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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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Notices of Rulemaking and Proposed Rules

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 Tuesday, August 24, 2021 from 1 p.m. to 3 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The location of the public hearing is subject to change due to concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2021-030, Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-004, Other Powers Invoked in That Order, and All Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public Health Emergency; or with any executive order that supersedes Executive Order 2021-030. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed amendment to 6.30.12 NMAC, K-5 Plus Program. 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 of Text

The purpose of the proposed amendment to **6.30.12 NMAC, K-5 Plus Program**, is to align the administrative rule with Section 22-13D-1 et seq. NMSA 1978, cited as the K-5 Plus Act.

Summary of Text

The proposed amendment to **6.30.12**

NMAC, K-5 Plus Program, includes the statutory requirements that must be met for the implementation of K-5 Plus schools, gives details about the kind of instruction, assessment, and professional development K-5 Plus schools are required to give or administer to students or teachers, and provides the application and review process and funding mechanisms. Additionally, the proposed amendment contains details on the information K-5 Plus schools will or may be required to report to the department.

Statutory Authorization(s):

Sections 9-24-8, 22-2-1, 22-2-2, 22-8-23.11 and 22-13D-1 et seq. 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 121, Santa Fe, New Mexico 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520. Written comments must be received no later than 5 p.m. (MDT) on Tuesday, August 24, 2021. The PED encourages the early submission of written comments. The public comment period is from Tuesday, July 20, 2021 to Tuesday, August 24, 2021 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.

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.

CULTURAL AFFAIRS DEPARTMENT

This is an emergency amendment to 4.5.9 NMAC, Sections 10, 11 and 14, effective 7/1/2021.

Explanatory note: DCA will be issuing a temporary emergency rule implemented and effective July 1, 2021. DCA is amending the rule in order to expedite funding to tribal libraries for the first summer and fall of a two-year program to develop and staff culturally and linguistically relevant after-school student services and community-based summer programs authorized by the New Mexico legislature. Without the emergency rule, the tribal libraries would lose funding for the first designated summer and fall of the program. DCA is also amending the rule in order to provide an exception to the rule that no more than twenty-five percent of federal funds received by the state library shall be available for special grants. This exception will enable the state library to fully expend federal pandemic relief funds under the special grant rule. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

4.5.9.10 FUNDING SOURCE: Special grants may be funded with federal funds, state funds, and any other funds available to the state librarian and not otherwise restricted. Use of state funds for special grants shall not reduce state grants-in-aid. No more than twenty-five percent of federal funds received by the state library shall be used for special grants except where specific federal program funds, such as those

from the American Recovery Plan Act (ARPA) are established and provided for pandemic relief.

[4.5.9.10 NMAC - N, 7/1/2015; A/E, 7/1/2021]

4.5.9.11 ELIGIBILITY: Public libraries and developing libraries that are eligible for state grants-in-aid in a given fiscal year are also eligible for special grants, unless the grant guidelines ~~[otherwise restrict the library's eligibility]~~ provide otherwise.

[4.5.9.11 NMAC - N, 7/1/2015; A/E, 7/1/2021]

4.5.9.14 TRANSFER OF FUNDS: Special grants shall only transfer to the grant recipient after the grant recipient signs a contract, agreeing to the terms applicable to the applicable special library program. ~~[The state library will reimburse grant recipients for expenses documented in their state library approved budget for the special library program.]~~

[4.5.9.14 NMAC - N, 7/1/2015; A/E, 7/1/2021]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 8 REQUIREMENTS FOR FAMILY INFANT TODDLER EARLY INTERVENTION SERVICES**

8.9.8.1 ISSUING AGENCY: Early Childhood Education and Care Department (ECECD)
[8.9.8.1 NMAC - N, 7/20/2021]

8.9.8.2 SCOPE: These regulations apply to all entities in New Mexico providing early intervention services to eligible children birth to three years of age and their families.
[8.9.8.2 NMAC - N, 7/20/2021]

8.9.8.3 STATUTORY AUTHORITY: Subsection E of Section 9-29-6 NMSA 1978.
[8.9.8.3 NMAC - N, 7/20/2021]

8.9.8.4 DURATION: Permanent
[8.9.8.4 NMAC - N, 7/20/2021]

8.9.8.5 EFFECTIVE DATE: July 20, 2021, unless a later date is cited at the end of a section.
[8.9.8.5 NMAC - N, 7/20/2021]

8.9.8.6 OBJECTIVE: These regulations are being promulgated to govern the provision of early intervention services to eligible children and their families and to assure that such services meet the requirements of state and federal statutes, in accordance with the Individuals with Disabilities Education Act.
[8.9.8.6 NMAC - N, 7/20/2021]

8.9.8.7 DEFINITIONS:
A. Definitions beginning with the letter "A":
(1) "Adaptive development" means the development of self-help skills, such as eating, dressing, and toileting.
(2) "Adjusted age (corrected age)" means adjusting / correcting the child's age for children born prematurely (i.e. born less than 37 weeks gestation). The adjusted age is calculated by subtracting the number of weeks the child was born before 40 weeks of

gestation from their chronological age. Adjusted Age (Corrected Age) should be used until the child is 24 months of age.

(3)

“**Assessment**” means the ongoing procedures used by qualified personnel to identify the child’s unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child’s eligibility for FIT services. Assessment includes observations of the child in natural settings, use of assessment tools, informed clinical opinion, and interviews with family members. Assessment includes ongoing identification of the concerns, priorities, and resources of the family.

B. Definitions

beginning with the letter “B”:

“**Biological/medical risk**” means diagnosed medical conditions that increase the risk of developmental delays and disabilities in young children.

C. Definitions

beginning with the letter “C”:

(1)

“**Child find**” means activities and procedures to locate, identify, screen and refer children from birth to three years of age with or at risk of having a developmental delay or developmental disabilities.

(2) “**Child**

record” means the early intervention records (including electronic records) maintained by the early intervention provider and are defined as educational records in accordance with the Family Educational Rights and Privacy Act (FERPA). Early intervention records include files, documents, and other materials that contain information directly related to a child and family, and are maintained by the early intervention provider agency. Early intervention records do not include records of instructional, supervisory, and administrative personnel, which are in the sole possession of the maker and which are not accessible or revealed to any other person except to substitute staff.

(3) “**Cognitive**

development” means the progressive

changes in a child’s thinking processes affecting perception, memory, judgment, understanding and reasoning.

(4)

“**Communication development**” means the progressive acquisition of communication skills, during pre-verbal and verbal phases of development; receptive and expressive language, including spoken, non-spoken, sign language and assistive or augmentative communication devices as a means of expression; and speech production and perception. It also includes oral-motor development, speech sound production, and eating and swallowing processes. Related to hearing, communication development includes development of auditory awareness; auditory, visual, tactile, and kinesthetic skills; and auditory processing for speech or language development.

(5)

“**Confidentiality**” means protection of the family’s right to privacy of all personally identifiable information, in accordance with all applicable federal and state laws.

(6) “**Consent**”

means informed written prior authorization by the parent(s) to participate in the early intervention system. The parent has been fully informed of all information relevant to the activity for which consent is sought in the parent’s native language and mode(s) of communication and agrees to the activity for which consent is sought. The parent(s) shall be informed that the granting of consent is voluntary and can be revoked at any time. The revocation of consent is not retroactive.

D. Definitions

beginning with the letter “D”:

(1) “**Days**”

means calendar days, unless otherwise indicated in these regulations.

(2)

“**Developmental delay**” means an evaluated discrepancy between chronological age and developmental age of twenty-five percent, after correction for prematurity, in one or more of the following

areas of development: cognitive, communication, physical/motor, social or emotional, and adaptive.

(3)

“**Developmental specialist**” means an individual who meets the criteria established in these regulations and is certified to provide ‘developmental instruction’. A developmental specialist works directly with the child, family and other personnel to implement the IFSP. The role and scope of responsibility of the developmental specialist with the family and the team shall be dictated by the individual’s level of certification as defined in early childhood education and care department, family support and early intervention division policy and service standards.

(4) “**Dispute**

resolution process” means the array of formal and informal options available to parents and providers for resolving disputes related to the provision of early intervention services and the system responsible for the delivery of those services.

(5) “**Due**

process hearing” means a forum in which all parties present their viewpoint and evidence in front of an impartial hearing officer in order to resolve a dispute.

(6)

“**Duration**” means the length of time that services included in the IFSP will be delivered.

E. Definitions

beginning with the letter “E”:

(1) “**Early**

intervention services” means any or all services specified in the IFSP that are designed to meet the developmental needs of each eligible child and the needs of the family related to enhancing the child’s development, as identified by the IFSP team. (Early intervention services are described in detail in the service delivery provisions of this rule.)

(2) “**ECO**

(early childhood outcomes)” means the process of determining the child’s development compared to typically developing children of the same age.

The information is used to measure the child's developmental progress over time.

(3) **“Eligible children”** means children birth to three years of age who reside in the state and who meet the eligibility criteria within this rule.

(4) **“Environmental risk”** means the presence of adverse family factors in the child's environment that increases the risk of developmental delays and disabilities in young children.

(5) **“Established condition”** means a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay or disability.

(6) **“Evaluation”** means the procedures used by qualified personnel to determine a child's initial and continuing eligibility for FIT services. It includes a review of records pertinent to the child's current health status and medical history; parent interview and parent report; observation of the child in natural settings; informed clinical opinion; use of FIT Program approved assessment tool(s); and identification of the level of functioning of the child in each developmental area -- cognitive, communication, physical/ motor (including vision and hearing), social or emotional, and adaptive. An initial evaluation refers to the child's evaluation to determine his or her initial eligibility for FIT services.

F. Definitions beginning with the letter “F”:

(1) **“Family”** means a basic unit of society typically composed of adults and children having as its nucleus one or more primary nurturing caregivers cooperating in the care and rearing of their children. Primary nurturing caregivers may include, but are not limited to, parents, guardians, siblings, extended family members, and others defined by the family.

(2) **“Family infant toddler (FIT) program”** means the program within state government that administers New

Mexico's early intervention system for children (from birth to age three) who have or are at risk for developmental delay or disability and their families. The FIT program is established in accordance with 28-18-1 NMSA, 1978, and administered in accordance with the Individuals with Disabilities Education Act (IDEA), Part C as amended, and other applicable state and federal statutes and regulations.

(3) **“Family service coordinator”** means the person responsible for coordination of all services and supports listed on the IFSP and ensuring that they are delivered in a timely manner. The initial family service coordinator assists the family with intake activities such as eligibility determination and development of an initial individualized family service plan (IFSP) The ongoing family service coordinator is selected at the initial IFSP meeting and designated on the IFSP form.

(4) **“FIT-KIDS (key information data system)”** means the online data collection and billing system utilized by the FIT program.

(5) **“Frequency”** means the number of times that a service is provided or an event occurs within a specified period.

G. Definitions beginning with the letter “G”:
[RESERVED]

H. Definitions beginning with the letter “H”:

(1) **“Head start/early head start”** means a comprehensive child development program for children of low income families established under the Head Start Act, as amended.

(2) **“Homeless”** means lacking a fixed, regular, and adequate nighttime residence.

I. Definitions beginning with the letter “I”:

(1) **“IFSP team”** means the persons responsible for developing, reviewing the IFSP. The team shall include the parent(s), the family service

coordinator, person(s) directly involved in conducting evaluations and assessments, and, as appropriate, persons who will be providing services to the child or family, an advocate or other persons, including family members, as requested by the family.

(2) **“Inclusive setting”** means a setting where the child with a developmental delay or disability participates in a setting with typically developing children. A classroom in an early head start, child care or preschool classroom must have at least fifty-one percent non disabled peers in order to be considered an inclusive setting.

(3) **“Indian tribe”** means any federal or state recognized Indian tribe.

(4) **“Individualized education program (IEP)”** means a written plan developed with input from the parents that specifies goals for the child and the special education and related services and supplementary aids and services to be provided through the public school system under IDEA Part B.

(5) **“Individualized family service plan (IFSP)”** means the written plan for providing early intervention services to an eligible child and the child's family. The plan is developed jointly with the family and appropriate qualified personnel involved. The plan is developed around outcomes and includes strategies to enhance the family's capacity to meet the developmental needs of the eligible child.

(6) **“Individualized family service plan process (IFSP process)”** means a process that occurs from the time of referral, development of the IFSP, implementation of early intervention services, review of the IFSP, through transition. The family service coordinator facilitates the IFSP process.

(7) **“Individuals with Disabilities Education Act (IDEA) – Part C”** means the federal law that contains

requirements for serving eligible children. Part C of IDEA refers to the section of the law entitled “The Early Intervention Program for Infants and Toddlers with Disabilities”.

(8) **“Informed clinical opinion”** means the knowledgeable perceptions of the evaluation team who use qualitative and quantitative information regarding aspects of a child’s development that are difficult to measure in order to make a decision about the child’s eligibility for the FIT program.

(9) **“Intensity”** means the length of time the service is provided during each session.

(10) **“Interim IFSP”** means an IFSP that is developed prior to the completion of the evaluation and assessments in order to provide early intervention services that have been determined to be needed immediately by the child and the child’s family. Use of an Interim IFSP does not extend the 45-day timeline for completion of the evaluation process.

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

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

L. Definitions beginning with the letter “L”:
(1)

“Lead agency” means the agency responsible for administering early intervention services under the Individuals with Disabilities Education Act (IDEA) Part C. The early childhood education and care department, family infant toddler (FIT) program, is designated as the lead agency for IDEA Part C in New Mexico.

(2) **“Local education agency (LEA)”** means the local public school district.

(3) **“Location”** means the places in which early intervention services are delivered.

M. Definitions beginning with the letter “M”:

(1) **“Mediation”** means a method of dispute resolution that is conducted by an impartial and neutral third party, who without decision-making authority will help parties to voluntarily reach an acceptable settlement on issues in dispute.

(2) **“Medicaid”** means the federal medical assistance program under Title XIX of the Social Security Act. This program provides reimbursement for some services delivered by early intervention provider agencies to medicaid-eligible children.

(3) **“Method”** means the way in which a specific early intervention service is delivered. Examples include group and individual services.

(4) **“Multidisciplinary”** means personnel from more than one discipline who work with the child and family, and who coordinate with other members of the team.

N. Definitions beginning with the letter “N”:

(1) **“Native language”** with respect to an individual who is limited English proficient, means the language normally used by a child or their parent(s) or mode of communication normally used by a child or their parents. Native language when used with respect to evaluations and assessments is the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment. Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(2) **“Natural environments”** means places that are natural or normal for children of the same age who have no apparent developmental delay, including the home, community and inclusive early

childhood settings. Early intervention services are provided in natural environments in a manner/method that promotes the use of naturally occurring learning opportunities and supports the integration of skills and knowledge into the family’s typical daily routine and lifestyle.

O. Definitions beginning with the letter “O”:

(1) **“Other services”** means services that the child and family need, and that are not early intervention services, but should be included in the IFSP. Other services does not mean routine medical services unless a child needs those services and the services are not otherwise available or being provided. Examples include, but are not limited to, child care, play groups, home visiting, early head start, WIC, etc.

(2) **“Outcome”** means a written statement of changes that the family desires to achieve for their child and themselves as a result of early intervention services that are documented on the IFSP.

P. Definitions beginning with the letter “P”:

(1) **“Parent(s)”** means a biological or adoptive parent(s) of a child; a guardian; a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare); or a surrogate parent who has been assigned in accordance with these regulations. A foster parent may act as a parent under this program if the natural parents’ authority to make the decisions required of parents has been removed under state law and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the decisions required of parents under the Federal Individual with Disabilities Education Act; and has no interest that would conflict with the interests of the child.

(2) **“Participating agency”** means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable

information to implement the requirements of this rule with respect to a particular child.

