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REGISTER**

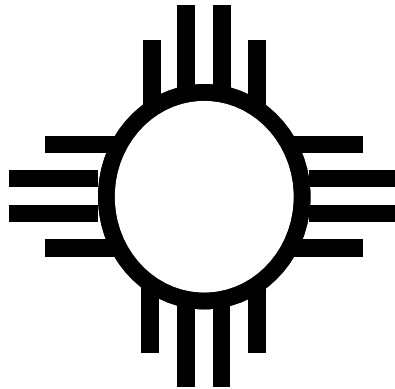


Volume XVI  
Issue Number 21  
November 15, 2005



# **New Mexico Register**

**Volume XVI, Issue Number 21  
November 15, 2005**



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

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# New Mexico Register

Volume XVI, Number 21

November 15, 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.

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

#### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE SERVICES NOTICE OF PUBLIC HEARING

The New Mexico Children, Youth and Families Department, Juvenile Justice Services, will hold a formal public hearing on Thursday, December 1, 2005, from 8:00 a.m. until 5:00 p.m. in the Cactus Room on the 8<sup>th</sup> floor at 300 San Mateo N. E. to receive public comments regarding the following policies as a result of revisions:

Repeal of 8.14.1 NMAC (General Provisions) and replacement with 8.14.1 NMAC (General Provisions); Repeal of 8 NMAC 14.2 (Probation and Aftercare) and replacement with 8.14.2 NMAC (Probation and Aftercare); repeal of 8 NMAC 14.3 (Facility Programs) and replacement with 8.14.3 NMAC (Facility Client Education); Amending 8.14.4 NMAC (Facility Medical and Mental Health) to 8.14.4 NMAC (Facility Medical and Behavioral Health Services); repeal of 8 NMAC 14.9 (Facility Sanitation and Hygiene) and replacement with 8.14.4 NMAC (Facility Medical and Behavioral Health Services); repeal of 8 NMAC 14.3 (Facility Programs), 8 NMAC 14.5 (Facility Food Service), 8 NMAC 14.6 (Facility Safety and Security), 8 NMAC 14.7 (Facility Rules and Discipline), and 8 NMAC 14.8 (Client Access to Communication) and replacement with 8.14.5 NMAC (Facility Operations).

The proposed policies may be reviewed, or a copy obtained during the regular business hours of Juvenile Justice Services, room 542, P.E.R.A. Building, Santa Fe, New Mexico, 87502. Please address inquiries to the attention of Jeanette Kinker, or Terence G. Cady, Assistant General Counsel.

Interested persons may testify at the hearing or submit written comments at the above address no later than 5:00 p.m., December 1, 2005. Written comments will be given the same consideration as oral testimony given at the hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Juvenile Justice Services at 505-827-7032. Juvenile Justice Services

requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS ARTS DIVISION

#### NOTICE OF HEARING ON PROPOSED RULES GOVERNING THE NEW MEXI- CO ARTS DIVISION

Notice is hereby given that pursuant to the New Mexico Arts Commission and Division Act Section 18-5-7(F) NMSA 1978, the New Mexico Arts Division proposes to adopt regulations to update the New Mexico Arts Commission bylaws and regulations governing the New Mexico Arts Division and its funding application procedures, requirements, and programs.

The proposed regulations update the New Mexico Arts Commission bylaws and define who is eligible to receive funding from the Division and describes the New Mexico Arts' procedures for receiving and considering applications for funding, and terms, conditions, and requirements for funding assistance. The proposed regulations will be discussed, and comments taken at a public hearing to be held on November 18<sup>th</sup>, 2005. New Mexico Arts Commission updates and funding application procedures will be heard between 9:30 am and 12:00 pm. The hearing will be held at the Pecos River Village Conference Center at 711 Muscatel Ave. in Carlsbad, NM. Copies of the proposed regulations may be obtained before the meeting at the New Mexico Arts Division, 4<sup>th</sup> Floor, 228 E. Palace Ave., Santa Fe, NM 87501 or by contacting Virginia Castellano at 505/827-6490 or by e-mail [virginia.castellano@state.nm.us](mailto:virginia.castellano@state.nm.us). The notice of the public hearing will be posted on NMA website [www.nmarts.org](http://www.nmarts.org) under "Breaking News" beginning November 4.

Interested persons may submit written comments to the New Mexico Arts Division at PO Box 1450, Santa Fe, NM 87504-1450 or e-mail comments regarding the funding programs to [virginia.castellano@state.nm.us](mailto:virginia.castellano@state.nm.us) to be received by 1:00 p.m. November 16, 2005. Written comments shall suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If any interested person has a disability and requires some accommodation in attending the public hearing or to have the rules com-

municated to them, please submit a written request identifying the disability and the type of accommodation needed to Virginia Castellano before November 7, 2005. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

### NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

#### Notice of Hearing of Rule 10.6.2 NMAC, Enhanced 911 Requirements

New Mexico Department of Finance and Administration

The Department of Finance and Administration (DFA), Local Government Division, hereby gives notice that LGD will conduct a public hearing at Mabry Hall, Department of Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501, on December 16, 2005 at 10:00 a.m. concerning the repeal of the current rule 10.6.2 NMAC, Enhanced 911 Requirements and the reenactment of rule 10.6.2 NMAC pursuant to Section 63-9D-8.1 NMSA 1978 and Section 9-6-5 E. NMSA 1978. The repeal and reenactment are due to changes in the Enhanced 911 Act, Sections 63-9D-1 etseq. NMSA 1978, effective July 1, 2005.

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on December 9, 2005, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the 10.6.2 NMAC. Copies of the text of the proposed rule are available from Ms. Juleann Martinez, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4973 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

### TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT CHAPTER 6 LOCAL GOVERN- MENT LAW ENFORCEMENT AGEN- CIES PART 2 ENHANCED 911 REQUIREMENTS

**10.6.2.1 ISSUING AGENCY:**  
Department of Finance and Administration,

Local Government Division.

[10.6.2.1 NMAC - Rp, 10.6.2.1 NMAC, xx-xx-xxxx]

**10.6.2.2 SCOPE:** The state, Indian reservations, counties and incorporated cities, towns and villages.

[10.6.2.2 NMAC - Rp, 10.6.2.2 NMAC, xx-xx-xxxx]

**10.6.2.3 STATUTORY AUTHORITY:** This rule is promulgated pursuant to the authority granted in Section 63-9D-8.1 NMSA 1978 and is deemed necessary to carry out the provisions of the Enhanced 911 Act, Sections 63-9D-1 et seq. NMSA 1978.

[10.6.2.3 NMAC - Rp, 10.6.2.3 NMAC, xx-xx-xxxx]

**10.6.2.4 DURATION:** Permanent.

[10.6.2.4 NMAC - Rp, 10.6.2.4 NMAC, xx-xx-xxxx]

**10.6.2.5 EFFECTIVE DATE:** xx-xx-xxxx, unless a later date is cited at the end of a section.

[10.6.2.5 NMAC - Rp, 10.6.2.5 NMAC, xx-xx-xxxx]

**10.6.2.6 OBJECTIVE:** The objective of Part 2, Chapter 6 is to carry out the provisions of the Enhanced 911 Act. These rules and regulations are designed to assist in the development, operation and maintenance of a reliable, uniform E911 system. This act establishes a program to provide for the purchase, lease, installation and maintenance of E911 equipment, telecommunicator training, database preparation, database updates, compliance with federal communications commission (FCC) requirements for phase I and phase II wireless E911 service, and E911 network costs as necessary for an E911 system.

[10.6.2.6 NMAC - Rp, 10.6.2.6 NMAC, xx-xx-xxxx]

**10.6.2.7 DEFINITIONS:**

**A.** "911 emergency surcharge" means the monthly uniform charge assessed on each access line in the state and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico.

**B.** "911 line/trunk" means a line/trunk accessed by dialing 911 terminating at a PSAP. 911 lines on basic 911 systems are one-way incoming only. Outgoing calls can only be made while an incoming 911 call is on the trunk, to conference and/or transfer to another location.

**C.** "911 PSAP equipment" means the public safety answering point (PSAP) equipment directly related to the operation of an E911 system including, but

not limited to, automatic number identification (ANI) displays, automatic location identification (ALI) displays, controllers, combined ANI/ALI displays, printers, generators, uninterruptible power supply (UPS), capability for the hearing impaired (TDD) 24/7 continuous logging recorders, work stations, wireless phase I and/or II mapping equipment, software associated with the system, telephones and other miscellaneous equipment necessary to dispatch emergency E911 calls.

**D.** "911 service area" means the area designated by the fiscal agent, local governing body or the division to receive enhanced 911 service.

**E.** "Access tandem" means the device that switches 911 calls to the proper PSAP.

**F.** "ADA" means Americans with Disabilities Act of Act of 1990.

**G.** "Alternate routing" means an optional feature that is capable of automatically rerouting 911 calls to a designated alternate location if all 911 trunks from a central office or a public safety answering point (PSAP) are out of service.

**H.** "Answering position" means a location within a PSAP equipped with an ANI and/or ALI display, printer or electronic storage media, telephone, and / or wireless call map display that is used to receive and display incoming E911 calls.

**I.** "Automatic location identification (ALI)" means a feature of E911, which displays the physical address of the telephone number that is being used to place the call. It requires a data storage and retrieval system, which matches a telephone number to its physical address. ALI information can include address (including room or floor), names of law enforcement, fire and medical agencies responsible for that address, type of service (e.g., residence, PBX, Centrex, coin), and name associated with the telephone number.

**J.** "Automatic number identification (ANI)" means a feature of E911, and sometimes basic 911 that automatically displays the telephone number of the person placing the 911 call at the PSAP. This is normally the telephone number of the person placing the call, but not always. For example, on older PBX systems, the ANI telephone number is normally the main number of the system. Therefore, off-premises stations will be identified as if they had the main telephone number (ANI) and as if they were located at the primary address of these older PBXs.

**K.** "Basic 911 service" means a telephone service that automatically connects a person dialing the three-digit number 911 to an established public safety answering point through normal telephone service facilities.

**L.** "Board" means the state board of finance.

**M.** "Called party hold" means a feature of basic 911 service that enables a PSAP telecommunicator to retain control of an incoming 911 call even if the caller hangs up.

**N.** "Central office (CO)" means telephone company equipment that provides telephone service to the public. More than one CO may be located in the E911 service area.

**O.** "Continuous logging recorder" means a device, which records date, time, voice and TDD/TTY communications, and other transactions involved in the processing of calls to and from the PSAP on a 24/7 basis.

**P.** "Cost recovery plan (plan)" means plan submitted to the division by communication mobile radio service carriers to determine allowable costs.

**Q.** "CMRS" means communication mobile radio service carriers.

**R.** "Database" means information that is collected, formatted and disseminated and that is necessary for the functioning of the E911 system, including geographic information system (GIS) addressing and digital mapping information.

**S.** "Default routing (default answering)" means a standard feature of E911 activated when an incoming 911 call cannot be selectively routed due to ANI failure, garbled digits, or other causes.

**T.** "Designated agents" means other partner (s) such as the county assessor, the city and/or county GIS personnel, pueblos and/or tribes within their geographic area, vendors and any person or entity doing addressing, mapping, GIS or MSAG tasks for a PSAP.

**U.** "Diverse routing" means (if available) the practice of routing calls through different circuit paths in order to prevent total loss of the 911 system in the event an individual circuit is disabled.

**V.** "Division" means the local government division of the department of finance and administration.

**W.** "Emergency service number (ESN)" means a number used by the database providers to identify emergency service providers within the 911 service area.

**X.** "Enhanced 911 equipment" means the public safety answering point equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, logging recorders and software associated with call detail recording, call center work stations, training, latitude and longitude base station or cell site location data and GIS equipment



necessary to obtain and process locational map and emergency service zone data for landline and wireless callers.

**Y.** "Enhanced 911 system (E911)" means a landline and wireless E911 system, with the aid of a database management system, mapping and electronic switching that provides rapid and reliable public service response to emergency calls. The system provides:

(1) tandem routing or selective routing of calls to the appropriate PSAP;

(2) automatic number identification (ANI) and automatic location identification (ALI);

(3) one or more access paths for communication between users in different geographic locations through a network system that may be designed for voice or data, or both and may feature limited or open access and may employ appropriate analog, digital, switching or transmission technologies; and

(4) the relay to the designated public safety answering point a wireless 911 caller's number and base station or cell site location and the longitude and latitude of the wireless 911 caller's location in relationship to the designated public safety answering point.

**Z.** "Fiscal agent" means the local governing body that administers grants from the fund for a given locality or region by agreement.

**AA.** "Fund" means the enhanced 911 fund defined by Section 63-9D-8 NMSA 1978 created in the state treasury to be used for the purchase, lease, installation or maintenance of enhanced 911 equipment as defined by Section 63-9D-3 (K) NMSA 1978 necessary for an enhanced 911 system.

**BB.** "GIS" means geographic information system.

**CC.** "GIS providers" means any individual creating or managing data for GIS addressing and mapping within a PSAP service area.

**DD.** "Forced disconnect" means a basic 911 feature, which allows a PSAP attendant to disconnect a 911 call and prevents intentionally jamming of 911 lines by callers who refuse to hang up. E911 uses the "time-out" CO feature to "force disconnect".

**EE.** "Grantee" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipality Code that have received a grant pursuant to the E911 Act.

**FF.** "Instant playback recorder" means a device that allows for the instant playback of the audio portion of a 911 call and a radio call at the E911 position.

**GG.** "Local exchange access

line" means a telephone line connecting a telephone to the telecommunications company's central office.

**HH.** "Local exchange area" means a geographic area encompassing one or more local communities served by a telecommunications company.

**II.** "Master street address guide (MSAG)" means the document or computer file that lists the physical street names (including the street prefix, suffix, and directional), address ranges, emergency service number and other routing codes used in the data management system (DMS) of an E911 system equipped with selective routing and/or automatic location identification.

**JJ.** "Monthly recurring cost (MRC)" means costs incurred by CMRS carriers for monthly trunking (T-1's to the two 9-1-1 access tandems) and the monthly wireless systems service provider (3<sup>rd</sup> party vendor) cost.

**KK.** "National emergency number association (NENA)" means the national association of telecommunications professionals involved with 911 service. NENA recommends PSAP policies and guidance on wireless E911 call taking. Membership includes employees of federal, state and local government agencies, telecommunication companies, and other communications service and equipment vendors.

**LL.** "Network" means any system designed to provide one or more access paths for communications between users at different geographic locations; provided that a system may be designed for voice, data, or both, and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies.

**MM.** "Non-recurring cost (NRC)" means one time costs incurred by CMRS carriers for initial connection fees to the two 911 access tandems and the wireless systems service provider (3<sup>rd</sup> party vendor non-recurring) cost.

**NN.** "Phase I cellular service" means the wireless carriers deliver a cellular 911 call to the PSAP nearest to the caller. At the PSAP the caller's phone number (ANI) will be available along with a map location of the carrier's tower receiving the wireless call with a probability factor, mapping an area from where the caller is located. This area may range from a square mile within a municipality, to several miles along a highway.

**OO.** "Phase II cellular service" means the wireless carriers will not only deliver a cellular 911 call to the PSAP nearest to the caller, but provide the caller's phone number (ANI) and the caller's approximate location (ANI) using the lati-

tude and longitude of the caller with a probability factor.

**PP.** "Primary public safety answering point" means a PSAP equipped with automatic number identification and automatic location identification displays, wireless mapping equipment, and the first point of reception of an E911 call. It serves the 911 service area in which it is located, and other municipalities as may be determined by the service area committee.

**QQ.** "PSAP consolidation" means the combining of one or more PSAPs within a county to form a single PSAP to serve the constituents previously served by the individual PSAPs.

**RR.** "PSAP serving area" means the geographic area containing a PSAP that is capable of answering all 911 calls and responding to them appropriately.

**SS.** "Public safety agency" means a public agency that provides law enforcement, fire, medical, and/or other emergency services.

**TT.** "Public safety answering point (PSAP)" means a twenty-four-hour local communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency.

**UU.** "Secondary public safety answering point" means a facility equipped with automatic number identification, automatic location identification displays and all other features common to primary PSAPs. It receives 911 calls only when they are transferred from the primary PSAP or on an alternate routing basis when calls cannot be completed to the primary PSAP.

**VV.** "Selective transfer" means that on systems with selective transfer, calls are routed to the proper secondary PSAP(s).

**WW.** "Service area" means the geographic area in which one or more entities participating in a 911 system are responsible for responding to all 911 calls and for ensuring that appropriate emergency assistance is dispatched.

**XX.** "Speed calling" means abbreviated dialing which can be programmed in a central office to allow calling of seven or ten digit numbers by dialing only one or two digits. On E911, a separate 30 number (two digit) speed call list may be provided for each primary and secondary PSAP as a standard feature.

**YY.** "Tandem routing or selective routing" means a feature that permits an E911 call to be routed to the designated primary PSAP based upon the telephone number of the calling party. This feature routes calls to the primary PSAP responsible for emergencies at the address

of the telephone placing the call based on the ANI telephone number and associated emergency service number (ESN) in the tandem office.

**ZZ.** "Telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunication services capable of originating an E911 call, to include any database management company contracted to create or maintain the PSAP's MSAG.

**AAA.** "Telephone devise for the hearing impaired/teletype (TDD/TTY)" means a telecommunication device consisting of modems that permit typed telephone conversations with or between hearing or speech-impaired people.

**BBB.** "Wireless / cellular" means a telephone linked to the public switched telephone network (PSTN) via a radio link through a company providing the radio link from various tower / antenna sites through which their switching equipment connects the wireless caller to the PSTN. Phase I wireless companies connect the wireless caller to the nearest PSAP by using the cell tower location being used by the cellular caller and selective routing.

**CCC.** "WE911" means wireless enhanced 911.

**DDD.** "Wireless working group (WWG)" means an advisory committee consisting of members directly involved in the phase I and phase II implementation of a PSAP and may consist of personnel from the division, the PSAP, the local and/or Qwest telephone company, wireless call-routing vendor, NM department of public safety (DPS) and the applicable local staff that provides local geographic information services (GIS). This advisory committee serves at the discretion of the division and may dissolved when no longer needed.

**EEE.** "Uninterruptible power supply (UPS)" means a system designed to provide power, during a period when the normal power supply is incapable of performing up to par.

**FFF.** "Vendor" means a person that provides enhanced 911 equipment, system, service or network support. [10.6.2.7 NMAC - Rp, 10.6.2.7 NMAC, xx-xx-xxxx]

#### 10.6.2.8 INTRODUCTION:

**A.** In New Mexico, the responsibility and authority for delivering emergency medical services, public fire protection, and law enforcement generally rests with the state, counties, and municipalities. This is true even when supplemental services are performed by others, such as private ambulance companies or independent public authorities and non-profit organi-

zations with limited internal fire protection and security forces.

**B.** An E911 telephone emergency system provides:

(1) expansion of the capabilities of the basic 911 emergency telephone number;

(2) faster response time, which minimizes the loss of life and property;

(3) automatic routing to the appropriate public safety answering point;

(4) immediate visual display of the telephone number, name, and address of the calling party; and,

(5) identifies callers, curtailing abuse of the emergency system.

[10.6.2.8 NMAC - Rp, 10.6.2.8 NMAC, xx-xx-xxxx]

#### 10.6.2.9 GUIDELINES:

**A.** Guidelines for basic and E911 service, system, equipment and network design and maintenance shall be established by the division following the best nationally accepted concepts and operating practices.

**B.** E911 call information shall follow the national NENA standards.

[10.6.2.9 NMAC - Rp, 10.6.2.9 NMAC, xx-xx-xxxx]

#### 10.6.2.10 DATABASE DEVELOPMENT REQUIREMENTS:

**A.** Database:

(1) The grantee and its designated agents shall work with the telecommunication company(s) to verify street names, address number ranges, and emergency service zones (ESZ), postal community and other information needed to create MSAG. These same agents shall also work to assign and/or verify the 9-1-1 address associated with each landline telephone number within the PSAP's geographic boundary. All database information shall be provided to the telecommunication company(ies) in the format specified by the telecommunication company(ies) for the initial load of these databases. All road name and community database information shall be submitted and maintained in format and content compliant with the USPS Publication 28.

(2) The E911 coordinator, as defined by Subsection D of 10.6.2.11 NMAC, or his/her appointed MSAG coordinator(s), shall ensure that changes and additions to road network and the emergency service boundaries (ESZ) in the geographic boundary of the PSAP are communicated to the telecommunications company(ies) in the form of MSAG updates on a continuous and timely basis. The telecommunications company(ies) shall dictate the format and transmission method of these MSAG updates. The E9-1-1 coordinator or his/her appointed MSAG coordinator(s) and the telecommunications company shall

ensure that all submitted changes, deletes and additions to the master street address guide (MSAG) are changed, deleted or added in the loaded MSAG maintained by the telecommunications company(ies). The E9-1-1 coordinator or his/her appointed MSAG coordinator(s) shall thoroughly review the loaded MSAG periodically, no less frequently than once a month, to ensure that submitted changes, deletes and additions have been properly made and entered by the telecommunications company(ies).

(3) All PSAPs shall conduct a yearly review of the MSAG, ALI and GIS databases to ensure the data in these documents is accurate and synchronized. The review shall:

(a) include the following information requested by each PSAP from the serving telecommunications company(ies) and database provider(s):

(i) complete MSAG extract for entire PSAP boundary area;

(ii) complete ALI extract for entire PSAP boundary area, to include SAUs, if any;

(iii) complete 701/709 error reports from all serving local exchange providers (telecommunications company(ies));

(iv) number of landline phones within PSAP boundaries;

(v) road centerline layer(s); and

(vi) ESZ layer(s);

(b) include the following output:

(i) number of ALI records that are not SAUs compared to total number of landline phone lines in PSAP area; this number, expressed as a percentage, must be 96% or higher once the PSAP is wireless phase 1 and 2 enabled;

(ii) percentage of ALI records that are MSAG valid, based on comparison of ALI data with MSAG data; house number, road name and ESN for each ALI record must match a corresponding MSAG record; this number must be 96% or higher once the PSAP is wireless phase 1 and 2 enabled;

(iii) list of roads/road segments that appear in the MSAG that do not appear in the GIS; and

(iv) list of roads/road segments that appear in the GIS but that do not appear in the MSAG;

(c) be submitted annually to the division and shall be shared with E9-1-1 coordinator and GIS providers; the E9-1-1 coordinator and/or his/her designated agents, together with the GIS providers, shall work to correct these errors and inconsistencies and distribute the corrections to the appropriate telecommunications agencies, as indicated.

(4) The division requires that all municipal and county public safety answer-

ing points (PSAPs) maintain accurate MSAG, ALI and GIS databases. Beginning on July 1, 2006 the MSAG and ALI must be maintained at 96% accuracy. This means 96% of all landline telephone numbers in the PSAP area must be matched with MSAG-valid 9-1-1 addresses and these addresses must be loaded in the ALI database. PSAPs shall meet the required accuracy levels as a precondition to applying for and receiving funding for E911 equipment, call taking and mapping equipment, equipment maintenance, training reimbursement, trunk and ALI lines, E911 ATM mapping network costs and wireless cost recovery expenses, and other eligible costs, from the fund.

(5) All telecommunication companies shall update the "selective routers", MSAG and ALI within 48 hours of completion of a service order by the telecommunication company.

**B. ALI:**

(1) Every telecommunication company providing ALI shall present uniform data, as defined by the NENA standards.

(2) The ALI shall be displayed and printed or archived immediately in the database when the 911 call is made.

(3) Each ALI data set shall include as a minimum:

(a) area code and telephone number;

(b) class of service;

(c) time in a 24-hour format (may be printed and not displayed);

(d) date (may be printed and not displayed);

(e) subscriber name or designation of non-published number;

(f) house (building) number;

(g) house number (building) suffix;

(h) directional prefix (NE, NW, SE, SW);

(i) street name including type;

(j) emergency service number location;

(k) community name;

(l) the state name;

(m) emergency service number;

(n) pilot number;

(o) emergency service number translation;

(p) any comments present;

(q) emergency response names of law enforcement, fire and EMS.

(4) ALI information shall use conventional English or NENA standard abbreviations where necessary and shall not use single letter or digit codes.

**C.** Database development of physical addresses: Addressing guidelines shall be established by the division. These guidelines must be followed by

grantees that seek reimbursement for costs from the Fund.

**D.** Other classes of service:

(1) The wireless working group shall advise the division on the development of procedures for:

(a) the delivery of cellular / wireless service to the 911 service area, and;

(b) the establishment of a statewide standard PSAP screen display format for the phase I and phase II information.

(2) Personal communications networks and any other future mobile and/or personal communications systems shall also be required to adhere to Subsection D of 10.6.2.10 NMAC above.

(3) Effective May 28, 2004, all new or upgraded customer owned or leased private branch exchanges (PBX) will incorporate a software package that when 911 is dialed from any extension, the extension number, name of the extension user, building address, room number and building floor, is passed through to the proper PSAP handling the call

(4) Effective May 28, 2004, the owner or lessee shall remit to the department of taxation and revenue the E911 surcharge for each activated telephone extension on the PBX.

[10.6.2.10 NMAC - Rp, 10.6.2.10 NMAC, xx-xx-xxxx]

**10.6.2.11 PSAP EQUIPMENT, ACQUISITION AND DISBURSEMENT OF FUNDS:**

**A.** The PSAP equipment must be capable of handling emergency call volumes to meet the needs of the public. This equipment must be compatible with that of the telecommunication company providing the 911 network and database.

**B.** In order to qualify for a PSAP, an applicant shall have a 24 hour, 7 days per week (24/7) communication facility.

**C.** A public safety answering point, at a minimum shall be equipped with the following features:

(1) ANI;

(2) ALI;

(3) call detail information;

(4) default routing (default answering) until selective routing is approved by the division;

(5) ability to print call detail information with either paper or electronic media;

(6) ability to transfer voice or TDD/TTY and data;

(7) selective and fixed button transfer on E911 systems;

(8) a minimum of thirty (30) minutes uninterruptible power supply;

(9) TDD/TTY communications

capability at each 911 answering position;

(10) switch hook status;

(11) for basic 911 be able to "ring back", i.e. phone back the 911 caller, put the caller on hold: disconnect the caller;

(12) 911 related calls, which pass through switching equipment, must provide transfer, conference, speed dialing and supervision of all calls until successfully transferred or terminated;

(13) each PSAP shall be equipped with at least one E911 answering position; when there is more than one answering position, they shall be similarly equipped with access to all incoming 911 lines, outgoing dedicated/switched lines, tie lines, and dial out lines;

(14) each PSAP shall be equipped with a continuous logging recorder; this logging recorder shall have:

(a) the capacity to record both sides of a conversation on each incoming 911 call and all radio communications while dispatching the 911 call;

(b) the ability to continuously document the year, date and time of each recorded event and the capability to record both voice and TDD/TTY;

(15) to maintain reliability, each PSAP shall be equipped with instant playback voice recorders at each call answering and radio position;

(16) each 911 trunk will have incoming emergency calls identified by both audible and visual and different indicators for landline and wireless trunks;

(17) each PSAP shall have sufficient 911 answering positions and staff to ensure that ninety percent (90%) of all 911 calls are answered in no more than ten (10) seconds and the balance of the calls within twenty (20) seconds during normal peak operating periods; staffing levels may vary during the working day to meet this requirement;

(18) for quality assurance and training purposes, PSAP answering equipment shall be provided for supervisors so they can monitor incoming emergency calls;

(19) each PSAP may be provided equipment furniture to adequately support the E911 and radio equipment, and the telecommunicators and dispatchers;

(20) each PSAP will have a backup generator capable of keeping the PSAP operating until commercial power is restored; and

(21) each PSAP will have a written agreement with a fully equipped PSAP capable of taking the PSAP's calls and dispatching the appropriate emergency response; PSAP transfer is accomplished by use of the "make busy" circuit, or calling the E911 center to reroute their 911 calls to the agreed upon PSAP.

**D. PSAP administration:**

(1) Every grantee participating in the E911 system shall designate someone to serve as a coordinator to work with the division and the telecommunication company regarding 911 issues.

(2) All coordinators working with the division and the telecommunication company regarding 911 issues will have personal work email address for receiving information regarding training classes, consolidation efforts, and transmittal of information required by this office.

(3) Only incorporated municipalities, counties, state police or native American tribes or pueblos, public safety agencies or their authorized agents may receive 911 calls.

(4) The 911 number shall be used to receive incoming emergency calls transferred to the PSAP by other PSAPs for certain alternate and default routing arrangements.

(5) 911 trunks shall not be used to make outgoing calls, but may be used to make outgoing transfer 911 calls if there is an incoming 911 call on the line/trunk.

(6) 911 trunks shall be used solely to receive emergency 911 calls at primary PSAPs and the transfer of 911 calls to another PSAPs.

(7) There shall be at least one PSAP operating 24 hours a day within the 911 service area. Municipalities and counties shall participate and assist with the operational costs necessary to maintain the service.

(8) Each PSAP shall maintain an up-to-date detailed profile of the PSAP. This profile shall include at a minimum:

(a) exact address of the PSAP;  
 (b) number and type of positions;  
 (c) type of equipment to include E911 call answering equipment, telephone switching equipment, wireless mapping equipment; and CAD system, radio system, and make and model of UPS and back-up generator;

(d) number and type of dedicated/switched voice/data circuits;

(e) routing central office and PSAP end office;

(f) maintenance control center to include name of company, physical address, telephone number, email address, and your point of contact for E911 equipment and voice logging recorder, if different from E911 equipment maintainer;

(g) PSAP coordinator and alternate contact name, address, phone number, and their PSAP email address;

(h) type and manufacturer of CAD system, if any, and type and manufacturer of voice logging recorder;

(i) GIS representative to include physical address, telephone number, and email address.

(9) Each PSAP shall maintain at least one unpublished seven-digit emergency number. This number shall also be used to receive incoming emergency calls transferred to the PSAP by other PSAPs for certain alternate and default routing arrangements.

(10) The PSAP shall be responsible for coordinating the "emergency service listing" on the inside front page(s) of their local telephone directories. Each PSAP will have a published seven-digit number for non-emergency calls

(11) Subscriber information provided in accordance with the 911 system shall be used only for the purpose of responding to emergency calls or for use in any ensuing investigation or prosecution directly resulting from a 911 call, including the investigation of false or intentionally misleading reports of incidents requiring emergency service.

(12) All voice and TDD/TTY recordings of incoming 911 calls shall be retained in accordance with state records center and archives regulations for municipal police and county sheriff records.

(13) Except for those devices, such as TDD/TTY, used by disabled persons requesting emergency assistance, no individual or company shall be allowed to send an automatic alarm or use an alerting device that causes 911 to be automatically dialed and to transmit a prerecorded signal or message to the PSAP on a 911 line.

(14) PSAP personnel shall program and maintain a list of the fixed and auto-dial transfer features. This feature will allow the PSAP to use the dedicated/switched 911 network to transfer 911 calls pertaining to emergencies outside its jurisdiction, to the appropriate PSAP. When a 911 caller is transferred, the transferring PSAP shall announce to the receiving PSAP that they are transferring a call for service. Will remain on the line and will inform the receiving PSAP that this is a transferred call for service.

(15) Call handling procedures and other related PSAP operations shall be implemented according to the training guidelines established by the division. Each PSAP shall have the ability to:

(a) transfer 911 calls to their back-up PSAP or another PSAP within or outside their 911 service area;

(b) directly dispatch public safety services or relay information to a public safety agency; all PSAPs that transfer 911 calls to a 7-digit administrative telephone line for the purpose of an outside the PSAP agency dispatching emergency services will obtain from, and have on file, a release of liability from the dispatch agency, and must forward a copy of the release to LGD for file; or,

(c) directly dispatch public safety

services.

(16) Any emergency unit dispatched to a location outside its jurisdiction in response to a request shall render services to the requesting party until relieved by the public safety agency responsible for that geographical area.

(17) All PSAPs shall be staffed 24-hours-a-day, seven-days-a-week, and operated by personnel certified by the state department of public safety pursuant to Section 29-7A-4 NMSA 1978, as amended. Staffing levels may vary during the working day to meet this requirement.

**(18) Special circumstances:**

(a) In accordance with ADA each PSAP shall establish procedures to handle calls from speech and hearing impaired individuals via TDD/TTY including the use of TDD call detectors and diverters.

(b) PSAPs shall develop procedures for handling an unanswered or silent 911 call and are urged to dispatch a public safety response unit(s) if the PSAP receives no response to the call back.

(19) Every PSAP will prepare an annual report for the division to include the information in Paragraphs (8), (9), (14) and (18) of Subsection D of 10.6.2.11 NMAC, above. Send the report electronically (email), or if email is not available, by regular mail to arrive at the division not later than June 30<sup>th</sup> of each year.

(20) Callers to 911 may only be transferred once to another PSAP. If, after the transfer, the 911 caller is not connected to the appropriate PSAP, the receiving PSAP shall take all of the necessary information to handle the call and then contact the appropriate PSAP for response.

(21) When a 911 caller is transferred, the transferring PSAP shall announce to the receiving PSAP that they are transferring a call for service. The transferring PSAP may stay on the line until such time as they are released.

(22) Each PSAP shall devise a contingency plan to provide continued emergency service when the PSAP is out of service.

**E. Funding, eligible costs:**

(1) The cost of enhanced 911 equipment necessary to provide E911 service may be recovered from the fund, including costs associated with the purchase, lease, installation of enhanced 911 equipment as well as enhanced 911 equipment furniture, training, and maintenance, with the exception of CAD, mobile and portable radio equipment and logging recorder maintenance.

(2) Money for other equipment indirectly related to the E911 system is the responsibility of the grantee, unless the division approves of such equipment.

(3) The network capability costs and database and services necessary for an

E911 system can be recovered from the fund.

(4) Costs for addressing including equipment and labor may be funded based upon demonstrated need and the availability of funds. Demonstrated need may include the maintenance on all software that the GIS / rural addressing departments use to create data for the PSAPs.

(5) Grantees that have received approval from the division may incur and recover course registration costs to train telecommunicators and GIS personnel from the fund.

(6) Upon prior approval of the division, travel mileage and / or per diem for telecommunicator and GIS personnel training may be reimbursed, while any request for travel mileage and / or per diem without prior approval will NOT be reimbursed.

(7) Mapping equipment and network for wireless phase I and phase II, and cost recovery for wireless service providers.

**F.** Funding, ineligible costs:

(1) basic termination charges incurred due to the disconnection of telephone equipment to be replaced with 911 equipment;

(2) capital outlay expenditures, such as, buildings, remodeling, moveable chattels, communication towers and equipment not directly related to a 911 telecommunicator position;

(3) mobile radios, pagers or cellular telephones;

(4) seven-digit transfer-to-lines;

(5) incoming emergency seven-digit line group;

(6) costs associated with implementing or maintaining basic or E 911 systems or features not approved in writing by the division;

(7) private line circuit costs unless approved by the division;

(8) directory listings;

(9) call volume indicators used after the initial twelve month implementation or when not otherwise justified;

(10) maintenance costs for radio equipment and other miscellaneous equipment that is not determined to be 911 PSAP equipment;

(11) direct or indirect overhead costs, such as contributions to retirement, health insurance, labor, departmental operation overhead, rent, utilities or building remodeling;

(12) Reimbursement for equipment not previously approved by the division prior to purchase.

[10.6.2.11 NMAC - Rp, 10.6.2.11 NMAC, xx-xx-xxxx]

#### 10.6.2.12 REVIEW AND APPROVAL PROCESS:

**A.** After requesting enhanced 911 service from a telecommunications company or CMRS, a local governing body may, acting as the fiscal agent for a PSAP, by ordinance or resolution, recover from the fund the amount necessary to recover the approved costs of providing the enhanced 911 system in its designated 911 service area.

**B.** The PSAP and its fiscal agent make a formal written request to the E911 program manager at the division for funding assistance in upgrading their current equipment or adding new equipment to meet new PSAP responsibilities or other eligible costs. The PSAP shall include with their written request a copy of the local governing body's resolution or ordinance described in Subsection A of 10.6.2.12 NMAC.

**C.** If applicable, a project manager from the division will make a site visit to the PSAP to determine the need and funding eligibility for the requested equipment and its conformance with advancing short or long-term policy to consolidate PSAPs.

