

NEW MEXICO 
Commission of Public Records
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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

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September 24, 2019

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Notices of Rulemaking and Proposed Rules

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF EMERGENCY RULEMAKING

The New Mexico Human Services Department (HSD) is issuing a temporary emergency rule to be effective October 1, 2019. The HSD is required to make changes to 8.102.500 of the New Mexico Administrative Code (NMAC) and 8.106.500 NMAC.

Each year the Department is required to make changes to the income and resource eligibility standards and the deduction amounts available to otherwise eligible households. These amounts are determined by the United States Department of Agriculture (USDA) and Food and Nutrition Services (FNS).

The Department received notification of the adjusted amounts on July 24, 2019, and will make the adjustments effective for benefit month October 2019 for Federal Fiscal Year (FFY) 2020 to comply with federal law and regulations.

The Department received the notice of the federal Cost-of-Living Adjustments (COLA) with less than sixty days to implement the changes to be effective on October 1 and has insufficient time to follow the regular rulemaking process; it will implement an emergency rule in order to be federally compliant.

Regulations issued pursuant to the act are contained in 45 CFR Parts 200-299.

Administration of the HSD, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

The emergency rule is being implemented to comply with the Federal mandate; failure to implement

the emergency rule would place the Department in violation of Federal law. The emergency rule will remain in effect until a permanent rule takes effect under normal rulemaking process.

The Human Services Register Vol. 42 No. 17 outlining the temporary emergency regulations is available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support/division-registers.aspx>.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing. The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Friday, October 25, 2019 from 9 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The purpose of the public hearing is to receive public input on the proposed new rule 6.12.11 NMAC, Student Diabetes Management, and repeal of 6.12.7 NMAC, Bullying Prevention, to be replaced with 6.12.7 NMAC, Safe Schools for All Students. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text

The purpose of the proposed new rule **6.12.11 NMAC, Student Diabetes Management**, is to provide parameters for diabetes care personnel training and diabetes care management of students with diabetes in public schools.

The purpose of the proposed repeal of **6.12.7 NMAC, Bullying Prevention**, to be replaced with **6.12.7 NMAC, Safe Schools for All Students**, is to establish requirements for local school boards and public schools, including charter schools and governing bodies, to develop and implement bullying prevention policies and programs and to report on the implementation of the Safe Schools for All Students Act per the parameters established within the provisions of this rule.

Statutory Authorization(s):

Sections 9-24-8, 22-2-1, 22-2-2, 22-34-1 through 22-34-9, and 22-35-1 through 22-35-5 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Friday, October 25, 2019. The PED encourages the early submission of written comments. The public comment period is from September 24, 2019 to October 25, 2019 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

**PUBLIC RECORDS,
COMMISSION OF

NOTICE OF REGULAR
MEETING AND OF
RULEMAKING**

The New Mexico Commission of Public Records (CPR) has scheduled a regular meeting and rule hearing for Tuesday, December 10, 2019, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Georgette Chavez at 476-7926 by November 19, 2019, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

The Commission of Public Records (“CPR”) and State Records Administrator (“SRA”) may consider the following items of rulemaking at the meeting:

Amend:
1.13.30 NMAC, Disposition of Public Records and Non-Records (CPR and SRA Rule).

Synopsis:
The proposed amendment of 1.31.30 NMAC consists of the following modifications:

Section 11 is being amended to remove the requirement of a destruction vendor having the national association for

information destruction (NAID) AAA certificate.

1.21.2 NMAC Retention and Disposition of Public Records (CPR Rule).

Synopsis:
The proposed amendment of 1.21.2 NMAC consists of the following modifications:

Section 519 is being amended to add response and denied to description and to change the retention to destroy 4 years from date request fulfilled or denied
Section 612 is being amended to add two retentions for judgment satisfied and judgment not satisfied records.

Section 708 is being added to create a classification for Veterinarian client/patient files.

A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission’s website (www.nmcpr.state.nm.us), or by contacting Rick Hendricks at Rick.Hendricks@state.nm.us, or via regular mail at 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7911.

At the hearing the CPR and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions. The Commission may vote on the proposed rules during the meeting on December 10, 2019. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5 p.m. on November 8, 2019. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you

are providing comments. Persons offering written comments at the hearing must have eight (8) copies for the Commission and Administrator to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

A copy of the agenda for the combined regular meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located at the State Records Center and Archives at 1209 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting. Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

**REGULATION AND
LICENSING DEPARTMENT
NUTRITION AND DIETETICS
BOARD**

**NOTICE OF TERMINATION OF
PROPOSED RULEMAKING**

The New Mexico Nutrition and Dietetics Practice Board gives notice that it is terminating rulemaking for 16.14.1.7 NMAC- Definitions, 16.14.3.14 NMAC Reciprocity, 16.14.5.9. NMAC- Test Administration, 16.14.6.8. NMAC- Annual Renewal, 16.14.7.8. NMAC- Reinstatement of a Lapsed License, 16.14.10.8. NMAC- Standards or Practice as published in NM Register, Vol. XXX, No. 18, (9/24/2019) pursuant to Sections 61-7A-1 to -15 NMSA 1978.

**REGULATION AND
LICENSING DEPARTMENT
SPEECH-LANGUAGE
PATHOLOGY, AUDIOLOGY,
AND HEARING AID
DISPENSING PRACTICES
BOARD**

**PUBLIC RULE HEARING AND
REGULAR BOARD MEETING**

The New Mexico Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practices Board (“Board”) will hold a rule hearing on Friday, October 25, 2019, at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at the New Mexico Commission for the Deaf and Hard of Hearing, Compass Bank Building, 505 Marquette Avenue NW, Albuquerque, New Mexico, in Suite 1550.

