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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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Notices of Rulemaking and Proposed Rules

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING AND RULEMAKING

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of the following proposed rulemaking. EMNRD proposes to adopt 17.9.588 NMAC, Grid Modernization Grant Program.

Purpose of Rule. In 2020 the Legislature passed the Electric Grid Modernization Roadmap Act directing EMNRD to establish a grid modernization grant program. The statute delineated entities eligible for grid modernization grant program funding, determined criteria for evaluating projects and provided a definition of grid modernization. The Act required EMNRD to promulgate rules to establish requirements and procedures for applying for a grid modernization grant program. In the 2020 Act, the Legislature also established a grid modernization grant program fund that may in the future include state-allocated funds and/or donations from the private sector.

17.9.588 NMAC, Grid Modernization Grant Program. EMNRD proposes to solicit three types of projects to advance research and development in electric grid modernization: 1) original research projects; 2) pre-construction and design projects; and 3) construction/installation, operation and verification projects. The rule adopts evaluation criteria and establishes an annual project solicitation cycle to correspond with the New Mexico fiscal year. The rule will apply to all grid modernization grant program projects irrespective of program funding source. The rule is based on lessons learned over a year of engaging stakeholders

and applicants under a Request for Applications (RFA) issued in 2021.

Legal Authority. EMNRD proposes the rules under the authority of Section 71-11-1(B) through (E) and Section 71-11-2, NMSA 1978.

The full text of the proposed rules are available from the EMNRD, Energy Conservation and Management Division, 1220 S. Saint Francis Drive, Santa Fe, NM 87505; at <https://www.emnrd.nm.gov/ecmd/ecmd-public-notices/>; or by contacting Jacqueline Waite at Jacqueline.waite@emnrd.nm.gov; telephone (505) 629-2858.

Public Hearing and Comment. EMNRD will hold a virtual public hearing on the proposed rules at 10 am on November 30, 2022. The public may join the hearing virtually through WebEx using one of the following:

Grid Modernization Grant Program Rule Public Hearing

Date and time:
Wednesday, Nov 30, 2022 10:00 am |
(UTC-06:00) Mountain Time (US &
Canada)

Join link:
<https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m91f4f72026b0ed8cb30c1f555d9d3c18>

Webinar number:
2495 251 0556

Webinar password:
MUmjMmVu522 (68656688 from
phones)

Join by phone
1-844-992-4726 United States Toll
Free
+1-408-418-9388 United States Toll

Access code: 249 525 10556

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing or may submit written comments by

November 30, 2022, by 5:00 p.m. by mail or e-mail. Please mail written comments to Jacqueline Waite, EMNRD, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail Jacqueline.waite@emnrd.nm.gov.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Jacqueline Waite at (505) 629-2858 or the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Jacqueline Waite at (505) 629-2858 if a summary or other type of accessible format is needed.

REGULATION AND LICENSING DEPARTMENT ACUPUNCTURE AND ORIENTAL MEDICINE, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Acupuncture and Oriental Medicine will hold a rule hearing on Wednesday, November 30, 2022, at 9:00 a.m. Following the rule hearing the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, New Mexico, for those desiring to attend in person.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ecd74a676eeaa7966b6a77be18d3d718>

Meeting (Access) Code: 2487 469 6143

Join by phone: 1-415-655-0002
United States Toll

Access Code: 2487 469 6143

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

16.2.6 NMAC - Expedited Licensing

16.2.10 NMAC - Fees

16.2.12 NMAC - Grounds for Denial, Suspension or Revocation of a License

16.2.21 NMAC - Licensure for Military Service Members, Spouse and Veterans

To obtain and review copies of the proposed changes you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/acupuncture-and-oriental-medicine/board-information/board-meetings/> or contact the New Mexico Board of Acupuncture and Oriental Medicine at (505) 476-4617 or by e-mail at Acuormedboard@state.nm.us.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Martha Gallegos, Senior Board Administrator, via electronic mail to Acuormedboard@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Wednesday, November 30, 2022.

Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/acupuncture-and-oriental-medicine/board-information/board-meetings/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the

Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/acupuncture-and-oriental-medicine/board-information/board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Martha Gallegos, Senior Board Administrator at (505) 476-4617.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Martha Gallegos, Senior Board Administrator (505) 476-4617.

Statutory Authority: The proposed rule changes are authorized by the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978, and specifically Section 61-14A-2 NMSA 1978 (empowering the Board to protect the public, public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of acupuncture and oriental medicine), Section 61-14A-8 NMSA 1978 (authorizing the Board to enforce the provisions of the Acupuncture and Oriental Medicine Practice Act and promulgate rules to that effect) and Section 61-14A-9 NMSA 1978 (authorizing the Board to provide rules establishing fees, examinations for licensing, and to maintain records of all persons so licensed under the Acupuncture and Oriental Medicine Practice Act). The public hearing is governed by the New Mexico Attorney General's default rules for rulemaking proceedings, Sections 1.24.25.1 through 1.24.25.16 NMAC and the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978.

Purpose of Proposed Rules: The proposed rule changes to Parts 6, 10, and 21 are intended to align the Board's rules with HB 191 (General Session 2022), which amended Sections 61-14A-8, 61-14A-13, and 61-14A-16 NMSA 1978 of the

Acupuncture and Oriental Medicine Practice Act. The proposed rule changes to Part 12 are intended to update the Board's rules concerning records retention by licensees to rendering it consistent with applicable federal laws and to modify the section governing use of acupuncture needles.

Summary of Proposed Changes:

The Board summarizes its proposed changes to its administrative rules as follows:

16.2.6 NMAC - Expedited

Licensing: The Board proposes to amend 16.2.6 NMAC to reflect the changes required by HB 191 and its amendment of Sections 61-14A-8, 61-14A-13, and 61-14A-16 NMSA 1978 of the Acupuncture and Oriental Medicine Practice Act. Specifically, the Board's proposed amendments to 16.2.6 NMAC include: adding a section updating the purpose of the rule (to provide for the issuance of expedited licenses pursuant to Section 61-1-31.1 and 61-1-34 NMSA 1978); adding definitions to the rule to define, among other things, "eligible jurisdiction," "expedited license," and related definitions; providing a list of disapproved licensing jurisdictions and reasons in support thereof as required by HB 191; providing a list of approved jurisdictions as required by HB 191; adding a section governing expedited licensure applications; defining the duration of expedited licenses and renewals; adding a new section governing licensing fees for military service members and veterans; adding a testing requirement that applicants pass the New Mexico Clinical Skills Examination as contemplated by Subsection F of Section 61-14A-11 NMSA 1978; and to renumber subsections of 16.2.6 NMAC.

16.2.10 NMAC - Fees: The Board proposes to amend 16.2.10 NMAC to reflect the changes required by HB 191 and its amendment of Sections 61-14A-8, 61-14A-13, and 61-14A-16 NMSA 1978 of the Acupuncture and Oriental Medicine Practice Act. Specifically, the Board's proposed amendments to 16.2.10 NMAC

include: removing outdated language concerning the deposit and use of fees; removing outdated language concerning fees charged to applicants; and replacement of the term “reciprocal” with “expedited.”

16.2.12 NMAC - Grounds for Denial, Suspension or Revocation of a License:

The Board proposes to amend 16.2.12 NMAC to update records retention requirements for licensees to be compatible with federal healthcare law and remove surplus language from the rule. Specific changes include: requiring licensees to maintain care records for at least seven years from the date of each patient visit; requiring licensees to provide patient records to patients within thirty days of receipt of a written request from the patient, unless other laws require disclosure under those laws’ terms; adding HIPAA language to the Breach of Confidentiality section; and removing “or removal” from the Permitting of Insertion of Acupuncture Needles section.

16.2.21 NMAC - Licensure for Military Service Members, Spouse and Veterans:

The Board proposes to amend 16.2.21 NMAC to reflect the changes required by HB 191 and its amendment of Sections 61-14A-8, 61-14A-13, and 61-14A-16 NMSA 1978 of the Acupuncture and Oriental Medicine Practice Act. Specifically, the Board proposes to repeal the entirety of this rule as it is outdated under HB 191 and is addressed in Board’s proposed amendments to rule 16.2.6 NMAC.

**REGULATION
AND LICENSING
DEPARTMENT
MESSAGE THERAPY BOARD**

**NOTICE OF PUBLIC RULE
HEARING AND REGULAR
BOARD MEETING**

The New Mexico Massage Therapy Board will hold a rule hearing on Thursday, December 1, 2022, at 10:00

a.m. Following the rule hearing, the Board will convene a regular board meeting to consider adoption of the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Dr., Albuquerque, NM, Sandia Conference Room for those desiring to attend in person.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

Event address for attendees:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e11d16eb103096e2a02c15ef3ddb2b281>

Event number: 2494 514 6282

United States Toll
+1-415-655-0002
Access code: 2494 514 6282

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

- 16.7.3 NMAC - Fees
- 16.7.4 NMAC – Requirements for Licensure
- 16.7.8 NMAC – Licensure for Military Service Members, Spouses and Veterans
- 16.7.10 NMAC- Examination

To obtain and review copies of the full text of the proposed rule and proposed changes you may go to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/massage-therapy/mt-laws-rules-and-policies/>, or contact the Boards and Commissions Division at (505) 476-4622.