**D.** If after discussions with the PSAP manager and his/her clients, the division believes the request has merit, is eligible for funding, and is consistent with PSAP consolidation policy, the PSAP in conjunction with the division will request price proposals from appropriate state price agreement vendors. The division promotes the consolidation of PSAPs and discussions will be held with all participants to determine the feasibility of consolidation. Discussion items will consist of the following:

(1) age and useful life remaining of existing equipment;

(2) estimated maintenance costs of continued use of existing equipment;

(3) equipment manufacturer's commitment to continued maintenance support of the existing equipment;

(4) continued use of analog technology vs. updating to digital technology;

(5) potential impact of wireless E911 implementation on PSAP and its continued use of existing equipment;

(6) PSAP vendors and telephone companies' readiness to install equipment;

(7) desire of PSAPs and their clients to consolidate all PSAP / dispatch functions at that time; and,

(8) the municipal and county governments' ability to fund supporting infrastructure for a consolidated PSAP.

**E.** If the division believes the request does not have merit, it will be returned to the PSAP as "not approved by the division".

**F.** Validated PSAP requests that have passed the above process,

will be forwarded in writing by the PSAP and the PSAP's fiscal agent to the division director for approval to place the request(s) on the board of finance meeting agenda.

**G.** Any item(s) that the division director feels are inappropriate will not be approved for inclusion in the board's meeting agenda. Rejected requests will be returned to the PSAP as "not approved by the division".

**H.** The division will present the E911 funding project list to the board for approval.

**I.** Fully executed grant agreement(s) and subcontract(s) shall be provided to the division for the official file. If necessary, subcontracts shall be procured in accordance with the New Mexico Procurement Code and applicable regulations.

[10.6.2.12 NMAC - Rp, 10.6.2.12 NMAC, xx-xx-xxxx]

#### 10.6.2.13 GEOGRAPHIC INFORMATION SYSTEMS (GIS) STANDARDS:

In order to ensure that road centerline shapefiles can be effectively used and integrated at a statewide level, standards are needed for attribute data consistency and the development of spatial data by entities creating them with geographic information systems (GIS). Pursuant to 63-9D-4 NMSA 1978, a local governing body in an enhanced 911 service area shall provide GIS addressing and digital mapping to the PSAP that provides enhanced 911 service to the local governing body, as follows:

**A.** The attribution data content shall be derived from standards established by the national emergency number association (NENA). The attribution data format and structure is also based on, but not identical to, NENA standards

**B.** The datum for geographic data shall be North American Datum 1983 (NAD 83) and the data shall be in a New Mexico state plane or universal transverse mercator (zone 12 or 13) projection. The geographic data shall be spatially complete for each GIS entity's defined area of responsibility, but must not extend past their geographic area of responsibility. Additionally, any road feature that extends beyond one entity's geographic area of responsibility shall align with the same feature maintained by the adjacent entity.

**C.** Spatial accuracy of geographic features is required to be such that they are representative of the actual feature at a scale of 1:5000. All geographic features shall have clean topology and shall be able to be utilized to form a statewide road network with connectivity. All attribution and geographic data shall be kept current through regular maintenance.

**D.** To ensure accurate dis-

patch call mapping, attribute data associated with geographic data shall be synchronized with MSAG and ALI data. This attribute data includes all components of road name and address ranges. Road name designations, including spelling, directional use, suffix types and abbreviations, shall match the road name values used in the MSAG. Road ranges in the GIS shall match or be included in road ranges in the MSAG.

**E.** The PSAP shall update the MSAG within 10 working days to reflect changes in addressing and mapping. [10.6.2.13 NMAC - Rp, 10.6.2.13 NMAC, xx-xx-xxxx]

#### **10.6.2.14 PLANNING AND IMPLEMENTATION OF ENHANCED WIRELESS SERVICE:**

**A.** E911 service to include phase I and phase II wireless shall be provided to the entire telecommunication company(s) service area(s) and should be implemented on a countywide or regional basis.

**B.** Where a telecommunication company's local exchange area extends into or encompasses two or more E911 service areas, the wireless working group (WWG) shall be responsible for initiating and establishing E911 wireless service areas.

**C.** The division shall have final approval authority after the PSAP and the telecommunication company identifies the need for selective routing and the associated network through which all calls for service are to be processed. The WWG through the division shall have final authority over the selective routing of the wireless vender coverage areas.

**D.** If the grantee requests a MSAG and/or a copy of the telecommunication company's "old-to-new" records in either printed or electronic format the telecommunication company shall comply within 45 days.

**E.** When the MSAG and ALI have been completed and loaded onto the database, they shall be jointly owned by the PSAP and the telecommunications company.

**F.** The telecommunication company shall provide an updated MSAG to the PSAP upon installation completion and thereafter as requested by the PSAP.

**G.** The data management system and selective routing database shall be updated by the telecommunication's company within 48 hours of completion of a service order by the telecommunications company.

**H.** The division shall have final approval authority of the addressing system, and GIS system used to develop the database adequate to support E911 and E911 wireless services.

[10.6.2.14 NMAC - Rp, 10.6.2.14 NMAC, xx-xx-xxxx]

#### **10.6.2.15 PSAP CONSOLIDATION:**

**A.** The division requires that municipal and county public safety answering points (PSAPs) within their contiguous county boundaries consolidate their 911 call answering and radio dispatch functions within one consolidated PSAP in the county. Only the consolidated PSAP in the county may apply for and receive funding for E911 equipment, equipment maintenance, training reimbursement, trunk and ALI lines; and E911 call taking and mapping equipment from the E911 fund for phase I and phase II enhanced wireless service.

**B.** Albuquerque police department PSAP and Bernalillo county's PSAP are excluded from 10.6.2.15 NMAC due to the large population served. The department of public safety district PSAPs; and native American pueblos and tribal police and also excluded from 10.6.2.15 NMAC.

**C.** Exceptions to 10.6.2.15 NMAC may be requested in writing with full justification to the division.

**(1)** Justification shall include cost considerations, population served, and proximity to the PSAP's back-up PSAP.

**(2)** The division's decision on granting an exception to 10.6.2.15 NMAC is final and not appealable.

**D.** Municipal and county PSAPs within one county's contiguous boundaries have one year from May 28, 2004 to develop a consolidation plan and enter into an approved joint powers agreement (JPA) for the consolidation of their E911 call answering and radio dispatch functions within one consolidated PSAP in the county.

**(1)** Consolidation plans will be approved / disapproved by the division.

**(2)** If the consolidation plan and JPA requirements are not met within one year, the applicable 911 grant agreement with the PSAPs governing bodies will be terminated in accordance with the terms and conditions of the grant agreement.

**E.** The division will work with municipal and county governments to prepare their consolidation plan in order to meet the requirements identified in this section.

[10.6.2.15 NMAC - Rp, 10.6.2.15 NMAC, xx-xx-xxxx]

#### **10.6.2.16 TELECOMMUNICATOR / DISPATCHER TRAINING:**

Pursuant to Section 63-9D-4A NMSA 1978, the local governing body shall require the PSAP to employ properly trained staff pursuant to the Public Safety

Telecommunication Training Act. Telecommunicators and dispatchers will be certified for two years and recertified for two-year intervals after that. In order to maintain certification, 20 hours of specified training will be required in each two-year interval. Course requirements needed for recertification are listed in 10.29.7 NMAC. Each PSAP manager or supervisor will appoint in writing a training officer. The training officer's name, duty phone number, and email address will be forward to the division, and resubmitted whenever the training officer is replaced. The training officer will be responsible for the following:

**A.** development of PSAP policies and procedures for ensuring every telecommunicator and dispatcher receives the required training;

**B.** keeping accurate written records on each individual's training; and

**C.** submitting, through the PSAP manager or supervisor, semi-annual reports in June and January to the division on the PSAP's training progress to include; number of telecommunicators and dispatchers trained, and the courses completed by each individual; and type and amount of training yet to be completed, and any problems encountered in meeting the training requirements of 10.29.7 NMAC; for information on training reimbursement see Subsection E of 10.6.2.11 NMAC.

[10.6.2.16 NMAC - Rp, 10.6.2.16 NMAC, xx-xx-xxxx]

#### **10.6.2.17 WIRELESS COST RECOVERY GUIDELINES:**

After requesting WE911 (wireless enhanced E911) from a CMRS, local governing bodies may, by ordinance or resolution in a form specified by the division, recover from the fund pursuant to Subsection G of Section 63-9D-8 NMSA 1978, the CMRS wireless enhanced 911 service carrier costs that meet the requirements in 10.6.2.17 NMAC. Pursuant to Subsection G of Section 63-9D-8 NMSA 1978, the division, on behalf of local governing bodies, shall directly pay or reimburse CMRS for their costs of providing WE911 service. In order to maintain adequate funding in the fund to provide enhanced 911 service and equipment to local governing bodies pursuant to Section 63-9D-8 NMSA 1978, the division shall reimburse only costs incurred by CMRS to provide enhanced wireless 911 service to municipal and county public safety answering points that are in accordance with the following:

**A.** All CMRS carriers shall submit a detailed cost recovery plan (plan), invoices and status reports to the division that meet the following criteria:

**(1)** The plan and invoices shall include the one time, non-recurring cost

(NRC) incurred by the CMRS carrier for the connection fee to the two 911 access tandems and the NRC for the wireless systems service provider (3rd party vendor).

(2) The plan and invoices shall include the CMRS carrier's monthly recurring (MRC) for trunking (T-1's to the two 911 access tandems) and the MRC for the wireless systems service provider (3rd party vendor).

(3) All other CMRS carrier costs are not currently eligible for cost recovery.

**B.** A plan or invoice submitted on behalf of a CMRS carrier by a third party shall include a letter of agency between the third party and the carrier, or have the letter on file. No plan or invoice submitted by a third party agent will be reviewed until the division receives notice of agency from the CMRS carrier.

**C.** The plan shall be submitted yearly by March 31st as a comprehensive statewide plan based on current circumstances. The plan shall detail the number of cell sites and the number of subscribers in each county, and the projected NRC and MRC for each county based on the current guidelines for cost recovery, including the type of wireless services you are providing; the jurisdictions (cities and counties) in which you provide wireless services, the wireless network service provider with which you have a reseller relationship, the number of customers or subscribers you have in New Mexico, the legal entity name, remittance name and tax number that you use to make tax remittances to the state of New Mexico; and the appropriate person within your organization and their contact information to discuss related tax items, remittances and which to address any additional questions.

**D.** The plan shall contain a detailed explanation of each cost item included.

**E.** The plan shall include a map designating the licensed area and the actual coverage area.

**F.** The plan shall include a sample monthly invoice from the CMRS carrier. The invoice must clearly separate MRC and NRC charges, by county. The division shall pay only the carrier. No third party agents shall be paid.

**G.** The plan shall be signed by an authorized official of the CMRS carrier or the third party agency and must be dated.

**H.** Once a CMRS carrier's plan is approved, invoices may be submitted per the guidelines.

**I.** Quarterly, the FCC wireless telecommunications bureau requires submission of a wireless carrier E911 deployment report. CMRS carriers shall provide an electronic copy of the New

Mexico portion of the excel spreadsheet (appendix portion) to the division within 5 days of submission to the FCC.

**J.** Periodically, the division may request CMRS carriers to furnish additional information for the planning, coordination and implementation of wireless enhanced 9-1-1.

**K.** To be considered and approved by the division, each CMRS carrier shall follow these procedures:

(1) CMRS carrier cost recovery shall initially be allowed a one-time \$0.50 per subscriber NRC and a monthly \$0.05 per subscriber MRC, based on actual deployments. In addition, one-time access costs of approximately \$450 per T-1 NRC and \$900 per T-1 MRC for trunking to connect to each access tandem shall be allowed.

(2) CMRS carriers shall submit a valid department of treasury internal revenue department form W-9 to establish vendor status and allow cost recovery remittances to be processed when invoices are received. Refer to the IRS website at <http://www.irs.gov/pub/irs-pdf/fw9.pdf> for the form.

(3) CMRS carrier invoices shall not exceed trunking cost allowances, the one-time \$0.50 NRC per subscriber, the monthly \$0.05 per subscriber MRC, based on actual deployments, and the allowed trunking NRC and MRC. Partial payment against an invoice is not allowed.

(4) CMRS carrier invoices will be processed, approved and disbursed on a monthly basis.

(5) Requests from new CMRS carriers shall be reviewed on a case-by-case basis.

[10.6.2.17 NMAC - N, xx-xx-xxxx]

#### **HISTORY OF 10.6.2 NMAC:**

Pre-NMAC History: The material in this part is derived from that previously filed with the State Records Center and Archives under:

DFA-LGD Rule No. 93-3, Enhanced 911 Rules and Regulations, filed 5-20-94.

History of Repealed Material:

10 NMAC 6.2, Enhanced 911 Requirements, filed 2/2/98 - Repealed effective 5-28-2004.

10.6.2 NMAC, Enhanced 911 Requirements, filed 5-17-2004 - Repealed effective xx-xx-xxxx.

## **NEW MEXICO BOARD OF NURSING**

### **NEW MEXICO BOARD OF NURSING**

#### **NOTICE OF PUBLIC HEARING**

Notice is hereby given that the New Mexico Board of Nursing will convene a Rules Hearing to amend:

16.12.1 NMAC

16.12.2 NMAC

16.12.3 NMAC

16.12.4 NMAC

16.12.6 NMAC

And new Part 9, titled: Management Of Chronic Pain With Controlled Substances and Part 10, titled: Management Of Medical Records.

This Hearing will be held at New Mexico Board of Nursing Conference Room on Friday, December 16, 2005 at 8:30 a.m.

Any person wishing to present testimony at the Hearing is requested to submit, to the Board of Nursing Office, 6301 Indian School NE, Suite 710, Albuquerque, NM, 87110, a written statement of intent (10 copies) to be received no later than December 2, 2005

The Statement shall provide:

Name of Witness:

Who Witness represents:

Brief statement of subject matter of testimony; & anticipated length of presentation.

Notice: Any person presenting testimony, who is representing a client, employer or group, must be registered as a lobbyist through the Secretary of State's Office (505) 827-3600 or do so within 10 days of the Public Hearings.

Persons requiring special accommodations at the hearing are asked to call the Board office (841-8340) no later than December 1, 2005 so that arrangements can be made. Hearing impaired persons call TDD 1-800-659-8331.

Drafts of proposed changes may be downloaded from our website: [www.state.nm.us/nursing](http://www.state.nm.us/nursing) or requested through the Board of Nursing office.

## NEW MEXICO BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY

### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Examiners for Occupational Therapy will hold a Rule Hearing on December 15, 2005. Following the Rule Hearing the New Mexico Board of Examiners for Occupational Therapy will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Examiners for Occupational Therapy Rule Hearing/Regular Meeting will begin at 11:00 a.m. The meetings will be held at the Regulation and Licensing Department, Toney Anaya Building, 2<sup>nd</sup> Floor, Hearing Room #1, located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504.

The purpose of the rule hearing is to consider adoption of proposed amendments to the following Board Rules and Regulations in 16.15 NMAC: Part 2 Licensing Requirements.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4827 after November 11, 2005. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than November 21, 2005. Persons wishing to present their comments at the hearing will need (12) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4827 at least two weeks prior to the meeting or as soon as possible.

Kim Syra, Administrator  
PO Box 25101- Santa Fe, New Mexico 87504

## NEW MEXICO OIL CONSERVATION COMMISSION

### REVISED NOTICE OF RULEMAKING

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL  
RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION  
SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on December 8, 2005, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning adoption of amendments to 19.15.1.7 NMAC and 19.15.2 NMAC. The proposed amendments will add new Sections 51, 52 and 53 to 19.15.2 NMAC, which will govern transportation and disposal of produced water and other oil field wastes and surface waste management facilities. The proposed amendments will extend permitting requirements for carriers of produced water and rules concerning disposition of produced water so that they will apply to all oil field wastes, change the procedures for permitting new surface waste management facilities or modifications of existing facilities, prohibit disposal of salt-contaminated wastes in landfills, and adopt other detailed regulations concerning surface waste management facilities. It will also propose standards for operation and remediation levels for facilities handling contaminated materials. The proposed amendments to 19.15.1.7 NMAC would amend the definition of non-domestic oil field waste and add new definitions for soil and biopiles. Copies of the text of the proposed amendments are available from Commission Secretary, Florene Davidson at (505) 476-3458 or from the Division's website at <http://www.emnrd.state.nm.us/EMNRD/ocd/Rules.htm>. Written comments on the proposed amendments must be delivered no later than 5:00 P.M. on Thursday, December 1, 2005. Written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505) 476-3458 or through the New Mexico Rely Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 1<sup>st</sup> day of November 2005.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

Mark E. Fesmire, P.E.  
Director, Oil Conservation Division

## NEW MEXICO PHYSICAL THERAPY BOARD

### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Physical Therapy Board will hold a Rule Hearing on December 20, 2005. Following the Rule Hearing the New Mexico Physical Therapy Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Physical Therapy Board Rule Hearing/Regular Meeting will begin at 11:00 a.m. The meetings will be held at the Presbyterian Healthplex, 6301 Forrest Hills Dr. N.E., Albuquerque, NM 87109.

The purpose of the rule hearing is to consider adoption of proposed additions and amendments to the following Board Rules and Regulations in 16.20 NMAC: Part 1 General Provisions, Part 2 Examinations, Part 3 Issuance of Licenses, Part 4 Temporary Licenses, Part 5 Schedule of Fees, Part 6 Physical Therapist Assistants, Part 7 Supervision, Part 8 Continuing Education, and Part 9 Education Criteria for Foreign-Educated Applicants.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4827 after November 18, 2005. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than November 28, 2005. Persons wishing to present their comments at the hearing will need (12) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary



aid or service to participate, please call the Board office at (505) 476-4827 at least two weeks prior to the meeting or as soon as possible.

Kim Syra, Administrator  
PO Box 25101- Santa Fe, New Mexico  
87504

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

### NEW MEXICO TAXATION AND REV- ENUE DEPARTMENT

#### NOTICE OF HEARING AND PRO- POSED RULES

The Department proposes to amend the following regulations:

**Taxation and Revenue Department Act**  
3.1.2.10 NMAC Section 9-11-12 NMSA  
1978 (*Cooperative Agreement*  
*Effective Date*)

**Tax Administration Act**  
3.1.4.13 NMAC Section 7-1-14 NMSA  
1978 (*Reporting According to*  
*Business Location*)

The Department proposes to adopt the following regulation:

**Taxation and Revenue Department Act**  
3.1.2.11 NMAC Section 9-11-12 NMSA  
1978 (*Secretary May Designate*  
*Reporting Requirements of Some Receipts*)

The proposals were placed on file in the Office of the Secretary on November 1, 2005. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about January 17, 2006.

A public hearing will be held on the proposals on Wednesday, December 21, 2005, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before December 21, 2005.

#### 3.1.2.10 COOPERATIVE AGREEMENT EFFECTIVE DATE:

A. A cooperative agreement or an amended cooperative agreement entered into pursuant to Section 9-11-12.1 NMSA 1978 or Section 9-11-12.2 NMSA 1978, shall become effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the cooperative agreement or amended cooperative agreement is signed by both the pueblo or tribe and the secretary.

B. To be effective as of January 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before September 30 of the previous year. To be effective as of July 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before March 30 of the same year.

[3.1.2.10 NMAC - N, 6/15/04; A, XXX]

#### 3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCA- TION

##### A. REPORTING ACCORDING TO BUSINESS LOCA- TION - GENERAL:

(1) Any person maintaining more than one place of business in New Mexico and reporting under one identification number is required to report the taxable gross receipts for each location on a single CRS-1 form. Receipts from locations in each municipality or in each county outside a municipality where a place or places of business are maintained must be indicated separately on the CRS-1 form.

(2) A person who maintains multiple places of business in a single municipality or multiple places of business not within a municipality but within a single county and who reports under one identification number is required to combine the taxable gross receipts from these places of business, indicating the total taxable gross receipts derived from all locations in each municipality or county on the CRS-1 form.

(3) For persons engaged in the construction business, "place of business" includes each place where construction is performed.

(4) The "place of business" of a person who has no other place of business in New Mexico, but who has sales personnel who reside in New Mexico, includes each place where such personnel reside. Such persons are required to report gross receipts in the manner provided in Paragraphs 3.1.4.13A(1) and (2) NMAC. The place of business of a person who has no other place of business and does not have sales personnel who reside in New Mexico

but who does have service technicians who perform service calls in New Mexico is "out of state", whether the service technicians live in New Mexico or elsewhere. For the purposes of Paragraph 3.1.4.13A(4) NMAC, a "service technician" is an employee whose primary work responsibility is the repair, servicing and maintenance of the products sold or serviced by the employer and whose sales activities are at most incidental.

(5) A person, other than an itinerant peddler, who is liable for the gross receipts tax and who has no "place of business" or resident sales personnel or other employees such as service technicians in New Mexico is required to indicate on the CRS-1 form that the business location is "out-of-state".

(6) A person is required to report receipts for the location where the place of business is maintained even though the sale or delivery of goods or services was not performed at or from the place of business, except as provided in Subsection J of this section. It should be noted, however, that each construction site, as indicated in Paragraph 3.1.4.13A(3) NMAC, is a "place of business" for this purpose.

(7) If a person has more than one place of business in New Mexico, the department will accept, on audit, this person's method of crediting sales to each place of business, provided the method of crediting is in accordance with the person's regular accounting practice and contains no obvious distortion.

(8) Example 1: The X Company maintains its only place of business in Roswell, but sends its sales personnel to different cities in New Mexico to solicit sales and take orders. X is not required to report its gross receipts for each municipality in which its sales personnel are operating. X reports its gross receipts only for Roswell because its sole place of business is Roswell.

(9) Example 2: The Z Company maintains its only place of business in Grants. It makes deliveries in its own trucks to customers in various other cities within New Mexico. Z is not required to report its gross receipts for each municipality in which it makes deliveries. Z reports its gross receipts only for Grants. It is not maintaining a place of business in municipalities outside Grants solely because of its deliveries.

(10) Example 3: The W Furniture Company maintains its only office and showroom inside the city limits of Carrizozo. W's furniture warehouse is located outside the Carrizozo city limits. Furniture sold by W is, for the most part, delivered from its warehouse. W's "place of business" is in Carrizozo and it must report

all its gross receipts for that municipality, regardless of the location of its warehouse.

(1) Example 4: The X Appliance Company maintains offices and showrooms in both Truth or Consequences and Las Cruces. The Truth or Consequences place of business initiates a sale of a refrigerator. The refrigerator is delivered from stock held in the Las Cruces place of business. X's place of business to which it credits the sale will be accepted on audit, if the crediting is in accordance with X's method of crediting sales in its regular accounting practice and contains no obvious distortion. If X credits the sale to its Truth or Consequences place of business, the department will accept Truth or Consequences as the location of the sale. The same result will occur if X credits the sale to its Las Cruces place of business.

**B. REPORTING ACCORDING TO BUSINESS LOCATION - UTILITIES:**

(1) Each municipality and the portion of each county outside a municipality in which customers of a utility are located constitute separate places of business. The physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility.

(2) The department will accept, on audit, a utility's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) For the purposes of Section 3.1.4.13 NMAC, "utility" means a public utility or any other person selling and delivering or causing to be delivered to the customer's residence or place of business water via pipeline, electricity, natural gas or propane, butane, heating oil or similar fuel or providing cable television service, telephone service or Internet access service to the customer's residence or place of business.

**C. REPORTING BY PERSONS ENGAGED IN THE LEASING BUSINESS:** A person from out of state who is engaged in the business of leasing as defined in Subsection E of Section 7-9-3 NMSA 1978 and who has no place of business or resident sales personnel in New Mexico is required to indicate "out-of-state" on the CRS-1 report form and to calculate gross receipts tax due using the tax rate for the state. An out-of-state person engaged in the business of leasing who has a place of business or resident sales personnel in New Mexico is required to report gross receipts for each municipality or area within a county outside of any municipalities in which the person maintains a place of business or resident sales personnel. An in-

state person engaged in the business of leasing with more than one place of business is required to report gross receipts for each municipality or area within a county outside of any municipality in which the person maintains a place of business.

**D. REPORTING TAXABLE GROSS RECEIPTS BY A PERSON MAINTAINING A BUSINESS OUTSIDE THE BOUNDARIES OF A MUNICIPALITY ON LAND OWNED BY THAT MUNICIPALITY:**

For the purpose of distribution of the amount provided in Section 7-1-6.4 NMSA 1978, persons maintaining a place of business outside the boundaries of a municipality on land owned by that municipality are required to report their gross receipts for that location. For the purpose of calculating the amount of state and local gross receipts tax due, such persons shall use the sum of the gross receipts tax rate for the state plus all applicable tax rates for county-imposed taxes administered at the same time and in the same manner as the gross receipts tax.

**E. ITINERANT PEDDLERS - TEMPORARY BUSINESS LOCATIONS:**

(1) An itinerant peddler is a person who sells from a nonreserved location chosen for temporary periods on a first-come, first-served basis. An itinerant peddler does not advertise or soliciting, has no one employed to sell and is not employed as a salesperson.

(2) An itinerant peddler shall report taxable gross receipts by the municipality or the area of a county outside any municipality where the peddler maintains a place of business. If the itinerant peddler sells from only one location, that location shall be the place of business. If an individual peddler has no set sales location, the place of business shall be the peddler's temporary or permanent residence within New Mexico.

(3) Example: X occasionally places a blanket on a sidewalk in a town wherever X can find space for the blanket and sells homemade pies. X is an itinerant peddler because the space is not reserved specifically for X, it is chosen for temporary periods, and X is not employed nor does X have employees. Additionally, because X cannot be expected to be found regularly carrying on business at the same sidewalk location every day, X's place of business, for reporting purposes, is X's residence.

(4) Any person who pays a fee to occupy a particular location or space for a determined period of time and who sells any item or performs any service at that location is not an itinerant peddler and shall report that location as a place of business.

(5) Example: X pays \$50.00 to rent a space for a booth for two days during a festival. X is not an itinerant peddler

because the space was assigned, and during the festival X could normally be expected to be found carrying on business at that place. X must therefore report the gross receipts from sales made during the festival to the location of the space.

(6) Any person who, in advance, advertises through print or broadcast media or otherwise represents to the public that the person will be at a particular location for a specified period of time and who sells property or performs service at that location shall report that location as a place of business.

(7) Example: X sells fish from a truck in a shopping center parking lot. X places an advertisement in the local paper informing the public where X will be located and the dates when X will sell fish at that location. X is not an itinerant peddler because X advertises and solicits business, and X can normally be expected to be found at that location during the time designated in the advertisement. The shopping center is X's place of business and X must report all activity occurring there to that location.

**F. OBVIOUS DISTORTION:**

For purposes of Section 3.1.4.13 NMAC, obvious distortion shall be presumed whenever the method used to credit sales to a place of business treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion, shall not be allowed and may be the basis of establishing intent to evade or defeat tax under the provisions of Section 7-1-72 NMSA 1978.

**G. SPACE PROVIDED BY CLIENT CONSTITUTES BUSINESS LOCATION:**

(1) Except as provided otherwise in Paragraph 3.1.4.13G(6) NMAC, any person performing a service who occupies space provided by the purchaser of the service being performed has established a business location if the following conditions are present:

(a) the space is occupied by the provider of the service for a period of six consecutive months or longer;

(b) the provider or employees of the provider of the service are expected, by the purchaser of the services or representatives of the purchaser, to be available at that location during established times; and

(c) critical elements of the service are performed at, managed or coordinated from the purchaser's location.

(2) The following indicia will be considered in determining if the above conditions are present:

(a) the provider of the service has assigned employees to the client's location as a condition of employment;

(b) telephone is assigned for the exclusive use by the service provider;

(c) the space has been designated for the use of the service provider;

(d) the space contains office furniture or equipment furnished by either the client or the service provider for the sole use of the service provider;

(e) the service provider is identified by business name on a sign located in or adjacent to the provided space;

(f) the client or other persons can expect to communicate, either in person or by telephone, with the service provider or employees or representatives of the service provider at the space provided by the client; and

(g) the contract between the client and the service provider requires the client to provide space to the service provider.

(3) Any person meeting the three conditions as evidenced by the listed indicia must report the receipts derived from the performance of the service at the client's location to the municipality or county in which the furnished space is located.

(4) Example 1: X has entered into a contract to perform research and development services for the army at a location on White Sands missile range within Doña Ana county. The term of the contract is one year and is renewable annually. X is required by the contract to assign employees to the project at White Sands missile base on a full-time basis. The assigned employees consider White Sands as their place of employment. The army furnishes X with office and shop space as well as furniture and equipment. The space is identified as X's location by a sign containing X's business name at the main entrance to the assigned space. A specific telephone number has been assigned for X's exclusive use during the term of the contract. X shall report the receipts from services performed at the White Sands location under this contract using Doña Ana county as the location of business for gross receipts tax purposes.

(5) Example 2: Y has entered into a maintenance contract with a state agency to maintain and repair computer equipment. The state agency provides storage facilities to Y for the storage of equipment and parts which will be used by Y in the maintenance and repair of computer equipment. Y's employees are present at the location of the state agency only when required to repair the computers. The agency contacts Y at Y's regular place of business to report equipment problems and to request necessary repairs. On receipt of a request from the agency, Y dispatches an employee to the agency's location to repair the equipment. The location of the state agency does not constitute a separate business location for Y.

Y shall report its receipts from the state agency under this contract to the location where Y maintains a regular place of business.

(6) The provisions of Subsection 3.1.4.13G NMAC do not apply when:

(a) the provider of the service is a co-employer or joint employer with the client of the employees at the client's location or has entered into a contract to provide temporary employees to work at the client's facilities under the client's supervision and control; and

(b) the provider of the service has no employees at the client's location other than employees described in Subparagraph 3.1.4.13G(6)(a) NMAC above.

**H. REPORTING ACCORDING TO BUSINESS LOCATION - PERSONS SUBJECT TO INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX ACT:**

(1) Each municipality and the portion of each county outside all municipalities in which customers of a person who is engaging in an interstate telecommunications business and who is subject to the interstate telecommunications gross receipts tax are located constitute separate places of business. Except for commercial mobile radio service as defined by 47 C.F.R. 20.3, the location of the person's customer is the location of the telephone sets, other receiving devices or other points of delivery of the interstate telecommunications service.

(2) The department will accept, on audit, the person's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) This version of Subsection 3.1.4.13H NMAC applies to all interstate telecommunications gross receipts tax returns due after January 1, 2000.

**I. REPORTING ACCORDING TO BUSINESS LOCATION - COMMERCIAL MOBILE RADIO SERVICE PROVIDERS:** For interstate telecommunications gross receipts tax returns due after January 1, 2000, each municipality and the portion of each county outside all municipalities in which customers of the provider of a commercial mobile radio service as defined by 47 C.F.R. 20.3 are located constitute separate places of business. With respect to the provision of commercial mobile radio service, the business location of a customer will be determined by the customer's service location. A customer's service location is determined first by the customer's billing address within the licensed service area. If the customer does not have a billing address

within the licensed service area or if the customer's billing address is a post office box or mail-drop, then the customer's service location is the street or rural address of the customer's residence or business facility within that service area.

**J. TRANSACTIONS ON TRIBAL TERRITORY:** The secretary may require a person selling or delivering goods or services to a tribal non-member on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 to report receipts based on the tribal location of the sale or delivery rather than the person's business location.

[3/5/70, 7/6/79, 11/20/79, 4/11/83, 11/5/85, 1/4/88, 8/22/88, 12/29/89, 8/15/90, 9/3/92, 2/22/95, 10/31/96, 7/30/99, 10/29/99; 3.1.4.13 NMAC - Rn & A, 3 NMAC 1.4.13, 12/29/00; A, 12/30/03; A, XXX]

**3.1.2.11 SECRETARY MAY DESIGNATE REPORTING REQUIREMENTS OF SOME RECEIPTS:** The secretary may require receipts from sales that occur on the tribal land of a pueblo or tribe that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 to be reported as located on tribal land regardless of where the taxpayer's place of business is maintained.  
[3.1.2.11 NMAC - N, XXX]

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**End of Notices and Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

#### Notice of Repeal

8.8.2 NMAC, Protective Services General Policies, filed 7-16-2004 is hereby repealed and replaced by 8.8.2 NMAC, Protective Services General Policies, effective 11-15-2005.

8.10.2 NMAC, Protective Services Intake, filed 7-16-2004 is hereby repealed and replaced by 8.10.2 NMAC, Protective Services Intake, effective 11-15-2005.

8.10.3 NMAC, Child Protective Services Investigation, filed 7-16-2004 is hereby repealed and replaced by 8.10.3 NMAC, Child Protective Services Investigation, effective 11-15-2005.

8.10.4 NMAC, Child Protective Services Voluntary Family Services, filed 2-1-2001 is hereby repealed effective 11-15-2005.

8 NMAC 10.5, CPS Child Care, filed 6-16-97 is hereby repealed effective 11-15-2005.

8 NMAC 10.6, Family Preservation Services, filed 6-16-97 is hereby repealed and replaced by 8.10.6 NMAC, In-home Services, effective 11-15-2005.

8.10.7 NMAC, Child Protective Legal Services, filed 2-1-2001 is hereby repealed and replaced by 8.10.7 NMAC, Child Protective Legal Services, effective 11-15-2005.

8.10.8 NMAC, Permanency Planning, filed 7-2-2004 is hereby repealed and replaced by 8.10.8 NMAC, Permanency Planning, effective 11-15-2005.

8.10.9 NMAC, Independent Living Program, filed 2-1-2001 is hereby repealed and replaced by 8.10.9 NMAC, Independent Living Program, effective 11-15-2005.

8.26.2 NMAC, Adoption Services, filed 7-16-2004 is hereby repealed and replaced by 8.26.2 NMAC, effective 11-15-2005.

8.27.2 NMAC, Foster Parenting, filed 7-2-2004 is hereby repealed and replaced by 8.27.2 NMAC, Foster Parenting, effective 11-15-2005.

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

#### TITLE 8 SOCIAL SERVICES CHAPTER 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVI- SIONS PART 2 PROTECTIVE SER- VICES GENERAL POLICIES

**8.8.2.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services.  
[8.8.2.1 NMAC - Rp, 8.8.2.1 NMAC, 11/15/05]

**8.8.2.2 SCOPE:** Protective services staff and the general public.  
[8.8.2.2 NMAC - Rp, 8.8.2.2 NMAC, 11/15/05]

**8.8.2.3 S T A T U T O R Y AUTHORITY:** Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272; Adult Protective Services Act, Section 27-7-1 et seq., NMSA 1978; Authority to Conduct Social Services 9-8-13 A(3) NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004); Children's Mental Health and Disabilities Code, 32A-6-1 NMSA 1978; Citizen Substitute Care Review Act, Section 32A-8-1 et seq., NMSA 1978; Emancipation of Minors Act, Section 28-6-2 et seq., NMSA 1978; Executive Order 93-001; Executive Order 95-04; Human Services Act, Section 9-8-1 NMSA 1978; Indian Child Welfare Act of 1978, P.L. 95-608; Interstate Compact on Placement of Children, Section 32A-11-1 et seq., NMSA 1978; Mental health and Developmental Disabilities Code; Multiethnic Placement Act of 1994, P.L. 103-382; New Mexico Children's Court Rules SCRA 10-1 et seq.; Probate Code, Section 45-5-301 et seq., NMSA 1978; Residential Abuse and Neglect Act; Social Security Act.  
[8.8.2.3 NMAC - Rp, 8.8.2.3 NMAC, 11/15/05]

**8.8.2.4 D U R A T I O N :** Permanent.  
[8.8.2.4 NMAC - Rp, 8.8.2.4 NMAC, 11/15/05]

**8.8.2.5 EFFECTIVE DATE:** November 15, 2005 unless a later date is cited at the end of a section.  
[8.8.2.5 NMAC - Rp, 8.8.2.5 NMAC, 11/15/05]

**8.8.2.6 OBJECTIVE:** To establish policies for the administrative functioning of protective services.  
[8.8.2.6 NMAC - Rp, 8.8.2.6 NMAC, 11/15/05]

**8.8.2.7 DEFINITIONS:**

**A. "Administrative hearing"** means a formal process, where the client has an opportunity to present evidence to an impartial hearing officer.

**B. "Administrative instructions"** are emergency regulations to clarify or modify existing policies.

**C. "Administrative review"** is an informal process, which may include an informal conference or may include only a record review. The administrative review does not create any substantive rights for the client.

**D. "Authorized representative"** means the individual who has the authority by court order to consent to and release results of AIDS/HIV testing for children, under the age of 14 years, in CYFD custody. This is a specific court appointment and a task that does not necessarily fall to the Guardian Ad Litem or CYFD. An authorized representative is only required in the case of AIDS/HIV.

**E. "Basic family unit"** means one or more adults and children, if any, who reside in the same household, this term is used for income/resource certification purposes.