The purpose of the rule hearing is to consider proposed amendments to the following rules:

16.26.2 NMAC – Licensure Requirements;
16.26.4 NMAC – Renewal of Licenses;
16.26.6 NMAC – Fees;
16.26.9 NMAC – Code of Ethics; and
16.26.11 NMAC – Licensure for Military Service Members, Spouses, and Veterans

The changes to Parts 2, 4, 6, 9, and 11 of the Board’s rules are primarily intended to address the changes to the Speech-Language, Pathology, Audiology, and Hearing Aid Dispensing Practices Act (“Act”), NMSA, 1978, Sections 61-14B-1 through -25, (1991, as amended through 2019), which occurred this past Legislative Session. *See* H.B. 48, 54th Leg., 1st Sess. (N.M. 2019), available at: <https://www.nmlegis.gov/Sessions/19%20Regular/final/HB0048.pdf>. The most significant change to the Act was to provide the Board with the authority to adopt a code of ethics that includes rules

requiring audiologists and hearing aid dispensers to inform prospective purchasers about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems. The changes to Part 9 of the Board’s rules, are intended to incorporate language required by House Bill 48. The changes are intended to comply with the provisions of the Act, incorporate more consistent terminology, and clarify existing provisions.

To obtain and review copies of the proposed changes you may go to the Board’s website at: http://www.rld.state.nm.us/boards/Speech_Language_Pathology_Audiology_and_Hearing_Aid_Dispensing_Practices_Rules_and_Laws.aspx, or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Lori Sciacca, Board Administrator, via electronic mail at speech.hearing@state.nm.us or by regular mail at PO Box 25101, Santa Fe, NM 87504, no later than Thursday, October 24, 2019. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board’s website at: http://www.rld.state.nm.us/boards/Speech_Language_Pathology_Audiology_and_Hearing_Aid_Dispensing_Practices_Rules_and_Laws.aspx, no more than three business days following receipt to allow for public view.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Lori Sciacca, Board Administrator at (505) 476-4622.

Statutory Authority: The Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practice Act, Sections 61-14B-1 to -25, NMSA 1978, among other

provisions, specifically authorizes the Board to “adopt and file rules necessary to carry out the provisions of the Speech-Language Pathology, Audiology, and Hearing Aid Dispensing Practice Act.”

Summary of Proposed Changes:

In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.26.2 NMAC - Licensure Requirements

The amendments to Part 1 clarify the requirements for licensure as a speech-language pathologist, and correct typographical and grammatical errors.

16.26.4 NMAC - Renewal of Licenses

The amendments to Part 4 adds provisions to ensure initial licenses are not issued for greater than 24 months. Language regarding payment of a late penalty fee is removed as it has been deemed unnecessarily burdensome for licensees.

16.26.6 NMAC - Fees

The amendments to Part 6 increase the renewal fee amount for speech-language pathologists and audiologists and deletes fees for dual licensure as there are no provisions for dual licensure provided for anywhere else within rule.

16.26.9 NMAC - Code of Ethics

The amendments to Part 9 adds language to comport with House Bill 48, requiring audiologists and hearing aid dispensers to inform prospective purchasers about hearing aid options that can provide a direct connection between the hearing aid and assistive listening systems.

16.26.11 NMAC - Licensure for Military Service Members, Spouses, and Veterans

The amendments to Part 11 adds provisions to ensure initial licenses are not issued for greater than 24 months.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN

that the Superintendent of Insurance (Superintendent), proceeding pursuant to the Insurance Code, Section 59A-30-4 et seq. NMSA 1978 (“Insurance Code”) proposes amendments of 13.14.1, 13.4.3, 13.14.6, 13.14.7, 13.14.9, and 13.14.10 NMAC, TITLE INSURANCE.

PURPOSE OF THE PROPOSED AMENDMENTS:

To set by order entered in the biennial rate case conducted pursuant to NMSA 1978, Section 59A-30-8(A), all title rates and fees that are subject to periodic adjustment, rather than require a companion biennial rulemaking to set the title rates and fees.

SUMMARY OF THE PROPOSED RULE:

The proposed rule amendments remove from current rules those provisions that establish rates and fees that are subject to adjustment during the biennial rate case conducted pursuant to NMSA 1978, Section 59A-30-8(A).

STATUTORY AUTHORITY:

Section 59A-2-8 NMSA 1978, Section 59A-2-9 NMSA 1978, Section 59A-16-17 NMSA 1978, Section 59A-30-4 NMSA 1978, Section 59A-30-7 NMSA 1978 and Section 59A-30-8 NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed amended rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/MiscPages/osilegal.aspx>) or the New Mexico Sunshine portal, or by requesting a copy in person at the NM Office of Superintendent of Insurance, 1120 Paseo de Peralta, Santa Fe, NM 87501.

OSI will hold a public hearing on the proposed rule amendments on November 4, 2019 at 10:00 a.m.

at the State Capitol Building, 3rd Floor Room 321, 490 Old Santa Fe Trail, Santa Fe, NM 87501. The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and any interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the “Title Rates & Rules” newsletter at: <https://newsletter.osi.state.nm.us/>

Written comments will be accepted through 4:00 pm on Friday, October 25, 2019. Responses to written comments or oral comments will be accepted through 4:00 pm on November 15, 2019. Comments may be submitted via email to Mariano.romero@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM Office of Superintendent of Insurance Attention: Mariano Romero, Room 331 1120 Paseo de Peralta, P.O. Box 1689, Santa Fe, NM 87504-1689

Docket No.: 19-00031-RULE-PC IN THE MATTER OF ADOPTION OF AMENDMENTS TO THE TITLE INSURANCE REGULATIONS CODIFIED AT TITLE 13, CHAPTER 14 NMAC

Only signed statements, proposals or comments will be accepted. Scanned or facsimile signatures or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader,

amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Martinez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

DONE AND ORDERED this 24th day of September 2019
/S/JOHN G. FRANCHINI

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN

that the Superintendent of Insurance (Superintendent), upon the petition of the Title Insurance Staff of the New Mexico Office of Superintendent, pursuant to NMSA 1978, Section 59A-30-8(A) will hold a biennial hearing to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent.