(3)

“**Permission**” means verbal authorization from the parents to carry out a function and shall be documented. Documentation of permission does not constitute written consent.

(4)

“**Personally identifiable information**” means that information in any form which includes the names of the child or family members, the child’s or family’s address, any personal identifier of the child and family such as a social security number, or a list of personal characteristics or any other information that would make it possible to identify the child or the family.

(5)

“**Personnel**” means qualified staff and contractors who provide early intervention services, and who have met state approved or recognized certification or licensing requirements that apply to the area in which they are conducting evaluations, assessments or providing early intervention services.

(6) “**Physical/**

motor development” means the progressive changes to a child’s vision, hearing, gross and fine motor development, quality of movement, and health status.

(7) “**Primary**

referral source” means parents, physicians, hospitals and public health facilities (including prenatal and postnatal care facilities), child care programs, home visiting providers, schools, local education agencies, public health care providers, children’s medical services, public agencies and staff in the child welfare system (including child protective service and foster care), other public health or social services agencies, early head start, homeless family shelters, domestic violence shelters and agencies, and other qualified individuals or agencies which have identified a child as needing evaluation or early intervention services.

(8) “**Prior**

written notice” means written notice given to the parents a reasonable time before the early intervention provider agency, either proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child’s family. Prior notice must contain the action being proposed or refused, the reasons for taking the action and all procedural safeguards that are available.

(9)

“**Procedural safeguards**” means the requirements set forth by IDEA, as amended, which specify families’ rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family.

(10) “**Provider**

agency” means a provider that meets the requirements established for early intervention services, and has been certified as a provider of early intervention services by the early childhood education and care department and that provides services through a provider agreement with the department.

(11) “**Public**

agency” means the lead agency and any other political subdivision of the state government that is responsible for providing early intervention services to eligible children and their families.

Q. Definitions

beginning with the letter “Q”:

[RESERVED]

R. Definitions

beginning with the letter “R”:

(1) “**Referral**

means the process of informing the FIT program regarding a child who may benefit from early intervention, and giving basic contact information regarding the family.

(2)

“**Reflective supervision**” means planned time to provide a respectful, understanding and thoughtful atmosphere where exchanges of information, thoughts, and feelings about the things that arise around

the person’s work in supporting healthy parent-child relationships can occur. The focus is on the families involved and on the experience of the supervisee.

S. Definitions

beginning with the letter “S”:

(1) “**School**

year” means the period of time between the fall and spring dates established by each public school district which mark the first and last days of school for any given year for children ages three through twenty-one years. These dates are filed each year with the public education department.

(2)

“**Scientifically based practices**” means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.

(3)

“**Screening**” means the use of a standardized instrument to determine if there is an increased concern regarding the child’s development when compared to children of the same age, and whether a full evaluation would therefore be recommended.

(4)

“**Significant atypical development**” means the eligibility determination under developmental delay made using informed clinical opinion, when twenty-five percent delay cannot be documented through state approved evaluation tool, but where there is significant concern regarding the child’s development.

(5) “**Social**

or emotional development” the developing capacity of the child to: experience, regulate, and express emotion; form close and secure interpersonal relationships; explore the environment and learn.

(6) “**State**

education agency” means the public education department responsible for administering special education and related serves under IDEA Part B.

(7)

“**Strategies**” means the section of the IFSP that describes how the

team, including the parents, will address each outcome. Strategies shall include the methods and activities developed by the IFSP team to achieve functional outcomes. Strategies shall include family routines, times and locations where activities will occur, as well as accommodations to be made to the environment and assistive technology to be used. Strategies shall also include how members of the team will work together to meet the outcomes on the IFSP.

(8)

“Supervision” means defining and communicating job requirements; counseling, mentoring and coaching for improved performance; providing job-related instruction; planning, organizing, and delegating work; evaluating performance; providing corrective and formative feedback; providing consequences for performance; and arranging the environment to support performance.

(9)

“Surrogate parent” means the person appointed in accordance with these regulations to represent the eligible child in the IFSP Process when no parent can be identified or located, or the child is a ward of the state. A surrogate parent has all the rights and responsibilities afforded to a parent under Part C of IDEA.

T. Definitions

beginning with the letter “T”:

(1)

“Transition” means the process for a family and eligible child of moving from services provided through the FIT program at age three. This process includes discussions with, and training of, parents regarding future placements and other matters related to the child’s transition; procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and with parental consent, the transmission of information about the child to a program into which the child might transition to ensure continuity of services, including evaluation and assessment information required and copies of IFSPs that have been developed and implemented.

(2)

“Transition plan” means a component of the IFSP that addresses the process of a family and eligible child of moving from one service location to another. The plan defines the roles, responsibilities, activities and timelines for ensuring a smooth and effective transition.

U. Definitions

beginning with the letter “U”:

[RESERVED]

V. Definitions

beginning with the letter “V”:

[RESERVED]

W. Definitions

beginning with the letter “W”:

“Ward of the state” means a child who is in foster care or in the custody of the child welfare agency.

[8.9.8.7 NMAC - N, 7/20/2021]

8.9.8.8

ADMINISTRATION:

A. Supervisory

authority.

(1) Any

agency, organization, or individual that provides early intervention services to eligible children and families shall do so in accordance with these regulations and under the supervisory authority of the lead agency for Part C of IDEA, the New Mexico early childhood education and care department.

(2) An agency

that has entered into a contract or provider agreement or an inter-agency agreement with the New Mexico early childhood education and care department to provide early intervention services shall be considered an “early intervention provider agency” under these regulations.

B. Provider

requirements.

(1) All early

intervention provider agencies shall comply with these regulations and all other applicable state and federal regulations. All early intervention provider agencies that provide such services shall do so under the administrative oversight of the lead agency for IDEA, Part C, the New Mexico early childhood education and

care department through the family infant toddler (FIT) program.

(2) All early

intervention provider agencies shall establish and maintain separate financial reporting and accounting procedures for the delivery of early intervention services and related activities. They shall generate and maintain documentation and reports required in accordance with these regulations, the provisions of the contract/provider agreement or an inter-agency agreement, medicaid rules and early childhood education and care department service definitions and standards. This information shall be kept on file with the early intervention provider agencies and shall be available to the New Mexico early childhood education and care department or its designee upon request.

(3) All early

intervention provider agencies shall employ individuals who maintain current licenses or certifications required of all staff providing early intervention services. Documentation concerning the licenses and certifications shall be kept on file with the early intervention provider agency and shall be available to the New Mexico early childhood education and care department or its designee upon request. The provider of early intervention services cannot employ an immediate family member of an eligible and enrolled child to work directly with that child. Exceptions can be made with prior approval by the New Mexico early childhood education and care department.

(4) Early

intervention provider agencies shall ensure that personnel receive adequate training and planned and ongoing supervision, in order to ensure that individuals have the information and support needed to perform their job duties. The early intervention provider agency shall maintain documentation of supervision activities. Supervision shall comply with requirements of appropriate licensing and regulatory agencies for each discipline.

(5) Early intervention provider agencies shall provide access to information necessary for the New Mexico early childhood education and care department or its designee to monitor compliance with applicable state and federal regulations.

(6) Failing to comply with these regulations on the part of early intervention provider agencies will be addressed in accordance with provisions in the contract/provider agreement or interagency agreement and the requirements of state and federal statutes and regulations.

C. Financial matters.

(1) Reimbursement for early intervention services to eligible children and families by the family infant toddler program shall conform to the method established by the New Mexico early childhood education and care department, as delineated in the early intervention provider agency’s provider agreement and in the service definitions and standards.

(2) Early intervention provider agencies shall only bill for early intervention services delivered by personnel who possess relevant, valid licenses or certification in accordance with personnel certification requirements of this rule.

(3) Early intervention provider agencies shall enter delivered services data into the FIT-KIDS (key information data system), which is generated into claims for medicaid, private insurance and invoices for the early childhood education and care department.

(4) Early intervention provider agencies shall maintain documentation of all services provided in accordance with service definitions and standards and provider agreement / contract requirements.

(5) The FIT program and early intervention provider agencies shall not implement a system of payments or fees to parents.

(6) Public and private insurance.

(a) The parent(s) will not be charged any co-pay or deductible related to billing their public insurance (including medicaid) and private insurance.

(b) The parent(s) shall provide written consent before personally identifiable information is disclosed for billing purposes to public insurance (including medicaid) and private insurance.

(c) The parent(s) may withdraw consent at any time to disclose personally identifiable information to public insurance (including medicaid) and private insurance for billing purposes.

(d) The parent(s) shall provide written consent to use their private insurance to pay for FIT program services. Consent shall be obtained prior to initial billing of their private insurance for early intervention services and each time consent for services is required due to an increase (in frequency, length, duration, or intensity) in the provision of services on the IFSP.

[8.9.8.8 NMAC - N, 7/20/2021]

8.9.8.9 PERSONNEL:

A. Personnel requirements.
 (1) Early intervention services shall be delivered by qualified personnel. Personnel shall be deemed “qualified” based upon the standards of their discipline and in accordance with these regulations and shall be supervised in accordance with these regulations.

(2) Individuals who hold a professional license or certificate from an approved field as identified in this rule, and provide services in that discipline, do not require certification as a developmental specialist. However, individuals who hold a professional license or certificate in one of these fields and who spend sixty percent or more of their time employed in the role of developmental specialist must

obtain certification as a developmental specialist.

(3) Personnel may delegate and perform tasks within the specific scope of their discipline. The legal and ethical responsibilities of personnel within their discipline cannot be delegated.

B. Qualified

personnel may include individuals from the following disciplines who meet the state’s entry level requirements and possess a valid license or certification:

- (1) audiology;
- (2) developmental specialist;
- (3) early childhood development and education;
- (4) education of the deaf/hard of hearing;
- (5) education of the blind and visually impaired;
- (6) family therapy and counseling;
- (7) nutrition/dietetics;
- (8) occupational therapy (including certified occupational therapy assistants);
- (9) orientation and mobility specialist;
- (10) pediatric nursing;
- (11) physical therapy (including physical therapy assistants);
- (12) physician (pediatrics or other medical specialty);
- (13) psychology (psychologist or psychological associate);
- (14) social work;
- (15) special education; and
- (16) speech and language pathology.

C. Certification of developmental specialist.

(1) Certification is required for individuals providing early intervention services functioning in the position of developmental specialist.

(2) A

developmental specialist must have the appropriate certificate issued by the New Mexico early childhood education and care department in accordance with the developmental specialist certification policy and procedures.

(3) The term of certification as a developmental specialist is a three-year period granted from the date the application is approved.

D. Reciprocity of certification: An applicant for a developmental specialist certificate who possesses a comparable certificate from another state shall be eligible to receive a New Mexico developmental specialist certificate, at the discretion of the New Mexico early childhood education and care department.

E. Certification renewal: The individual seeking renewal of a developmental specialist certificate shall provide the required application and documentation in accordance with policy and procedures established by the FIT program.

F. Agency exemptions from personnel certification requirements.

(1) At its discretion, the FIT program may issue to an early intervention provider agency an exemption from personnel qualifications for a specific developmental specialist position. The exemption shall be in effect only for one year from the date it is issued.

(2) An exemption from certification is for a specific position and is to be used in situations when the early intervention provider agency can demonstrate that it has attempted actively to recruit personnel who meet the certification requirements but is currently unable to locate qualified personnel.

(3) Early intervention provider agencies shall not bill for early intervention services delivered by a non-certified developmental specialist unless the FIT program has issued an exemption for that position.

(4)

Documentation of efforts to hire personnel meeting the certification requirements shall be maintained.

G. Family service coordinators.

(1) Family service coordinators shall possess a bachelor's degree in health, education or social service field or a bachelor's degree in another field plus two years' experience in community, health or social services.

(2) If an early intervention provider agency is unable to hire suitable candidates meeting the above requirements, a person can be hired as a family service coordinator with an associate of arts degree and at least three years' experience in community, health or social services.

(3) Early intervention provider agencies may request a waiver from the FIT program, to hire family service coordinators who do not meet the qualifications listed above but do meet cultural, linguistic, or other specific needs of the population served or an individual who is the parent of a child with a developmental delay or disability.

(4) All individuals must meet all training requirements for family service coordinators in accordance with FIT program standards within one-year of being hired.

H. Supervision of early intervention personnel providing direct services.

(1) Early intervention provider agencies shall ensure that developmental specialists and all other direct providers of early intervention (employees and subcontractors), and family service coordinators receive monthly planned and ongoing reflective supervision.

(2) The early intervention provider agency shall maintain documentation of supervision activities conducted.

(3) Supervision of other early intervention personnel shall comply with the requirements of other appropriate licensing and regulatory

agencies for each discipline.
[8.9.8.9 NMAC - N, 7/20/2021]

8.9.8.10 CHILD IDENTIFICATION:

A. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and other state, federal and tribal government agencies in a coordinated child find effort to locate, identify and evaluate all children residing in the state who may be eligible for early intervention services. Child find efforts shall include families and children in rural and in Native American communities, children whose family is homeless, children in foster care and wards of the state, and children born prematurely.

B. Early intervention provider agencies shall collaborate with the New Mexico early childhood education and care department and shall inform primary referral sources regarding how to make a referral when there are concerns about a child's development. Primary referral sources include: hospitals; prenatal and postnatal care facilities; physicians; public health facilities; child care and early learning programs, school districts; home visiting programs; homeless family shelters; domestic violence shelters and agencies; child protective services, including foster care; other social service agencies; and other health care providers.

C. Early intervention provider agencies in collaboration with the New Mexico early childhood education and care department shall inform parents, medical personnel, local education agencies and the general public of the availability and benefits of early intervention services. This collaboration shall include an ongoing public awareness campaign that is sensitive to issues related to accessibility, culture, language, and modes of communication.

D. Referral and intake:

(1) Primary referral sources shall inform parent(s) of their intent to refer and the purpose

for the referral. Primary referral sources should refer the child as soon as possible, but in no case more than seven days after the child has been identified.

(2) Parents must give permission for a referral of their child to the FIT program.

(3) The child must be under three years of age at the time of the referral.

(4) If there are less than 45 days before the child turns three at the time of referral, the early intervention provider agency will not complete an evaluation to determine eligibility and will assist the family with a referral to Part B preschool special education and other preschool programs, as appropriate and with consent of the parent(s).

(5) The early intervention provider agency receiving a referral shall promptly assign a family service coordinator to conduct an intake with the parent(s).

(6) The family service coordinator shall contact the parent(s) to arrange a meeting at the earliest possible time that is convenient for the parent(s) in order to:

- (a) inform the parent(s) about early intervention services and the IFSP process;
- (b) review the FIT family handbook;
- (c) explain the family's rights and procedural safeguards;
- (d) if in a county that is also served by other FIT provider, inform the parent(s) of their choice of provider agencies and have them sign a "freedom of choice" form.

(e) provide information about evaluation options; and with the parent's consent, arrange the comprehensive multidisciplinary evaluation.

(7) If the child is found eligible for FIT services, the family service coordinator with parental consent shall schedule and facilitate the initial IFSP meeting to be completed within 45 days of

referral to the FIT program for early intervention services.

(8) Exceptions to the 45-day timeline for completion of the initial IFSP due to exceptional family circumstances must be documented in the child's early intervention record. Exceptional family circumstances include:

(a) The child or parent is unavailable to complete the screening (if applicable), the initial evaluation the initial assessments of the child and family, or the initial IFSP meeting.

(b) The parent has not provided consent for the screening (if applicable) the initial evaluation, or the initial assessment of the child despite documented repeated attempts by the early intervention provider.

E. Screening.

(1) A developmental screening for a child who has been referred may be conducted using a standardized instrument to determine if there is an indication that the child may have developmental delay and whether an evaluation to determine eligibility is recommended.

(2) A developmental screening should not be used if the child has a diagnosis that would qualify them under established condition or biological medical risk or where the referral indicates a strong likelihood that the child has delay in their development, including when a screening has already been conducted.