Pursuant to 20.1.1.304 NMAC, all interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical

written statement for the record in lieu of providing oral testimony at the hearing, must file the written statement prior to the hearing or submit it at the hearing.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Roxann Ortiz-Pena, Board Administrator, via electronic mail at massage.board@state.nm.us or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Wednesday November 30, 2022. Persons will also be given the opportunity to present their comments at the rule hearing. All written comments will be posted to the Board’s website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/massage-therapy/mt-laws-rules-and-policies/>, no more than three business days following receipt to allow for public view.

Please note that formatting and minor technical changes in the regulations other than those proposed by the New Mexico Massage Therapy Board may be proposed at the hearing. In addition, the Board may make other changes as necessary to accomplish the purpose of protecting public health and safety in response to public comments and evidence presented at the hearing.

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

Statutory Authority: Subsection A of Section 61-12C-8 NMSA 1978 of the Massage Therapy Practice Act, Sections 61-12C-1 to -28 NMSA 1978, specifically authorizes the Board to, “adopt and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Massage Therapy

Practice Act, in accordance with the provisions of the Uniform Licensing Act. In addition, Section 61-1-31.1 NMSA 1978 of the Uniform Licensing Act, requires the Board to “determine those states and territories of the United States and District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the Board will accept an applicant for expedited licensure.”

Purpose of the Proposed Rules:

The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board’s statutory obligation to further the interests of public health, safety, and welfare by “protect(ing) the public from unlawful, improper and incompetent practice of massage therapy.” See Section 61-12C-2 NMSA 1978. In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act, Sections 61-1-1 through 37 NMSA 1978 and the Massage Therapy Practice Act, Sections 61-12C-1 to 28 NMSA 1978. See H.B. 191, 56th Leg., Regular Session. (N.M. 2022), available at <https://nmlegis.gov/Sessions/22%20Regular/final/HB0191.pdf>.

Summary of Proposed Changes:

The Board summarizes its proposed changes to its administrative rules as follows:

16.7.3 - NMAC - Fees

The proposed changes to Part 3 of the Board’s current rules consist of adding language. In addition to minor non-substantive changes including amendments providing necessary renumbering, the new Part 3 provides for pro-rated license fees per month for the initial license term of licensees receiving their license pursuant to the provisions for expedited licensure.

16.7.4 – NMAC - Requirements for

Licensure

The proposed changes to Part 4 of the Board’s current rules are to amend the existing language. In addition to minor non-substantive changes including amendments providing necessary renumbering and citation, amended Part 4 proposed amendments change the objective of Part 4 to reflect the legislative purpose of the Board, the general provisions for licensure by examination. Additionally, proposed amendments to Part 4 remove provisions for licensure by credentials, which is to be replaced with the process for expedited licensure under the proposed changes to Part 8 (see below). Finally, proposed amendments to Part 4 clarify that the initial licensing period provision, providing for the award of an initial license period for up to two years to provide for syncing individual licensee license renewal to the Board’s annual licensing renewal cycle.

16.7.8 – NMAC - Expedited Licensure

The proposed changes to Part 8 of the Board’s current rules consist of repealing and replacing existing language. The new Part 8 provides for expedited licensure for applicants currently licensed in an eligible jurisdiction and expedited licensure for military service members, their family members, and veterans. These additions include definitions applicable to Part 8, a listing of disapproved licensing jurisdictions and the reasons therefore, provisions for the requirements of the expedited licensure application for applicants currently licensed in an eligible jurisdiction, and provisions regarding the initial term of an expedited license and its renewal.

16.7.10 – NMAC - Examination

The proposed changes to Part 10 of the Board’s current rules are to amend existing language. The proposed amendments to Part 10 clarify that the Board’s jurisprudence examination is required for both applicants for licensure by examination and

those licensees that received their license pursuant to the expedited licensure provisions for those applicants then currently licensed in an eligible jurisdiction, after their initial expedited licensure period has expired.

REGULATION AND LICENSING DEPARTMENT OPTOMETRY, BOARD OF

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Optometry will hold a rule hearing on Thursday, December 1, 2022, at 9:00 a.m. Following the rule hearing, the Board will convene a regular board meeting to adopt the rules and take care of regular business. The rule hearing and board meeting will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, NM, in the Rio Grande Conference Room for those desiring to attend in person.

The meeting will also be held via Cisco Webex Meetings for those desiring to attend virtually.

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e5b9eced031e021d7c46ab54f566df6dd>

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2487 003 8272

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

- 16.16.2 - Fees
- 16.16.3 – Requirements for Licensure by Examination
- 16.16.4 – Expedited Licensure
- 16.16.10 – Renewal of New Mexico Optometry Licenses
- 16.16.25 – Licensure for Military Service Members, Spouses and Veterans

To obtain and review copies of the proposed changes and public comments, you may go to the Board's website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/optometry/optometry-rules-and-laws/> or contact the Boards and Commissions Division at (505) 476-4622.

The Board is currently accepting public written comments on the proposed amendments. Please submit written comments on the proposed changes to Roberta Perea, Board Administrator, via electronic mail at: Optometry.Bd@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504, no later than Wednesday, November 30, 2022. Written comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/optometry/optometry-rules-and-laws/>. Persons will also be given the opportunity to present their written or oral comments at the public rule hearing.

The agenda for the board meeting will be posted and available at least 72 hours before the meeting on the Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/optometry/optometry-board-information/optometry-board-meetings/>. Copies of the rules or the agenda may also be obtained by contacting Roberta Perea, Board Administrator at (505) 476-4622.

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

Statutory Authority: Subsection E of Section 61-2-6 of the Optometry Act, NMSA 1978, Sections 61-2-1 to -18, specifically authorized the Board to "promulgate in accordance with the State Rules Act, all rules for

the implementation and enforcement of the provisions of the Optometry Act." In addition, 61-1-31.1 NMSA 1978 of the Uniform Licensing Act, Sections 61-1-1 to -36 NMSA 1978, provides that "A board by rule shall determine those states and territories of the United States and the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure." Additionally, Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

Purpose of the Proposed Rules:

The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among expedited licensure applicants, and to generally satisfy the Board's statutory obligation "to determine what constitutes the practice of optometry in accordance with the provisions of the Optometry Act." Section 61-2-6. In addition, the proposed rule changes are intended to comply with 2022 legislative changes made during the regular session in HB 191 Uniform Licensing Act signed into law by Governor Lujan Grisham on March 3, 2022.

Summary of Proposed Changes:

16.16.2 NMAC – Fees

The amendments to this part are to add a new section to the rule to be in compliance with the 2022 legislative change regarding HB191. The proposed rule changes clarify the statutory authority, application processing fee, examination fee, license fee for examination, other administrative fees, and expedited license fee. The proposed rule adds an expedited license fee section, defines the fee amount, and replaces the license fee for endorsement candidates section.

16.16.3 NMAC – Requirements for Licensure by Examination

The amendments to this part are to be in compliance with the 2022 legislative change regarding HB191. The proposed rule changes clarify the statutory authority, objective, examination requirements, application requirements, application approval process, and ensures consistency in the rule's language. The proposed rule change clarifies examination requirements for all applicants as well as application requirements. The proposed application requirements remove the requirement for letters of reference and a passport type photograph.

16.16.4 NMAC – Expedited Licensure

The amendments to this part includes a repeal and replace due to the 2022 legislative change regarding HB191 Uniform Licensing Act. This proposed rule sets out the requirements to apply for an "expedited license" in New Mexico. It also lists the states that are excluded from the expedited licensure process and the grounds for their exclusion. The proposed rule also includes a section defining the expedited licensure process for military service members and veterans. Lastly, the proposed rule sets out an expedited license's duration and its renewal process. This section will be repealed and replaced.

16.16.10 NMAC – Renewal of New Mexico Optometry Licenses

The amendments to this part are to be in compliance with the 2022 legislative change regarding HB191. The proposed rule changes clarify the statutory authority and license expiration date. The rule clarifies that an initial license may be issued for a period greater than twelve months but must be less than twenty-four months in order to align license expiration dates with the renewal cycle.

16.16.25 NMAC – Licensure for Military Service Members, Spouses and Veterans

The proposed rule change contemplates a repeal of 16.16.25

NMAC due to its provisions being incorporated into the proposed rule for 16.16.4 NMAC. The proposed repeal of the existing Licensure for Military Service Members, Spouses and Veterans rule, which affords an expedited licensure process to members of the military, is in order to consolidate the expedited licensure process into 16.16.4 for both military and non-military applicants.

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

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.

AGRICULTURE, DEPARTMENT OF

This is an amendment to 21.1.1 NMAC, Sections 9, 10, 11, 12, 14, 15 and 16 effective 12/01/2022.

