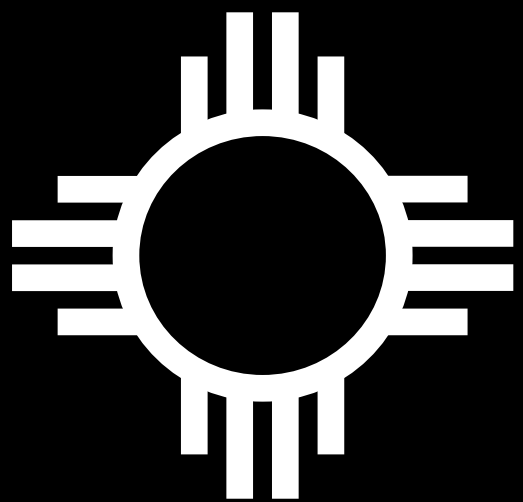


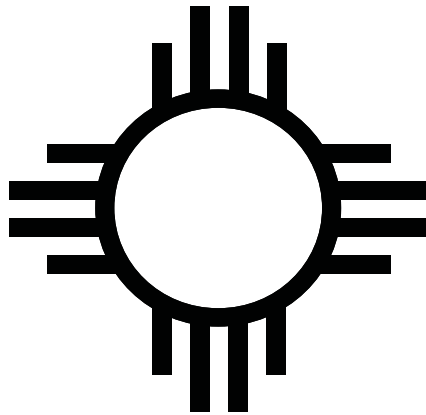
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 22
November 30, 2012

New Mexico Register

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November 30, 2012



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

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2012

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New Mexico Register

Volume XXIII, Number 22

November 30, 2012

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARING AND MEETING

On **February 13, 2013 at 5:30 PM**, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) at the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102.

The hearing will address a proposal by the Air Quality Division (AQD) of the City of Albuquerque's Environmental Health Department, to repeal the currently effective rule 20.11.41 NMAC, *Authority to Construct*; adopt a proposed replacement 20.11.41 NMAC, *Construction Permits*; and incorporate it into the New Mexico State Implementation Plan (SIP) for Air Quality. As grounds, the Petitioner (City of Albuquerque) states the following: The existing 20.11.41 NMAC is an outdated regulation. There have been significant changes made to the New Mexico Air Quality Control Act (Air Act) since 1994 when 20.11.41 NMAC was last substantively amended. For example, the Air Act generally requires AQD to make a final decision regarding a construction permit application within 90 days of the application being determined to be complete. Although AQD follows the 90-day timeline, the present wording of 20.11.41 NMAC provides 120 days, which is inconsistent with the Air Act.

The Air Act and the currently effective 20.11.41 NMAC include minimal wording regarding hearings or meetings that may be held before the AQD makes a decision about a pending permit application. Although public information hearings (PIHs) are not required by the Air Act, the AQD has adopted increasing outreach, notice and other activities regarding PIHs on a policy level. The expanded processes are included in the proposed 20.11.41 NMAC.

The Air Act at NMSA 1978, §74-2-4.C [1967 as amended through 2007], requires air quality standards and regulations within Bernalillo County to be "not lower than those required by regulations adopted

by" the state Environmental Improvement Board (EIB). Therefore, AQD compared the currently effective 20.11.41 NMAC to the EIB regulation 20.2.72 NMAC, *Construction Permits*, and is proposing amendments to bring the two rules into alignment. PLEASE NOTE: additional important changes are also included in proposed replacement 20.11.41 NMAC.

Following the hearing, the Air Board will convene its regular monthly meeting during which they are expected to consider repealing the currently effective rule 20.11.41 NMAC, *Authority to Construct*; adopting a proposed replacement 20.11.41 NMAC, *Construction Permits*; and incorporating this replacement into the SIP.

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

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to provide non-technical testimony regarding the proposal to repeal and replace 20.11.41 NMAC may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinance, Section 9-5-1-6, *Adoption of Regulations, Notice and Hearing* [ROA 1994]; Bernalillo County Ordinance, Section 30-35, *Adoption of Regulations, Notice and Hearings* [Ord. No. 94-5, Section 6, 2-2-94]; and 20.11.82 NMAC, *Rulemaking Procedures—Air Quality Control Board*.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC and 20.11.82.16.B.(1) NMAC to file, by 5:00 pm on January 29, 2013, a written Notice Of Intent (NOI) to testify and 15 copies, with Elizabeth Jones, Air Quality Control Board Liaison, Environmental Health Department, One Civic Plaza, NW, Suite 3023, Albuquerque, New Mexico 87102, or email to ejones@cabq.gov or you may deliver your NOI to the Environmental Health Department, Suite 3023, 400 Marquette Avenue NW. The NOI shall identify the name, address, and affiliation of the person testifying.

In addition, written non-technical comments to be incorporated into the public record for the February 13, 2013 hearing should be received at P.O. Box 1293, Albuquerque, NM 87103; or the Environmental Health Department office, by 5:00 pm on February 6, 2013. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to ejones@cabq.gov and shall include the required name and address information.

A copy of the proposed replacement regulation and the October 30, 2012 *Comparison Summary of Current and Proposed Albuquerque-Bernalillo County Air Quality Control Board Regulations for Minor Stationary Source Air Quality Permitting Actions* may be obtained at the Environmental Health Department Office, or by contacting Ms. Elizabeth Jones electronically at ejones@cabq.gov by phone (505) 768-2601 or by downloading the documents at http://www.cabq.gov/airquality/documents/AQCBPetitionNo_20126Filed_103012Portfolio.pdf

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2601 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, December 13, 2012**, beginning at 9:00 a.m., in the **Lordsburg Civic Center, 313 East 4th Street, Lordsburg, NM 88045**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: revocations, preventative cougar control in bighorn sheep ranges biennial report, habitat restoration, web-based license sale system update, and Commission-owned properties and consideration of disposal or exchange. Additionally they will hear and consider action as appropriate on proposed and final amendments to the following rules: New Mexico Hunter-Trapper Reporting System Rule 19.30.10, Hunting and Fishing Application Rule 19.31.3 NMAC, Deer Rule

19.31.13 NMAC and Barbary Sheep portion of 19.31.12 regards unitization agreements and license validity, Hunting and Fishing Application, Hunting and Fishing – Manner and Method, Barbary Sheep, Oryx, Persian Ibex, Deer, Elk, Pronghorn Antelope, Turkey, Bighorn Sheep, Bear and Cougar, and Javelina Rules 19.31.3, 19.31.10, 19.31.12 - 19.31.17, and 19.31.21, Artificial Light Permit System 19.30.13, and Use of Department of Game and Fish Lands, Protection of Department of Game and Fish Lands and Wildlife Management Area Rules 19.30.4, 19.34.3 - 19.34.5. They will hear general public comments (comments are limited to three minutes). A closed executive session is planned to discuss matters related to personnel, and litigation, and/or real property.

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at <http://www.wildlife.state.nm.us/> for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8027. Please contact Ms. Quintana at least three working days before the meeting date. Public documents, including the Agenda and Minutes are provided in various accessible forms upon request.

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rule making and adoption of rule hearing and a regular board meeting will be held on Thursday, December 6, 2012 at the Albuquerque Marriott Pyramid (West Frontage Road), Albuquerque, New Mexico at 9:00 a.m. The Board will initiate rule changes regarding Use of Livestock Drugs and Biologicals and Animal Enterprise Protection and discuss other matters of general business.

Copies of the rule and agenda can be obtained by contacting Myles C. Culbertson, Executive Director, New Mexico Livestock

Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Interested persons may submit their views on the proposed rule to the Board at the above address and/or may appear at the scheduled hearing and make a brief verbal presentation of their view.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting or need to make handicap parking arrangements, please contact the New Mexico Livestock Board at (505)841-6161 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the New Mexico Livestock Board if a summary or other type of accessible formats is needed.

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Psychologist Examiners will hold a Rule Hearing on Friday, January 11, 2012. Following the Rule Hearing, the New Mexico Board of Psychologist Examiners will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Psychologist Examiners Rule Hearing will begin at 9:00 a.m. and the regular meeting will convene immediately following the Rule Hearing. The meetings will be held at the Regulation and Licensing Department, 5200 Oakland Avenue NE, in the main conference room, Albuquerque, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.22.5 NMAC Psychologists: Application Requirements; Procedures, 16.22.11 NMAC Complaint Procedures; Adjudicatory Proceedings, 16.22.27 NMAC Conditional Prescribing or Prescribing Psychologists: Formulary.

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, (505)476-4622, or send an e-mail to Psychologist.Examiners@state.nm.us after December 11, 2012. In order for

the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than January 4, 2013. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

The Board may enter into Executive Session pursuant to § 10-15-1 of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

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) 476-4622 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comments on Rule Number 18.27.2 NMAC, Division 100 – General Provisions Standard Specifications for Highway and Bridge Construction. The purpose of the proposed rule is to replace the current rule established January 31, 2008.

The hearing is scheduled on Wednesday January 9, 2013, from 1:30 p.m. to 3:30 p.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. A copy of the proposed rule can be obtained by visiting <http://www.dot.state.nm.us/Construction.html> or by contacting David E. Trujillo P.E., telephone (505) 660-3751, e-mail david.trujillo2@state.nm.us, or Armando M. Armendariz P.E., telephone (505) 490-2740, e-mail armando.armendariz@state.nm.us to request a copy of the proposed rule or provide written correspondence to:

New Mexico Department of Transportation
C/O State Construction Bureau,
Attention: Division 100

P.O. Box 1149, SB 4
Santa Fe, New Mexico 87504-1149

The hearing will be held before David E. Trujillo P.E., NMDOT State Construction Engineer. Interested persons may also present their views by written statements submitted on or before Saturday, February 9, 2013, to:

New Mexico Department of
Transportation
C/O State Construction Bureau,
Attention: Division 100
P.O. Box 1149, SB 4
Santa Fe, New Mexico 87504-1149

Telephone (505) 490-2740.
E-mail armando.armendariz@state.nm.us

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact David E. Trujillo P.E., or Armando M. Armendariz P.E., at (505) 660-3751 or (505) 490-2740 respectively, at least ten (10) days before the hearing.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

**NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS**

The New Mexico Department of Workforce Solutions ("Department") hereby gives notice that the Department will conduct a public hearing in the auditorium of the State Personnel Office located at 2600 Cerrillos Road, Santa Fe, New Mexico on January 7, 2013 from 1:00 P.M. until 3:00 P.M. The purpose of the public hearing will be to obtain input on amendments to 11.2.3 NMAC.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Elizabeth Garcia. Written comments must be received no later than 5 p.m. January 3, 2013. However, the submission of written comments as soon as possible is encouraged.

Copies of the amended rules may be accessed at <http://www.dws.state.nm.us/> or obtained from Elizabeth Garcia Tel.: (505) 841-8478, elizabetha.garcia@state.nm.us.

The amended rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Elizabeth Garcia as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**End of Notices and Proposed
Rules Section**

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Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs, filed June 30, 2010 is repealed effective November 30, 2012 and replaced by 8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs, effective November 30, 2012.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

TITLE 8 SOCIAL SERVICES
CHAPTER 16 CHILD CARE
LICENSING
PART 2 CHILD CARE
CENTERS, OUT OF SCHOOL TIME
PROGRAMS, FAMILY CHILD CARE
HOMES, AND OTHER EARLY CARE
AND EDUCATION PROGRAMS

8.16.2.1 ISSUING AGENCY:
Children, Youth and Families Department (CYFD).
[8.16.2.1 NMAC - Rp, 8.16.2.1 NMAC, 11/30/12]

8.16.2.2 SCOPE: All child care centers, out of school time programs, family child care homes, and other early care and education programs within the state of New Mexico.
[8.16.2.2 NMAC - Rp, 8.16.2.2 NMAC, 11/30/12]

8.16.2.3 S T A T U T O R Y
AUTHORITY: The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico children, youth and families department, by authority of the Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, and Sections 24-1-2 (D), 24-1-3 (I) and 24-1-5 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.
[8.16.2.3 NMAC - Rp, 8.16.2.3 NMAC, 11/30/12]

8.16.2.4 D U R A T I O N :
Permanent.
[8.16.2.4 NMAC - Rp, 8.16.2.4 NMAC, 11/30/12]

8.16.2.5 EFFECTIVE DATE:

November 30, 2012, unless a later date is cited at the end of a section.
[8.16.2.5 NMAC - Rp, 8.16.2.5 NMAC, 11/30/12]

8.16.2.6 OBJECTIVE: The objective of 8.16.2 NMAC is to establish standards and procedures for the licensing of facilities and educators who provide child care to children within New Mexico. These standards and procedures are intended to: establish minimum requirements for licensing facilities providing non-residential care to children in order to protect the health, safety, and development of the children; monitor facility compliance with these regulations through surveys to identify any areas that could be dangerous or harmful to the children or staff members; monitor and survey out of school time programs; and encourage the establishment and maintenance of child care centers, homes and facilities for children that provide a humane, safe, and developmentally appropriate environment. These regulations apply during all hours of operation for child care centers, homes and out of school time programs.
[8.16.2.6 NMAC - Rp, 8.16.2.6 NMAC, 11/30/12]

8.16.2.7 DEFINITIONS:
A. "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:
(1) physical contact that harms or is likely to harm a child;
(2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and
(3) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

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

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

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

E. "Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations).

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

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

H. "Child" means a person who is under the chronological age of 18 years.

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

J. "Class A deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

K. "Class B deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

L. "Class C deficiency" means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

M. "Clean" means to physically remove all dirt and contamination.

N. "Conditions of operation" means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

O. "Core hours" means the

Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

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Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

daily hours of operation of the child care facility.

P. "Corrective action plan" means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

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

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

S. "Direct provider of care" means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

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

U. "Disinfect" means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

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

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

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

Y. "Exploitation" of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

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

AA. "Family child care home" means a private dwelling required to be licensed under these regulations that provides care, services and supervision for

a period of less than 24 hours of any day for no more than six children. The licensee will reside in the home and be the primary educator.

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

CC. "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

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

EE. "Infant" means a child age six weeks to 12 months.

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

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

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

II. "Mission statement," describes what the program aspires to do and whom the program aspires to serve.

JJ. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds the standards of one of the following national accrediting bodies: the national association for the education of young children (NAEYC) academy for early childhood program accreditation; the national early childhood program accreditation (NECPA);

the national association of family child care (NAFCC), the national child care association (NCCA); the council of accreditation (COA); the national accreditation commission for early care and education programs (NAC); the international Christian accrediting association (ICAA); or the association of Christian schools international (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

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

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

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

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

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

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

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

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

SS. "Philosophy statement" describes how the program's mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program's perspective on early care and education

and the nature of how children learn. The program's philosophy is implemented through the curriculum.

TT. "Policy" is a written directive that guides decision-making. Policies form the basis for authoritative action.

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

VV. "Procedure" is a series of steps to be followed, usually in a specific order, to implement policies.

WW. "Professional development" is an on-going plan for continued professional development for each staff member, including the director.

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

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

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

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

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

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

DDD. "Sanitize" means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

EEE. "School-age" means a child in care who is age five to 18 years.

FFF. "Staff evaluation" means that each staff member is evaluated by the director, using criteria from the individual's job description. The individual

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

GGG. "Substitute" means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

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

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

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

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

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

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

NNN. "Toddler" means a child age 12 months to 24 months.

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

PPP. "Unattended" means an educator is not physically present with a child or children under care.

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

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

SSS. "Volunteer" means a person who is not employed as a childcare educator, spends less than six hours per week at the facility, is under direct physical

supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members.

TTT. "Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.

[8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 11/30/12]

8.16.2.8 R E L A T E D REGULATIONS AND CODES: Facilities subject to these regulations are also subject to the current versions of the following regulations and codes:

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

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

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

D. New Mexico department of health regulations, Health Facility Licensure Fees and Procedures, 7.1.7 NMAC.

E. New Mexico children, youth and families department regulations, Administrative Appeals, 8.8.4 NMAC.

F. New Mexico department of health regulations, Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

G. New Mexico children, youth and families department regulations, Governing Background Check and Employment History of Licensees and Staff of Child Care Facilities, 8.8.3 NMAC.

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

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

J. Latest edition adopted by the New Mexico state fire board of the International Fire Code.

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

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

M. New Mexico department of health Regulations Governing Immunizations Required for School

Attendance Immunization Requirement, 7.5.2 NMAC.

N. Federal Americans with Disabilities Act (ADA).

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

P. Latest edition of Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No.325), Handbook for Public Playground Safety.

Q. Any code, ordinance, or rule of a governing body, including but not limited to cities, towns, or counties having jurisdiction over the area in which the facility is situated.

[8.16.2.8 NMAC - Rp, 8.16.2.8 NMAC, 11/30/12]

8.16.2.9 APPLICATION:

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

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

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

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

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

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

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

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

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

I. Parent's day out programs held in a church, religious building or house of worship, or public building operating for no more than eight hours per week and no more than four hours on any given day. The program will be staffed by parents participating in the program, or by others who are members of the church or public affiliation.

[8.16.2.9 NMAC - Rp, 8.16.2.9 NMAC, 11/30/12]

8.16.2.10 LICENSING AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY):

The child care services bureau, licensing section, of the early childhood services division of the New Mexico children, youth and families department, hereafter called the licensing authority, has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16, NMSA 1978, as amended.