(3) If a developmental screening is conducted:

(a) the written consent of the parent(s) must be obtained for the screening; and

(b) the parent must be provided written notice that they can request an evaluation at any point during the screening process.

(4) If the results of the screening:

(a) Do not indicate that the child is

suspected of having a developmental delay, the parent must be provided written notice of this result and be informed that they can request an evaluation at the present time or any future date.

(b) Do indicate that the child is suspected of having a developmental delay, an evaluation must be conducted, with the consent of the parent(s). The 45-day timeline from referral to the completion of the initial IFSP and all of the referral and intake requirements of this rule must still be met.

F. Evaluation.

(1) A child who is referred for early intervention services, and whose parent(s) has given prior informed consent, shall receive a comprehensive multidisciplinary evaluation to determine eligibility, unless the child receives a screening in accordance with the screening requirements of this rule and the results do not indicate that the child is suspected of having a developmental delay. Exception: If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted even if the results do not indicate that the child is suspected of having a developmental delay.

(2) The evaluation shall be:

- (a) timely, multidisciplinary, evaluation;
- (b) conducted by qualified personnel, in a nondiscriminatory manner so as not to be racially or culturally discriminatory; and

(c) shall include information provided by the parent(s).

(3) If parental consent is not given, the family service coordinator shall make reasonable efforts to ensure that the parent(s) is fully aware of the nature of the evaluation or the services that would be available; and that the parent(s) understand that the child will not be able to receive the evaluation or services unless consent is given.

(4) A comprehensive multidisciplinary evaluation shall be conducted by a multidisciplinary team consisting of at least two qualified professionals from different disciplines.

(5) The family service coordinator shall coordinate the evaluation and shall obtain pertinent records related to the child's health and medical history.

(6) The evaluation shall include information provided by the child's parents, a review of the child's records related to current health status and medical history and observations of the child. The evaluation shall also include an assessment of the child's strengths and needs and a determination of the developmental status of the child in the following developmental areas:

(a) physical/motor development (including vision and hearing);

(b) cognitive development;

(c) communication development;

(d) social or emotional development; and

(e) adaptive development.

(7) The evaluation team shall use the tool(s) approved by the FIT program. Other domain specific tools may be used in addition to the approved tool(s).

(8) The tool(s) used in the evaluation shall be administered by certified or licensed personnel who have received training in the use of the tool(s).

(9) The evaluation shall be conducted in the child and family's native language, in accordance with the definition of native language, unless it is clearly not feasible to do so.

(10) The evaluation team will collect and discuss all of the information obtained during the evaluation process in order to make a determination of the child's eligibility for the FIT program.

(11) An evaluation report shall be generated that summarizes the findings of

the multidisciplinary evaluation team. The report shall summarize the child's level of functioning in each developmental area based on assessments conducted and shall describe the child's overall functioning and ability to participate in family and community life. The report shall include recommendations regarding approaches and strategies to be considered when developing IFSP outcomes. The report shall also include a statement regarding the determination of the child's eligibility for the FIT program.

(12) Parents shall receive a copy of the evaluation report and shall have the results and recommendations of the evaluation report explained to them by a member of the evaluation team or a member of the IFSP team, with prior consultation with the evaluation team.

(13) Information from the evaluation process and the report shall be used to assist in determining a rating for the initial early childhood outcome (ECO).

(14) If the child has a recent and complete evaluation current within the past six months from another Early Intervention Agency, the results may be used, in lieu of conducting an additional evaluation, to determine eligibility.

(15) If, based on the evaluation conducted the evaluation team determines that a child is not eligible, the evaluation team must provide the parent with prior written notice, and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms such as requesting a due process hearing or mediation or filing a State complaint.

G. Eligibility.

(1) The child's eligibility for early intervention services shall be determined through the evaluation process as identified in Section F. A statement of the child's eligibility for the FIT Program shall be documented in the evaluation report.

(2) The child's age shall be adjusted (corrected) for prematurity for children born less than 37 weeks gestation. The adjusted age shall be used until a child is 24 months of age for the purpose of eligibility determination.

(3) Informed clinical opinion may be used by the evaluation team to establish eligibility when the approved evaluation tool(s) or other approved assessment tools are not able to establish developmental delay.

(a) If informed clinical opinion is used to determine the child's eligibility, documentation must be provided to justify the child's eligibility.

(b) A second level review and sign off shall occur within the early intervention provider agency by someone of equal or higher certification or licensure that was not part of the evaluation team.

(c) Informed clinical opinion may only be used to qualify a child for more than one year with review and approval of the FIT program.

(4) The child must be determined eligible under one of the following categories.

(a) **Developmental delay:** a delay of twenty-five percent or more, after correction for prematurity, in one or more of the following areas of development: cognitive; communication; physical/motor; social or emotional; adaptive.

(i) Twenty-five percent delay shall be documented utilizing the tool(s) approved by the FIT program.

(ii) If the FIT program approved tool does not indicate a twenty-five percent delay, a domain-specific tool may be used to establish eligibility if the score is one and one-half standard deviations below the mean or greater.

(iii) Developmental delay includes "significant atypical development" documented on the basis of informed clinical opinion.

(b)
Established condition: a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay. The established condition shall be diagnosed by a health care provider and documentation shall be kept on file. Established conditions include the following:

- (i)** genetic disorders with a high probability of developmental delay, including chromosomal anomalies including Down syndrome and Fragile X syndrome (in boys); inborn errors of metabolism including Hurler syndrome; and other syndromes, including Prader-Willi and Williams;
- (ii)** perinatal factors, including preterm newborn, 28 completed weeks or less
- (iii)** perinatal factors, including toxoplasmosis, rubella, CMV, and herpes (TORCH);
- (iv)** prenatal toxic exposures including fetal alcohol syndrome (FAS); and birth trauma, including neurologic sequelae from asphyxia;
- (v)** neurologic conditions, including congenital anomalies of the brain including holoprosencephaly, lissencephaly, microcephaly, hydrocephalus; anomalies of spinal cord including meningomyelocele; degenerative or progressive disorders including muscular dystrophies, leukodystrophies, spinocerebellar disorders; cerebral palsy (all types), including generalized, hypotonic patterns; abnormal movement patterns including generalized hypotonia, ataxias, myoclonus, and dystonia; peripheral neuropathies; traumatic brain injury; and CNS trauma including shaken baby syndrome;
- (vi)** sensory abnormalities, including visual impairment or blindness; congenital impairments including cataracts; acquired impairments including retinopathy of prematurity; cortical visual impairment; and chronic hearing loss;

- (vii)** physical impairment, including congenital impairments including arthrogyriposis, osteogenesis imperfecta, and severe hand anomalies; and acquired impairments including amputations and severe burns;
- (viii)** mental/psychosocial disorders, including autism spectrum disorders; and
- (ix)** conditions recognized by the FIT program as established conditions for purposes of this rule; a genetic disorder, perinatal factor, neurologic condition, sensory abnormality, physical impairment or mental/psychosocial disorder that is not specified above must be recognized by the FIT program in order to qualify as an established condition for purposes of this rule; physician, designated by the New Mexico early childhood education and care department, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program receipt of the request for review.

(c)
Biological or medical risk for developmental delay: a diagnosed physical, mental, or neurobiological condition. The biological or medical risk condition shall be diagnosed by a health care provider and documentation shall be kept on file. Biological and medical risk conditions include the following:

- (i)** genetic disorders with increased risk for developmental delay, including chromosomal anomalies including Turner syndrome, Fragile X syndrome (in girls), inborn errors of metabolism including Phenylketonuria (PKU), and other syndromes including Goldenhar neurofibromatosis, and multiple congenital anomalies (no specific diagnosis);
- (ii)** perinatal factors, including prematurity (less than 35 weeks and more than 28 completed weeks gestation) or small for gestational age (less than 1750 grams); prenatal toxic

- exposures including alcohol, polydrug exposure, and fetal hydantoin syndrome; and birth trauma including seizures, and intraventricular or periventricular hemorrhage;
- (iii)** neurologic conditions, including anomalies of the brain including the absence of the corpus callosum, and macrocephaly; anomalies of the spinal cord including spina bifida and tethered cord; abnormal movement patterns including severe tremor and gait problems; and other central nervous system (CNS) influences, including CNS or spinal cord tumors, CNS infections (e.g., meningitis), abscesses, acquired immunodeficiency syndrome (AIDS), and CNS toxins (e.g., lead poisoning);
- (iv)** sensory abnormalities, including neurological visual processing concerns that affect visual functioning in daily activities as a result of neurological conditions, including seizures, infections (e.g., meningitis), and injuries including traumatic brain injury (TBI); and mild or intermittent hearing loss;
- (v)** physical impairment, including congenital impairments including cleft lip or palate, torticollis, limb deformity, club feet; acquired impairments including severe arthritis, scoliosis, and brachial plexus injury;
- (vi)** mental/psychosocial disorders, including severe attachment disorder, severe behavior disorders, and severe socio-cultural deprivation;
- (vii)** other medical factors and symptoms, including growth problems, severe growth delay, failure to thrive, certain feeding disorders, and gastrostomy for feeding; and chronic illness/medically fragile conditions including severe cyanotic heart disease, cystic fibrosis, complex chronic conditions, and technology-dependency; and
- (viii)** conditions recognized by the FIT program as biological or medical risk conditions for purposes of this rule; a genetic disorder, perinatal

factor, neurologic condition, sensory abnormality, physical impairment, mental/psychosocial disorder, or other medical factor or symptom that is not specified above must be recognized by the FIT program in order to qualify as an medical or biological risk condition for purposes of this rule; department of health physician, designated by the FIT program manager, shall make a determination of whether a proposed condition will be recognized within seven days of the FIT program manager's receipt of the request for review.

(d)

Environmental risk for

developmental delay: a presence of adverse family factors in the child's environment that increases the risk for developmental delay in children. Eligibility determination shall be made using the tool approved by the FIT program.

(5) The

families of children who are determined to be not eligible for the FIT program shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. Families shall receive information regarding other community resources, such as home visiting and how to access specific resources in their area. Families shall also be informed about how to request re-evaluation at a later time should they suspect that their child's delay or risk for delay increases.

H. Redetermination of eligibility.

(1) The child's eligibility for the FIT program shall be re-determined annually in accordance with the eligibility determination requirements of this rule.

(2) The child's continued eligibility shall be documented on the IFSP.

(3) If the child no longer meets the requirements under the original eligibility category, the team will determine if the child meets the criteria for one of the other eligibility categories before exiting the child.

(4) If the child is determined to no longer be eligible for the FIT program the family shall be provided with prior written notice and informed of their rights to dispute the eligibility determination. The family service coordinator will assist the family, with their consent, with referrals to other agencies.

I. Ongoing assessment.

(1) Each eligible child shall receive an initial and ongoing assessment to determine the child's unique strengths and needs and developmental functioning.

The ongoing assessment will utilize multiple procedures including the use of a tool that helps the team determine if the child is making progress in their development, to determine developmental levels for the IFSP and to modify outcomes and strategies, and to determine the resources, priorities, and concerns of the family.

(2)

Assessment information shall be used by the team as part of the process of determining early childhood outcome (ECO) scores at the time of the initial IFSP and prior to the child exiting the FIT program.

(3) An annual assessment of the resources, priorities, and concerns of the family shall be voluntary on the part of the family. The IFSP shall reflect those resources, priorities and concerns the family has identified related to supporting their child's development.

[8.9.8.10 NMAC - N, 7/20/2021]

8.9.8.11 INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP):**A. IFSP development.**

(1) A written IFSP shall be developed and implemented for each eligible child and family.

(2) The IFSP shall be developed at a meeting. The IFSP meeting shall:

(a) take place in a setting and at a time that is convenient to the family;

(b) be conducted in the native language

of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so; and

(c) meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(3)

Participants at the initial IFSP and annual IFSP meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) a person or persons directly involved in conducting evaluations and assessments of the child;

(e) as appropriate, a person or persons who are or will be providing early intervention services to the child and family;

(f) the family service coordinator; and

(g) other individual(s) as applicable, such as personnel from: child care; early head start; home visiting; medically fragile; children's medical services; child protective services; physician and other medical staff, and with permission of the parent(s).

(4) If a person or persons directly involved in conducting evaluations and assessments of the child is unable to attend a meeting, the family service coordinator shall make arrangements for the person's participation through other means, including: participating by telephone; having a knowledgeable authorized representative attend; or submitting a report.

(5) The initial IFSP shall be developed within 45 days of the referral.

(6) Families shall receive prior written notice of the IFSP meeting.

(7) The family service coordinator shall assist the parent(s) in preparing for the IFSP meeting and shall ensure that the parent(s) have the information that they need in order to fully participate in the meeting.

B. Contents of the IFSP: The IFSP shall include:

(1) the child's name, address, the name and address of the parent(s) or guardian, the child's birth date and, when applicable, the child's chronological age and adjusted age for prematurity (if applicable);

(2) the date of the IFSP meeting, as well as the names of all participants in the IFSP meeting;

(3) the dates of periodic and annual reviews;

(4) a summary of the child's health (including vision and hearing) and the child's present levels of development in all domains (cognitive, communication, physical/ motor, social and emotional and adaptive);

(5) with the approval of the parent(s), a statement of the family's concerns, priorities and resources that relate to enhancing the development of the infant or toddler as identified through the family assessment;

(6) the desired child and family outcomes developed with the family (including but not limited to pre-literacy and numeracy, as developmentally appropriate to the child), the strategies to achieve those outcomes and the timelines, procedures and criteria to measure progress toward those outcomes;

(7) a statement of specific early intervention services based on peer-reviewed research (to the extent practicable) that are necessary to meet the unique needs of the child and family to achieve the desired outcomes, and the duration, frequency, intensity, location, and the method of delivering the early intervention services;

(8) a parental signature, which denotes prior consent to the early intervention services

on the IFSP; if the parent(s) does not provide consent for a particular early intervention service, then the service(s) to which the parent(s) did consent shall be provided;

(9) specific information concerning payment sources and arrangements;

(10) the name of the ongoing family service coordinator;

(11) a statement of all other services including, medical services, child care and other early learning services being provided to the child and family that are not funded under this rule;

(12) an outcome, including strategies the family service coordinator or family shall take to assist the child and family to secure other services not funded under this rule;

(13) a statement about the natural environments in which early intervention services shall be provided; if the IFSP team determines that services cannot be satisfactorily provided or IFSP outcomes cannot be achieved in natural environments, then documentation for this determination and a statement of where services will be provided and what steps will be taken to enable early intervention services to be delivered in the natural environment must be included;

(14) the projected start dates for initiation of early intervention services and the anticipated duration of those services; and

(15) at the appropriate time, a plan including identified steps and services to be taken to ensure a smooth and effective transition from early intervention services to preschool services under IDEA Part B and other appropriate early learning services.

C. Interim IFSP.

(1) With parental consent an interim IFSP shall be developed and implemented, when an eligible child or family have an immediate need for early intervention services prior to the completion of the evaluation and assessment.

(2) The interim IFSP shall include the name of the family service coordinator, the needed early intervention services, the frequency, intensity, location and methods of delivery, and parental signature indicating consent.

(3) The use of an interim IFSP does not waive or constitute an extension of the evaluation requirements and timelines.

D. Family service coordination.

(1) Family service coordination shall be provided at no cost to the family.

(2) The parent may choose the early intervention agency that will provide ongoing family service coordination.

(3) The parent may request to change the family service coordinator, at any time.