21.1.1.9 RULEMAKING PREREQUISITES:

A. Prior to the adoption, amendment, or repeal of any rule, the department shall publish notice of its proposed action in the New Mexico register and at least 30 days prior to its proposed action, not including the publication or the day of proposed action, shall:

- (1) if required by statute, publish notice of its proposed action in newspapers or trade, industrial, or professional publications, as will reasonably give public notice to interested persons;
- (2) notify by mail or electronic mail any person or group filing a written request for such notification to the New Mexico department of agriculture, notification being by mail or electronic mail to the last address specified by the person or group; ~~[requests from such persons or groups shall be renewed annually.]~~
- (3) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;
- (4) post on the agency website;
- (5) post on the sunshine portal;
- (6) make available at the agency district and field offices;
- (7) provide to the New Mexico legislative council.

B. The notice described in Subsection A of 21.1.1.9 NMAC above shall include:

- (1) information on the public hearing and how a person may participate;

(2) information on how comments may be submitted to the department where the comments will be received, and when the comments are due;

(3) a summary describing the full text of the proposed rule;

(4) a short explanation describing the substance of the proposed action;

(5) information on how the proposed rule may be obtained and internet link that provides free access to the full text of the proposed rule;

(6) a reference to the statutory authority under which the rule is proposed; and

(7) a citation to technical information, if any, and how to obtain the technical information.

[21.1.1.9 NMAC, Rp, 21.1.1.8 NMAC, 11/01/2018, A; 12/01/2022]

21.1.1.10 RULEMAKING HEARINGS: Rulemaking hearings shall be conducted as follows.

A. The rules of civil procedure and the rules of evidence shall not apply.

B. Unless the circumstances otherwise justify the order of appearance will be as follows:

- (1) comments of department staff;
- (2) comments of each proponent;
- (3) comments of each opponent; and
- (4) comments ~~[of other interested persons;]~~ from the general public.

C. Comments from any individual who provides public comment at the hearing may be questioned by the agency or hearing officer or, at the discretion of the

agency or hearing officer, or as otherwise provided by law, by other persons at the hearing.

D. Public hearings shall be conducted in a fair and equitable manner.

E. Public hearings shall be open to the public and recorded.

[21.1.1.10 NMAC, Rp, 21.1.1.9 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.11 PUBLIC COMMENT:

The department shall afford all interested persons reasonable opportunity to submit written data, views, or arguments in support of or opposition to a proposed rule. Any interested person seeking to modify a proposed rule in any way must submit a proposed modification in writing to the department.

A. Information or comment submitted may be in electronic or written format;

B. public comment period will be open for a period of at least 30 days after the date of notice in the NM register; and

C. the department will consider all comments respecting the proposed rule prior to a final decision.

D. All comments filed on proposed rule shall be made available to any person for inspection upon request and shall be posted to the agency's website within three business days of receipt.

[21.1.1.11 NMAC, N, 11/01/2018; A, 12/01/2022]

21.1.1.12 HEARING OFFICER:

The director ~~[may]~~ shall appoint an agency representative or hearing officer to conduct the hearing and receive statements and supporting data. The agency representative or hearing officer will be authorized to make all rulings in the conduct of the proceedings and in the receipt of

statements and supporting data.
[21.1.1.12 NMAC, Rp, 21.1.1.10 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.14 ADOPTION OF THE RULE: Adoption of any rule will be through the board of regents of New Mexico state university at a scheduled board meeting. The board shall be presented with a complete hearing record and recommended action of the director.

~~[A.]~~ At the time a rule is adopted, the department shall provide a concise explanatory statement to the public containing:

~~[(H)]~~ A. the date the agency adopted the rule and effective date if different than adopted date;

~~[(Z)]~~ B. a reference to the specific statutory or other authority authorizing the rule; and

~~[(S)]~~ C. any findings required by a provision of law for the adoption of the rule;

D. reasons for any changes between the published proposed rule and the final rule;

E. reasons for not accepting substantive arguments made through public comment.

~~[B.]~~ Within 15 days after the adoption of the rule the department shall file the adopted rule with the state records office, and shall provide to the public as defined in Section 14-4-2 NMSA 1978, the adopted rule. The effective date of the rule shall be the date of publication in the New Mexico register unless a later date is provided for in the rule.]

[21.1.1.14 NMAC, Rp, 21.1.1.14 NMAC, 11/01/2018; A, 12/01/2022]

21.1.1.15 EMERGENCY RULE: ~~[The director may adopt an emergency rule if he finds that the time required to complete the rule making procedures would cause imminent peril to the public health, safety or welfare; cause the unanticipated loss of funding for an agency program; or place the agency in violation of federal law. The agency shall provide to the public a record justifying the finding for the need of the emergency rule, prior to the publication of the emergency~~

~~rule. The director's finding and a brief statement of the reasons for its finding shall be incorporated in the public record, the public record will also state that the rule is temporary and will not exceed 180 days.]~~

The department shall comply with emergency rulemaking procedures in Section 14-4-5.6 NMSA 1978.

[21.1.1.15 NMAC, N, 11/01/2018; A, 12/01/2022]

21.1.1.16 FILING RULES:

Each rule, amendment, or repeal thereof adopted by the department shall be filed with the state records center in accordance with the ~~[law:]~~ State Rules Act, Section 14-4-5 NMSA 1978

[21.1.1.16 NMAC, Rp, 21.1.1.15 NMAC, 11/01/2018; A, 12/01/2022]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

TITLE 8 SOCIAL SERVICES

CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE

PART 3 CHILD CARE ASSISTANCE; REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS

8.9.3.1 ISSUING

AGENCY: Early Childhood Education and Care Department ("ECECD").

[8.9.3.1 NMAC - N, 11/01/2022]

8.9.3.2 SCOPE: This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility for child care assistance benefits. (See 8.9.3.8 NMAC for detailed list.)
[8.9.3.2 NMAC - N, 11/01/2022]

8.9.3.3 STATUTORY

AUTHORITY: Subsection E of Section 9-29-6 NMSA 1978.

[8.9.3.3 NMAC - N, 11/01/2022]

8.9.3.4 DURATION:

Permanent
[8.9.3.4 NMAC - N, 11/01/2022]

8.9.3.5 EFFECTIVE

DATE: November 1, 2022, unless a later date is cited at the end of section.
[8.9.3.5 NMAC - N, 11/01/2022]

8.9.3.6 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. To establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

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.

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.

[8.9.3.6 NMAC - N, 11/01/2022]

8.9.3.7 DEFINITIONS:

A. Terms beginning with the letter “A”:

(1) **“Attending a job training or educational program”** means actively participating in an in-person or online job training or educational program.

(2) **“At-risk child care”** means a program for families at-risk as determined by the department.

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

C. Terms beginning with the letter “C”:

(1) **“CACFP”** means the child and adult care food program, administered by the Early Childhood Education and Care Department.

(2) **“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.

(3) **“Client”** means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

(4) **“Closure”** means the client’s child care case is closed with the department.

(5) **“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.

D. Terms beginning with the letter “D”:

(1) **“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.

(2) **“Department”** means the New Mexico Early Childhood Education and Care Department (“ECECD”).

E. Terms beginning with the letter “E”:

(1) **“Earned income”** means income received as gross wages from employment or as profit from self-employment.

(2) **“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.

F. Terms beginning with the letter “F”: **“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.

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

H. Terms beginning with the letter “H”:

(1) **“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 Subparagraphs (a) through (c) of this Paragraph.

(2)

“Household” means the household as defined below in Paragraph (1) of Subsection C of 8.9.3.11 NMAC.

(3)

“Household income” means household income as defined below in Paragraph (3) of Subsection C of 8.9.3.11 NMAC.

I. Terms beginning with the letter “I”:

(1)

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

(2) “Infant,

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

(a)

infant: zero - 23 months;

(b)

toddler: 24 -35 months;

(c)

preschool: three to five year olds; and

(d)

school age: six year olds and older.

J. Terms beginning with the letter “J”: “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. Educational programs include graduate and post graduate programs or classes.

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

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

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

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 ECECD. ECECD 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 ECECD:

(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 that are not on the above list will no longer be ECECD approved national accrediting bodies.

(2) “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 Paragraph (3) of Subsection T of 8.9.3.7 NMAC.

(3) “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.

O. Terms beginning with the letter “O”:

(1) “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.

(2)

“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.

P. Terms beginning with the letter “P”: “Provider

types” means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) “In-home”

care means care provided in the child’s own home.

(2)

“Registered home” means child care provided in the home of a provider who is registered with the department 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) **“Family, friend, or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

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

R. Terms beginning with the letter “R”:

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

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

S. Terms beginning with the letter “S”:

(1) **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

(2) **“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.

(3) **“Special supervision”** means the special supervision for child(ren) as defined below in Subsection G of 8.9.3.11 NMAC.

(4) **“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.

(5) **“Suspension”** means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

T. Terms beginning with the letter “T”:

(1) **“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.

(2) **“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.

(3) **“Temporary change of activity”** means one of the following events:

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

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

(c) student holiday or break for a parent or legal guardian participating in training or education;

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

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

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

U. Terms beginning with the letter “U”:

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

(2) **“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.