[8.16.2.10 NMAC - Rp, 8.16.2.10 NMAC, 11/30/12]

8.16.2.11 LICENSING:

A. TYPES OF LICENSES:

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

(a) 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.16.2.11 NMAC. 1-star level is designated for programs not receiving child care subsidy. All 1-star educators receiving subsidy and licensed at the time of publication of these rules shall have until July 1, 2012 to meet 2-star requirements included in the following sections of these regulations:

(i) for centers: Paragraph (16) of Subsection G of 8.16.2.22 NMAC, Paragraphs (5) through (9) of Subsection G of 8.16.2.24 NMAC, and Subsection H of 8.16.2.24 NMAC;

(ii) for licensed family and group child care homes: Paragraph (4) of Subsection E of 8.16.2.32 NMAC, Paragraph (14) of Subsection F of 8.16.2.32 NMAC, Paragraphs (4) through (8) of Subsection G of 8.16.2.34 NMAC, and Subsection H of 8.16.2.34 NMAC;

(iii) for licensed out of school time programs: Subparagraph (k) of Paragraph (1) of Subsection E of 8.16.2.41 NMAC, Paragraph (14) of Subsection F of

8.16.2.41 NMAC, Paragraphs (5) through (9) of Subsection B of 8.16.2.43 NMAC and Subsection C of 8.16.2.43 NMAC.

(b) 2-star level requires meeting and maintaining licensing requirements at all times.

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

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

(e) 5-star level is voluntary and requires meeting and maintaining licensing requirements and maintaining approved national accreditation status.

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

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

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

(c) After a second temporary license has been issued, a new application and the required application fee must be submitted within 30 days in order to renew the license for the remainder of that one year period.

(3) AMENDED LICENSE: A child care facility will submit a new notarized application to the licensing authority before modifying information required to be stated on the license. Examples of such modifications include dates, capacity, director and number of stars.

(a) A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application (Fee \$20.00) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director's appointment is valid for 90 days.

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

layout of the child care facility until the licensing authority has approved and issued the amended license.

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

(4) **PROVISIONAL 2-STAR LICENSE:** Newly licensed programs receiving child care subsidy will be given a provisional 2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

B. RENEWAL OF LICENSE:

(1) A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. CYFD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a \$25.00 late fee must be submitted with the renewal fee.

(2) All licensed facilities must maintain an original background check eligibility letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would or would not be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence. The teenage child's guardian shall sign the annual statement on behalf of the teenage child.

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

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

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

visitors.

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

(1) the owner of the child care facility changes;

(2) the child care facility moves;

(3) the licensee of the child care facility changes; or

(4) the child care facility closes.

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

(1) on the day a child care facility closes;

(2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;

(3) on the day a child care facility moves.

F. ACCREDITED PROGRAMS: Accredited programs must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to be designated as a 5-star facility. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.16.2.11 NMAC - Rp, 8.16.2.11 NMAC, 11/30/12]

8.16.2.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

A. The licensing authority may revoke, suspend, or restrict a license, reduce star status, deny an initial or renewal license application, impose monetary sanctions pursuant to 7.1.8 NMAC, put in place conditions of operation, impose other sanctions or requirements against a licensee, or reduce to a base level of child care assistance reimbursement a licensee who is in receipt of a higher than base level of child care assistance reimbursement, for any of the following reasons:

(1) violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the licensee cannot reasonably safeguard the health and safety of children;

(2) failure to allow access to the licensed premises by authorized representatives of the licensing authority;

(3) misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;

(4) allowing any person to be active in the child care facility who is or would be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC; this will include all adults and teenaged children living in a family child care or group child care home operated in a private residence;

(5) failure to timely obtain required background checks;

(6) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to employ any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

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

(8) failure to comply with provisions of the other related regulations listed in these regulations;

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

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

(11) loss of accreditation, regardless of reason, will result in a reduction in star status;

(12) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present or sold on the premises at any time, regardless of whether children are present; or

(13) making false statements or representations to the licensing authority with the intent to deceive, which the licensee knows, or should know to be false.

B. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

C. The children, youth and families department notifies the licensee in writing of any action taken or contemplated against the licensee. The notification shall include the reasons for the department's action.

D. The licensee may obtain administrative review of any action taken or contemplated against the licensee.

E. The administrative review shall be conducted by a hearing officer appointed by the department's

secretary.

F. If the action is to take effect immediately, the department affords the licensee the opportunity for an administrative appeal within five working days. If the license is suspended pending the results of an investigation, the licensee may elect to postpone the hearing until the investigation has been completed.

G. If the contemplated action does not take immediate effect, and the licensee is given advance notice of the contemplated action, the licensee is allowed 10 working days from date of notice to request an administrative appeal.

H. In circumstances in which Public Health Act NMSA 1978 Subsection N of Section 24-1-5 (2005) may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a licensee, the provisions of Subsection N of Section 24-1-5 shall apply as follows.

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of 15 days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

(5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.

(6) Nothing in Subsection H of 8.16.2.12 NMAC shall be construed to require licensure that is not otherwise required in this regulation.

I. The licensing authority may require a direct provider of care to undergo an additional background check if information shows any of the following:

(1) that the direct provider of care has pending charges for any criminal offense;

(2) that the direct provider of care has a pending or substantiated CYFD protective services or juvenile justice service referral;

(3) that the direct provider of

care has any criminal history or history of a referral to CYFD protective services or juvenile justice services discovered after the most recent background check; or

(4) that the direct provider of care is the subject of an allegation of abuse and neglect in any licensed facility.

J. There shall be no right to administrative review for reduction in star level resulting from loss of, or failure to maintain, national accreditation status. The licensee shall be bound by the rules, regulations, policies and procedures implemented by the national accreditation body that governs its accreditation process.

K. The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. The licensing authority shall reduce the star level of the license to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.

[8.16.2.12 NMAC - Rp, 8.16.2.12 NMAC, 11/30/12]

8.16.2.13 CIVIL MONETARY PENALTIES:

A. The following factors shall be considered by the licensing authority when determining whether to impose civil monetary penalties:

(1) death or serious injury to a child;

(2) abuse, neglect or exploitation of a child;

(3) regulatory violations which immediately jeopardize the health and safety of a child;

(4) numerous violations, which combined, jeopardize the health and safety of a child;

(5) repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a child care facility;

(6) failure of a child care facility to correct violations found during previous surveys or visits;

(7) intentional misrepresentation regarding condition of the facility;

(8) effect of a civil monetary penalty on financial viability of the facility; or

(9) extenuating circumstances, which allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.

B. An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B, and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation.

C. The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

(1) Class A deficiency: not less than \$500 and not greater than \$5,000.

(2) Class B deficiency: not less than \$300 and not greater than \$3,000.

(3) Class C deficiency: not less than \$100 and not greater than \$500.

[8.16.2.13 NMAC - Rp, 8.16.2.13 NMAC, 11/30/12]

8.16.2.14 WAIVERS:

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

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

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

[8.16.2.14 NMAC - Rp, 8.16.2.14 NMAC, 11/30/12]

8.16.2.15 VARIANCES - CURRENTLY LICENSED FACILITIES:

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

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

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

B. Variances granted will continue in force as long as the child care facility continues to provide services

pursuant to these regulations and will not violate the criteria of Subsection A of this section.

C. The licensing authority will grant a variance for those requirements contained in 8.16.2.8 NMAC *related regulations and codes* if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them. [8.16.2.15 NMAC - Rp, 8.16.2.15 NMAC, 11/30/12]

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

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

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

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

D. The licensing authority may grant a variance for those requirements contained in 8.16.2.8 NMAC *related regulations and codes* if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them. [8.16.2.16 NMAC - Rp, 8.16.2.16 NMAC, 11/30/12]

8.16.2.17 SURVEYS FOR CHILD CARE FACILITIES:

A. The licensing authority will conduct a survey at least twice a year in each child care facility using these regulations as criteria. The licensing authority will conduct additional surveys or visit the child care facility additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate complaints.

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

C. The licensee, director, or operator, will submit within 10 working days after the date of the survey, a corrective action plan to the licensing authority for deficiencies found during the survey. The

corrective action plan will be specific on how and when the child care facility will correct the deficiency or deficiencies.

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

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

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

[8.16.2.17 NMAC - Rp, 8.16.2.17 NMAC, 11/30/12]

8.16.2.18 COMPLAINTS:

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

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

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

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

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

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

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

D. The licensee shall cooperate in good faith with any investigation by the licensing authority. Obstruction of an investigation may subject the licensee to

sanctions, up to revocation.

E. Action by the licensing authority:

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

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

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

(a) the licensing authority will require the child care facility to submit and comply with a written corrective action plan; or

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

(c) the licensing authority will file criminal charges or pursue civil remedies.

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

[8.16.2.18 NMAC - Rp, 8.16.2.18 NMAC, 11/30/12]

8.16.2.19 BACKGROUND

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

[8.16.2.19 NMAC - Rp 8.16.2.19 NMAC, 11/30/12]

8.16.2.20 CHILD CARE CENTER REGULATIONS:

A. **APPLICABILITY TO CHILD CARE CENTERS:** A center required to be licensed under regulations in 8.16.2.21 NMAC through 8.16.2.29 NMAC is one that provides care, education, services and supervision to children for less than 24 hours a day to children in a non-residential setting, and is not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

B. **NEW OR INNOVATIVE PROGRAMS FOR PROVIDING CHILD CARE TO CHILDREN:** A new or innovative service for child care that is typically not governed

by these regulations will be licensed if there is a substantiated need for the service and if it meets all requirements outlined in Paragraphs (1), (2) and (3) of Subsection C. New or innovative programs shall adhere to all basic licensing standards regulations except that the licensing authority may grant waiver(s) to the extent necessary to accommodate new and innovative services which may conflict with any regulations pertaining to curriculum and environment.

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

- (1) an explanation of any special needs or modifications for the children who will be receiving these services;
- (2) identification of those portions of the proposed program that would conflict with these regulations; and
- (3) statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations.

D. SPECIAL REQUIREMENTS FOR CENTERS LOCATED ON OR NEAR THE PREMISES OF CORRECTIONAL FACILITIES: Applicants for centers located on or near correctional facilities will submit a proposal to the licensing authority for review and approval. The proposal will include:

- (1) an explanation of security modifications that are deemed necessary to ensure the safety of the staff, parents, and children using the child care center; and
- (2) statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations if the proposed program is in conflict with these regulations. [8.16.2.20 NMAC - Rp, 8.16.2.20 NMAC, 11/30/12]

8.16.2.21 LICENSURE REQUIREMENTS FOR CENTERS:

A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no

fault of their own, they have not received responses from these agencies.

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

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

- (a) a kitchen, if meals are prepared on site and served in the center;
- (b) private water supply, if applicable;
- (c) private waste or sewage disposal, if applicable; and
- (d) a swimming pool, if applicable.

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

- (a) Accessibility to individuals with disabilities is provided in all new centers and will include the following:
 - (i) main entry into the center is level or has a ramp to allow for wheelchair access;
 - (ii) building layout allows for access to the main activity area;
 - (iii) access to at least one bathroom is required to have a door clearance of 32 inches; the toilet unit also provides a 60-inch diameter turning radius;
 - (iv) if ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise; and
 - (v) ramps exceeding a six-inch rise are provided with handrails.
- (b) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the center.

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

schedule.

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

B. CAPACITY OF CENTERS:

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

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

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

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

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

(c) Centers must post classroom capacities and ratios in an area of the room that is easily visible to parents, staff and visitors.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a) a lost or missing child;
- (b) the death of a child;
- (c) the abuse or neglect of a child;
- (d) any incident, including but not limited to accidents, illness, and injuries, that requires medical care beyond on-site first aid;
- (e) fire, flood, or other natural disaster that creates structural damages to a center or poses a health hazard;
- (f) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;
- (g) any legal action against a

center or staff members related to the care and custody of children;

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

(i) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(j) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A center will notify parents or guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the center. Incidents include, but are not limited to those listed in Paragraph (1) of Subsection C of 8.16.2.21 NMAC.

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

[8.16.2.21 NMAC - Rp, 8.16.2.21 NMAC, 11/30/12]

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

A. ADMINISTRATION RECORDS: A licensee will display in a prominent place that is readily visible to parents, staff and visitors:

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

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

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

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

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

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

(1) actions to be taken in case of accidents or emergencies involving a child,

parents or staff members;

(2) policies and procedures for admission and discharge of children;

(3) policies and procedures for the handling of medications;

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

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

(6) policies and procedures for the handling of children who are ill;

(7) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation and reunification with parents, and individual plans for children with special needs; the plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

D. P A R E N T HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following:

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

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

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

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

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the classroom;

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

(i) celebrating holidays, birthdays and parties;

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

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

(d) notification of absence;

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

(f) field trip policies;

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

(h) emergency procedures, safety policies, and disaster preparedness plan;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure; and

(l) guidance policy

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

(1) PERSONAL INFORMATION:

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

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

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

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

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

(f) a record of any accidents, injuries or illnesses which require first aid or medical attention which must be reported to the parent or guardian;

(g) a record of observations of recent bruises, bites or signs of potential abuse or neglect, which must be reported to CYFD;

(h) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

(i) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child.

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

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

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

(2) EMERGENCY INFORMATION:

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

(b) The name and telephone number of two people in the local area to contact in an emergency when a parent or

guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

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

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

(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

F. PERSONNEL RECORDS:

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

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification; if background check is in process then documentation showing that it is in process, such as a money order, shall be placed in file;

(f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC;

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

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

(i) emergency contact number;

(j) universal precaution acknowledgment form;

(k) confidentiality form;

(l) results of performance evaluations;

(m) administrative actions or reprimands;

(n) written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals; and

(o) signed acknowledgment that the staff have read and understand the

personnel handbook;

(p) signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan.

(q) Form I-9, employment eligibility verification.

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

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

(1) organizational chart;

(2) job descriptions of all employees by title;

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

(4) code of conduct;

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

(6) procedures and criteria for performance evaluations;

(7) policies on absence from work;

(8) grievance procedures;

(9) procedures for resignation or termination;

(10) copy of licensing regulations;

(11) policy on parent involvement;

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

(13) policy on sexual harassment;

(14) child guidance policy;

(15) confidentiality statement; and

(16) plan for retention of qualified staff.

[8.16.2.22 NMAC - Rp, 8.16.2.22 NMAC, 11/30/12]

8.16.2.23 PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children.

(2) All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or

older.

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

(5) Volunteers shall not be counted in the staff/child ratios or left alone with children unless they meet all requirements for staff members.

(6) Substitutes and part-time educators counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements, professional development plan and evaluations. Substitutes, volunteers, and educators routinely employed in a center but working 20 hours or fewer a week will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements and have professional development plans and evaluations. See Paragraph (2) of Subsection B of 8.16.2.23 NMAC for additional training requirements.

(7) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of 50% of the center's core hours of operation. See Paragraph (2) of Subsection F of 8.16.2.22 NMAC.

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

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

(10) A center will have a minimum of two staff members present at all times. If the center has fewer than seven children, the second educator may conduct other activities such as cooking, cleaning, or bookkeeping.

(11) A center will keep a list of at least two people who can substitute for any staff member. The list will include the people's names, telephone numbers, background check, health certificates and record of orientation.

(12) Each room of the center and its premises shall be inspected at closing time on a daily basis to assure the center is secure, free of hazards, and that no child has been left unattended.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) **DIRECTOR QUALIFICATIONS:**

(a) Unless exempted under Subparagraph (b) below, a child care center will have a director who is at least 21 years old and meets the requirements outlined in the table below.

Professional Preparation		and	Experience
Program Administration The first of three AA-level Early Childhood Program Administration courses in the Early Childhood Program Administration career pathway: <i>Program Management I</i> Or The National Administrator Credential (NAC)*	and		Child Development/ Early Childhood Education <i>Child Growth, Development and Learning</i> (one of the AA-level "common core courses")**
The Provisional AA-Level NM Early Childhood Program Administration Certificate (All three AA-level Early Childhood Program Administration Courses and Practicum: <i>Program Management I, Effective Program Development for Diverse Learners and Their Families & Practicum, Professional Relationships & Practicum</i>)			
The New Mexico Child Development Certificate (CDC) (Includes the following four courses as well as additional non-coursework requirements: <i>Child Growth, Development and Learning; Health, Safety and Nutrition; Family and Community Collaboration; and Assessment of Children and Evaluation of Programs</i>)			
The Child Development Associate (CDA) certificate			
The Child Care Professional (CCP) certificate			
The New Mexico Early Childhood Program Administration Certificate			
Montessori Teacher Certification			
The New Mexico One-Year Vocational Certificate			
Associate of Arts (AA) or Applied Sciences (AA or AAS) in child development or early childhood education			
Or			
A bachelor's degree or higher in early childhood education or a related field. Related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or other degree with successful completion of courses in early childhood.		and	One year of experience in an early childhood growth and development setting

*The NAC and two years of experience in an early childhood growth and development setting will be accepted as sufficient qualification for a director under the following conditions: a) The NAC was received prior to November 30, 2012 and b) the NAC has been maintained and has not expired subsequent to November 30, 2012.

** Directors shall be given until the end of the first full academic semester following their start date to successfully complete this course.

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

(2) TRAINING:

(a) The director will develop and document an orientation and training plan for new staff members and volunteers and will provide information on training opportunities. The director will have on file a signed acknowledgment of completion of orientation by employees, volunteers and substitutes as well as the director. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following:

- (i) scope of services, activities, and the program offered by the center;
- (ii) emergency first aid procedures, recognition of childhood illness and indicators of child abuse;
- (iii) fire prevention measures, emergency evacuation plans and disaster preparedness plans;
- (iv) review of licensing regulations;
- (v) policies regarding guidance, child abuse reporting, and handling of complaints;
- (vi) review of written policies and procedures as defined in Subsection C of 8.16.2.22 NMAC;
- (vii) center/parental agreement;
- (viii) sanitation procedure;
- (ix) written goals of the program;
- (x) personnel handbook;
- (xi) parent handbook;
- (xii) names and ages of children;
- (xiii) names of parents;
- (xiv) tour of the facility; and
- (xv) introduction to other staff and parents.

(b) New staff members working directly with children regardless of the number of hours per week will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment. Substitutes are exempt from this requirement.