OSI staff, all title insurers, and title insurance agents conducting business in New Mexico, and the public are encouraged, to participate in the hearing as parties and provide oral comments or file any written comments. A scheduling conference which will set dates for events, including the deadline for requesting leave to intervene, is scheduled to begin at 9:00 a.m., on September 26, 2019. All persons interested in participating in the case are encouraged to participate in the scheduling conference. Updates concerning the conference, including the conference call number, are available by subscribing to the “Title Rates & Rules” newsletter at: <https://newsletter.osi.state.nm.us/>

All documents shall be filed by hand delivering, mail, or electronic mail to:

Mr. Mariano Romero
OSI Records Management Bureau
1120 Paseo de Peralta, Room 331
P. O. Box 1689
Santa Fe, NM 87504-1689
Mariano.Romero@state.nm.us
**ATTN: Docket No.
19-00030-RATE-PC**

The Superintendent will hold a public hearing to consider promulgation of rates for title insurance beginning on Monday, November 4, 2019, beginning at 1:30 p.m. in State Capitol Building, 3rd Floor, Room 321, 490 Old Santa Fe Trail, Santa Fe, NM 87501. The Superintendent designates R. Alfred Walker as the hearing examiner in the Rate Case. Any updates concerning the hearing date, time, or location will be available by subscribing to the "Title Rates & Rules" newsletter at: <https://newsletter.osi.state.nm.us/>

Any person with a disability requiring special assistance in order to participate in the hearing should contact **Melissa Martinez, at 505-476-0333** no later than **October 21, 2019**.

The Superintendent will consider all oral comments and will review all written comments and responses from persons who are not Designated Parties or their respective members or employees filed or made on or before **November 4, 2019**.

The record in this rate case shall close on the earlier of thirty (30) days following the Public Hearing; that is **December 4, 2017**, or the date a Final Order is issued in this case.

**End of Notices of
Rulemaking and
Proposed Rules**

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Adopted Rules

Effective Date and Validity of Rule Filings

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

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.8.3 NMAC Sections 6, 7, 11, 13, and 16 effective October 1, 2019.

8.8.3.6 OBJECTIVE:

A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required in settings to which these regulations apply.

B. Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.

C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff [~~and include a screen of abuse and neglect information in databases in New Mexico and in each state where the applicant resided during the preceding five years~~] in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information in each State where the applicant resided during the preceding five years.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 10/1/16, A, 10/01/19]

8.8.3.7 DEFINITIONS:

A. AOC means administrative office of the courts.

B. "Administrative review" means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.

C. "Administrator" means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.

D. "Adult" means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection K below.

E. "Appeal" means a review of a determination made by the BCU, which may include an administrative review or a hearing.

F. "Applicant" means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3.

G. "Arrest" means notice from a law enforcement agency about an alleged violation of law.

H. BCU means the CYFD background check unit.

I. "Background check" means a screen of CYFD's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

J. "Care recipient" means any person under the care of a licensee.

K. "Child" means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.

L. "Conditional employment" means a period of employment status for a new applicant prior to the BCU's final disposition of the applicant's background check.

M. "Criminal history" means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

N. "Direct, physical supervision" means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients.

O. "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.

P. "Eligibility" means the determination that an applicant does not pose an unreasonable risk to care recipients after a background check is conducted.

Q. "Employment history" means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.

R. "Licensed" means authorized to operate by the licensing authority by issuance of an operator's license or certification certificate.

S. "Licensee" means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC or other program or entity within the scope of these regulations, including AOC supervised visitation and safe exchange program providers. CYFD LICENSEE means program or entity within the scope of these regulations except the AOC supervised visitation and safe exchange program providers.

T. “Licensing authority” means the CYFD division having authority over the licensee.

U. “Moral turpitude” means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

V. “Notice of provisional employment” means a written notice issued to a child care center or home applicant indicating the BCU reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

[W:] W. “Relevant conviction” means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term relevant conviction also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31-20-13 (1994) NMSA 1978, or Section 30-31-28 (1972) NMSA 1978, or a comparable provision of another state’s law, is not a relevant conviction for purposes of these regulations, unless or until such

time as the conditional discharge is revoked or rescinded by the issuing court. The term relevant conviction does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

[W:] X. “Unreasonable risk” means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.
[8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 10/1/16, A, 10/01/19]

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

(1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;

(2) ~~[until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;]~~ the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to employment;

(3) ~~[the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to the commencement of supervised services; and]~~ until receiving background eligibility, the applicant shall at all times be under direct

physical supervision. See next paragraph for standards regarding applicants required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC;

(4) a licensee or applicant required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of Paragraph (2) of this subsection, a notice of provisional employment decision will be provided to the child care center or home within five days unless the BCU determines there is good cause shown for an extension; and

~~[(4)]~~ **(5)** no more than 45 days shall have passed since the date of the initial application unless the BCU documents good cause shown for an extension.

B. With the exception of the provision under 8.16.2.19 NMAC and 8.17.2.11 NMAC, if a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the BCU, the direct provider of care must re-comply with 8.8.3.10 NMAC. A direct provider of care may transfer employment, as permitted by 8.16.2.19 NMAC and 8.17.2.11 NMAC, or for a period of 180 days after the date of an eligibility letter from the BCU without complying with 8.8.3.10 NMAC only if the direct provider of care submits a preliminary application that meets the following conditions:

(1) the direct provider of care submits a statement swearing under penalty of perjury that he or she has not been arrested or charged with any crimes, has not been an alleged perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct provider of care submits

an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the BCU to determine if further background checks or a new application is necessary; and
 (3) the BCU determines within 15 days that the direct provider of care's prior background check is sufficient for the employment or position the direct provider of care is going to take.
 [8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 10/1/16, A, 10/01/19]

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

- (1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;
- (2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;
- (3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;
- (4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;
- (5) the applicant's child is in CYFD or

another state's custody [~~at the time the application is processed by the BCU~~]; or

(6) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

B. A disqualifying conviction may be proven by:

- (1) a copy of the judgment of conviction from the court;
- (2) a copy of a plea agreement filed in court in which a defendant admits guilt;
- (3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;
- (4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;

(5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed or is pending completion of a conditional discharge for the disqualifying conviction.