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

W. Terms beginning with the letter “W”: **“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.

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

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

Z. Terms beginning with the letter “Z”: [RESERVED] [8.9.3.7 NMAC - N, 11/01/2022]

8.9.3.8 TYPES OF CHILD CARE: These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents or legal guardians have a variety of child care services from which to choose:

A. licensed child care programs administered by

public schools and post-secondary institutions that provide on-site care for the children of students;

B. licensed child care programs administered by tribal entities;

C. licensed child care programs administered by church or religious organizations;

D. in-home care;

E. licensed child care centers;

F. registered family childcare homes;

G. licensed family and group childcare homes;

H. licensed out of school time programs;

I. licensed programs operated by employers for their employees; and

J. FFN.

[8.9.3.8 NMAC - N, 11/01/2022]

8.9.3.9 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 Early Childhood Education and Care 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 Early Childhood Education and Care 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 8.9.3.11 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 four 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 four hundred and twenty-five percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.9.3.11 NMAC. The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents.

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. [8.9.3.9 NMAC - N, 11/01/2022]

8.9.3.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility:

- (1) a completed signed application form;
- (2) documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.9.3.11 NMAC;
- (3) documentation of the applicant’s TANF eligibility or participation, if applicable, and can include applicant’s social security number or assigned TANF identification number;
- (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- (6) verification of birth for all applicant’s household children;
- (7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;
- (8) verification of custody of children, if applicable;
- (9) verification of dependency of a child or adult household member, if applicable;
- (10) documentation of New Mexico residency;
- (11) identification for parent/guardian; and
- (12) department approved provider.

B. 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)
Verification of Birth	-Birth certificate -Hospital or public health records -Certificate of Indian blood -Birth center records
Countable Earned Income	-Paystubs -Employer statement/verification of work form (for new employment) -Client statement, if earning wages from various odd jobs/day labor -Employer contract/work agreement -Payroll/gross wage history For self-employed individuals: -Income tax return -Profit and loss (must be verified by a bookkeeper or accountant) -Common reporting standard (CRS) statements from New Mexico taxation and revenue department
Countable Unearned Income	-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
Qualifying Activity	-Proof of TANF participation (example: work participation agreement (WPA)) -School schedule -Statement from educational institution -Work schedule -Paystubs -Employer statement -Client statement -Contract/work agreement -Proof of new business registration with state

Documentation of Incapacity	-Statement or letter from medical professional on letterhead/stationary -Statement/record/letter from a federal government agency that issues or provides disability benefits -Statement/records/letters from a state vocational rehabilitation agency counselor -Records/letters from a treatment facility/counselor -Certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits
Custody	-Court order, or other legal records -Adoption records -Statement signed under penalty of perjury -Attorney records
Dependency	-Court order -Notarized statement -Divorce papers -Durable power attorney -Guardianship documentation -Federal tax documents verifying person is claimed as a dependent -Written statement with supervisor’s approval
New Mexico Residency	-Lease/rental agreement -Utility bill -Mortgage receipt -Written statement from person you are residing with -Current New Mexico driver’s license -Statement from landlord -Other records that provide a name and address
Identification for Parent/Guardian	-Current or expired government issued photo identification/passport -School photo identification -Government issued immigration document with photo -Employer identification with photo
Citizenship/Immigration Verification	-United States birth certificate -Military identification -Passport -Naturalization certificate -Permanent resident card -ASPEN/HSD verification (client must be listed as “eligible child”) (example: refugees/other qualified aliens may receive services through HSD but also may have United States department of state form) -Numident (from social security office) -Refugee/asylee letter from United States secretary of state or from homeland security -Any document from the immigration and naturalization services (INS), department of homeland security (DHS), or other authoritative document showing a child’s immigration status that qualifies the child for assistance

C. The department may approve a client to submit their initial application by fax, email, electronic submission, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Upon approval from the child care regional manager, clients may be given longer than 14 calendar days, but no more than 30 calendar days, to submit required documentation.

D. Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
- (2) the client is employed, attending school or a training program or seeking employment. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
- (3) the provider is eligible to be paid.

8.9.3.11 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 child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility 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 as Paragraphs (7) and (8) of Subsection C of 8.9.3.11 NMAC. 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 8.9.3.11 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 8.9.3.11 NMAC; overtime shall be counted at ECECD's discretion if ECECD 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 including graduate and other educational stipends; 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 ECECD 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 8.9.3.11 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. 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 submit verification of the TANF approved activity unless they are exempt by TANF. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

I. Calculating Need

for Care: The department determines the number of hours of care needed in consultation with the parent or legal guardian at the time of certification and approved hours are reflected in the child care placement agreement covering the certification period. The department determines the number of hours of care needed based on the qualifying activity of the parent or legal guardian and physical custody of the child, as applicable. Clients and caseworkers shall negotiate a reasonable amount of study and travel time, which is an individualized determination based on each client's specific needs, during the application process and special attention shall be paid to the child's specific needs. The department determines the number of hours of care needed based on a maximum weekly need and approved based on the units of service set forth below in Subsections E and F of 8.9.3.17 NMAC.

J. 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, such as online or home-schooling. Child care benefits are paid during the hours that children are attending a dedicated Early Head Start-Child Care Partnerships Program funded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care.

[8.9.3.11 NMAC - N, 11/01/2022]

8.9.3.12 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 Paragraph (2) of Subsection E of 8.9.3.7 NMAC. Clients designated as essential workers who recertify must be at or below four hundred and twenty-five 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 8.9.3.11 NMAC.

[8.9.3.12 NMAC - N, 11/01/2022]

8.9.3.13 CLIENT

RESPONSIBILITIES: Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, seeking employment, 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://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 8.9.3.13 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 divided by two hundred percent of annual federal poverty level for household size) multiplied by (low end of the monthly income bracket on the co-payment schedule) multiplied by 1.1 equals the 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 8.9.3.17 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. 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.

F. 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 must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income.

(3) A client must notify the department of any changes to their contact information.

(4) 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.

(5) 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.

(6) Clients who do not comply with this requirement may be sanctioned. [8.9.3.13 NMAC - N, 11/01/2022]

8.9.3.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended at the request of the client if child care benefits are not being utilized 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 child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

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

(1) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.9.3.9 NMAC, with an income in excess of four hundred and twenty-five percent of the federal poverty level;

(2) failing to recertify at the end of approved eligibility period; or

(3) being disqualified from participation in the program.

[8.9.3.14 NMAC - N, 11/01/2022]

8.9.3.15 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. If a client notifies the provider of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks following the first date of nonattendance.

(1) If the provider notifies the department of the above, the provider will be paid through the period of nonattendance, not to exceed six weeks.

(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 8.9.3.21 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 8.9.3 NMAC. 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 8.9.3 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 ECECD 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 ECECD approved provider.

G. Owners and licensees may not receive child care subsidy payments to provide care for their own children.

H. 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.

I. Providers must promote the equal access of services for all children and families by developing and implementing policies and procedures that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

[8.9.3.15 NMAC - N, 11/01/2022]

8.9.3.16 DEPARTMENT RESPONSIBILITIES:

A. The department pays child care providers who provide child care services to department clients in a timely manner.

B. Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

C. Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required documentation from the client.

D. Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF.

Eligibility for TANF is determined by the New Mexico human services department.

F. Child care assistance workers must inform parents or legal guardians of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

G. The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents or legal guardians and providers.

H. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent or legal guardian and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents or legal guardians and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.9.3.16 NMAC - N, 11/01/2022]

8.9.3.17 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 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 8.9.3 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. Hours for seeking employment is set at full-time.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$880.00	\$635.00	\$575.00	\$441.00
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$855.00	\$830.00	\$680.00	\$428.00
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$875.00	\$850.00	\$700.00	\$412.00
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$375.00	\$375.00	\$350.00	\$350.00

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 ECECD 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 ECECD 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. 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:

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. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

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

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

M. If a significant change occurs in the client’s circumstances, (see Subsection F of 8.9.3.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. 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.

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

[8.9.3.17 NMAC - N, 11/01/2022]

8.9.3.18 UNDER PAYMENTS: If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the department’s knowledge or receipt of notification. Notification of the department by the client or provider must occur within three months of the occurrence of alleged underpayment or underpayment may be denied.

[8.9.3.18 NMAC - N, 11/01/2022]

8.9.3.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.
[8.9.3.19 NMAC - N, 11/01/2022]

8.9.3.20 FRAUD: The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility is fraud and appropriate sanctions, including recoupment, termination of benefits, and referral to law enforcement, are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined. In cases where substantiated fraud has been determined, the department may disqualify a client or provider until their debt has been paid in full.
[8.9.3.20 NMAC - N, 11/01/2022]

8.9.3.21 SANCTIONS: Sanctions may be imposed according to the severity of the infraction as determined by the department as detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency.

B. The department may initiate the recoupment process against any provider who fail to report in a timely manner that a child has not been in attendance for 14 consecutive calendar days.

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

D. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current.
[8.9.3.21 NMAC - N, 11/01/2022]

8.9.3.22 FAIR HEARINGS: Clients who have been denied benefits, whose benefits have been reduced, terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

A. The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone is permitted. The claimant may request a change of date, provided that the 60 calendar day time limit is not exceeded.

B. The department appoints a hearing officer. The department is not responsible or liable for a claimant's travel costs, legal costs, or any other costs associated with the claimant's request for a fair hearing.

C. The hearing officer reviews all of the relevant information and makes a final decision within 30 calendar days of the hearing. The final decision is binding upon the department and claimant and implemented within 14 calendar days of the hearing decision. The claimant is notified in writing of the hearing officer's decision within 14 calendar days of the hearing decision.