(c) Each staff person working directly with children and more than 20 hours per week, including the director, is required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address first aid, CPR, infection control and at least three competency areas within one year and all seven areas within two years. The competency areas are 1) child growth, development, and learning; 2) health, safety, nutrition, and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism.

(d) Training must be provided by individuals who are registered on the New Mexico trainer registry.

(e) Training provided by center employees and directors shall count for no more than half of the required 24 hours of training each year.

(f) On-line training courses shall count for no more than 16 hours each year. If the 45-hour entry level course or its equivalent is taken online, it is exempt from the online training limitation.

(g) Online first aid and CPR training will not be approved.

(h) Identical trainings shall not be repeated for the purpose of obtaining credit.

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

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

(k) A center will keep a training log on file with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate.

(l) A college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours.

(m) See Paragraph (6) of Subsection A of 8.16.2.23 NMAC for requirements for centers that operate less than 20 hours per week.

C. STAFF / CHILD RATIOS:

(1) Centers where children are grouped by age:

(a) Age in group: six weeks through 24 months. Staffing: one adult for every six children or fraction of group thereof.

(b) Age in group: two years. Staffing: one adult for every 10 children or fraction of group thereof.

(c) Age in group: three years.

Staffing: one adult for every 12 children or fraction of group thereof.

(d) Age in group: four years.

Staffing: one adult for every 12 children or fraction of group thereof.

(e) Age in group: five years.

Staffing: one adult for every 15 children or fraction of group thereof.

(f) Age in group: six years and older. Staffing: one adult for every 15 children or fraction of group thereof.

(2) CENTERS WHERE AGE GROUPS ARE COMBINED

(a) Age in group: six weeks through 24 months. Staffing: one adult to every six children or fraction of group thereof.

(b) Age in group: two through four years. Staffing: one adult to every 12 children or fraction of group thereof.

(c) Age in group: three through five years. Staffing: one adult to every 14 children or fraction thereof.

(d) Age in group: six years and older. Staffing: one adult to every 15 children or fraction of group thereof.

(e) If a center groups toddlers ages 18 to 24 months with children ages 24 through 35 months, the staff/child ratio shall be maintained at one staff per six children.

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

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

[8.16.2.23 NMAC - Rp, 8.16.2.23 NMAC, 11/30/12]

8.16.2.24 SERVICES AND CARE OF CHILDREN IN CENTERS:

A. GUIDANCE:

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

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

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

(a) physical punishment of any type, including shaking, biting, hitting,

pinching or putting anything on or in a child's mouth;

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

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

B. NAPS OR REST PERIOD: A center will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

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

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

(3) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats.

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

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

(6) Educators shall ensure that nothing covers the face or head of a child aged 12 months or younger when the child is laid down to sleep and while the child is sleeping. Educators shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(7) Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician justifying the sleeping arrangement.

(8) Staff must be physically available to sleeping children at all times. Children must not be isolated for sleeping or napping in an un-illuminated room unless attended by an educator.

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

(10) Staff/child ratios shall be maintained at naptime.

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND

TODDLERS

- (1) The center will provide a crib for each infant and, when appropriate, for a toddler.
- (2) Cribs will meet federal standards and be kept in good repair. The center will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. Stacking cribs is prohibited.
- (3) No child will be allowed to sleep in a playpen, car seat, stroller or swings.
- (4) Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.
- (5) Toys that are mouthed by infants and toddlers will be cleaned after mouthing by one child before other children do the same.
- (6) A center will not admit any child under the age of six weeks except with the written approval of a licensed physician.
- (7) A center will care for children under age two years in rooms separate from those used by older children. Children age six weeks to 12 months may be in the same room with children age 13 to 24 months, when they are physically separated from the older children. A center may group toddlers ages 18 to 24 months with children ages 24 through 35 months.
- (8) Throughout the day, an educator will give each infant and toddler physical contact and attention. A caregiver will hold, talk to, sing to and take inside and outside walks with the child. A caregiver will respond immediately to all cries of infants and to the cries of all children within two minutes.
- (9) An educator will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.
- (10) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive.
- (11) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping and waking periods.
- (12) A center will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.
- (13) Infants shall either be held or fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.
- (14) Foods served will meet the nutritional needs of the infant or toddler. Foods will be developmentally appropriate for each infant served.

(15) A center shall provide an evacuation crib.

D. DIAPERING AND TOILETING:

- (1) An educator will plan toilet training with a parent so the toilet routine is consistent. A center will not attempt to toilet train a child who is not developmentally ready.
- (2) A center will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single-use gloves when changing a diaper and wash their hands after changing a diaper. Food service gloves are not permissible for diaper changing.
- (3) A center will have a change of clothes on hand, including dry, clean clothing and diapers sufficient to meet the needs of each child. A center will label diapers and diapering supplies for each child and store them properly. Diaper bags will be inaccessible to children. Soiled diapers will be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.
- (4) An educator will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

- (1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If center staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.
- (2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. ADDITIONAL REQUIREMENTS FOR NIGHT CARE:

- (1) A center that provides night care will have 50 square feet of activity area per child for night care.
- (2) Staff will be awake and immediately available to children who need attention during the night.
- (3) The beds and cots provided for children shall be completely furnished with mattress, waterproof mattress protectors, sheets under and over the child, blanket, pillow and pillowcase.
- (4) Linens shall be changed immediately in case of soiling.

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

G. PHYSICAL ENVIRONMENT:

- (1) Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:
 - (a) dramatic play;
 - (b) creative art;
 - (c) books;
 - (d) blocks and accessories;
 - (e) manipulatives;
 - (f) music;
 - (g) science;
 - (h) math/number; and
 - (i) sensory.
 - (2) Each center is clearly defined, using shelves and furniture.
 - (3) Adults can visually supervise all centers at all times.
 - (4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.
 - (5) Learning areas have adequate space and noisy and quiet areas are arranged so that children's activities can be sustained without interruption.
 - (6) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.
 - (7) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.
 - (8) Floor surface is suitable for activities that will occur in each learning area.
 - (9) File and storage space is available for educators' materials.
- H. SOCIAL - EMOTIONAL RESPONSIVE ENVIRONMENT:**
- (1) Educators remain calm in stressful situations.
 - (2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.
 - (3) Educators help children communicate their feelings by providing them with language to express themselves.
 - (4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner.

Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

- (1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily.
- (2) A center will not use accordion-style baby gates.
- (3) A child care center will provide activities that encourage children to be actively involved in the learning process and to experience a variety of developmentally appropriate activities and materials.
- (4) A center will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.
- (5) Each child at a center will have a designated space for storage of clothing and personal belongings.
- (6) A center will store equipment and materials for children’s use within easy reach of the children, including those with disabilities. A center will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.
- (7) A center will provide children with toys and other materials that are safe and encourage the child’s creativity, social interaction, and a balance of individual and group play.
- (8) A center will post a daily activity schedule. A center will follow a consistent pattern for routine activities such as meals, snacks and rest.
- (9) Media viewing will not be permitted for children under two years of age. Media viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content.
- (10) Children and family members shall be acknowledged upon arrival and departure.
- (11) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part-time children shall have a minimum of 30 minutes of physical activity daily, preferably outside.
- (12) Equipment and program requirements apply during all hours of operation of the licensed facility.

J. OUTDOOR PLAY AREAS:

- (1) Outdoor play equipment used in child care centers shall be:
 - (a) intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; or
 - (b) if intended for residential use, shall be safe and securely anchored.
- (2) A center will enclose the outdoor play area with a fence at least four feet high and with at least one latched gate available for an emergency exit.
- (3) A center will place sufficient energy absorbing surfaces beneath climbing structures, swings, and slides (as determined by Subsection P of 8.16.2.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

- (4) Playground equipment shall be inspected and inspections documented weekly.
- (5) An outdoor play area for children under age two years will have an area protected from the general traffic where the children can crawl in safety.
- (6) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.
- (7) Children shall be protected from the sun during outdoor play, as instructed by the child’s parent or guardian.

K. SWIMMING, WADING AND WATER:

- (1) Each child will have written permission from a parent or guardian before the child enters the pool.
- (2) If a center has a portable wading pool:
 - (a) a center will drain and fill the wading pool with fresh water daily and disinfect pool before and after each use;
 - (b) a center will empty a wading pool when it is not in use and remove it from areas accessible to children;
 - (c) a center will not use a portable wading pool placed on concrete or asphalt.
- (3) If a center has a built in or above ground swimming pool, ditch, fishpond or other water hazard:
 - (a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

- (b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children;
- (c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.
- (4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
0-23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:

- (1) A center will ensure the children’s safety on field trips and excursions. See Subparagraph (h) of Paragraph (1) of Subsection E of 8.16.2.22 NMAC for requirements for permission slips.
- (2) Children will not go to a private residence unless accompanied by two adults.
[8.16.2.24 NMAC - Rp, 8.16.2.24 NMAC, 11/30/12]

8.16.2.25 FOOD SERVICE REQUIREMENTS FOR CENTERS:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the center will conform to the guidelines from United States department of agriculture’s (USDA’s) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

- (1) A center will provide a meal or snack at least every three hours except when the child is sleeping at night.
- (2) A center will serve, if necessary, a child a therapeutic or special diet with written prescription/diet orders from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the center staff.
- (3) A center shall make water freely available to children.
- (4) A center that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA’s current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.
 - (a) Only 100-percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than 100-percent juice or artificially flavored drinks for meals or snacks is prohibited. 100-percent fruit or vegetable juice may be diluted with water.
 - (b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.
 - (c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.
 - (5) A center shall vary snacks each day and shall include a selection of two different food group components from the four food group components.

C. MENUS:

- (1) Menus shall include a variety of foods. The same menu will not be served twice in one week.
- (2) Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.
- (3) Dated weekly menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

D. KITCHENS: Centers shall comply with current New Mexico environment department requirements regarding food service.

- (1) A center will not allow children in the kitchen except under careful supervision.
- (2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.
- (3) A center will serve food promptly and refrigerate immediately after use.
- (4) A center will protect food and drink by properly storing items in an airtight container or by tightly wrapping them. A center will label and date all leftover food.
- (5) If food is brought from the child’s home, a center will label it with the child’s name and refrigerate if necessary. A center will label and refrigerate bottles of infant formula or breast milk.
- (6) A center’s refrigerators and separate freezers will have working internal thermometers and keep food requiring refrigeration, including formula, at 41 degrees (fahrenheit) or below, and frozen food at 0 degrees (fahrenheit) or below.
- (7) A center will protect all food from insects, rodents and other vermin.
- (8) A center will discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.
- (9) A center will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize. Disposable plates and cups and plastic utensils of food-grade, medium weight may be used for single service, but styrofoam cups may not be used.
- (10) A center will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.
- (11) A center shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

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

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

(3) Adults must sit with the children at meal and snack times to assist children with eating, drinking, and self-feeding and to encourage family-style dining and socialization.

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

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

[8.16.2.25 NMAC - Rp, 8.16.2.25 NMAC, 11/30/12]

8.16.2.26 HEALTH AND SAFETY REQUIREMENTS FOR CENTERS:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

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

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

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

(d) before and after eating;

(e) before and after feeding a child; and

(f) after handling pets or animals or items used by animals such as water and food bowls.

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

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

B. FIRST AID REQUIREMENTS:

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

(2) A center will keep a first-aid kit and a first-aid manual together in the

center in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum, band aids, gauze pads, adhesive tape, scissors, soap, nonporous gloves, and a thermometer.

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

C. MEDICATION:

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

(2) Facilities will give medication only with written permission from a parent or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement (Paragraph (2) of Subsection C of 8.16.2.26 NMAC) only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.

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

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

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The center shall not administer expired medication.

[8.16.2.26 NMAC - Rp, 8.16.2.26 NMAC, 11/30/12]

8.16.2.27 I L L N E S S REQUIREMENTS FOR CENTERS:

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

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

C. A center will send a child home when:

(1) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness or behavior changes; or

(2) an educator observes signs of contagious disease or severe illness.

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

[8.16.2.27 NMAC - Rp, 8.16.2.27 NMAC, 11/30/12]

8.16.2.28 TRANSPORTATION REQUIREMENTS FOR CENTERS:

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

B. A center will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

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

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

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(4) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

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

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

F. No one will smoke in a vehicle used for transporting children.

G. A second adult will accompany the driver of the vehicle when a center transports five or more children under age five years.

H. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

I. At least one adult transporting children shall be currently certified in cardiopulmonary resuscitation (CPR).

[8.16.2.28 NMAC - Rp, 8.16.2.28 NMAC, 11/30/12]

8.16.2.29 BUILDING, GROUNDS AND SAFETY REQUIREMENTS FOR CENTERS:

A. HOUSEKEEPING:

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

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

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

B. PEST CONTROL:

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

(2) The licensed applicator may

not apply pesticides when children are on the premises.

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

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

C. MECHANICAL SYSTEMS:

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

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

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

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

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

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

E. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

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

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

(3) Use of electrical cords and outlets:

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

this equipment.

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

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

F. EXITS AND WINDOWS:

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

(2) There must be at least two exits remote from each other in each activity area of the center.

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

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

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

(4) Activity areas for children must have windows or skylight area of at least one-twentieth of the floor area.

G. TOILET AND BATHING FACILITIES:

(1) A center shall have one sink in any room for infants, toddlers, and combination thereof. Centers licensed after November 30, 2012 shall have one sink and one toilet in any room that has children ages 24 – 35 months, which shall be used exclusively by the children in this room. All sinks referred to in this paragraph shall have permanent plumbing, hot and cold running water, and shall not be used for food preparation.

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

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

(4) Toilets and lavatories must be provided in the following ratios. These ratios also apply to programs that share lavatories with unlicensed facilities.

(a) one toilet and one lavatory for one to 12 children;

(b) two toilets and two lavatories for 13 through 25 children;

(c) one toilet and one lavatory for each additional 15 children or fraction thereof;

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

H. S A F E T Y COMPLIANCE:

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

(2) A center will:

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

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

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

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

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

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

(g) a center will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone; a center will not use a pay phone to fulfill this requirement; if cordless phones are used, emergency numbers shall be posted on the phone itself; facilities shall post the center's telephone number and address in a conspicuous location next to the emergency phone numbers; a center shall have at least one corded phone or cell phone for use in the case of a power outage;

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

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

(j) a center must have a minimum of two 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the center; and

(k) fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting must be properly maintained and inspected on a least yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection E of 8.16.2.29 NMAC for emergency lighting requirements.

I. S M O K I N G ,

FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A center will prohibit smoking in all areas, including vehicles, and will not allow any alcoholic beverages, firearms, or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

J. P E T S :

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

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

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

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

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

[8.16.2.29 NMAC - Rp, 8.16.2.29 NMAC, 11/30/12]

8.16.2.30 FAMILY CHILD CARE HOME AND GROUP CHILD CARE HOME REGULATIONS: APPLICABILITY: A private dwelling required to be licensed under regulations in 8.16.2.31 NMAC through 8.16.2.38 NMAC which meets one of the following criteria.

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

B. Group child care home - A private dwelling or other building on the premises required to be licensed pursuant to these regulations which provides care, services, and supervision for at least seven but not more than 12 children for a period of less than 24 hours of any day. The licensee will reside in the home and be the primary educator. A group day care home intending

to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose.

[8.16.2.30 NMAC - Rp, 8.16.2.30 NMAC, 11/30/12]

8.16.2.31 LICENSURE REQUIREMENTS FOR HOMES:

A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

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

(3) **BACKGROUND CHECK:** In addition to the basic requirements at 8.16.2.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's Background Check and Employment History Verification provisions (8.8.3 NMAC), regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home as per the requirements outlined in the department's most current version of the Background Check and Employment History Verification provisions. All requirements of the current Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

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

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

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

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

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

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

B. CAPACITY OF A HOME:

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

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

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

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

(5) A home must have 35 square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than 12 children. A home must have at least one bathroom with a toilet and sink. For a home licensed for no more than six children, one activity room will be measured. For a home licensed for 12 children, no more than two rooms will be measured.

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

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a) a lost or missing child;
- (b) the death of a child;
- (c) the abuse or neglect of a child;
- (d) any incident, including but not

limited to accidents, illness, and injuries, that requires medical care beyond on-site first aid;

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

(f) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

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

(h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(i) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the home. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.31 NMAC.

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

[8.16.2.31 NMAC - Rp, 8.16.2.31 NMAC, 11/30/12]

8.16.2.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

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

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

(2) the current child care regulations;

(3) the guidance policy;

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

(5) an up to date disaster preparedness plan, which shall include steps for evacuation, relocation and reunification with parents, and individual plans for children with special needs. The plan shall be approved annually by the licensing authority; the department will provide

guidance on developing these plans.

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

- (1) mission statement;
- (2) philosophy statement; and
- (3) curriculum statement.

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

(1) GENERAL INFORMATION:

- (a) mission statement;
- (b) philosophy statement;
- (c) program information (location, license information, days and hours of operation, services offered);

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

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

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the family or group child care home;

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

(i) celebrating holidays, birthdays and parties;

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

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

(d) notification of absence;

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

(f) field trip policies;

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

(h) emergency procedures, safety policies, and disaster preparedness plan;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure; and

(l) guidance policy.

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

(1) PERSONAL INFORMATION:

(a) name of the child, date of birth, gender, home address, mailing address and

telephone number;

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

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

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

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

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

(g) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

(h) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child;

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

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

(k) a signed acknowledgement that the parent or guardian has read and understands the parent handbook.

(2) **EMERGENCY INFORMATION:**

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

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

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

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

(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders,

guardianship, powers of attorney, court orders, and custody by children's protective services.

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

(1) Documentation of a background check and employment history verification for all educators and all adults living in the home.

(2) An annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC.

(3) A record of the time the second educators arrived at and left work, to include breaks and lunch.