**F. "Client"** means a person who is receiving services from CYFD.

**G. "Communicable disease"** means any infectious disease that is both potentially communicable through common social or sexual contact and poses a significant health risk if contracted.

**H. "Courtesy homestudy"** involves the assignment of a social and community services coordinator to complete an out-of-county homestudy on an identified family.

**I. "Courtesy interviews"** involve the assignment of a social and community services coordinator to conduct an out-of-county interview as part of a child protective services case.

**J. "Courtesy supervision"** involves the assignment of social and community services coordinator duties and responsibilities for an out-of-county case, specific aspect of a case or a specific activity.

**K. "CYFD"** refers to the children, youth and families department.

**L. "Family of one"** may be considered to be a child living with non-legally responsible relatives, an emancipated minor, or a child living under the care of

an unrelated person, this term is used for income/resource certification purposes.

**M. "Intermediate sanction"** means a corrective plan that specifies how a licensee can meet the licensure standards of CYFD.

**N. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**O. "Need to know"** standard is the standard by which individual(s) are identified as required to receive confidential information, based upon risk of transmission of a specific disease.

**P. "Protective services"** refers to the organizational unit within CYFD that provides child protective services.

**Q. "Regulations"** are those rules that govern CYFD activities and have the force of law.

**R. "Secretary"** means the secretary of CYFD.

**S. "Separate family unit"** is related adults other than spouses or unrelated adults residing together, this term is used for income/resource certification purposes.

**T. "Universal precautions"** are the standardized protocol for the prevention of communicable disease.

[8.8.2.7 NMAC - Rp, 8.8.2.7 NMAC, 11/15/05]

**8.8.2.8 PROTECTIVE SERVICES:** Protective services is responsible for providing child protective services to individuals and families within the state of New Mexico.

**A. Mission statement:** Protective services is dedicated to enhancing the safety, dignity and well being of children, youth and families in New Mexico. Protective services strives to protect children from abuse, neglect and exploitation and to support healthy families.

**B. Child protective services (CPS) goals:** The goal of child protective services is to protect children from intra-familial abuse and/or neglect and provide treatment.

**C. Access to protective services:** Protective services provides community based services and maintains a toll free number that is posted in protective services offices.

[8.8.2.8 NMAC - Rp, 8.8.2.8 NMAC, 11/15/05]

**8.8.2.9 INTERAGENCY RELATIONSHIPS:** The protective services works with the other service areas within CYFD and other state agencies to enhance the provision of services to clients.

[8.8.2.9 NMAC - Rp, 8.8.2.9 NMAC, 11/15/05]

**8.8.2.10 LEGAL AUTHORITY AND GUIDELINES:** All services and licenses are provided in accordance with federal and state constitutional, statutory and regulatory requirements. Except as otherwise stated, CYFD and any contractor, provide services and licenses without regard to age, gender, race, religion, disability, marital status, or tribal affiliation in accordance with law.

[8.8.2.10 NMAC - Rp, 8.8.2.10 NMAC, 11/15/05]

**8.8.2.11 POLICY AND PROCEDURES DEVELOPMENT AND REVIEW**

**A. Protective services** holds a public hearing prior to the adoption, inclusion, amendment or repeal of any portion of the New Mexico administrative code in accordance with the State Rules Act.

**B. Protective services** files policy and regulations with the New Mexico state records center and archives.

**C. Emergency regulations:** For good cause, protective services may issue regulations on an emergency basis without notice or hearing if the secretary determines that the immediate action is in the public's best interest. An emergency regulation is effective for no longer than 30 days unless protective services, within seven days of the issuance of the emergency regulation, complies with the public hearing notice requirements of this section.

**D. Administrative instructions:** The use of administrative instructions is not encouraged. If an administrative instruction is necessary, protective services takes steps to hold a public hearing within 90 days to amend the policy.

**E. Protective services** considers requests for revisions to policies and procedures by any individual.

**F. Maintenance of the manual:** The protective services policy and procedures bureau annually reviews policies and procedures and makes revisions as necessary to reflect changes in practice to comply with federal and state laws as well as changes in CYFD philosophy and standards of practice. Revisions to policies and procedures will be made as provided by statute and regulations.

[8.8.2.11 NMAC - Rp, 8.8.2.11 NMAC, 11/15/05]

**8.8.2.12 PARENTAL RIGHTS AND RESPONSIBILITIES:** In addition to the procedural protections provided in the New Mexico Children's Code, any parent of a child in the custody of CYFD retains all residual rights and responsibilities in accordance with law concerning that child unless and until modified by court order.

[8.8.2.12 NMAC - Rp, 8.8.2.12 NMAC, 11/15/05]

**8.8.2.13 PROVISION OF SERVICES**

**A.** Provision of services is based upon the assessment of risk to and needs and strengths of the individual and/or family and the availability of services.

**B.** Services are provided in a setting most consistent with the least restrictive alternatives and the treatment plan developed.

**C.** Protective services does not provide services or confirm abuse, neglect and/or exploitation solely on the basis of poverty or homelessness.

**D.** If a person seeking services has a disability that prevents the person from access to CYFD facilities or services, CYFD will take steps to ensure accessibility, in accordance with the Americans with Disabilities Act (ADA).

**E.** Protective services makes reasonable efforts to protect vulnerable children from abuse, neglect and/or exploitation, and when safely possible, to preserve the integrity of the family unit.

**F.** Basic family unit, separate family unit and family of one as defined in these policies are utilized for income/resource certification for service provision and are not used for treatment planning purposes.

**G.** Provision of services is not dependent upon income certification or recertification for persons receiving the following services:

- (1) child protective services;
- (2) Independent living services for youth;
- (3) family services;
- (4) domestic violence services;
- (5) child protective services childcare;
- (6) foster care service for children; or
- (7) adoption services for children.

**H.** There are no residency or citizenship requirements for the provision of emergency protective services.

[8.8.2.13 NMAC - Rp, 8.8.2.14 NMAC, 11/15/05]

**8.8.2.14 COMMUNICABLE DISEASES:** Protective services provides services to individuals at risk of being, or who are determined to be, abused, neglected and/or exploited who are also infected with a communicable disease.

**A. Decision to release information regarding HIV positive/AIDS**

(1) For children under the age of 14 years in CYFD's custody, an authorized representative is required to consent to and release results of AIDS/HIV testing. CYFD requests to be the authorized representative for children in CYFD's custody through an application to the court.

(2) Protective services promptly provides testing results to the child's foster parents, and/or prospective foster parents, and adoptive parents.

(3) Protective services provides testing results to the individual responsible for the child's medical care when the child is placed in an institution such as correctional, treatment or shelter facilities.

(4) For children under the age of 14 when CYFD is the authorized representative, the social and community services coordinator in consultation with the supervisor decides which individuals, based upon the "need to know" standard, are provided with confidential information.

(5) For children under the age of 14 when CYFD is not the authorized representative, the court-appointed authorized representative decides which individuals, based upon the "need to know" standard, are provided with confidential information.

(6) Children 14 years old and older decide which individuals are provided with confidential information.

**B. Decision to release information regarding other communicable diseases.** Protective services informs foster parents, adoptive parents, and other direct care providers of any diagnosed communicable disease present in the child. Others may be informed based upon the public health risks associated with transmission of that particular disease.

**C. Testing for HIV/AIDS**

(1) An adult may be required to be tested for the presence of HIV/AIDS pursuant to the Health and Safety Code, Section 24-2B-1.

(2) A child 14 years old and older in CYFD's custody may be tested for the presence of HIV/AIDS when testing is medically indicated and the child consents.

(3) A child under the age of 14 in CYFD's custody may be tested for the presence of HIV/AIDS when the testing is medically indicated and the authorized representative consents.

(4) If CYFD is unable to obtain required consent for testing a child, and testing is medically indicated, CYFD may seek an order from the children's court to conduct testing.

(5) Children adjudicated delinquent based on offenses involving high risk sexual contact are tested in accordance with Health and Safety Code, Section 24-2B-5.1(E).

**D.** Protective services staff and/or providers use universal precautions. [8.8.2.14 NMAC - Rp, 8.8.2.15 NMAC, 11/15/05]

**8.8.2.15 WITHDRAWING FROM SERVICES:** Individuals and families can withdraw from voluntary services

or involuntary services. CYFD may take other actions to ensure the safety of children if safety is a concern as a result of the family's withdraw from services.

[8.8.2.15 NMAC - Rp, 8.8.2.16 NMAC, 11/15/05]

**8.8.2.16 WAITING LISTS:**

CYFD may establish waiting lists for certain services.

[8.8.2.16 NMAC - Rp, 8.8.2.17 NMAC, 11/15/05]

**8.8.2.17 ADMINISTRATIVE APPEALS:**

CYFD, as appropriate, provides a client with either an administrative review or an administrative hearing to appeal a CYFD decision. The requestor must request the appeal for a review or hearing either orally or in writing to CYFD within 10 days of the notice of the contemplated action. The outcome of an administrative review or hearing is final except as otherwise provided by law.

**A.** The administrative review process is used in the following instances, upon request:

(1) removal of foster children when the children have been in placement with the family for longer than six months;

(2) removal of adoptive children prior to finalization;

(3) denial of adoption or foster home application;

(4) denial of semi-independent living services;

(5) the substantiation of an abuse or neglect report unless the issue is subject of a pending legal case; or

(6) a substantiated report revealed by a central background check.

**B.** The administrative hearing process is used in the following instances, upon request:

(1) the revocation, suspension, or non-renewal of a foster home license;

(2) the denial, revocation, suspension, or non-renewal of a child placement agency license;

[8.8.2.17 NMAC - Rp, 8.8.2.18 NMAC, 11/15/05]

**8.8.2.18 CONFIDENTIALITY:**

All CYFD staff and contractors maintain confidentiality of records and information in accordance with the laws and regulations that apply to specific services.

**A.** Any information concerning a person who is involved in an abuse or, neglect case is confidential and may only be released as allowed by law.

**B.** All records in the custody or under the control of CYFD, including but not limited to client records and foster parent records (including applications), are confidential and may only be released as

allowed by law.

**C.** CYFD may release the identity of the reporting party only with the reporting party's consent or with a court order.

[8.8.2.18 NMAC - Rp, 8.8.2.19 NMAC, 11/15/05]

**8.8.2.19 INTEROFFICE COLLABORATION AND COOPERATION:**

As the provision of adequate and relevant services to the individual and/or family is the first priority, the local county offices work together to provide one another with mutual support and assistance through courtesy interviews, courtesy home studies and courtesy supervision.

[8.8.2.19 NMAC - Rp, 8.8.2.20 NMAC, 11/15/05]

**8.8.2.20 CONFLICT OF INTEREST:**

CYFD employees do not have primary responsibility for cases in which the employee has a close personal relationship with the client or a principal in the case or in which the client is a relative. In the event of the above the employee will report the relationship to the supervisor and another party will be assigned to the case.

[8.8.2.20 NMAC - Rp, 8.8.2.21 NMAC, 11/15/05]

**8.8.2.21 SOCIAL SECURITY NUMBERS AND/OR TAX IDENTIFICATION NUMBERS:**

CYFD collects social security and/or tax identification numbers for all vendors and clients.

[8.8.2.21 NMAC - Rp, 8.8.2.22 NMAC, 11/15/05]

**8.8.2.22 RECOVERY:**

CYFD seeks recovery of all overpayments made.

[8.8.2.22 NMAC - Rp, 8.8.2.23 NMAC, 11/15/05]

**8.8.2.23 PAYMENT TIME FRAMES:**

Any demands for payments must be submitted within 45 days of the service delivery or the date the charges were incurred, or else payment is denied.

[8.8.2.23 NMAC - Rp, 8.8.2.24 NMAC, 11/15/05]

**8.8.2.24 CRITICAL SELF ANALYSIS:**

CYFD may conduct an internal review of any critical situation in which self-analysis is determined to be appropriate.

**A.** Critical self-analysis is confidential and privileged and not for publication or release.

**B.** The intent of the critical self-analysis is to evaluate CYFD's internal decision-making process and to make improvements to protect other clients. The analysis/recommendation section is confi-

dential to encourage and foster candid expression of recommendations and advice from personnel who would otherwise temper their remarks because of concern for their own personal interest, safety or reputation.

[8.8.2.24 NMAC - Rp, 8.8.2.25 NMAC, 11/15/05]

#### **8.8.2.25 EMPLOYEE SAFETY**

**A.** Workers are encouraged to report to their supervisors any situations and/or circumstances that they believe are unsafe. The supervisor assists the worker in structuring the situation to enhance the safety for the worker.

**B.** A worker follows these standards when providing services:

(1) requests law enforcement to accompany the worker to the home of any client when there is information that indicates a potential for violence;

(2) stands to the side of the entrance when waiting for someone to come to the door;

(3) after entering a home, does not permit the door to be locked and positions himself/herself near an exit;

(4) leaves the situation or terminates contact when the potential for violence appears imminent; the worker notifies his/her supervisor immediately and law enforcement is contacted to provide any protection required; and

(5) notifies law enforcement and his/her supervisor if threatened or physically assaulted.

[8.8.2.25 NMAC - Rp, 8.8.2.26 NMAC, 11/15/05]

**8.8.2.26 QUALIFICATIONS AND TRAINING OF STAFF:** Protective services staff meets minimum qualifications as determined by their positions and job functions, and participate in formal pre-service and annual training as required by CYFD.

**A.** All protective services staff shall be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact, during the investigation and throughout any treatment.

**B.** Protective services supervisors and county office managers receive training in supervision within three (3) months of commencing supervision or employment as a supervisor or county office manager.

**C.** After the first year, protective services supervisors and county office managers participate in annual training.

**D.** Within one month of hire, all child protective services social and community services coordinators com-

mence formal pre-service training. Social and community services coordinators must have child protective services legal training prior to assuming responsibility for a case.

**E.** After the first year, social and community services coordinators will participate in annual training.

[8.8.2.26 NMAC - Rp, 8.8.2.27 NMAC, 11/15/05]

#### **8.8.2.27 ACCESS TO POLICIES AND RECORDS**

**A.** Copies of policies and procedures are available for public inspection in county offices. Reasonable copying charges are assessed for duplication.

**B.** All records in the custody or under the control of protective services may only be released in accordance with law or regulation. Requests for records must be made in writing to the county office manager and reasonable copying charges are assessed for duplication.

[8.8.2.27 NMAC - Rp, 8.8.2.28 NMAC, 11/15/05]

**8.8.2.28 QUALITY ASSURANCE REVIEW:** CYFD provides ongoing case reviews to ensure that families served are provided quality services.

**A.** The purpose of quality assurance review is to promote safety, permanence, health, and well-being through a system of quality assurance review that ensures that appropriate and quality services are provided to children and families.

**B.** The goal of the quality assurance program is to provide reliable and valid performance and outcome data that will be used to improve service delivery and outcomes for children and families.

**C.** CYFD uses several methods of data collection and analysis as part of its overall quality assurance review. Supervisors, managers and quality assurance staff provide ongoing case reviews. The quality assurance unit provides evaluation reports to the division director. Progress reports include, but are not limited to, evaluation of the quality of services provided, identification of strengths and needs in the service and delivery system, and relevant reports and evaluation of any program improvement measures.

**D.** The quality assurance unit notifies the county office manager and deputy director about specific cases that have safety or risk issues identified during the county office review.

**E.** The quality assurance manager completes a report at the conclusion of the county office review that provides data about the results and findings of the review.

**F.** County office managers develop and implement a program improvement plan after receipt of the quality assur-

ance report, with the input and approval of the deputy director and division director.

[8.8.2.28 NMAC - N, 11/15/05]

#### **HISTORY OF 8.8.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

SSD 2.0.0, General Provisions - Service Availability, filed 8/21/86;

SSD 2.0.0, General Provisions - Service Availability, filed 1/29/87;

SSD 2.0.0, General Provisions - Service Availability, filed 1/13/88;

SSD 2.0.0, General Provisions - Service Availability, filed 6/14/88;

SSD 2.0.0, General Provisions - Service Availability, filed 3/28/89;

SSD 2.0.0, General Provisions - Service Availability, filed 3/15/91;

HSSD 74-12 Social Services Manual filed 3/11/74;

SSD 2.1.0, General Provisions - Regulations, filed 8/21/86;

SSD 2.1.0, General Provisions - Regulations, filed 3/15/91;

SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 8/21/86;

SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 1/29/87;

SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 6/18/87;

SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 11/18/87;

SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 1/13/88;

SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 7/14/89;

SSD Rule #435.0000 General Provision - Delivery of Services, filed 10/16/81;

SSD 2.3.0 General Provisions - Delivery of Services, filed 8/21/86;

SSD 2.3.0 General Provisions - Delivery of Services, filed 11/18/87;

SSD 2.3.0 General Provisions - Delivery of Services, filed 9/18/90;

SSD 2.4.0, General Provisions - Termination of Services, filed 8/21/86;

SSD Rule #260.0000, Confidential Nature of Information Obtained in Operation of Program, filed 11/10/81;

SSD 2.5.0, General Provisions - Confidentiality, filed 8/21/86;

SSD Rule #250.0000 Fair Hearings filed 11/10/81;

SSD 2.6.0 General Provisions - Administrative Review, filed 8/21/86;

SSD 2.6.0, General Provisions - Administrative Review, filed 1/29/87;

SSD 2.6.0, General Provisions -



Administrative Review of SSD Decisions, filed 9/17/93;  
 SSD 2.7.0 General Provision - Legal Authority for Services to Children, filed 8/22/86;  
 SSD 2.8.0, General Provisions - Legal Authority Adult Services, filed 8/22/86;  
 SSD 2.9.0, General Provisions - Overview of Child and Family Services, filed 8/22/86.

**History of Repealed Material:**

8 NMAC 8.2, Protective Services Division General Policies - Repealed 2/14/01.  
 8.8.2 NMAC, Protective Services Division General Policies - Repealed 7/30/04.  
 8.8.2 NMAC, Protective Services General Policies - Repealed 11/15/05.

**NEW MEXICO CHILDREN,  
 YOUTH AND FAMILIES  
 DEPARTMENT**

**PROTECTIVE SERVICES DIVISION**

**TITLE 8 SOCIAL SERVICES  
 CHAPTER 10 CHILD PROTECTIVE SERVICES  
 PART 2 PROTECTIVE SERVICES INTAKE**

**8.10.2.1 ISSUING AGENCY:**  
 Children, Youth and Families Department, Protective Services.  
 [8.10.2.1 NMAC - Rp, 8.10.2.1 NMAC, 11/15/05]

**8.10.2.2 SCOPE:** Protective services employees and the general public.  
 [8.10.2.2 NMAC - Rp, 8.10.2.2 NMAC, 11/15/05]

**8.10.2.3 STATUTORY AUTHORITY:** New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004)  
 [8.10.2.3 NMAC - Rp, 8.10.2.3 NMAC, 11/15/05]

**8.10.2.4 DURATION:** Permanent.  
 [8.10.2.4 NMAC - Rp, 8.10.2.4 NMAC, 11/15/05]

**8.10.2.5 EFFECTIVE DATE:** November 15, 2005, unless a later date is cited at the end of a section.  
 [8.10.2.5 NMAC - Rp, 8.10.2.5 NMAC, 11/15/05]

**8.10.2.6 OBJECTIVE:** To establish provisions for accepting reports of alleged child and/or adult abuse, neglect and/or exploitation.  
 [8.10.2.6 NMAC - Rp, 8.10.2.6 NMAC, 11/15/05]

**8.10.2.7 DEFINITIONS:**

**A. "Abuse and neglect check"** is the review of the management information system to determine if there has been any previous involvement with CYFD's protective services.

**B. "ALTSD"** means the New Mexico aging and long term services department.

**C. "Appropriate report"** is an allegation made to CYFD of child abuse or neglect that falls within CYFD's mandate to investigate.

**D. "At risk"** is a determination that there exists a high probability that a child will suffer maltreatment in the future.

**E. "Child in the custody of CYFD"** means any child in the custody of CYFD pursuant to the New Mexico Children's Code.

**F. "Collateral contact"** is an individual who may possess pertinent information concerning the alleged victim, the alleged perpetrator or may be able to provide information concerning the alleged abuse or neglect that would be helpful in making an accurate investigative decision and deposition.

**G. "CYFD"** refers to the New Mexico children, youth and families department.

**H. "Emergency report"** is an appropriate report for which an investigation is initiated within 3 hours from receipt of a report by SCI.

**I. "Enhanced intake"** is the collection of additional information from collateral contacts by SCI staff so as to make an informed intake decision.

**J. "Indian child"** refers to an unmarried person who is (1) under the age of eighteen years old; (2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and (3) the biological child of a member of an Indian tribe.

**K. "Initiation"** is a face-to-face contact by the investigation worker with the alleged victim.

**L. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**M. "Placement"** is an out of home residential arrangement for the care of children in the custody of the CYFD, including: family foster care, relative foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

**N. "Prioritization"** is the assignment of a time frame for CYFD to initiate an investigation based upon an indication or report of immediate danger to the child and mitigating protective factors identified in the report.

**O. "Priority one report"** is an appropriate report for which an inves-

tigation is initiated within 24 hours from receipt of the report by SCI.

**P. "Priority two report"** is an appropriate report for which an investigation is initiated within 5 calendar days from receipt of the report by SCI.

**Q. "Provider"** refers to any person or agency contracted by CYFD to provide placement or child care services.

**R. "Report"** is a verbal or written presentation of information concerning alleged child and/or adult maltreatment that is received by CYFD.

**S. "Reporter"** refers to any individual who has contacted CYFD to make a report of alleged child or adult maltreatment.

**T. "SCI"**, or statewide central intake, is CYFD's operation responsible for receiving and screening reports of alleged child and/or adult maltreatment and assigning accepted reports to the appropriate county office for investigation.

**U. "Screened in report"** is a report that has met CYFD's criteria for acceptance for investigation.

**V. "Screened out report"** is a report that has not met CYFD's criteria for acceptance for investigation.  
 [8.10.2.7 NMAC - Rp, 8.10.2.7 NMAC, 11/15/05]

**8.10.2.8 PURPOSE OF CHILD AND ADULT PROTECTIVE SERVICES INTAKE:** The purpose of protective services intake is to collect sufficient information to determine if the situation reported rises to the level of abuse or neglect as defined by statute, and if the alleged perpetrator is a parent or caretaker so as to determine whether an investigation by CYFD or ALTSD and/or referral to another agency is warranted.  
 [8.10.2.8 NMAC - Rp, 8.10.2.8 NMAC, 11/15/05]

**8.10.2.9 ELIGIBILITY**

**A.** Any child, birth up to age 18, and any vulnerable adult is eligible for protective services intake without regard to income.

**B.** All individuals are required by law to report child abuse and/or neglect if he/she knows or has a reasonable suspicion that a child has been abused and/or neglected.  
 [8.10.2.9 NMAC - Rp, 8.10.2.9 NMAC, 11/15/05]

**8.10.2.10 PROVISION OF INTAKE SERVICES**

**A.** CYFD receives reports of suspected child and adult abuse and/or neglect 24 hours a day, seven days a week.

**B.** Intake services are conducted by individuals classified as a social

and community services coordinator or caseworker, or higher.

C. CYFD accepts reports from individuals wishing to remain anonymous.

[8.10.2.10 NMAC - Rp, 8.10.2.10 NMAC, 11/15/05]

#### 8.10.2.11 PROTECTION OF THE IDENTITY OF REPORT SOURCES:

CYFD protects the identity of reporting sources and shall not disclose absent the consent of the informant or a court order.

[8.10.2.11 NMAC - Rp, 8.10.2.11 NMAC, 11/15/05]

#### 8.10.2.12 INTAKE DECISION

A. CYFD makes intake decisions on all reports received.

B. CYFD uses information received from the reporting source, information from collateral contacts as available, and results of the abuse and neglect check to assist in making the intake decision.

[8.10.2.12 NMAC - Rp, 8.10.2.12 NMAC, 11/15/05]

#### 8.10.2.13 PRIORITIZATION:

CYFD prioritizes all appropriate reports.

[8.10.2.13 NMAC - Rp, 8.10.2.13 NMAC, 11/15/05]

#### 8.10.2.14 REPORTING REQUIREMENTS

A. When it is the professional opinion of CYFD staff that there is a reasonable suspicion of child/adult abuse or neglect, a report is made to local law enforcement in writing within 48 hours of the receipt of the report.

B. CYFD refers all screened out reports to other agencies as resources exist or as required by law.

C. When the alleged perpetrator of abuse or neglect is not a caretaker or household member, e.g. a coach, schoolteacher, or neighbor, CYFD receives the information from the reporting source and informs the reporter that the allegation will be forwarded within 48 hours for investigation to law enforcement.

D. When the report received involves an Indian child on the reservation or pueblo, CYFD immediately transmits the information to Tribal law enforcement or Tribal social services.

[8.10.2.14 NMAC - Rp, 8.10.2.14 NMAC, 11/15/05]

#### 8.10.2.15 DOCUMENTATION REQUIREMENTS FOR INTAKE

A. CYFD makes a record of all reports.

B. CYFD maintains records of all reports as follows:

(1) Screened out reports with no

further contact with CYFD are maintained for six months.

(2) Screened out reports having additional contact with or reports to CYFD are maintained on a schedule based upon the most recent contact with CYFD.

(3) Appropriate reports are maintained on the schedule based upon the results of the investigation and disposition of any subsequent case arising from the report.

[8.10.2.15 NMAC - Rp, 8.10.2.15 NMAC, 11/15/05]

#### HISTORY OF 8.10.2 NMAC:

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives: SSD Rule #410.0000, Protective Services to Children, filed 11/10/81;

SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 8/22/86;

SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 3/28/89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 8/22/86;

SSD 4.1.0, Child Protective Services - General Provisions, filed 1/29/87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 6/18/87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 3/28/89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9/14/89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9/18/90;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 8/22/86;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 3/28/89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 8/22/86;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 11/18/87;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 6/13/88;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3/28/89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3/20/90;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 9/18/90.

#### History of Repealed Material:

8.10.2 NMAC, Protective Services Intake - Repealed, 7/30/04.

8.10.2 NMAC, Protective Services Intake - Repealed, 11/15/05.

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### PROTECTIVE SERVICES DIVISION

#### TITLE 8 SOCIAL SERVICES CHAPTER 10 CHILD PROTECTIVE SERVICES

#### PART 3 CHILD PROTECTIVE SERVICES INVESTIGATION

**8.10.3.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services.

[8.10.3.1 NMAC - Rp, 8.10.3.1 NMAC, 11/15/05]

**8.10.3.2 SCOPE:** Protective services employees and the general public.

[8.10.3.2 NMAC - Rp, 8.10.3.2 NMAC, 11/15/05]

**8.10.3.3 STATUTORY AUTHORITY:** New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004)

[8.10.3.3 NMAC - Rp, 8.10.3.3 NMAC, 11/15/05]

**8.10.3.4 DURATION:** Permanent.

[8.10.3.4 NMAC - Rp, 8.10.3.4 NMAC, 11/15/05]

**8.10.3.5 EFFECTIVE DATE:** November 15, 2005, unless a later date is cited at the end of a section.

[8.10.3.5 NMAC - Rp, 8.10.3.5 NMAC, 11/15/05]

**8.10.3.6 OBJECTIVE:** To establish guidelines for the investigation of alleged abuse and/or neglect of children by their parent, guardian, caretaker, other household member, or foster care provider, and to determine the disposition of the case.

[8.10.3.6 NMAC - Rp, 8.10.3.6 NMAC, 11/15/05]

#### 8.10.3.7 DEFINITIONS:

A. **"Administrative review"** means an informal process. It may include an informal conference or may include only a record review. The administrative review process does not create any substantive rights for the client.

B. **"Appropriate report"** means a report of child abuse and/or neglect received by CYFD that falls within CYFD's mandate to investigate.

C. **"At risk"** is a determination that there exists a high probability that a child will suffer maltreatment in the future.

D. **"Child in the custody of CYFD"** means any child in the custody

of the children, youth and families department pursuant to the New Mexico Children's Code.

**E. "Collateral contact"** refers to an individual who may possess pertinent information concerning the alleged victim, the alleged perpetrator or may be able to provide information concerning the alleged abuse, neglect or exploitation that would be helpful in making an accurate investigative decision and deposition.

**F. "CYFD"** refers to the New Mexico children, youth and families department.

**G. "Investigative decision"** means the determination of whether a child has suffered physical abuse, emotional abuse or psychological abuse as defined by the New Mexico Children's Code.

**H. "Emergency report"** is an appropriate report for which an investigation is initiated within 3 hours from receipt of a report by SCI.

**I. "Emotional maltreatment"** is an observable behavior, activity, and/or words to intimidate, threaten, deride or degrade the child that causes substantial impairment of the child's mental or psychological ability to function.

**J. "Indian child"** refers to an unmarried person who is (1) under the age of eighteen years old; (2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and (3) the biological child of a member of an Indian tribe.

**K. "Initiation"** of an investigation is a face-to-face contact by the investigation worker with the alleged victim or documented diligent efforts to establish face to face contact with the victim.

**L. "Investigation disposition"** is the determination of the level of involvement, if any, of CYFD with the family based upon an assessment of ongoing risk to the child, the needs and strengths of the family and the safety of the child.

**M. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**N. "Notice of privacy practices"** means the written or electronic notice CYFD uses and disclosures of protected health information of the individual's rights and CYFD's legal duties with respect to protected health information.

**O. "Physical abuse"** is defined by the New Mexico Children's Code, and includes the non-accidental injury to a child, which, regardless of motive, is inflicted or allowed to be inflicted upon a child.

**P. "Physical neglect"** is defined by the New Mexico Children's Code and includes the failure, whether intentional or not, of the person responsible for the child's care to provide and maintain

adequate food, clothing, medical care, supervision, and/or education.

**Q. "Placement"** is an out of home residential arrangement for the care of children in the custody of CYFD, including: family foster care, relative foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

**R. "Priority one report"** is a report for which an investigation is initiated within 24 hours from receipt of the report by SCI.

**S. "Priority two report"** is a report for which an investigation is initiated within 5 calendar days from receipt of the report by SCI.

**T. "Protected health information"** means individually identifiable health information maintained by protective services for purposes of providing case management services.

**U. "Provider"** refers to any person or agency contracted by CYFD to provide placement or childcare services.

**V. "Reasonable efforts"** are the provision of services or other interventions in an attempt to address the safety and/or risk(s) factors to prevent the removal of the child from the home of the parent, guardian, or provider, return the child if removal was required, and/or finalize an alternative permanency plan if reunification is not an option.

**W. "Reunification"** is a permanency plan with the goal to safely return a child to the legal and physical custody of a parent or guardian.

**X. "Safe haven"** refers to the Safe Haven for Infants Act whereby a person may leave an infant with the staff of a hospital without being subject to criminal prosecution for abandonment or abuse if the infant was born within 90 days of being left at the hospital, as determined within a reasonable degree of medical certainty, and if the infant is left in a condition that would not constitute abandonment or abuse pursuant to Section 36-6-1 NMSA 1978.

**Y. "Sexual abuse"** is defined by the New Mexico Children's Code, and includes any incident of sexual contact involving a child that is inflicted by the person responsible for the child's care.

**Z. "Substantiation"** in a child abuse and/or neglect investigation means the victim(s) is under the age of 18, a caretaker/provider has been identified as the perpetrator and/or identified as failing to protect, and credible evidence exists to support the conclusion by the investigation worker that the child has been abused and/or neglected as defined by the New Mexico Children's Code. Credible evidence upon which to base a finding of substantiation includes:

(1) caretaker admission;

(2) physical facts/evidence;

(3) collateral and/or witness statements/observations;

(4) child disclosure; and/or

(5) investigation worker observation.

**AA. "Unsubstantiated"** means that the information collected during the investigation does not support a finding that the child was abused and/or neglected. [8.10.3.7 NMAC - Rp, 8.10.3.7 NMAC, 11/15/05]

**8.10.3.8 PURPOSE OF CHILD PROTECTIVE SERVICES INVESTIGATION:** The purpose of child protective services investigation is to assess safety of children who are the subjects of reports of alleged abuse or neglect. The purpose of the investigation is to collect and assess information to determine whether the incident of child abuse or neglect occurred, whether any child in the home remains at risk for continuing abuse and neglect, and to assess the need for additional protective services. Investigations will be conducted for children in the custody of their biological parents, adoptive parents, other relatives or guardians, or who are in CYFD custody. [8.10.3.8 NMAC - Rp, 8.10.3.8 NMAC, 11/15/05]

**8.10.3.9 SAFETY OF THE CHILD**

**A.** The safety of the child is the overriding concern throughout the casework relationship with the family. If the safety of the child is ever in conflict with the treatment or preservation of a family unit, the child's need for protection always takes precedence.

**B.** CYFD requests immediate assistance from law enforcement if necessary to assess and/or secure the safety of the child. [8.10.3.9 NMAC - Rp, 8.10.3.9 NMAC, 11/15/05]

**8.10.3.10 ASSIGNMENT**

**A.** Every accepted report is assigned to an investigation worker for investigation.

**B.** Emergency and priority one reports are assigned for investigation immediately upon receipt of the report in the county field office. Reports received under safe haven are assigned as emergency reports. Reports received on children in CYFD custody and in foster care or pre adoptive homes are assigned as emergency reports.

**C.** Priority two reports are assigned for investigation no later than 24 hours from receipt of the report in the county field office. [8.10.3.10 NMAC - Rp, 8.10.3.10 NMAC, 11/15/05]

**8.10.3.11 INITIATION:** The investigation worker initiates the investigation within the time frames established by CYFD as follows:

**A.** Emergency reports are initiated within 3 hours of receipt of the report from the reporting source.

**B.** Priority one reports are initiated within 24 hours of receipt of report from the reporting source.

**C.** Priority two reports are initiated within 5 calendar days of receipt of report from the reporting source.

[8.10.3.11 NMAC - Rp, 8.10.3.11 NMAC, 11/15/05]

### **8.10.3.12 CONDUCTING INVESTIGATIONS**

**A.** CYFD gathers the information required to determine the immediate safety and ongoing risks of harm to the child.

**B.** CYFD interviews/observes the alleged child victim and all other children in the household during the investigation.

**C.** Prior to interviewing a child, CYFD shall notify the parent or guardian of the child who is being interviewed, unless CYFD determines that notification would adversely affect the safety of the child about whom the report has been made or compromise the investigation. If CYFD interviews a child without the permission of the parents/guardians, CYFD notifies them of the interview within 24 hours.

**D.** CYFD identifies all caretakers of the child.

**E.** CYFD interviews the parents/guardians, or the care provider, during the investigation.

**(1)** CYFD informs the parents/guardians, or the care provider, of the following:

**(a)** that prior to any legal proceeding, any interaction with the parents/guardians, or the care provider, is voluntary;

**(b)** that only law enforcement can remove a child who is not in the custody of CYFD, if necessary to protect the child's health and safety, unless the district court issues an ex parte order allowing CYFD to remove the child;

**(c)** that CYFD will work confidentially with them except when it becomes necessary to work with law enforcement, the district attorney or relevant agencies. If the alleged perpetrator is licensed by CYFD or any other agency, the licensor will be notified of the allegations and the final disposition of the investigation;

**(d)** that information concerning the report and investigation has been entered into CYFD files; and

**(e)** that other people may be inter-

viewed in order to complete this investigation.

**(2)** CYFD provides the notice of privacy practices to the parents or guardians no later than the first contact or, in the event of an emergency, as soon as reasonably practicable after the emergency. CYFD makes a good faith effort to document acknowledgement of receipt of the notice and documents the reasons why the acknowledgement was not obtained.

**F.** CYFD advises the party, at the time of initial contact with the alleged perpetrator subject to the investigation, the reported allegations made, in a manner consistent with laws protecting the rights of the reporter.

**G.** CYFD interviews collateral contacts during the investigation.

**H.** CYFD visits the home during an investigation. This requirement may be waived in specific circumstances which include but are not limited to:

**(1)** the parent/guardian refuses;

**(2)** the home has been determined to be unsafe by law enforcement and/or public health; and/or

**(3)** the family is homeless.

**I.** CYFD arranges for evaluations/examinations as required during the investigation.

**J.** The investigation worker completes the investigation within 30 days of the report, unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

**K.** The investigation worker completes the safety assessment, risk assessment and family strengths and needs assessments tools in all investigations.

[8.10.3.12 NMAC - Rp, 8.10.3.12 NMAC, 11/15/05]

### **8.10.3.13 ALLEGATION OF ABUSE/NEGLECT IN FACILITIES**

**A.** If requested by law enforcement, CYFD assists law enforcement in conducting investigations of child abuse and/or neglect in schools, facilities, or childcare homes/centers.