C. If a background check shows pending charges for a felony offense, any misdemeanor offense involving domestic violence, child abuse, any other misdemeanor offense of moral turpitude, or an arrest but no disposition for any such crime, there shall be a determination of unreasonable risk if a conviction as charged would result in a determination of unreasonable risk.

D. If a background check shows a pending child protective services referral or any other CYFD investigation of abuse or neglect, there shall be a determination of unreasonable risk.

E. If a background check shows that an applicant has an outstanding warrant, there shall be a determination of unreasonable risk.
 [8.8.3.13 NMAC - Rp, 8.8.3.13 NMAC, 10/1/16, A, 10/01/19]

8.8.3.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

A. An applicant's background check eligibility may be suspended for the following:

- (1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a conviction as charged would result in a determination of unreasonable risk;
- (2) a pending child protective services referral or any other CYFD investigation of abuse or neglect; ~~or~~
- (3) an outstanding warrant; or
- (4) any other

reason that creates an unreasonable risk determination pursuant to these regulations.

B. It is the duty of the administrator of a facility or the licensee and the background check eligibility holder, upon learning of any of the above, to notify the licensing authority immediately. Failure to immediately notify the licensing authority may result in the revocation of background check eligibility.

C. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the matter is resolved and eligibility is affirmatively reinstated by the BCU.

D. Background check eligibility may be reinstated or revoked as follows:

- (1) If the applicant can provide information relating to the disqualifying criminal charge that would show that a criminal conviction as charged would not lead to an unreasonable risk;

(2) If the matter causing the suspension is resolved within six months of the suspension, the applicant may provide documentation to the BCU showing how the matter was resolved and requesting reinstatement of background check eligibility. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

(3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation. [8.8.3.16 NMAC - N, 10/1/16, A, 10/01/19]

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.15.2 NMAC Sections 7, 9, 12, 13, 15, and 17, effective October 1, 2019.

8.15.2.7 DEFINITIONS:

- A. "Attending a job training or educational program" means actively participating in a job training or educational program.
- B. "At-risk child care" means a program for families at-risk of child protective services involvement as determined by the department.
- C. "CACFP" means the child and adult care food program, administered by the children, youth and families department.
- D. "Child with a disability or special needs" means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and supports; or children without identified conditions,

but requiring specialized services, supports, or monitoring.

E. "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.

F. "Closure" means the child care case is closed.

G. "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.

H. "Department" means the New Mexico children, youth and families department (CYFD).

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

J. "Homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

- (1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living

in circumstances described in Paragraphs (1) through (3) of this subsection.

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

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

- (1) infant: zero - 23 months;
- (2) toddler: 24 -35 months;
- (3) preschool: three to five year olds; and
- (4) school age: six year olds and older.

M. "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.

N. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(1) The following are the only national accrediting bodies that are approved by CYFD:

- (a) the association of Christian schools international (ACSI);
- (b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);

(d) the national accreditation commission for early care and education programs (NAC);

(e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(f) the national association of family child care (NAFCC); or

(g) the national early childhood program accreditation (NECPA).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

O. “Non-temporary change in activity” means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Section CC below.

P. “Non-traditional hours of care” means care provided between the afterhours 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.

Q. “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.

R. “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.

S. “Child Protective services (CPS) child care” means child care services for children placed in the custody of the child protective services of the department.

T. “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 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 exempt.

(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.

U. “Recertification” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

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

W. “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.

X. “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.

Y. “Suspension” means that the child care case remains eligible, but benefits are not paid to the provider.

Z. “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.

AA. “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.

BB. “Termination” means the child care case will be closed due to cause.

CC. “Temporary change of activity” means one of the following events that does not exceed three months:

(1) limited absence from work for employed parents for periods of family leave (including parental leave) or sick leave;

(2) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(3) student holiday or break for a parent participating in training or education;

(4) reduction in work, training or education hours, as long as the parent is still working or attending training or education; and

(5) cessation of work or attendance at a training or education program less than 90 days.

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

EE. “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.

~~FF.~~ “Waiting list” means a list of families who have applied for child care services during a period of lack of funding.

~~GG.]~~ **FE.** “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. [8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/16, A, 02/01/17, A, 10/01/19]

8.15.2.9 PRIORITIES

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

A. Priority one: Clients receiving temporary assistance to needy families (TANF) benefits are considered priority one clients.

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

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

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

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

(2) A person who applies for participation exemption for any or all of the above reasons is referred to the children, youth & families department child care resource and referral. The child care resource and referral assists the client with location of child care. The final validation/verification of a client’s inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with the human services department (HSD). HSD is responsible for providing notice of the approval or denial of a participation exemption.

B. Priority one A: **[RESERVED]**

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. ~~[If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.]~~ The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents. ~~[If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds one hundred percent of the federal poverty level but is at or below two hundred percent of the federal poverty level to the priority four category.]~~

D. Priority two: Families transitioning off TANF. Clients must have received TANF for at least one month in the past 12 months in order to qualify for priority two. Only clients whose TANF cases

are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

E. Priority three: **[RESERVED]**

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time ~~[subject to the availability of funds and renewable subject to the availability of funds]~~ and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. ~~[The department reserves the right to expand the eligibility requirement up to two hundred percent of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.]~~ The department prioritizes child care services within priority four for children with special needs, disabilities, ~~[teen parents and homeless families]~~ homeless families, and for teen parents.

G. Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.

H. At-risk child care: In addition to these priorities, the department pays for at-risk protective services child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income requirements and copayments are

waived for clients in this priority. [8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/16, A, 10/01/19]

8.15.2.12

RECERTIFICATION: Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. 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, 10/1/16, A, 10/01/19]

8.15.2.13 CLIENT

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 or educational program.

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. [~~Co-payments are based upon the size and income of the household.~~] Co-payments are determined by income and household size. The co-payment schedule is published yearly at <https://cyfd.org/child-care-services>.

