.41 NMAC - Rp, 8.16.2.41 NMAC, 02/14/05]

**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. See Paragraph (3) of Subsection C of 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, 02/14/05]

**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. ENVIRONMENT:**

(1) Environment is organized into identifiable learning centers/spaces.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members, and visitors.

**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 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, 02/14/05]

**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, 02/14/05]

**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, 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 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 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, 02/14/05]

**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 passenger 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) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. 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 program will:

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

(b) use the fire alarm or detector system;

(c) emphasize an orderly evacuation rather than speedy; and

(d) 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 authority 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, 02/14/05]

#### 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 MATERIAL:

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.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 2-14-05.

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES 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,  
02/14/05]

**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, 02/14/05]

**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, 02/14/05]

**8.17.2.4 DURATION:** Permanent.

[8.17.2.4 NMAC - Rp, 8.17.2.4 NMAC, 02/14/05]

**8.17.2.5 EFFECTIVE DATE:** February 14, 2005, unless a later date is cited at the end of a section.

[8.17.2.5 NMAC - Rp, 8.17.2.5 NMAC, 02/14/05]

**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, 02/14/05]

**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, criminal records check (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, 02/14/05]

**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. All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are ineligible or the provider does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

[8.17.2.8 NMAC - Rp, 8.17.2.8 NMAC, 02/14/05]

**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, 02/14/05]

**8.17.2.10 STATE AND FEDERAL CRIMINAL RECORDS CHECKS:**

A. Criminal records checks 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 provisions of 8.8.3 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, 02/14/05]

#### **8.17.2.11 RENEWAL :**

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, 02/14/05]

#### **8.17.2.12 VISITATION :**

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, 02/14/05]

#### **8.17.2.13 NON-COMPLIANCE:**

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; and

(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;

(6) Substantiated abuse and/or neglect of children as determined by the protective services division of CYFD or a law enforcement agency;

(7) 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, 02/14/05]

#### **8.17.2.14 ANNUAL CERTIFICATION:**

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 - Rp, 8.17.2.14 NMAC, 02/14/05]

#### **8.17.2.15 INCIDENT 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; or

C. the abuse or neglect of a child.

[8.17.2.15 NMAC - Rp, 8.17.2.15 NMAC,

02/14/05]

#### **8.17.2.16 - 19 [RESERVED]**

#### **8.17.2.20 REQUIRED STANDARDS:**

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, 02/14/05]

#### **8.17.2.21 GROUP COMPOSITION 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, 02/14/05]

#### **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) and no more than 82 degrees (fahrenheit). A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.

E. The home must be adequately ventilated at all times.

F. All gas-fired equipment

and water heaters must have a 100% cutoff valve and be city/county inspected and approved.

G. All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees (fahrenheit) in all areas accessible to children.

H. A caregiver must provide safe playing areas inside and outside the home.

I. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, and sharp and pointed objects in a storage area inaccessible to children.

J. The home provider must have a working telephone in the home at all times when non-resident children are present. 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.

K. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center by the telephone.

L. 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.

M. A caregiver will install at least one working smoke detector in an appropriate area in the home.

N. A caregiver will store all firearms, such as rifles and handguns, in a locked area inaccessible to children.

O. 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.

P. 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.

Q. A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, or laundry rooms.

R. 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.

S. A home will have two (2) major exits readily accessible to children.

T. Toys and objects (including high chairs) are safe, durable, easy to clean and nontoxic.

U. Children will not use a

common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

V. 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, and a thermometer.

W. A caregiver will ensure that all pets in the home are inoculated as required by law and will keep proof of inoculations.

X. A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will disinfect the diaper-changing surface and wash their hands and the child's hands after every diaper change.

Y. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device.