**B.** CYFD conducts a safety assessment of any child in CYFD custody placed in a facility or childcare home/center where abuse and neglect has been reported regarding a child in CYFD custody and refers to law enforcement for investigation. [8.10.3.13 NMAC - Rp, 8.10.3.13 NMAC, 11/15/05]

### **8.10.3.14 ALLEGATION OF ABUSE/NEGLECT IN FOSTER HOMES, TREATMENT FOSTER HOMES, AND PRE-ADOPTIVE HOMES**

**A.** CYFD investigates abuse/neglect reports pertaining to children placed in a CYFD licensed foster home, treatment foster home, or preadoptive home.

**B.** CYFD notifies law enforcement and coordinates the investigation if requested.

[8.10.3.14 NMAC - Rp, 8.10.3.14 NMAC, 11/15/05]

### **8.10.3.15 INVESTIGATIONS INVOLVING INDIAN CHILDREN**

**A.** CYFD is responsible for investigating child abuse and/or neglect reports involving Indian children who reside off the reservation or pueblo.

**B.** CYFD assists in the investigation of child abuse and/or neglect reports of children on the reservation or pueblo if requested by the Indian tribal government.

**C.** CYFD makes efforts to determine if the child who is subject of an investigation is an Indian child.

**D.** CYFD notifies the tribe of any investigations involving Indian children as required by the Indian Child Welfare Act.

[8.10.3.15 NMAC - Rp, 8.10.3.15 NMAC, 11/15/05]

### **8.10.3.16 SEEKING OR ACCEPTING CUSTODY OF CHILDREN, INCLUDING INDIAN CHILDREN**

**A.** CYFD makes reasonable efforts to maintain the family unit and prevent the removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternative permanency plans in a timely manner when reunification is not appropriate or possible. The investigation worker documents this in the case record as well as in the affidavit for custody. In circumstances where reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family, the investigation worker documents reasons why such reasonable efforts were not required in the case record as well as the affidavit for custody.

**B.** CYFD seeks custody of Indian children who are domiciled or residing off-reservation when continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**C.** An Indian child who is domiciled on the reservation but temporarily located off the reservation may be removed by law enforcement from his parent or Indian custodian in order to prevent

imminent physical damage or harm to the child. CYFD notifies the tribe as soon as possible and facilitates a transfer of the case to the tribe.

**D.** CYFD notifies parents/guardians that their child is in custody within 24 hours of the child being taken into custody.

**E.** CYFD makes every effort to identify and locate fit and willing relatives for consideration of placement of a child in custody who requires out of home placement.

[8.10.3.16 NMAC - Rp, 8.10.3.16 NMAC, 11/15/05]

### **8.10.3.17 INVESTIGATION DECISION**

**A.** The investigation worker makes an investigation decision within 30 days of the report unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

**B.** The investigation decision includes a determination of substantiated or unsubstantiated on each of the allegations in the report.

**C.** After review and approval by the supervisor, the investigation decision is entered into FACTS by the worker.

[8.10.3.17 NMAC - Rp, 8.10.3.17 NMAC, 11/15/05]

### **8.10.3.18 INVESTIGATION DISPOSITION**

**A.** CYFD makes an investigation disposition within 30 days of the receipt of the report in every investigation CYFD conducts unless an extension is secured from the supervisor. No extension may be granted unless the reasons for the extension are documented in FACTS. Extensions are not to exceed an additional 30 days after the original 30 days.

**B.** CYFD determines the investigation disposition of the investigation based upon the service delivery matrix that considers the assessment of the child's risk of future abuse and/or neglect, the needs and strengths of the family and the safety of the child.

[8.10.3.18 NMAC - Rp, 8.10.3.18 NMAC, 11/15/05]

### **8.10.3.19 DOCUMENTATION**

**A.** CYFD records all investigation assignments.

**B.** CYFD documents all investigations.

**C.** CYFD documents all investigation decisions.

**D.** All information

obtained by CYFD in an investigation is confidential and is released only as allowed by law.

**E.** The investigation worker documents reasonable efforts made to avoid removal of the child from the home, efforts to reunify the child if removal was required and/or efforts to achieve an alternative permanency plan if reunification is not an option. Documentation is included in the case record and in the affidavit for custody.

**F.** CYFD documents acknowledgement of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgement of receipt of the notice of privacy practices and the reasons why the acknowledgement was not obtained.

[8.10.3.19 NMAC - Rp, 8.10.3.19 NMAC, 11/15/05]

### **8.10.3.20 NOTIFICATION**

**A.** CYFD notifies the parents/guardians/providers and, if appropriate, law enforcement, regulatory agencies or others who have a right to know, of the results of the investigation.

**B.** The results of any substantiated investigation, which is not the subject of a court action, may be reviewed through CYFD's administrative review process.

[8.10.3.20 NMAC - Rp, 8.10.3.20 NMAC, 11/15/05]

### **HISTORY OF 8.10.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives: SSD Rule #410.0000, Protective Services To Children, filed 11-10-81;

SSD 4.0.0, Child Protective Services - Definition And Goal Statement, filed 8-22-86;

SSD 4.0.0, Child Protective Services - Definition And Goal Statement, filed 3-28-89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 8-22-86;

SSD 4.1.0, Child Protective Services - General Provisions, filed 1-29-87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 6-18-87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 3-28-89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9-14-89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9-18-90;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 8-22-86;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 3-28-89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 8-22-86;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 11-18-87;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 6-13-88;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3-28-89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3-20-90;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 9-18-90.

### **History of Repealed Material:**

8 NMAC 10.3, Child Protective Services Investigation - Repealed 02/14/01.

8.10.3 NMAC, Child Protective Services Investigation - Repealed 07/30/04.

8.10.3 NMAC, Child Protective Services Investigation - Repealed 11/15/05.

## **NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

### **PROTECTIVE SERVICES DIVISION**

#### **TITLE 8 SOCIAL SERVICES CHAPTER 10 CHILD PROTECTIVE SERVICES PART 6 IN-HOME SERVICES**

**8.10.6.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services.

[8.10.6.1 NMAC - Rp, 8 NMAC 10.6.1, 11/15/05]

**8.10.6.2 SCOPE:** Protective services employees and the general public.  
[8.10.6.2 NMAC - Rp, 8 NMAC 10.6.2, 11/15/05]

**8.10.6.3 STATUTORY AUTHORITY:** New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004)

[8.10.6.3 NMAC - Rp, 8 NMAC 10.6.3, 11/15/05]

**8.10.6.4 DURATION:** Permanent.

[8.10.6.4 NMAC - Rp, 8 NMAC 10.6.4, 11/15/05]

**8.10.6.5 EFFECTIVE DATE:** November 15, 2005, unless a later date is cited at the end of a section.

[8.10.6.5 NMAC - Rp, 8 NMAC 10.6.5, 11/15/05]

**8.10.6.6 OBJECTIVE:** To establish guidelines for the provision of In-home Services to families with substantiated

ed maltreatment at high or moderate risk, or with a child under the age of 3, to reduce repeat maltreatment and to assure the continued safety of children.

[8.10.6.6 NMAC - Rp, 8 NMAC 10.6.6, 11/15/05]

#### 8.10.6.7 DEFINITIONS:

**A. "Assessment plan"** is the plan developed with the family to further assess the family's needs from which the family treatment plan will be developed.

**B. "Case management"** is a service provided to clients that includes, but is not limited to, assessment of needs, reports, monitoring of progress, coordination of services, facilitation of inter-agency collaboration and documentation of efforts to meet the client's needs.

**C. "Child protective services child care"** is provided by CYFD as a component of a treatment plan for a child whose family is receiving services as a result of a report for abuse or neglect regardless of income eligibility.

**D. "Client"** is each individual in a family receiving service from CYFD as an open and active case in FACTS.

**E. "Client satisfaction surveys"** is a questionnaire completed by the family for the purpose of gathering of information to evaluate the quality of CYFD.

**F. "Community resources"** are agencies, contractors, individuals, and community organizations that deliver services or other support for clients during and after CYFD involvement.

**G. "Conditionally safe"** is the term used to describe the CYFD's assessment based upon available information that when community resources have been put in place to protect the child, factors detrimental to the child have been temporarily eliminated and/or the child's immediate circumstance or environment is not threatening to the child.

**H. "CYFD"** refers to the New Mexico children, youth and families department.

**I. "Direct service"** is a service provided by CYFD staff person to an individual or family that supports one or more goals in the assessment plan or treatment plan.

**J. "Early and periodic screening, diagnosis and treatment (EPSDT)"**, is a medicaid program designed to provide preventive and comprehensive health care services to medicaid-eligible children under age 21.

**K. "Emergency discretionary funds"** are funds used to secure services or items necessary to reduce the risk of recurrence of maltreatment.

**L. "Engagement"** is the

commitment to and subsequent involvement of community resources in a case process.

**M. "FACTS"** is the family automated client tracking system, CYFD's management information system.

**N. "Family assessment"** is a collaborative process involving the client and other relevant persons to compile information to identify the family's strengths, needs, and issues that need to be addressed in order to develop a service plan.

**O. "Family group decision making (FGDM)"** is the process by which decisions are made affecting the family, including, but not limited to, the possible placement of a child, treatment goals, selection of service providers, family intervention, and termination of a case, that includes the family and community resources. The FGDM process extends the initial team decision-making meeting and/or may be initiated at any time determined beneficial to the case.

**P. "Fictive kin"** is a person not related by birth or marriage who has an emotionally significant and positive relationship with a child.

**Q. "Maltreatment"** is neglect, abuse or perpetration of sexual activity that adversely affects an individual.

**R. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**S. "Notice of privacy practices"** means the written or electronic notice of CYFD's uses and disclosures of protected health information and of the individual's rights and CYFD's legal duties with respect to protected health information.

**T. "Protected health information"** is individually identifiable health information maintained by CYFD for purposes of providing case management services.

**U. "Relative"** is someone related to another person by blood or marriage within the fifth degree of consanguinity.

**V. "Risk"** is the likelihood that a child will be abused or neglected by his/her parents or legal guardian based on established criteria.

**W. "Safe"** is the term used to describe CYFD's assessment based upon pre-determined factors that a child's immediate circumstance or environment is free from persons and/or situations that have been identified as possible causes of harm to the child.

**X. "Safety plan"** is a written document that outlines the steps a family and/or individual will take to insure safety of themselves or others in their care that is mutually agreed upon by the family members and CYFD and may include communi-

ty resources.

**Y. "Service level"** is the intensity of delivery at which a family receives the In-home Services.

**Z. "Substitute care"** is the placement of a child outside the child's home made by CYFD pursuant to emergency custody, custody order or voluntary placement agreement.

**AA. "Supervisor case notes"** are the notes on a case entered in FACTS by the supervisor including, but not limited to, decisions and the reasons for a decision.

**BB. "Support system"** is a network of community resources that provide an individual or family with support for continued safety, stability and well-being.

**CC. "Structured decision making instruments"** are instruments used to determine safety and risk of maltreatment of children and the needs and strengths of the family, based on application of pre-determined criteria.

**DD. "Team decision making (TDM)"** is a family centered meeting, for making decisions affecting the family and possible placement of a child, which includes the family and community resources.

**EE. "Treatment plan"** is a plan developed by CYFD in cooperation with clients and community resources, based on the information collected, which identifies the specific changes in behaviors and/or circumstances that are expected as a result of the In-home Services intervention.

**FF. "Voluntary placement"** is an agreement, in writing, between the CYFD and a parent/guardian in which the parent/guardian voluntarily places their child in the custody of CYFD.

**GG. "Wrap around services"** is a service delivery system that utilizes community resources, is designed to fit the specific needs of the client, promotes full client engagement in the service delivery and enhances the client's ability to access resources after CYFD involvement.

[8.10.6.7 NMAC - Rp, 8.10.6.7 NMAC, 11/15/05]

**8.10.6.8 PURPOSE OF IN-HOME SERVICES:** The purpose of In-home Services is to reduce the risk of the recurrence of maltreatment of children by their caretakers without the intervention of the courts.

[8.10.6.8 NMAC - Rp, 8 NMAC 10.6.8, 11/15/05]

#### 8.10.6.9 ELIGIBILITY

**A.** A family is eligible to receive In-home Services without regard to income.

**B.** A family is eligible to

receive In-home Services when a report of abuse and/or neglect has been substantiated and:

(1) the risk assessment is scored high to moderate and the needs and strengths instrument is scored high or moderate; or

(2) a child under 3 years of age resides in the home.

**C.** A family is eligible to receive In-home Services when a report of abuse or neglect has been unsubstantiated and CYFD determines that based on safety and/or risk issues, services should be offered to prevent maltreatment.

**D.** A family whose child is in the legal custody of CYFD through a court order is not eligible to receive In-home Services.

[8.10.6.9 NMAC - Rp, 8 NMAC 10.6.9, 11/15/05]

#### **8.10.6.10 PROVISION OF SERVICES**

**A.** No waiting list is established or maintained for In-home Services.

**B.** Services are provided to the family on a voluntary basis.

**C.** Services are provided to the family based on the assessment of needs and risks of the family utilizing family strengths, family resources and community and CYFD.

**D.** CYFD prioritizes the use of family and community services over direct services whenever possible and appropriate.

[8.10.6.10 NMAC - N, 11/15/05]

#### **8.10.6.11 CASE ASSIGNMENT**

**A.** In-home Services are assigned within five working days of the disposition of the investigation.

**B.** The initial face-to-face contact occurs within 72 hours from case transfer to the In-home Services worker.

**C.** The investigation worker closes the investigation upon transfer of the case to the In-home Services worker.

[8.10.6.11 NMAC - N, 11/15/05]

**8.10.6.12 IN-HOME SERVICES PLANS:** CYFD develops and implements three types of plans for the provision of In-home Services; a safety plan, family assessment plan and family treatment plan.

**A.** CYFD completes a safety plan that addresses all individuals in the family. The plan is completed in collaboration with the family utilizing safety factors identified in the safety assessment. The plan addresses:

- (1) identified safety concerns; and
- (2) actions to be taken if a child or

family member is at imminent risk of harm.

**B.** CYFD completes a family assessment plan for all In-home Services cases. The family assessment plan addresses factors identified in the risk assessment and the need and strengths assessment that was completed during the investigation and is:

(1) a collaborative effort between the family and CYFD;

(2) focused on safety and well-being;

(3) documented in FACTS in the narrative section within 7 days from the date of case assignment; and

(4) completed within 4 weeks from the date of assignment.

**C.** CYFD completes a family treatment plan for all In-home Services cases. The family treatment plan addresses the assessed needs of the family, as determined by the family assessment and the risk assessment and the need and strengths assessment instruments, which were conducted during the investigation, and:

(1) is developed in collaboration with the family;

(2) utilizes information collected during the investigation and from the family assessment plan;

(3) addresses the families' needs and safety issues, while building on the families' strengths. At least three of the identified needs are addressed in the plan;

(4) is developed and documented in FACTS in the APS/FPS treatment plan window within 4 weeks from date of transfer; and

(5) is continually reviewed to determine progress and whether adjustments in the plan are needed to address newly identified needs or if the family has met the goals of the plan.

[8.10.6.12 NMAC - N, 11/15/05]

**8.10.6.13 CASE DOCUMENTATION:** Case plans, case contacts, and supervisory consultations are documented in FACTS.

[8.10.6.13 NMAC - N, 11/15/05]

**8.10.6.14 DURATION OF SERVICE DELIVERY:** In-home Services case interventions are limited to 90 days, with the possibility of one 90-day extension.

[8.10.6.14 NMAC - N, 11/15/05]

**8.10.6.15 DELIVERY OF IN-HOME SERVICES:** In-home Services are provided at two levels of service intensity. While receiving In-home Services a family may move between the two service levels. The selection of a level of service is based on the assessed family needs, strengths and risk factors, which are documented in the

supervisor case notes in FACTS by the supervisor.

**A.** Level 1 is case management in which the In-home Services worker:

(1) refers families to appropriate community services;

(2) monitors the families' utilization of services;

(3) works with the family to enhance their utilization of services;

(4) evaluates the families' progress toward meeting treatment goals; and

(5) continually assesses the child's and each family member's safety.

**B.** Level 2 is more intensive services that incorporate the case management services described in level 1 and provides of at least one direct service to families. Direct services to families includes, but is not limited to:

(1) crisis intervention;

(2) wrap around services;

(3) parenting training;

(4) family management training;

(5) communication skills training;

and

(6) conflict management skills training.

**C.** Both levels utilize engagement of families and community resources in the assessment process and treatment plan development. At completion of a Level 1 or 2 and closure of the case, the family will have an enhanced ability to maintain their support system to provide for a safe and stable environment that adequately meets the needs of all members.

[8.10.6.15 NMAC - N, 11/15/05]

**8.10.6.16 CASE ASSESSMENT AND STAFFING:** CYFD utilizes staffings and conferences to assess, review and develop plans and review services and client safety.

[8.10.6.16 NMAC - N, 11/15/05]

#### **8.10.6.17 FACE-TO-FACE MEETINGS WITH THE FAMILY:**

Face-to-face meetings with the parents and children in the home provide the worker with the ability to assess the family for safety as well as progress in meeting the goals of the case.

**A.** Weekly meetings with the family and children are recommended during level 2 designation.

**B.** The actual required number of meetings and level of interaction will depend on supervisory direction and availability of community resources.

**C.** When determining the meeting frequency and other types of intervention, safety is always the first consideration. At a minimum, the worker will meet

with the parents and children:

(1) at the beginning of the service to establish rapport and begin the assessment plan;

(2) to establish the treatment plan;

(3) prior to closing the case;

(4) each time the SDM instruments are utilized;

(5) to deliver direct services; and

(6) as deemed appropriate by worker or required by the supervisor.

[8.10.6.17 NMAC - N, 11/15/05]

#### **8.10.6.18 EMERGENCY DISCRETIONARY FUNDS (EDF)**

**A.** EDF are used to enhance the case plans and are directly connected to the achievement of the goals of the In-home Services assessment phase and/or the treatment plan.

**B.** EDF is not automatically provided to every family.

**C.** EDF is administered by the director or his/her designee.

**D.** Direct disbursement of EDF to clients is prohibited.

**E.** EDF are not used for restitution, court fees, bonds, medical or mental health services, paying traffic tickets, posting bail, paying off credit cards or credit accounts, purchasing fire arms, fireworks, recreational equipment and/or cars.

**F.** EDF may be used for purchases of products or services such as rent, or rent deposits, utilities, clothing, transportation, food, home, and car and appliance repair.

**G.** \$250.00 is the maximum EDF expended per family. The regional manager and the protective services director or his/her designee must approve more than \$250.00 per family.

**H.** EDF is not used as positive reinforcement for families.

**I.** Federal 1099 (IRS) reporting is required.

[8.10.6.18 NMAC - Rp, 8.10.6.18 NMAC, 11/15/05]

#### **8.10.6.19 SUBSEQUENT REPORTS OF ABUSE AND/OR NEGLECT:**

CYFD may continue to provide In-home Services during and after an investigation that resulted from additional child abuse and/or neglect allegations if the safety of the child and family can be insured. A report to statewide central intake is made only when there is reason to believe abuse and/or neglect has occurred subsequent to the original report that resulted in providing In-home Services.

[8.10.6.19 NMAC - N, 11/15/05]

#### **8.10.6.20 FAMILY REFUSAL OF IN-HOME SERVICES:**

A decision by a family to refuse or withdraw from services does not constitute abuse or neglect. In

the case where a family:

**A.** refuses In-home Services, the worker, in consultation with the supervisor, reviews the results of the safety assessment, risk assessment and family needs and strengths assessment instruments and other pertinent information to determine if CYFD should pursue legal action;

**B.** withdraws after beginning In-home Services, the worker conducts a safety assessment and a risk reassessment and reviews the results, along with the investigation and other pertinent information, to determine an appropriate course of action; action may include, but is not limited to:

(1) revision of the In-home Services intervention strategy;

(2) case closure; or

(3) pursuit of involuntary services through a court order.

[8.10.6.20 NMAC - N, 11/15/05]

#### **8.10.6.21 CASE CLOSURE:**

In-home Services may be closed with no further intervention from CYFD when the structured decision making instruments are completed and:

**A.** the safety assessment instrument documents that the child is safe or conditionally safe;

**B.** the safety assessment and risk reassessment instruments document either no escalation of risk or a decrease in the risk level;

**C.** the goals of the treatment plan have been achieved; or

**D.** the family withdraws from services pursuant to PR 8.10.6.20, Family Refusal of In-home-services.

[8.10.6.21 NMAC - N, 11/15/05]

#### **8.10.6.22 EVALUATION:**

In-home Services effectiveness will be evaluated.

[8.10.6.22 NMAC - N, 11/15/05]

#### **HISTORY OF 8.10.6 NMAC:**

**Pre-NMAC History:** [RESERVED]

#### **History of Repealed Material:**

8 NMAC 10.6, Family Preservation Services, filed 6/16/97 - Repealed 11/15/05.

### **NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

#### **PROTECTIVE SERVICES DIVISION**

#### **TITLE 8 SOCIAL SERVICES CHAPTER 10 CHILD PROTEC- TIVE SERVICES PART 7 CHILD PROTEC- TIVE LEGAL SERVICES**

#### **8.10.7.1 ISSUING AGENCY:**

Children, Youth and Families Department, Protective Services.

[8.10.7.1 NMAC - Rp, 8.10.7.1 NMAC, 11/15/05]

#### **8.10.7.2 SCOPE:**

Protective services employees and the general public.

[8.10.7.2 NMAC - Rp, 8.10.7.2 NMAC, 11/15/05]

#### **8.10.7.3 STATUTORY**

**AUTHORITY:** Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004); Indian Child Welfare Act of 1978, P.L. 95-608; New Mexico Children's Court Rules SCRA 10-1 et seq.

[8.10.7.3 NMAC - Rp, 8.10.7.3 NMAC, 11/15/05]

#### **8.10.7.4 DURATION:**

Permanent.

[8.10.7.4 NMAC - Rp, 8.10.7.4 NMAC, 11/15/05]

#### **8.10.7.5 EFFECTIVE DATE:**

November 15, 2005, unless a later date is cited at the end of a section.

[8.10.7.5 NMAC - Rp, 8.10.7.5 NMAC, 11/15/05]

**8.10.7.6 OBJECTIVE:** To establish parameters for the provision of legal services for children at significant risk of abuse and/or neglect and children in the custody of CYFD.

[8.10.7.6 NMAC - Rp, 8.10.7.6 NMAC, 11/15/05]

#### **8.10.7.7 DEFINITIONS:**

**A. "Abandoned infant"** means a child assessed to be under the age of one year who has been left by the parent without provision for the child's identification for a period of fourteen days, or who has been left with others, including the other parent or an agency, without provisions for support and without communication for a period of 3 months.

**B. "Adjudication hearing"** is the hearing that occurs within sixty days of service on the respondents and is the hearing at which the Court determines whether the child is abused or neglected.

**C. "Affidavit"** means a sworn statement of facts and accompanies the petition for an ex-parte order. It is signed by any person who either has personal knowledge of the facts or has been informed of them and believes them to be true.

**D. "Best interest of the child"** is the standard that reflects the protection of the child from abuse and neglect. In motions to terminate parental rights and



for permanent guardianship cases, the term encompasses stability and permanency in placement.

**E. "Children's court attorneys"** are the attorneys who have been given the authority and the responsibility to represent CYFD in child abuse and neglect and family in need of services proceedings.

**F. "Child's attorney"** refers to the attorney appointed by the court to represent the child who is 14 years of age or older.

**G. "Compelling reasons"** means the reasons and/or circumstances which necessitate CYFD's determination that the filing of a motion for termination of parental rights is not in a child's best interest and/or the reason a permanency plan of "planned permanent living arrangement" is the most appropriate plan for the child.

**H. "Consent decree"** means a plea of no contest by the respondent to the allegations in the petition and an agreement to participate in a court ordered six month treatment plan with subsequent dismissal of the petition with prejudice.

**I. "Custodian"** refers to an adult with whom the child lives who is not a parent or guardian.

**J. "Custody"** means legal custody as defined by statute.

**K. "Date child enters foster care"** means the earlier of 60 days from the date of removal of the child or the date of the adjudication of child abuse or neglect.

**L. "Disposition"** means the court hearing which establishes custody and where the court may adopt a treatment plan for the child and family.

**M. "Emergency custody"** exists when a child is removed from the parent's home based upon a determination by law enforcement that the child is in need of protective custody or based upon an ex parte custody order.

**N. "Ex parte custody order"** is an order issued by the court pursuant to an ex parte affidavit that grants emergency custody to CYFD.

**O. "Family in need of court ordered services"** refers to the Family in Need of Court Ordered Services Act whereby services are provided through court intervention when voluntary services have been exhausted in recognition of the fact that in many instances of truancy and running away by a child the situation is symptomatic of a family in need of services where the child and parent are unable to share a residence

**P. "Guardian ad litem"** is appointed by the court to represent and protect the best interests of the child in a neglect and abuse proceeding when the child is less than 14 years old.

**Q. "Indian child"** refers

to an unmarried person who is (1) under the age of eighteen years old; (2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and (3) the biological child of a member of an Indian tribe.

**R. "Infant"** means a child less than one year of age.

**S. "Legal custody"** means a legal status created by [the] order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States.

**T. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**U. "Party"** in a neglect and abuse proceeding is any individual named in the petition or subsequently granted that status in the case by the court.

**V. "Periodic review"** is a court hearing where the court reviews the treatment plan and may modify the treatment plan or adopt a new treatment plan.

**W. "Permanency hearing"** is a court hearing where the court reviews the progress made in the case, determines the permanency plan for the child and creates orders to expedite the achievement of permanency for the child.

**X. "Permanency review hearing"** is a court hearing where the court reviews the transition plan adopted when a reunification plan is ordered at the permanency hearing.

**Y. "Petition"** means the document filed with the court setting forth the allegations of abuse and/or neglect and relief sought.

**Z. "Reasonable medical judgment"** means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and treatment possibilities with respect to the medical conditions involved.

**AA. "Respondent"** refers to a parent, guardian or custodian of a child named in an abuse and neglect proceeding.

**BB. "Settlement"** is an admission or a plea of no contest by the respondent to the allegations in the petition.

**CC. "10-day custody hearing"** is the hearing at which the court determines if probable cause exists for the child

to remain in CYFD's custody pending adjudication.

**DD. "Treatment issues"** include placement decisions, permanency planning goals, and treatment recommendations.

**EE. "Trial home visit"** means the period of time, not to exceed 60 months, in which a child with a plan of reunification resides with the parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

**FF. "Use immunity"** means that the in-court testimony, statements made in the course of court ordered psychological evaluation or treatment program, records, documents or other physical objects produced by an immunized respondent shall not be used against that respondent in a criminal prosecution.

**GG. "Withholding medically indicated treatment"** means the failure to respond to an infant's life-threatening condition by providing treatment which, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions.

[8.10.7.7 NMAC - Rp, 8.10.7.7 NMAC, 11/15/05]

**8.10.7.8 PURPOSE OF CPS LEGAL SERVICES:** The purpose of child protective legal services is to (1) represent CYFD's position in court with regard to the permanency plans for children, and (2) protect children through legal intervention and to facilitate permanency in relevant cases.

[8.10.7.8 NMAC - Rp, 8.10.7.8 NMAC, 11/15/05]

**8.10.7.9 ROLE OF THE CHILDREN'S COURT ATTORNEY:**

The children's court attorney provides information, interpretation of law and general assistance to CYFD in the provision of child protective services and presents CYFD's recommendations in a court of law.

[8.10.7.9 NMAC - Rp, 8.10.7.9 NMAC, 11/15/05]

**8.10.7.10 DIFFERENCES OF OPINION:**

When the children's court attorney, CYFD worker and supervisor cannot agree on the most appropriate course of action, the issues will be resolved between the managing children's court attorney and county office manager. The protective services director is the final arbiter in a decision.

[8.10.7.10, NMAC - Rp, 8.10.7.10 NMAC, 11/15/05]

**8.10.7.11 DECISION TO APPEAL COURT DECISION:** When a

court rules against CYFD on a significant issue, the children's court attorney initiates a discussion with CYFD to determine if an appeal should be taken.

[8.10.7.11 NMAC - Rp, 8.10.7.11 NMAC, 11/15/05]

### 8.10.7.12 GENERAL PROVISIONS

**A.** Attorney-client relationship: The primary decision-maker on the case is the CYFD worker for the purpose of the attorney-client relationship.

**B.** Attorney-client privileged communications: Written and verbal communications concerning CYFD business between a children's court attorney and a CYFD employee in anticipation of litigation or concerning on-going litigation is privileged. Privileged communication may not be disclosed to a third party without appropriate permission or by order of the court.

**C.** Confidentiality/access to records: Protective services records and information incident to or obtained as a result of a neglect and abuse investigation or proceeding are confidential and can only be inspected pursuant to a valid court order except by those entities specifically entitled to access under the New Mexico Children's Code.

(1) When allowing access to an authorized entity, all attorney-client privileged information and all identifying information on the reporting source is stricken.

(2) Protective services records or information are not released pursuant to a subpoena because subpoenas do not reflect a court determination of legitimate interest in the case or the work of the court.

**D.** Child support: CYFD makes a report for collection of child support to child support enforcement division on all children in custody.

**E.** Parent's rights: All mothers and all fathers who are married to the child's mother have a constitutional liberty interest in rearing the child. Additionally, those unmarried fathers who avail themselves of the opportunity to parent have a similar constitutional liberty interest.

(1) At the inception of the case, CYFD identifies those parents with protected rights.

(2) At the inception of the case, CYFD makes efforts to locate all parents and all relatives who might be a resource to the child.

**F.** Best interest of the child is the standard used by CYFD to make decisions regarding planning and managing child protective services cases.

**G.** Change of venue/transfer of legal cases: A motion to change venue is not initiated absent approval of the

sending and receiving county protective services offices. Venue is not to be changed on cases where a consent decree has been entered or adjudication has not occurred.

**H.** Custody: Legal custody includes the right to place a child. If CYFD has legal custody, the court can only order a specific placement when CYFD has failed in implementing any material provision in the treatment plan or abused its discretion in the placement or proposed placement of a child.

**I.** Home studies in domestic relations cases: There is no legal authority for courts to order CYFD to conduct home studies in New Mexico domestic relations cases to which CYFD is not a party.

(1) Orders to conduct home studies in New Mexico domestic relations cases are resisted.

(2) CYFD responds to the request as an abuse/neglect report, and screens and investigates in accordance with protective services policy.

[8.10.7.12 NMAC - Rp, 8.10.7.12 NMAC, 11/15/05]

### 8.10.7.13 PROCEDURAL PRINCIPLES

**A.** CYFD complies with the provisions of the New Mexico Children's Code and the children's court rules.

**B.** Protective custody given to CYFD by law enforcement cannot be extended.

**C.** Allegation of abuse/neglect must be made for each individual named as a respondent in a petition. To perfect CYFD's custody, both parents should be named as respondents. If CYFD has no allegations as to one parent, that parent will generally receive custody.

**D.** A father who does not have parental rights to the child can be excluded from the petition.

**E.** A custodian may be named as a respondent.

**F.** If abuse or neglect can be proven as to only one child and CYFD makes the decision that other siblings in the household are at risk and should be placed in CYFD custody, the children's court attorney utilizes New Mexico case law to seek custody of at-risk children.

**G.** A hearing on custody pending adjudicatory hearing must be held within ten working days of the filing of the petition.

**H.** An adjudicatory trial is held in regard to the abuse/neglect of each parent. The time frame will run separately based on the respective dates of service on each parent.

**I.** Parties cannot extend the time frame for "commencing" the adju-

dicatory hearing by agreement. CYFD seeks an extension from the supreme court if the adjudicatory hearing cannot be timely held.

**J.** Prior to the adjudicatory hearing and permanency hearing, CYFD meets with the other parties and attempts to settle issues attendant to the hearing and proposed treatment plan that serves the child's best interest.

**K.** In the case of a child who is removed from the home:

(1) In the first court ruling that sanctions the removal of a child from the home, CYFD seeks a judicial determination that continuing in the home would be contrary to the child's welfare, or that placement would be in the best interest of the child.

(2) CYFD seeks to obtain, within 60 days from the date the child is removed, a judicial determination that reasonable efforts were made, or were not required, to prevent removal. Instances in which reasonable efforts are not required are set forth herein at Subsection C of 8.10.7.18 NMAC.

(3) If feasible, both judicial determinations may be sought simultaneously.

**L.** In those cases where a child will remain in voluntary foster care longer than 180 days, the CYFD seeks to obtain a judicial determination prior to the 180<sup>th</sup> day, that the child's placement in voluntary foster care is in the best interest of the child.

[8.10.7.13 NMAC - Rp, 8.10.7.13 NMAC, 11/15/05]

### 8.10.7.14 SETTLEMENT

**A.** Settlement of a sex abuse case at the adjudicatory stage involves a stipulation (admission or no contest) as to the case specific underlying factual basis of the sex abuse. In most cases, a stipulation to neglect or physical abuse is unacceptable based on treatment issues and protection of other potential victims. The managing children's court attorney approves any exceptions.

**B.** Consent Decrees are not favored and only used after consultation with the managing attorney.

[8.10.7.14 NMAC - Rp, 8.10.7.14 NMAC, 11/15/05]

### 8.10.7.15 INFORMING PARENTS AND RESPONDENTS OF THEIR RIGHTS

**A.** CYFD informs parents of their rights at the commencement of the investigation.

**B.** The court informs the respondent of his/her rights at the respondent's first appearance. Under Rule 10-304, those rights include:

(1) notice of the allegations of the petition;

(2) the right to trial on the petition;

(3) the right to be represented by an attorney; and

(4) the possible consequences if the allegations of the petition are found to be true.

[8.10.7.15 NMAC - Rp, 8.10.7.15 NMAC, 11/15/05]

#### **8.10.7.16 EXTENSION OF**

**CUSTODY:** A judgment granting custody to CYFD remains in force for an indeterminate period not to exceed two years. If custody is required to protect the child, CYFD requests an extension of custody prior to the expiration.

[8.10.7.16 NMAC - Rp, 8.10.7.16 NMAC, 11/15/05]

#### **8.10.7.17 APPOINTMENT OF**

**GUARDIAN AD LITEM (GAL) OR CHILD'S ATTORNEY:** CYFD requests that a GAL be appointed to represent and protect the best interests of the child in a neglect and abuse proceeding when the child is less than 14 years old. CYFD requests that an attorney be appointed to represent the child 14 years of age or older. [8.10.7.17 NMAC - Rp, 8.10.7.17 NMAC, 11/15/05]

#### **8.10.7.18 LITIGATION CON-**

**SIDERATIONS**

**A.** CYFD makes reasonable efforts to prevent removal of the child and, when removal is necessary, CYFD makes reasonable efforts to reunify the child and to finalize the child's current permanency plan.

**B.** Protection and the best interest of the child are of paramount concern, followed by the treatment needs of the family.

**C.** Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if CYFD obtains a judicial determination that such efforts are not required because:

(1) a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as set forth in the New Mexico Children's Code; or

(2) the parent or custodian has been convicted, by a court of competent jurisdiction, of murder or voluntary manslaughter of another child of the parent, or of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter, or convicted of a felony assault that results in serious bodily injury to the child or another child of the parent.

**D.** No conversations concerning settlement or disposition occur in

the absence of counsel for CYFD.

(1) Direct contact between CYFD workers and respondent's counsel is limited to the exchange of routine information, such as, time for visitation, name of psychologist to perform evaluation, etc.

(2) CYFD routinely informs the guardian ad litem or child's attorney about important decisions relating to the child.

**E.** CYFD spares children the trauma of testifying except when determined necessary by CYFD to protect the child's safety and best interest.

**F.** CYFD pursues obtaining use immunity when CYFD's reunification efforts may conflict with a criminal prosecution.

**G.** The CYFD worker is CYFD's primary witness on treatment issues. Psychological expertise is used only when issues of mental illness, developmental disabilities, personality disorders or children's behavior disorders appear in a given case.

**H.** In a case where a parent has a recognizable mental or physical disability, CYFD shows how services provided were designed to address the disability within the context of the parenting plan.