B. [~~Co-payments for each additional child are determined at one half of the co-payment for the previous child.~~] Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible

child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the copayment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. [~~Co-payments for children in part-time care are determined based upon the block of time that the child is in care.~~] Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

(1) full time care will be based on one hundred percent of the base co-payment;

(2) part time 1 care will be based on seventy-five percent of the base co-payment;

(3) part time 2 care will be based on fifty percent of the base co-payment; and

(4) part time 3 care will be based on twenty-five percent of the base co-payment.

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 any non-temporary change in activity, or household members moving in or out, within five business days of the change. Clients who do not comply with this requirement may be sanctioned.

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 12 months of initial application with the child care assistance program.

(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; at-risk child care; 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; guardian; parent is deceased 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, 10/1/16, A, 10/01/19]

8.15.2.15 PROVIDER REQUIREMENTS: Child care providers must abide by all department regulations. 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.

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. 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.

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. Child care providers must notify the department within three business days after the fifth day of non-attendance if the child is disenrolled or is absent for five consecutive scheduled days. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided by Subsection G of 8.15.2.11 NMAC.

D. 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 hours listed on the placement agreement. Failure to comply with this requirement may result in sanctions or suspension of the child care assistance agreement.

(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.]~~ Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.

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

(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.

E. 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. The child care resource and referral will assist clients with choosing another CYFD approved provider.

F. Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program.
[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/16, A, 10/01/19]

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 child care placement agreement expires during the month, 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. Upon a change of provider the client and former provider have three days after the fifth day of nonattendance 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 department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.

~~[E.]~~ **D.** The amount of the payment is based upon the age of the child and 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.]~~ **E.** The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of [6]8-19 hours per week per month	Care provided for an average of 7 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.]~~ **E.** Hours of care shall be rounded to the nearest whole number.

~~[F.]~~ **G.** Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes and in-home child care			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

~~[G.]~~ **H.** The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable.

~~[H.]~~ **I.** Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I. below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved

national accreditation status will be paid at the accredited 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.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) 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. All providers are required to notify the department immediately when a change in accreditation status occurs.

[F] J. The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

[F] K. In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

[K] L. Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 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 AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

[F] M. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent 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.] N.~~ If a significant change occurs in the client’s circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be 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.] O.~~ 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.] P.~~ Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/16, A, 10/01/19]

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.16.2 NMAC Sections 7, 19, 21, 22, 31, 32, 40, and 41 effective October 1, 2019. Section 7 has been renumbered pursuant to style and format recommendation from SRCA, Administrative Law Division.

8.16.2.7 DEFINITIONS:

A. Terms beginning with the letter “A”:

(1) “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:

(a) physical contact that harms or is likely to harm a child;

(b) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(c) 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.

(2) “Activity area” means space for children’s activities where related equipment and materials are accessible to the children.

(3) “Adult” means a person who has a chronological age of 18 years or older.

(4) “AIM HIGH” is a voluntary quality child care improvement program that is no longer open to new registered or licensed child care programs. Recognition of AIM HIGH will terminate on December 31, 2017.

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

(6) “Attended” means the physical presence of a staff member or educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Paragraph 12 of Subsection S of 8.16.2.7 NMAC).

B. Terms beginning with the letter “B”: [RESERVED]

C. Terms beginning with the letter “C”:

(1) “Capacity” means the maximum number of children a licensed child care facility

can care for at any one time.

(2) “Child” means a person who is under the chronological age of 18 years.

(3) “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.

(4) “Child with a disability or special needs” means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(5) “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.

(6) “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.

(7) "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.

(8) "Clean" means to physically remove all dirt and contamination.

(9) "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.

(10) "Core hours" means the daily hours of operation of the child care facility.

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

(12) "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.

D. Terms beginning with the letter "D":

(1) "Deficiency" means a violation of these regulations.

(2) "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.

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

(4) "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.

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

E. Terms beginning with the letter "E":

(1) "Educator" means an adult who directly cares for, serves, and supervises children in a licensed child care facility. Educators are considered staff members.

(2) "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.

(3) "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.

(4) "Expulsion" means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter "F":

(1) "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.

(2) "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.

(3) "FOCUS" is a voluntary tiered quality rating and improvement program that is open to all registered and licensed child care programs.

G. Terms beginning with the letter "G":

(1) "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.

(2) "Group size" is the number of children assigned to an educator or team of educators occupying an individual classroom or well-defined space within a larger room.

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

H. Terms beginning with the letter "H":

(1) "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.

(2) "Homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels,

trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b)

children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c)

children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d)

migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

I. Terms beginning with the letter “I”: “Infant” means a child age six weeks to 12 months.

J. Terms beginning with the letter “J”: [RESERVED]

K. Terms beginning with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”:

(1) “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.

(2) “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.

(3) “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.

M. Terms beginning with the letter “M”: “Mission statement” describes what the program aspires to do and whom the program aspires to serve.

N. Terms beginning with the letter “N”:

(1) “National accreditation status”

means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(a)

The following are the only national accrediting bodies that are approved by CYFD:

(i)

the association of Christian schools international (ACSI);

(ii)

the council on accreditation (COA) for early childhood education and after school programs;

(iii)

the international Christian accrediting association (ICAA);

(iv)

the national accreditation commission for early care and education programs (NAC);

(v)

the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(vi)

the national association of family child care (NAFCC); or

(vii)

the national early childhood program accreditation (NECPA).

(b)

Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

(2) “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.

(3) “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.

(4) “Notice of provisional employment”

means a written notice issued to a child care center or home applicant indicating the Background Check Unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

(5) “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.

O. Terms beginning with the letter “O”:

(1)

“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.

(2) “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.

P. Terms beginning with the letter “P”:

(1)

“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.

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

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

(4) "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.

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

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

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

(8) "Professional development" is an on-going plan for continued professional development for each educator, including the director.

(9) "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.

(10) "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.

R. Terms beginning with the letter "R":

(1) "Ratio" is the maximum number of children one educator can be responsible for.

(2) "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.