[8.17.2.22 NMAC - Rp, 8.17.2.22 NMAC, 02/14/05]

#### **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, 02/14/05]

#### **8.17.2.24 RECORD KEEPING**

**REQUIREMENTS:** Caregivers must keep an information card for each child with:

A. the child's full name;

B. the child's birth date;

C. any known food or drug allergies or unusual physical condition;

D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;

E. the name and telephone number of the child's physician;

F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;

G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent; and,

H. 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, 02/14/05]

#### **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. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

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. All caregivers receiving child care assistance subsidies who register after July 1, 2006 must complete, within six months of registration, an 18-hour course or an equivalent approved by the department. The 18-hour course will count toward the 6 hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

H. Providers caring for infants shall receive two hours of infant specific training within six-months 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, 02/14/05]

#### **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, 02/14/05]

**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, 02/14/05]

#### **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 11/1/02.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 02/14/05.

## **NEW MEXICO RACING COMMISSION**

This is an amendment to Section 8 of 15.2.7 NMAC, effective 02/14/2005.

### **15.2.7.8 GENERAL PROVISIONS:**

**A. GENERAL:** Each association shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the commission. The totalisator shall be tested prior to and during the meeting as required by the commission. Each association shall make reasonable provisions for providing a backup system in case of a mechanical failure. The association is required to report to the commission on the backup system so provided.

#### **B. RECORDS:**

(1) The association shall maintain records of all wagering so the commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each association and safeguarded for a period of time specified by the commission. The commission may require that certain of these records be made available to

the wagering public at the completion of each contest.

(2) The association shall provide the commission with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

### **C. PARI-MUTUEL TICKETS:**

(1) A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the association and is evidence of the obligation of the association to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The association shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold, and for a 60 day period after the last day of the meeting.

(2) To be deemed a valid pari-mutuel ticket, such ticket shall have been recorded by a pari-mutuel ticket machine operated by the association and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

(a) the name of the association operating the meeting;

(b) a unique identifying number or code;

(c) identification of the terminal at which the ticket was issued;

(d) a designation of the performance for which the wagering transaction was issued;

(e) the contest number for which the pool is conducted;

(f) the type or types of wagers represented;

(g) the number or numbers representing the betting interests for which the wager is recorded;

(h) the amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

(3) No pari-mutuel ticket recorded or reported as previously paid, cancelled, or non-existent shall be deemed a valid pari-mutuel ticket by the association. The association may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in Subsection D of 15.2.7 NMAC of these general provisions.

### **D. PARI-MUTUEL TICKET SALES:**

(1) Pari-mutuel tickets shall not be sold by anyone other than an association licensed to conduct pari-mutuel wagering.

(2) No pari-mutuel ticket may be sold on a contest for which wagering has already been closed and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalisator is closed for wagering on such contest.



(3) Claims pertaining to a mistake on an issued ticket, or a mistake involving failure to issue a ticket, must be made by the bettor prior to leaving the seller's window. Cancellation or exchange of tickets issued shall not be permitted after a patron has left a seller's window except in accordance with written policies established by the association and approved by the commission.

(4) Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official". Any subsequent change in the order of finish or award of purse money as may result from a subsequent ruling by the stewards or commission shall in no way affect the pari-mutuel payout. If an error in the posted order of finish or payout figures is discovered, the official order of finish or payout prices may be corrected and an announcement concerning the change shall be made to the public.

(5) The association shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization of the commission.

(6) The association shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

(7) No person under eighteen (18) years of age is permitted to purchase or cash a pari-mutuel ticket. It shall be the duty of the pari-mutuel employees to demand proof of age from any person whose age, as it pertains to this rule, is doubtful.

**E. ADVANCE PERFORMANCE WAGERING:** No association shall permit wagering to begin more than ~~one hour~~ four days before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the commission.

**F. CLAIMS FOR PAYMENT FROM PARI-MUTUEL POOL:**

(1) At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the association in any case where the association has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the commission, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the commission within 48 hours.

(2) In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required in Subsection C Paragraph (2) of 15.2.7 NMAC of these general provisions, the association shall make a recommendation to accompany the claim forwarded to the commission as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

(3) In the case of a claim made for payment on a pari-mutuel wager, the commission shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the association, or may deny the claim, or may make such other order as it may deem proper.