D. At the claimant's option the case may remain open at the same benefit level until disposition. If the decision is in favor of the department, the claimant is responsible for repayment of all monies received to which the claimant was not entitled, unless the hearing decision provides otherwise or the early childhood services director authorizes otherwise in exceptional circumstances. The fair hearing process is not intended as a means to extend the time for receipt of child care assistance payments to which the recipient is not otherwise entitled, and therefore exceptional circumstances must be explicitly stated.

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF.

Eligibility for TANF is determined by the New Mexico human services department. If TANF benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.
[8.9.3.22 NMAC - N, 11/01/2022]

8.9.3.23 COMPLAINTS: Clients or providers who are dissatisfied with the services provided by the department may express their complaints orally or in writing to the local field office, the central office, the director’s office or the office of the department secretary. The department’s toll free number is posted in each office and made available to clients and providers upon request. The local supervisor, bureau chief, director or secretary responds to complaints by clients or providers orally or in writing as is deemed appropriate in each case.
[8.9.3.23 NMAC - N, 11/01/2022]

8.9.3.24 CO-PAYMENT SCHEDULE: The department will develop and publish an annual co-payment schedule based on the federal poverty guidelines.
[8.9.3.24 NMAC - N, 11/01/2022]

8.9.3.25 CONFIDENTIALITY: Client files are established and maintained solely for use in the administration of the child care assistance program. Information contained in the records is confidential and is released only in the following limited circumstances:

- A. to the client upon request;
- B. to an individual who has written authorization from the client;
- C. to department employees and agents who need it in connection with program administration, including program auditors; or
- D. to other agencies or individuals including law enforcement officers who satisfy the following conditions:
 - (1) agency or individual is involved in the administration of a federal or a

federally-assisted program, which provides assistance in cash, in kind or in services directly to individuals on the basis of need;

(2) information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;

(3) agency or individual is subject to standards of confidentiality comparable to those contained herein; and

(4) agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if the client has made application to the inquiring agency for a benefit of service;

E. as requested in a subpoena or subpoena duces tecum.
[8.9.3.25 NMAC - N, 11/01/2022]

HISTORY OF 8.9.3 NMAC:
[RESERVED]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 4 CHILD CARE LICENSING; CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS**

8.9.4.1 ISSUING AGENCY: Early Childhood Education and Care Department (“ECECD”).
[8.9.4.1 NMAC - N, 11/01/2022]

8.9.4.2 SCOPE: All child care centers, out of school time

programs, family child care homes, and other early care and education programs within the state of New Mexico.
[8.9.4.2 NMAC - N, 11/01/2022]

8.9.4.3 STATUTORY AUTHORITY: The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico Early Childhood Education and Care Department, by authority of the Early Childhood Education and Care Department Act, Section 9-29-1 to 9-29-12 NMSA 1978, and Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and Section 24-1-5 NMSA 1978 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.
[8.9.4.3 NMAC - N, 11/01/2022]

8.9.4.4 DURATION: Permanent.
[8.9.4.4 NMAC - N, 11/01/2022]

8.9.4.5 EFFECTIVE DATE: November 1, 2022, unless a later date is cited at the end of a section.
[8.9.4.5 NMAC - N, 11/01/2022]

8.9.4.6 OBJECTIVE: The objective of 8.9.4 NMAC is to establish standards and procedures for the licensing of facilities and educators who provide child care to children within New Mexico. These standards and procedures are intended to: establish minimum requirements for licensing facilities providing non-residential care to children in order to protect the health, safety, and development of the children; monitor facility compliance with these regulations through surveys to identify any areas that could be dangerous or harmful to the children or staff members; monitor and survey out of school time programs; and encourage the establishment and maintenance of child care centers, homes and facilities for children that provide a humane, safe, and developmentally appropriate

environment. These regulations apply during all hours of operation for child care centers, homes and out of school time programs. The objective of 8.9.4 NMAC is also to establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

[8.9.4.6 NMAC - N, 11/01/2022]

8.9.4.7 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)

“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).

(5)

“Attended” means the physical presence of a staff member or educator supervising and actively engaging children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See definition of “Supervision”, Paragraph (12) of Subsection S of 8.9.4.7 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) “Cease and desist letter”

means a formal letter from the licensing authority outlining any ongoing violation of applicable regulations and providing 24 to 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the licensing authority. A cease and desist letter is usually issued when a provider violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the licensing authority will take if the violation(s) is not corrected by that deadline.

(3) “Child”

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

(4) “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.

(5) “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.

(6) “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.

(7) “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.

(8) “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.

(9) “Clean”

means to physically remove all dirt and contamination.

(10)

“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.

(11) “Core

hours” means the daily hours of operation of the child care facility.

(12)

“Corrective action plan” means the plan submitted by the licensee

addressing how and when identified deficiencies will be corrected.

(13)

“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. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special consideration will be made for homes on tribal lands.

(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 Subparagraphs (a) through (c) of this Paragraph.

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 ECECD 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 – regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Early Childhood Education and Care Department Act, Sections 9-29-1 to 9-29-12 NMSA 1978, as amended.

M. Terms beginning with the letter “M”:

(1) **“Media”**
means the use of televisions, video games, and non-educational online streaming such as video and social media.

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

N. Terms beginning with the letter “N”:

(1) **“National accreditation status”** means the achievement and maintenance of accreditation status by an accrediting body that has been approved by ECECD. ECECD determines the program criteria and standards to evaluate and approve accrediting bodies. The following are the only national accrediting bodies that are approved by ECECD:

(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) **“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) **“Pacifier”**
means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2) **“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.

(3) **“Pest”**
means any living organism declared a pest pursuant to the Pesticide Control Act.

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

(5) **“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.

(6) **"Policy"**

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

(7)

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

(8)

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

(9)

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

(10)

"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.

(11)

"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 Early Childhood Education and Care Department in 8.9.4 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”:

(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. [8.9.4.7 NMAC - N, 11/01/2022]

8.9.4.8 RELATED REGULATIONS AND CODES:

Facilities subject to these regulations are also subject to the current versions of the following regulations and codes:

- A. New Mexico health department regulations, control of disease and conditions of public health significance, 7.4.3 NMAC.
- B. New Mexico health department regulations, governing public access to information in the department records, 7.1.3 NMAC.
- C. New Mexico department of health regulations, health facility licensure fees and procedures, 7.1.7 NMAC.
- D. New Mexico department of health regulations, health facility sanctions and civil monetary penalties, 7.1.8 NMAC.
- E. New Mexico Early Childhood Education and Care Department regulations, governing

background check and employment history of licensees and staff of child care facilities, 8.9.6 NMAC.

F. New Mexico environment department, food service and food processing, 7.6.2 NMAC.

G. Latest edition adopted by the New Mexico state fire board of the national fire protection association life safety code handbook 101.

H. Latest edition adopted by the New Mexico state fire board of the international fire code.

I. Latest edition adopted by the New Mexico construction industries division of the uniform building code enacted by the international conference of building officials.

J. Latest edition of the New Mexico building, plumbing/mechanical and electrical codes adopted by the New Mexico construction industries division.

K. New Mexico department of health regulations governing immunizations required for school attendance immunization requirement, 7.5.2 NMAC.

L. Federal Americans with Disabilities Act (ADA).

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

N. Latest edition of critical heights of playground equipment for various types and depths of resilient surfaces based on information from the U.S. consumer product safety commission (CPSC Publication No.325), handbook for public playground safety.

O. Any code, ordinance, or rule of a governing body, including but not limited to cities, towns, or counties having jurisdiction over the area in which the facility is situated. [8.9.4.8 NMAC - N, 11/01/2022]

8.9.4.9 APPLICATION:

These regulations apply to public or private facilities and homes that provide care, education, services, and supervision to children less than

24 hours of any day, come within the statutory definition of “health facilities” set out in Subsection D of Section 24-1-2 of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority. These regulations do not apply to any of the following.

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

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

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

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

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

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

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

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

I. Parent’s day out programs held in a church, religious building or house of worship, or public building operating for no more than eight hours per week and no more than four hours on any given day. The program will be staffed by

parents participating in the program, or by others who are members of the church or public affiliation.
[8.9.4.9 NMAC - N, 11/01/2022]

8.9.4.10 LICENSING AUTHORITY

(ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY): The child care services bureau regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department, hereafter called the licensing authority, has been granted the responsibility for the administration and enforcement of these regulations by authority of Early Childhood Education and Care Department Act, Section 9-29-1 to 9-29-12, NMSA 1978, as amended.
[8.9.4.10 NMAC - N, 11/01/2022]

8.9.4.11 LICENSING: A. TYPES OF LICENSES:

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

(a)
1-star level is designated for programs not receiving child care subsidy. 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.9.4.11 NMAC.