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

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

S. Terms beginning with the letter "S":

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

(2) "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.

(3) "Serious injury" means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

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

(5) "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.

(6) "Staff member" means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

(7) "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.

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

(9) "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.

(10) "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.

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

(12) "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.

(13) "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.

T. Terms beginning with the letter “T”: “Toddler” means a child age 12 months to 24 months.

U. Terms beginning with the letter “U”:

(1) “U/L”
means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

(2)
“Unattended” means an educator is not physically present with a child or children under care.

(3)
“Unsubstantiated complaint” means a complaint not determined to be factual based on an investigation of events.

V. Terms beginning with the letter “V”: [RESERVED]

(1) “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.

(2)
“Volunteer” means any person who is not employed by the child care facility, spends six hours or less 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 or educator.

W. Terms beginning with the letter “W”: “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, 10/1/16, A, 10/01/19]

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. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member’s employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

A. the staff member was found eligible as a direct provider of care in a child care center, licensed child care, home licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

B. submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC. [8.16.2.19 NMAC - Rp 8.16.2.19 NMAC, 10/1/16, A, 10/01/19]

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 instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers or any person who may have unsupervised physical access to children 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. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member’s employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(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, ratios, and group sizes 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) a serious injury;
- (c) the abuse or neglect of a child;
- (d) fire, flood, or other natural disaster that creates structural damages to a center or poses a health hazard;

(e) 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;

(f) any legal action against a center or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(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 have 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, 10/1/16, A, 10/01/19]

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 expulsion of children. Policies and procedures shall include how the center will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The center must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- (4) policies and procedures for the handling of medications;

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

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

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

(8) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations (see waivers, Subsection D of 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

D. FAMILY 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; and

(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) expulsion procedures;
 - (d) fee payment procedures, including penalties for tardiness;
 - (e) notification of absence;
 - (f) fee credits, if any (e.g. for vacations, absences, etc.);
 - (g) field trip policies;
 - (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
 - (i) emergency procedures, safety policies, and disaster preparedness plan;
 - (j) snow days and school closure;
 - (k) confidentiality policy;
 - (l) child abuse/neglect reporting procedure; and
 - (m) 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, a grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth;
(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 staff member'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 of the notice of provisional employment showing that it is in process, [~~such as a submission receipt, shall~~ must be placed in file. A background check must be conducted at least once every five years on all required individuals;
(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 educator, 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; and
(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) confidentially statement; and
- (16) a plan for retention of qualified staff.

[8.16.2.22 NMAC - Rp, 8.16.2.22 NMAC, 10/1/16, A, 10/01/19]

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 instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, 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. A household member reaching the age of 18 must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. 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. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(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) a serious injury;
- (c) the abuse or neglect of a child;

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

(e) 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;

(f) any legal action against a home, household member, or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(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, 10/1/16, A, 10/01/19]

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 emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the licensing authority and 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;

<p>(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);</p>	<p>(i) emergency procedures, safety policies, and disaster preparedness plan;</p>	<p>(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;</p>
<p>(f) daily schedule;</p>	<p>(j) snow days and school closure;</p>	
<p>(g) a statement supportive of family involvement that includes an open door policy to the family or group child care home;</p>	<p>(k) confidentiality policy;</p>	
<p>(h) appropriate dress for children, including request for extra change of clothes;</p>	<p>(l) child abuse/neglect reporting procedure; and</p>	<p>(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;</p>
<p>(i) celebrating holidays, birthdays and parties; and</p>	<p>(m) guidance policy.</p>	
<p>(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.</p>	<p>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:</p>	<p>(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;</p>
<p>(2) POLICIES AND PROCEDURES:</p>	<p>(1) PERSONAL INFORMATION:</p>	
<p>(a) enrollment procedures;</p>	<p>(a) name of the child, date of birth, gender, home address, mailing address and telephone number;</p>	<p>(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</p>
<p>(b) disenrollment procedures;</p>	<p>(b) names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;</p>	<p>(k) a signed acknowledgement that the parent or guardian has read and understands the parent handbook.</p>
<p>(c) policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;</p>	<p>(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;</p>	<p>(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.</p>
<p>(d) fee payment procedures, including penalties for tardiness;</p>	<p>(d) date the child first attended the home and the date of the child's last day at the home;</p>	<p>(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;</p>
<p>(e) notification of absence;</p>	<p>(e) a copy of the child's up-to-date immunization record or a public health division-approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth;</p>	
<p>(f) fee credits, if any (e.g. for vacations, absences, etc.);</p>	<p>(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;</p>	<p>(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</p>
<p>(g) field trip policies;</p>		<p>(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders,</p>
<p>(h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);</p>		

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 staff members and all adults living in the home. If a background check is in process for a staff member, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals.

(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)

confidentially statement; and

(14) plan for

retention of qualified staff.

[8.16.2.32 NMAC - Rp, 8.16.2.32 NMAC, 10/1/16, A, 10/01/19]

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 instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, 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. ~~[A request for a background check must be submitted prior]~~ Prior to a staff member’s employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(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) a serious injury;

(c) the abuse or neglect of a child;

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

(e) 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;

(f) any legal action against a program or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(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, 8.16.2.40 NMAC, 10/1/16, A, 10/01/19]

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. 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 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; and

(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) expulsion procedures;
- (d) fee payment procedures, including penalties for tardiness;

(e) notification of absence;

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

(g) field trip policies;

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

(i) emergency procedures and safety policies;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) guidance policy; and

(n) emergency procedures, safety policies, and disaster preparedness plan.

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 staff member’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. If a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals;

(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;

(14) plan for

retention of qualified staff; and

(15) an up-

to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, and continuity of operations (see waivers, Subsection D of 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans; and

(16) policies

and procedures for expulsion of children. Policies and procedures shall include how the program will maintain a positive environment and will focus on preventing the expulsion of children age five. The program must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement.