(4) A written plan for ongoing professional development for each educator that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals. Family child care homes who do not have employees are exempted from this requirement.

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

(1) job description of second educator;

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

(3) code of conduct;

(4) training requirements, professional development opportunities;

(5) procedures and criteria for performance evaluations;

(6) policies on absence from work;

(7) procedures for resignation or termination;

(8) copy of licensing regulations;

(9) policy on parent involvement;

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

(11) policy on sexual harassment;

(12) child guidance policy;

(13) confidentiality statement; and

(14) plan for retention of qualified staff.

[8.16.2.32 NMAC - Rp, 8.16.2.32 NMAC, 11/30/12]

8.16.2.33 PERSONNEL AND STAFFING REQUIREMENTS FOR HOMES:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) A licensee will not allow any

employee or any other adult living in the home involved in an incident which would disqualify that employee or other adult under the department's most current version of the Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children or to reside in the home.

(2) All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) The licensee shall be in the licensed child care home during at least 75 percent of the home's core hours of operation.

(5) Substitutes, volunteers and part time second educators counted in the staff/child ratios shall meet the same requirements as regular staff members, except for training requirements. Substitutes and part time second educators routinely employed in the home but working 20 hours or less a week shall complete half the required training hours. Such employees working more than 20 hours per week shall complete all required training hours. The primary educator in a licensed home shall complete all required training hours, regardless of the number of hours worked.

(6) A home licensed to provide care for six or fewer children will have at least one educator in the home at all times. A home licensed to provide care for more than two children under the age of two will have at least two educators in the home at all times.

(7) A home licensed for seven to 12 children will have at least two educators at the home when more than six children are present or when more than two children under the age of two are present.

(8) Children will never be left unattended. An educator will be with the children at all times whether activities are inside or outside of the home. Educators will be onsite, available and responsive to children during all hours of operation.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) A home will keep a training log on file including the date of the training, name of educator, hours earned, subject/competency area, source of training, and training certificates.

(2) Educators working for a home will receive at least 12 documented hours of training during each year, including six hours in child growth and development and three hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven

competency areas. The competency areas are: 1) child growth, development and learning; 2) health, safety, nutrition and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism. An educator cannot count more than three hours in first aid or CPR training toward the total hours required. Online first aid and CPR training will not be approved. For this purpose, a year begins and ends at the anniversary date of employment. Training must be provided by individuals who are registered on the New Mexico trainer registry. On-line training courses shall count for no more than eight hours each year. If the 45-hour entry level course or its equivalent is taken online, it is exempt from the online training limitation. Identical trainings shall not be repeated for the purpose of obtaining credit.

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

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

(5) A home must have at least one person on duty at all times who is certified in first aid and cardio-pulmonary resuscitation (CPR).

[8.16.2.33 NMAC - Rp, 8.16.2.33 NMAC, 11/30/12]

8.16.2.34 SERVICES AND CARE OF CHILDREN IN HOMES:

A. GUIDANCE:

(1) A home will have written policies and procedures clearly outlining guidance practices. Care-givers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

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

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

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

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

B. NAPS OR REST PERIOD:

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

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

(3) Each child will have an individual bed, cot, or mat.

(4) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats. Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths of an inch thick. Mats and cots shall be cleaned and linens must be laundered before being used by another child.

(5) Educators shall ensure that nothing covers the face or head of a child aged 12 months or younger when the child is laid down to sleep and while the child is sleeping. Educators shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(6) Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician justifying the sleeping arrangement.

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

(8) Children shall be directly supervised during naptime.

(9) All children shall sleep in the licensed area of the home. No children shall be allowed to sleep behind closed doors.

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS:

(1) The home will provide a crib for each infant and, when appropriate, for a toddler.

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

(3) No child will be allowed to sleep in a playpen, car seat, stroller or swing.

(4) Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.

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

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

(7) An educator will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(8) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive.

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

(10) Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

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

(12) Food served shall meet the nutritional needs of the infant or toddler. Foods shall be developmentally appropriate for each infant served.

D. DIAPERING AND TOILETING:

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

(2) A home will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single use gloves when changing a diaper and wash their hands after changing a diaper. Food service gloves are not permissible for diaper changing.

(3) A home will have a supply of dry, clean clothing and diapers sufficient to meet the needs of the child. A home will label diapers and diapering supplies for each child and store them separately. Diaper bags will be inaccessible to children.

(4) An educator will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper

change. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If family or group home educators believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. NIGHT CARE: In addition to all other requirements, a home providing night care will have an educator onsite, physically available and responsive to children who need attention during the night.

G. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into functional identifiable learning areas. Family child care homes that have dedicated space shall have at least four of the following learning areas. Family child care homes that do not have dedicated space shall have at least three of the following learning areas:

- (a) a place for messy play;
- (b) a place for loud, active play;
- (c) a place for playing quietly;
- (d) a place to pretend; and
- (e) a place to read.

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

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

(4) Learning areas have adequate space and noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(5) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(6) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(7) Floor surface is suitable for activities that will occur in each learning area.

(8) File and storage space is available for educators' materials.

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

(1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily.

(2) A home will not use accordion-style baby gates.

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

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

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

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

(7) Media viewing will not be permitted for children less than two years of age. Media viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content.

(8) Children and family members shall be acknowledged upon arrival and departure.

(9) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part time children shall have a minimum of 30 minutes of physical activity daily, preferably outside.

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

J. OUTDOOR PLAY:

(1) Outdoor play equipment used in child care homes shall be:

- (a) intended for public (non-residential) use and installed and maintained according to the manufacturer's instructions; or
- (b) if intended for residential use, shall be safe and securely anchored.

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

(3) A home will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

- (4) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.
- (5) Children shall be protected from the sun during outdoor play, as instructed by the child's parent or guardian.

K. SWIMMING, WADING AND WATER:

- (1) Each child will have written permission from a parent or guardian before the child enters a pool.
- (2) If a home has a portable wading pool:
 - (a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;
 - (b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children;
 - (c) a home will not use a portable wading pool placed on concrete or asphalt.
- (3) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:
 - (a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;
 - (b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and
 - (c) when in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.

- (4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
0-23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:

- (1) A home will ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection D of 8.16.2.32 NMAC for information on permission slips.
- (2) Children will not go to a private residence other than the licensed home unless accompanied by two adults. [8.16.2.34 NMAC - Rp, 8.16.2.34 NMAC, 11/30/12]

8.16.2.35 FOOD SERVICE REQUIREMENTS FOR HOMES:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home will conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

- (1) A home will provide a child a meal or snack at least every three hours except when the child is sleeping at night.
- (2) A home will serve if necessary a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the educators.
- (3) A home shall make water freely available to children.
- (4) A home that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA's current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.
 - (a) Only 100-percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than 100-percent juice or

artificially flavored drinks for meals or snacks is prohibited. 100-percent fruit or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.

(5) A home will vary snacks each day and will include a selection of two different food group components from the four food group components.

C. MENUS:

(1) Weekly menus must be dated and posted in an area easily visible to parents.

(2) Menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

D. KITCHENS:

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

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

(3) A home will serve food promptly and refrigerate immediately after use. Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

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

(5) If food is brought from the child's home, a home will label it with the child's name and refrigerate if necessary. A home will label and refrigerate bottles of infant formula or breast milk. Labeling is not necessary if only one child is using bottles.

(6) A home will keep food requiring refrigeration, including formula, at 41 degrees (fahrenheit) or below, and frozen food at 0 degrees (fahrenheit) or below.

(7) Refrigerators and separate freezers will have working internal thermometers.

(8) A home will protect all food from insects, rodents and other vermin.

(9) A home will discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

(10) A home will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize.

(11) A home will use cleaning materials for the kitchen and food preparation

areas only in the kitchen and will store the materials separately from food.

(12) A home shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A home will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served. Areas will be sanitized before and after each use.

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

(3) Time allowed for meals shall enable children to eat at a reasonable rate. [8.16.2.35 NMAC - Rp, 8.16.2.35 NMAC, 11/30/12]

8.16.2.36 HEALTH AND SAFETY REQUIREMENTS FOR HOMES:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

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

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

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

(d) before and after eating or feeding a child; and

(e) after handling pets or animals or items used by animals such as water and food bowls.

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

B. FIRST AID REQUIREMENTS:

(1) A home will keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

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

against HIV and hepatitis B.

C. MEDICATION:

(1) A home will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Homes will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement (Paragraph (2) of Subsection C of 8.16.2.26) only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.

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

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

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The home shall not administer expired medication.

D. ILLNESS AND NOTIFIABLE DISEASES:

(1) Children or staff members absent due to any notifiable disease will not return to the home without a signed statement from a physician.

(2) A home will separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.

(3) A home will send a child home when:

(a) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness or behavior changes; or

(b) the educator observes signs of contagious disease or severe illness.

[8.16.2.36 NMAC - Rp, 8.16.2.36 NMAC,

11/30/12]

8.16.2.37 TRANSPORTATION REQUIREMENTS FOR HOMES:

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

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

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

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

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(4) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

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

E. No one will smoke in a vehicle used for transporting children.

F. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

G. At least one adult transporting children shall be currently

certified in cardiopulmonary resuscitation. [8.16.2.37 NMAC - Rp, 8.16.2.37 NMAC, 11/30/12]

8.16.2.38 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES:**A. HOUSEKEEPING:**

(1) An educator will keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

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

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will have a tight fitting lid, be durable and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed child care homes must use a New Mexico licensed pest applicator whenever applying pesticides on the home's buildings and grounds.

(2) The pest control company may not apply pesticides when children are on the premises.

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

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

C. MECHANICAL SYSTEMS:

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

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

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

(4) A home will provide fresh air

and control odors by either mechanical or natural ventilation. If a home uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet will be below 110 degrees (fahrenheit). A home will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) A home will use U/L approved equipment only and will properly maintain this equipment.

(2) All electrical outlets within reach of children will be safety outlets or will have protective covers.

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

E. EXITS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be useable for an emergency exit.

F. TOILET AND BATHING FACILITIES:

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

(2) All closets and bathroom locks must have an outside release. A home will enclose all bathrooms.

G. SAFETY COMPLIANCE:

(1) A home will have an operating smoke detector in each child-activity room and in each room in which a child sleeps.

(2) A home will have a 210ABC extinguisher mounted in the kitchen in a visible and easily accessible place. A professional will inspect each fire extinguisher once a year and fire extinguishers will have official tags noting the date of inspection.

(3) A home will conduct at least one fire drill each month, will hold the drills at different times of the day and will keep a record of the fire drills with the date, time, number of adults and children participating, and any problems.

(4) A home will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home will prohibit

smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. A home will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. PETS:

(1) A home will inform parents or guardians in writing before pets are in the home.

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

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(5) An educator must be physically present during the handling of all pets or other animals.

[8.16.2.38 NMAC - Rp, 8.16.2.39 NMAC, 11/30/12]

8.16.2.39 REGULATIONS FOR PROGRAMS OFFERING ONLY OUT OF SCHOOL TIME CARE:

APPLICABILITY: A child care program required to be licensed under 8.16.2.40 NMAC through 8.16.2.47 NMAC of this regulation provides a variety of developmentally appropriate activities that are both educational and recreational at a specific site, usually a school, on a regular basis before or after school or when school is not in regular session to children age five to 18 years, and not exempted from regulation under any of the exceptions listed in 8.16.2.9 NMAC.

[8.16.2.39 NMAC - Rp 8.16.2.40 NMAC, 11/30/12]

8.16.2.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides

documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A program will submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3) **BACKGROUND CHECK:** The licensing authority will provide a copy of the most current version of the department's Background Check and Employment History Verification provisions (8.8.3 NMAC), regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home as per the requirements of the most current version of the department's Background Check and Employment History Verification provisions. All requirements of the current Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(4) **ZONING, BUILDING AND OTHER APPROVALS:** An applicant will use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department's requirements. Acceptable documents will be provided to the licensing authority before licensure. Otherwise, an applicant will have:

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

(b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

(c) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; and

(d) current written approval from the New Mexico environment department or other environmental health authority for:

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

(ii) private water supply, if applicable;

(iii) private waste or sewage disposal, if applicable; and,

(iv) a swimming pool, if applicable.

(5) **ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES:** Accessibility for individuals with disabilities is provided in all new facilities and will include the following.

(a) Main entry into the facility is level or has a ramp to allow for wheelchair

access.

(b) Building layout allows for access to the main activity area.

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

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

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

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

(6) **SCHEDULE:** All applications for a new license will include a description of the programs proposed activities and schedule.

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

B. CAPACITY OF A PROGRAM:

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

(2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site.

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

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

(b) A program must have an outdoor activity space.

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

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(a) a lost or missing child;

(b) the death of a child;

(c) the abuse or neglect of a child;

(d) any incident, including but not

limited to accidents, illness, and injuries, that requires medical care beyond on-site first aid;

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

(f) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(g) any legal action against a program or staff members related to the care and custody of children;

(h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(i) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A program will notify parents and guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.40 NMAC.

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

[8.16.2.40 NMAC - Rp, 8.16.2.41 NMAC, 11/30/12]

8.16.2.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, staff and visitors:

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

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

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

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

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

C. P A R E N T HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following.

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

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

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

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

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the classroom;

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

(i) celebrating holidays, birthdays and parties;

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

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

(d) notification of absence;

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

(f) field trip policies;

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

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure;

(l) guidance policy; and

(m) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation and reunification with parents, and individual plans for children with special needs; the plan shall be approved annually by the licensing authority and the department shall provide guidance on developing these plans.

D. CHILDREN'S RECORDS: A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program, unless otherwise indicated in the list below, for 12 months after the child's last day of attendance. Records will contain at

least:

(1) PERSONAL INFORMATION:

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

(b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, and pager, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

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

(e) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian; these records may be kept at a central location;

(f) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

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

(h) an enrollment agreement; this form will be signed by a parent or guardian with an outline of the services and the costs; these forms may be kept at a central location.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child; the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times;

(b) the name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency;

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

(d) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

E. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct

contact with the children. A program will keep the file for one year after the educator's last day of employment. Unless otherwise indicated, a licensee may keep the items listed below in a central location. Records will contain at least the following:

- (a) name, address and telephone number;
- (b) position;
- (c) current and past duties and responsibilities;
- (d) dates of hire and termination;
- (e) documentation of a background check and employment history verification;
- (f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC;
- (g) documentation of first-aid and cardiopulmonary resuscitation training;
- (h) documentation of all appropriate training by date, time, hours and area of competency;
- (i) emergency contact number;
- (j) universal precaution acknowledgement; and
- (k) a written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals.

(2) A program will maintain current work schedules and daily sign in sheets for the director, all staff, all educators, and volunteers and keep the records on file for at least 12 months. The record will include the time the employee arrived at and left work and include breaks and lunch.

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

- (1) organizational chart;
 - (2) job descriptions of all employees by title;
 - (3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
 - (4) code of conduct;
 - (5) training requirements
 - (6) procedures and criteria for performance evaluations;
 - (7) policies on absence from work;
 - (8) grievance procedures;
 - (9) procedures for resignation or termination;
 - (10) copy of licensing regulations;
 - (11) policy on parent involvement;
 - (12) health policies related to both children and staff;
 - (13) policy on sexual harassment;
- and

(14) plan for retention of qualified staff.

[8.16.2.41 NMAC - Rp, 8.16.2.42 NMAC, 11/30/12]

8.16.2.42 PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children;

(2) All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators (staff members) who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios will not be responsible for cooking, clerical or cleaning duties while caring for children.

(5) Substitutes, volunteers and part-time educators counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and educators routinely employed in a facility but working 20 hours or fewer a week will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements. See Paragraph (3) of Subsection C of 8.16.2.42 NMAC for additional training requirements.

(6) Each site will have a site director. The site director or a designated co-director who meets the same qualifications as the site director will be on site 50 percent of the program's core hours of operation.

(7) A program will maintain staff/child ratios at all times. Children must never be left unattended whether inside or outside the facility.

(8) A program will have a minimum of two staff members present at all times. If the program has less than seven children, the second educator may be engaged in other duties.

(9) Each site will have one adult for every 15 children age five or older.

B. STAFF QUALIFICATIONS:

(1) Unless exempted under Paragraph (3) below, an out of school time program will have an administrator/director who is at least 21 years old and has proof of

a current copy of:

(a) a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC), or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b) a bachelor's degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

(3) Program administrators and site directors employed in a licensed program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

C. TRAINING:

(1) The program administrator will develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following areas: a) scope of services and activities offered by the program; b) emergency first aid procedures; c) indicators of child abuse and neglect; d) fire prevention measures, emergency evacuation plan and disaster preparedness plan; e) review of licensing regulations; f) review of policies regarding guidance; g) child abuse and neglect reporting; h) handling of incidents and complaints; i) health and safety, including infection and injury prevention and control.

(2) A program will keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(3) All educators are required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency

areas within two years. Training shall be relevant to school age children. Identical trainings shall not be repeated for the purpose of obtaining credit. The competency areas are:

- (a) child growth, development, and learning;
- (b) health, safety, nutrition, and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

(4) Training must be provided by individuals who have education or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department.

(5) Program administrators may count hours in personnel and business training toward the training requirement. [8.16.2.42 NMAC - Rp, 8.16.2.43 NMAC, 11/30/12]

8.16.2.43 SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE:

A. GUIDANCE:

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

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

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

- (a) physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child's mouth;
- (b) withdrawal of food, rest, bathroom access, or outdoor activities;
- (c) abusive or profane language, including yelling;
- (d) any form of public or private humiliation, including threats of physical punishment; or
- (e) unsupervised separation.

B. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age appropriate functional identifiable

learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

- (a) dramatic play;
- (b) creative art;
- (c) books;
- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and
- (i) sensory.