(4) The family service coordinator shall be responsible for:

(a) informing the family about early intervention and their rights and procedural safeguards;

(b) gathering information from the family regarding their concerns, priorities and resources;

(c) coordinating the evaluation and assessment activities;

(d) facilitating the determination of the child's eligibility;

(e) referring the family to other resources and supports;

(f) helping families plan and prepare for their IFSP meeting;

(g) organizing and facilitating IFSP meetings;

(h) arranging for and coordinating all services listed on the IFSP;

(i) coordinating and monitoring the delivery of the services on the IFSP to ensure that they are provided in a timely manner;

(j) conducting follow-up activities to determine that appropriate services are being provided;

(k) assisting the family in identifying funding sources for IFSP services, including medicaid and private insurance;

(l) facilitating periodic reviews of the IFSP; and

(m) facilitating the development of the transition plan and coordinating the transition steps and activities.

(5) Family service coordination shall be available to families upon their referral to the FIT program.

(6) Family service coordination shall be listed on the IFSP for all families of eligible children.

(7) Families may direct the level of support and assistance that they need from their family service coordinator and may choose to perform some of the service coordination functions themselves.

E. Periodic review of the IFSP.

(1) A review of the IFSP for a child and child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review.

(2) The parent(s), the family service coordinator, and others as appropriate, shall participate in these reviews.

(3) A review can occur at any time at the request of the parent(s) or early intervention provider agency.

(4) Participants at a periodic review meeting shall include:

(a) the parent(s);

(b) other family members, as requested by the parent(s) (if feasible);

(c) an advocate or person outside of the family, as requested by the parent(s);

(d) the family service coordinator; and

(e) persons providing early intervention services, as appropriate.

F. Annual IFSP.

(1) The family service coordinator shall convene the IFSP team on an annual basis, to review progress regarding outcomes on the IFSP and to revise outcomes, strategies or services, as appropriate to the child's and family's needs and the annual re-determination of the child's eligibility for services.

(2) Attendance at the annual IFSP meeting shall conform to the requirements of the initial IFSP meeting.

(3) The team shall develop a new IFSP for the coming year; however, information may be carried forward from the previous IFSP if the information is current and accurate.

(4) Results of current evaluations and assessments and other input from professionals and parents shall be used in determining what outcomes will be addressed for the child and family and the services to be provided to meet these outcomes.

(5) The annual IFSP process shall include a determination of the child's continuing eligibility utilizing the tool(s) approved by the FIT program.

(6) At any time when monitoring of the IFSP by the family service coordinator or any member of the IFSP team, including the family, indicates that services are not leading to intended outcomes, the team shall be reconvened to consider revision of the IFSP. The IFSP team can also be reconvened if there are significant changes to the child's or family's situation, e.g., moving to a new community, starting child care or early head start, health or medical changes, etc.

(7) If there are significant changes to the IFSP, the revised IFSP can be considered a new annual IFSP with a new start and end date.

[8.9.8.11 NMAC - N, 7/20/2021]

8.9.8.12 SERVICE DELIVERY:

A. Early intervention services.

(1) Early intervention services shall be:

(a) designed to address the outcomes identified by the IFSP team (which includes parents and other team members);

(b) identified in collaboration with the parents and other team members through the IFSP process;

(c) listed on the IFSP if recommended by the team, including the family, even if a service provider is not available at that time;

(d) delivered to the maximum extent appropriate in the natural environment for the child and family in the context of the family's day to day life activities;

(e) designed to meet the developmental needs of the eligible child and the family's needs related to enhancing the child's development;

(f) delivered in accordance with the specific location, duration and method in the IFSP; and

(g) provided at no cost to the parent(s).

(2) Early intervention services (with the exception of consultation and evaluation and assessments) must be provided within 30 days of the start date for those services, as listed on the IFSP and consented to by the parent(s).

(3) If an early intervention service cannot be achieved satisfactorily for the eligible child in a natural environment, the child's record shall contain justification for services provided in another setting or manner and a description of the process used to determine the most appropriate service delivery setting, methodology for service delivery, and steps to be taken to enable early intervention services to be delivered in the natural environment.

(4) Early intervention services shall be provided, by qualified personnel, in accordance with an IFSP, and meet the standards of the state. Early intervention services include:

(a) **Assistive technology services:** services which directly assist in the selection, acquisition, or use of assistive technology devices for eligible children. This includes the evaluation of the child's needs, including a functional evaluation in the child's natural environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for eligible children; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing developmental therapy, education and rehabilitation plans and programs; training or technical assistance for an eligible child and the child's family; and training or technical assistance for professionals that provide early intervention or other individuals who provide other services or who are substantially involved in the child's major life functions. Assistive technology devices are pieces of equipment, or product systems, that are used to increase, maintain, or improve the functional capabilities of eligible children. Assistive technology devices and services do not include medical devices that are implanted, including a cochlear implant, or the optimization, maintenance, or replacement of such a device.

(b) **Audiological services:** services that address the following: identification of auditory impairment in a child using at risk criteria and appropriate audiology screening techniques; determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures; referral for medical and other

services necessary for the habilitation or rehabilitation of children with auditory impairment; provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training; provision of services for the prevention of hearing loss; and determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(c) **Developmental instruction:** services that include working in a coaching role with the family or other caregiver, the design of learning environments and implementation of planned activities that promote the child's healthy development and acquisition of skills that lead to achieving outcomes in the child's IFSP. Developmental instruction provides families and other caregivers with the information, skills, and support to enhance the child's development. Developmental instruction addresses all developmental areas: cognitive, communication, physical/motor, vision, hearing), social or emotional and adaptive development. Developmental instruction services are provided in collaboration with the family and other personnel providing early intervention services in accordance with the IFSP.

(d) **Family therapy, counseling and training:** services provided, as appropriate, by licensed social workers, family therapists, counselors, psychologists, and other qualified personnel to assist the parent(s) in understanding the special needs of their child, supporting the parent-child relationship, and to assist with emotional, mental health and relationship issues of the parent(s) related to parenting and supporting their child's healthy development.

(e) **Family service coordination:** services and activities as designated in the IFSP and performed by a designated individual to assist and enable the families of children from

birth through age three years of age to access and receive early intervention services. The responsibilities of the family service coordinator include acting as the single point of contact for: coordinating, facilitating and monitoring the delivery of services to ensure that services are provided in a timely manner; coordinating services across agency lines; assisting parents in gaining access to, and coordinating the provision of, early intervention services and other services as identified on the IFSP; explaining early intervention services to families, including family rights and procedural safeguards; gathering information from the family regarding their concerns, priorities and resources; coordinating the evaluation and assessment activities; facilitating the determination of the child's eligibility; referring the family to providers for needed services and supports; scheduling appointments for IFSP services for the child and their family; helping families plan and prepare for their IFSP meeting; organizing, facilitating and participating in IFSP meetings; arranging for and coordinating all services listed on the IFSP; conducting follow-up activities to determine that appropriate services are being provided; coordinating funding sources for services provided under the IFSP; facilitating periodic reviews of the IFSP; ensuring that a transition plan is developed at the appropriate time; and facilitating the activities in the transition plan to support a smooth and effective transition from FIT services.

(f) **Health services:** those health related services that enable an eligible child to benefit from the provision of other early intervention service during the time that the child is receiving the other early intervention services. These services include, but are not limited to, clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and consultation by physicians with other service providers concerning the special health care needs of eligible

children that will need to be addressed in the course of providing other early intervention services. Health services do not include surgery or purely medical services; devices necessary to control or treat a medical condition; medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children; or services related to implementation, optimization, maintenance or replacement of a medical device that is surgically implanted.

(g)

Medical services: those services provided for diagnostic or evaluation purposes by a licensed physician to determine a child’s developmental status and other information related to the need for early intervention services.

(h)

Nursing services: those services that enable an eligible child to benefit from early intervention services during the time that the child is receiving other early intervention services and include the assessment of health status for the purpose of providing nursing care; the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and administration of medication, treatments, and regimens prescribed by a licensed physician.

(i)

Nutrition services: include conducting individual assessments in nutritional history and dietary intake; anthropometric biochemical and clinical variables; feeding skills and feeding problems; and food habits and food preferences. Nutrition services also include developing and monitoring appropriate plans to address the nutritional needs of eligible children; and making referrals to appropriate community resources to carry out nutrition goals.

(j)

Occupational therapy services: those services that address the functional needs of a child related

to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child’s functional ability to perform tasks in a home, school, and community setting. Occupational therapy includes identification, assessment, and intervention; adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate the development and promote the acquisition of functional skills, and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(k)

Physical therapy services: those services that promote sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. Included are screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction; obtaining interpreting, and integrating information appropriate to program planning to prevent or alleviate movement dysfunction and related functional problems; and providing individual and group services to prevent or alleviate movement dysfunction and related functional problems.

(l)

Psychological services: those services delivered as specified in the IFSP which include administering psychological and developmental tests and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and planning and management of a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(m)

Sign language and cued language services: services that include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(n)

Social work services: those activities as designated in the IFSP that include identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services; preparing a social or emotional developmental assessment of the child within the family context; making home visits to evaluate patterns of parent-child interaction and the child’s living conditions, providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents; and working with those problems in a child’s and family’s living situation that affect the child’s maximum utilization of early intervention services.

(o)

Speech and language pathology services: those services as designated in the IFSP which include identification of children with communicative or oral-motor disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; provision of services for the habilitation or rehabilitation of children with communicative or oral-motor disorder and delays in development of communication skills; and provision of services for the habilitation, rehabilitation, or prevention of communicative or oral-motor disorders and delays in development of communication skills.

(p)

Transportation services: supports that assist the family with the cost of travel and other related costs as designated in the IFSP that are necessary to enable an eligible child and family to receive early

intervention services or providing other means of transporting the child and family.

(q)

Vision services: services delineated in the IFSP that address visual functioning and ability of the child to most fully participate in family and community activities. These include evaluation and assessment of visual functioning including the diagnosis and appraisal of specific visual disorders, delays and abilities; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorder; and communication skills training. Vision services also include orientation and mobility training addressing concurrent motor skills, sensation, environmental concepts, body image, space/time relationships, and gross motor skills. Orientation and mobility instruction is focused on travel and movement in current environments and next environments and the interweaving of skills into the overall latticework of development. Services include evaluation and assessment of infants and toddlers identified as blind/visually impaired to determine necessary interventions, vision equipment, and strategies to promote movement and independence.

B. All services delivered to an eligible child shall be documented in the child's record and reported to the FIT program in accordance with policy and procedure established by the FIT program.

C. The family service coordinator shall review and monitor delivery of services to ensure delivery in accordance with the IFSP. [8.9.8.12 NMAC - N, 7/20/2021]

8.9.8.13 TRANSITION:

A. Transition planning shall occur with the parent(s) of all children to ensure a smooth transition from the FIT program to preschool or other setting.

B. Notifications to the public education department and local education agency (LEA):

(1) The FIT program shall provide notification

to the public education department, special education bureau, of all potentially eligible children statewide who will be turning three years old in the following 12-month period.

(2) The early intervention provider agency shall notify the LEA of all potentially eligible children residing in their district who will turn three years old in the following 12-month period. This will allow the LEA to conduct effective program planning.

(3) The notification from the early intervention provider agency to the LEA shall:

(a) include children who are potentially eligible for preschool special education services under the Individuals with Disabilities Education Act (IDEA) Part B; potentially eligible children are those children who are eligible under the developmental delay or established condition categories;

(b) include the child's name, date of birth, and contact information for the parent(s);

(c) be provided at least quarterly in accordance with the process determined in the local transition agreement; and

(d) be provided not fewer than 90 days before the third birthday of each child who is potentially eligible for IDEA Part B.

C. Transition plan:

(1) A transition plan shall be developed with the parent(s) for each eligible child and family that addresses supports and services after the child leaves the FIT program.

(2) The transition plan shall be included as part of the child's IFSP and shall be updated, revised and added as needed.

(3) The following is the timeline for developing the transition plan:

(a) at the child's initial IFSP meeting the transition plan shall be initiated

and shall include documentation that the family service coordinator has informed the parent(s) regarding the timelines for their child's transition;

(b) by the time child is 24 months old, the transition plan will be updated to include documentation that the family service coordinator has informed the parent(s) of the early childhood transition options for their child and any plans to visit those settings; and

(c) at least 90 days and not more than nine months before the child's third birthday, the transition plan shall be finalized at an annual IFSP or transition conference meeting that meets the attendance requirements of this rule.

(4) The transition plan shall include:

(a) steps, activities and services to promote a smooth and effective transition for the child and family;

(b) a review of program and service options available, including Part B preschool special education, head start, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, private preschool, child care settings and available options for Native American tribal communities; or home if no other options are available;

(c) documentation of when the child will transition;

(d) the parent(s) needs for childcare if they are working or in school, in an effort to avoid the child having to move between preschool settings;

(e) how the child will participate in inclusive settings with typically developing peers;

(f) evidence that the parent(s) have been informed of the requirement to send notification to the LEA;

(g) discussions with and training of the parent(s) regarding future placements and other matters related the child's transition;

(h) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting; and

(i) a confirmation that referral information has been transmitted, including the assessment summary form and most recent IFSP.

D. Referral to the LEA and other preschool programs:

(1) A transition referral shall be submitted by the family service coordinator, with parental consent, to the LEA at least 60 days prior to the transition conference. The transition referral shall include at a minimum the child's name, the child's date of birth, the child's address of residence, and the contact information for the parent(s), including name(s), address(es), and phone number(s).

(2) For children who enter the FIT program less than 90 days before their third birthday, the family service coordinator shall submit a referral, with parental consent, as soon as possible to the LEA. This referral shall serve as the notification for the child. No further notification to the LEA shall be required for the child.

(3) For children referred to the FIT program less than 45 days before the child's third birthday, the family service coordinator shall submit a referral to the LEA, with parent consent, but the early intervention provider agency will not conduct an evaluation to determine eligibility in accordance with the referral and intake provisions of this rule.

E. Invitation to the transition conference: The family service coordinator shall submit an invitation to the transition conference to the LEA and other preschool programs at least 30 days prior to the transition conference.

F. Transition assessment summary:

(1) The family service coordinator shall submit a completed transition assessment

summary form to the LEA at least 30 days prior to the transition conference.

(2) Assessment results, including present levels of development, must be current within six months of the transition conference.

G. Transition conference: The transition conference shall:

(1) be held with the approval of the parent(s);

(2) be held at least 90 days and no more than nine months prior to the child's third birthday;

(3) meet the IFSP meeting attendance requirements of this rule;

(4) take place in a setting and at a time that is convenient to the family;

(5) be conducted in the native language of the family, or other mode of communication used by the family, unless it is clearly not feasible to do so;

(6) with permission of the parent(s), include other early childhood providers (early head start/head start, child care, private preschools, New Mexico school for the deaf, New Mexico school for the blind and visually impaired, etc.);

(7) be facilitated by the family service coordinator to include:

(a) a review of the parent(s)'s preschool and other service options for their child;

(b) a review of, and if needed, a finalization of the transition plan;

(c) a review of the current IFSP, the assessment summary; and any other relevant information;

(d) the transmittal of the IFSP, evaluation and assessments and other pertinent information with parent consent;

(e) an explanation by an LEA representative of the IDEA Part B procedural safeguards and the eligibility

determination process, including consent for the evaluation;

(f) as appropriate, discussion of communication considerations (if the child is deaf or hard of hearing) and Braille determination (if the child has a diagnosis of a visual impairment), autism considerations, and considerations for children for whom English is not their primary language.

(g) discussion of issues including enrollment of the child, transportation, dietary needs, medication needs, etc.

(h) documentation of the decisions made on the transition page and signatures on the transition conference signature page, which shall be included as part of the IFSP. Copies of the transition conference page and signature page shall be sent to all participants.

H. Transition date:

(1) The child shall transition from the FIT program when the child turns three years old.

(2) For a child determined to be eligible by the LEA for preschool special education (IDEA Part B):

(a) if the child's third birthday occurs during the school year, transition shall occur by the first school day after the child turns three; or

(b) if the child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP (or IFSP-IEP) will begin.