[8.16.2.41 NMAC - Rp, 8.16.2.41 NMAC, 10/1/16, A, 10/01/19]

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.17.2 NMAC Sections 7, 10, and 11 effective October 1, 2019.

8.17.2.7 DEFINITIONS:

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

(1) physical contact that harms or is likely to harm a child;

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

(3) punishment that is hazardous to the physical, emotional or mental state of the child; and

(4) 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. “Adult” means a person who has a chronological age of 18 years or older.

C. “Child” means any person who is under the chronological age of 18 years.

D. “Child care assistance program (CCAP)” means the state of New Mexico’s child care services bureau (CCSB) which administers the federal child care and development fund (CCDF).

E. “Child and adult care food program (CACFP)” means the state of New Mexico’s family nutrition bureau which administers the federal child and adult care food program.

F. “Child with a disability or special needs” means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

G. “Drop-in” means a child who attends a child care home on an occasional or unscheduled basis.

H. “Emergency caregiver” means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, eight hours or less, on behalf of the primary caregiver.

I. “Exempt caregiver” means a child care home primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

J. “Expulsion” means the involuntary termination of the enrollment of a child or family.

K. “Guidance” means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

L. “Homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(1) children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living

in circumstances described in Paragraphs (1) through (3) of this subsection.

M. “Infant” means a child from birth to one-year-old.

N. “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.

O. “Non-resident child” means any child who does not reside in the primary caregiver’s home.

P. “Notice of Provisional Employment” means a written notice issued to a child care center or home applicant indicating the Background Check Unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

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

[Q:] R. “Primary caregiver” means a registered child care home caregiver 18 years of age or older who is personally providing care to children, less than 24 hours a day, in his/her own residence and has completed the registration process, paid the required fee and has no other employment during hours of care. The primary caregiver must reside in the home.

[R:] S. “Registered authority” means the child care services bureau - registration section of the early childhood services division of the New Mexico children, youth and families department.

~~[S.]~~ **T.** “Registered family child care home” means the residence of an independent primary caregiver who registers the home under these regulations to participate in the child and adult care food program or in the state and federal child care assistance programs.

~~[F.]~~ **U.** “Registered family child care food-only home” means the residence of an independent primary caregiver who registers the home under these regulation to participate in the child and adult care food program only and does not participate in the state and federal child care assistance program.

~~[E.]~~ **V.** “Resident child” means any child who resides in the home, such as the primary caregiver’s own children by birth or adoption, foster children, grandchildren, or cohabitant’s children who are part of the residential unit.

~~[V.]~~ **W.** “Serious injury” means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

~~[W.]~~ **X.** “Substitute caregiver” means someone 18 years of age or older who is authorized by the primary caregiver and the registered authority to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions.

~~[X.]~~ **Y.** “Substantiated” means an incident or complaint determined to be factual, based on an investigation of events.

~~[Y.]~~ **Z.** “Supervision” means the direct observation and guidance of children at all times and requires being physically present with them.

~~[Z.]~~ **AA.** “Survey” means a representative of CYFD’s authority to enter a home, observes activity, examine the records and premises, interviews parents and records deficiencies.

~~[AA.]~~ **BB.** “Unattended” means a caregiver is not physically present with a child or children under care.

~~[BB.]~~ **CC.** “Unsubstantiated” means an incident or complaint not determined to be factual based on an investigation of events.

[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 10/1/16, A, 10/01/19]

8.17.2.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers 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 exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

C. Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions. A request for a background check must be submitted prior to a substitute caregiver employment. A substitute caregiver must receive a notice of provisional employment prior to beginning employment or obtain a background check in accordance with 8.8.3 NMAC.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have

the required background checks and training.

E. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

F. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

G. All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their date of initial registration. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

(1) prevention and control of infectious diseases (including immunization);

(2) prevention of sudden infant death syndrome and use of safe sleeping practices;

(3) administration of medication, consistent with standards for parental consent;

(4) prevention of and response to emergencies due to food or other allergic reactions;

(5) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(6) prevention of shaken baby syndrome and abusive head trauma;

(7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;

(8) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(9) precautions in transporting children (if applicable);

(10) first aid and cardiopulmonary resuscitation (CPR) certification; and

(11) recognition and reporting of child abuse and neglect.

H. Primary and substitute caregivers are required to attend six hours of training annually. Training documentation must be maintained for three years and include the caregiver’s name, the date of training, instructor’s name and signature, topic of training and number of hours completed.

I. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

J. If a registered home caregiver completes 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.

K. Primary and substitute caregivers are required to maintain current first aid and CPR certification at all times. On-line first aid and CPR classes are not valid. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

L. Training shall 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.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 10/1/16, A, 10/01/19]

8.17.2.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions as promulgated by the children, youth and families department. All non-licensed child care caregivers must adhere to these provisions to maintain their registration status. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

(1) the staff member was found eligible as a direct provider of care in a child care center, licensed child care home, licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

(2) submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

B. The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department’s most current version of the background checks and employment history verification provisions (8.8.3 NMAC). A household member ~~[over] reaching~~ the age of 18, ~~[who is currently approved but does not have an individual background check clearance, shall comply with the background check requirements no later than one year after these regulations are in effect.]~~ must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

C. Any adult who is present in the registered primary caregiver’s home for significant periods while children are in care, or who commences being present in the registered primary caregiver’s home for significant periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.

F. The primary caregiver shall certify upon renewal that they, or any other adult living in the home have not been convicted of a disqualifying offense during the last twelve month.

[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 10/1/16, A, 10/01/19]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.102.500 NMAC, Section 8 effective 10/1/2019.

8.102.500.8 GENERAL REQUIREMENTS:

A. **Need determination process:** Eligibility for NMW, state funded qualified aliens and EWP cash assistance based on need requires a finding that:

(1) the benefit group’s countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group’s countable net income after all allowable deductions does not equal

or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income

limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)	
one person	[\$860]	<u>\$885</u>
	(b)	
two persons	[\$1,166]	<u>\$1,199</u>
	(c)	
three persons	[\$1,472]	<u>\$1,511</u>
	(d)	
four persons	[\$1,778]	<u>\$1,824</u>
	(e)	
five persons	[\$2,084]	<u>\$2,138</u>
	(f)	
six persons	[\$2,390]	<u>\$2,451</u>
	(g)	
seven persons	[\$2,696]	<u>\$2,763</u>
	(h)	
eight persons	[\$3,002]	<u>\$3,077</u>

(i) add [\$306] \$314 for each additional person.