(i)
for centers: Paragraph (17) of Subsection G of 8.9.4.22 NMAC, Paragraphs (5) through (9) of Subsection G of 8.9.4.24 NMAC, and Subsection H of 8.9.4.24 NMAC;

(ii)
for licensed family and group child care homes: Paragraph (4) of Subsection E of 8.9.4.32 NMAC, Paragraph (15) of Subsection F of 8.9.4.32 NMAC, Paragraphs (4) through (8) of Subsection G of 8.9.4.34 NMAC, and Subsection H of 8.9.4.34 NMAC;

(iii)
for licensed out of school time programs: Subparagraph (k) of Paragraph (1) of Subsection E of 8.9.4.41 NMAC, Paragraph (14) of Subsection F of 8.9.4.41 NMAC, Paragraphs (5) through (9) of Subsection B of 8.9.4.43 NMAC and Subsection C of 8.9.4.43 NMAC.

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

(c)
2+ star level is voluntary and requires meeting and maintaining licensing requirements as well as meeting the most recent FOCUS eligibility requirements and 2+ star criteria.

(d)
3-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS level 3 quality criteria at all times.

(e)
4-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS levels 3 and 4 quality criteria at all times.

(f)
5-star level is voluntary and requires meeting and maintaining licensing requirements, FOCUS levels 3, 4 and 5 quality criteria at all times and maintaining ECECD approved national accreditation status.

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

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

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

(c)
After a second temporary license has been issued, a new application and the required application fee must be submitted within 30 days in order to

renew the license for the remainder of that one year period.

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

(a)
A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application (fee \$20) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director's appointment is valid for 90 days.

(b)
A notarized application must be submitted for a change of capacity (fee \$20). Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

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

(4)
PROVISIONAL 2-STAR LICENSE: Newly licensed programs receiving child care subsidy will be given a provisional

2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

(5)
MILITARY LICENSE:

(a)
Centers on military installations are governed and inspected by the United States department of defense (DoD) and obtain national accreditations. Therefore, such centers do not require an inspection by the New Mexico licensing authority.

(b)
In order to participate in the child care assistance program, providers licensed by the DoD must submit the following:

Licensing application

(i)
Annual submission of a letter or memo detailing the approved DoD background clearance status for the director and all staff members in accordance with 8.9.6 NMAC, to include the individual's name, date of birth, and home address;

(iii)
DoD annual certification;

(iv)
DoD approved accreditation, if applicable; and

(v)
W-9 form and supporting documentation, if applicable.

(6) TRIBAL GOVERNMENT LICENSE:

(a)
Centers and homes operating on sovereign tribal lands are governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency. Therefore, such centers and homes do not require an inspection by the New Mexico licensing authority.

(b)
Providers licensed by the Tribal CCDF Lead Agency program must submit the following to obtain licensure from ECECD:

(i)
Licensing application;

(ii)
Proof of Tribal CCDF Lead Agency approval;

(iii)
Annual submission of a letter or memorandum attesting that the Tribal CCDF's programs' director and all staff are in compliance with state, federal or Tribal background check clearances;

(iv)
Annual submission of a list of the director and all staff employed by the Tribal CCDF program, listing each individual staff member's name, date of birth, and home address; and

(v)
W-9 form and supporting documentation, if applicable.

B. RENEWAL OF LICENSE:

(1) A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. ECECD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a \$25 late fee must be submitted with the renewal fee.

(2) All licensed facilities must maintain an original background check eligibility letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence. The teenage child's guardian shall sign the annual statement on behalf of the teenage child.

(3) Upon receipt of a notarized renewal application, the required fee and the completion of an on-site survey, the

licensing authority will issue a new license effective the day following the date of expiration of the current license, if the child care facility is in compliance with these regulations.

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

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

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

- (1)** the owner of the child care facility changes;
- (2)** the child care facility moves;
- (3)** the licensee of the child care facility changes; or
- (4)** the child care facility closes.

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

- (1)** on the day a child care facility closes;
- (2)** on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;
- (3)** on the day a child care facility moves.

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

failure to meet and maintain licensing standards.
[8.9.4.11 NMAC - N, 11/01/2022]

8.9.4.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

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

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

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

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

(4) allowing any person to be active in the child care facility who is or would be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC; this will include all adults and teenaged children living in a family child care or group child care home operated in a private residence whether or not they are active in the child care operation;

(5) failure to timely obtain required background checks;

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

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

(8) substantiated abuse or neglect of children by an educator, staff member, volunteer, or household member as determined by ECECD, CYFD, or a law enforcement agency;

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

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

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

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

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

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

(15) background clearance suspension or denial.

B. Commencement of an ECECD, CYFD or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation,

the department may take such further action as is supported by the investigation results.

C. A suspension, revocation, or conditions of operations imposed pursuant to Subsection A of this Section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

D. The Early Childhood Education and Care Department notifies the licensee in writing of any action taken or contemplated against the licensee. The notification shall include the reasons for the department's action.

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

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

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

H. If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect or an appeal of the following action is concluded and the action is either upheld or overturned.

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

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

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

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

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

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

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

(6) Nothing in Subsection J of 8.9.4.12 NMAC shall be construed to require licensure that is not otherwise required in this regulation.

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

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

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

(3) that the direct provider of care has any criminal history or history of a referral to CYFD protective services or juvenile justice services discovered after the most recent background check; or

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

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

M. There shall be no right to an appeal or administrative review when the licensing authority issues a cease and desist letter; provided, however, that the licensee shall have the right to an appeal or administrative review of any subsequent action taken by the licensing authority as set forth herein.

N. The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. The licensing authority shall reduce the star level of a provider granted national accreditation status by the department to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. If a provider holding accreditation from an accrediting body no longer approved by ECECD fails to maintain these requirements, this will result in the provider reimbursement reverting to

the base reimbursement rate. The provider may increase their star level only by meeting FOCUS criteria or by attaining ECECD approved national accreditation status. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.
[8.9.4.12 NMAC - N, 11/01/2022]

8.9.4.13 CIVIL MONETARY PENALTIES:

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

- (1) death or serious injury to a child;
- (2) abuse, neglect or exploitation of a child;
- (3) regulatory violations which immediately jeopardize the health and safety of a child;
- (4) numerous violations, which combined, jeopardize the health and safety of a child;
- (5) repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a child care facility;
- (6) failure of a child care facility to correct violations found during previous surveys or visits;
- (7) intentional misrepresentation regarding condition of the facility;
- (8) effect of a civil monetary penalty on financial viability of the facility; or

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

B. An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency

when the survey or investigation results in citation of regulatory violations comprising class A, class B, and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation.

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

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

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

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

[8.9.4.13 NMAC - N, 11/01/2022]

8.9.4.14 WAIVERS:

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

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

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

D. Requests for waivers may include temporary operating standards following an ECECD recognized disaster.

[8.9.4.14 NMAC - N, 11/01/2022]

8.9.4.15 VARIANCES - CURRENTLY LICENSED FACILITIES:

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

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

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

B. Variances granted will continue in force as long as the child care facility continues to provide services pursuant to these regulations and will not violate the criteria of Subsection A of this section.

C. The licensing authority will grant a variance for those requirements contained in 8.9.4.8 NMAC related regulations and codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.9.4.15 NMAC - N, 11/01/2022]

8.9.4.16 VARIANCES - NEW CHILD CARE FACILITY:

A new child care facility may be located in an existing building or a newly constructed building.

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

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

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

D. The licensing authority may grant a variance for those requirements contained in

8.9.4.8 NMAC related regulations and codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.9.4.16 NMAC - N, 11/01/2022]

8.9.4.17 SURVEYS FOR CHILD CARE FACILITIES:

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

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

C. The licensee, director, or operator, will submit within 10 working days after the date of the survey, a corrective action plan to the licensing authority for deficiencies found during the survey. The corrective action plan will be specific on how and when the child care facility will correct the deficiency or deficiencies.

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

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

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

G. If a facility has video cameras on the premises that has recording capabilities, footage must be accessible to the licensing authority upon request.
[8.9.4.17 NMAC - N, 11/01/2022]

8.9.4.18 COMPLAINTS:

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

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

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

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

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

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

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

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

E. Action by the licensing authority:

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

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

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

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

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

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

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

[8.9.4.18 NMAC - N, 11/01/2022]

8.9.4.19 BACKGROUND CHECKS: Background checks

will be conducted in accordance with the most current regulations related to background checks and employment history verification provisions as promulgated by the Early Childhood Education and Care Department pursuant to 8.9.6 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status. 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 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

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

B. submits an application for transfer and is found eligible pursuant to 8.9.6.11 NMAC.
[8.9.4.19 NMAC - N, 11/01/2022]

8.9.4.20 CHILD CARE CENTER REGULATIONS:

A. APPLICABILITY TO CHILD CARE CENTERS: A center required to be licensed under regulations in 8.9.4.21 NMAC through 8.9.4.29 NMAC is one that provides care, education, services and supervision to children for less than 24 hours a day to children in a non-residential setting, and is not exempted from regulation under any of the exceptions listed in 8.9.4.9 NMAC.