I. The individualized education program (IEP):

(1) The family service coordinator and other early intervention personnel shall participate in a meeting to develop the IEP (or IFSP-IEP) with parent approval.

(2) The family service coordinator, with parent consent, shall provide any new or updated documents to the LEA in order to develop the IEP.

J. Follow-up family service coordination: At the request

of the parents, and in accordance with New Mexico early childhood education and care department policy, family service coordination shall be provided after the child exits from early intervention services for the purpose of facilitating a smooth and effective transition.

[8.9.8.13 NMAC - N, 7/20/2021]

8.9.8.14 PROCEDURAL SAFEGUARDS:

A. Procedural safeguards are the requirements set forth by IDEA, as amended, and established and implemented by the New Mexico early childhood education and care department that specify family’s rights and protections relating to the provision of early intervention services and the process for resolving individual complaints related to services for a child and family. The family service coordinator at the first visit with the family shall provide the family with a written overview of these rights and shall also explain all the procedural safeguards.

B. The family service coordinator shall provide ongoing information and assistance to families regarding their rights throughout the period of the child’s eligibility for services. The family service coordinator shall explain dispute resolution options available to families and early intervention provider agencies. A family service coordinator shall not otherwise assist the parent(s) with the dispute resolution process.

C. Surrogate parent(s).

(1) A surrogate parent shall be assigned when:
 (a) no parent can be identified;
 (b) after reasonable efforts a parent cannot be located; and
 (c) a child is a ward of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process.
 (2) The family service coordinator shall be

responsible for determining the need for the assignment of a surrogate parent(s) and shall contact the FIT program if the need for a surrogate is determined.

(3) The continued need for a surrogate parent(s) shall be reviewed regularly throughout the IFSP process.

(4) The FIT program shall assign a surrogate parent within 30 days after it is determined that the child needs a surrogate parent. A surrogate may also be appointed by a judge in case of a child who is a ward of the court, as long as the surrogate meets the requirements of this rule.

(5) The person selected as a surrogate:

(a) must not be an employee of the lead agency, other public agency or early intervention provider agency or provider of other services to the child or family; the person is not considered an employee if they solely are employed to serve as a surrogate;

(b) must have no personal or professional interest that conflicts with the interests of the child; and

(c) must have knowledge and skills that ensure adequate representation of the child.

(6) A surrogate parent has all of the same rights as a parent for all purposes of this rule.

D. Consent.

(1) The family service coordinator shall obtain parental consent before:

(a) administering screening procedures under this rule that are used to determine whether a child is suspected of having a disability;

(b) an evaluation conducted to determine the child’s eligibility for the FIT program;

(c) early intervention services are provided;

(d) public or private insurance is used, in accordance with this rule; and

(e) personally identifiable information is disclosed, unless the disclosure is made to a participating agency.

(2) The family service coordinator shall ensure that the parent is fully aware of the nature of the evaluation and assessment or early intervention service that would be available and informed that without consent the child cannot receive an evaluation or early intervention services.

(3) The parent(s):
 (a) may accept or decline any early intervention service at any time; and

(b) may decline a service after first accepting it, without jeopardizing other early intervention services.

(4) The FIT program may not use due process procedures of this rule to challenge a parent’s refusal to provide any consent that is required by this rule.

E. Prior written notice and procedural safeguards notice.

(1) Prior written notice shall be provided at least five days before the early intervention provider agency proposes, or refuses, to initiate or change the identification, evaluation or placement of a child, including any changes to length, duration, frequency and method of delivering a service. Parent(s) may waive the five-day period in order for the change to be implemented sooner, if needed.

(2) The prior written notice must include sufficient detail to inform the parent(s) about:

(a) the action being proposed or refused;
 (b) the reasons for taking the action; and
 (c) all procedural safeguards available, including mediation, how to file a complaint and a request for a due process hearing, and any timelines for each.

(3) The procedural safeguards notice must be provided in the native language

of the parent(s) or other mode of communication used by the parent, unless clearly not feasible to do so.

(4) If the native language of the parent(s) is not a written language, the early intervention provider agency shall translate the notice orally in their native language or other means of communication so that the parent understands the notice. The family service coordinator shall document that this requirement has been met.

F. No child or family shall be denied access to early intervention services on the basis of race, creed, color, sexual orientation, religion, gender, ancestry, or national origin.

G. Confidentiality and opportunity to examine records.

(1) **Notice:**

Notice to the parent(s) shall be provided when a child is referred to the FIT program, and shall include:

(a)

a description of the types of children that information is maintained on, the types of information sought, and method used in gathering the information, and the uses of the information;

(b)

a summary of the policies and procedures regarding storage, disclosure to third parties, retention and destruction of personally identifiable information;

(c)

a list of the types and locations of early intervention records collected, maintained or used by the agency;

(d)

a description of the rights of the parent(s) and children regarding this information, including their rights under IDEA, Part C ("Confidentiality"); and

(e)

a description of the extent to which the notice is provided in the native languages of the various population groups in the state.

(2)

Confidentiality.

(a)

All personally identifiable data,

information, and records shall be protected, and confidentiality maintained in accordance with the Family Educational Rights and Privacy Act (FERPA).

(b)

Personally identifiable data, information, and records shall be maintained as confidential from the time the child is referred to the FIT program until the point at which records are no longer required to be maintained in accordance with federal or state law.

(c)

Prior consent from the parent(s) must be obtained before personally identifiable information is disclosed to anyone other than a participating agency or used for any purpose other than meeting a requirement of these regulations.

(d)

The early intervention provider agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages.

(e)

One official at each early intervention provider agency must assume responsibility for ensuring the confidentiality of all personally identifiable information.

(f)

The early intervention provider agency must maintain for public inspection a current listing of names and positions of personnel who may have access to personally identifiable information.

(g)

All personnel collecting or using personally identifiable information must receive training or instructions on the confidentiality requirements of this rule.

(3) **Access to**

records.

(a)

The early intervention provider agency must permit the parent(s) to inspect and review any early intervention records related to their child without unnecessary delay and before any IFSP meeting or due process hearing, and in no cases more

than 10 days after the request has been made.

(b)

The early intervention provider agency must respond to reasonable requests for explanations and interpretations of the early intervention records.

(c)

The parent has the right to have a representative inspect and review the early intervention records.

(d)

The early intervention provider agency must assume that the parent has the right to review the early intervention records unless they have been provided documentation that the parent does not have authority under state law governing such matters as custody, foster care, guardianship, separation and divorce.

(e)

The early intervention provider agency must provide copies of evaluations and assessments, the IFSP as soon as possible after each meeting at no cost.

(f)

The early intervention provider agency must provide one complete copy of the child's early intervention records at the request of the parent(s) at no cost.

(g)

The early intervention provider agency may otherwise charge a fee for copies of records that are made for parents under this rule if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records.

(h)

The early intervention provider agency may not charge a fee to search for or to retrieve records to be copied.

(4) **Record of**

access.

(a)

The early intervention provider agency must keep a record of parties obtaining access to early intervention records (except access by the parent(s), authorized representatives of the lead agency and personnel of the FIT provider agency).

(b)

The record must include the name of

the party, the date access was given, and the purpose for which the party was authorized to access the record.

(c) If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(5) Amendment of records at parent request.

(a) If the parent(s) believes that information in the child's records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), they may request that the early intervention provider agency amend the information.

(b) The early intervention provider agency must decide whether to amend the information in accordance with the request within 14 days of receipt of the request.

(c) If the early intervention provider agency refuses to amend the information in accordance with the request, it must inform the parent(s) of the refusal and advise the parent(s) of their right to a hearing.

(6) Records hearing.

(a) The early intervention provider agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's record to ensure that it is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s).

(b) A parent may request a due process hearing under this rule to address amendment of records.

(c) If as a result of a hearing it is determined that information in the records is inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must amend the information accordingly and inform the parents in writing.

(d) If as a result of a hearing it is determined that information in the records is not inaccurate, misleading, or violates the privacy or other rights of the child or parent(s), the early intervention provider agency must inform the parents of the right to place in the child's records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(e) Any explanation placed in the child's records must be maintained by the early intervention provider agency as long as the record is contested or as long as the contested portion is maintained and if the contested portion is released to any party, the explanation must also be disclosed to the party.

(7) Destruction of records.

(a) Records shall be maintained for a minimum of six years following the child's exit from the early intervention services system before being destroyed. At the conclusion of the six year period, records shall be destroyed upon the request of the parent(s), or may be destroyed at the discretion of the early intervention provider agency.

(b) The early intervention provider agency must attempt to inform the parent(s) when personally identifiable information collected, maintained or used is no longer needed to provide services under state and federal regulations.

(c) Notwithstanding the foregoing, a permanent record of a child's name, date of birth, parent contact information, name of the family service coordinator, names of early intervention personnel, and exit data (year and age upon exit, and any programs entered into upon exit) may be maintained without time limitation.

H. Dispute resolution options.

(1) Parents and providers shall have access to

an array of options for resolving disputes, as described herein.

(2) The family service coordinator shall inform the family about all options for resolving disputes. The family shall also be informed of the policies and procedures of the early intervention provider agency for resolving disputes at the local level.

I. Mediation.

(1) The mediation process shall be made available to parties to disputes, including matters arising prior to filing a complaint or request for due process hearing. The mediation:

(a) shall be voluntary on the part of the parties;

(b) shall not be used to deny or delay the parent(s)'s right to a due process hearing or to deny any other rights of the parent(s);

(c) shall be conducted by a qualified and impartial mediator who is trained in mediation techniques and who is knowledgeable in the laws and regulations related to the provision of early intervention services;

(d) shall be selected by the FIT program from a list of qualified, impartial mediators who are selected based on a random, rotational or other impartial basis; the selected mediator may not be an employee of the lead agency or the early intervention provider agency and they must not have a personal or professional interest that conflicts with the person's objectivity; and

(e) shall be funded by the FIT program.

(2) Sessions in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties.

(3) If the parties resolve the dispute, they must execute a legally binding agreement that:

(a) states that all discussions that occurred during the mediation process will remain confidential and

may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) is signed by both parties.

(4) The mediation agreement shall be enforceable in a state or federal district court of competent jurisdiction.

J. Complaints.

(1) An individual or organization may file a complaint with the state director of the FIT program regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family. The party submitting the complaint shall also forward a copy of the complaint to the FIT provider agency(ies) serving the child.

(2) The written complaint shall be signed by the complaining party and shall include:

(a) a statement that the FIT program or FIT provider agency(ies) serving the child have violated a requirement of this rule or Part C of the IDEA, and a statement of the facts on which that allegation is based;

(b) the signature and contact information of the complainant;

(c) if the complaint concerns a specific child:

(i) the name and address of the residence of the child, or if the child is homeless, the contact information for the child;

(ii) the name of the FIT provider agency(ies) serving the child;

(iii) a description of the nature of the dispute related to the proposed or refused initiation or change, including facts related to the dispute; and

(d) a proposed resolution of the dispute to the extent known and available to the party at the time.

(3) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the FIT program.

(4) Upon receipt of a complaint, the early childhood education and care department shall determine if an investigation is necessary, and if an investigation is deemed necessary, within 60 calendar days after the complaint is received it shall:

(a) carry out an independent on-site investigation;

(b) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(c) provide an opportunity for the lead agency, public agency or early intervention provider agency to respond to the complaint, including at a minimum:

(i) at the discretion of the FIT program, a proposal to resolve the complaint; and

(ii) an opportunity for a parent who has filed a complaint and the FIT program or the FIT provider agency(ies) serving the child to voluntarily engage in mediation, consistent with this rule;

(d) give the parties the opportunity to voluntarily engage in mediation;

(e) review all relevant information and make an independent determination as to whether any law or regulation has been violated; and

(f) issue a written decision to the complainant and involved parties that addresses each allegation and details the findings of fact and conclusions and the reason for the complaint investigator's final decision. The written decision may include recommendations that include technical assistance activities, negotiations and corrective actions to be achieved.

(5) An extension of the 60 day investigation

timeline will only be granted if exceptional circumstances exist with respect to a particular complaint or if the parties agree to extend the timeline to engage in mediation.

(6) If the complaint received is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the complaint investigator shall set aside any part of the complaint that is being addressed in a due process hearing until the conclusion of that hearing. Any issue in the complaint that is not part of the due process hearing must be resolved within the sixty-calendar day timeline.

(7) If an issue raised in a complaint is or was previously decided in a due process hearing involving the same parties, the decision from that hearing is binding on that issue, and the FIT program shall inform the complainant to that effect.

(8) A complaint alleging a failure to implement a due process hearing decision shall be resolved by the department.

(9) Except as otherwise provided by law, there shall be no right to judicial review of a decision on a complaint.

K. Request for a due process hearing.

(1) In addition to the complaint procedure described above, a parent, a participating FIT provider, or the FIT program may file a request for a hearing regarding a proposal, or refusal, to initiate or change the identification, evaluation, or placement of a child; or regarding the provision of early intervention services to a child and the child's family.

(2) A parent or participating FIT provider may request a hearing to contest a decision made by the FIT program pursuant to the complaints provisions above.

(3) A request for a hearing shall contain the same minimum information required for a complaint under this rule.

L. Appointment of hearing officer.

(1) When a request for a hearing is received, the FIT program shall assign an impartial hearing officer from a list of hearing officers maintained by the FIT program who:

- (a) has knowledge about IDEA Part C and early intervention;
 - (b) is not an employee of any agency or entity involved in the provision of early intervention; and
 - (c) does not have a personal or professional interest that would conflict with their objectivity in implementing the process.
- (2) The hearing officer shall:
- (a) listen to the presentation of relevant viewpoints about the due process issue;
 - (b) examine all information relevant to the issues;
 - (c) seek to reach timely resolution of the issues; and
 - (d) provide a record of the proceedings, including a written decision.

M. Due process hearings.

- (1) When a request for a hearing is received, a due process hearing shall be conducted.
- (2) The due process hearing shall be carried out at a time and place that is reasonably convenient to the parents and child involved.
- (3) The due process hearing shall be conducted and completed and a written decision shall be mailed to each party no later than 30 days after receipt of a parent’s complaint. However, the hearing officer may grant specific extensions of this time limit at the request of either party.

(4) A parent shall have the right in the due process hearing proceedings:

- (a) to be accompanied and advised by counsel and by individuals with

special knowledge or training with respect to early intervention services for children and others, at the party’s discretion;

- (b) to present evidence and confront, cross examine, and compel the attendance of witnesses;
- (c) to prohibit the introduction of any evidence at the hearing that has not been disclosed to the party at least five days before the hearing;
- (d) to obtain a written or electronic verbatim record of the hearing, at no cost to the parent; and
- (e) to obtain a written copy of the findings of fact and decisions, at no cost to the parent.

(5) Any party aggrieved by the findings and decision of the hearing officer after a hearing has the right to bring a civil action in a state or federal court of competent jurisdiction, within 30 days of the date of the decision.

N. Abuse, neglect, and exploitation.

(1) All instances of suspected abuse, neglect, and exploitation shall be reported in accordance with law and policies established through the New Mexico early childhood education and care department and the children, youth and families department.

(2) A parent’s decision to decline early intervention services does not constitute abuse, neglect or exploitation. [8.9.8.14 NMAC - N, 7/20/2021]

HISTORY OF 8.9.8 NMAC:
[RESERVED]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an emergency amendment to 8.15.2 NMAC, Sections 6, 7, 11, 13, 14, 15 and 17, effective 7/1/2021.