**I.** CYFD files requests so as to obtain timely judicial determinations

**J.** CYFD seeks to obtain judicial determinations that are made on a case-by-case basis, and in which the court states the specific reasons for its determination. [8.10.7.18 NMAC - Rp, 8.10.7.18 NMAC, 11/15/05]

#### **8.10.7.19 DOCUMENTATION**

**TO COURT:** CYFD completes and provides reports to the court and other parties as required by law. The children's court attorney provides documentation and evidence so that the court may make specific factual findings in determinations of reasonable efforts to prevent removal, reasonable efforts not required to prevent removal, and reasonable efforts to finalize the permanency plan in effect. The children's court attorney documents to the court the compelling reasons for seeking placement in the legal custody of CYFD under a planned permanent living arrangement as the child's permanency plan when CYFD has considered reunification, adoption, permanent guardianship, or placement with a fit and willing relative, and has concluded that these are not the most appropriate permanent plans for the child. [8.10.7.19 NMAC - Rp, 8.10.7.19 NMAC, 11/15/05]

#### **8.10.7.20 WITHHOLDING**

#### **MEDICALLY INDICATED TREAT-**

#### **MENT**

**A.** CYFD takes necessary legal action to protect handicapped infants and other children who have been continuously hospitalized since birth, who were born extremely premature or who have a long-term disability when reports of withholding medically indicated treatment are received.

**B.** The term "infant" and the reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit existing protection available under state law regarding medical neglect of children over one year of age.

**C.** The term withholding medically indicated treatment does not apply in the following circumstances:

(1) the infant is chronically and irreversibly comatose;

(2) the provision of such treatment would merely prolong dying or otherwise be futile in terms of the survival of the infant; or

(3) the provision of such treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.

[8.10.7.20 NMAC - Rp, 8.10.7.20 NMAC, 11/15/05]

#### **8.10.7.21 REMOVING CHILD**

**FROM LIFE SUPPORT SYSTEMS**

**A.** CYFD seeks parental consent to the removal of a child from life support systems.

**B.** When parental consent is denied due to the parent's concern of possible escalation of related criminal charges, the children's court attorney request an emergency court setting on the issue and give notice to the parents.

**C.** CYFD keeps the GAL fully informed and seeks concurrence with CYFD's recommendation.

[8.10.7.21 NMAC - Rp, 8.10.7.21 NMAC, 11/15/05]

#### **8.10.7.22 TERMINATION OF**

**PARENTAL RIGHTS**

**A.** The children's court attorney attends the change of plan staffing when CYFD is considering recommending to the court that a child's plan be changed to adoption and/or termination of parental rights.

**B.** CYFD pursues motions to terminate parental rights when the child's plan is adoption, or when it is clinically indicated.

**C.** In the case of a child who has been in foster care 15 of the most recent 22 months, CYFD pursues a motion to terminate parental rights by the end of the

15th month in foster care, unless the child is being cared for by a relative, or CYFD has documented compelling reason(s) for not filing; or CYFD has not provided to the family those services deemed necessary for the safe return of the child within the time period in the case plan. CYFD calculates the 15 of the most recent 22 month period from the date the child entered foster care, uses a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period, and excludes trial home visits and runaway episodes in calculating the 15 months. If there are compelling reasons for not seeking to terminate parental rights, those reasons must be documented in the case plan.

**D.** In the case of a child less than one year old, CYFD pursues a motion to terminate parental rights within 60 days of the judicial determination that the child has been abandoned. If there are compelling reasons for not seeking to terminate parental rights, those reasons must be documented in the case plan.

**E.** In a case where there has been a judicial determination that reasonable efforts to reunify the child with the parent are not required for the reasons specified in Paragraph (2) of Subsection C of 8.10.7.18 NMAC, CYFD pursues a motion to terminate parental rights within 60 days of that judicial determination. If there are compelling reasons for not seeking to terminate parental rights, those reasons must be documented in the case plan.

**F.** Biological fathers who participate in the child's life have a protected liberty interest and must be accorded all of the notice and reasonable efforts protection of the New Mexico Children's Code. Those biological fathers who do not participate in the child's life have no protected liberty interest and are not entitled to notice of the protections offered under the New Mexico Children's Code.

**G.** CYFD attempts to obtain a sworn statement from the mother on the identity of the father, or places the mother on the stand and asks questions concerning the father's identity.

**H.** CYFD checks the putative father registry if the mother does not identify any person as the father. [8.10.7.22 NMAC - Rp, 8.10.7.22 NMAC, 11/15/05]

### **8.10.7.23 RELINQUISHMENT OF PARENTAL RIGHTS**

**A.** Relinquishments are only taken in furtherance of a plan of adoption or in cases where a severance of the parent-child relationship is therapeutically necessary for the child's emotional or physical well-being.

**B.** The children's court

attorney creates a record in the district court that the relinquishment is voluntary, no promises were made to the parent, no fraud was involved, the parent understands the consequences and finality of the decision, and unless the adoption is open, the court will not enforce any agreements regarding contact with the child.

**C.** No one can relinquish parental rights to CYFD without CYFD's consent.

**D.** In any case involving an Indian child, the relinquishment can only be taken in state court if the parent is domiciled off-reservation. Otherwise, the tribal court would have exclusive jurisdiction.

**(1)** CYFD makes a record concerning the parent's domicile prior to the relinquishment being taken.

**(2)** CYFD does not accept the relinquishment on an Indian children until ten days after the birth of the child.

**E.** CYFD accepts conditional relinquishments in the following situations:

**(1)** the relinquishing parent(s) designates an adoptive parent(s) whose homestudy has been approved;

**(2)** the relinquishment contemplates the termination of parental rights of the other parent; and/or

**(3)** ongoing contact in some form will occur up to the point of adoption finalization; conditions which contemplate contact beyond finalization of the adoption cannot be included, unless pursuant to an open adoption agreement.

[8.10.7.23 NMAC - Rp, 8.10.7.23 NMAC, 11/15/05]

**8.10.7.24 PERMANENT GUARDIANSHIP:** CYFD can move the court for an order establishing a permanent guardianship for the child.

[8.10.7.24 NMAC - Rp, 8.10.7.24 NMAC, 11/15/05]

**8.10.7.25 MENTAL HEALTH:** Anytime a child in the custody of CYFD is in need of placement in a mental health facility, the children's court attorney files an appropriate pleading with the district court.

[8.10.7.25 NMAC - Rp, 8.10.7.25 NMAC, 11/15/05]

**8.10.7.26 FAMILY IN NEED OF COURT ORDERED SERVICES:** CYFD decides when it is appropriate to file a family in need of court ordered services petition.

[8.10.7.26 NMAC - Rp, 8.10.7.26 NMAC, 11/15/05]

**8.10.7.27 INDIAN CHILD WELFARE ACT (ICWA):** The Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), hereinafter referred to as "ICWA",

was enacted to protect the best interests of Indian children and preserve tribal integrity by reducing the destruction of Indian culture caused by the removal of children from Indian homes and environments. The ICWA provides that the states and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children.

**A.** A tribe has exclusive jurisdiction over any child custody proceedings, as defined in 25 U.S.C. 1903, involving a child who resides or is domiciled within the tribe's reservation.

**B.** If a child is a ward of the tribal court, the tribe retains exclusive jurisdiction even if the child's residence changes to a location off-reservation. CYFD acts in an emergency to protect the child, when the child is temporarily off-reservation. CYFD notifies the tribe as soon as possible and facilitates a transfer of the case to the tribe.

**C.** When a child is domiciled or resides off the reservation, the state and the tribe both have jurisdiction.

**D.** When an Indian child is the subject of an abuse/neglect, family in need of court ordered services, or adoption action under the New Mexico Children's Code, the tribe may intervene.

**E.** CYFD supports requests to transfer to tribal court absent good cause to the contrary, objection by either parent or declination by the tribal court. Good cause not to transfer the proceeding may exist in any of the following circumstances:

**(1)** The proceeding was at an advanced stage when the request to transfer was received and the entity making the request did not file the request promptly after receiving notice of the hearing.

**(2)** The Indian child is over twelve years of age and objects to the transfer.

**(3)** The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses.

**(4)** The parents of a child over five years of age are not available and the child has had little or no contact with the child's tribe or members of the child's tribe.

**F.** CYFD receives and investigates reports of child abuse and/or neglect in conformance with ICWA and as outlined in CYFD policy on intake and investigations.

**G.** CYFD conforms to the placement preferences set forth in ICWA and as outlined in CYFD policy on permanency planning.

**H.** CYFD honors the request of a parent of an Indian child to remain anonymous insofar as it relates to the parent's extended family. CYFD noti-

fies the tribe as required by the ICWA and explains to the parent that anonymity cannot be guaranteed.

[8.10.7.27 NMAC - Rp, 8.10.7.27 NMAC, 11/15/05]

**8.10.7.28 SPECIAL IMMIGRANT JUVENILE STATUS:** If a child in the custody of CYFD is not a legal alien, CYFD applies with the INS to have the child declared a "special immigrant juvenile" when the child's permanency plan is adoption, and it is in the child's best interests not to be returned to his/her country of origin.

[8.10.7.28 NMAC - Rp, 8.10.7.28 NMAC, 11/15/05]

**8.10.7.29 EXPERT WITNESSES**

**A.** CYFD gives the children's court attorney advance notice of all witnesses, expert or otherwise, to be called to allow sufficient time to secure subpoenas and service by the sheriff's department.

**B.** CYFD reimburses for expert testimony, time and travel.

**(1)** The managing attorney approves the expert witness services before they are rendered.

**(2)** CYFD has payment guidelines that are followed except in areas of the state where lower rates may be negotiated. Regional attorneys may approve higher rates under exceptional circumstances, budget permitting.

[8.10.7.29 NMAC - Rp, 8.10.7.29 NMAC, 11/15/05]

**8.10.7.30 PERMANENCY HEARING REQUIREMENTS**

**A.** A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months from the date a child enters foster care, whichever occurs first.

**B.** If the court adopts a permanency plan of reunification at the permanency hearing, the court shall adopt a plan for transitioning the child home and schedule a permanency review hearing within three months. If a child is reunified, the subsequent hearing may be vacated.

**C.** The court shall hold permanency hearings every twelve months when a child is in the legal custody of CYFD.

**D.** CYFD provides the foster parent(s) of a child and any preadoptive parent(s) or relative(s) providing care for the child with timely notice of and an opportunity to be heard in permanency hearings and permanency review hearings. The notice and opportunity to be heard do not include the right to standing as a party to

the case.

[8.10.7.30 NMAC - Rp, 8.10.7.30 NMAC, 11/15/05]

**8.10.7.31 NOTICE AND OPPORTUNITY TO BE HEARD AT REVIEWS:** CYFD gives notice to all parties, the child's guardian ad litem or attorney if 14 years or older, the child's CASA, the contractor administering the citizen review board (see the New Mexico Children's Code), the child's foster parents, preadoptive parents, or relative caregiver, of the time, place and purpose of any judicial review hearing held pursuant to NMSA Section 32A-4-25(A) or (B) of the New Mexico Children's Code, including hearings held after a termination of parental rights has occurred. Review hearings are held within six months of the dispositional hearing or termination of parental rights and every six months until the child's adoption or reunification.

[8.10.7.31 NMAC - Rp, 8.10.7.31 NMAC, 11/15/05]

**HISTORY of 8.10.7 NMAC:**

**Pre-NMAC History:**

Material in this part was derived from that previously filed with the State Records Center and Archives under:

SSD Rule #410.0000, Protective Services to Children, filed 11/10/81;

SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 8/22/86;

SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 3/28/89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 8/22/86;

SSD 4.1.0, Child Protective Services - General Provisions, filed 1/29/87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 6/18/87;

SSD 4.1.0, Child Protective Services - General Provisions, filed 3/28/89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9/14/89;

SSD 4.1.0, Child Protective Services - General Provisions, filed 9/18/90;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 8/22/86;

SSD 4.2.0, Child Protective Services - General Guidelines, filed 3/28/89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 8/22/86;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 11/18/87;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 6/13/88;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3/28/89;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3/20/90;

SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 9/18/90.

**History of Repealed Material:**

8 NMAC 10.7, Child Protective Legal Services - Repealed, 2/14/01.

8.10.7 NMAC, Child Protective Legal Services - Repealed 11/15/05.

**NEW MEXICO CHILDREN,  
YOUTH AND FAMILIES  
DEPARTMENT**

**PROTECTIVE SERVICES DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 10 CHILD PROTECTIVE SERVICES  
PART 8 PERMANENCY PLANNING**

**8.10.8.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services.

[8.10.8.1 NMAC - Rp, 8.10.8.1 NMAC, 11/15/05]

**8.10.8.2 SCOPE:** Protective services employees and the general public.

[8.10.8.2 NMAC - Rp, 8.10.8.2 NMAC, 11/15/05]

**8.10.8.3 STATUTORY AUTHORITY:** New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004).

[8.10.8.3 NMAC - Rp, 8.10.8.3 NMAC, 11/15/05]

**8.10.8.4 DURATION:** Permanent.

[8.10.8.4 NMAC - Rp, 8.10.8.4 NMAC, 11/15/05]

**8.10.8.5 EFFECTIVE DATE:** November 15, 2005, unless a later date is cited at the end of a section.

[8.10.8.5 NMAC - Rp, 8.10.8.5 NMAC, 11/15/05]

**8.10.8.6 OBJECTIVE:** To establish parameters for the provision of permanency planning services to children in the custody of CYFD.

[8.10.8.6 NMAC - Rp, 8.10.8.6 NMAC, 11/15/05]

**8.10.8.7 DEFINITIONS:**

**A.** "Assessment plan" is the process of collaborating with the clients to compile information to identify the client's strengths, needs, and issues that need to be addressed in order to develop a service plan.

**B.** "Adoption resource

**team** is a team of two people, one a CYFD employee and one under contract with CYFD, who is responsible for reviewing, amending, and approving the individual adoption plans for children with a plan of adoption, to ensure timely movement toward adoption and permanence.

**C. "Best interest placement process"** is the considerations of all the elements that are required to best meet the needs of the child in out of home care.

**D. "Child protective services child care"** is provided by CYFD as a component part of a treatment plan for a child whose family is receiving services as a result of a report for abuse or neglect and is not based on income eligibility.

**E. "Children's maintenance accounts"** are accounts established when a child receives specific monetary benefits, such as social security, SSI child support, and other benefits. Resources received on behalf of the child are used to reimburse CYFD for the child's care and to meet the needs of the child.

**F. "Close proximity"** means a location physically close enough to facilitate family visiting, consistent with the best interest and special needs of the child.

**G. "Concurrent plan"** means a second permanency plan in addition to a primary permanency plan of reunification.

**H. "Conditionally safe"** is the term used to describe the CYFD's assessment based upon available information that, when persons or services have been put in place to protect the child, or factors detrimental to the child have been temporarily eliminated, the child's immediate circumstance or environment is not threatening to the child.

**I. "Congregate care settings"** are facilities that are licensed to provide 24 hour a day care for children in a group setting.

**J. "Crisis shelter group care"** is a facility licensed to provide 24 hour, seven day a week emergency, and short-term care to children between the ages of birth to 18.

**K. "CYFD"** means the New Mexico children, youth and families department.

**L. "CYFD licensed family foster homes"** are homes licensed by CYFD to provide care to a child not related to the foster parents.

**M. "Daily supervision"** provides 24 hour a day supervision for a child when the child's usual caretaker is not able to provide such care. It is a program to sustain the foster family by providing time-limited and temporary relief from the ongoing responsibility of daily care.

**N. "Early and periodic screening, diagnosis and treatment**

**(EPSDT)**, is a medicaid program designed to provide comprehensive and preventive health care services to medicaid-eligible children under age 21.

**O. "Emergency shelter"** is a facility licensed to provide 24 hour a day, seven days per week care to children age 12 and over who are in need of temporary shelter.

**P. "Fictive kin"** is a person not related by birth or marriage who has an emotionally significant relationship with a child.

**Q. "Fifth degree of consanguinity"** includes brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, sister-in-law, and brother-in-law, as well as documented godparents.

**R. "Group home"** is a residential childcare facility licensed children age 12 years old and older. Group homes are not secured in the manner that residential treatment facilities are secured.

**S. "Indian child"** refers to an unmarried person who is (1) under the age of eighteen years old; (2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and (3) the biological child of a member of an Indian tribe.

**T. "Indian foster family homes"** are foster family homes licensed or approved by an Indian tribe.

**U. "Individualized adoption plan"** is an individualized and specific recruitment plan developed by the adoption consultant and approved by the ART for children who have a plan of adoption.

**V. "Initial relative assessment"** is an in-home assessment of a relative completed by the child's worker to determine suitability for placement.

**W. "Interstate compacts"** are binding agreements among states which allow homestudies and certifications of out-of-state placements, which allows CYFD to place children across state lines.

**X. "Least restrictive"** means that the placement is as home-like as possible considering the needs of the child.

**Y. "Level 1 foster care"** is the basic level of foster care services; every child entering foster care is in level 1.

**Z. "Level 2 foster care"** is for children requiring a higher level of care, structure or supervision than would be required for a child of similar age or development.

**AA. "Level 3 foster care"** is for children requiring a significantly and consistently high level of care and is generally an alternative to institutional care.

**BB. "Maintenance payments"** are the reimbursements made to substitute care providers and designed to meet the child's ongoing needs. Maintenance payments are not considered

income.

**CC. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**DD. "Needs"** of the child include safety, food, shelter, and emotional well-being.

**EE. "Notice of privacy practices"** means the written or electronic notice of CYFD's uses and disclosures of protected health information and of the individual's rights and CYFD's legal duties with respect to protected health information.

**FF. "Permanency planning"** is the systematic process of carrying out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships.

**GG. "Permanency plan"** specifies where and with whom the child shall live and the proposed legal relationship between the child and the permanent caretaker(s).

**HH. "Protected health information"** means individually identifiable health information maintained by CYFD for purposes of providing case management services.

**II. "Relative"** is someone connected to another person by blood or marriage within the fifth degree of consanguinity.

**JJ. "Relative foster home"** is a home licensed by CYFD to provide foster care to a child related to the foster parent(s) within the fifth degree of consanguinity or a documented godchild.

**KK. "Safe"** is the term used to describe CYFD's assessment based upon available information that a child's immediate circumstance or environment is free from persons and/or situations that have been identified as possible causes of harm to the child.

**LL. "Sibling continuity"** is the placement of siblings together or, when placement together is clinically contraindicated, sibling continuity involves supporting the relationship among the siblings through visitation.

**MM. "Substitute care"** is any placement outside the child's home.

**NN. "Treatment foster care home"** is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

**OO. "Treatment plan"** is a plan developed by CYFD in cooperation with clients, based on the information collected and which identifies the specific changes in behaviors and/or circumstances

that are required for the child to achieve permanency.

**PP. "Trial home visit"** is the period of time, not to exceed 6 months, in which a child with a plan of reunification resides with the parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

[8.10.8.7 NMAC - Rp, 8.10.8.7 NMAC, 11/15/05]

### **8.10.8.8 PURPOSE OF PERMANENCY PLANNING SERVICES:**

The purpose of permanency planning services is to systematically carry out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships.

**A.** Permanency planning is conducted for all children in the custody of CYFD.

**B.** CYFD establishes one of the following permanency plans for each child in CYFD custody:

(1) **Reunification:** The goal of a plan of reunification is to safely reunify the child to the home of the parent and/or legal guardian.

(2) **Adoption:** The goal of a plan of adoption is to judicially terminate the rights, privileges and duties as between the child and the biological parent(s), and to judicially establish in another family such rights, privileges and duties as between a child and heir, and the adoptive parent(s).

(3) **Permanent guardianship:** The goal of a plan of permanent guardianship is to establish a court-sanctioned arrangement which vests in a guardian all rights and responsibilities of a parent without terminating the rights of the parent as set forth in the New Mexico Children's Code.

(4) **Placement with a fit and willing relative:** The goal of a plan of placement with a fit and willing relative is to establish a court sanctioned relationship between the child and the child's relative in order to maintain family relationships to the extent possible, consistent with the best interests of the child. The placement should preferably result in adoption or guardianship of the child by the fit and willing relative.

(5) **Planned permanent living arrangement:** The goal of a planned permanent living arrangement is to establish a court sanctioned arrangement to provide physical and emotional permanency for the child when the court determines that this is the most appropriate permanency plan for the child after considering reunification, adoption and permanent guardianship.

**C.** A permanency plan is

established for every child at the assessment planning conference.

(1) A plan of reunification is inappropriate in most cases involving abandonment, extreme history of abuse/neglect of the child or a sibling or when the parent has caused great bodily injury or death to a child or the child's sibling.

(2) At a minimum, the appropriateness of the permanency plan is assessed for its relevancy at every established CYFD conference, staffing and judicial review. Permanency plans may be changed to meet the needs of the child.

(3) The appropriateness of the permanency plan will be reviewed prior to a permanency hearing.

**D.** During the time that reasonable efforts are being made to reunify the child and family, CYFD may also concurrently make reasonable efforts to finalize one of the other permanency plans (adoption, permanent guardianship, permanent placement with a fit and willing relative, or planned permanent living arrangement) for the child.

**E.** CYFD seeks to terminate parental rights and establish and/or modify a permanency plan for children in the following circumstances:

(1) If a child is in substitute care for 15 of the most recent 22 months, CYFD files a motion to terminate parental rights by the end of the 15th month, unless the child is being cared for by a relative, or CYFD has documented compelling reasons for not filing, or CYFD has not provided to the family those services deemed necessary for the safe return of the child within the time period in the case plan. CYFD calculates the 15 of the most recent 22 month period from the date the child entered foster care, uses a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period, and excludes trial home visits and runaway episodes in calculating the 15 months. If there are compelling reasons for not seeking to terminate parental rights, those reasons must be documented in the case plan. For purposes of determining the applicable time to file such a motion, the child is considered to have entered foster care on the earlier of:

(a) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(b) the date that is 60 days after the date on which the child is removed from the home.

(2) If the child is an abandoned infant, CYFD seeks to terminate parental rights concurrent with the judicial determination of abandonment.

(3) If the parent or custodian has been convicted of murder or voluntary

manslaughter of another child of the parent, or of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter, or convicted of a felony assault that results in serious bodily injury to the child or another child of the parent, CYFD seeks to terminate parental rights within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

[8.10.8.8 NMAC - Rp, 8.10.8.8 NMAC, 11/15/05]

**8.10.8.9 ELIGIBILITY:** Any child under 18 years of age who is in the custody of CYFD through a court order or voluntary placement agreement, is eligible for permanency planning services without regard to family income.

[8.10.8.9 NMAC - Rp, 8.10.8.9 NMAC, 11/15/05]

**8.10.8.10 WAITING LIST:** There is no waiting list for permanency planning services.

[8.10.8.10 NMAC - Rp, 8.10.8.10 NMAC, 11/15/05]

**8.10.8.11 SUBSTITUTE CARE:** The investigation worker, in consultation with the supervisor, assesses whether substitute care is required to protect the child. The safety of the child is the paramount consideration when assessing the need for out-of-home placement. If, after the safety assessment, CYFD finds that placement is necessary:

**A.** CYFD conducts an assessment of the needs and strengths of the child and family to determine a placement that can best ensure the safety of the child and meet those needs.

(1) CYFD completes a safety assessment prior to any removal or return home.

(2) The worker may recommend a child remain in his/her own home if the safety assessment indicates that the child is safe or conditionally safe and a safety plan is in place that safeguards the child. Reasonable efforts will be made to prevent out-of-home placement.

**B.** CYFD selects a best interest placement for the child based on the needs and strengths of the child in relation to the available placement options.

**C.** When substitute care is required to protect the child, the out-of-home placement meets the following criteria:

(1) **Least restrictive:** Children are placed in the least restrictive setting consistent with the assessment of their individual needs.

(2) **Close proximity:** Children are

placed in close proximity to their home if their safety can be assured.

(3) Sibling continuity: Children are placed in a manner that encourages the development and/or maintenance of an appropriate relationship with their siblings.

(4) Indian child placement: CYFD makes a best interest placement for an Indian child in accordance with the placement preferences of the Indian Child Welfare Act (I.C.W.A.).

(5) Relatives: CYFD considers placement with relatives as a preference when making substitute care decisions. CYFD considers fictive kin for placement if appropriate for best interest placement consideration.

[8.10.8.11 NMAC - Rp, 8.10.8.11 NMAC, 11/15/05]

#### 8.10.8.12 PRE-PLACEMENT

**ACTIVITIES:** CYFD conducts pre-placement activities to assess the needs and strengths of the child and family and assist in determining placement and secure appropriate funding. If a child's circumstances require an emergency placement, then all the pre-placement activities are completed prior to adjudication.

[8.10.8.12 NMAC - Rp, 8.10.8.12 NMAC, 11/15/05]

#### 8.10.8.13 PLACEMENT:

CYFD provides for a variety of placement types to meet the unique qualities and needs of children in custody requiring out of home care. In order of preference, a child shall be placed with a fit and willing relative caregiver, a foster home, or in a group setting. Out-of-home care in a family environment is preferred to out-of-home care in an institution and/or congregate care setting. Other criteria are stated in Subsection C of 8.10.8.11 NMAC above.

**A.** The child is considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(2) the date that is 60 days after the date on which the child is removed from the home.

**B.** Children in CYFD custody are placed in licensed/certified homes or facilities or approved relative homes.

**C.** CYFD determines the placement of the child.

(1) CYFD may place children directly into homes or facilities such as:

(a) approved relative home in which an initial relative assessment has been completed;

(b) CYFD licensed relative foster home;

(c) CYFD foster home; or

(d) crisis shelter group care or an emergency shelter.

(2) CYFD complies with the requirements of human services department regulations, department of health regulations, and other CYFD regulations to access such placement types as:

(a) treatment foster care;

(b) group home; or

(c) residential treatment centers.

(3) For children in custody who are in crisis due to severe emotional or psychiatric disorders, CYFD seeks evaluations and treatment in psychiatric hospitals, which bill medicaid for such services.

(4) CYFD gives preference to an adult relative over a non-relative caregiver when determining the initial placement and any subsequent change in placement for a child, provided that the relative caregiver meets all New Mexico foster parenting licensing standards and the placement is able to meet the safety and treatment needs of the child.

(5) The placement of a child into foster care shall not be delayed or denied on the basis of the race, color, or national origin of the foster parent, or the child involved.

**D.** CYFD provides notification of change of placement as required by the New Mexico Children's Code.

[8.10.8.13 NMAC - Rp, 8.10.8.13 NMAC, 11/15/05]

#### 8.10.8.14 OUT-OF-STATE

**PLACEMENTS:** Children in CYFD custody are not placed in out-of-state, non-relative foster homes unless the plan is to reunite the child with the natural parents or relatives who reside in the same state where the placement is planned.

**A.** The out-of-state placement of a child in CYFD custody complies with the interstate compact on the placement of children.

**B.** CYFD has no authority to license foster home in other states.

**C.** The protective services director is notified of any out-of-state placement of a child in CYFD custody in a residential treatment center or psychiatric and/or medical facility.

**D.** CYFD visits each child who is in an out-of-state placement in his or her placement at least quarterly and submits a report of the visit. The treatment worker also makes arrangements for a caseworker on the staff of the state agency for the state in which the child has been placed to visit the child monthly and submit a report of the visits at least once every 3 months.

[8.10.8.14 NMAC - Rp, 8.10.8.14 NMAC, 11/15/05]

#### 8.10.8.15 FINANCIAL

**RESPONSIBILITY FOR CARE:** While the child is in CYFD custody and until parental rights have been terminated, the

child's parents continue to be financially responsible for the child. CYFD establishes a children's maintenance account for any child in CYFD custody who receives monetary benefits. Resources received on behalf of the child are used to reimburse CYFD for the child's care and to meet the needs of the child.

[8.10.8.15 NMAC - Rp, 8.10.8.15 NMAC, 11/15/05]

#### 8.10.8.16 RESPONSIBILITY

**FOR MEDICAL CARE:** If parental support is not available, CYFD seeks to obtain other medical coverage or, if all other possibilities are exhausted, to qualify the child for medicaid through SSI, title IV-E or child welfare services medicaid. If the child is not eligible under medicaid, the child's medical needs are covered through title XX funds.

[8.10.8.16 NMAC - Rp, 8.10.8.16 NMAC, 11/15/05]

#### 8.10.8.17 ELIGIBILITY

**DETERMINATIONS:** CYFD determines funding eligibility for each child in substitute care.

[8.10.8.17 NMAC - Rp, 8.10.8.17 NMAC, 11/15/05]

#### 8.10.8.18 VOLUNTARY

**PLACEMENTS:**

**A.** When the parent/guardian/custodian is cooperative and CYFD assesses it to be in the best interest of the child, CYFD may accept legal custody of a child placed voluntarily with CYFD through a written agreement.

**B.** No child shall remain in voluntary placement for longer than one hundred eighty consecutive days or for more than one hundred eighty days in any calendar year; provided that a child may remain in voluntary placement up to an additional one hundred eighty consecutive days upon order of the court after the filing of a petition by CYFD for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.

**C.** In no event shall a child remain in voluntary placement for a period in excess of three hundred sixty-five days in any two-year period.

**D.** The protective services director or his/her designee approves all voluntary placement agreements before accepting a voluntary placement.

**E.** If the parent/guardian/custodian requests CYFD to return the child prior to the termination of the voluntary placement agreement, the child is returned within 72 hours of the request unless an abuse or neglect petition is filed concerning that child, and the court enters an order finding abuse or neglect,



prior to the expiration of the 72 hours. The request may be written or oral; the CYFD worker documents oral requests in the file. CYFD assesses the return of the child utilizing the SDM tools prior to returning the child to the physical custody of the parent or guardian and makes a determination about whether or not to file an abuse or neglect petition.

**F.** CYFD develops service plans with all families entering into a voluntary placement agreement.  
[8.10.8.18 NMAC - Rp, 8.10.8.18 NMAC, 11/15/05]

**8.10.8.19 RELINQUISHMENT OF PARENTAL RIGHTS TO CYFD:** No parent may relinquish parental rights to CYFD without CYFD's consent.  
[8.10.8.19 NMAC - Rp, 8.10.8.19 NMAC, 11/15/05]

**8.10.8.20 SERVICE PLANS:** CYFD develops two types of service plans during the time a case remains open for services.

**A.** CYFD develops an assessment plan at the assessment planning conference.

**B.** CYFD develops a treatment plan prior to the adjudication, and reviews and modifies the plan as required at all subsequent judicial reviews and permanency hearings.

**C.** The assessment plan and treatment plan must describe services offered and provided to prevent removal from the home, reunify the family and/or to finalize a placement when reunification is not, or is no longer, the permanency plan goal.

**D.** CYFD establishes eligibility for medically necessary targeted case management within 30 days of entry into CYFD custody and every 6 months thereafter at a minimum. In addition, a determination will be made regarding the appropriateness of applying for social security insurance (SSI).

**E.** CYFD determines level of care within 30 days of entry into CYFD custody and every 6 months thereafter at a minimum. In addition, a determination will be made regarding the appropriateness of applying for social security insurance (SSI) and/or the developmentally disabled (DD) waiver.

**F.** CYFD completes a concurrent plan assessment on every child within 30 days of entry into CYFD custody.

**G.** CYFD develops a concurrent plan when it is indicated by the concurrent plan assessment. Any of the approved permanency plan goals may be appropriate as a permanency goal for the concurrent plan. The concurrent plan is

implemented concurrently with the permanency plan and becomes the treatment plan whenever the court determines this is in the child's best interests.

**H.** If a child is placed a substantial distance from home, the treatment plan will set forth the reasons why this placement is in the child's best interest.

**I.** CYFD evaluates the status of each child within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion, and re-evaluates the status every six months thereafter so long as the child remains in custody. The evaluation includes a determination of the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the treatment plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care. The evaluation also projects a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

**J.** CYFD provides the parent or guardian, the child if age 14 or older, and the guardian ad litem or child's attorney if the child is in the state's custody, with the notice of privacy practices at the first contact to develop treatment services. CYFD documents the acknowledgement of receipt and the good faith efforts to obtain the acknowledgement and reasons why it was not obtained.

[8.10.8.20 NMAC - Rp, 8.10.8.20 NMAC, 11/15/05]

#### **8.10.8.21 SERVICES TO CHILDREN AND FAMILIES**

**A.** CYFD provides or arranges services for the child as needed while the child is in custody, including but not limited to:

- (1) educational services;
- (2) medical services;
- (3) psychological services;
- (4) treatment and habilitation services; and
- (5) daily supervision.

**B.** If the child's permanency plan is reunification, CYFD provides or arranges for services for the child's family to effect the changes necessary to reunify the family.

**C.** For children with a permanency plan of reunification, CYFD utilizes the safety reassessment, risk reassessment and family needs and strengths reassessment tools to determine the need for continuation of services to the child's family and to assess case progress.

**D.** CYFD may seek the

services of the federal parent locator service to search for absent parents at any point to facilitate a permanency plan.

**E.** CYFD provides services to children age 16 and older and all children with a permanency plan of planned permanency living arrangement to assist transition to independent living.

**F.** When CYFD seeks to terminate parental rights, CYFD concurrently undertakes to identify, recruit, process, and approve a qualified family for adoption of a child.

**G.** CYFD provides or arranges for services for the parents or guardians of a child in CYFD custody as needed to address the safety and risk factors that resulted in the abuse or neglect petition being filed and the child placed in substitute care.

(1) CYFD makes active efforts to locate and engage both the child's mother and father in treatment planning and tailors the treatment plan to the individual needs and strengths of each parent or guardian.

(2) CYFD has at least monthly contact with the parent or guardian of a child in CYFD custody to review the parent's progress in completing the terms of the treatment plan, to provide direction and feedback on the parent/child visits, and to provide information about the child's progress and status in foster care.

(3) The monthly contact with the parents or guardians includes both the mother and the father and is a face to face visit unless circumstances do not allow it and those circumstances are approved by the supervisor.

(4) Any exceptions to meetings with parents are documented in the record.  
[8.10.8.21 NMAC - Rp, 8.10.8.21 NMAC, 11/15/05]

**8.10.8.22 FAMILY VISITATION:** CYFD arranges for visitation between the child in substitute care and the child's parents and siblings. The conditions of visitation are determined based upon the child's safety and best interest.

**A.** A child may be returned to the parent or guardian on a trial home visit while the child remains in the legal custody of CYFD. If a trial home visit exceeds six months in duration, or exceeds a longer time period deemed appropriate by the court, and the child is subsequently returned to foster care, the placement is considered a new placement and procedures must be followed to newly establish title IV-E eligibility.

**B.** CYFD visits each child in CYFD custody at least monthly in the child's placement and assesses the placement for appropriateness in meeting the child's needs and safety.

**C.** CYFD encourages and facilitates visitation between children in custody and their siblings, relatives and significant others.  
[8.10.8.22 NMAC - Rp, 8.10.8.22 NMAC, 11/15/05]

**8.10.8.23 MAINTENANCE PAYMENTS TO SUBSTITUTE CARE PROVIDERS**

**A.** Substitute care providers are reimbursed for the care provided to children at rates established by the state legislature.

**B.** To be honored, request from substitute care providers for reimbursements for pre-approved purchases must be submitted within 45 days of the expenditure.

**C.** CYFD is not liable and will not reimburse any person for any loss or property damage, real or personal, in excess of \$25,000, that is shown to be caused by a child in substitute care.

**D.** A foster home or other facility must meet all relevant licensing/certification standards to be eligible to receive federal IV-E funding.

**E.** CYFD assesses every child within 30 days of entry into substitute care for the level of care needs and makes appropriate placement based on that assessment.

[8.10.8.23 NMAC - Rp, 8.10.8.23 NMAC, 11/15/05]

**8.10.8.24 STAFFINGS AND CONFERENCES:**

CYFD utilizes staffings and conferences to internally review and develop plans and review the permanency plan for each child in custody.

[8.10.8.24 NMAC - Rp, 8.10.8.24 NMAC, 11/15/05]

**8.10.8.25 CITIZEN REVIEW BOARD:**

CYFD refers each child in custody to the citizen review board as required by the New Mexico Children's Code. The citizen review board provides the foster parent(s) of a child and any pre-adoptive parent(s) or relative(s) providing care for the child with timely notice of and an opportunity to be heard before the citizen review board. The notice and opportunity to be heard do not include the right to standing as a party in the case.

[8.10.8.25 NMAC - Rp, 8.10.8.25 NMAC, 11/15/05]

**8.10.8.26 TERMINATION OF CUSTODY:**

CYFD's custody of a child terminates under the following circumstances:

**A.** the court dismisses or terminates CYFD's custody of a child;

**B.** a voluntary placement agreement expires;

**C.** court ordered custody of the child expires;

**D.** the child reaches the age of majority; or

**E.** a child in CYFD's custody marries or joins the armed forces.

[8.10.8.26 NMAC - Rp, 8.10.8.26 NMAC, 11/15/05]

**8.10.8.27 INTERSTATE COM-**

**FACTS:** CYFD complies with the provisions of the interstate compacts on all eligible placements.

[8.10.8.27 NMAC - Rp, 8.10.8.27 NMAC, 11/15/05]

**8.10.8.28 DOCUMENTATION**

**A.** CYFD documents case work activities concerning services provided to children receiving permanency planning services.