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

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

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

(5) Learning areas have adequate space and quiet areas are arranged so that children's activities can be sustained without interruption.

(6) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(7) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(8) Floor surface is suitable for activities that will occur in each learning area.

(9) File and storage space is available for educators' materials.

C. SOCIAL - EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

D. EQUIPMENT AND PROGRAM:

(1) A program will provide sufficient equipment, materials, and

furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

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

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

(4) A program will provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate, and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.

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

(6) Media viewing will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content.

(7) Children and family members shall be acknowledged upon arrival and departure.

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

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment used in out of school time programs shall be:

- (a) intended for public (non-residential) use and installed and maintained

according to the manufacturer’s instructions; or

(b) if intended for residential use, shall be safe and securely anchored.

(2) A program will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety. When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.						
Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches
For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.						

(3) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

G. SWIMMING, WADING AND WATER:

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

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

- (a) a program will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;
- (b) a program will empty a wading pool when it is not in use and remove it from areas accessible to children;
- (c) a program will not use a portable wading pool placed on concrete or asphalt.

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

- (a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;
- (b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and
- (c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

(4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
5 years	1	10
6 years and older	1	12

H. FIELD TRIPS:

(1) A program will ensure the children’s safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection D of 8.16.2.41 NMAC for requirements concerning field trip permission slips.

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

[8.16.2.43 NMAC - Rp, 8.16.2.44 NMAC, 11/30/12]

8.16.2.44 FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the program will conform to the guidelines from United States department of agriculture’s (USDA’s) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A program will provide a child a meal or snack at least every three hours.

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

(3) A program will serve snacks each day and will include a selection of two different food group components from the four food group components.

(4) A program shall serve only 100-percent fruit or vegetable juice. The use of fruit drinks that contain less than 100% juice or artificially flavored drinks for meals or snacks is prohibited. 100-percent fruit or vegetable juice may be diluted with water.

(5) A program shall serve a wide variety of fruits and vegetables, with a preference for fresh or frozen fruits and vegetables over canned.

(6) A program shall make water freely available to children.

(7) Menus shall contain a variety of foods. The same menu must not be served twice in one week.

C. KITCHENS:

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

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

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

(4) A program will discard any leftover milk.

(5) A program will keep food requiring refrigeration, at 41 degrees (fahrenheit) or below and frozen food at 0 degrees (fahrenheit) or below.

(6) Refrigerators and separate freezers will have working internal thermometers.

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

(8) A program will protect all food from insects, rodents and other vermin.

(9) A program will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: a) wash with soapy water; b) rinse with clean warm water; and c) sanitize using.

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

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

(12) A program will provide sanitary cups or glasses or a drinking fountain for drinking water. A program will not allow children to share drinking or eating utensils.

(13) A program shall thoroughly sanitize food preparation surfaces before and after each use.

[8.16.2.44 NMAC - Rp, 8.16.2.45 NMAC, 11/30/12]

8.16.2.45 HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. HYGIENE: Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

- (1) after using a toilet;

(2) before and after caring for a sick child;

(3) before any food service activity, including setting the table;

(4) before and after eating; and

(5) after handling pets or animals or items used by animals such as water and food bowls.

B. FIRST AID REQUIREMENTS:

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

(2) A program will keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, as a minimum, band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(3) A program will treat blood spills cautiously and promptly decontaminate the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program will clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A program will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

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

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

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

- (5) When the medication is no

longer needed, it shall be returned to the parents or guardians or destroyed. The program shall not administer expired medication.

D. ILLNESSES:

(1) Children or staff members absent due to any notifiable disease will not return to the program without a signed statement from a physician.

(2) A program will separate and constantly observe a child who becomes sick at the program and promptly notify a parent or guardian of the child's illness.

(3) A program will send a child home when:

(a) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness or behavior changes; or

(b) an educator observes signs of contagious disease or severe illness.

(4) The program will have a cot or mat available for sick children and it will be cleaned and disinfected thoroughly after use. [8.16.2.45 NMAC - Rp, 8.16.2.46 NMAC, 11/30/12]

8.16.2.46 TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

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

C. No one will smoke in a vehicle used for transporting children.

D. A program will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(1) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(2) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

E. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least

weekly.

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

G. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

H. At least one adult transporting children shall be currently certified in cardiopulmonary resuscitation (CPR).

[8.16.2.46 NMAC - Rp, 8.16.2.47 NMAC, 11/30/12]

8.16.2.47 BUILDING,GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE

A. HOUSEKEEPING:

(1) A program will keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

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

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will be durable, and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed programs must use a New Mexico licensed applicator whenever applying pesticides in or on the program's buildings and grounds.

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

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

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

C. MECHANICAL SYSTEMS:

(1) A program will maintain comfortable temperatures (68 degrees fahrenheit through 82 degrees fahrenheit) in all rooms used by children. A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler

temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

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

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

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

(5) Water coming from a faucet will be below 110 degrees (fahrenheit). A program will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

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

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

(3) Use of electrical cords and outlets:

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

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

E. EXITS AND

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

(1) There must be at least two exits remote from each other in each activity area of the program.

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

F. TOILET AND

BATHING FACILITIES:

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

(2) All toilets and sinks must be located within 100 feet of the licensed area. The staff member shall maintain a direct line of sight of the child until the child enters the bathroom and from the time the child leaves the bathroom until the child returns.

G. SAFETY COMPLIANCE:

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

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

(b) use the fire alarm, detector system or a simulated fire alarm;

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

(d) a program will keep on file a record of the fire drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill; records will be kept for one year.

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

(3) A program will post evacuation plans for each room used by children in the appropriate room.

(4) A program will keep a working telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. A pay phone will not fulfill this requirement. If cordless phones are used, emergency numbers shall be posted on the phone itself. Facilities shall post the program's telephone number and address in a conspicuous location next to the emergency phone numbers.

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

(6) A program must have a minimum of two 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the program.

(7) Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting must be properly maintained and inspected on at least a yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection D of 8.16.2.47 NMAC for emergency lighting requirements.

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

I. PETS:

(1) A program will inform parents or guardians in writing before pets are at the program site.

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

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

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

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

[8.16.2.47 NMAC - Rp, 8.16.2.47 NMAC, 11/30/12]

HISTORY OF 8.16.2 NMAC:

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

HSSD 76-8, Child Care Facilities, Licensing Rules, Regulations and Standards, 12-1-76 HED-82-4 (HSD), Regulations Governing Child Care Center Licensing, 8-11-82

HED-81-2 Regulations Governing Family Day Care Licensing, 6-16-81

HED 82-6 (HSD), Regulations Governing Family Day Care Licensing, 8-11-82

HED 87-1 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care to Children, 6-16-87

HED 87-3 (HSD), New Mexico Regulations Governing Facilities Providing Day/Night Care to Children, 6-19-87.

HISTORY OF REPEALED MATERIAL:

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-99.

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care

Homes, and other Early Care and Education Programs - repealed 8-1-00.

8 NMAC 16.2, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 8-1-01.

8.16.2 NMAC, Child Care Centers, Before/After School Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 11-01-02.

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

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 6-30-10.

8.16.2 NMAC, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs - repealed 11-30-12.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.15.2 NMAC, Sections 7, 10 - 15, 17, 18 and 21, effective 11/30/12.

8.15.2.7 DEFINITIONS:

A. "Attending a job training or educational program" means being physically present and actively participating in a job training or educational program.

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

C. "Child support enforcement division" means the child support enforcement program administered by New Mexico's human services department, which collects child support from non-custodial parents.

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

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

[E:] F. "Department" means the New Mexico children, youth and families department (CYFD).

[F:] G. "Earned income" means income received as wages from employment or as profit from self-employment.

[G:] H. "Homeless" means an individual who lacks a fixed, regular, and adequate nighttime residence; and an individual who has a primary nighttime residence that is:

(1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(2) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(3) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

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

[I:] J. "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(1) infant: 0-23 months;

(2) toddler: 24 -35 months;

(3) preschool: three to five year olds; and

(4) school age: six year olds and older.

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

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

of young children (NAEYC) academy for early childhood program accreditation; the national early childhood program accreditation (NECPA); the national association of family child care (NAFCC); the council of accreditation (COA); the national accreditation commission for early care and education programs (NAC); the international Christian accrediting association (ICAA); or the association of Christian schools international (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

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

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

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

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

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

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

(2) "Registered home" means child care provided in the home of a provider who is registered with the department's child and adult care food program to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are ineligible.

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

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

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

(6) "Out of school time care"

means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

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

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

[S-] T. "Residing with" means living in a household which provides shelter and care to a child during the non-working hours of the child's parent or guardian.

[T-] U. "SNAP" means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

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

[V-] W. "Suspension" means that the child care case is kept open, but benefits are not paid.

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

[X-] Y. "Teen parent" means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

[Y-] Z. "Termination" means the child care case is terminated due to cause.

[Z-] AA. "Underpayment" means a payment made by the department for services provided which did not fully reimburse the client or provider.

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

[BB-] CC. "Waiting list" means a list of families who have applied for

child care services during a period of lack of funding.

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

[DD-] EE. "CACFP" means the child and adult care food program, administered by the children, youth and families department.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC, 02/14/05; A, 09/15/05; A, 08/31/06; A, 06/30/10; A, 11/30/12]

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person, or by mail, at the local child care office. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation:

(1) a completed signed application form;

(2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program or the supplemental nutrition assistance program; social security numbers may be used to establish TANF participation or receipt of child care support;

(3) school schedule, if applicable;

(4) ~~birth certificates~~ verification of birth for all applicant children;

(5) proof of unearned income;

(6) proof of residency; and

(7) the name, address, phone number, and social security number of the provider selected to care for the children.

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

(1) the client is utilizing child care services;

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

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

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 02/14/05; A, 08/31/06; A, 06/30/10; A, 11/30/12]

8.15.2.11 ELIGIBILITY REQUIREMENTS:

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

A. The household: The

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

B. Allowed exclusions from the household for ~~[co-pay]~~ co-payment calculation only: Excluded from the household for ~~[co-pay]~~ co-payment calculation purposes only are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents or legal guardians in this situation are required to qualify for child care assistance as per Subsection D below and, upon qualification, have the required ~~[co-pay]~~ co-payment waived.

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

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

E. Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable) [~~These include, but are not limited to~~]: income from employment by working for others or from self-employment; child support payments; alimony payments; veterans administration (VA) payments except VA payments for educational purposes and disability; union payments; unemployment or workman's compensation; railroad retirement benefits; pensions; TANF benefits, including ~~[diversionary]~~ diversion payments; royalties; ~~[and]~~ income from rental property; social security benefits; work study income; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

F. Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of a dependent child who is under 18 and in school; food stamps; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency

status beginning September 11, 2001;" third party payments; energy assistance benefits; foster care payments; adoption subsidies; ~~[supplemental security income (SSI); social security benefits for dependent children;]~~ VA payments for educational purposes and disability; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or Americorp; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; ~~[work study income;]~~ overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts.

G. Verification of income: Clients applying for child care assistance benefits are required to verify income by providing current proof of income for all members of the household who receive income. Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined. A self-employed individual who does not show a profit that is equal to federal minimum wage times 30 hours per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be discontinued.

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

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

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

K. Teen parent: A teen parent who is attending a high school or a GED program or attending any other job

skills training or educational programs directly related to enhancing employment opportunities is prioritized relative to budget availability.

L. Failure to use authorized child care: If authorized child care has not been used for ~~[10]~~ five consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, child care assistance services may be terminated. The provider or the client shall notify the department within three business days after the ~~[tenth]~~ fifth day of non-attendance. Upon receiving notice from the provider or the client within the prescribed timeframe, the department shall issue a ~~[14 calendar day]~~ notice to the client stating when the client's case will be closed and shall simultaneously issue a ~~[14 calendar day]~~ notice to the provider stating when the last date of payment will be made. ~~[Providers shall be paid through the final day of expiration of the provider's 14 calendar day notice, if the provider has reported non-attendance within the prescribed three-day timeframe. If the department is not notified within this three day timeframe, the provider shall be paid through the tenth day of non-attendance and no further. The client's case will be closed on the final day of expiration of the 14 calendar day notice if the client does not respond to the 14 calendar day notice.]~~ Providers shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed above. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance. Clients in cyclical employment are exempted.

M. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity. Work, educational or community service activities must be approved by HSD for SNAP clients. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses. Child care benefits for clients who are preparing for the acquisition of a GED shall be limited to one year.

N. Temporary absences: The following rules apply when the parent or guardian is temporarily absent from the home but continues to be part of the household and children are cared for by the parent or guardian's authorized representative: Child care assistance will be provided for up to 90

days. During this time, eligibility for child care assistance shall be based upon the parent or guardian's income. The hours of care needed shall be based upon the authorized representative's school, work or approved activity schedule. If the parent or guardian's absence exceeds 90 days, the authorized representative is required to apply for child care assistance. At this time, the authorized representative's income will be considered in determining eligibility, as per Subsection A of 8.15.2.11 NMAC. Under documented extenuating circumstances, including but not limited to military deployment, child care assistance may be provided for up to 12 months. During this period of time, eligibility for child care assistance shall be based upon the parent or guardian's income.

[N:] O. Special supervision: Child care benefits may be provided to children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.

[Ø:] P. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-k, school or other programs.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 02/14/05; A, 06/30/10; A, 11/30/12]

8.15.2.12

RECERTIFICATION: Clients must recertify for services at least once every six months [~~except as follows: High school students may recertify upon the completion of the school year; and clients who have continuously received child care assistance for at least two years, who have been employed at the same location for at least two years, and who have not had frequent changes to their case may recertify every 12 months~~]. All clients shall provide continued proof of eligibility. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 02/14/05; A, 06/30/10; A, 11/30/12]

8.15.2.13

C L I E N T RESPONSIBILITIES: Clients must abide

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

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for child protective services (CPS) and qualified grandparents or legal guardians as defined in Subsection B of 8.15.2.11 NMAC. Co-payments are based upon the size and income of the household.

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

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

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

E. The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

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

G. Notification of changes: Clients must notify the department of changes that affect the need for care, which include but are not limited to loss of employment, no longer attending school, no longer participating in a work requirement, or household members moving in or out, within [~~14 calendar~~] five business days of the change. Priority one clients whose TANF cases are closed by the human services department at the time of their TANF recertification, must contact the department immediately. Clients who do not comply with this requirement may be sanctioned, and may be subject to the recoupment process.

H. Required application with New Mexico human services department's child support enforcement division (CSED):

(1) When one or both of the child's

parents are absent from the home, the client shall apply for child support through CSED within six months of initial application with the child care assistance program. Clients currently receiving child care assistance at the time this policy becomes effective shall have six months after recertification to comply with this requirement. Clients recertifying in fewer than six months will have until their following recertification visit to comply.

(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; a parent is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; or when good cause exists.

(3) Good cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:

(a) there is possible physical or emotional harm to the child, parent or guardian;

(b) the child was conceived as a result of incest or rape;

(c) legal proceedings for adoption of the child are pending before a court; or

(d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(4) The applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

(5) If the client is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 02/14/05; A, 06/30/10; A, 11/30/12]

8.15.2.14

C A S E SUSPENSIONS: [~~Clients who are engaged in cyclical educational programs or cyclical employment, such as students, public school employees, and school bus drivers may request temporary suspension, not to exceed three months per occurrence, of the use of~~

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

A. Clients may request temporary suspension, not to exceed three months per occurrence, of the use of child care assistance benefits without losing eligibility for benefits, for reasons such as but not limited to:

(1) engagement in cyclical educational programs or cyclical employment, such as students, public school employees, and school bus drivers;

(2) child is receiving care that is not reimbursed through CYFD for a limited period of time, such as child care provided by grandparents over the summer;

(3) client is in the third trimester of her pregnancy or client's doctor determines that continued employment before birth jeopardizes the mother or the unborn child's health;

(4) maternity leave after the birth or adoption of a child; the case may be suspended for longer than three months if there are documented medical complications for either the mother or the child; or

(5) client has a medically documented condition.

B. A case may also be suspended with child care benefits being paid to client or additional household member for up to 30 calendar days in a situation of lost employment or graduation from high school or undergraduate school, providing the client is making a bona fide effort to secure employment, and the client reports the change in a timely manner. Case suspensions due to lost employment or graduation are not to exceed two occurrences per calendar year.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 02/14/05; A, 06/30/10; A, 11/30/12]

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

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are ineligible. If registered home providers complete the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands. A child protective services screen will be conducted on all new registered providers. Evidence of a substantiated referral for child abuse or neglect for a provider, a second caregiver, or any persons age 18 or over residing in the provider's home or working in a licensed child care center/home [with] may result in the ineligibility of that provider to receive payments under the child care assistance program. [The only exception is when a custodial parent has a substantiated referral but resides with the child care provider who does not have a substantiated referral.]

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

C. New child care providers must participate in at least one orientation session within the first six months of becoming a child care vendor for the department. Providers are notified of this requirement.

D. Child care providers must notify the department within three business days after the [tenth] fifth day of non-attendance if the child is disenrolled

or is absent for [H0] five consecutive scheduled days. Absences totaling [H0] five or more consecutive scheduled days must be approved by the client's caseworker. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided by Subsection L of 8.15.2.11 NMAC.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the times and days listed on the placement agreement. Failure to comply with this requirement may result in sanctions or suspension of the child care assistance contract.

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

(2) Providers may charge a registration/educational fee [for materials and supplies only] to a child care assistance family comparable to but not to exceed that charged to private pay families. The registration/educational fee shall be charged no more than once every six months and shall be limited to materials and supplies. If the department determines that the provider is charging fees that are unreasonable and pose an undue burden to child care assistance families, the department may suspend the child care assistance contract.