**G. PAYMENT FOR ERRORS:** If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed; and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

(1) verification is required to show that the amount of the commission, the amount in breakage, and the amount in payouts is equal to the total gross pool; if the amount of the pool is more than the amount used to calculate the payout, the underpayment shall be added to the corresponding pool of the next contest; if underpayments are discovered after the close of the meeting, the underpayment shall be held in an interest-bearing account approved by the commission until being added, together with accrued interest, to the corresponding pool of the next meeting;

(2) any claim not filed with the association within 60 days, inclusive of the date on which the underpayment was publicly announced, shall be deemed waived; and the association shall have no further liability therefore;

(3) in the event the error results in an overpayment to winning wagers, the association shall be responsible for such payment.

**H. BETTING EXPLANATION:** A summary explanation of pari-mutuel wagering and each type of betting pool offered shall be published in the program for every wagering performance. The rules of racing relative to each type of pari-mutuel pool offered must be prominently displayed on association grounds and available upon request through association representatives.

**I. DISPLAY OF BETTING INFORMATION:**

(1) Approximate odds for win pool betting shall be posted on display devices within view of the wagering public and updated at intervals of not more than 90 seconds.

(2) The probable payout or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the commission.

(3) Official results and payouts must be displayed upon each contest being declared official.

**J. CANCELLED CONTESTS:** If a contest is cancelled or declared

"no contest", refunds shall be granted on valid wagers in accordance with these rules.

**K. REFUNDS:**

(1) Notwithstanding other provisions of these rules, refunds of the entire pool shall be made on:

(a) win pools, exacta pools, and first-half double pools offered in contests in which the number of betting interests has been reduced to fewer than two (2);

(b) place pools, quinella pools, trifecta pools, first-half quinella double pools, first-half twin quinella pools, first-half twin trifecta pools, and first-half trisuperfecta pools offered in contests in which the number of betting interests has been reduced to fewer than three (3);

(c) show pools, superfecta pools, and first-half twin superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four (4).

(2) Authorized refunds shall be paid upon presentation and surrender of the affected pari-mutuel ticket.

**L. COUPLED ENTRIES AND MUTUEL FIELDS:**

(1) Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests shall be refunded, notwithstanding other provisions of these rules.

(2) For the purpose of price calculations only, coupled entries and mutuel fields shall be calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules.

**M. POOLS DEPENDENT UPON BETTING INTERESTS:**

Unless the commission otherwise provides, at the time the pools are opened for wagering, the association:

(1) may offer win, place, and show wagering on all contests with six (6) or more betting interests;

(2) may be allowed to prohibit show wagering on any contest with five (5) or fewer betting interests scheduled to start;

(3) may be allowed to prohibit place wagering on any contest with four (4) or fewer betting interests scheduled to start;

(4) may be allowed to prohibit quinella wagering on any contest with three (3) or fewer betting interests scheduled to

start;

(5) may be allowed to prohibit quinella double wagering on any contests with three (3) or fewer betting interests scheduled to start;

(6) may be allowed to prohibit exacta wagering on any contest with three (3) or fewer betting interests scheduled to start;

(7) may prohibit trifecta wagering on any contest with seven (7) or fewer betting interests scheduled to start;

(8) may prohibit superfecta wagering on any contest with seven (7) or fewer betting interests scheduled to start;

(9) may be allowed to prohibit twin quinella wagering on any contests with three (3) or fewer betting interests scheduled to start;

(10) may prohibit twin trifecta wagering on any contests with seven (7) or fewer betting interests scheduled to start;

(11) may prohibit tri-superfecta wagering on any contests with seven (7) or fewer betting interests scheduled to start;

(12) may prohibit twin superfecta wagering on any contests with seven (7) or fewer betting interests scheduled to start.

**N. PRIOR APPROVAL REQUIRED FOR BETTING POOLS:**

(1) An association desiring to offer new forms of wagering must apply in writing to the commission and receive written approval prior to implementing the new betting pool.