**B.** The records maintained by CYFD are confidential and may only be released in accordance with applicable law.

**C.** CYFD documents acknowledgement of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgement of receipt of the notice of privacy practices and the reasons why the acknowledgment was not obtained. In the case of notice to a GAL, a certificate of service signed by CYFD's attorney shall constitute the requisite documentation.

[8.10.8.28 NMAC - Rp, 8.10.8.28 NMAC, 11/15/05]

**8.10.8.29 FOSTER CARE GOALS**

**A.** CYFD's foster care goals for the maximum number of children who will remain in foster care after having been in foster care for a period in excess of twenty-four months, are:

(1) 450 for federal fiscal year 2004;

(2) 400 for federal fiscal year 2005;

**B.** CYFD will take the following steps to reduce the number of children who will remain in foster care after having been in foster care for a period in excess of twenty-four months, and to achieve the goals set forth in Subsection (A):

(1) When it becomes apparent that reunification will not be the permanency plan for the child, CYFD conducts a review at which another permanency plan option is selected, and steps are identified to expedite it. If the permanency plan is adoption, CYFD refers the child's case to the adoption resource team and develops an individual adoption plan. CYFD first considers relatives and foster parents, and then other avenues for recruitment to identify potential adoptive homes. CYFD identifies

what recruitment activities can be done in the interim before the child is freed for adoption.

(2) CYFD implements the individual adoption plan which includes targeted recruitment activities. CYFD attempts to identify potential adoptive homes for best interest adoption placement and assesses the current foster parent(s) as a potential adoptive home. CYFD reviews the progress of completing the individual adoption plan with the ART every 60 days until the child is placed in a potential adoptive home.

[8.10.8.29 NMAC - Rp, 8.10.8.29 NMAC, 11/15/05]

**8.10.8.30 CHILD PROTECTIVE SERVICES CHILD CARE**

**A.** CYFD provides child protective services childcare as one part of a treatment plan for children and families receiving services to address child maltreatment safety and risk factors.

**B.** The purpose of protective services childcare are:

(1) to enable parents/guardians to participate in activities which are part of the comprehensive treatment plan;

(2) to enable foster parents to maintain employment, obtain job training and/or attend educational programs while children are in placement in the home;

(3) to provide childcare as crisis intervention for those families who lack other resources, are at risk of child maltreatment, and unable to provide adequate care for their child.

**C.** CYFD provides protective services childcare:

(1) without regard to income eligibility;

(2) depending on the assessment of need for the child and family or foster family; and

(3) as appropriate and to maintain stability of a placement.

**D.** CYFD arranges for child protective services childcare by providers who meet the requirements established by and who are licensed or certified by the CYFD childcare services bureau.

**E.** The child's worker determines an appropriate childcare provider in cooperation with the child's family and/or foster family.

**F.** CYFD follows the service standards and payment rates for childcare that are established by the CYFD child care services bureau.

**G.** CYFD arranges child protective services childcare from any of the following approved provider types:

(1) licensed family child care;

(2) certified family child care;

and

(3) licensed childcare center.

[8.10.8.30 NMAC - Rp, 8.10.8.30 NMAC, 11/15/05]

#### HISTORY OF 8.10.8 NMAC:

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

SSD Rule #411.0000, Substitute Care, filed 11/10/81;  
 SSD 5.0.0, Substitute Care for Children - Definition and Goal Statement, filed 8/22/86;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 8/22/86;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 1/29/87;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 6/18/87;  
 SSD 5.1.0, Substitute Care for Children - General Provision, filed 3/28/89;  
 SSD Rule #410.5400, Substitute Care for Children - General Guidelines, filed 9/17/81;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 8/22/86;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 1/29/87;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 6/18/87;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 11/18/87;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 1/13/88;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 3/30/89;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 7/14/89;  
 SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 9/18/90;  
 SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/86;  
 SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 1/29/87;  
 SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 11/18/87;  
 SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 6/14/88;  
 SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/88;  
 SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 9/18/90;  
 SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 3/15/91;  
 SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/86;  
 SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 1/29/87;  
 SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 6/18/87;  
 SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 11/18/87;

SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/88;

SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/28/89;

SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/20/90;

SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 9/18/90;

SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/15/91;

SSD 3.3.0, Family Services - Department Responsibilities, filed 8/22/86;

SSD 3.3.0, Family Services - Department Responsibilities, filed 1/29/87;

SSD 3.3.0, Family Services - Department Responsibilities, filed 6/18/87;

SSD 3.3.0, Family Services - Department Responsibilities, filed 11/18/87;

SSD 3.3.0, Family Services - Department Responsibilities, filed 1/13/88

#### History of Repealed Material:

8.10.8 NMAC, Permanency Planning - Repealed, 2/14/01

8.10.8 NMAC, Permanency Planning - Repealed 7/15/04

8.10.8 NMAC, Permanency Planning - Repealed 11/15/05

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### PROTECTIVE SERVICES DIVISION

#### TITLE 8 SOCIAL SERVICES CHAPTER 10 CHILD PROTECTIVE SERVICES PART 9 I N D E P E N D E N T LIVING PROGRAM

**8.10.9.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services.

[8.10.9.1 NMAC - Rp, 8.10.9.1 NMAC, 11/15/05]

**8.10.9.2 SCOPE:** Protective services employees, contractors, and the general public.

[8.10.9.2 NMAC - Rp, 8.10.9.2 NMAC, 11/15/05]

**8.10.9.3 S T A T U T O R Y AUTHORITY:** New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004).

[8.10.9.3 NMAC - Rp, 8.10.9.3 NMAC, 11/15/05]

**8.10.9.4 D U R A T I O N :** Permanent

[8.10.9.4 NMAC - Rp, 8.10.9.4 NMAC, 11/15/05]

**8.10.9.5 EFFECTIVE DATE:** November 15, 2005, unless a later date is cited at the end of a section.

[8.10.9.5 NMAC - Rp, 8.10.9.5 NMAC, 11/15/05]

**8.10.9.6 OBJECTIVE:** To establish guidelines to successfully transition foster youth and emancipated foster youth into adult living.

[8.10.9.6 NMAC - Rp, 8.10.9.6 NMAC, 11/15/05]

#### 8.10.9.7 DEFINITIONS:

**A. "Approved education plan"** means, an individualized educational plan that describes the milestones and time frames that must be achieved by the youth to attain a high school diploma or general equivalency diploma (GED), and/or post secondary goals such as technical/vocational school, community college or college.

**B. "CYFD"** means the New Mexico children, youth and families department.

**C. "Education and Training Voucher (ETV) Program"** means a program, under the auspices of the Chafee Foster Care Independence Act of 1999 that provides financial assistance to eligible youth who are enrolled in an accredited post-secondary higher educational setting. These funds are specifically allocated to cover the cost of attendance for these youth.

**D. "Guardianship"** means the court appointment of a person or entity qualified to provide care, custody, or control of a minor or incapacitated person"

**E. "Independent living coordinator"** means a CYFD social worker or contracted provider who assists a youth's worker with ensuring the youth, over 15 years of age or any child with a plan of planned permanent living arrangement, is provided appropriate services. The IL coordinator also provides technical assistance to county offices.

**F. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**G. "Planned permanent living arrangement"** is an alternative plan to provide physical and emotional permanency for a youth who resides in an out-of-home placement and for whom reunification, adoption, permanent guardianship, or permanent placement with a fit and willing relative, are not considered to be the most appropriate permanent plan.

**H. "Permanency planning"** is the systematic process of carrying out, within a time-limited period, a set of

goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships.

**I. "Start-up funds"** means funds that are provided to assist eligible youth to establish a domicile, i.e., independent living arrangement.

**J. "Transitional living plan"** means an individualized, written plan that assesses and addresses a youth's needs and strengths to successfully transition into independence.

**K. "Youth"** refers to an individual in the 13 to 23-age range.

**L. "Youth with disabilities"** means youth who demonstrates over time either partial or complete functional impairment to the extent that he/she is unable to manage his/her financial affairs or both." They are determined to need consistent support and services resulting from an acknowledged diagnosis of a disability. Such support and services will continue to be needed after age 18.  
[8.10.9.7 NMAC - Rp, 8.10.9.7 NMAC, 11/15/05]

**8.10.9.8 PURPOSE OF INDEPENDENT LIVING PROGRAM:** The purpose of the independent living program is to prepare youth in the legal custody of CYFD for successful management of adult responsibilities by:

**A.** Identifying children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as:

- (1) assistance in obtaining a high school diploma;
- (2) career exploration;
- (3) vocational training;
- (4) job placement and retention;
- (5) training in daily living skills;
- (6) training in budgeting and financial management skills;
- (7) substance abuse prevention, and preventive health activities such as smoking avoidance, nutrition education and pregnancy prevention; and

(8) providing emotional and personal support to children aging out of foster care through mentors and the promotion of interaction with dedicated adults.

**B.** Providing financial, housing, counseling, employment, education, and other appropriate support services to youth who have left foster care because they have attained 18 years of age, and who have not yet attained 21 years of age, to complement their own efforts to achieve self-sufficiency.

[8.10.9.8 NMAC - Rp, 8.10.9.8 NMAC, 11/15/05]

**8.10.9.9 TRANSITIONAL-LIVING PLAN:** CYFD develops and implements a transitional living plan for every youth in foster care who is 16 years of age or older, for any youth with the permanency plan of planned permanent living arrangement regardless of age, and for youth ages 18-21 who have emancipated from foster care and are eligible for independent living services. The transitional living plan shall include:

**A.** a description of the specific skills the youth requires for successful transition into independent living as an adult;

**B.** identification of the program, educational or otherwise, appropriate to provide the necessary skills;

**C.** the reasons why the program is likely to be useful;

**D.** the availability of any proposed programs;

**E.** CYFD's plan for assuring that the child/youth shall be adequately prepared for adulthood;

**F.** where the youth will live until reaching adulthood; and

**G.** the child's goals for achieving independence.

[8.10.9.9 NMAC - Rp, 8.10.9.9 NMAC, 11/15/05]

**8.10.9.10 SUPPORT SERVICES:** CYFD provides support services to a youth to help the individual achieve self-sufficiency.

**A.** Those eligible for support services are:

(1) youth under age 18 who are in the legal custody of CYFD protective services;

(2) youth who emancipated from foster care at age 18 but who have not yet reached the age of 21.

**B.** CYFD recruits and develops adult mentors to provide personal and emotional support to children aging out of foster care. Mentors may be members of the youth's extended family or other appropriate adults who are willing and interested in becoming a permanent support for the youth at the time of transition into adulthood and beyond. Mentors will:

(1) attend training as identified or provided by CYFD;

(2) meet the criminal records clearance criteria established for foster and adoptive applicants;

(3) participate in activities as identified in the youth's transitional living plan or semi-independent living arrangement.

**C.** CYFD protective services offers education and training vouchers (ETV), for eligible youth, up to the age of 23 and youth adopted on or after their 16<sup>th</sup> birthday, for the "cost of attendance" at an

accredited post-secondary educational institution.

[8.10.9.10 NMAC - Rp, 8.10.9.10 NMAC, 11/15/05]

**8.10.9.11 PERMANENCY PLANNING SERVICES FOR YOUTH:**

The purpose of permanency planning services is to provide services and living arrangements for youth in the custody of CYFD protective services and youth who left foster care at age 18 and have not yet attained age 21, and to provide services, financial and medical assistance to youth you are former foster care recipients in preparation for the successful management of adult responsibilities and to achieve a safe and permanent living arrangement in a timely manner.

[8.10.9.11 NMAC - Rp, 8.10.9.11 NMAC, 11/15/05]

**8.10.9.12 SEMI-INDEPENDENT LIVING (SIL):** CYFD provides a placement alternative for eligible older adolescents, whose permanency plan is planned permanent living arrangement. This alternative placement makes the youth their own vendor to receive the substitute care payment. The substitute care payment allows the youth to live as a boarder with their foster parent or to live on their own with limited CYFD supervision. Semi-independent living eligible youth are at least 16 years of age and in the custody of CYFD. Children/youth under the age of 16 are not eligible for a semi-independent living placement unless approved by the county office manager. CYFD provides financial assistance and services to youth who have left foster care at age 18 and have not yet attained the age of 21 in order to assist them to achieve independence.

[8.10.9.12 NMAC - Rp, 8.10.9.12 NMAC, 11/15/05]

**8.10.9.13 YOUTH AGES 16 TO 21:** Youth ages 16 to 21 who are in foster care or who were in foster care when they reached age 18 and who have not yet reached age 21 may be provided with services:

**A.** Youth ages 16 to 18: A youth in the custody of CYFD receives services necessary to complete a transitional living plan. Prior to a youth's 18th birthday, CYFD may approve a continued placement in substitute care if the youth or provide semi-independent living services.

**B.** Youth ages 18 to 21: A youth who leaves foster care at age 18 and who has not yet reached age 21 may receive transitional living services at any time between the ages of 18 and 21 if the following apply:

(1) the client agrees to participate in age appropriate independent living serv-

ices; and

(2) the client agrees to become his/her own vendor for financial assistance; and

(a) the client is interested in pursuing post-secondary education or training;

(b) the client is interested in pursuing employment; or

(c) the client is interested in participating in rehabilitation treatment.

C. If the youth becomes his or her own provider for substitute care payments, the youth may live in a foster home if the youth and the substitute care provider both want and agree that the youth may remain in the home/or placement.

[8.10.9.13 NMAC - Rp, 8.10.9.13 NMAC, 11/15/05]

**8.10.9.14 YOUTH WITH DISABILITIES:** CYFD provides appropriate transition services to youth with disabilities who are in the custody of CYFD and who may require a guardian be appointed for them. Services are provided to assist the youth transition from CYFD to adult oriented services such as aging and long term services department.

[8.10.9.14 NMAC - Rp, 8.10.9.14 NMAC, 11/15/05]

#### HISTORY OF 8.10.9 NMAC:

##### Pre-NMAC History:

The material in this part was derived from that previously filed with the State Records Center and Archives under: SSD Rule #411.0000 Substitute Care, 11/10/81; SSD 5.0.0, Substitute Care for Children - Definition and Goal Statement, 8/22/86; SSD 5.1.0, Substitute Care for Children - General Provision, 8/22/86; SSD 5.1.0, Substitute Care for Children - General Provision, 1/29/87; SSD 5.1.0, Substitute Care for Children - General Provision, 6/18/87; SSD 5.1.0, Substitute Care for Children - General Provision, 3/28/89; SSD Rule #410.5400, Substitute Care for Children General Guidelines, 9/17/81; SSD 5.2.0, Substitute Care - General Guidelines, 8/22/86; SSD 5.2.0, Substitute Care - General Guidelines, 1/29/87; SSD 5.2.0, Substitute Care - General Guidelines, 6/18/87; SSD 5.2.0, Substitute Care - General Guidelines 3/28/89; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 8/22/86; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 1/29/87; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 6/18/87; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 6/14/88; SSD 5.3.0, Substitute Care for Children -

Department Responsibilities, 8/22/88; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 9/18/90; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 3/15/91; SSD Rule #412.0000, Youth Services - Definition and Goal Statement, 11/10/81; SSD 6.0.0, Youth Services - Definition and Goal Statement, 11/10/81; SSD 6.0.0, Youth Services - Definition and Goal Statement, 8/22/86; SSD 6.1.0, Youth Services - General Provisions: Youth Services, 8/22/86; SSD 6.1.0, Youth Services - General Provisions: Youth Services, 1/29/87; SSD 6.1.0, Youth Services - General Provisions: Youth Services, 6/18/87; SSD 6.1.0, Youth Services - General Guidelines, 8/22/86; SSD 6.1.0, Youth Services - General Guidelines, 8/22/86.

#### History of Repealed Material:

8 NMAC 10.9, Independent Living Program - Repealed, 2/14/01.

8.10.9 NMAC, Independent Living Program - Repealed, 11/15/05.

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

### TITLE 8 SOCIAL SERVICES CHAPTER 26 ADOPTION PART 2 ADOPTION SERVICES

**8.26.2.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services.

[8.26.2.1 NMAC - Rp, 8.26.2.1 NMAC, 11/15/05]

**8.26.2.2 SCOPE:** Protective services employees and the general public.  
[8.26.2.2 NMAC - Rp, 8.26.2.2 NMAC, 11/15/05]

**8.26.2.3 STATUTORY AUTHORITY:** New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004).

[8.26.2.3 NMAC - Rp, 8.26.2.3 NMAC, 11/15/05]

**8.26.2.4 DURATION:** Permanent.

[8.26.2.4 NMAC - Rp, 8.26.2.4 NMAC, 11/15/05]

**8.26.2.5 EFFECTIVE DATE:** November 15, 2005, unless a later date is

cited at the end of a section.

[8.26.2.5 NMAC - Rp, 8.26.2.5 NMAC, 11/15/05]

**8.26.2.6 OBJECTIVE:** To establish standards for the provision of adoption services to children in the custody of CYFD and families seeking to adopt those children.

[8.26.2.6 NMAC - Rp, 8.26.2.6 NMAC, 11/15/05]

#### 8.26.2.7 DEFINITIONS:

A. "Abuse/neglect check" is a review of the information management system to determine if there has been any previous involvement with CYFD.

B. "Administrative hearing" is a formal process, where the client has an opportunity to present evidence to a impartial hearing officer appointed by the office of the secretary.

C. "Administrative review" is an informal process, which may include an informal conference or may include only a record review. The administrative review process does not create any substantive rights for the client.

D. "Adoptee" refers to any person who is the subject of an adoption petition.

E. "Adoption" is the establishment of a court sanctioned legal parental relationship between an adult and a child.

F. "Adoption resource team (ART)" is a team of two people, one a CYFD employee and one under contract with CYFD, which reviews cases where adoption is or may become the plan, and which may approve the plan, or make or recommend changes to the plan, to ensure timely movement toward adoption and permanence.

G. "Applicant" is an individual(s) applying to CYFD to be considered as an adoptive family for a child in CYFD custody.

H. "Background records check" includes local, state and federal clearances.

I. "Best interest adoptive placement" means the process whereby CYFD finds the best permanent home for the child, taking into consideration such factors as adoptive parent and child preferences, availability of services, compatibility of interest and activities, willingness to consider open adoption if applicable, and willingness to maintain sibling relationships if applicable.

J. "Consent" is a document signed by the adoptee if the child is fourteen years of age or older consenting to the adoption.

K. "Disruption" means

the removal of a child from an adoptive home after an adoptive placement agreement has been signed but prior to the finalization of the adoption.

**L. "Fictive kin"** is a person not related by birth or marriage who has an emotionally significant relationship with the child.

**M. "Fifth degree of consanguinity"** includes brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, sister-in-law, and brother-in-law, as well as documented godparents.

**N. "Freed for adoption"** means all parental rights are terminated and all time for appeal is exhausted.

**O. "Full disclosure"** is mandatory and continuous disclosure by CYFD throughout the adoption proceedings of all known information specific to the child.

**P. "Individualized adoption plan (IAP)"** is an individualized and specific recruitment plan developed by the adoption consultant and approved by the ART for children who have a plan of adoption.

**Q. "Level 1 foster care"** is the basic level of foster care services; every child entering foster care is in level 1.

**R. "Level 2 foster care"** is for children requiring a higher level of care, structure or supervision than would be required for a child of similar age or development.

**S. "Level 3 foster care"** is for children requiring a significantly high level of care and is generally an alternative to institutional care.

**T. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**U. "Non-recurring adoption expenses"** are reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which have not been reimbursed from other sources or funds. Such costs may include the adoption study, including health and psychological examination, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the placement or adoption process.

**V. "Post placement services"** are services provided by the CYFD placement staff or contractors to children in CYFD custody and their adoptive families to assure the stability of the placement and help them meet the requirements to finalize the adoption within time frames set out in the Adoption Act Regulations (8 NMAC 26.3).

**W. "Post decree services"** are services provided by CYFD placement staff, contractors, or community providers to children and families who have finalized an adoption to help maintain the stability and functioning of the family.

**X. "Subsidy"** is a third party payment program that may include medicaid eligibility, maintenance payments and/or payments for special events.

[8.26.2.7 NMAC - Rp, 8.26.2.7 NMAC, 11/15/05]

**8.26.2.8 PURPOSE OF ADOPTION SERVICES:** The purpose of adoption services is to provide appropriate and permanent adoptive homes for children in the custody of CYFD for whom a plan of adoption is appropriate.

[8.26.2.8 NMAC - Rp, 8.26.2.8 NMAC, 11/15/05]

**8.26.2.9 ADOPTION REGULATIONS**

**A.** CYFD conforms to the Adoption Act Regulations (8 NMAC 26.3) in the provision of adoption services.

**B.** The definitions in the Adoption Act Regulations apply to these policies.

[8.26.2.9 NMAC - Rp, 8.26.2.9 NMAC, 11/15/05]

**8.26.2.10 CHILD ELIGIBILITY CRITERIA:** A child is eligible for adoption services when a child's permanency plan or concurrent plan is adoption.

[8.26.2.10 NMAC - Rp, 8.26.2.10 NMAC, 11/15/05]

**8.26.2.11 ADOPTIVE PARENT ELIGIBILITY**

**A.** Any adult age 18 years and older is eligible to adopt through CYFD once she/he has an approved pre-placement study.

**B.** A CYFD employee is not allowed to adopt any child with whom he/she is working in an official capacity.

**C.** CYFD conducts background record checks for all applicants. The applicant(s) shall provide finger print cards to CYFD for all adult relatives or non-relatives residing in the applicant(s)' home, as well as a request for federal background record checks. No person shall be approved as an adoptive parent who has current or past convictions records for crimes against children, including but not limited to sexual offense, neglect, and/or abuse or any other violent offense, including but not limited to domestic violence, assault, battery or rape.

**D.** No person shall be approved as an adoptive parent whose own children are in foster care or when there has been a substantiation of sexual abuse or severe physical abuse.

[8.26.2.11 NMAC - Rp, 8.26.2.11 NMAC, 11/15/05]

**8.26.2.12 ELIGIBILITY FOR STUDY BY CYFD STAFF**

**A.** Applicants shall reside in the state of New Mexico as defined in the Adoption Act 32A-5-3(V) and be at least 18 years of age in order to have an adoptive study completed by CYFD.

**B.** An adoptive family may be a single parent, a married couple who have been cohabiting for two years or more or an unmarried couple who have been cohabiting for two years or more. In some cases, a shorter period of cohabitation may be acceptable if approved by the placement supervisor.

**C.** If the inquiring family has experienced the loss of a household member within the past year, the application shall be accepted after an assessment of the family's situation.

**D.** If an applicant family gains a full-time member, the application process shall be discontinued until CYFD reassesses the family and determines the family's ability to successfully integrate an adoptive child.

[8.26.2.12 NMAC - Rp, 8.26.2.12 NMAC, 11/15/05]

**8.26.2.13 WAITING LIST**

**A.** There is no waiting list for eligible children.

**B.** When resources are limited, the prioritization for the study of adoptive applicants is as follows:

(1) fit and willing relatives of the child eligible for adoption, including fictive kin;

(2) home studies completed for a specific child only; and

(3) the current recruitment criteria that is set according to the population of children awaiting adoption.

[8.26.2.13 NMAC - Rp, 8.26.2.13 NMAC, 11/15/05]

**8.26.2.14 RECRUITMENT**

**A.** CYFD's recruitment efforts focus on developing a pool of potential adoptive homes willing and able to adopt the children needing placement. CYFD attempts to identify and locate fit and willing relatives for consideration as part of the pool of available adoptive parents.

**B.** CYFD recruits statewide for potential adoptive homes for children requiring placement.

**C.** CYFD's recruitment plan at a minimum addresses the following:

(1) information about the characteristics and needs of available children;

(2) the nature of the adoption process; and

(3) supports available to adoptive families.

**D.** CYFD develops individual adoption plans to recruit for those children for whom an adoptive home has not been identified according to the requirements of the adoption resource team (ART) process.

[8.26.2.14 NMAC - Rp, 8.26.2.14 NMAC, 11/15/05]

### **8.26.2.15 SUBSIDIZED ADOPTIONS**

**A.** CYFD makes information about subsidized adoption available to interested families.

**B.** Post decree subsidy services are available to a family who has adopted an eligible child through CYFD.

**C.** CYFD determines if a child is eligible to receive state or federal subsidy based upon federally and/or state established criteria that consider the special needs of the child, the child's birth family and/or economic status of the adoptive family.

**D.** The subsidy maintenance payment cannot exceed the maximum amount that would have been paid for the child in foster care.

**E.** Types of subsidy available:

(1) Legal: There shall be a one-time only attorney fees subsidy for legal services leading to the finalization of an adoption.

(2) Maintenance: Maintenance payments based on the maximum amount of maintenance payment the child is eligible for in foster care shall be utilized to meet the child's existing day-to-day needs.

(3) Medical: Medical subsidy shall cover only those pre-existing conditions that are not covered by the family's private/group medical insurance or Medicaid.

(4) Medically fragile: Subsidy may continue beyond the child's 18<sup>th</sup> birthday if the child is enrolled in the medically fragile waiver program, in which case the payments may extend until the child is twenty-one years of age.

**F.** For a private agency treatment foster home the adoption subsidy shall be negotiated in the same manner as any other subsidy.

**G.** In the case of the conversion to adoption of CYFD's level 3 foster homes, the subsidy may be negotiated up to the level 3 foster care rate and must be approved by the protective services director or deputy secretary.

**H.** The adoptive parent receiving subsidy notifies CYFD within two weeks of any of the changes listed below.

(1) the adoptive parent is no longer legally responsible for the child;

(2) change of address;

(3) change in the child's name;

(4) change in family needs or circumstances; and/or

(5) death of the child.

**I.** Failure to notify CYFD in a timely manner may result in suspension or termination of the monthly adoption subsidy payment and a request for repayment of funds.

**J.** If the child's worker has determined that the child is eligible for Title IV-E funding, the child is eligible for non-recurring adoption expenses as noted below.

(1) Time frames: The agreement for non-recurring expenses shall be signed prior to the final decree of adoption.

(2) Eligibility: There is no income eligibility requirement for adoptive parents in determining whether payments for non-recurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(3) Separate reimbursement: In cases where siblings are placed and adopted, either separately or as a unit, each child shall be treated as an individual with separate reimbursement up to the maximum allowable for each child.

(4) Interstate placement: When the adoption of the child involves interstate placement, the state that enters into adoption subsidy agreement shall be responsible for paying the non-recurring adoption expenses of the child. In cases in which there is interstate placement but no agreement for adoption assistance, the state in which the final adoption decree is issued shall be responsible for reimbursement of non-recurring expenses if the child meets the requirements. Subsidy payments are paid to the adoptive parents regardless of the family's place of residence as long as the child is under age 18, and there is verification of the family's financial need and the child's continued dependency.

**K.** Each Title IV-E subsidy agreement shall be completed and signed prior to adoptive finalization to be valid. The child shall not be eligible for Title IV-E subsidy after the adoption decree has been entered.

**L.** CYFD notifies the adoptive parent in writing when changes in the adoption subsidy rate occur.

**M.** CYFD reviews each subsidy agreement annually to redetermine eligibility maintenance payments may increase or decrease based on current financial status report, that is, a current tax form 1040. The adoptive family shall be required

to submit a current financial status report at least 45 days before the expiration of the agreement and verification that the child is in the home and/or the family is financially responsible for the child.

(1) Subsidy can be terminated based upon any of the following events:

(a) fulfillment and completion of the terms of the agreement;

(b) at the request of the adoptive parent;

(c) when the child reaches 18 years of age;

(d) upon the death of the child;

(e) upon the cessation of legal responsibility of the adoptive parent for the adopted child;

(f) CYFD determines that the child is no longer receiving any support from the adoptive parent; or

(g) the family fails to participate in the renewal process for adoption assistance.

(2) The adoptive parent may request an administrative hearing of the decision to reduce, change, suspend or terminate adoption subsidy in accordance with CYFD policy.

[8.26.2.15 NMAC - Rp, 8.26.2.15 NMAC, 11/15/05]

### **8.26.2.16 ADOPTION PRE-PLACEMENT STUDY PROCESS**

**A.** Consistent with requirements of the New Mexico Children's Code, CYFD completes a pre-placement homestudy to determine whether an applicant is an appropriate adoptive parent and the characteristics of the child suitable for the applicant. The process includes:

(1) Application: The applicants complete and sign the application provided by CYFD.

(2) Orientation and training: The applicants attend and participate in CYFD approved orientation and training.

(3) Background records checks: The applicant's completed federal, state and local background record checks including all adult relatives and non-relatives in the household, shall be received and reviewed by CYFD to ensure the applicants meet federal and state requirements (see 8.8.3 NMAC).

(4) References: The applicants provide five references, all of which shall be contacted by CYFD. Any adult children shall provide additional references, all of who shall be contacted by CYFD; any exceptions must have supervisory approval.

(5) Verifications: The applicant provides verification of marriages, divorces, employment, military status and income.

(6) Interviews: The applicants and all other family members participate in

group and individual interviews.

(7) Medicals: The applicants and each member of the household shall provide a medical report which is current within the last year.

(8) Home visit: The applicants allow and participate in a visit to the applicant's address.

**B.** CYFD documents the information collected and the results of the study process in the pre-placement study.

**C.** An individual applying to CYFD to adopt and participating in the study process agrees to and acknowledges the following:

(1) If a person applies to adopt, she/he agrees not to concurrently apply with other adoption agencies.

(2) If a person decides to apply to other agencies, s/he shall notify the placement worker.

(3) If a person files an independent adoption action, the placement shall be terminated immediately.

(4) CYFD may require a psychiatric or medical evaluation or other therapeutic intervention for an applicant as part of the study process at the expense of the applicant.

(5) The applicant has the right to terminate the application process at any time.

(6) CYFD notifies the applicant in person and in writing of CYFD's decision to terminate the study process.

**D.** CYFD updates the pre-placement homestudy at minimum every six months.

**E.** CYFD will send the homestudy of the approved adoptive family to the family's attorney for a private adoption or to another licensed agency when:

(1) one year has elapsed since the approval of the study and there has not been an adoptive placement made by CYFD; and

(2) the family requests the CYFD study be sent to a licensed agency or a private adoption for a fee of \$1,500, unless the study is being requested for a special needs adoption.

[8.26.2.16 NMAC - Rp, 8.26.2.16 NMAC, 11/15/05]

#### **8.26.2.17 BEST INTEREST ADOPTION PLACEMENT**

**A.** Children are referred to an adoption consultant and may be referred to the adoption resource team for the purposes of identifying a potential adoptive home.

**B.** The best interest of a child is paramount in identifying an adoptive family for a child.

**C.** A decision to separate siblings shall be based on a carefully documented and reviewed determination that such a separation would be beneficial to the

siblings involved. If separation would benefit one or more siblings, but not all siblings, for social, emotional or developmental reasons, CYFD will consider the needs of each child separately. CYFD will not separate siblings solely because an adoptive placement is available for one or more children but not the entire group.

**D.** The final placement decision is the responsibility of CYFD.

**E.** Children aged 14 years or older must consent to the adoption.

**F.** The placement of a child shall not be delayed or denied on the basis of the race, color, or national origin of the adoptive parent or the child involved. The selected family should show an awareness of and sensitivity to the ethnic and cultural resources that may be available to them for the child placed in the home.

**G.** Consideration is given first to relatives for placement of a child in custody who needs out of home placement. [8.26.2.17 NMAC - Rp, 8.26.2.17 NMAC, 11/15/05]

#### **8.26.2.18 FOSTER HOME ADOPTIONS**

**A.** CYFD places children that the concurrent planning assessment tools indicate have a poor prognosis for reunification in concurrent planning foster homes as a potential adoptive home if the permanency plan changes to adoption.

**B.** CYFD considers any foster parent who has provided foster care for six months as a potential adoptive home for a child in custody with a plan of adoption.

**C.** When a foster parent, including a treatment foster parent, has been selected as an adoptive parent for a child in CYFD custody, CYFD completes the pre-placement homestudy.

[8.26.2.18 NMAC - Rp, 8.26.2.18 NMAC, 11/15/05]

#### **8.26.2.19 FULL DISCLOSURE AND ADOPTIVE PLACEMENT**

**A.** CYFD provides full disclosure of information to the extent known regarding the adoptee to the adoptive family.

(1) The information provided includes all known information regarding the adoptee's:

- (a) physical health history;
- (b) psychological history;
- (c) mental and behavioral health history;
- (d) hospitalization history;
- (e) medication history;
- (f) genetic history;
- (g) physical description;
- (h) social history;
- (i) placement history;
- (j) education history;

- (k) eligibility for subsidy; and
- (l) legal risk.

(2) The adoptive family is required to agree in writing to maintain confidentiality of all information provided in full disclosure.

(3) All records concerning applicants and adoptees are confidential and may only be released in accordance with law.

(4) Birth family identifying information may be deleted from the information/documents provided to the adoptive family during full disclosure as appropriate. Documents concerning the birth parents are not provided during full disclosure unless CYFD has secured a release of information from the birth parents.

(5) The potential adoptive family returns all information provided during full disclosure to CYFD if the placement of the adoptee does not occur.

**B.** CYFD may elect to discontinue the presentation at any time during the full disclosure.

**C.** The adoptive family waits to inform CYFD of a decision about the placement until at least 72 hours have elapsed from the time of full disclosure.

**D.** CYFD works with the adoptee and adoptive family to prepare each for placement. At a minimum, preparation pre-placement visitation occurs between the child and adoptive family.

**E.** CYFD and adoptive family reviews and signs the placement agreement at the time of actual placement. [8.26.2.19 NMAC - Rp, 8.26.2.19 NMAC, 11/15/05]

#### **8.26.2.20 POST PLACEMENT ADOPTION SERVICES**

**A.** CYFD provides services to the child and adoptive family until the finalization of the adoption.

**B.** CYFD develops a treatment plan with all families adopting children in CYFD custody. A treatment plan may include any or all of the following:

(1) assessment of service needs for the family conducted by the placement worker based on interviews with the family, children and knowledge of the issues that require attention or resolution.

(2) collateral contacts and reports necessary to insure successful integration of the family during the post placement period; and

(3) monitoring and arranging of psychological, medical, educational and therapeutic services.

**C.** CYFD assesses and documents the status of the placement until finalization of the adoption.

[8.26.2.20 NMAC - Rp, 8.26.2.20 NMAC, 11/15/05]

#### **8.26.2.21 ABUSE INVESTIGA-**



**TIONS IN PRE-ADOPTIVE PLACEMENT**

**A.** Any CYFD employee suspecting child abuse and/or neglect in a preadoptive home makes a report as per CYFD policy concerning child protective services intake.

**B.** Any report of child abuse or neglect in a preadoptive placement accepted by CYFD is investigated as per CYFD policy concerning child protective services investigations.

**C.** Based upon the result of the investigation, CYFD may:

(1) proceed with the adoptive placement;

(2) terminate the adoptive placement; and/or

(3) determine the family no longer eligible to adopt children in CYFD custody.

**D.** CYFD notifies the adoptive family in person and in writing of the results of the investigations and CYFD actions.

[8.26.2.21 NMAC - Rp, 8.26.2.21 NMAC, 11/15/05]

**8.26.2.22 DISRUPTION AND CRISIS INTERVENTION**

**A.** CYFD may elect to develop and implement a crisis intervention plan to avert the disruption of an adoptive placement.

**B.** If a disruption is unavoidable, CYFD focuses efforts on minimizing the emotional stress to the child associated with the disruption.

**C.** After a disruption, CYFD assesses the permanency plan for the child, refers the child to the ART and develops an individualized adoption plan if adoption continues to be the most appropriate plan.

[8.26.2.22 NMAC - Rp, 8.26.2.22 NMAC, 11/15/05]

**8.26.2.23 FINALIZATION**

**A.** Finalization of adoption complies with state statutes in order to create permanence for the child and adoptive family.

**B.** CYFD establishes recommended time frames for finalization based on the age and needs of the child and in accordance with the adoption regulations at 8.26.3 NMAC.

**C.** During this period CYFD provides information to the adoptive family regarding requirements for legal finalization of the adoption including the family's selection of an attorney, agency provision of legal consents, name change of the child and required consent of the child over fourteen years of age.