C. Eligibility for support services only:

Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

	(1)	one person	
			[\$1,012] <u>\$1,041</u>
	(2)	two persons	[\$1,372] <u>\$1,410</u>
	(3)	three persons	[\$1,732] <u>\$1,778</u>
	(4)	four persons	[\$2,092] <u>\$2,146</u>
	(5)	five persons	[\$2,452] <u>\$2,515</u>
	(6)	six persons	[\$2,812] <u>\$2,883</u>
	(7)	seven persons	[\$3,172] <u>\$3,251</u>
	(8)	eight persons	[\$3,532] <u>\$3,620</u>
	(9)	add	[\$360] <u>\$369</u> for each additional person.

D. Standard of need:

(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$91 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified aliens, and EWP cash assistance benefit group is:

	(a)	one person	\$266
	(b)	two persons	\$357
	(c)	three persons	\$447
	(d)	four persons	\$539
	(e)	five persons	\$630
	(f)	six persons	\$721
	(g)	seven persons	\$812
	(h)	eight persons	\$922

(i) add \$91 for each additional person.

E. Special needs:

(1) **Special clothing allowance:** A special

clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a)

For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b)

The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified aliens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c)

The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified aliens, EWP cash assistance, or wage subsidy.

(2) **Layette:**

A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) **Special circumstance:**

Dependent upon the availability of funds and in accordance with the federal act, the HSD secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group:

Based on the availability of state and federal funds, the department may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 07/01/2001; A, 10/01/2001;

A, 10/01/2002; A, 10/01/2003; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 11/15/2007; A, 01/01/2008; A/E, 10/01/2008; A, 08/01/2009; A, 08/14/2009; A/E, 10/01/2009; A, 10/30/2009; A, 01/01/2011; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.500 NMAC, Section 8 effective 10/1/2019.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need determination process: Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. GA payment determination: The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. Gross income test:

The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)	
one person	[\$860]	<u>\$885</u>
	(b)	
two persons	[\$1,166]	<u>\$1,199</u>
	(c)	
three persons	[\$1,472]	<u>\$1,511</u>
	(d)	
four persons	[\$1,778]	<u>\$1,824</u>
	(e)	
five persons	[\$2,084]	<u>\$2,138</u>
	(f)	
six persons	[\$2,390]	<u>\$2,451</u>
	(g)	
seven persons	[\$2,696]	<u>\$2,763</u>
	(h)	
eight persons	[\$3,002]	<u>\$3,077</u>
	(i)	

add ~~[\$306]~~ \$314 for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:**

The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test:

The total countable earned and unearned income of the benefit group

after all allowable deductions cannot equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children:

A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental issuance:

A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

[8.106.500.8 NMAC - N, 07/01/2004; A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008;

A, 07/01/2009; A/E, 10/01/2009;
 A, 10/30/2009; A, 12/01/2009; A,
 01/01/2011; A, 07/29/2011; A/E,
 10/01/2011; A/E, 10/01/2012;
 A, 07/01/2013; A/E, 10/01/2013;
 A/E, 10/01/2014; A, 10/01/2015;
 A, 10/01/2016; A/E, 10/01/2017;
 A, 2/01/2018; A/E, 10/01/2018; A,
 3/1/2019; A/E, 10/01/2019]

PUBLIC RECORDS, COMMISSION OF

This is an amendment to 1.13.11
 NMAC, Sections 11 and 17,
 effective 9/24/2019.

1.13.11.11 ACCESS:

A. Under the
 Inspection of Public Records Act,
 Section 14-2-1 NMSA 1978, access to
 certain records is restricted.

~~(1) — medical
 records;~~

~~(2) — personnel
 files;~~

~~(3) — law
 enforcement records that reveal
 confidential sources, methods, or
 information on individuals accused
 but not charged with a crime;~~

~~(4) —
 confidential material, which would
 invade the privacy of an individual.]~~
 For certain law enforcement records,
 see 1.13.11.17 NMAC for inspection
 or duplication.

B. The use of
 donated materials shall be subject to
 restrictions placed by the donor.

C. Access to materials
 which are not arranged or are being
 processed may also be restricted.

D. Access to fragile or
 very valuable materials may also be
 restricted.

E. Access to
 permanent agency records in the
 custody of the NMSRCA, but not yet
 accessioned into the archives shall
 be requested by the state records
 administrator.

[07/01/96; 1.13.11.11 NMAC - Rn,
 1 NMAC 3.2.10.2.11, 7/15/2003; A,
 6/1/2006; A, 9/24/2019]

1.13.11.17 REQUIREMENTS FOR LAW ENFORCEMENT RECORDS:

A. The inspection
 and reproduction of public records
 shall be made in accordance with the
 Inspection of Public Records Act and
 the terms and conditions prescribed
 within this rule and 1.13.2 NMAC.

B. The requestor shall
 provide the following information:

(1) the printed
 name of the requestor;

(2) the
 requestor's address; and

(3) the date of
 the request.

C. If SRCA staff
 determines that there may be
 protected personal identifier
 information or other information
 made confidential by law in any
 records responsive to a request for
 archival records, staff may request
 that the originating agency or court of
 originating jurisdiction ("originating
 agency") conduct a review of records
 prior to release.

D. For any records
 request made, an originating agency
 shall review any records sent to it
 by SRCA and provide a response in
 conformance within the time limits
 provided by IPRA.

E. If photocopy/
 duplication request is made by
 requestor, costs shall be paid prior to
 release of documents.

[N, 9/24/2019]

End of Adopted Rules

2019 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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2020 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 6	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 10
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