B. NEW OR INNOVATIVE PROGRAMS FOR PROVIDING CHILD CARE TO CHILDREN: A new or innovative service for child care that is typically not governed by these regulations will be licensed if there is a substantiated

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

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

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

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

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

[8.9.4.20 NMAC - N, 11/01/2022]

8.9.4.21 LICENSURE REQUIREMENTS FOR CENTERS:

A. LICENSING REQUIREMENTS:

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

(2) **BACKGROUND CHECK:** The licensing authority will provide a copy of the most current version of the department’s background check and employment history verification provisions, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers or any person who may have unsupervised physical access to children as per the requirements outlined in the department’s most current version of the background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 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 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

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

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

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

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

requirements may apply depending on the size and complexity of the center.

(5)

SCHEDULE: All applications for a new license will include a description of the center’s proposed activities and schedule.

(6) INITIAL

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

B. CAPACITY OF CENTERS:

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

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

(3) Children shall not be cared for in unlicensed areas of the facility.

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

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

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

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

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate

authorities the following incidents.

After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred.

A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(a) a lost, missing or unattended child;

(b) a serious injury;

(c) the abuse or neglect of a child;

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

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

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

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

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

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

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

(2) A center will notify parents or guardians in writing of any incident, including

notifiable illnesses, that have threatened the health or safety of children in the center. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.21 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children’s protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures. [8.9.4.21 NMAC - N, 11/01/2022]

8.9.4.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

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

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

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

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

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

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

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

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

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

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

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

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

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

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

(8) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations (see waivers, Subsection D of 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans and

(9) policies and procedures that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

D. FAMILY HANDBOOK: All facilities using these regulations must have a parent handbook. Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following:

(1) **GENERAL INFORMATION:**

(a) mission statement;

(b) philosophy statement;

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

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

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

(f) daily schedule;

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

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

(i) celebrating holidays, birthdays and parties; and

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

(2) **POLICIES AND PROCEDURES:**

(a) enrollment procedures;

(b) disenrollment procedures;

(c) expulsion procedures;

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

(e) notification of absence;

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

(g) field trip policies;

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

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

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) guidance policy;

(n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

(o) employee cellular telephone usage policy that directs and defines safe and appropriate use.

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

(1) **PERSONAL INFORMATION:**

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

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

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

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

(e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth, or at-risk children and youth as determined by the department;

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

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

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

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

(j) a record of the time the child arrived and left the center and dates of attendance initialed by a parent,

guardian, or person authorized to pick up the child;

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

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

(2) EMERGENCY INFORMATION:

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

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

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

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

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

F. PERSONNEL RECORDS:

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

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a background check and employment history verification; if background check is in process then documentation of the notice of provisional employment showing that it is in process, must be placed in file. A background check must be conducted at least once every five years on all required individuals;

(f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

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

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

(i) emergency contact number;

(j) universal precaution acknowledgment form;

(k) confidentiality form;

(l) results of performance evaluations;

(m) administrative actions or reprimands;

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

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

(p) signed acknowledgement that all staff have reviewed and are aware of the

center’s disaster preparedness plan and evacuation plan; and

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

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

G. PERSONNEL HANDBOOK: The center will give each employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following critical contents:

- (1) organizational chart;
- (2) job descriptions of all employees by title;
- (3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (4) code of conduct;
- (5) training requirements, career lattice, professional development opportunities;
- (6) procedures and criteria for performance evaluations;
- (7) policies on absence from work;
- (8) grievance procedures;
- (9) procedures for resignation or termination;
- (10) copy of licensing regulations;
- (11) policy on parent involvement;
- (12) health policies related to both children and staff;
- (13) policy on sexual harassment;

(14) child guidance policy;

(15) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(16) confidentially statement; and

(17) a plan for retention of qualified staff. [8.9.4.22 NMAC - N, 11/01/2022]

8.9.4.23 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 8.9.6 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 8.9.4.23 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 daily core hours of operation. The licensing authority may require proof of the director’s time on-site. See Paragraph (2) of Subsection F of 8.9.4.22 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 based on the age of the majority of children in the group. 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. All educators shall perform head counts at regular intervals throughout the day.

(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 people who can substitute for any staff member. The list will include the people’s names, telephone numbers, background check, health certificates and record of orientation.

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

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

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

Professional Preparation		Experience
Program Administration The first of three AA-level Early Childhood Program Administration courses in the Early Childhood Program Administration career pathway: <i>Program Management 1</i> Or The National Administrator Credential (NAC)*	and	Child Development/ Early Childhood Education <i>Child Growth, Development and Learning</i> (one of the AA-level “common core courses”)**
The Provisional AA-Level NM Early Childhood Program Administration Certificate (All three AA-level Early Childhood Program Administration Courses and Practicum: <i>Program Management 1, Effective Program Development for Diverse Learners and Their Families & Practicum, Professional Relationships & Practicum</i>)		and
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>)		Two-years experience in an early childhood growth and development setting
The Child Development Associate (CDA) certificate		
The Child Care Professional (CCP) certificate		
The New Mexico Early Childhood Program Administration Certificate		
Montessori Teacher Certification		
The New Mexico One-Year Vocational Certificate		
Associate of Arts (AA) or Applied Sciences (AA or AAS) in child development or early childhood education		
Or		
A bachelor’s degree or higher in early childhood education or a related field. Related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or any bachelor’s degree with a transcript containing two or more Early Childhood courses.		and
		One year of experience in an early childhood growth and development setting

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

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

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

(2)
TRAINING:

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

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

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

(iii) fire prevention measures, emergency evacuation plans and disaster preparedness plans;

(iv) review of licensing regulations;

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

(vi) review of written policies and procedures as defined in Subsection C of 8.9.4.22 NMAC;

(vii) center/parental agreement;

(viii) sanitation procedure;

(ix) written goals of the program;

(x) personnel handbook;

(xi) parent handbook;

(xii) names and ages of children;

(xiii) names of parents;

(xiv) tour of the facility; and

(xv) introduction to other staff and parents.

(b)
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:

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

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

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

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

(v) 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;

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

(vii) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;

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

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

(x) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component; and

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

(c)
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.

(d)
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:

(i) child growth, development and learning;

(ii) health, safety, nutrition and infection control;

(iii) family and community collaboration;

(iv) developmentally appropriate content;

(v) learning environment and curriculum implementation;

(vi) assessment of children and programs; and

(vii) professionalism.

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

(f)
Training provided by center employees, directors, owners, and direct affiliates of the provider shall count for no more than half of the required 24 hours of training each year.

(g)
On-line training courses shall count for no more than 16 hours each year. If the 45-hour entry level course or its

equivalent is taken online, it is exempt from the online training limitation.

(h) 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.

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

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

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

(l) A center will keep a training log on file for all staff 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) A college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours. 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) See Paragraph (6) of Subsection A of 8.9.4.23 NMAC for requirements for 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 8.9.4.23 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 8.9.4.23 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 8.9.4.23 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 Paragraph (1) of Subsection C of 8.9.4.23 NMAC, must be able to clearly demonstrate the intent of group sizing through written procedures that must be approved by ECECD. 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 8.9.4.23 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.
[8.9.4.23 NMAC - N, 11/01/2022]

8.9.4.24 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.

(5) Children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

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. Cribs which have sneeze guards installed may be placed end-to-end as long as they remain easily accessible.

(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 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 physician justifying the sleeping arrangement. A physician's note must contain a timeframe for the specific sleep arrangement. The facility shall adhere to the timeframe recommended by the doctor.

(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. Illumination must be enough to see the entire room, clearly observe sleeping children and allow for quiet activities for non-sleeping children.

(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. Cribs will not be used for storage. Animals and pets will not be allowed in cribs or on sleeping materials.

(3) No child will be allowed to sleep in a playpen, pack and play, car seat, stroller, swings, bouncers or high chairs, or other equipment not intended for sleep purposes.

(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 self-contained 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. Children that are awake should be moved every 30 minutes to offer new stimulation.

(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. Infant rooms shall be arranged so that placement of cribs in an area used by other children does not encroach upon the minimum usable floor space requirements.

(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) Children will not be allowed to walk or run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers will not be tied to the child. Pacifiers that contact the floor or ground will be cleaned and sanitized appropriately.

(15) Foods served will meet the nutritional needs of the infant or toddler. Foods will be developmentally appropriate for each infant served.

(16) A center shall provide an evacuation crib with wheels suitable for the surfaces around the facility and placed closest to the means of egress (exit).

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 and will meet all requirements for nap or rest period in accordance with Paragraphs (3) through (10) of Subsection B of 8.9.4.24 NMAC.

(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. 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, weather permitting, preferably outside. Part-time children shall have a minimum of 30 minutes of physical activity daily, preferably outside. The center will ensure drinking water is available and maintained at a cool temperature while playing 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. Outside play areas must be on the premises and approved by the licensing authority.
- (3) A center will place sufficient energy absorbing surfaces beneath climbing structures, swings, and slides (as determined by Subsection N of 8.9.4.8 NMAC). Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material.

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	8 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 by providing shade (as necessary), sunscreen, proper attire and limiting the time of exposure to the elements. The center must also consider instructions by the child’s parent or guardian. Drinking water should be available as needed and outlined in Paragraph (11) of Subsection I of 8.9.4.24 NMAC.