(2) The association may suspend previously approved forms of wagering with the prior approval of the commission. Any carryover shall be held until the suspended form of wagering is reinstated. An association may request approval of a form of wagering or separate wagering pool for specific performances.

**O. CLOSING OF WAGERING IN A CONTEST:**

(1) A commission representative shall close wagering for each contest after which time no pari-mutuel tickets shall be sold for that contest.

(2) The association shall maintain, in good order, a system approved by the commission for closing wagering.

**P. COMPLAINTS PERTAINING TO PARI-MUTUEL OPERATIONS:**

(1) When a patron makes a complaint regarding the pari-mutuel department to an association, the association shall immediately issue a complaint report, setting out:

- (a) the name of the complainant;
- (b) the nature of the complaint;
- (c) the name of the persons, if any, against whom the complaint was made;
- (d) the date of the complaint;
- (e) the action taken or proposed to be taken, if any, by the association.

(2) The association shall submit every complaint report to the commission within 48 hours after the complaint was made.

**Q. LICENSED EMPLOYEES:** All licensees shall report any known irregularities, wrong doings by, or dismissal of, any person involving pari-mutuel wagering immediately to the commission and cooperate in subsequent investigations.

**R. UNRESTRICTED ACCESS:** The association shall permit the commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the association that relate to pari-mutuel wagering.

**S. EMERGENCY SITUATIONS:** Should an emergency arise in connection with the operation of the pari-mutuel department not covered by these rules and an immediate decision is necessary, the manager of the pari-mutuel department shall make the decision and render a full report to the commission within 48 hours.

[15.2.7.8 NMAC - Rp, 15 NMAC 2.7.8, 03/15/2001; A, 10/29/2004; A, 02/14/2005]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

This is an amendment to 19.15.40 NMAC, replacing the 2001 Edition (NFPA 58) with the 2004 Edition (NFPA 58), effective March 2, 2005.

**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION**

**TITLE 18 TRANSPORTATION  
AND HIGHWAYS  
CHAPTER 30 HIGHWAY CON-  
TRACTS FINANCIAL ACCOUNTING  
AND REPORTING  
PART 2 FUND SHARING  
WITH GOVERNMENTAL ENTITIES  
FOR AUTHORIZED TRANSPORTA-  
TION PROJECTS**

**18.30.2.1 ISSUING AGENCY:** New Mexico Department of Transportation, P.O. Box 1149 Santa Fe, New Mexico 87504-1149. [18.30.2.1 NMAC - N, 01/27/05]

**18.30.2.2 SCOPE:** All local governmental entities and the general public. [18.30.2.2 NMAC - N, 01/27/05]

**18.30.2.3 STATUTORY AUTHORITY:** Adoption of this rule is pursuant to authority granted to the New Mexico state transportation commission and the New Mexico department of transportation through its secretary pursuant to NMSA 1978, Section 67-3-11; NMSA 1978, Special Session Laws of 2004, Chapter 3, Section 28.

[18.30.2.3 NMAC - N, 01/27/05]  
[Also pursuant to State Transportation Commission Policy 4]

**18.30.2.4 DURATION:** Six years ending January 31, 2011. [18.30.2.4 NMAC - N, 01/27/05]

**18.30.2.5 EFFECTIVE DATE:** January 27, 2005, unless a later date is cited at the end of a section. [18.30.2.5 NMAC - N, 01/27/05]

**18.30.2.6 OBJECTIVE:** To create a rule as pursuant to NMSA 1978, Section 67-3-59.1, NMSA 1978, Section 67-3-59.2, and NMSA 1978, Section 67-3-59.3 which identifies funding share and sliding scale of funding share for two projects: (1) the Rio Bravo boulevard extension and interchange construction to access Mesa del Sol in the city of Albuquerque and Bernalillo county; and (2) the reconstruction of an interchange at Interstate 40 and West Central Avenue in the city of Albuquerque and Bernalillo county. The sliding scale is based on the local entity's ability to pay a portion of the project from local resources. [18.30.2.6 NMAC - N, 01/27/05]