**D.** If the adoptive family and child move out of state prior to finaliza-

tion, a referral through the interstate compact on the placement of children is initiated by CYFD to request appropriate post placement services and written reports. The family may file the adoption petition in their state of residence or in the New Mexico county of the child's origin.

[8.26.2.23 NMAC - Rp, 8.26.2.23 NMAC, 11/15/05]

**8.26.2.24 POST DECREE SERVICES:**

CYFD may provide direct post decree services or make appropriate reports to community based contract services for adoptive families and for the child to maintain the family unit.

[8.26.2.24 NMAC - Rp, 8.26.2.24 NMAC, 11/15/05]

**8.26.2.25 ADULT ADOPTEE REQUESTS:**

CYFD provides information to an adult adoptee, sibling, or biological parent as allowed for by law.

[8.26.2.25 NMAC - Rp, 8.26.2.25 NMAC, 11/15/05]

**8.26.2.26 ADOPTION RESOURCE TEAMS:**

The adoption resource teams review cases with a plan of adoption when the goal of adoption has not been achieved for 12 months or more, whose adoptive placements disrupt or for whom the adoption has not been finalized within 12 months of the signed placement agreement, as well as certain other cases for which the plan should be, or may become, adoption. As applicable in specific circumstances, the adoption resource teams review, amend, and approve in an individualized adoption plan, specific recruitment steps to place the child in an adoptive or pre-adoptive home, as appropriate, or develop other steps intended to achieve adoptions more quickly for those children whose plan is adoption.

[8.26.2.26 NMAC - Rp, 8.26.2.26 NMAC, 11/15/05]

**8.26.2.27 OPEN ADOPTIONS:**

CYFD facilitates the negotiation of open adoption agreements when determined appropriate.

[8.26.2.27 NMAC - N, 11/15/05]

**HISTORY OF 8.26.2 NMAC:**

**Pre-NMAC History:**

The material in this part was derived from that previously filed with the State Records Center and Archives:

SSD 7.0.0, Adoption - Definition and Goal Statement, filed 8/22/86;

SSD 7.0.0, Adoption - Definition and Goal Statement, filed 6/14/88;

SSD 7.0.0, Adoption - Purpose and Goal Statement, filed 10/18/95;

SSD 7.1.0, Adoption - General Provisions: Adoption, filed 8/22/86;

SSD 7.1.0, Adoption - General Provisions: Adoption, filed 6/18/87;

SSD 7.1.0, Adoption - General Provisions: Adoption, filed 1/13/88;

SSD 7.1.0, Adoption - General Provisions: Adoption, filed 3/28/89;

SSD 7.2.0, Adoption - General Guidelines, filed 8/22/86;

SSD 7.2.0, Adoption - General Guidelines, filed 6/18/87;

SSD 7.2.0, Adoption - General Guidelines, filed 6/14/88;

SSD 7.2.0, Adoption - General Guidelines, filed 3/15/91;

SSD 7.3.0, Adoption - Department Responsibilities, filed 8/22/86;

SSD 7.3.0, Adoption - Department Responsibilities, filed 8/22/86;

SSD 7.3.0, Adoption - Department Responsibilities, filed 6/14/88;

SSD 7.3.0, Adoption - Department Responsibilities, filed 3/15/91;

SSD 7.3.0, Adoption - Department Responsibilities, filed 10/18/95.

**History of Repealed Material:**

8 NMAC 26.2, Adoption Services - Repealed, 2/14/01.

8 NMAC 26.2, Adoption Services - Repealed, 7/30/04.

8.26.2 NMAC, Adoption Services - Repealed 11/15/05.

**NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT**

**PROTECTIVE SERVICES DIVISION**

**TITLE 8 SOCIAL SERVICES  
CHAPTER 27 FOSTER CARE  
PART 2 FOSTER PARENT-  
ING**

**8.27.2.1 ISSUING AGENCY:** Children, Youth and Families Department, Protective Services

[8.27.2.1 NMAC - Rp, 8.27.2.1 NMAC, 11/15/05]

**8.27.2.2 SCOPE:** Protective services employees and general public.

[8.27.2.2 NMAC - Rp, 8.27.2.2 NMAC, 11/15/05]

**8.27.2.3 STATUTORY AUTHORITY:** Authority to Conduct Social Services 9-8-13 A(3) NMSA 1978;

New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Repl. 2004).

[8.27.2.3 NMAC - Rp, 8.27.2.3 NMAC, 11/15/05]

**8.27.2.4 DURATION:** Permanent

[8.27.2.4 NMAC - Rp, 8.27.2.4 NMAC,

11/15/05]

**8.27.2.5 EFFECTIVE DATE:** November 15, 2005, unless a later date is cited at the end of a section.  
[8.27.2.5 NMAC - Rp, 8.27.2.5 NMAC, 11/15/05]

**8.27.2.6 OBJECTIVE:** To establish standards for the recruitment, training, screening, evaluation, licensing and retention of foster parents consistent with the licensing standards for foster care for children in the custody of CYFD.  
[8.27.2.6 NMAC - Rp, 8.27.2.6 NMAC, 11/15/05]

**8.27.2.7 DEFINITIONS:**

**A. "Abuse/neglect check"** is the check of the information management system to determine if there has been any previous involvement with CYFD.

**B. "Administrative hearing"** is a formal process, where the client has an opportunity to present evidence to an impartial hearing officer.

**C. "Administrative review"** is an informal process. It may include an informal conference or may include only a record review. The administrative review process does not create any substantive rights for the client.

**D. "Background records check"** includes local, state and federal clearances.

**E. "Case management team"** consists of the parents, the child (if age appropriate), the CYFD, the supervisor, service providers, foster parents and any significant others in the child's and/or family's life.

**F. "CYFD"** means the New Mexico children, youth and families department.

**G. "Fictive kin"** is a person not related by birth or marriage who has an emotionally significant relationship with a child.

**H. "Fifth degree of consanguinity"** includes brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, sister-in-law, and brother-in-law, as well as documented godparents.

**I. "Homestudy report"** is the written assessment of the applicant family.

**J. "Initial relative assessment"** is an in-home assessment of a relative completed by the child's worker to determine suitability for placement.

**K. "Medical statement"** means the written summary concerning an individual's emotional and physical health and the documentation of the existence of any medical/psychological conditions that impact the individual's ability to provide

care to a child.

**L. "New Mexico Children's Code"** refers to Section 32A-1-1, et. seq., NMSA 1978.

**M. "Surrogate parent"** refers to a person who stands in for the parent of a student to protect the student's educational rights, and acts as the student's advocate in the educational decision-making process.

[8.27.2.7 NMAC - Rp, 8.27.2.7 NMAC, 11/15/05]

**8.27.2.8 FOSTER CARE LICENSING STANDARDS:** Services provided to foster parents and/or services provided by foster parents to children in the custody of CYFD are in accordance with the foster care licensing standards.

**A.** The definitions contained in the foster care licensing standards apply to these policies.

**B.** These foster care licensing standards are reviewed by Protective Services annually.

[8.27.2.8 NMAC - Rp, 8.27.2.8 NMAC, 11/15/05]

**8.27.2.9 ELIGIBILITY:** Any adult at least 18 years of age who is a legal resident of the country and who resides in New Mexico can apply to be a foster parent.  
[8.27.2.9 NMAC - Rp, 8.27.2.9 NMAC, 11/15/05]

**8.27.2.10 RECRUITMENT:** CYFD recruits foster parents in all parts of the state, and makes attempts to identify and locate relatives for consideration of placement, with emphasis on the needs of the children requiring out-of-home care.  
[8.27.2.10 NMAC - Rp, 8.27.2.10 NMAC, 11/15/05]

**8.27.2.11 INQUIRIES:** CYFD responds to inquiries from individuals interested in becoming foster parents.  
[8.27.2.11 NMAC - Rp, 8.27.2.11 NMAC, 11/15/05]

**8.27.2.12 CYFD EMPLOYEES AS FOSTER PARENTS:** CYFD employees who meet licensing requirements and do not have a conflict of interest may serve as foster parents.  
[8.27.2.12 NMAC - Rp, 8.27.2.12 NMAC, 11/15/05]

**8.27.2.13 LICENSING PROCESS:** CYFD screens, trains, studies, approve and licenses foster homes that accept children who are in CYFD custody.  
[8.27.2.13 NMAC - Rp, 8.27.2.13 NMAC, 11/15/05]

**8.27.2.14 APPLICATION:** Individuals interested in becoming a foster

parent complete the application provided by CYFD.

[8.27.2.14 NMAC - Rp, 8.27.2.14 NMAC, 11/15/05]

**8.27.2.15 TRAINING**

**A.** Applicants meet the preservice training requirements CYFD establishes.

**B.** Foster parents meet the annual training requirements established by CYFD.

[8.27.2.15 NMAC - Rp, 8.27.2.15 NMAC, 11/15/05]

**8.27.2.16 STATE AND FEDERAL BACKGROUND RECORDS CHECKS**

**A.** Background records checks are required for all persons caring for children. The applicant provides fingerprint cards to CYFD, including all adult relatives and non-relatives residing in the applicant's home. A request for background records checks must be submitted to CYFD as soon as possible in the home study process.

**B.** An applicant shall not be eligible for a foster care license, or to provide foster care for a child, and CYFD shall be in violation of this regulation, if the applicant is allowed to continue to provide foster care services after being notified that a background records check reveals information that would disqualify an individual from providing services to children. Final approval shall not be granted in any case in which a background records check reveals:

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

(2) a felony conviction for spousal abuse;

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

(4) a conviction for any crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, or

(5) a felony conviction within the past 5 years, of a crime of physical assault, battery, or a drug-related offense.

**C.** An applicant shall not be eligible for a foster care license, or to provide foster care for a child, and CYFD shall be in violation of this regulation, if the applicant is allowed to continue to provide foster care services after being notified that a background records check reveals information that would disqualify an individual from providing services to children.

**D.** For any applicant who has received state and federal background clearance through another approved foster parent licensing agency or organization within six months of an application with CYFD, CYFD may elect to forego an addi-

tional federal background records check unless CYFD believes there is cause to request it.

[8.27.2.16 NMAC - Rp, 8.27.2.16 NMAC, 11/15/05]

#### **8.27.2.17 ABUSE/NEGLECT CHECK**

**A.** A review of the CYFD management information system for abuse and neglect reports is conducted on all household members of the applicant family.

**B.** CYFD shall not license as a foster parent any person who has been convicted of an offense of sexual molestation/sexual abuse of an adult or child, or who has been the subject of a substantiated allegation of sexual molestation/sexual abuse of an adult or child.

**C.** If a substantiation of child or adult abuse/neglect exists, the application is assessed on a case-by-case basis to determine if the family dynamics that resulted in the abuse/neglect have been resolved. When there is a question, CYFD decides in favor of a foster child and denies the license.

**D.** A check of the management information system is conducted on all household members each year at the time of annual relicensing.

[8.27.2.17 NMAC - Rp, 8.27.2.17 NMAC, 11/15/05]

#### **8.27.2.18 MEDICAL**

**A.** Foster parent applicants provide medical statements from a physician to CYFD to be considered for licensure.

**B.** The information provided on the medical statement is reviewed by CYFD to determine if there exist a medical/psychological concern/condition that would impact or limit the individual's ability to foster children.

**C.** Foster parents provide new medical statements every three years at the time of the annual relicensing.

[8.27.2.18 NMAC - Rp, 8.27.2.18 NMAC, 11/15/05]

#### **8.27.2.19 PHYSICAL STANDARDS FOR FOSTER HOMES**

**A.** The physical standards of each home are evaluated as part of the licensing process using the standards set forth in licensing standards for foster care.

**B.** The physical standards of each home are evaluated each year at the time of relicensure using the standards set forth in the foster care licensing standards.

**C.** Only the standards regarding space requirements may be waived to allow for an otherwise acceptable relative foster home license.

[8.27.2.19 NMAC - Rp, 8.27.2.19 NMAC, 11/15/05]

#### **8.27.2.20 REFERENCES**

**A.** CYFD collects a minimum of five personal references on every foster home applicant.

**B.** Adult children of the foster parent applicant are contacted to provide a reference in addition to the five personal references. Exceptions to references from adult children of foster parent applicants require supervisory approval and documentation as to the reasons for the exception.

[8.27.2.20 NMAC - Rp, 8.27.2.20 NMAC, 11/15/05]

#### **8.27.2.21 REQUIRED VERIFICATIONS**

**A.** The applicant provides verification of his/her employment and/or income. To be considered for a foster parent license, the applicant shall have sufficient income, apart from the reimbursement, to support himself/herself and family.

**B.** The applicant provides verification of any marriages/divorces.

[8.27.2.21 NMAC - Rp, 8.27.2.21 NMAC, 11/15/05]

#### **8.27.2.22 INTERVIEWS :**

CYFD interviews in person all members of the foster parent applicant household.

[8.27.2.22 NMAC - Rp, 8.27.2.22 NMAC, 11/15/05]

#### **8.27.2.23 FOSTER HOME LICENSE**

**A.** A foster parent license from CYFD is not an entitlement. The issuance of a license is based upon the review of the information collected and CYFD's professional assessment of the applicant's ability to provide care to the children in CYFD custody.

**B.** Foster home licenses are valid for one year and are eligible for renewal if the licensing requirements continue to be met.

**C.** CYFD may temporarily suspend a foster parent license to allow:

(1) the completion of a child abuse/neglect investigation;

(2) the completion of a policy/regulation violation investigation;

(3) the participation of the foster parents in a corrective action plan;

(4) the foster parents time to adjust to a significant family event such as the birth or adoption of a child, etc.; and/or

(5) CYFD to assure safety of children in care.

**D.** No foster children may be placed in a foster home whose license has been suspended.

**E.** The foster parents are provided written notification of the suspen-

sion and the reason for the suspension.

**F.** Unless extraordinary circumstances exist, a license may only be suspended for up to six months. At the end of the suspension, CYFD decides whether to reinstate or revoke the license.

[8.27.2.23 NMAC - Rp, 8.27.2.23 NMAC, 11/15/05]

#### **8.27.2.24 LICENSING RELATIVE FOSTER PARENTS**

**A.** CYFD licenses relatives within the fifth degree of consanguinity and documented grandparents to provide foster care to children in CYFD's custody in the most family-like setting for the child that is safe, is the least restrictive, is in close proximity, and provides sibling continuity.

**B.** A child in CYFD's custody may be placed on an emergency basis with a relative when the investigation or treatment worker completes the initial relative assessment by collecting and assessing the following information and obtaining supervisory approval:

(1) the child's attitude toward the relative;

(2) the relative's attitude toward the child and parents;

(3) the relative's motivation to foster the child;

(4) the relative's ability to safely parent the child;

(5) local background records check that does not contain a disqualifying conviction;

(6) check of CYFD's management information system for abuse or neglect involvement with CYFD; and

(7) completion of the physical licensing checklist.

**C.** The safety of the child is the primary consideration. If this is ever in conflict with the placement of the child with a relative, CYFD makes the placement decision in favor of the child's safety.

**D.** Approval of the relative foster parent's license is conditional until such time as the foster care licensing requirements are satisfactorily completed. Relative foster parents are expected to complete all requirements of foster home licensing within 60 days of placement.

**E.** CYFD considers fictive kin if there are persons who meet this definition identified during the life of the case. Emergency placements may be made with fictive kin, who meet all the requirements for assessing the appropriateness and safety of an emergency placement. Any fictive kin with an emergency placement are required to complete all licensing requirements within 120 days for the placement to continue.

[8.27.2.24 NMAC - Rp, 8.27.2.24 NMAC, 11/15/05]

**8.27.2.25 DENIAL OF A LICENSE**

**A.** Applicants may be denied licensure at any point in the licensing process when, in the professional opinion of the placement worker, conditions in the prospective foster family home are not conducive to the fostering of children.

**B.** Applicants who have been denied an initial foster parent license may request an administrative review of the decision.

[8.27.2.25 NMAC - Rp, 8.27.2.25 NMAC, 11/15/05]

**8.27.2.26 REVOCATION OF A LICENSE**

**A.** A foster home license may be revoked when, in the opinion of the placement worker, conditions in the foster family home are not conducive to the fostering of children.

**B.** A foster parent whose license has been revoked may request an administrative hearing of that decision.

[8.27.2.26 NMAC - Rp, 8.27.2.26 NMAC, 11/15/05]

**8.27.2.27 CHANGES IN HOUSEHOLD EFFECTING LICENSURE STATUS**

**A.** Foster parents licensed by CYFD notify CYFD immediately, but no later than three days of any circumstance that may impact their license. Circumstances include but are not limited to:

- (1) birth or death of household member;
- (2) serious illness of household member;
- (3) criminal arrest and/or conviction of any household member;
- (4) new person in the home; and/or
- (5) change in address.

**B.** CYFD assesses changes within the foster home that may affect licensing status and acts based upon the assessment.

[8.27.2.27 NMAC - Rp, 8.27.2.27 NMAC, 11/15/05]

**8.27.2.28 MONITORING AND SUPPORT OF CYFD LICENSED FOSTER HOMES**

**A.** CYFD monitors the foster homes it licenses.

**B.** At a minimum, CYFD conducts a home visit to the licensed foster parent every six months regardless of placements.

**C.** CYFD provides the following information to the foster parent concerning a child in placement or a child that the foster parents are considering for placement:

(1) reason the child is in care, including information about the child's family;

(2) behavior;

(3) psychological/emotional concerns;

(4) educational status; and

(5) medical.

(6) placement history, if the child has been in custody prior to this placement.

**D.** CYFD receives, documents and investigates all reported licensing violations and reports of maltreatment in foster care.

**E.** CYFD provides support to the foster parents it licenses that are under investigation for allegations of child abuse and/or neglect. CYFD is prohibited from acting in such a manner that may interfere with any ongoing criminal investigation.

**F.** CYFD may develop and implement corrective action plans with foster parents to address parenting and/or licensing and policy concerns. At no time is the safety of a foster child compromised to allow for a foster parent to participate in a corrective action plan.

**G.** Relative foster homes receive the same monitoring and support afforded to non-relative foster homes.

[8.27.2.28 NMAC - Rp, 8.27.2.28 NMAC, 11/15/05]

**8.27.2.29 ROLE AND RESPONSIBILITIES OF FOSTER PARENT**

**A.** The foster parent is responsible for the daily care and supervision of a child placed in the foster parent's home.

**B.** The foster parent agrees to abide by all federal, state and local laws and the licensing standards for foster care.

**C.** The foster parent is a member of the child's case management team and, as a team member, participates in the development and implementation of team plans and may participate in conferences, citizen review boards, judicial reviews, individual education plans, etc. Foster parents do not make independent plans for children in their care.

**D.** When requested by the local education agency (LEA), the foster parent may serve as a surrogate parent to protect the foster child's educational rights and acts as the student's advocate in the educational decision-making process.

**E.** Foster parents refuse placements that they believe are not appropriate to their home.

**F.** Foster parents document their observations of the child's attitudes and behaviors on a monthly basis and provide that information to CYFD.

**G.** Foster parents adhere to

the provisions of the New Mexico Children's Code, regarding confidentiality.

**H.** Foster parents agree to never inflict corporal punishment on a child in foster care, including spanking, hitting, hair or ear pulling, and actions intended to produce fear, shame, or other emotional and/or physical trauma.

**I.** Foster parents maintain and return all of a child's belongings when he/she moves to another placement, including return home.

**J.** Foster parents cooperate with and carry out the CYFD plans for the child, including but not limited to working with the parent, guardian, or custodian of a child in placement, returning the child to his/her own parents or guardian, placing with relatives, transferring to other substitute care settings, or adoption planning and placement.

[8.27.2.29 NMAC - Rp, 8.27.2.29 NMAC, 11/15/05]

**8.27.2.30 FOSTER PARENT BILL OF RIGHTS:** CYFD shall maintain a foster parent bill of rights and shall include it with all foster parent agreements. [8.27.2.30 NMAC - N, 11/15/05]

**8.27.2.31 DOCUMENTATION AND RECORDS**

**A.** CYFD maintains records on all foster parents and foster parent applicants.

**B.** All records concerning foster parents or foster parent applicants are confidential and may only be released in accordance with law or regulation.

**C.** The results of a foster home or relative foster home assessment are documented in CYFD's approved homestudy format and filed in the foster parent record.

**D.** CYFD files all information received on foster parents and applicants, including but not limited to assessment information, copy of foster home license, corrective action plans, investigations and dispositions, history of placements, etc., in the foster parent record.

**E.** The foster parent is allowed to review the foster parent's own record except for letters of reference, information from third parties, and the identity of any abuse or neglect report source. Copying the record is not permitted unless allowed by law.

[8.27.2.31 NMAC - Rp, 8.27.2.30 NMAC, 11/15/05]

**HISTORY OF 8.27.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

SSD 5.3.0, Substitute Care for Children -

Department Responsibilities, filed 8/22/86; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 1/29/87; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 11/18/87; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 6/14/88; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/88; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 9/18/90; SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 3/15/91; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/86; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 1/29/87; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 6/18/87; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 11/18/87; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/88; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/28/89; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/20/90; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 9/18/90; SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/15/91

#### History of Repealed Material:

8.27.2, Foster Parenting - Repealed 2/14/01.  
8.27.2 NMAC, Foster Parenting - Repealed 7/15/04.  
8.27.2 NMAC, Foster Parenting - Repealed 11/15/05.

### NEW MEXICO GENERAL SERVICES DEPARTMENT STATE PURCHASING DIVISION

**This is an amendment to 1.4.4 NMAC, Sections 1, 5, 8, 9, and 10, effective 11-15-05. This action also renumbers and reformats 1 NMAC 1.1 to 1.4.4 NMAC in accordance with the current NMAC requirements.**

**1.4.4.1 ISSUING AGENCY:** General Services Department - State Purchasing Division.  
[02-15-99; 1.4.4.1 NMAC - Rn, 1 NMAC 1.1.1 & A, 11-15-05]

**1.4.4.5 EFFECTIVE DATE:**

February 15, 1999 unless a later date is cited at the end of a section ~~[or paragraph]~~.  
[02-15-99; 1.4.4.5 NMAC - Rn, 1 NMAC 1.1.5 & A, 11-15-05]

**1.4.4.8 PURPOSE:** This rule implements the mandated requirements of Section 14-11-7 NMSA 1978, as amended, and as outlined in 1.4.4.3 NMAC of this rule, the newspaper publisher is entitled to receive no more than:

A. ~~[44 cents (\$.44)]~~ \$.56 cents (\$.56) for each column line of eight point or smaller type for the first insertion; and

B. ~~[35.2 cents (\$.352)]~~ \$.44 cents (\$.44) per line of each subsequent insertion;

C. all emblems, display headings, rule work and necessary blank spaces shall be calculated as solid type and shall be counted and paid for as such.

[02-15-99; 1.4.4.8 NMAC - Rn, 1 NMAC 1.1.8 & A, 11-15-05]

**1.4.4.9 [DISCOUNTS:** ~~A discount of 15% for the first insertion and for subsequent insertions shall be applied for legal notices or advertisements submitted in a format that is acceptable to the publisher and will reduce typesetting time for the newspaper by providing legal ad copy on a computer disk; via computer modem; or presented camera ready to the respective newspaper publisher.~~  
[02-15-99; Recompiled 11/30/01]

**[1.4.4.10] RATE REVIEW:** For the purpose of addressing changes in economic conditions within the newspaper industry, as well as the general economy and inflation, the rate or rates set forth in 1.4.4.3 NMAC of this rule shall be reviewed annually by the secretary of the general services department. If necessary, the rate or rates shall be adjusted annually to reflect and maintain a current and reasonable rate to be paid to newspaper publishers.  
[02-15-99; 1.4.4.9 NMAC - Repealed, 11-15-05 & Rn, 1 NMAC 1.1.10, 11-15-05]

### NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.2 NMAC, Section 8, effective December 15, 2005.

**16.19.2.8 APPLICATIONS - SUBJECTS:** Applicants for licensure by examination shall pass the standard national examination currently known as NAPLEX and pass the NABP multi-state pharmacy jurisprudence examination (MPJE)

#### A. EXAMINATIONS

(1) In order to sit for the examination based on NAPLEX subjects, the appli-

cant must be a graduate from a college of pharmacy accredited by the American council on pharmaceutical education (ACPE).

(2) To pass an examination, the candidate shall have a score of at least 75 in the NAPLEX examination.

(3) To pass the jurisprudence examination in the state of New Mexico, the candidate shall have a score of at least 75.

(4) Candidates taking NAPLEX in participating states may transfer scores in compliance with NABP" score transfer program", upon payment of the fee to the New Mexico board of pharmacy for registration by examination, and in compliance with such other requirements set by the New Mexico board of pharmacy so long as New Mexico participates in the NABP "score transfer program".

(5) Only those score-transfer applicants who have passed the NAPLEX examination and received their score may take the MPJE.

**B.** Graduates of schools or colleges of pharmacy not accredited by the American council on pharmaceutical education (A.C.P.E.), shall be eligible to take the licensing examination required under this section by providing evidence satisfactory to the board that the applicant has satisfied the requirements of 61-11-9 NMSA 1978:

(1) has submitted an application on a form supplied by the board;

(2) has completed the internship requirements of Part 5; and

(3) has successfully completed the national association of board of pharmacy foreign pharmacy graduate examination committee certification program~~[- during which the applicant must pass the Foreign Pharmacy Graduate Equivalency Examination, and demonstrate English language proficiency by passing both the Test of English as a Foreign Language (TOEFL) with a score of 550 or higher and the Test of Spoken English (TSE) with a score of 55 or higher].~~

**C.** Applicants with work experience as a pharmacist in another country may petition the board to accept the work experience in lieu of internship requirements of 16.19.5 NMAC. The board may elect to accept all, a portion or none of the experience as a substitute for internship requirements.

[04-30-98; 16.19.2.8 NMAC - Rn, 16 NMAC 19.2.8, 03-30-02; A, 02-15-03; A, 12-15-05]

**NEW MEXICO BOARD OF PHARMACY**

This is an amendment to 16.19.12 NMAC, Sections 12 & 13, effective December 15, 2005.

**16.19.12.12 LICENSE/REGISTRATION RENEWAL:**

- A. Pharmacist license renewal for active \$200.00 bi-ennially
- B. Pharmacist license renewal for in-active \$70.00 bi-ennially
- C. Intern renewal \$30.00 per year
- D. Duplicate license for interns and pharmacists \$10.00
- E. Controlled substance registration \$60.00
- F. Duplicate license for controlled substance \$10.00
- G. Pharmacy technician renewal \$30.00 bi-ennially
- H. Pharmacist clinician \$70.00 bi-ennially

**I. Pharmacist license renewal for active pharmacists with 50 or more years of service - \$70.00 bi-ennially** [03-07-80...08-27-90; A, 07-31-98; A, 11-14-98; 16.19.12.12 NMAC - Rn, 16 NMAC 19.12.12, 03-30-02; A, 12-15-02; A, 09-30-03; A, 07-15-04; A, 12-15-05]

**16.19.12.13 LICENSE FEES:**

- A. License fee for drug manufacturer [~~\$5000.00 for 1 year or \$10,000.00 for 2 years. Upon implementation of a federal medicare prescription drug benefit program, the annual fee shall revert to \$1000.00 annually.~~] **\$700.00 bi-ennially**
- B. Wholesale drug distributor [~~\$5000.00 for 1 year or \$10,000.00 for 2 years. Upon implementation of a federal medicare prescription drug benefit program, the annual fee shall revert to \$1000.00 annually.~~] **\$700.00 bi-ennially**
- C. Drug manufacturer/repackager [~~\$5000.00 for 1 year or \$10,000.00 for 2 years. Upon implementation of a federal medicare prescription drug benefit program, the annual fee shall revert to \$1000.00 annually.~~] **\$700.00 bi-ennially**
- D. Repackager [~~\$5000.00 for 1 year or \$10,000.00 for 2 years. Upon implementation of a federal medicare prescription drug benefit program, the annual fee shall revert to \$1000.00 annually.~~] **\$700.00 bi-ennially**
- E. Retail pharmacy license \$300.00 bi-ennially
- F. Hospital pharmacy license \$300.00 bi-ennially
- G. Hospital drug room pursuant to Section 61-11-7 of Pharmacy Act \$60.00

- H. Duplicate license \$10.00
- I. Nonresident pharmacies \$400.00 bi-ennially
- J. Seller or dispenser of contact lenses \$400.00 bi-ennially
- K. Alternative **reduced licensure** fee for wholesale **drug distributor**/manufacturer/repackager as determined by the board or board's designee. [03-07-80...05-01-93; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 03-30-02; A, 09-30-03; A, 07-15-04; A, 01-15-2005; A, 12-15-05]

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

PUBLIC EDUCATION DEPARTMENT  
 JERRY APODACA EDUCATION BUILDING  
 300 DON GASPAR  
 SANTA FE, NEW MEXICO 87501-2786

The Public Education Department ("Department") has repealed 6.12.2 NMAC (HEALTH - IMMUNIZATION OF SCHOOL CHILDREN) and 6.12.3 NMAC (HEALTH - ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)), effective November 15, 2005. The Department has adopted new rule 6.12.2 NMAC (HEALTH SERVICES), which repromulgates the provisions of the repealed 6.12.2 NMAC, repromulgates and updates the provisions of the repealed 6.12.3 NMAC, and adds new language addressing self-carry for the treatment of asthma and anaphylaxis associated medical conditions.

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY**  
**PART 2 HEALTH SERVICES**

**6.12.2.1 ISSUING AGENCY:** Public Education Department [6.12.2.1 NMAC - Rp, 6.12.2.1 NMAC, 11-15-05]

**6.12.2.2 SCOPE:** This regulation applies to children attending public, nonpublic, or home schools in New Mexico unless otherwise expressly limited. [6.12.2.2 NMAC - Rp, 6.12.2.2 NMAC, 11-15-05]

**6.12.2.3 STATUTORY**

**AUTHORITY:** This regulation is adopted pursuant to Section 22-2-1 NMSA 1978. [6.12.2.3 NMAC - Rp, 6.12.2.3 NMAC, 11-15-05]

**6.12.2.4 DURATION:** Permanent [6.12.2.4 NMAC - Rp, 6.12.2.4 NMAC, 11-15-05]

**6.12.2.5 EFFECTIVE DATE:** 11-15-05, unless a later date is cited at the end of a section. [6.12.2.5 NMAC - Rp, 6.12.2.5 NMAC, 11-15-05]

**6.12.2.6 OBJECTIVE:** This rule addresses health services for children attending schools in New Mexico. [6.12.2.6 NMAC - Rp, 6.12.2.6 NMAC, 11-15-05]

**6.12.2.7 DEFINITIONS:** [Reserved]

**6.12.2.8 REQUIREMENTS FOR IMMUNIZATION OF CHILDREN ATTENDING PUBLIC, NONPUBLIC, OR HOME SCHOOLS:**

- A. The following definitions apply to this section.
  - (1) "Administrative authority" means the superintendent, principal or the designee of such person.
  - (2) "Public health division regulations" means those regulations adopted by the public health division of the department of health pursuant to the authority granted in Sections 24-5-1 to 24-5-6, NMSA 1978 and including the immunization schedule.
  - (3) "Licensed physician" means a physician licensed to practice medicine or osteopathic medicine in New Mexico, another state or territory.
  - (4) "Certified nurse practitioner" means an individual licensed as a certified nurse practitioner with prescriptive authority by the New Mexico board of nursing, another state or territory.
  - (5) "Required immunizations" means those immunizations against diseases deemed to be dangerous to the public health by the public health division and set forth in its immunization schedule effective at date of enrollment.
  - (6) "Satisfactory evidence of commencement and completion of immunization" means satisfactory evidence of a person having begun the process of immunizations in a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized public or private health facility stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule.

Persons enrolling in schools who have begun the process of immunization shall have one month following the date of enrollment to complete the required immunizations and submit satisfactory evidence of completing the required immunizations or having continued the process of the required series.

(7) "Satisfactory evidence of immunization" means a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized, licensed health facility stating that the required immunizations have been administered to the person.

B. No student shall be enrolled in the public, nonpublic, or home schools in the state unless the student can present satisfactory evidence of commencement or completion of immunization in accordance with the immunization schedule and rules and regulations of the public health division.

C. Exemptions from immunization:

(1) The student is exempt from immunization as required by Subsection B of this rule upon filing with the governing authority:

(a) a statement or certificate signed by a licensed physician or certified nurse practitioner stating that the physical condition of the person seeking enrollment is such that immunization would seriously endanger the life or health of the person; or

(b) an exemption granted by the public health division on the basis of:

(i) notarized affidavits or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(ii) notarized affidavits or written affirmation from his parent or legal guardian that his religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

(2) Exemption from obtaining the required immunizations is valid for a period not to exceed nine (9) months and will not extend beyond the end of the school year in which the child is currently enrolled.

D. Disenrollment: If satisfactory evidence of commencement or completion of immunization or an exemption from immunization in accordance with Subsection C is subsequently determined to be invalid for any reasons and the student is unable to provide either valid satisfactory evidence of commencement or completion of immunization or a valid exemption from immunization in accordance with Subsection C, the administrative authority

shall commence disenrollment proceedings.

E. Administrative duty to report:

(1) It is the duty of each school superintendent, whether of a public or nonpublic school, to cause to be prepared a record showing the required immunization status of every child enrolled in or attending a school under his (her) jurisdiction.

(2) These records must be kept current and available to public health authorities.

(3) The name of any parent or guardian who neglects or refuses to permit his (her) child to be immunized against diseases as required by rules and regulations promulgated by the public health division shall be reported by the school superintendent to the director of the public health division within a reasonable time after such facts become known to the superintendent. [6.12.2.8 NMAC - Rp, 6.12.2.7, 8, 9, 10 & 11 NMAC, 11-15-05]

#### **6.12.2.9 STUDENT'S RIGHT TO SELF ADMINISTER CERTAIN MEDICATIONS**

A. The following definitions apply to this section.

(1) "Health care practitioner" means a person authorized under law in New Mexico to prescribe drugs for the treatment of asthma and anaphylaxis associated medical conditions.

(2) "Medication" means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and includes inhaled bronchodilators, inhaled corticosteroids and auto-injectable epinephrine.

(3) "Self-administration" means a student's discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to prescription or written direction from a health care practitioner.

B. Requirements

(1) General rights: Schools (whether public or nonpublic) must grant to any student in grades kindergarten through 12 authorization to carry and self-administer health care practitioner prescribed asthma treatment medications and anaphylaxis emergency treatment medication if the following conditions are met:

(a) a health care practitioner has prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication; and

(b) the student has demonstrated the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed by the health care practitioner (or such practitioner's designee) and the school nurse or other school official who is a public educa-

tion department licensed health care provider; and

(c) the school nurse (if available) with the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(d) the school has, in writing, informed the parent or guardian of the student that the school, including its employees and agents, is to incur no liability as a result of any injury arising from the self-administration of medication pursuant to this section; and

(e) the student's parent or guardian has completed and submitted to the school:

(i) any written documentation required by the school, including the statement required by Paragraph (1);

(ii) the treatment plan formulated under Subparagraph (c) of this paragraph; and

(iii) a signed statement from the parent or guardian of the student acknowledging that, notwithstanding any provision of state law to the contrary, the school (including its employees and agents) is to incur no liability as a result of any injury arising from such self-administration of medication and the parent or guardian will indemnify and hold harmless the school (including its employees and agents) against any claim arising out of such self-administration of medication.

(2) Extent of authorization: An authorization granted under Paragraph (1) of Subsection B must allow the student involved to possess and use his/her medication:

(a) while in school;

(b) while at a school-sponsored activity;

(c) during normal before-school and after-school activities such as before-school or after school care on school-operated property; and,

(d) in transit to or from school or school-sponsored activities.

(3) Duration of authorization. An authorization granted under Subsection B:

(a) must be effective only for the school year for which it is granted; and

(b) must be renewed by the parent or guardian each subsequent school year in accordance with this section.

(4) The school must ensure that back-up medication, if provided by a student's parent or guardian, be kept at the student's school at a location easily accessible to the student in event of an asthma or anaphylaxis emergency. Each school must develop policies and procedures to address the safekeeping of back-up medication in a manner that ensures the medication is easi-

ly accessible by the student. Authorized school personnel who in good faith provide a person with backup medication as provided in this paragraph are not liable for civil damages as a result of providing the medication.