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

F. Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. [8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 02/14/05; A, 09/15/05; A, 06/30/10; A, 11/30/12]

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of

the month:

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

B. ~~[When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the 14 calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.]~~ Upon a change of provider the client and former provider have three days after the 5th day of non attendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.

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

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

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

~~[E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1):~~

~~F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time):~~

~~G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type:]~~

E. Hours of care shall be rounded to the nearest whole number.

F. Child care placement agreements for out of school time care shall be opened and closed concurrent with the beginning and end of summer vacations, with the exception of year round school.

[H.]G. Monthly reimbursement rates:

Licensed child care centers							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$521.37	\$463.75	\$470.72	\$434.63	\$440.01	\$408.02	\$390.64	\$377.96
Licensed group homes (capacity: 7-12)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$424.01	\$400.96	\$388.93	\$381.23	\$383.08	\$375.81	\$378.53	\$368.53
Licensed family homes (capacity: 6 or less)							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$410.20	\$387.60	\$370.08	\$365.04	\$369.17	\$362.09	\$364.28	\$354.64
Registered homes and in-home child care							
Infant		Toddler		Pre-school		School-age	
Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro	Metro	Non-Metro
\$278.74	\$258.00	\$264.00	\$217.69	\$242.00	\$220.00	\$242.00	\$198.00

~~[F.] H.~~ The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, Star level status of the provider if applicable, and in accordance with

the rate established for metro or non-metro location of the provider. Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. [~~These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties.~~] All other providers receive the non-metro rate.

[~~F~~] I. Providers holding national accreditation status receive an additional \$132.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

[~~K~~] J. The department pays a differential rate to providers achieving higher Star levels as follows: 3-Star at \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$104.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$132.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

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

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

[~~M~~] L. If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

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

[~~O~~] N. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six to 12 month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 08/15/07; A, 06/30/10; A/E, 11/01/10; Re-pr, 12/30/10; A/E, 12/01/11; Re-pr, 12/30/11; A, 7/1/12; A, 11/30/12]

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

[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 02/14/05; A, 11/30/12]

8.15.2.21 SANCTIONS: If a client or provider fails to meet programmatic requirements that affect benefits and result in an overpayment, sanctions may be imposed according to the severity of the infraction as determined by the department and detailed below.

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

B. Providers or clients who fail to report in a timely manner that a child is not in attendance for [~~H0~~] five consecutive, scheduled days will have the payment recoupment process initiated.

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

D. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current. The department assists the provider in collecting the [~~eo-pay~~] co-payment only if the [~~eo-pay~~] co-payment has been in arrears 30 calendar days or less.

E. Clients who fail to timely report changes that affect their eligibility resulting in an overpayment may be sanctioned and payment recoupment may be sought for the entire amount accruing from the end of the [~~14-calendar~~] five business days allowed for notification through the date the client provides notice of the change to the department. A first offense may result in a written warning and recoupment; a second offense may result in a [~~3-month~~] three-month suspension and recoupment; and a subsequent offense may result in permanent disqualification.

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 02/14/05; A, 08/31/06; A, 06/30/10; A, 11/30/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.21 NMAC, Section 8, effective 12-15-12.

16.5.21.8 CATEGORIES OF TEMPORARY OR PUBLIC SERVICE LICENSES:

Temporary or public service dental hygiene licenses may be issued in the following categories for specific purposes, if education and experience requirements are met.

A. Clinical educator.

(1) Dental hygienists, not currently licensed in New Mexico, who provide continuing education or training that includes clinical demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for 48 hours (two days). If the course lasts longer than two days, additional 48 hour licenses may be requested upon payment of the applicable fees.

(2) Dental hygienists, not currently licensed in New Mexico, who intend to serve as a faculty member of an accredited dental hygiene program must apply for a temporary or public service license. The temporary or public service license is issued for 12 months and may be renewed one time. Temporary or public service licensees must be granted a license under the provisions of 16.5.19 NMAC or 16.5.21.15 NMAC prior to the expiration date of the temporary or public service license to continue uninterrupted practice of dental hygiene in New Mexico.

B. Public health dental hygiene. A dental hygienist may be granted temporary or public service licensure to practice in a state institution, public health clinic or public health program approved or maintained by the New Mexico department of health. The temporary or public service license holder is restricted to work exclusively in the institution or program named on the application. A temporary or public service license may be issued for six or 12 months and may be renewed one time. Temporary or public service licensees must be granted a license under the provisions of 16.5.19 NMAC or 16.5.21.15 NMAC prior to the expiration date of the temporary or public service license to continue uninterrupted practice of dental hygiene in New Mexico.

C. Presumptive public service licensure for charitable dental hygiene projects: A dental hygienist not holding a license in the state may be granted a presumptive public service license for up to 72 hours to participate in a committee approved, and ratified by the board, charitable project. Except as noted in this section the dental hygienist shall otherwise be subject to the provisions of the dental

practice act and the rules and regulations of the board. The presumptive public service license is valid only when:

(1) the charitable project is approved by the committee and ratified by the board 45 days prior to the scheduled event;

(2) the dental hygienist receives no compensation for participating in the project;

(3) the project is sponsored by an entity as defined in 16.5.21.7 NMAC and that entity has been approved by the committee, and ratified by the board, to undertake the charitable project;

(4) the dental hygienist holds a license in good standing in another jurisdiction and the license is verified by the sponsoring entity;

(5) the dental hygienist has graduated from and holds a diploma from a dental hygiene school accredited by the commission on dental accreditation and a copy of the diploma is on file with the sponsoring entity;

(6) upon request of the out-of-state dental hygienist shall produce copies of their diploma and license in another jurisdiction;

(7) the dental hygiene care provided is within the scope and limits of the license the dental hygienist holds in the other jurisdiction;

(8) the out-of-state dental hygienist works under the indirect supervision of a dentist licensed in this state who is present at the charitable project;

(9) patients who receive dental hygiene care during the charitable project will be given a list of dentists whom they can contact if post-operative care is needed;

(10) a charitable public service license is not eligible for conversion to any other temporary or public service, regular license, or license by credentials, and

(11) no fee shall be required by the board for the presumptive public service license for a charitable project.

[3-14-73, 5-31-95, 9-30-96; 16.5.21.8 NMAC - Rn & A, 16 NMAC 5.21.8, 12-30-02; A, 09-18-10; A, 01-09-12; A, 12-15-12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.29 NMAC, Section 8 and the repeal of Section 10, effective 12-15-12.

16.5.29.8 SCOPE OF PRACTICE:

A dental hygienist may perform dental hygiene services as defined in Section 61-5A-4 ~~[(B) and (C)]~~ B thru F of the act with the supervision defined. In addition, a licensed hygienist may:

A. prescribe, administer or dispense therapeutic agent as per the formulary as defined in Subsection C of

16.5.29.11 NMAC;

B. function as an expanded function dental auxiliary after passing the certifying exam and completing the apprenticeship accepted by the board;

C. function as a community dental health coordinator after completing a program certified by the board;

D. except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

E. except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

F. administration of local anesthesia as defined in 16.5.28 NMAC; and

G. such other closely related services as permitted by the rules of the committee and the board.

[10/21/70, 5/31/95; 16.5.29.8 NMAC - Rn, 16 NMAC 5.29.8, 04/17/06; A, 01/09/12; A, 12/15/12]

**16.5.29.10 [P R A C T I C E
SETTINGS:** ~~New Mexico licensed dental hygienists may practice in the following settings; with supervision as defined in 16.5.1 NMAC:~~

~~A. the office of a New Mexico licensed dentist;~~

~~B. a clinic or clinics operated or approved by an executive agency of the state of New Mexico;~~

~~C. a hospital with written authorization;~~

~~D. a state licensed nursing home or long term care facility with written authorization;~~

~~E. a school regulated by the New Mexico department of education; or~~

~~F. a medical office for the application of topical preventative therapeutics.] [RESERVED]~~

[5/31/95, 12/15/97; 16.5.29.10 NMAC - Rn, 16 NMAC 5.29.10, 04/17/06; A, 04/16/08; A, 01/09/12; Repealed, 12/15/12]

NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.30 NMAC, Sections 7 and 10, effective 12-15-12.

16.5.30.7 DEFINITIONS:

A. "Addiction" means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal

physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. "Chronic pain" means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

D. "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or and damage.

[C:] E. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

[E:] E. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

[F:] G. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[9-30-96; 16.5.30.7 NMAC - Rn, 16 NMAC 5.30.7, 12-14-00; A, 01-09-12; A, 12-15-12]

16.5.30.10 GUIDELINES: The committee shall define the following as guidelines for disciplinary action.

A. "Gross incompetence" or "gross negligence" means, but shall not be limited to, a significant departure from the prevailing standard of care in patient treatment.

B. "Unprofessional conduct" means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental hygiene profession;

(2) failure to advise the patient in simple understandable terms of the treatment rendered, the expectations for success, and the responsibility the patient must assume;

(3) failure to inform dentist or patient of periodontal assessment;

(4) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(5) sexual misconduct;

(6) failure to use appropriate

infection control techniques and sterilization procedures;

(7) breach of ethical standards, an inquiry into which the committee will begin by reference to the code of ethics of the American dental hygienists' association;

(8) fraud, deceit or misrepresentation in any renewal or reinstatement application;

(9) violation of any order of the committee, and ratified by the board, including any probation order;

(10) injudicious administration of any drug or medicine;

(11) failure to report to the committee or board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental hygiene or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(12) deliberate and willful failure to reveal, at the request of the committee, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the committee or board; and

(13) cheating on an examination for licensure;

(14) failure of a dental hygienist to comply with the following advertising guidelines:

(a) shall not advertise in a false, fraudulent, or misleading manner, and

(b) shall include in the advertisement the name of the hygienist, the name of the employer dentist(s), the practice address(es) and telephone number(s);

(15) failure of a collaborative practice dental hygienists to refer a patient for dental care; or

(16) failure of a collaborative practice dental hygienist to comply with the terms of a signed collaborative practice agreement;

(17) failure of a collaborative practice dental hygienist to professionally and effectively communicate with a patients dentist of record, or consulting dentist, in a professional manner in regard to a shared patient's care under 16.5.17 NMAC of these rules;

(18) failure of a collaborative dental hygienist to comply with the following advertisement guidelines, no person shall:

(a) practice dental hygiene under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board;

(b) practice dental hygiene without

displaying his/her full name as it appears on the license issued by the board on the outside of the entrance door of each office;

(c) shall include in all advertisements the dental hygienist's name, address and telephone number; and

(d) shall not advertise a practice in a false, fraudulent or misleading manner;

~~[(18)]~~ (19) assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

~~[(19)]~~ (20) conviction of either a misdemeanor or a felony punishable by incarceration;

~~[(20)]~~ (21) aiding and abetting a dental auxiliary who is not properly certified;

~~[(21)]~~ (22) patient abandonment;

~~[(22)]~~ (23) habitually addicted as defined in 61.5A-21 4 & 6 and 61.5B-3. (C) and (D) habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 NMSA 1978] or habitual or excessive use or abuse of alcohol;

~~[(23)]~~ (24) failure of the licensee to furnish the committee; its investigators or representatives with information requested by the committee, and ratified by the board; ~~[and]~~

~~[(24)]~~ (25) failure to appear before the board when requested by the committee, and ratified by the board, in any disciplinary proceeding; ~~and~~

~~(26) failure to be in compliance with the Parental Responsibility Act NMSA1978, Section 40-5A-3 seq.~~

~~[3-14-73, 4-10-81, 10-16-92, 5-31-95, 9-30-96, 1-1-99, 2-14-00; 16.5.30.10 NMAC - Rn & A, 16 NMAC 5.30.10 12-14-00; A, 07-19-10; A, 01-09-12; A, 12-15-12]~~

NEW MEXICO COMMISSIONER OF PUBLIC LANDS

New Mexico State Land Office

Notice of Repealed Rule

Ray Powell, M.S., D.V.M., New Mexico Commissioner of Public Lands, hereby gives notice to repeal State Land Office Rule: Title 19 - Natural Resources and Wildlife, Chapter 2 - State Trust Lands, Part 22 - Planning and Development Leases (19.2.22 NMAC), effective November 30, 2012, and that it is hereby replaced with Title 19 - Natural Resources and Wildlife, Chapter 2 - State Trust Lands, Part 22 - Planning and Development Leases (19.2.22 NMAC) effective November 30, 2012.

**NEW MEXICO
COMMISSIONER OF
PUBLIC LANDS**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST
LANDS
PART 22 PLANNING AND
DEVELOPMENT LEASES**

19.2.22.1 ISSUING AGENCY:

Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail - P. O. Box 1148 - Santa Fe, New Mexico 87501.

[19.2.22.1 NMAC - Rp, 19.2.22.1 NMAC, 11/30/12]

19.2.22.2 SCOPE:

Pursuant to Article XIII, Section 2, of the New Mexico Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.22 NMAC, governs the granting of planning and development leases, on those lands within the commissioner's constitutional jurisdiction.

[19.2.22.2 NMAC - Rp, 19.2.22.2 NMAC, 11/30/12]

19.2.22.3 S T A T U T O R Y

AUTHORITY: N.M. Const. Art. XIII; Section 19-1-1 et seq. NMSA 1978; Section 19-7-1 et seq. NMSA 1978.

[19.2.22.3 NMAC - Rp, 19.2.22.3 NMAC, 11/30/12]

19.2.22.4 D U R A T I O N :

Permanent.

[19.2.22.4 NMAC - Rp, 19.2.22.4 NMAC, 11/30/12]

19.2.22.5 EFFECTIVE DATE:

November 30, 2012, unless a later date is cited at the end of a section.

[19.2.22.5 NMAC - Rp, 19.2.22.5 NMAC, 11/30/12]

19.2.22.6 OBJECTIVE:

The objectives of 19.2.22 NMAC are to generate value to the trust by planning and development of trust land for future sale, lease, or exchange through the process of obtaining government approvals and the placement of infrastructure pertinent to the planning and development of the land; to assure protection and maintenance of trust assets and lands; to provide planning and development lease terms and conditions; and to provide an efficient process for such leasing.

[19.2.22.6 NMAC - Rp, 19.2.22.6 NMAC, 11/30/12]

19.2.22.7 DEFINITIONS: As used in 19.2.22 NMAC, the following terms have the meaning set forth in this section. A planning and development lease may add detail to a definition to accommodate lease specific issues.

A. "Applicant" means the person or entity first applying to nominate trust land for a planning and development lease.

B. "Approval / approved" means written approval and includes only that which has been expressly approved and nothing further which might be implied.

C. "Assignment" means any direct or indirect transfer or partial transfer of all of a lessee's interest in all or a part of a planning and development lease, including, but not limited to, any conditional transfer or transfer by operation of law, excluding subleases.

D. "Base value" means the value that results from the base appraisal, as more specifically defined in Paragraph (1) of Subsection A of 19.2.22.17 NMAC below.

E. "Base infrastructure" means tangible improvements consisting of main distribution or arterial-level service lines, or the municipal or local equivalent, including at a minimum, all of the following: water, sanitary sewer, gas, electricity, telecommunications, and roadways or other transportation facilities.

F. "Collateral assignment" or "leasehold mortgage" means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a planning and development lease, infrastructure, governmental approvals, or improvement value credit.

G. "Commissioner" means the New Mexico commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

H. "Disposition" means a take-out sale, a take-out lease, or a take-out exchange of all or any portion of trust land subject to a planning and development lease.

I. "Disposition parcel" means the portion of the trust land under lease that is subject to disposition.

J. "Government approvals" means legal rights granted by governments or agencies that run with the leased land including but not limited to planning, zoning, water and sewer service agreements, development agreements, platting, archaeological clearances or mitigation, and such other rights as may be required for the further development, improvement or use of the trust land; any property, rights, approvals, or privileges obtained or developed for the benefit of,

or made appurtenant to, trust land and any other rights, permits or privileges obtained or developed in connection with a lessee's use of the leased trust land including, but not limited to, development rights and approvals.

K. "Governmental entity" means the state of New Mexico, its agencies or political subdivisions, Indian tribes and pueblos, or federal government agencies other than the department of interior.

L. "Infrastructure" means any improvements approved through a governmental approval process and necessary to support or enhance future planned development of all or the relevant parts of the leased premises, including but not limited to utilities, erosion control structures and flood control structures, roadways, sanitary sewers, water wells, water reservoirs, and sanitary sewage treatment facilities.

M. "Improvements" means any item of tangible property secured, developed, placed, created or constructed on the leased premises including but not limited to buildings, structures, infrastructure, permanent equipment and fixtures, and water rights developed as appurtenant to the trust land and approved by the commissioner, including any associated and required land use approvals.

N. "Improvement value (IV)" means the increased value of the leased premises attributable to improvements as established by appraisal, as more specifically defined in Subsection C of 19.2.22.17 NMAC below.

O. "Improvement value credit (IVC)" means the lessee percentage multiplied by the improvement value.

P. "Joint planning agreement" means a written agreement or understanding entered between the commissioner and a local government designed to facilitate planned growth of trust lands for the greatest benefit to the trust and the local community.

Q. "Leased premises" means that portion of trust land which is subject to a planning and development lease.

R. "Lessee" means the party of record at the state land office, who leases trust land from the commissioner under a planning and development lease.

S. "Lessee percentage (LP)" means the percentage to be determined through negotiation or bidding, and incorporated into the lease, which sets the lessee's proportional share of IV.

T. "Lessor" means the commissioner acting by and through the state land office.

U. "Natural appreciation (NA)" means any increase in the value of the leased premises not attributable to improvements, as determined by appraisal or

by a pre-negotiated annual adjustment factor, as more specifically defined in Paragraph (3) of Subsection A of 19.2.22.17 NMAC below.

V. "Planning and development lease" means a written lease of trust land issued under this part, 19.2.22 NMAC, designed to improve the value of trust land for future sale, lease, or exchange. The commissioner, in his discretion, shall determine the development potential of trust land.