Explanatory statement: ECECD will be issuing emergency rule

amendments made pursuant to NMSA 1978, § 14-4-5.6 and effective on July 1, 2021. ECECD is amending this rule in order to protect the health, safety, and welfare of children in child care settings and the general public. ECECD is also making these emergency amendments in order to prevent the anticipated loss of federal funding. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

8.15.2.6 OBJECTIVE:

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

B. To establish child care assistance rates in accordance with the requirements of the Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF), which is the primary Federal funding source of child care assistance to enable parents to work or pursue education and training so that they may better support their families while at the same time promoting the learning and development of their children. The CCDBG requires every state to submit an updated CCDF Plan every three years. A key requirement of the CCDBG Act is that lead agencies establish subsidy payment rates that ensure equal access to child care for children receiving child care assistance. States have two

options to establish subsidy payment rates that ensure equal access: lead agencies must collect and analyze data through either a statistically valid and reliable market rate survey, or through an ACF pre-approved alternative methodology, such as a cost estimation model. New Mexico's rates, as set forth herein, and effective July 1, 2021 were informed by a cost estimation model and with extensive statewide stakeholder engagement. This new cost estimation model was developed in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico's children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

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

[8.15.2.6 NMAC - Rp, 8.15.2.6 NMAC, 10/1/2016, AE; 7/1/2021]

8.15.2.7 DEFINITIONS:

A. "Attending a job training or educational program" means actively participating in an in-person or online job training or educational program.

B. "At-risk child care" means a program for families at-risk 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, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

E. "Client" means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

F. "Closure" means the client's child care case is closed with the department.

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. "Demonstration of incapacity" means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician's/medical professional's/treatment provider's letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

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

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

K. "Essential worker" means those who conduct a range of operations and services in industries that are essential to ensure the continuity of critical functions in the economy of our nation and state. During this period of economic recovery and subject to budgetary considerations, the presumption is that all workers are essential to the well being of the state's economy.

~~[K:]~~ **L. "Fluctuation of earnings"** means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:

(1) average family earnings over a period of time (e.g., 12 months); or

(2) choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

~~[L:]~~ **M. "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:] N. “Household” means the household as defined below in Paragraph (1) of Subsection C. of 8.15.2.11 NMAC.

[N:] O. “Household income” means household income as defined below in Paragraph (3) of Subsection C. of 8.15.2.11 NMAC.

[O:] P. “Incidental money” means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

[P:] Q. “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.

[Q:] R. “Job training and educational program” means participation in a short or long term educational or training program, including online programs that provide 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.

[R:] S. “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.

[S:] T. “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 HH below.

[T:] U. “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.

[U:] V. “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.

[V:] W. “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.

[W:] X. “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.

(7) **[“Friend, family, or neighbor (FFN)” “Family, friend, or neighbor (FFN)”** means care [to be] provided temporarily in a home [to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months.] and only [It] in the case of a public health emergency [the

department may extend the temporary status].

~~[X:]~~ Y. **“Recertification”** means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

~~[Y:]~~ Z. **“Registration/ educational fee”** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

~~[Z:]~~ AA. **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

~~[AA:]~~ BB. **“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.

~~[BB:]~~ CC. **“Special supervision”** means the special supervision for child(ren) as defined below in Subsection G of 8.15.2.11 NMAC.

~~[CC:]~~ DD. **“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.

~~[DD:]~~ EE. **“Suspension”** means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

~~[EE:]~~ FF. **“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.

~~[FF:]~~ GG. **“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.

~~[GG:]~~ HH.

“Termination” means the client’s child care case will be closed due to cause.

~~[HH:]~~ II.

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

(1) limited absence from work for employed parents or legal guardians 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 or legal guardian participating in training or education;

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

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

~~[H:]~~ JJ.

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

~~[JJ:]~~ KK.

“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, grants and other income which does not meet the definition of earned income.

~~[KK:]~~ LL.

“Working” means employment of any type, including self-employment and teleworking. 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 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020; A, 3/1/2021, A/E, 7/1/2021]

8.15.2.11 ELIGIBILITY

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

A. Child care staff will initiate communication at the initial determination of their eligibility period to provide outreach and consumer education with a case management approach and coordination of services to support families.

B. Eligibility period: Based upon the client meeting all eligibility requirements, a 12-month certification period will be granted.

(1) Eligibility may be granted for less than 12 months at the parent or legal guardian’s request. The parent or legal guardian will, however, remain eligible for the approved 12-month eligibility period.

(2) At-risk child care may be granted for less than 12 months as determined by the department.

(3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

(4) The client will remain eligible if a temporary change of activity occurs.

(5) If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

C. Income eligibility determination:

(1) The household: The household includes biological parents, stepparents, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit. Grandparents who

are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, medical or other treatment, or military service.

(2) Legal guardians who are not the parents of the child(ren) for whom child care assistance is sought, are required to qualify for child care assistance as per Paragraph (3) below and, upon qualification, have the required co-payment waived.

(3) Household income: The household's gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility. Household income does not include any earned and unearned income received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

(4) Family assets: A family's assets may not exceed one million dollars.

(5) Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; alimony payments; veterans administration (VA) payments except VA payments

that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; workman's compensation; railroad retirement benefits; pensions; royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

(6) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of household dependents; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001"; third party payments; energy assistance benefits; foster care payments; adoption subsidies; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or AmeriCorps; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure

compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

(7)

Verification of household countable earned and unearned income: Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current documentation of income for biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

(8)

Calculating income:

(a)

Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.15.2.11 NMAC

(b)

Conversion factors: When income is received on a weekly, biweekly, or semimonthly basis, the income shall be converted to monthly amount as follows:

(i)

Income received on a weekly basis is averaged and multiplied by four and three-tenths. Weekly income is defined as income received once per week.

(ii) Income received on a biweekly basis is averaged and multiplied by two and fifteen one-hundredths. Biweekly income is defined as income received once every two weeks. Income is received on the same day of the week each pay period, therefore receiving 26 payments per year.

(iii) Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

(iv) Income received on a monthly basis is averaged and multiplied by one. Monthly income is defined as income received once per month.

D. Residency requirement: An applicant of child care assistance and a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

E. Citizenship and eligible immigration status: Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified immigrant as defined by the United States department of health and human services, administration for children and families, office of child care.

F. Age requirement: Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for at-risk child care.

G. Special supervision: Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

H. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.

I. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

J. The following are acceptable documents to use to verify eligibility. Other documents may be considered and taken to the supervisor to be reviewed for eligibility.

Verification Type	Acceptable documentation or Information (examples)
<u>Verification of Birth</u>	-Birth certificate -Hospital records -Birth center records
<u>Countable Earned Income</u>	-Paystubs -Employer statement/verification of work form -Client statement, if earning wages from various odd jobs /day labor contract/work agreement -Payroll history -Income tax return with transcripts -Profit and loss (must be verified by a bookkeeper or accountant)
<u>Countable Unearned Income</u>	-Benefit award letter (i.e. – social security, veteran administration (VA)) -Letter or document from agency making payment -Court records or other legal documents -Statement from tribal agency -Bank or other financial statement -Divorce or separation decree -Trust documents -Workers' compensation documents -Rental income information

<u>Qualifying Activity</u>	<ul style="list-style-type: none"> -<u>Proof of TANF participation</u> (Example: work participation agreement (WPA)) -<u>School schedule</u> -<u>Statement from educational institution</u> -<u>Work schedule</u> -<u>Paystubs</u> -<u>Employer statement</u> -<u>Client statement</u> -<u>Contract/work agreement</u> -<u>Proof of new business registration with State</u>
<u>Documentation of Incapacity</u>	<ul style="list-style-type: none"> -<u>Statement or letter from medical professional on letterhead/stationary</u> -<u>Statement/record/letter from a federal government agency that issues or provides disability benefits</u> -<u>Statement/records/letters from a state vocational rehabilitation agency counselor</u> -<u>Records/ letters from a treatment facility/counselor</u> -<u>Certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.</u>
<u>Custody</u>	<ul style="list-style-type: none"> -<u>Court order</u> -<u>Sworn statement</u> -<u>Attorney records</u>
<u>Dependency</u>	<ul style="list-style-type: none"> -<u>Court order</u> -<u>Notarized statement</u> -<u>Divorce papers</u> -<u>Durable power attorney</u> -<u>Guardianship documentation</u> -<u>Federal tax documents verifying person is claimed as a dependent</u> -<u>Written statement with supervisor's approval</u>
<u>NM Residency</u>	<ul style="list-style-type: none"> -<u>Lease/rental agreement</u> -<u>Utility bill</u> -<u>Mortgage receipt</u> -<u>Written statement from person you are residing with</u> -<u>Current NM driver's license</u> -<u>Statement from landlord</u> -<u>Other records that provide a name and address</u>
<u>ECECD approved provider</u>	<p>Tell ECECD the provider you choose. Select provider from www.newmexicokids.org , or call New Mexico kids resource & referral at 1-800-691-9067.</p>
<u>Identification for Parent / Guardian</u>	<ul style="list-style-type: none"> -<u>Current or expired government issued photo I.D. / passport</u> -<u>School photo I.D.</u> -<u>Government issued immigration document with photo</u> -<u>Employer I.D. with photo</u>
<u>Age of Child</u>	<ul style="list-style-type: none"> -<u>Government issued photo I.D.</u> -<u>Birth certificate / hospital certificate of birth</u> -<u>Religious records</u> -<u>School records</u> -<u>Certificate of Indian blood</u> -<u>Paternity papers</u> -<u>Numident (social security application)</u>

<u>Relationship of Child to Parent/Guardian</u>	<u>-Birth certificate</u> <u>-Court order, or other legal records</u> <u>-Family Bible or baptismal record</u> <u>-Adoption records</u> <u>-Marriage license/certificate</u> <u>-Hospital or public health record</u> <u>-Certificate of Indian blood</u> <u>-Department of vital statistics record</u>
<u>Citizenship/ Immigration Verification</u>	<u>-US Birth Certificate</u> <u>-Military ID</u> <u>-Passport</u> <u>-Naturalization certificate</u> <u>-Permanent resident card</u> <u>-ASPEN/HSD verification (client must be listed as “eligible child”)</u> <u>(EX. Refugees/other qualified aliens may receive services through HSD but also may have US department of state form)</u> <u>-Numident (from social security office)</u> <u>-Refugee/asylee letter from US secretary of state or from homeland security</u> <u>-Any document from the INS, DHS, or other authoritative document showing a child’s immigration status that qualifies the child for assistance.</u>

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021]

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 at-risk child care and qualified grandparents or legal guardians. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [<https://eyfd.org/child-care-services>] <https://www.nmeccd.org/child-care-assistance/>. In the case of an emergency, or under extenuating circumstances, the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client’s approved rate, including required co-payments.

B. 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 determining the co-payment

amount based on the co-payment schedule 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 co-payment 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. 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 or legal guardians 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 or legal guardian 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 or legal guardian.

G. Notification of changes: Clients must provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

(1) A client must notify the department of any non-temporary change in activity or changes to household composition. Notifications must be provided within 14 calendar days of the change.

(2) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

(3) If the client has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

(4) Clients who do not comply with this requirement may be sanctioned. [8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A/E 7/1/2021]

8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended by the client if child care benefits are not being utilized for a period not to exceed three months

with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

B. If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, the client will be granted a three-month grace period in which the client will remain eligible. This three-month grace period is for the purpose of giving the client an opportunity to secure new employment or another approved activity. The three-month grace period will start on the date of required notification for the non-temporary change of activity pursuant to Subsection G of Section 8.15.2.13 NMAC.

C. A case will be closed if the following conditions apply:

(1) any non-temporary change in activity and failure to obtain an activity after the three-month grace period;

(2) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Subsection G of 8.15.2.9 NMAC, with an income in excess of four hundred [and fifty] percent of the federal poverty level; [~~(3) moving out of state;~~]

[~~(4)~~] (3) failing to recertify at the end of approved eligibility period; or

[~~(5)~~] at the option of the client;

[~~(6)~~] (4) being disqualified from participation in the program. [~~or~~]

[~~(7)~~] failure to use authorized child care. [8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021]

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 placement 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. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within 30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

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

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

(1) If the above notification was met, the provider will be paid through the 14th calendar day following the first date of nonattendance.

(2) If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(3) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.15.2.21 NMAC.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care placement agreement. Failure to comply with this requirement may result in sanctions.

(1) 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.~~] The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

(2) 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.

F. Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another CYFD approved provider.

G. 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, 10/1/2016; A, 10/1/2019; A, 3/1/2021; A/E, 7/1/2021]

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. A signed child care placement agreement must be returned to the department for payment to be issued to the provider. The following circumstances under which the department may close placements or discontinue payment 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. Payment for notification of changes:

(1) If a client fails to notify the department within 14 calendar days of their expected

last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.

(2) If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.

(3) If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(4) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

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.~~] The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

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 or legal guardian 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 placement agreement covering the certification period.

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 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

F. Hours of care shall be rounded to the nearest whole number.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$[720.64] 880.00	\$[589.55] 635.00	\$[490.61] 575.00	\$[436.27] 441.00
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$[586.07] 855.00	\$[487.11] 830.00	\$[427.13] 680.00	\$[422.74] 428.00
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$[566.98] 875.00	\$[463.50] 850.00	\$[411.62] 700.00	\$[406.83] 412.00
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$[289.89] 375.00	\$[274.56] 375.00	\$[251.68] 325.00	\$[251.68] 300.00

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. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

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.

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]

Licensed Child Care Centers			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$335.00	\$290.00	\$250.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$640.00	\$550.00	\$350.00	\$250.00

Licensed Family and Group Homes			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$195.00	\$195.00	\$195.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$260.00	\$260.00	\$260.00	\$250.00

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.

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.

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%

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.

O. The department may conduct provider, parent, or legal guardian, 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.

P. Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020; A, 3/1/2021; A/E, 7/1/2021]

**EARLY CHILDHOOD
EDUCATION AND CARE
DEVELOPMENT**

This is an emergency amendment to 8.15.2 NMAC, Sections 9 and 12, effective 8/1/2021.

Explanatory statement: ECECD will be issuing emergency rule amendments made pursuant to NMSA 1978, § 14-4-5.6 and effective on July 1, 2021. ECECD is amending this rule in order to protect the health, safety, and welfare of children in child care settings and the general public. ECECD is also making these emergency amendments in order to prevent the anticipated loss of federal funding. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

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 to include TANF diversionary payment, are considered priority one clients.

(1)

Participation exemption: The human services department (HSD) 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 and 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 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. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

D. Priority two:
Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF 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 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 prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

G. Priority four plus:

During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below three hundred fifty percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below four hundred percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC.

The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents. Co-payments for families in priority four plus are not waived. Co-payments for families will be capped at three hundred percent of the federal poverty level.

~~G.~~ **H.** Priority five: In addition to these priorities, the department pays for at-risk child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority. [8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021]

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 and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Subsection G. of 8.15.2.9 NMAC. Clients designated as essential workers who recertify must be at or below [two] four 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 child care placement agreement. At time of recertification, clients must provide documentation 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. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B. of 8.15.2.11 NMAC.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021]

EARLY CHILDHOOD EDUCATION AND CARE DEVELOPMENT

This is an amendment to 8.16.2 NMAC, Sections 7, 23, 24, 26, 27, 28, 31, 33, 34, 36, 37, 41, 42, 43, 45 and 46, effective 7/1/2021.

Explanatory statement: ECECD will be issuing emergency rule amendments made pursuant to NMSA 1978, § 14-4-5.6 and effective on July 1, 2021. ECECD is amending this rule in order to protect the health, safety, and welfare of children in child care settings and the general public. ECECD is also making these emergency amendments in order to prevent the anticipated loss of federal funding. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

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”:

(1) **“Mission statement”** describes what the program aspires to do and whom the program aspires to serve.

(2) **“Media”** means the use of televisions, video games, and non-educational on-line

streaming such as video and social media.

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.