**18.30.2.7 DEFINITIONS:**  
**A. "Commission"** means the New Mexico state transportation commission.  
**B. "Department"** means the New Mexico department of transportation.  
**C. "Secretary"** means the secretary of the New Mexico department of transportation or his or her designee. [18.30.2.7 NMAC - N, 01/27/05]

**18.30.2.8 SLIDING SCALE FOR AUTHORIZED TRANSPORTATION PROJECTS WITH LOCAL GOVERNMENT:**  
**A.** The authorized matching funds for the GRIP funded portion of the transportation project for the Rio Bravo boulevard extension and interchange construction to access Mesa del Sol in the city of Albuquerque and Bernalillo county from the local governments are:  
(1) city of Albuquerque: funds from the capital program.  
(2) Bernalillo county:

- (a) funds for environmental analysis;
- (b) funds for staff time devoted to project;
- (c) value of estimated right-of-way contribution.
- (3) Private share from private sources.

**B.** The authorized matching funds for the GRIP funded portion of the transportation project for the reconstruction of an interchange at Interstate 40 and West Central Avenue in the city of Albuquerque and Bernalillo county from the local governments are:

(1) city of Albuquerque-sliding scale as agreed to in cooperative project agreement;

(2) Bernalillo county-sliding scale as agreed to in cooperative project agreement.

**C.** The authorized match for the projects' matching funds for the New Mexico department of transportation are: (1) the Rio Bravo boulevard extension and interchange construction to access Mesa del Sol in the city of Albuquerque and Bernalillo county - \$6 million from the GRIP bond issue; (2) the reconstruction of an interchange at Interstate 40 and West Central Avenue in the city of Albuquerque and Bernalillo county - \$6 million from the GRIP bond issue.

[18.30.2.8 NMAC - N, 01/27/05]

**HISTORY OF 18.30.2 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:**  
[RESERVED]

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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

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### NEW MEXICO ENVIRONMENT DEPARTMENT

#### NOTICE OF OPEN FUNDING CYCLE

The New Mexico Environment Department (NMED) is accepting applications for placement on the fiscal year 2004-2009 Priority List of the Clean Water State Revolving Loan Fund also known as Wastewater Facility Construction Loan Fund. Applications for the addition of water pollution control projects to the Priority List will be accepted through March 31, 2005 at 5:00 p.m. MST.

The New Mexico Clean Water State Revolving Loan Fund Program provides low interest loan funds for the planning, design, and construction of wastewater facilities to prevent or abate water pollution. In addition, monies are available for the redevelopment of Brownfield sites and the protection and/or prevention of statewide water resources from non-point source pollution. Eligible projects include but are not limited to preliminary planning to determine the feasibility of treatment works, engineering design, construction of sewage collection and treatment systems, storm water management facilities, landfill closures and modifications, on-site wastewater system repairs and replacements, underground storage tank removal, constructed wetlands, well capping, contaminated soil remediation, correction of groundwater contamination, and soil erosion controls. Any municipality, county, Indian tribe or sanitation district may apply for a loan from NMED, as agent for the Water Quality Control Commission, which is the designated water pollution control agency within New Mexico. A community's initial request for assistance does not obligate it to accept a loan. Approximately \$30 Million in federal and state funds are currently available for loans to eligible projects.

Questions regarding the Fund or the application process may be directed to Richard P. Rose, Chief, Construction Programs Bureau, at (505) 827-9691 or Ramona Rael, Financial Manager at (505) 827-2808.

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### NEW MEXICO LIVESTOCK BOARD

#### NOTICE OF SPECIAL BOARD MEETING

**NOTICE IS HEREBY GIVEN** that a Special Board meeting will be held on Thursday, February 17, 2005, at the Office of the Attorney General, 407 Galisteo St., at 1:00 p.m. The Board will discuss Tri National sub-grantee contract information for R.F.P.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs.

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### End of Other Related Material Section

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## 2005

## SUBMITTAL DEADLINES AND PUBLICATION DATES

<b>Volume XVI</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
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.