(5) Maintenance of information: Information described in Subparagraphs (c) and (e) of Paragraph (1) shall be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency. Each school must develop policies and procedures to address the safekeeping and confidentiality of the required information.  
[6.12.2.9 NMAC - N, 11-15-05]

#### 6.12.2.10 HUMAN IMMUNODEFICIENCY VIRUS (HIV)

A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to students and school employees infected with HIV, provides for appropriate curricula regarding HIV, and requires community involvement in the development of policies and the review of instructional materials.

B. Each school district shall implement a policy that will ensure that all students infected with HIV have appropriate access to public education and that their rights to privacy are protected and to further ensure that the rights to privacy of all school employees infected with HIV are protected.

C. Curricula:

(1) Each school district shall provide instruction about HIV and related issues in the curriculum of the required health education content area to all students in the elementary grades, in the middle/junior high school grades, and in the senior high school grades.

(2) Educational materials and grade levels of instruction shall be determined by the local school district and shall be appropriate to the age group being taught.

(3) The instructional program shall include, but not necessarily be limited to:

(a) definition of HIV and acquired immune deficiency syndrome (AIDS);

(b) the symptoms and prognosis of HIV and AIDS;

(c) how the virus is spread;

(d) how the virus is not spread;

(e) ways to reduce the risks of getting HIV/AIDS, stressing abstinence;

(f) societal implications for this disease;

(g) local resources for appropriate medical care; and

(h) ability to demonstrate refusal skills, overcome peer pressure, and use

decisionmaking skills.

D. Community involvement. Each local board of education shall insure the involvement of parents, staff; and students in the development of policies and the review of instructional materials.

[6.12.2.10 NMAC - Rp, 6.12.3.8, 9 & 10 NMAC, 11-15-05]

#### HISTORY OF 6.12.2 NMAC:

**PRE-NMAC HISTORY:** The material in 6.12.2.8 NMAC is derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 76-16, Immunization Of School Children, filed September 1, 1976; and State Board of Education (SBE) Regulation No. 76-16 (Amendment 1), Immunization Of School Children, filed October 19, 1988. The material in 6.12.2.10 NMAC was derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 87-11, Regulation On Acquired Immune Deficiency Syndrome (AIDS), filed April 13, 1988.

#### HISTORY OF REPEALED MATERIAL:

The material in 6.12.2.8 NMAC is derived from 6.12.2 NMAC, Immunization of School Children - repealed effective 11-15-05. The material in 6.12.2.10 NMAC is derived from 6.12.3 NMAC, Acquired Immune Deficiency Syndrome (AIDS) - repealed effective 11-15-05.

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**Explanatory paragraph:** This is an amendment to 6.40.2 NMAC (NEW MEXICO SCHOOL BUS STANDARDS AND SCHOOL BUS PHASE-OUT), effective 11-15-2005. Section 1 (ISSUING AGENCY) is amended to reflect the Public Education Department as the issuing agency pursuant to the amended Article XII, Section 6 of the Constitution of New Mexico. Subsections D (BRAKES), G (COLOR), J (ELECTRICAL SYSTEM), V (POWER AND GRADE ABILITY), BB (TIRES AND RIMS), and FF (VEHICLE INTERLOCK SYSTEM) of 6.40.2.9 NMAC (BUS CHASSIS STANDARDS) are amended. Subsections D (BATTERY), H (COLOR), K (CROSSING CONTROL ARM), R (GLAZING), T (subsection name amended to read "HEATING AND AIR CONDITIONING SYSTEMS"), V (IDENTIFICATION), BB (MIRRORS), GG (POWER LIFTS AND RAMPS), NN

(SEAT AND CRASH BARRIERS), OO (SECUREMENT AND RESTRAINT SYSTEM FOR WHEELCHAIR/MOBILITY AID AND OCCUPANT), VV (STOP SIGNAL ARM), YY (SUPPORT EQUIPMENT AND ACCESSORIES), AAA (TECHNOLOGY AND NEW EQUIPMENT), HHH (WINDOWS), and KKK (WIRING) of 6.40.2.10 NMAC (BUS BODY STANDARDS) are amended. Subsections E (DISTRIBUTION OF FUNDS) and F (REPORTING AND ACCOUNTABILITY) of 6.40.2.11 NMAC (SCHOOL BUS ADVERTISEMENTS) are amended. Numerous words and punctuation throughout the rule have also been changed to conform to the state records center and archives' requirements with respect to use of the upper case and lower case and punctuation.

**6.40.2.1 ISSUING AGENCY:**  
[State Board of Education] The Public Education Department  
[7-01-96, 7-30-99; 6.40.2.1 NMAC - Rn, 6 NMAC 9.2.1 7-31-2000; A, 11-15-2005]

#### 6.40.2.9 BUS CHASSIS STANDARDS

##### D. BRAKES

(8) All type C and type D school [47-passenger or larger] buses shall be equipped with air brakes.

##### G. COLOR

(1) Chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be in national school bus yellow. The flat top surface of the hood may be non-reflective national school bus yellow. Activity school buses may be team colors.

(2) Demountable rims, if used, may be, silver, gray or black as received from the wheel manufacturer. Wheels may be polished aluminum, chrome or of a team color on activity buses only.

#### J. ELECTRICAL SYSTEM

##### (1) Battery

(b) Since all batteries are to be secured in a sliding tray in the body, chassis manufacturers shall temporarily mount the battery on the chassis frame, except that van conversion or cutaway front-section chassis may be manufacturer's standard configuration. In these cases, the final location of the battery and the appropriate cable lengths shall be according to the design objectives, or as mutually agreed upon by the chassis and body manufacturer. In all cases, however, the battery cable provided with the chassis shall have sufficient length to allow some slack. Battery storage area shall be secured with a locking system or release system that shall be accessible from the dri-



ver's compartment.

**(2) Alternator**

(b) Types A-II buses over 15,000 lbs. GVWR and all types C and D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting society of automotive engineers (SAE) J 180, having a minimum output rating of ~~[400]~~ 130 amperes. Alternators of ~~[400]~~ 130 through 145-ampere design shall produce a minimum of 50 percent amperes output at engine idle speed.

(c) All buses equipped with an electrical power lift shall have a minimum ~~[400]~~ 130-ampere alternator.

**(3) Wiring**

(b) Chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or in an accessible location in the engine compartment of vehicles designed without a cowl, that shall contain the following terminals for the body connections:

(i) main ~~[400]~~ 130 amp body circuit

**V. POWER AND GRADE ABILITY:** ~~[GVWR shall not exceed 185 pounds per published net horsepower of the engine at the manufacturer's recommended maximum number of revolutions per minute.] Shall not exceed the manufacturer's recommended standards for the vehicle size.~~

**BB. TIRES AND RIMS**

(1) Tires and rims of the proper size and tires with a load rating commensurate with chassis manufacturer's gross vehicle weight rating shall be provided. The use of multi-piece rims and/or tube-type tires shall not be permitted on any school bus ordered after the effective date of these standards. Rims on activity buses may be chrome or of a team color.

**FF. VEHICLE INTER-LOCK SYSTEM:** School buses equipped with a power lift shall ~~[have a spring park brake and transmission locking system that automatically activates when the transmission is in the neutral position and special service door is in the open position. An interlock key shall be provided that disables the vehicle and automatically increases the engine idle while the interlock key is removed from the system]~~ meet 49 CFR 571.403 and 571.404 (FMVSS).

[7-01-96; 6.40.2.9 NMAC - Rn, 6 NMAC 9.2.10 & A, 7-31-2000; A, 07-15-2003; A, 11-15-2005]

**6.40.2.10 BUS BODY STANDARDS**

**D. BATTERY**

(2) When the battery is mounted as described in the chassis section, the body manufacturer shall attach the battery securely on a slide-out or swing-out tray in a closed, vented compartment in the body

skirt, so that the battery is accessible for convenient servicing from the outside. Battery compartment door or cover shall be hinged at front or top, and secured by ~~[an adequate and conveniently operated latch or other type fastener]~~ a locking system. On all type A buses, one or both batteries may be mounted in the engine compartment in an accessible location.

**H. COLOR**

(3) ~~[Optionally]~~ The roof of the bus ~~[may]~~ shall be painted white extending down to the drip rails on the sides of the body, except that front and rear roof caps shall remain national school bus yellow.

**K. CROSSING CONTROL ARM:** A crossing control arm if equipped shall be placed on the front bumper and shall have a positive locking device. The operation of the crossing control arm shall be ~~[electrical]~~ equipped with a shut off control switch located in the driver compartment.

(1) Buses equipped with a crossing control arm shall be mounted on the right side of the front bumper, and shall ~~[not open more than 90°]~~ open to a 90° angle.

**R. GLAZING [~~(optional)~~]:** Tinted glazing ~~[may]~~ Glazing shall not exceed 28% and shall be installed in all doors, windows, and windshields consistent with federal, state, and local regulations.

**T. [~~HEATERS~~] HEATING AND AIR CONDITIONING SYSTEMS**

(13) Air conditioning (optional) may be equipped.

**V. IDENTIFICATION**

(3) Optional lettering may be displayed as follows:

(c) Manufacturer, dealer or school identification or logos. Team logos of team colors may be painted on the sides of the school bus, not to interfere with driver(s) visibility.

**BB. MIRRORS**

(2) Each school bus shall be equipped with exterior mirrors meeting the requirements of 49 CFR 571.111 (FMVSS). Mirrors shall be ~~[easily adjustable]~~ electrical remote, but shall be rigidly braced with up to one (1") inch mounting brace so as to reduce vibration. The mirror system shall be an independent system consisting of one (1) flat glass mirror assembly and one (1) convex mirror assembly per side of the vehicle. The cross view mirror, reflective surface shall be of a type for maximum, low light, visibility. The lens shall present the driver with a flat, horizontal top surface, which limits the upward view of the sky and solar glare and shall provide for lateral adjustment only.

**GG. POWER LIFTS AND RAMPS:** Power lift shall be located on the right rear side of the bus body and shall comply with the requirements of the imple-

menting regulation to the Americans with Disability Act (ADA) as found in 36 CFR 1192.23. Exception: Buses exclusively used for special education may place lift on front side of the bus. The lift may be located on the left side of the bus if, and only if, the bus is primarily used to deliver students to the left side of the one way streets.

(3) All vehicles covered by this specification shall provide a level-change mechanism or boarding device (e.g., lift or ramp) complying with paragraph ~~[b or c of this section]~~ (b) or (c) of 36 CFR 1192.23 and sufficient clearances to permit a wheelchair or other mobility aid user to reach a securement location.

**NN. SEAT AND CRASH BARRIERS**

(2) All seats shall have a minimum depth of 15-inches. All seat backs shall be a minimum of ~~[24 inches]~~ 28 inches high and a minimum 20-inches from seating reference point.

~~(8) [Use of a flip seat at any side emergency door location in conformance with 49 CFR 571.222 (FMVSS), including required aisle width to side door, is acceptable. Any flip seat shall be free of sharp projections on the underside of the seat bottom. The underside of the flip up seat bottoms shall be padded or contoured to reduce the possibility of snagged clothing or injury during use. Flip seats shall be constructed to prevent passenger limbs from becoming entrapped between the seat back and the seat cushion when in upright position. The seat cushion shall be designed to rise to a vertical position automatically when not occupied.] A flip seat is not permitted, with the exception of the activity vehicle.~~

**OO. SECUREMENT AND RESTRAINT SYSTEM FOR WHEELCHAIR/MOBILITY AID AND OCCUPANT:** Track seating is required. For purposes of better understanding the various aspects and components of this section, the term securement or phrase securement system is used exclusively in reference to the device(s) which secure the wheelchair/mobility aid. The term restraint or phrase restraint system is used exclusively in reference to the device(s) used to restrain the occupant of the wheelchair/mobility aid. The phrase securement and restraint system is used to refer to the total system, which secures and restrains of the wheelchair/mobility aid and the occupant.

**VV. STOP SIGNAL ARM:**

All stop signal arm(s) shall comply with the requirements of 49 CFR 571.131 (FMVSS) and shall be double faced except for the rear stop arm. Stop arm signals shall be equipped with red flashing LED lamps connected to the alternating red flashing signal lamp circuits and visible to the front and rear.

**YY. SUPPORT EQUIPMENT AND ACCESSORIES**

(1) Each bus ~~[which is set up to accommodate wheelchair/mobility aids or other assistive or restraint devices which utilize belts,]~~ shall contain at least one belt cutter properly secured in a location within reach of the driver while belted into his/her driver's seat. The belt cutter shall be durable and designed to eliminate the possibility of the operator or others being cut during use.

**AAA. TECHNOLOGY AND NEW EQUIPMENT:** It is the intent of these standards to accommodate new technologies and equipment, which will better facilitate the transportation of students. When a new technology, piece of equipment, or component is desired to be applied to the school bus, and it meets the following criteria, it may be acceptable.

(6) The inspection technology sensory equipment including the GPS emergency notification systems shall be provided.

**KKK. WIRING**

(2) Circuits: Two (2) additional circuits shall be provided for a two-way radio communication system and video camera surveillance equipment. [7-01-96; 6.40.2.10 NMAC - Rn, 6 NMAC 9.2.11 & A, 7-31-2000; A, 07-15-2003; A, 11-15-2005]

**6.40.2.11 SCHOOL BUS ADVERTISEMENTS****E. DISTRIBUTION OF FUNDS**

(3) Forty percent of the proceeds raised shall be distributed on a per membership basis of middle and junior high schools by the ~~[State Superintendent]~~ secretary of education to school districts for extracurricular activities. If a school district does not expend money from the school bus advertising fund for extracurricular activities, it shall revert to the fund.

**F. REPORTING AND ACCOUNTABILITY**

(1) Funds raised by a school district from lease agreements relating to the use of advertising space on school buses by commercial advertisers shall be remitted to the ~~[state department of education]~~ public education department, accounted for and subject to review and examination.

(2) School districts shall report to the ~~[department of education]~~ public education department on how the funds were used in the technology plans and for extracurricular activities. [7-01-96, 7-31-97; 6.40.2.11 NMAC - Rn, 6 NMAC 9.2.12 & A, 7-31-2000; A, 11-15-2005]

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**Explanatory paragraph:** This is an amendment to 6.41.4 NMAC (STANDARD FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS), effective 11-15-05. Sections 1 (ISSUING AGENCY), 2 (SCOPE) and 6 (OBJECTIVE) are amended to reflect the amended Article XII, Section 6 of the Constitution of New Mexico. Section 3 (STATUTORY AUTHORITY) is amended to reflect current statutory authority. Section 7 (DEFINITIONS) is amended to reflect the amended Article XII, Section 6 of the Constitution of New Mexico and to add new definitions. Section 9 (SCHOOL ADMINISTRATION RESPONSIBILITIES) is amended to reflect the amended Article XII, Section 6 of the Constitution of New Mexico in Subsections D and I. Paragraph (4) of Subsection E, Subparagraphs (c) and (d) of Paragraph (1) of Section J (School bus driver selection) of Section 9 are also amended and a new Subsection L added. Subsections A and B of Section 10 (TRANSPORTATION PROVIDER RESPONSIBILITIES) is amended to reflect the amended Article XII, Section 6 of the Constitution of New Mexico; a new Subsection D is added. Subsection D (Physical qualifications) of Section 11 (SCHOOL BUS DRIVERS, SUBSTITUTES, AND BUS ASSISTANTS RESPONSIBILITIES) is amended, and new Subsections F and G are added. Paragraph (4) of Subsection C and Paragraph (1) of Subsection E of Section 12 (SCHOOL BUS OPERATIONS AND EQUIPMENT) are amended. Subsections A, B, and F of Section 13 (INSTRUCTIONAL PROGRAMS FOR SCHOOL BUS DRIVERS) are amended.

**6.41.4.1 ISSUING AGENCY:** ~~[State Board of Education]~~ Public Education Department [12-31-98, 07-30-99; 6.41.4.1 NMAC - Rn, 6 NMAC 9.5.3.1, 07-01-01; A, 11-15-05]

**6.41.4.2 SCOPE:** Provisions of Chapter 41, Part 4 apply to public school districts and charter schools. This regulation governs local public school districts. If a local public school district choose to provide transportation services by contracting with an outside provider instead of through district employed personnel, it may do so. The local public school district, however, is responsible for ensuring that the provisions of transportation services complies with all pertinent state and federal regulations and statutes and ~~[state board of education]~~ pub-

lic education department regulations. [12-31-98; 6.41.4.2 NMAC - Rn, 6 NMAC 9.5.3.2, 07-01-01; A, 11-15-05]

**6.41.4.3 STATUTORY AUTHORITY:** This regulation is promulgated pursuant to Sections 22-2-1, 22-2-2, 22-8-26, 22-10A-5, and 22-16-2, NMSA 1978.

[12-31-98; 6.41.4.3 NMAC - Rn, 6 NMAC 9.5.3.3, 07-01-01; A, 11-15-05]

**6.41.4.6 OBJECTIVE:** To establish a safe and efficient unified system of transportation responsive to the needs of eligible students and to guide the provision of school transportation and transportation as a related service to students with disabilities. Student transportation services, therefore, shall ensure that:

B. all eligible students are served within the requirements of current federal and state laws and ~~[state board of education]~~ public education department regulations; [12-31-98; 6.41.4.6 NMAC - Rn, 6 NMAC 9.5.3.6, 07-01-01; A, 11-15-05]

**6.41.4.7 DEFINITIONS:**

**D. Eligible student**

(1) Students eligible for transportation services under federal and state statute or under the ~~[state board of education's]~~ public education department's "Hazardous Walking Regulation." State statute provides that students are eligible for transportation services if school bus routes are:

- (a) one mile one-way for students in grades kindergarten through 6;
- (b) one and one-half miles one way for students in grades 7-9, and;
- (c) two miles one way for students in grades 10-12.

**M. School bus driver instructor** - Any, person certified by the ~~[state]~~ school transportation ~~[unit]~~ bureau to provide behind the wheel pre-service ~~[and in-service]~~ training for New Mexico school bus drivers.

**P. Serious traffic offense** means a conviction of any of the following offenses contained in the Motor Vehicle Code [Articles 1 through 8 of Chapter 66 NMSA 1978]:

- (1) speeding in excess of 15 miles above any posted speed limit;
- (2) reckless driving;
- (3) careless driving;
- (4) passing a school bus;
- (5) following too closely;
- (6) operating a commercial motor vehicle without holding a valid commercial driver's license (CDL) along with any endorsements;
- (7) racing on a highway;
- (8) homicide or great bodily harm

by vehicle:

(9) injury to a pregnant woman;

(10) failing to stop after an accident involving death or personal injury;

(11) operating a vehicle after suspension or revocation of a driver's license.

**[P.] Q. Substitute driver** - An individual employed by a school district or private contractor to operate a school bus on a regular to-and-from route when the assigned school bus driver is absent. This person shall meet all certification and licensing requirements of the regular school bus driver.

**[Q.] R. Transportation as a related service** - Transportation modifications and/or supportive services specified in the IEP as required to assist a student with disabilities to benefit from educational services in the least restrictive environment. If modifications and/or supportive services are not required, transportation is not a related service. When the student's needs do not require modifications, transportation is provided as a regular service if the student is eligible.

**[R.] S. Transportation provider** - An individual or business that has entered into a binding agreement with the local school board to provide school transportation services.

**T. Transportation supervisor** - An individual, designated by the district superintendent, charter school, or district transportation provider, who has responsibility to monitor and/or guide the local school transportation program and/or drivers and who is required to make daily observations to detect reasonable suspicion for alcohol and/or substance use. [12-31-98; 6.41.4.7 NMAC - Rn, 6 NMAC 9.5.3.7 & A, 07-01-2001; A, 11-15-05]

#### 6.41.4.9 SCHOOL ADMINISTRATION RESPONSIBILITIES

**D. School bus routes:** School district administrator shall follow ~~all of the state board of education~~ public education department regulations and procedures for the establishment and monitoring of school bus routes.

**E. Loading and unloading students at schools**

(4) The school bus engine must be off and the park brake activated while students are loading/unloading from school buses. Should the driver be required to leave the driver's seat, the keys shall be removed from the ignition switch. Exception: School buses with a wheelchair lift that meets construction standards requiring a vehicle interlock system for school buses built after July 1, 2003.

**H. Provisions of transportation for students with disabilities**

(4) The procedural safeguards

outlined in ~~state board of education~~ public education department regulations regarding due process procedures, protection in evaluation and delivery of services, least restrictive environment, and confidentiality of information, shall apply when considering transportation as a related service to students with disabilities.

#### I. Student behavior

(1) When a student's behavior endangers the safety of others, the student shall be suspended from the transportation vehicle according to the local board of education's policies and ~~state board of education~~ public education department regulations.

(2) Provisions for removal and reinstatement of transportation services for students with disabilities shall be specified in the local board of education's policies and in the student's IEP. In the interim, the student with the disability may require other means to access educational services. Any change in related service(s) transportation must be made through the IEP process, and the procedural safeguards specified in ~~state board of education~~ public education department regulations shall apply.

**J. School bus driver selection**

(1) The school district administrator or local transportation provider shall adhere to all applicable federal and state employment requirements when employing, re-employing or retaining a school bus driver. The employer shall maintain records verifying completion of the following procedures in their files:

(c) a criminal background check in accordance with Section ~~[22-10-3.3]~~ 22-10A-5, NMSA 1978; to determine if the applicant has a record of criminal convictions; the school district and transportation provider shall maintain an agreement, authorization, waiver and release form, in addition to a criminal history affidavit on any new employee working with children;

(d) satisfactory completion of a ~~school bus driver~~ department of transportation (DOT) physical examination;

**L. Provide training for transportation supervisors/administrators and other school district or charter school employee(s) who are responsible for supervision of the school transportation program and/or school employed drivers:** Annually a minimum of two (2) hours of in-service training is required. The contents of the training will be determined by the state transportation director. [12-31-98; 2-14-00; 6.41.4.9 NMAC - Rn, 6 NMAC 9.5.3.9 & A, 07-01-01; A, 11-15-05]

#### 6.41.4.10 TRANSPORTATION PROVIDER RESPONSIBILITIES

**A. These services**

**include:**

(3) hiring all drivers, substitute drivers and assistants in accordance with local policy, ~~state board of education~~ public education department regulations and section 22-10-3.3, NMSA, 1978;

**B. Equipment recall:** Any school bus owner, when notified to return the vehicle for modification or repair by an automotive manufacturer, distributor, ~~state department of education~~ public education department or federal agency, shall comply immediately with the directive.

**D. Provide training for transportation providers and their employees who have supervisory responsibility of school bus drivers:** Annually a minimum of two (2) hours of in-service training is required. The contents of the training will be determined by the state transportation director.

[12-31-98; 6.41.4.10 NMAC - Rn, 6 NMAC 9.5.3.10, 07-01-01; A, 11-15-05]

#### 6.41.4.11 SCHOOL BUS DRIVERS, SUBSTITUTES, AND BUS ASSISTANTS RESPONSIBILITIES

**D. Physical qualifications**

(1) Before transporting students, a school bus driver, activity driver, substitute driver and bus assistant are required to have a physical examination, and renewed every 24 months from the date of the last examination or before as specified by a licensed physician. School bus drivers, activity school bus drivers and substitute school bus drivers are required to use the physical examination form established by the department of transportation (DOT).

(3) All physical examinations shall be conducted by a licensed physician ~~[under criteria developed by and certified on a form specified by the state transportation director].~~

**E. School bus driver license requirements**

(1) Pursuant to the Motor Vehicle Code, an operator of a school bus shall possess a commercial driver license (CDL), class B with the appropriate endorsements (P and S endorsement).

**F. Operational standards for an initial driver applicant**

(1) Any person initially applying for full or part time employment with a school district or charter school to operate a school bus or a school owned activity vehicle used to transport students shall not be eligible to operate such a vehicle if he has:

(a) been convicted for driving a vehicle while under the influence of intoxicating liquor or drugs ("DWT") within three (3) years of the date of his application;

(b) been convicted for DWI beyond three (3) years from the date of his application unless he provides a written ver-

ification from a licensed counselor or physician that he has successfully completed an alcohol or drug abuse program;

(c) been convicted two (2) or more times for DWI;

(d) had his driver's license suspended or revoked within the previous five years for any serious traffic offense;

(e) been convicted of more than three serious traffic offenses within three (3) years since the date of his application;

(f) been convicted of any felony within ten (10) years since the date of his application;

(g) a conviction for any violation of the Controlled Substances Act [30-31-1 to 30-31-25, 30-31-26 to 30-31-28, 30-31-30 to 30-31-40, NMSA 1978];

(h) been convicted of child abuse pursuant to Section 30-6-1, NMSA 1978;

(i) been convicted of any other criminal offense in which a child was a victim as required by the offense.

(2) Any person initially employed or applying for full or part time employment with a private entity to operate a school bus to transport public school students, or a school owned activity vehicle used to transport public school students, shall not be eligible to operate such a vehicle for the same reasons listed at Subparagraphs (a) through (i) of Paragraph (1) of Subsection F of 6.41.4.11 NMAC.

(3) Because they are deemed to have unsupervised access to students at a public school, effective January 1, 2006, any person initially employed or applying for full or part time employment with a private entity to operate a school bus to transport public school students, or a school owned activity vehicle used to transport public school students, shall at his own expense submit to a fingerprint-based background check in accordance with section 22-10A-5, NMSA 1978, provided that:

(a) such background check shall be conducted at the time of that individual's initial employment whether for full or part time to operate a school bus to transport public school students or a school owned activity vehicle used to transport public school students;

(b) a school district, charter school or transportation provider shall maintain an agreement, authorization, waiver and release form, in addition to a criminal history affidavit on file for any employee employed for full or part time to operate a school bus or a school owned activity vehicle.

**G. Continuing standards for drivers of school buses or school-activity vehicles**

(1) Any individual who currently operates a school bus or a school owned activity vehicle used to transport students, shall no longer be eligible to operate a

school bus or a school owned activity vehicle if after January 1, 2006, he receives any of the following:

(a) a conviction for driving a vehicle while under the influence of intoxicating liquor or drugs;

(b) a suspension or revocation of his driver's license for any serious traffic offense;

(c) convictions for more than three serious traffic offense as defined in this rule;

(d) a conviction for any felony;

(e) a conviction for any violation of the Controlled Substances Act [30-31-1 to 30-31-25, 30-31-26 to 30-31-28, 30-31-30 to 30-31-40, NMSA 1978];

(f) a conviction for child abuse pursuant to Section 30-6-1, NMSA 1978;

(g) a conviction for any other criminal offense in which a child was a victim as required by the offense.

(2) The background check requirements set forth at Paragraph (3) of Subsection F of 6.41.4.11 NMAC, shall not be imposed on anyone who on January 1, 2006, is already engaged in full or part time employment to operate a school bus to transport public school students, or a school owned activity vehicle used to transport public school students. This paragraph shall not be interpreted as negating or voiding any duly adopted school district or charter school policy related to background checks of school employees or contractors' employees.

[12-31-98; 6.41.4.11 NMAC - Rn, 6 NMAC 9.5.3.11 & A, 07-01-01; A, 11-15-05]

#### **6.41.4.12 SCHOOL BUS OPERATIONS AND EQUIPMENT:**

**C. Procedures for loading or unloading students on the traveled portion of the roadway**

(4) Bring the bus to a full stop ~~[and disengage the gears by shifting to neutral gear position and]~~ set the parking brake and disengage the gears by shifting to neutral gear position. The alternating red flasher lights and stop arm shall be activated automatically when the service door is opened after the bus is completely stopped.

**E. Loading and unloading at schools**

(1) The school bus engine must be off and the park brake activated while students are loading/unloading from school buses. Should the driver be required to leave the driver's seat, the keys shall be removed from the ignition switch. **Exception:** School buses with a wheelchair lift that meets construction standards requiring a vehicle interlock system for school buses built after July 1, 2003.

[12-31-98; 6.41.4.12 NMAC - Rn, 6 NMAC 9.5.3.12 & A, 07-01-01; A, 11-15-05]

#### **6.41.4.13 INSTRUCTIONAL PROGRAMS FOR SCHOOL BUS DRIVERS.**

**A. Certification (pre-service training) for first-time bus drivers**

(2) A new driver who has not been previously employed or certified as a school bus driver in New Mexico shall be required to successfully complete 36 ~~[contact]~~ hours of training. Instruction on transportation as a related service shall be included. The ~~[following 20 hours of]~~ pre-service training shall ~~[be completed]~~ include the following:

(a) Classroom - [8] 22 hours (2 hours shall be on familiarization with the bus and equipment). Classroom instruction shall include a review of the Standards for Providing Transportation Services to Eligible Students, district and/or employer safety policies and regulations, general motor vehicle operating procedures, and passenger management.

(c) Observation time - [6] 2 hours: Observation time includes riding in a school bus with a regular, licensed school bus driver on a regular route, or in observation of other trainees under the supervision of a school bus driver trainer. This shall also include actual route orientation with a regular licensed driver.

(d) Completion of minimum training: Within 60 calendar days of employment, the driver shall satisfactorily complete ~~[the following instructional programs approved by the school transportation unit:~~

(i) ~~an approved first aid course including CPR (8 hours);~~

(ii) ~~a defensive driving course (8 hours)] an approved first aid course including CPR (6 hours).~~

**B. Training requirements for school bus drivers**

(2) To remain qualified, school bus drivers and/or bus assistants shall complete a total of 8 hours in-service training per semester during the school year or 4 hours per quarter. In-service for new drivers should be pro-rated for the number of quarters employed during their first year. Quarters during the year are as follows: January 1 - March 31; April 1 - June 30; July 1 - September 30 and October 1 - December 31. Drivers or assistants who are disqualified under this paragraph shall obtain the required in-service training from the prior semester to re-qualify.

**F. Activity driver operating a school owned vehicle for planned school sponsored activities shall comply with the following:** Drivers shall be employees of a school district and, before operating a school owned vehicle, the driver shall comply with the requirements of subparagraphs a through d of paragraph 1 of subsection J of 6.41.4.9, a physical exami-

nation in accordance with subsection D of 6.41.4.11, and shall meet the requirements of the Controlled Substances and Alcohol Use and Testing in accordance with 49 CFR Part 382.

(2) The following pre-service training shall be completed: A school bus driver instructor certified by the state school transportation director shall conduct the 4-hour classroom instruction.

(b) Completion of minimum training within the first year of driving a school owned vehicle, unless documentation is provided for previous completion[ ]:

(i) ~~[nationally recognized or state]~~ approved first aid course including CPR (6 hours);

(ii) nationally recognized or state approved defensive driving course.

[12-31-98; 6.41.4.13 NMAC - Rn, 6 NMAC 9.5.3.13 & A, 07-01-2001; A, 11-15-05]

## NEW MEXICO DEPARTMENT OF TRANSPORTATION

### TITLE 18       TRANSPORTATION AND HIGHWAYS CHAPTER 1     TRANSPORTATION GENERAL PROVISIONS PART 6        LEASING OF REAL PROPERTY FOR COMMERCIAL PURPOSES

**18.1.6.1       ISSUING AGENCY:**  
New Mexico Department of Transportation  
- P.O. Box 1149, Santa Fe, New Mexico  
87504-1149.

[18.1.6.1 NMAC - N, 11/15/05]

**18.1.6.2       SCOPE:** General public interested in conducting commercial activities on department land.

[18.1.6.2 NMAC - N, 11/15/05]

**18.1.6.3       S T A T U T O R Y  
AUTHORITY:** This regulation is adopted pursuant to NMSA 1978, Section 67-3-12G and NMSA 1978, Section 67-11-9.

[18.1.6.3 NMAC - N, 11/15/05]

**18.1.6.4       D U R A T I O N :**  
Permanent.

[18.1.6.4 NMAC - N, 11/15/05]

**18.1.6.5       EFFECTIVE DATE:**  
November 15, 2005, unless a later date is cited at the end of a section.

[18.1.6.5 NMAC - N, 11/15/05]

**18.1.6.6       OBJECTIVE:** The purpose of this regulation is to establish procedures for the conduct, permitting or authorization of commercial enterprises or activities on department land.

[18.1.6.6 NMAC - N, 11/15/05]

#### **18.1.6.7       DEFINITIONS:**

**A.       "Commission"** means the New Mexico state transportation commission.

**B.       "Department"** means the New Mexico department of transportation.

**C.       "Department land"** means New Mexico state transportation commission or New Mexico department of transportation owned land or land leased to or from the state of New Mexico.

**D.       "Determination"** means the written documentation of a decision by the secretary or his or her designee including findings of fact required to support a decision. A determination becomes part of the department record for the commercial enterprise or activity.

**E.       "Person"** means any individual, firm, corporation, company, joint venture, voluntary association, partnership, trust, or unincorporated organization, or combination thereof.

**F.       "Public entity"** means any entity as defined by NMSA 1978, Section 11-1-2 of the Joint Powers Agreements Act (NMSA 1978, 11-1-1 to 11-1-7).

**G.       "Secretary"** means the New Mexico secretary of transportation or his or her designee.

[18.1.6.7 NMAC - N, 11/15/05]

#### **18.1.6.8       C O M M E R C I A L ENTERPRISES AND ACTIVITIES:**

**A.** This rule provides for commercial enterprises or activities on department land where such development or activities is in the best interest of the department and serves the public interest. Since commercial use of department property generates proceeds or payments which will be deposited into the state road fund and may have other benefits to the department or the public, such uses are transportation, highway or department uses or purposes and do not constitute a determination that the property involved is excess of the department's needs or uses. This rule shall not apply to any lease or agreement between the department and a public entity for non-commercial purposes or use, nor shall it apply to commercial leases of department land made pursuant to acquisition of property for right-of-way purposes under the eminent domain code or special alternative condemnation procedure, for air space agreements, oil and gas leases, employee housing arrangements or residential leases of department property, including leases to security or law enforcement personnel.

**B.       Authorized Use:** In furtherance of commercial enterprises or

activities on department land for the purpose of providing goods and services to the users of the property or facilities or for generating payments to the state road fund, the department may sell, exchange, or lease department property and may use any other powers granted to it by law. Any commercial enterprise or activity is authorized so long as it is in the department's best interest or serves the public interest. The department shall report all proposed commercial activity to the commission at its regularly scheduled meetings. The commission retains the authority to approve, disapprove and modify all proposed commercial activity.

**C.       Determination Required:** Prior to the conduct or authorization of commercial enterprises or activities on department land, the secretary shall determine that the commercial enterprise or activity is in the best interest of the department or serves the public interest. This determination shall be approved by the commission and, once so approved, shall be a final action by the department. This determination shall be in writing and shall include:

(1) a description of the commercial enterprise or activity to be authorized;

(2) a description of the department land to be used for the commercial enterprise or activity;

(3) the form of the commercial enterprise or activity, e.g. whether conducted by the department or by a person through license, permit or other appropriate authorization granted by the department;

(4) the nature of any agreements into which the department will enter to accomplish the commercial enterprise or activity;

(5) the method of establishing the commercial enterprise or activity, e.g. through competitive proposal process or otherwise;

(6) if the commercial enterprise or activity is not established through a competitive process, the reasons that a competitive process was not chosen; and

(7) a statement as to why the commercial enterprise or activity is in the best interest of the department or serves the public interest.

**D.       Competition Favored:** It is the policy of the commission and the department to provide fair access to persons who are able to conduct the commercial enterprises and activities contemplated by this rule. As a result, whenever practicable, the department shall pursue such commercial enterprises and activities through a competitive process. The department may adopt a competitive process for conducting commercial leasing which will be governed by the Procurement Code (NMSA 1978,

Section 13-1-28 through Section 13-1-199) and applicable regulations. Otherwise, any other appropriate competitive process may be used. Any competitive process used, other than the Procurement Code and applicable regulations, must contain provision for any aggrieved competitor to protest the final award. When a competitive process is impracticable or otherwise against the best interest of the department, the secretary shall so determine and provide in writing the reasons that a competitive process is not used.

**E. Record of Action:** For each commercial enterprise or activity established pursuant to this rule, the department shall keep a record of action. The record shall contain the determination required in paragraph C and any contracts, agreements, licenses, permits or other authorizations entered into by the department as a result of that determination. This record shall be available for public inspection to the extent required by law.

**F. Proceeds:** Any proceeds or payments that are derived from these activities shall be deposited into the state road fund.

[18.1.6.8 NMAC - N, 11/15/05]

**HISTORY OF 18.1.6 NMAC:**  
[RESERVED]

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**End of Adopted Rules Section**

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**SUBMITTAL DEADLINES AND PUBLICATION DATES**

**2005**

<b>Volume XVI</b>	<b>Submission Deadline</b>	<b>Publication Date</b>
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

**2006**

<b>Volume XVII</b>	<b>Submission Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 3	January 17
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 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
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 3	July 17
Issue Number 14	July 18	July 31
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 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

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