Q. Terms beginning with the letter "Q": [RESERVED]

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, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.16.2.23 PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS:

A. PERSONNEL AND STAFFING REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

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

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

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

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

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

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

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

(b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as

a director. Current directors having a break in employment of more than one year must meet the requirements as specified in Subparagraph (a) above.

(2)

TRAINING:

(a)

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

with children. Initial orientation will include training on the following:

(i)

scope of services, activities, and the program offered by the center;

(ii)

emergency first aid procedures, recognition of childhood illness and indicators of child abuse;

(iii)

fire prevention measures, emergency evacuation plans and disaster preparedness plans;

(iv)

review of licensing regulations;

(v)

policies regarding guidance, child abuse and neglect reporting, and handling of complaints;

<p>review of written policies and procedures as defined in Subsection C of 8.16.2.22 NMAC;</p>	(vi)	<p>planning for emergencies resulting from natural or man-caused disasters;</p>	<p>professionalism. (vii)</p>
<p>center/parental agreement;</p>	(vii)	<p>handling and storage of hazardous materials and the appropriate disposal of bio contaminants;</p>	<p>Training must be provided by individuals who are registered on the New Mexico trainer registry. (e)</p>
<p>sanitation procedure;</p>	(viii)	<p>precautions in transporting children (if applicable);</p>	<p>Training provided by center employees and directors shall count for no more than half of the required 24 hours of training each year. (f)</p>
<p>written goals of the program;</p>	(ix)	<p>first aid and cardiopulmonary resuscitation (CPR) [certification];</p>	<p>On-line training courses shall count for no more than 16 hours each year. (g)</p>
<p>personnel handbook;</p>	(x)	<p><u>awareness with a pediatric component</u>; and</p>	<p>If the 45-hour entry level course or its equivalent is taken online, it is exempt from the online training limitation. (h)</p>
<p>parent handbook;</p>	(xi)	<p>recognition and reporting of child abuse and neglect.</p>	<p>Online first aid and CPR training will not be approved, <u>unless there is a hands-on component included. In-person requirements may be waived in case of an emergency.</u> (i)</p>
<p>names and ages of children;</p>	(xii)	<p>New staff members working directly with children regardless of the number of hours per week will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment. Substitutes are exempt from this requirement. (c)</p>	<p>Identical trainings shall not be repeated for the purpose of obtaining credit. (j)</p>
<p>names of parents;</p>	(xiii)	<p>Each staff person working directly with children and more than 20 hours per week, including the director, is required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. The competency areas are [1]</p>	<p>Directors may count hours in personnel and business training toward the training requirement. (k)</p>
<p>tour of the facility; and</p>	(xiv)	<p>child growth, development, and learning; [2]</p>	<p>Infant and toddler educators must have at least four hours of training in infant and toddler care annually and within six months of starting work. The four hours will count toward the 24-hour requirement. (l)</p>
<p>introduction to other staff and parents.</p>	(xv)	<p>health, safety, nutrition, and infection control; [3]</p>	<p>A center will keep a training log on file with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate. (m)</p>
<p>All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire. All current educators will have three months to comply with the following training from the date these regulations are promulgated:</p>	(b)	<p>family and community collaboration; [4]</p>	<p>college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours. Basic level pre-requisites, such as math and English courses, leading to a degree in early childhood development will be considered equivalent to a minimum of 15 clock hours per credit hour. (n)</p>
<p>prevention and control of infectious diseases (including immunization);</p>	(i)	<p>developmentally appropriate content; [5]</p>	<p>See Paragraph (6) of Subsection A of 8.16.2.23 NMAC for requirements for</p>
<p>prevention of sudden infant death syndrome and use of safe sleeping practices;</p>	(ii)	<p>learning environment and curriculum implementation; [6]</p>	
<p>administration of medication, consistent with standards for parental consent;</p>	(iii)	<p>assessment of children and programs; and [7]</p>	
<p>prevention of and response to emergencies due to food or other allergic reactions;</p>	(iv)		
<p>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;</p>	(v)		
<p>prevention of shaken baby syndrome and abusive head trauma;</p>	(vi)		
<p>emergency preparedness and response</p>	(vii)		

centers that operate less than 20 hours per week.

C. STAFF/CHILD RATIOS AND GROUP SIZES:

(1) Ratios and group sizes shall be observed as outlined in the tables below:

Centers where children are grouped by age		
Age Group	Adult to child ratio	Maximum group size
infants	1:6 or fraction of group thereof	12*
toddlers	1:6 or fraction of group thereof	12*
two years	1:10 or fraction of group thereof	20
three years	1:12 or fraction of group thereof	24
four years	1:12 or fraction of group thereof	24
five years	1:15 or fraction of group thereof	30
six years and older	1:15 or fraction of group thereof	30

Centers Where Age Groups Are Combined		
Age Group	Adult to child ratio	Maximum group size
six weeks through 24 months	1:6 or fraction of group thereof	12*
two through four years	1:12 or fraction of group thereof	24
three through five years	1:14 or fraction of group thereof	28
six years and older	1:15 or fraction of group thereof	30
18 to 24 months with children ages 24 through 35 months	1:6 or fraction of group thereof	12*

*Providers whose group size exceeds the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated shall continue with their current group size as long as ratios are maintained at all times. Providers whose group size meets the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated must continue to meet the maximum group size. All new licensed providers and those requesting an infant or toddler capacity change after the date these regulations are promulgated must meet the maximum group size as indicated above.

(2) The number of children who may be in a group and the number of caregivers is specified in Paragraph (1) of Subsection C of 8.16.2.23 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) the room is divided so that different activity/interest areas are well-defined (i.e. creative art, dramatic play, books, manipulatives, blocks, science, and math);

(b) each activity/interest area will have a posted capacity, which may vary according to the activity and size of the space, and will not exceed the group size requirement as specified in Paragraph (1) of Subsection C of 8.16.2.23 NMAC;

(c) placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

(d) individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

(e) a single educator is responsible

for supervising up to the number of children allowed in the adult to child ratio age grouping specified in Paragraph (1) of Subsection C of 8.16.2.23 NMAC in one or more interest area as long as every child is in direct eyesight of the educator; and

(f) the total number of children in a larger room must not exceed the room capacity based on activity space. For example, if a three to five year old classroom has a capacity of 40, and the maximum group size is 28, the room must be divided by at least two well-defined spaces that include various activity/interest areas and be supervised by at least three educators, who are spread out so that every child is "attended."

(3) Child care facilities not meeting the requirements as specified in Paragraphs (1) of Subsection C of 8.16.2.23 NMAC, must be able to clearly demonstrate the intent of group sizing through written procedures that must be approved by

CYFD. The written procedures will address the following:

- (a) maintenance of adult to child ratio within the group size in Paragraph (1) of Subsection C of 8.16.2.23 NMAC to facilitate adult to child interaction and constructive activity among children;
- (b) assignment of a group of children to an educator or team of educators; and
- (c) demonstrate how the educators will meet the needs of all children in the assigned classroom and account for all children at all times.

(4) A center will schedule staff to minimize the number of primary educators a child has during the day and the week. A child will have no more than three primary, consecutive educators in any day including educators in the early morning and late afternoon. Each child must have an educator who is aware of details of the child's habits, interests, and any special concerns.

(5) The same educator who cares for the children under age two years will supervise those children when they play with children over two years.
[8.16.2.23 NMAC - Rp, 8.16.2.23 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.24 SERVICES AND CARE OF CHILDREN IN CENTERS:

A. GUIDANCE:

- (1) A center will have written policies and procedures clearly outlining guidance practices. Centers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.
- (2) Guidance will be consistent and age appropriate.
- (3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

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

- (a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;
- (b) withdrawal of food, rest, bathroom access, or outdoor activities;
- (c) abusive or profane language, including yelling;
- (d) any form of public or private humiliation, including threats of physical punishment; or
- (e) unsupervised separation.

B. NAPS OR REST PERIOD:

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

- (1) Children under the age of six years in the centers for more than five hours will have a rest period.
- (2) A center will allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.
- (3) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats.

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

- (5) Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths of an inch thick. Mats and cots shall be cleaned and ~~linens will~~ sanitized after each use regardless of the same child using the mat or cot. Linens may be used

multiple times over the course of a week but must be laundered before being used by another child.

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

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

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

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

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

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS

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

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

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

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

(5) Toys that are mouthed by infants and toddlers will be cleaned after mouthing by

one child before other children do the same.

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

(7) A center will care for children under age two years in rooms separate from those used by older children. Children age six weeks to 12 months may be in the same room with children age 13 to 24 months, when they are physically separated from the older children. A center may group toddlers ages 18 to 24 months with children ages 24 through 35 months.

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

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

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

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

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

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

(14) Foods served will meet the nutritional needs

of the infant or toddler. Foods will be developmentally appropriate for each infant served.

(15) A center shall provide an evacuation crib.

D. DIAPERING AND TOILETING:

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

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

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

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

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

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

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

F. ADDITIONAL REQUIREMENTS FOR NIGHT CARE:

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

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

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

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

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

G. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

- (a) dramatic play;
- (b) creative art;
- (c) books;
- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and

(i) sensory.

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

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

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

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

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

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

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

(9) File and storage space is available for educators’ materials.

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

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

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

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry,

hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

(1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily. Toys will be disinfected at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

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

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

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

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

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

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

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

(9) Media viewing will not be permitted for children under two years of age.

[Media] Non-educational viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing includes all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

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

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

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

J. OUTDOOR PLAY AREAS:

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

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; or

(b) if intended for residential use, shall be safe and securely anchored.

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

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

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

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

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	5 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

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

(4) Playground equipment shall be inspected and inspections documented weekly.

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

(6) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

(7) Children shall be protected from the sun during outdoor play, as instructed by the child's parent or guardian.

K. SWIMMING, WADING AND WATER:

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

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

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

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

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

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

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

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

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

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

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

L. FIELD TRIPS:
(1) A center will ensure the children’s safety on field trips and excursions. See Subparagraph (h) of Paragraph (1) of Subsection E of 8.16.2.22 NMAC for requirements for permission slips.
(2) Children will not go to a private residence unless accompanied by two adults. [8.16.2.24 NMAC - Rp, 8.16.2.24 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.26 HEALTH AND SAFETY REQUIREMENTS FOR CENTERS:

A. HYGIENE:
(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:
(a) after using a toilet, assisting a child with toilet use, or changing a diaper;
(b) before and after caring for a sick child;
(c) before any food service activity, including setting the table;
(d) before and after eating;
(e) before and after feeding a child; [and]
(f) after handling pets or animals or items used by animals such as water and food bowls [-] ; and
(g) after handling trash.

(2) A center will label with the child’s name and store separately any item used for an individual child’s personal hygiene.
(3) If a center promotes tooth brushing activities, the center will store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

B. FIRST AID REQUIREMENTS:
(1) All educators, staff, and management in direct contact with children must be certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component. From the date of hire, staff will have three months to obtain the first aid and CPR certification. All staff must maintain first aid and CPR certification with a pediatric component. Prior to licensure, at a minimum, the director will have first aid and CPR certification.
(2) A center will keep a first-aid kit and a first-aid manual together in the center in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum, band aids, gauze pads, adhesive tape, scissors, soap, nonporous gloves, and a thermometer.
(3) A center will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A center will clean contaminated surfaces first with hot soapy water then with a disinfecting solution effective against HIV and hepatitis B.

C. MEDICATION:
(1) All staff and children’s medications must be labeled. A center will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.
(2) Facilities will give medication only with written permission from a parent or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement (Paragraph (2) of Subsection C of 8.16.2.26 NMAC)

only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child’s parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.

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

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

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

[8.16.2.26 NMAC - Rp, 8.16.2.26 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.27 ILLNESS REQUIREMENTS FOR CENTERS:

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

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

C. A center will send a child home when:

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

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

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

E. The center must perform daily health check/screenings of all children in care. Findings will be documented and maintained for review.

[8.16.2.27 NMAC - Rp, 8.16.2.27 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.28 TRANSPORTATION REQUIREMENTS FOR CENTERS:

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

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

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

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

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

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

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

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

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

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

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

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

I. At least one adult transporting children, shall be currently certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component.

[8.16.2.28 NMAC - Rp, 8.16.2.28 NMAC, 10/1/2016; A/E, 7/1/2021]

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. 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:
 - (i)** Private water supply, if applicable;
 - (ii)** private waste or sewage disposal, if applicable; and
 - (iii)** 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 non-residential 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, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.16.2.33 PERSONNEL AND STAFFING

REQUIREMENTS FOR HOMES:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) A licensee will not allow any staff member, including the licensee, or any other adult living in the home involved in an incident which would disqualify that staff member or other adult under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children or to reside in the home.

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

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

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

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

educator in a licensed home shall complete all required training hours, regardless of the number of hours worked.

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

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

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

B. STAFF QUALIFICATIONS AND TRAINING:

(1) All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire. All current educators will have three months to comply with the following training from the date these regulations are promulgated:

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

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

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

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

(e) 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;

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

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

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

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

(j) first aid and cardiopulmonary resuscitation (CPR) [certification] awareness with a pediatric component; and

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

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

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

(a) child growth, development and learning; [2]

(b) health, safety, nutrition and infection control; [3]

(c) family and community collaboration; [4]

(d) developmentally appropriate content; [5]

(e) learning environment and curriculum implementation; [6]

(f) assessment of children and programs; and [7]

(g) professionalism.

(4) An educator cannot count more than three hours in first aid or CPR training toward the total hours required. Online first aid and CPR training will not be approved unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. For this purpose, a year begins and ends at the anniversary date of employment. Training must be provided by individuals who are registered on the New Mexico trainer registry. On-line training courses shall count for no more than eight hours each year. If the 45-hour entry level course or its equivalent is taken online, it is exempt from the online training limitation. Identical trainings shall not be repeated for the purpose of obtaining credit. The 12 hours of annual training will be waived for educators if employed by a program currently under FOCUS consultation.

~~(4)~~ (5) Infant and toddler educators must have at least two hours of training in infant and toddler care within six months of starting work. The two hours will count toward the 12-hour requirement in Paragraph (2).

~~(5)~~ (6) The primary educator will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment.

~~(6)~~ (7) A home must have all educators certified in first aid and cardio-pulmonary resuscitation (CPR) with a pediatric component. Staff shall obtain the first aid and CPR certification within three months of being hired. All staff shall maintain current first aid and CPR certification. Prior to licensure, the primary caregiver shall have CPR certification.

[8.16.2.33 NMAC - Rp, 8.16.2.33 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.34 SERVICES AND CARE OF CHILDREN IN HOMES:

A. GUIDANCE:
 (1) A home will have written policies and procedures clearly outlining guidance practices. Care-givers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.
 (2) Guidance will be consistent and age appropriate.
 (3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

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

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

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

(c) abusive or profane language, including yelling;

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

(e) unsupervised separation.

B. NAPS OR REST PERIOD:

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

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

(3) Each child will have an individual bed, cot, or mat that is sanitized after each use.

regardless of the same child using the mat or cot. Linens can be used multiple times over the course of a week but must be laundered before being used by another child.

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

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

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

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

(8) Children shall be directly supervised during naptime.