W. "Qualified bidder" means a prospective bidder that has satisfied both the qualification deposit and all other bidder qualifications as more specifically described in Subsections A and B of 19.2.22.11 NMAC.

X. "Rent" means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a planning and development lease.

Y. "Rent adjustment" means a periodic increase of any rent amount.

Z. "Subsequent value (SV)" means the value that results from any subsequent appraisal, as more specifically defined in Paragraph (2) of Subsection A of 19.2.22.17 NMAC below.

AA. "Schedule of fees" means a list of administrative fees which is published on the state land office website and revised by the commissioner from time to time.

BB. "State land office" means the New Mexico state land office.

CC. "Sublease" means a transaction or arrangement whereby a planning and development lessee transfers to another anything less than the full interest in the planning and development lease, including but not limited to the rights to use, possess, manage or control all or part of the leased premises.

DD. "Take-out exchange" means a relinquishment or a conditional relinquishment of all or a portion of the leased premises from the planning and development lease together with, and for the purpose of, an exchange of the same pursuant to 19.2.21 NMAC.

EE. "Take-out lease" means a relinquishment or a conditional relinquishment of all or a portion of the leased premises from a planning and development lease together with, and for the purpose of, a business lease of the same pursuant to 19.2.9 NMAC.

FF. "Take-out sale" means a relinquishment or a conditional relinquishment of all or a portion of the leased premises from a planning and development lease together with, and for the

purpose of, a sale of the same pursuant to 19.2.14 NMAC.

GG. "Termination" means the end of a planning and development lease whether by cancellation, relinquishment or the expiration of the lease term.

HH. "Trust" means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust's assets, which are administered through the state land office by the commissioner.

II. "Trust land" means all land owned by the trust.

JJ. "Unapproved infrastructure and government approvals" means infrastructure and governmental approvals that have not received the commissioner's approval. [19.2.22.7 NMAC - Rp, 19.2.22.7 NMAC, 11/30/12]

19.2.22.8 L E A S I N G STANDARDS:

A. The surface estate of any parcel or combination of parcels of trust land may be leased under a planning and development lease at the discretion of the commissioner.

B. A planning and development lease may be initiated only through public notice and a public auction in accordance with this rule and other applicable law, including but not limited to NMSA 1978 Section 19-7-9(c) (2009).

C. In making a determination as to whether to enter a planning and development lease, the commissioner will make a determination as to whether the lease is in the best interest of the trust based on specific considerations including but not limited to:

(1) the present value and estimated future value that will be created for the trust;

(2) the anticipated impact on trust lands adjacent to or near the proposed planning and development lease;

(3) the proposed planning and development lease's conformance with any joint planning agreements or existing land use plans;

(4) the interests of the local community;

(5) the feasibility of the proposed development project; and

(6) the ability of a lessee to execute the proposed development project.

D. Notwithstanding any other provision of 19.2.22 NMAC, and at any time before the execution of a planning and development lease, the commissioner may, at the commissioner's discretion, reject any application or bid submitted under 19.2.22 NMAC.

[19.2.22.8 NMAC - Rp, 19.2.22.8 NMAC, 11/30/12]

19.2.22.9 INITIATING A LEASE:

A. A planning and development lease may be initiated either by an applicant or by the commissioner.

B. Any person, corporation or other legal entity registered with the New Mexico public regulations commission, or any other legal entity authorized to do business in New Mexico, may apply to lease any trust lands under a planning and development lease by submitting an application on forms prescribed by the commissioner.

C. The application for a planning and development lease must, at a minimum, be made under oath and include the applicant's full name and contact information, a general description of the trust land proposed for leasing including its present use and general location, a general description of the proposed planning and development activities and a statement describing the anticipated benefits to the trust.

D. The application must include a nonrefundable application fee and advertising deposit in the amount established by the commissioner.

E. If, after an initial evaluation of an application, the commissioner determines that proceeding with the proposed planning and development lease may be in the best interest of the trust:

(1) the commissioner shall require that a base appraisal be performed consistent with Paragraph (1) of Subsection A of 19.2.22.17 NMAC below;

(2) the commissioner may also require a survey plat and legal description of the trust lands performed by a licensed professional surveyor in the state of New Mexico; and

(3) the commissioner may require any other supplemental information from the applicant deemed appropriate under the circumstances.

F. An applicant may withdraw an application for a planning and development lease at any time.

G. If the applicant is not the successful bidder and the lease is awarded to another party, the successful bidder shall reimburse the applicant for the cost of the appraisal, survey and additional costs incurred by the applicant related to the auction required by the commissioner and born by the applicant.

[19.2.22.9 NMAC - Rp, 19.2.22.9 NMAC, 11/30/12]

19.2.22.10 PUBLIC NOTICE OF A PROPOSED PLANNING AND DEVELOPMENT LEASE:

A. Advertisement. A notice of public auction must be published once each week for not less than 10

consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land. The notice of lease sale must contain:

(1) the date, time and place of the auction;

(2) a description of the trust land offered for lease and any limitations on the uses of the land including any local land use restrictions, covenants, master plans, joint planning agreements or any restrictions established by the commissioner;

(3) a statement as to whether the lease may be reasonably amended after its execution; and

(4) the name of the person to contact at the state land office for additional information on the auction and the trust land being offered for lease.

B. Notice at the property.

The applicant for the lease shall post notices of the proposed lease on the boundaries of the proposed leased premises adjacent or nearest to public rights of ways, in a similar manner as required by the local government through its land use approval process. Such notice shall be posted and maintained by the applicant for the 10 week public notice period so as to be visible from the public right of way. Notices shall be in the form of a sign identifying that a lease is being requested from the New Mexico state land office, the size of the proposed lease in terms of acreage, the name and contact information of the applicant, and purpose of the lease.

C. Bid information packet. Anyone requesting information on the auction will be provided with a bid information packet which, at a minimum, will include:

(1) a form planning and development lease;

(2) a bid proposal form;

(3) the amount of the qualification deposit;

(4) a description of the public auction process;

(5) the base value of the land together with a statement as to whether the commissioner's portion of the IV, if any, will be rolled over into the subsequent lease; and

(6) a list of qualifications and statement of the criteria established by the commissioner for determining the highest and best bid.

[19.2.22.10 NMAC - N, 11/30/12]

19.2.22.11 PUBLIC AUCTION:

The commissioner may, under the following procedures, offer a planning and development lease to the highest and best bidder after public notice and a public auction. In order to qualify to bid at a public auction, each prospective bidder must satisfy both a qualification deposit and the bidder qualifications prescribed by

the commissioner in accordance with the following.

A. Qualification deposit.

Each prospective bidder must deposit with the commissioner the following amounts which are to be specifically described in the public notice:

(1) the costs of the auction, whether incurred by the state land office or the applicant; such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning, and brokerage or other real estate fees;

(2) the first rental payment under the planning and development lease; and

(3) if the trust land offered for lease has IV or improvements from a previous lease, all prospective bidders must deposit:

(a) a sum equal to the value of the IV, the improvements, or both, or a bond or letter of credit sufficient to cover the value of these (the holder of IVC or the owner of improvements need not make this deposit); or

(b) if the commissioner has agreed that its portion of the IV will be rolled over into the subsequent lease all bidders except for the holder of IVC must deposit:

(i) a sum equal to the IVC or a bond or letter of credit sufficient to cover the IVC;

(ii) a bill of sale for the IVC executed by the holder of the IVC; or

(iii) a waiver of payment signed by the holder of the IVC.

B. Bidder qualifications.

In order to ensure the greatest return for the trust, the commissioner will establish the minimum objective criteria that must be satisfied by each prospective bidder in order to qualify to bid based on the nature of the lease and the proposed uses of the trust land. Such requirements may include but are not limited to:

(1) a preliminary, non-binding pro-forma or similar documentation that identifies a minimum anticipated return rate to the trust and demonstrates that a bid proposal is realistic and achievable;

(2) a financial statement that demonstrates solvency and resources sufficient to accomplish the proposed development project; and

(3) some minimum level of experience in land use planning and development.

C. Refunds.

Upon completion of the lease auction, the commissioner shall return any deposits to the unsuccessful bidders.

D. Due diligence.

All bidders must undertake their own due diligence, including but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the

state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering upon trust land.

E. Auction.

The auction may be conducted by the acceptance of oral or sealed bids. If awarded at all, the planning and development lease will be awarded to the qualified bidder offering the highest bid as determined by the following: For each auction, the commissioner shall set a specific non-negotiable base rent. The commissioner may accept bids based on the lessee percentage, or set a specific non-negotiable lessee percentage and allow bidding in the form of a cash bonus pursuant to the following:

(1) if the commissioner sets only a specific non-negotiable base rent, the highest bid will be the bid offering the lowest lessee percentage; or

(2) if the commissioner sets both a specific non-negotiable base rent and lessee percentage, the highest bid will be the bid offering the highest cash bonus.

F. Bidding IVC.

A lessee may bid its accrued IVC attributable to the portion of the leased premises subject to disposition at any public bid for the same disposition parcel.

[19.2.22.11 NMAC - Rp, 19.2.22.11 NMAC, 11/30/12]

19.2.22.12 PLANNING AND DEVELOPMENT LEASE:

A. Execution of lease.

The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within 30 days after the auction, enter into the lease. The commissioner may extend the period for entering into a lease to no greater than 180 days after the auction. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the winner, or terminate the lease.

B. Lease terms.

All planning and development leases will contain, at a minimum, such provisions as may be prescribed by the commissioner and must comply with all applicable laws in effect at the time of lease execution.

C. Conditions.

The commissioner shall establish conditions in a planning and development lease necessary for providing a secure return to the trust, managing the trust land in an economically reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a planning and development lease shall have an affirmative duty to diligently

prevent and protect against trespass and waste on trust land.

D. Uses. A planning and development lease must designate the allowable uses of the leased trust land. The commissioner may establish restrictions on the uses of the trust land, including but not limited to restrictions contained in local land use rules, covenants, or land use plans.

E. Rent. Unless otherwise provided in a lease, rent will be paid in advance in annual installments.

F. Mineral reservation. Each planning and development lease will reserve the mineral estate, geothermal resources, water, and pore spaces for exploration, development, conservation and production and all related rights of access over, through or across trust land. The commissioner may, in a planning and development lease, agree, upon payment of a negotiated fee sufficient to compensate the trust based on the commissioner's evaluation of the potential value of the reserved rights, not to exercise these reserved rights during the term of the lease.

G. Easements and rights of way reservations. Each planning and development lease will reserve to the commissioner the right to grant easements and rights-of-way across trust land for any legal purpose. A planning and development lease may provide that any easements or rights-of-way so granted across leased trust land must be located to avoid, to the extent practicable, unreasonable interference with the uses allowed under the lease and to be consistent with land use and development plans approved by the commissioner.

H. Fish and game easement; recreational access permit. Unless specifically stated otherwise, a planning and development lease will be withdrawn by the commissioner from public use under a fish and game easement or under recreational access permit.

I. Water rights. Water rights developed on trust land under a planning and development lease must be developed pursuant to a separate agreement with the commissioner.

J. Other terms, rents, fees. The commissioner may require such other terms, rents, or fees not otherwise disallowed by this rule or other applicable law.

[19.2.22.12 NMAC - Rp, 19.2.22.12 NMAC, 11/30/12]

19.2.22.13 SUBLEASE ; ASSIGNMENT OR PARTIAL ASSIGNMENT:

A. Any sublease, assignment or partial assignment for use of trust land is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such

terms or requirements as are deemed to be in the best interests of the trust including but not limited to:

(1) additional consideration to the commissioner;

(2) disclosure of the value paid to the lessee in consideration of the assignment or sublease; and

(3) that the sublessee, assignee or partial assignee meets the same or substantially similar minimum qualifications that were required of the lessee at the time of bidder qualification.

B. The commissioner may, in a lease, pre-approve certain assignments or subleases that he deems to be in the best interests of the trust.

(1) No assignment or sublease of trust land under a planning and development lease will be approved unless the lessee is in compliance with the terms of the lease.

(2) The commissioner's approval of a sublease or assignment does not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease does not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.

(3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.

C. Applications to sublease or assign must be made by the current lessee under oath, on forms prescribed by the commissioner, and must be accompanied by the fees shown on the schedule of fees.

D. No assignment or sublease will extend the term of a planning and development lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's planning and development lease.

E. The termination of a planning and development lease will automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner through an attornment or a similar agreement.

F. A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.

[19.2.22.13 NMAC - Rp, 19.2.22.13 NMAC, 11/30/12]

19.2.22.14 COLLATERAL ASSIGNMENTS; LEASEHOLD MORTGAGES:

A. Unless otherwise provided in a planning and development lease, and subject to the prior approval of the commissioner, a lessee's interest in a planning and development lease or

infrastructure, inclusive of accrued IVC, may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall not have a lien on the commissioner's interest in the trust land, the lease, any infrastructure, or the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign or mortgage a lessee's interest in a planning and development lease, or in any infrastructure, without the approval of the commissioner, will be void and will not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or infrastructure.

(1) Prior to making any collateral assignment a lessee shall apply to the commissioner, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment or leasehold mortgage and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment or leasehold mortgage subject to such terms and conditions that he deems to be in the best interests of the trust, and may agree to such reasonable amendments to the planning and development lease as may be necessary for the collateral assignment or leasehold mortgage.

B. If the commissioner gives written notice to a planning and development lessee of a breach of the lease by the lessee, the commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the development planning lessee. Such notice will be sent by certified mail to the most current name and address of the collateral assignee or mortgagee in the official lease file of the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee will be required.

C. An approved collateral assignee or mortgagee may cure a lessee's breach within the time periods provided to the lessee under the lease. A planning and development lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the planning and development lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment of infrastructure does not change the status of any infrastructure as approved, unapproved, removable or permanent infrastructure.

D. A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee

or mortgagee upon making a collateral assignment or leasehold mortgage.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment or leasehold mortgage.

(2) Any successor in interest to a lessee's interest in a planning and development lease, or in any infrastructure, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or leasehold mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, will be deemed to be an assignee under 19.2.22.13 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.22.14 NMAC - Rp, 19.2.22.14 NMAC, 11/30/12]

19.2.22.15 APPROVAL OF GOVERNMENT APPROVALS AND INFRASTRUCTURE:

No government approvals may be secured, or infrastructure placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without prior approval by the commissioner. Such approval will not be unreasonably withheld and may be conditioned upon certain requirements imposed by the commissioner which may include, without limitation, consistency with previous government approvals, and the provision of a bond or other adequate security to assure proper removal of infrastructure (when appropriate) from trust land and the restoration of trust land. Unless otherwise required by the terms of a lease, all government approvals and infrastructure will remain on the trust land even after cancellation or termination of a lease.

A. A request for the commissioner's approval of improvements, governmental approvals or infrastructure must be made in writing on such forms and in such manner as may be required by the commissioner, and must be accompanied by the fee set forth in the schedule of fees, if any. Once received, the commissioner shall act to approve or reject the proposed improvements or infrastructure within 30 days from the date of receipt. However, the commissioner is not obligated to approve any infrastructure, improvements or government approvals, and failure by the commissioner to act upon such requests within 30 days deems the request denied.

B. The commissioner

may preapprove existing and proposed infrastructure or government approvals with the lease when the commissioner determines it is in the best interests of the trust.

C. If the lessee fails to obtain the commissioner's prior approval for infrastructure or government approvals, the commissioner may, for an additional fee, approve such items after they have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land if the commissioner determines that it is in the best interest of the trust to do so.

[19.2.22.15 NMAC - Rp, 19.2.22.15 NMAC, 11/30/12]

19.2.22.16 REMOVAL OF PROPERTY:

A. Upon the termination of a planning and development lease, all unapproved infrastructure must be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No item of infrastructure may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unapproved infrastructure be left in place. Such infrastructure will become the property of the commissioner and no person will be entitled to any IVC for such infrastructure, and the lessee will be deemed to have waived any claim of government taking or other damages.

(3) Any unapproved infrastructure left on trust land without the commissioner's approval will remain the liability of the lessee. The commissioner may elect to take any necessary action to remove such infrastructure and all costs and fees incurred will constitute additional rent due from the lessee under the lease. Alternatively, the commissioner may declare the property abandoned and ownership transferred to the commissioner and the lessee will be deemed to have waived any claim of government taking or other damages.

B. In all cases where infrastructure is removed from trust land, the lessee is solely liable for the restoration of the trust land to its condition prior to the placement of such infrastructure. The lessee's obligation to remove infrastructure and to restore the trust land survives the termination of the lease.

C. All costs, fines and fees incurred by the commissioner as a result of infrastructure left on trust land without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust land during the term of the

lease, or arising from or in connection with the lessee's use and occupancy of the trust land, remains the sole liability of the lessee and will be deemed additional rent due at the time incurred.

[19.2.22.16 NMAC - Rp, 19.2.22.16 NMAC, 11/30/12]

19.2.22.17 IMPROVEMENT VALUE; IMPROVEMENT VALUE CREDIT:

A. IV, when calculated. Improvement value (IV) must be calculated when a planning and development lease terminates, upon a disposition or partial disposition, or at lessor's discretion including but not limited to at the time of a sublease or assignment. IV is generally determined through appraisal by comparing the subsequent value of the leased premises to the base value of the leased premises with an adjustment for natural appreciation pursuant to the following and as described in Paragraph (1) of Subsection C of 19.2.22.17 NMAC below:

(1) **Base appraisal.** Prior to the effective date of the planning and development lease, the applicant, at the applicant's expense, shall cause an appraisal of the trust land to be performed by a qualified appraiser conforming to the uniform standards of professional appraisal practice (USPAP) to establish the base value (BV). The commissioner may require specific appraisal instructions and require that the appraiser be approved in advance. The state land office staff appraiser shall review the base appraisal pursuant to the USPAP Standard 3, and make a recommendation to the commissioner that the base appraisal be accepted, rejected, or accepted with adjustments. The commissioner may approve a BV consistent with the staff appraiser's recommendation or make deviations therefrom if appropriate based on the commissioner's exercise of reasonable judgment, documented in writing. The commissioner reserves the right to reject any base appraisal.