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

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS:

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

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

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

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

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

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

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

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

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

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

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

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

D. DIAPERING AND TOILETING:

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

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

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

(4) An educator will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

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

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

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

G. PHYSICAL ENVIRONMENT:

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

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

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

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

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

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

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

- (7) Floor surface is suitable for activities that will occur in each learning area.
- (8) File and storage space is available for educators’ materials.
- H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:**
 - (1) Educators remain calm in stressful situations.
 - (2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children’s questions and acknowledging their comments, concerns, emotions and feelings.
 - (3) Educators help children communicate their feelings by providing them with language to express themselves.
 - (4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.
- I. EQUIPMENT AND PROGRAM:**
 - (1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily. Toys shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.
 - (2) A home will not use accordion-style baby gates.
 - (3) A home will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time, each child can be individually involved.
 - (4) A home will store equipment and materials for children’s use within easy reach of the children, including those with disabilities. A home will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.
 - (5) A home will provide children with toys and other materials that are safe, developmentally appropriate, and encourage the child’s creativity, social interaction, and a balance of individual and group play.
 - (6) A home will post a daily activity schedule. A home will follow a consistent pattern for routine activities such as meals, snacks and rest.
 - (7) Media viewing will not be permitted for children less than two years of age. Media viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing includes all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.
 - (8) Children and family members shall be acknowledged upon arrival and departure.
 - (9) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part time children shall have a minimum of 30 minutes of physical activity daily, preferably outside.
 - (10) Equipment and program requirements apply during all hours of operation of the licensed facility.
- J. OUTDOOR PLAY:**
 - (1) Outdoor play equipment used in child care homes shall be:
 - (a) intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; or
 - (b) if intended for residential use, shall be safe and securely anchored.
 - (2) A home will enclose the outdoor play area with a fence at least four feet high and with at least one latched gate available for an emergency exit.
 - (3) A home will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety. When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.						
Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches

Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

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

(4) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

(5) Children shall be protected from the sun during outdoor play, as instructed by the child's parent or guardian.

K. SWIMMING, WADING AND WATER:

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

(2) If a home has a portable wading pool:
 (a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

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

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

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

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

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

(c) when in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.

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

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

L. FIELD TRIPS:

(1) A home will ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection D of 8.16.2.32 NMAC for information on permission slips.

(2) Children will not go to a private residence other than the licensed home unless accompanied by two adults.

[8.16.2.34 NMAC - Rp, 8.16.2.34 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.36 HEALTH AND SAFETY REQUIREMENTS FOR HOMES:

A. HYGIENE:

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

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

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

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

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

(e) after handling pets or animals or items used by animals such as water and food bowls [-]; and

(f) after handling trash.

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

B. FIRST AID REQUIREMENTS:

(1) A home will keep a first-aid kit and a first-

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

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

C. MEDICATION:

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

(2) Homes will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement (Paragraph (2) of Subsection C of 8.16.2.36) only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.

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

medication, the dosage, and the hours and dates the child should receive the medicine.

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

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

D. ILLNESS AND NOTIFIABLE DISEASES:

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

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

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

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

(b) the educator observes signs of contagious disease or severe illness. [8.16.2.36 NMAC - Rp, 8.16.2.36 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.37 TRANSPORTATION REQUIREMENTS FOR HOMES:

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

B. A home will license all vehicles used for transporting

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

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

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

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

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

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

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

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

F. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have

current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

G. At least one adult transporting children shall be currently certified in first aid and cardiopulmonary resuscitation with a pediatric component.

[8.16.2.37 NMAC - Rp, 8.16.2.37 NMAC, 10/1/2016; A/E, 7/1/2021]

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: 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. A copy must be kept onsite;

(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. A copy must be kept onsite;

(g)

documentation of first-aid and cardiopulmonary resuscitation [training] with a pediatric component. A copy must be kept onsite;

(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, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.16.2.42 PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1)

An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children;

(2) All

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

(3) Educators

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

(4) Clerical,

cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios will not be responsible for cooking, clerical or cleaning duties while caring for children.

(5)

Substitutes, volunteers and part-time educators counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and educators routinely employed in a facility but working 20 hours or fewer a week, will complete half the required training hours. Such

employees working more than 20 hours a week will meet full training requirements. See Paragraph (4) of Subsection C of 8.16.2.42 NMAC for additional training requirements.

(6) Each site

will have a site director. The site director or a designated co-director who meets the same qualifications as the site director will be on site 50 percent of the program's core hours of operation.

(7) A program

will maintain staff/child ratios and group sizes at all times. Children must never be left unattended whether inside or outside the facility.

(8) A program

will have a minimum of two staff members present at all times, with one being an educator. If the program has less than seven children, the second staff member may be engaged in other duties.

(9) Each

site will have one adult for every 15 children age five or older. Maximum group size of 30.

(10) The

number of children who may be in a group and the number of caregivers is specified in Paragraph (9) of Subsection A of 8.16.2.42 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a)

The room is divided so that different activity/interest areas are well-defined (i.e. art, dramatic play, fine motor, homework, science, math, and quiet homelike area);

(b)

Each activity/interest area will have a posted capacity, which may vary according to the activity and size of the space, and will not exceed 30;

(c)

Placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

(d)

Individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

(e)

A single educator is responsible for supervising up to 15 children in one or more interest area as long as every child is in direct eyesight; and

(f)

The total number of children in the larger room must not exceed the room capacity based on activity space. For example, if the larger room has a capacity of 90, and the maximum group size is 30, the room must be divided by at least three well-defined activity/interest areas and be supervised by at least six caregivers, who are spread out so that every child is "attended".

B. STAFF

QUALIFICATIONS:

(1) Unless

exempted under Paragraph (3) below, an out of school time program will have an administrator/director who is at least 21 years old and has proof of a current copy of:

(a)

a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC), or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b)

a bachelor's degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development setting; early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every

site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

(3) Program administrators and site directors employed in a licensed program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

C. TRAINING:

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

- (a) scope of services and activities offered by the program;
- (b) emergency first aid procedures;
- (c) indicators of child abuse and neglect;
- (d) fire prevention measures, emergency evacuation plan and disaster preparedness plan;
- (e) review of licensing regulations;
- (f) review of policies regarding guidance;
- (g) child abuse and neglect reporting;
- (h) handling of incidents and complaints; and
- (i) health and safety, including infection and injury prevention and control.

(2) All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire. All current educators will have three months to comply with the following training from the date these regulations are promulgated:

- (a) prevention and control of infectious diseases (including immunization);
- (b) administration of medication, consistent with standards for parental consent;
- (c) prevention of and response to emergencies due to food or other allergic reactions;
- (d) 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;
- (e) abusive head trauma;
- (f) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;
- (g) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (h) precautions in transporting children (if applicable);
- (i) first aid and cardiopulmonary resuscitation (CPR) [~~certification~~ awareness with a pediatric component; and
- (j) recognition and reporting of child abuse and neglect.

(3) A program will keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(4) All educators are required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. Training shall be relevant to school age children. Identical trainings shall not be repeated for the purpose of obtaining credit. The competency areas are:

- (a) child growth, development, and learning;
- (b) health, safety, nutrition, and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

(5) The 24 hours of annual training will be waived for educators if employed by a program currently under FOCUS consultation.

(6) Training must be provided by individuals who have education or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department.

(7) Program administrators may count hours in personnel and business training toward the training requirement. [8.16.2.42 NMAC - Rp, 8.16.2.42 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.43 SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE:

A. GUIDANCE:

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

(2) Guidance will be consistent and age appropriate.

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

prohibited unless due to documented emergencies or medically documented necessity.

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

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

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

(c) abusive or profane language, including yelling;

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

(e) unsupervised separation.

B. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

(a) dramatic play;

(b) creative art;

(c) books;

(d) blocks and accessories;

(e) manipulatives;

(f) music;

(g) science;

(h) math/number; and

(i) sensory.

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

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

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

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

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

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

(8) The floor surface is suitable for activities that will occur in each learning area.

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

C. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

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

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

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

D. EQUIPMENT AND PROGRAM:

(1) A program will provide sufficient equipment,

materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved. Toys shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

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

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

(4) A program will provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate, and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.

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

(6) Media viewing will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing to include all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

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

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

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

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

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

F. OUTDOOR PLAY AREAS:

- (1) Outdoor play equipment used in out of school time programs shall be:
 - (a) intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; or
 - (b) if intended for residential use, shall be safe and securely anchored.
- (2) A program will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.						
When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.						
Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches
For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.						

(3) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

G. SWIMMING, WADING AND WATER:

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

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

- (a) a program will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

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

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

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

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

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

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

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

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
5 years	1	10
6 years and older	1	12

H. FIELD TRIPS:

(1) A program will ensure the children's safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection D of 8.16.2.41 NMAC for requirements concerning field trip permission slips.

(2) Children will not go to a private residence unless accompanied by two adults. [8.16.2.43 NMAC - Rp, 8.16.2.43 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.45 HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**A. HYGIENE:**

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

- (1) after using a toilet;
- (2) before and after caring for a sick child;
- (3) before any food service activity, including setting the table;
- (4) before and after eating; ~~and~~
- (5) after handling pets or animals or items used by animals such as water and food bowls [-]; and

(6) after handling trash.

B. FIRST AID REQUIREMENTS:

(1) A program will have all educators certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Online first aid and CPR training will not be approved, unless there is a hands-on component included. In-

person requirements may be waived in case of an emergency. Staff shall obtain the first aid / CPR certification within three months of being hired. All staff shall maintain current first aid / CPR certification. Prior to licensure, at a minimum, the site director shall have first aid/ CPR certification.

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

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

C. MEDICATION:

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

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

(3) A designated staff member will be

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

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

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

D. ILLNESSES:

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

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

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

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

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

(4) The program will have a cot or mat available for sick children and it will be cleaned and disinfected thoroughly after use.

[8.16.2.45 NMAC - Rp, 8.16.2.45 NMAC, 10/1/2016; A/E, 7/1/2021]

8.16.2.46 TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

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

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

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

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

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

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

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

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

H. At least one adult transporting children shall be currently certified in cardiopulmonary resuscitation (CPR) with a pediatric component.

[8.16.2.46 NMAC - Rp, 8.16.2.46 NMAC, 10/1/2016; A/E, 7/1/2021]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.17.2 NMAC, Sections 7, 10, 11, 12, 22 and 24, effective 7/1/2021.

Explanatory statement: ECECD will be issuing emergency rule amendments made pursuant to NMSA 1978, § 14-4-5.6 and effective on July 1, 2021. ECECD is amending this rule in order to protect the health, safety, and welfare of children in child care settings and the general public. ECECD is also making these emergency amendments in order to prevent the anticipated loss of federal funding. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

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. “Clean” means to physically remove all dirt and contamination.

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

[H.] I. “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.

[F:] **J. “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.

[F:] **K. “Expulsion”** means the involuntary termination of the enrollment of a child or family.

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

[F:] **M. “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:] **N. “Infant”** means a child from birth to one-year-old.

O. “Media” means the use of televisions, video games, and non-educational on-line streaming such as video and social media.

[N:] **P. “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:] **Q. “Non-resident child”** means any child who does not reside in the primary caregiver’s home.

[P:] **R. “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.

[Q:] **S. “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.

[R:] **T. “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.

[S:] **U. “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.

[F:] **V. “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:] **W. “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.

[F:] **X. “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.

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

Z. “Significant amount of time” someone who is on the premises for more than one hour per day during hours of care.

[F:] **AA. “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.

[F:] **BB. “Substantiated”** means an incident or complaint determined to be factual, based on an investigation of events.

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

[AA:] **DD. “Survey”** means a representative of CYFD’s

authority to enter a home, observes activity, examine the records and premises, interviews parents and records deficiencies.

~~[BB:]~~ **EE.**

“Unattended” means a caregiver is not physically present with a child or children under care.

~~[CC:]~~ **FF.**

“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, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

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. Emergency caregivers must comply with background check requirements, and be certified in first-aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Emergency caregivers may be exempted from all other training requirements. 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~~] awareness with a pediatric component; 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 with a pediatric component at all times. On-line first aid and CPR classes are not valid unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. 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, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

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 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. 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. Family members or guests visiting for temporary periods (less than five days) are not considered as spending significant periods of time. However, such visiting family or guests must not have unsupervised access to the children in care at any time.

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, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.17.2.12 ANNUAL

REGISTRATION: An annual registration is issued for a one-year period to a child care home that has met all requirements of these regulations.

A. Primary caregivers must renew registration annually, and only after receiving an onsite inspection by CYFD, by submitting a registration application and paying the processing charge with cashier's check or a money order.

B. Primary caregiver's who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.

C. Primary caregivers shall ensure that all adults residing in the home as well as secondary caregivers and adults spending a significant amount of time in the home are listed on all documentation required by CYFD and sponsoring agencies.

[8.17.2.12 NMAC - N, 10/1/2016; A/E, 7/1/2021]

8.17.2.22 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees Fahrenheit and no more than 82 degrees Fahrenheit. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.

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

F. A home will not use un-vented heaters or open flame heaters. Portable heaters will be used in accordance with manufacture instructions. A home will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

G. All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees Fahrenheit in all areas accessible to children. A home may install a water tempering control valve ahead of all domestic water-heater piping.

H. A caregiver must provide safe playing areas inside and outside the home. Outside play areas must be approved by the registered authority.

I. A caregiver's outside play area must be safe, clean and free of any debris. The caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, hazardous area or when determined to be necessary for safety by the registered authority. The fence will have one latched gate for emergency exits.

J. The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the registered home.

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

L. The primary caregiver must have a working telephone in the home and a valid working phone number on file with CYFD at all times.

M. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.

N. A caregiver will install at least one working smoke

detector and a carbon monoxide detector in an appropriate area in the home.

O. A caregiver will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children.

P. A caregiver will keep all weapons in a locked area inaccessible to children.

Q. A caregiver will prohibit smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

R. A home will have a 2A-10B:C fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and will have official tags noting the date of inspection.

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

T. In case of a fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available. 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 registered authority and the department will provide guidance on developing these plans.

U. A caregiver will conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A caregiver will hold

the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

~~[H:]~~ **V.** A home will have two major exits readily accessible to children with no obstructions in the pathways of these exits.

~~[W:]~~ **W.** Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Toys will be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

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

~~[W:]~~ **Y.** Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

~~[X:]~~ **Z.** The home will have a first aid kit stored in a convenient place inaccessible to children, but easily accessible by caregiver. The kit will contain at least Band-Aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

~~[W:]~~ **AA.** A caregiver with pets will comply with the following requirements:

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

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

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

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily.

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

~~[Z.]~~ **BB.** A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will wash their hands and the child's hands after every diaper change. A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.

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

[8.17.2.22 NMAC - Rp, 8.17.2.23 NMAC, A, 10/1/2016; A/E, 7/1/2021]

8.17.2.24 RECORD KEEPING REQUIREMENTS:

Caregivers must keep an information card for each child (including drop-in children) with:

- A. the child's full name;
- B. the child's birth date;
- C. any known food or drug allergies or unusual physical condition;
- D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
- E. the name and telephone number of the child's physician;
- F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
- G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;
- H. an immunization record showing current, age-

appropriate immunizations for each child or a written waiver for immunizations granted by the department of health. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth; ~~and~~

I. written permission from parent to transport children outside of the registered home [-] ; and

J. 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. The attendance log must be kept on file for 12 months.

[8.17.2.24 NMAC - Rp, 8.17.2.25 NMAC, 10/1/2016; A/E, 7/1/2021]

End of Adopted Rules

Other Material Related to Administrative Law

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Office of Superintendent of Insurance gives Notice of a Minor, Nonsubstantive Correction to 13.10.29 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA and pursuant to 1.24.10.25 NMAC, please note that the above emergency rule has a part number that is already taken and active on the New Mexico Administrative Code (“NMAC”) website. Accordingly, since there was not a repeal filing for 13.10.29 NMAC – DEFINITIONS, I have reassigned the above rule with the part number: 13.10.39 NMAC and have updated the NMAC website accordingly.

A copy of this Notice of Errata Rule Filing will be filed with the official version of above rule.

**End of Other Material
Related to Administrative
Law**

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Issue 6	March 11	March 23
Issue 7	March 25	April 6
Issue 8	April 8	April 20
Issue 9	April 22	May 4
Issue 10	May 6	May 25
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Issue 20	October 14	October 26
Issue 21	October 28	November 9
Issue 22	November 15	November 30
Issue 23	December 2	December 14
Issue 24	December 16	December 28

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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