(2) **Subsequent appraisal.** A subsequent appraisal is required in order to update the current value of the leased premises for purposes of identifying IV, if any. At least 60 but not more than 90 days prior to the expiration of a lease, disposition or partial disposition, or at lessor's discretion including but not limited to at the time of a sublease or assignment, lessee at lessee's expense shall cause an appraisal of the trust land to be performed by a qualified appraiser and conforming to USPAP to establish the subsequent value of the leased premises (SV). The commissioner may require specific appraisal instructions, including but not limited to those described in Subparagraph (a) of Paragraph (3) below, and require that the appraiser be approved in

advance. The state land office staff appraiser shall review the subsequent appraisal pursuant to USPAP Standard 3, and make a recommendation to the commissioner that the subsequent appraisal be accepted, rejected, or accepted with adjustments. The commissioner may set the SV consistent with the staff appraiser's recommendation or make deviations therefrom if appropriate based on the commissioner's exercise of reasonable judgment, documented in writing. The commissioner reserves the right to reject any subsequent appraisal.

(3) **Adjustment for NA.** Only the beneficiaries of the land trust are entitled to increased value resulting from NA. Accordingly, every planning and development lease must provide for one of the following methodologies designed to adjust for NA when determining IV:

(a) **Appraisal instructions method.** In addition to any other specific appraisal instructions required by the commissioner, each subsequent appraisal must be performed pursuant to the following specific instructions requiring two iterations of the appraisal:

(i) first iteration - the appraiser shall first appraise the disposition parcel for its present value considering only those improvements, if any, that were in place at the time that the base appraisal was performed; if the value that results from this first iteration exceeds BV as established by the base appraisal, this first iteration value becomes the BV of the disposition parcel for purposes of calculating IV; and

(ii) second iteration - the appraiser shall next appraise the disposition parcel at its full present value considering all present improvements; the value that results from this second iteration becomes the SV of the disposition parcel for purposes of calculating IV.

(b) **Predetermined adjustment factor or other alternative method.** Any methodology determined by the commissioner to protect the trust's interest in the value created by NA as opposed to the value created by lessee's improvements may be used, including but not limited to a pre-negotiated periodic adjustment factor included in the lease to be applied to the BV to account for the anticipated NA at the time of disposition.

B. IVC accrual; when payable. IVC accrues only upon completion of base infrastructure at least up to the boundary of the leased premises, or in the case of a partial disposition, sublease or partial assignment, at least to the present boundary of the disposition parcel, sublease or partial assignment. Alternatively, pursuant to the terms of a lease, IVC may accrue when the lessee has contractually obligated itself to construct such base infrastructure and where the contractual

obligation is adequately secured by a transferable bond or letter of credit or other acceptable security. The commissioner may require that base infrastructure be extended or guaranteed through a given parcel prior to allowing a disposition, partial disposition, sublease or assignment. Upon disposition to any person or entity other than the holder of the IVC, the purchaser or new lessee shall satisfy payment for the IVC pursuant to the following:

(1) in the case of a sale or exchange, the commissioner shall convey payment of the IVC, if any, to the holder thereof from the sale or exchange proceeds; or

(2) in the case of a lease, the commissioner shall convey payment of the IVC, if any, to the holder thereof from the deposit described in Paragraph (3) of Subsection A of 19.2.22.11 NMAC above less any rent, costs, or damages owed to the commissioner; however, no payment of the IVC will be made if a bill of sale or waiver of payment signed by the holder of the IVC is filed with the commissioner.

C. IVC, how calculated. Subject to the conditions and restrictions set forth in this provision, a lessee may be entitled to IVC as determined by the following procedures and calculations and pursuant to the terms of the lease:

(1) Step 1: The base value is subtracted from the subsequent value, as adjusted for NA through one of the methodologies described in Paragraph (3) of Subsection A of 19.2.22.17 NMAC above, to determine the improvement value [SV - BV = IV].

(2) Step 2: The improvement value is multiplied by the lessee percentage to determine improvement value credit [IV x LP = IVC].

EXAMPLE WHERE: SV (adjusted for NA) = 200, BV = 100, and LP = 60%

$200 - 100 = 100$: **IV = 100**

$100 \times .60 = 60$: **IVC = 60**

(3) A lessee will not be liable for any negative IVC.

(4) Any bonus offered at a lease auction, or any value bid at a sale or exchange auction in excess of SV as set by Paragraph (2) of Subsection A of 19.2.22.17 NMAC above, will be payable solely to the commissioner and will not be considered for purposes of IVC.

D. Depreciation of IVC. A planning and development lease may provide that IVC may be lost or depreciated over a stated time if, after termination of the planning and development lease, there is no successor in interest other than the commissioner.

E. Commissioner not liable for IVC. Except for the transfer of funds for IVC deposited by a lessee or to be paid from the proceeds of a sale, the commissioner is not liable for the payment of any IVC. The commissioner may require a release or indemnity from the party receiving payment of the IVC.

F. IVC holder must be identifiable. The holder of the IVC must be identified in the records of the state land office. Unless otherwise provided in a lease, leasehold mortgage or collateral assignment of IVC or infrastructure approved by the commissioner and filed with the state land office, the commissioner shall treat the lessee, not the collateral assignee or mortgagee, as the holder of the IVC and the party entitled to payment
[19.2.22.17 NMAC - Rp, 19.2.22.17 NMAC, 11/30/12]

19.2.22.18 TAKE-OUT LEASES; TAKE-OUT SALES OR EXCHANGES AUTHORIZED: During the term of a planning and development lease, a lessee may from time to time apply for a take-out lease or take-out sale or exchange. Take-out sales will be considered most appropriate where the final land use proposal is owner-occupied residential, otherwise take-out leases in the form of long term business leases will be considered most appropriate.
[19.2.22.18 NMAC - N, 11/30/12]

19.2.22.19 ACQUISITION OF RIGHTS-OF-WAY BY LESSEE FOR DEDICATION TO A GOVERNMENTAL ENTITY: Trust lands within a planning and development lease may, from time to time, be purchased by a lessee for dedication to a governmental entity as rights-of-way pursuant to the following:

A. Dedications through long term lease, sale, or exchange. A lessee may acquire rights-of-way by lease, sale, or exchange only after 10 weeks public notice and a public auction as required by applicable state land office rules and other applicable law.

B. Dedications through easement with right of reversion. A lessee may acquire rights-of-way in the form of an easement where the easement is simultaneously dedicated to a governmental entity for a term of "for so long as it used for a public purpose."

C. Pricing of the easement. Rights-of-way acquired by a lessee on behalf of a governmental entity and simultaneously dedicated to the governmental entity will, at the sole discretion of the commissioner, be priced either on a per rod basis pursuant to the commissioner's standard fee schedule, or at the per acre value as extrapolated from BV without adjustment for NA or SVA. In determining the proper pricing for the right-

of-way, the commissioner shall consider the immediate and certain economic impacts to adjacent trust lands, if any, that may reasonably result from the right-of-way and associated infrastructure.

D. Effect on IV. The acquisition or dedication of a right-of-way pursuant to this section is not a disposition for purposes of IV, and such dedications will in no way impact a lessee's right or interest in IVC. A lessee may claim IVC relating to infrastructure on portions of the leased premises dedicated as rights-of-way at the time of a subsequent disposition.

[19.2.22.19 NMAC - N, 11/30/12]

19.2.22.20 RELINQUISHMENT:

A. A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a planning and development lease. The commissioner may establish in the terms of a lease conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

B. A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

C. A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

D. A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

E. Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.22.20 NMAC - N, 11/30/12]

19.2.22.21 D E F A U L T ; REMEDIES: Unless otherwise provided in a planning and development lease, a lessee shall be in default under a planning

and development lease if a breach of the lease is not cured within 30 days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

A. Notice. Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or leasehold mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

B. Remedies. On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the planning and development lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.22.21 NMAC - N, 11/30/12]

19.2.22.22 EXISTING LEASES:

Except as provided in this section, the commissioner may not lease under a planning and development lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes his interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed planning and development lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new planning and development lease in compliance with the following requirements.

A. The new planning and development lease shall identify the existing lease, shall state that the new planning and development lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new planning and development lessee will not interfere with the uses permitted under the existing lease.

B. The existing lessee must consent in writing to the new planning and development lease unless the commissioner previously reserved the right to execute such a lease under the terms of the existing lease.

[19.2.22.22 NMAC - Rp, 19.2.22.18, 11/30/12]

HISTORY of 19.2.22 NMAC:

History of Repealed Material:

19.2.22 NMAC, Planning and Development Leases filed 10/15/09 repealed effective, 11/30/12 and replaced with 19.2.22 NMAC, Planning and Development Leases effective, 11/30/12

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

**TITLE 13 INSURANCE
CHAPTER 10 H E A L T H
INSURANCE
PART 27 U N I F O R M
DEFINITIONS AND STANDARDIZED
METHODOLOGIES FOR
CALCULATING THE MEDICAL LOSS
RATIO**

13.10.27.1 ISSUING AGENCY: New Mexico Public Regulation Commission, Insurance Division.

[13.10.27.1 NMAC - N, 11/30/12]

13.10.27.2 SCOPE: This rule applies to all health care insurers, health maintenance organizations, or health care plans that are required to obtain a certificate of authority or licensure in this state or which provide, offer or administer managed health care plans.

[13.10.27.2 NMAC - N, 11/30/12]

13.10.27.3 S T A T U T O R Y AUTHORITY: Sections 8-8-4, 59A-2-9, 59A-22-50 59A-23C-10, 59A-46-51 and 59A-47-46 NMSA 1978.

[13.10.27.3 NMAC - N, 11/30/12]

13.10.27.4 D U R A T I O N : Permanent.

[13.10.27.4 NMAC - N, 11/30/12]

13.10.27.5 EFFECTIVE DATE: November 30, 2012, unless a later date is cited at the end of a section.

[13.10.27.5 NMAC - N, 11/30/12]

13.10.27.6 O B J E C T I V E : The purpose of this rule is to clarify statutory requirements that insurers make reimbursement for direct services at certain levels across all product lines by providing guidance and establishing uniform definitions and standardized methodologies for the calculation of the medical loss ratio for plan years 2010, 2011, 2012 and unless this rule is repealed, for plan years thereafter.

[13.10.27.6 NMAC - N, 11/30/12]

13.10.27.7 DEFINITIONS: As

used in this definition:

A. "health insurer" means a person duly authorized to transact the business of health insurance in the state pursuant to the Insurance Code but does not include a person that only issues a limited-benefit policy intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or that only issues policies for long-term care or disability income;

B. "direct services" means services rendered to an individual by a health insurer or a health care practitioner, facility or other provider, including case management, disease management, health education and promotion, preventive services, quality incentive payments to providers and any portion of an assessment that covers services rather than administration and for which an insurer does not receive a tax credit pursuant to the Medical Insurance Pool Act or the Health Insurance Alliance Act; provided, however, that "direct services" does not include care coordination, utilization review or management or any other activity designed to manage utilization or services;

C. "health care plan" means a nonprofit corporation authorized by the superintendent of the insurance division to enter into contracts with subscribers and to make health care expense payments but does not include a person that only issues a limited-benefit policy intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or that only issues policies for long-term care or disability income;

D. "health maintenance organization" means any person who undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for copayments or deductibles, but does not include a person that only issues a limited-benefit policy or contract intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or that only issues policies for long-term care or disability income;

E. "premium" means all income received from individuals and private and public payers or sources for the procurement of health coverage, including capitated payments, self-funded administrative fees, self-funded claim reimbursements, and interests less any premium tax paid pursuant to Section 59A-6-2 NMSA 1978 and fees associated with participating in a health insurance exchange

that serves as a clearinghouse for insurance; these premiums shall be gross of any reinsurance;

F. "individually underwritten" means any health care policy, plan or contract issued to an individual or family reflecting the characteristics of the family members covered; these characteristics include, but are not limited to, place of residence, age, gender, and health status;

G. "carrier" shall mean collectively, health maintenance organization, health care plan, and health insurer;

H. "minimum medical loss ratio" means the percentage determined in accordance with section 13.10.27.8 NMAC;

I. "health product lines" mean:

(1) all programs utilized by a health insurer for the offering of products, including but not limited to:

(a) all private programs, including individual, small group and large group;

(b) all public programs, including all medicaid and medicare and any related or future programs or products;

(c) all other arrangements for the procurement of health coverage, including capitated arrangements, self-funded arrangements; and

(d) such other programs or arrangements that the superintendent of the insurance division may designate by order or bulletin; but not

(2) programs of HIPPA-excepted benefits intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or policies for long-term care or disability income;

J. "product" shall mean any policy, plan or contract related to the provision of health care services offered, arranged or facilitated by an insurer.

[13.10.27.7 NMAC - N, 11/30/12]

13.10.27.8 M I N I M U M MEDICAL LOSS RATIOS FOR ALL HEALTH PRODUCT LINES, EXCEPT INDIVIDUALLY UNDERWRITTEN HEALTH PRODUCT LINES:

A. General requirement. Carriers shall meet the minimum medical loss ratio established, and in the manner calculated, under this rule.

B. Measurement period. Compliance with the minimum medical loss ratio shall be measured over a rolling three year period. The initial measurement period shall be the years, 2010, 2011 and 2012. Each year thereafter, the subsequent year shall be added to the rolling three year period and the oldest year shall be removed.

For example, the second measurement year shall be 2011, 2012 and 2013.

C. Aggregation. Loss ratios shall be calculated on a consolidated level within a state, with experience allocated to state based upon the situs of the contract. Experience of all affiliates shall be accumulated to the following levels:

(1) individually underwritten health policies; and

(2) all other policies.

D. Frequency. Loss ratios shall be calculated annually by carriers that issue products through health product lines, beginning in 2013 covering the period 2010 through 2012.

E. Timeline. Loss ratios shall be calculated using claim data incurred during the three year measurement period and paid before April 1 of the year following the that period. No adjustment may be made for incurred but not reported (IBNR) claims. The compliance requirement form set forth in 13.10.27.9 NMAC shall be the basis for the loss ratio calculation and will be filed with the insurance division by April 15 of the year following the measurement period. This form is first due on April 15, 2013.

F. Calculation. The numerator of the loss ratio calculation shall be direct services, as defined by this rule. The denominator of the calculation shall be premium, as defined by this rule. This calculation is deemed to be fully credible due to the three year time period used and the aggregation levels required.

G. Minimum loss ratio levels. The minimum loss ratio for individually underwritten health policies shall be 80%. The minimum loss ratio for other policies, calculated collectively, shall be 85%.

H. Compliance with minimum loss ratio. With compliance requirement form set forth in 13.10.27.9 NMAC, each carrier shall submit to the insurance division either:

(1) a statement signed by a qualified actuary that the minimum loss ratio requirements have been met; or

(2) a plan to return excess premium charged to policyholders.

I. Actions required upon noncompliance with requirements. The plan to return excess premiums shall provide prospective premium credits to each policyholder in the affected segment (i.e., individually underwritten health policies or all other policies). The premium credits shall cover July through December of the year following the measurement period. At the end of this period, and no later than March 31 of the year following the premium credits, the carrier shall demonstrate that refunds in the required amount have been made. The prospective refund shall be made on a per subscriber basis, unless an

alternative basis is approved by the superintendent of the insurance division, and shown separately on the policyholder's monthly (or other frequency) bill. This credit may reflect the family composition of the rating structure used for each policyholder.
 [13.10.27.8 NMAC - N, 11/30/12]

13.10.27.9 COMPLIANCE REQUIREMENT FORM.

Measurement Period **Submitting Entity:** _____
January 1, 20xx - December 31, 20xx **Covered Affiliates:** _____

		<u>Individually Underwritten Policies</u>	<u>All Other Policies</u>
A	Premium	\$ _____	\$ _____
B	Self-Funded Claim Administrative Fees	\$ _____	\$ _____
C	Self-Funded Administrative Fees	\$ _____	\$ _____
D	Premium Tax	\$ _____	\$ _____
E	Fees Associated with Health Insurance Exchanges	\$ _____	\$ _____
F	Subtotal (A+B+C-D-E)	80.0%	\$ 85.0%
G	Minimum Allowed Loss Ratio	\$ _____	\$ _____
H	G x F	\$ _____	\$ _____
I	Incurred and Paid Claims*	\$ _____	\$ _____
J	Case Management Fees Paid To Providers	\$ _____	\$ _____
K	Disease Management Fees Paid to Providers	\$ _____	\$ _____
L	Health Education/Promotion Fees Paid to Providers	\$ _____	\$ _____
M	Preventive Services	\$ _____	\$ _____
N	Quality Incentive Payments to Providers	\$ _____	\$ _____
O	Assessments**	\$ _____	\$ _____
P	Pharmacy Rebates	\$ _____	\$ _____
Q	Subtotal (I+J+L+M+N+O-P)	\$ _____	\$ _____
	REFUND DUE (H-Q), if greater than zero	\$ _____	\$ _____
	CALCULATED LOSS RATIO (Q divided byF)	_____ %	_____ %

* Includes capitation payments.

** Portion that covers claim costs rather than administration for which the insurer did not receive a tax credit.

[13.10.27.9 NMAC - N, 11/30/12]

HISTORY OF 13.10.27 NMAC: [RESERVED]

Submittal Deadlines and Publication Dates 2012

Volume XXIII	Submittal Deadline	Publication Date
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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Volume XXIV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	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 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

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