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 8.9.4.22 NMAC for requirements for permission slips.
- (2) Children will not go to a private residence unless accompanied by two adults.
[8.9.4.24 NMAC - N, 11/01/2022]

8.9.4.25 FOOD SERVICE REQUIREMENTS FOR CENTERS:

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

B. MEALS AND SNACKS:

- (1) A center will provide a child a meal or snack at least every three hours except when the child is sleeping at night.
- (2) A center will serve, if necessary, a child a therapeutic or special diet with written prescription/ diet orders from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the center staff.
- (3) A center shall make water freely available to children.
- (4) A center that provides daily meals and snacks shall plan these to meet the minimum standards

in the CACFP and to be consistent with the USDA's current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

(a)

Only one hundred percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent or vegetable juice may be diluted with water.

(b)

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

(c)

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

(5) A center

shall vary snacks each day and shall include a selection of two different food group components from the four food group components.

C. MENUS:

(1) Menus

shall include a variety of foods. The same menu will not be served twice in one week.

(2)

Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.

(3) Dated

weekly menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

D. KITCHENS:

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

(1) A center

will not allow children in the kitchen except under careful supervision.

(2) A food

preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A center

will serve food promptly and refrigerate immediately after use.

(4) A center

will protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A center will label and date all leftover food.

(5) If food

is brought from the child's home, a center will label it with the child's name and refrigerate if necessary. A center will label and refrigerate bottles of infant formula or breast milk. The center must ensure children are fed the food or bottle provided by their parent/guardian and as instructed by them.

(6) A center's

refrigerators and separate freezers will have working internal thermometers and keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below, and frozen food at zero degrees Fahrenheit or below.

(7) A center

will discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

(8) A

center will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: a) wash with soapy water; b) rinse with clean warm water; and c) sanitize. Disposable plates and cups and plastic utensils of food-grade, medium weight may be used for single service, but Styrofoam cups may not be used.

(9) A center

will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(10) A center

shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A center

will equip dining areas with tables,

chairs, eating utensils and dishes appropriate to the age of the children served and sanitize the areas before and after use.

(2) Staff/

child ratios and group size must be maintained at meal times.

(3) Adults

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

(4) Time

allowed for meals shall enable the children to eat at reasonable rate.

(5) A center

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

[8.9.4.25 NMAC - N, 11/01/2022]

8.9.4.26 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;

(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 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.

[8.9.4.26 NMAC - N, 11/01/2022]

8.9.4.27 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

(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.

[8.9.4.27 NMAC - N, 11/01/2022]

8.9.4.28 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 fully-charged 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, use e-cigarettes or vaporizers 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.

J. At all times, drivers will have a way to communicate to the facility the number of children being transported. Drivers will maintain a log to include the name of child, drop off and pick up times of all children being transported. The log will be kept for a minimum of 12 months for review.

[8.9.4.28 NMAC - N, 11/01/2022]

8.9.4.29 BUILDING, GROUNDS AND SAFETY REQUIREMENTS FOR CENTERS:

A. HOUSEKEEPING:

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

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

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

B. PEST CONTROL:

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

(2) The licensed applicator may not apply

pesticides when children are on the premises.

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

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides, herbicides, and other natural repellants and kept out of reach of children.

C. MECHANICAL SYSTEMS:

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

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

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

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

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

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

E. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

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

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

(3) Use of electrical cords and outlets:

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

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

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

F. EXITS AND WINDOWS:

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

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

(a) All exits must be marked, including fire exits, by signs having letters at

least six inches high whose principal strokes are at least three-fourths of an inch wide.

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

(c) All activity spaces for children under the age of two and a half years shall be on the "level of exit discharge" or ground floor.

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

(4) Activity areas for children must have windows or skylight area of at least one-twentieth of the floor area. A skylight means an opening in a roof or ceiling, framed, and fitted with glass for admitting natural light. A skylight is also a tubular skylight, solar tube, or light tunnel. Tubular skylights are devices which uses a rooftop dome to transfer light indoors through reflective tubing running from the roof to the ceiling. Natural lighting received from an adjacent room will not meet the natural lighting requirements.

G. TOILET AND BATHING FACILITIES:

(1) A center shall have one sink in any room for infants, toddlers, and combination thereof. Centers licensed after November 30, 2012 shall have one sink and one toilet in any room that has children ages 24 - 35 months, which shall be used exclusively by the children in this room. All sinks referred to in this paragraph shall have permanent plumbing, hot and cold running water, and shall not be used for food preparation or bottle cleaning. A basin with multiple compartments with a shared faucet will be considered one sink.

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

(3) All closets and bathroom locks must have an

outside release. A center will enclose all bathrooms. Bathrooms must be accessible and functional.

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

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

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

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

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

H. SAFETY COMPLIANCE:

(1) A center will conduct emergency preparedness practice drills at least quarterly beginning January of each calendar year.

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

(3) A center will:

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

(b) use the fire alarm or detector system;

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

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

(e) a center shall request an annual fire inspection from the fire authority having jurisdiction over the center; if the policy of the fire authority having jurisdiction does not provide for an annual inspection of the center, the center must document the date the

request was made and to whom; a copy of the latest inspection must be posted in the center;

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

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

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

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

(j) a center must be equipped with carbon monoxide detectors to cover all licensed areas of the center if the child care program uses any sources of coal, wood, charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions.

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

(l) fire extinguishers, alarm systems, automatic detection equipment, and

other firefighting must be properly maintained and inspected on a least yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection E of 8.9.4.29 NMAC for emergency lighting requirements.

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

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

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

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

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

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

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

[8.9.4.29 NMAC - N, 11/01/2022]

8.9.4.30 FAMILY CHILD CARE HOME AND GROUP CHILD CARE HOME REGULATIONS:

APPLICABILITY: A private dwelling required to be licensed under regulations in 8.9.4.31 NMAC through 8.9.4.38 NMAC which meets one of the following criteria.

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

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

[8.9.4.30 NMAC - N, 11/01/2022]

8.9.4.31 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 8.9.4.19 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 (8.9.6 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 8.9.6 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 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 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 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. Children shall not be cared for in unlicensed areas of the home.

(6) The home will have an outdoor play area, which must be contained by a fence. Outside play areas must be on the premises or approved by the licensing authority.

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 or unattended 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. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.31 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.

[8.9.4.31 NMAC - N, 11/01/2022]

8.9.4.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

A.

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

(1) all

licenses, certificates, and most recent

inspection reports of all state and local government agencies with jurisdiction over the home;

(2) the current

child care regulations;

(3) the

guidance policy;

(4) the

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

(5) an up

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

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

(1) mission

statement;

(2) philosophy

statement; and

(3) curriculum

statement.

C. PARENT

HANDBOOK: All facilities using these regulations must have a parent handbook. Upon updating the parent handbook, changes must be approved and submitted to licensing and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following:

(1) GENERAL

INFORMATION:

(a)

mission statement;

(b)

philosophy statement;

(c)

program information (location,

license information, days and hours of operation, services offered);

(d)

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

(e)

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

(f)

daily schedule;

(g)

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

(h)

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

(i)

celebrating holidays, birthdays and parties; 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)

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

(d)

fee payment procedures, including penalties for tardiness;

(e)

notification of absence;

(f)

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

(g)

field trip policies;

(h)

health policies (program's policies

on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i)

emergency procedures, safety policies, and disaster preparedness plan;

(j)

snow days and school closure;

(k)

confidentiality policy;

(l)

child abuse/neglect reporting procedure;

(m)

guidance policy;

(n)

anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

(o)

employee cellular telephone usage policy that directs and defines safe and appropriate use.

D. CHILDREN'S

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

(1)

PERSONAL INFORMATION:

(a)

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

(b)

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

(c)

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

(d)

date the child first attended the home

and the date of the child's last day at the home;

(e)

a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth, or at-risk children and youth as determined by the department;

(f)

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

(g)

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

(h)

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

(i)

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

(j)

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

(k)

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

(2)

EMERGENCY INFORMATION:

(a)

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

(b)

the name and telephone number of two people to contact in the local

area in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times.

(c)

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

(d)

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

(e)

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

E. PERSONNEL

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

(1)

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

(2)

An annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC.

(3)

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

(4)

A written plan for ongoing professional development for each educator that is based on the seven areas of competency, consistent with the

career lattice, and based on the individual's goals. Family child care homes who do not have employees are exempted from this requirement.

F. PERSONNEL

HANDBOOK: The educator will give each non-resident employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following critical contents:

- (1) job description of second educator;
- (2) benefits, if provided, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (3) code of conduct;
- (4) training requirements, professional development opportunities;
- (5) procedures and criteria for performance evaluations;
- (6) policies on absence from work;
- (7) procedures for resignation or termination;
- (8) copy of licensing regulations;
- (9) policy on parent involvement;
- (10) health policies related to both children and staff;
- (11) policy on sexual harassment;
- (12) child guidance policy;
- (13) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);
- (14) confidentially statement;

(15) plan for retention of qualified staff; and
 (16) employee cellular telephone usage policy that directs and defines safe and appropriate use.
 [8.9.4.32 NMAC - N, 11/01/2022]

8.9.4.33 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. Providers and secondary caregivers shall perform head counts at regular intervals throughout the day.

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) 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;

(b) health, safety, nutrition and infection control;

(c) family and community collaboration;

(d) developmentally appropriate content;

(e) learning environment and curriculum implementation;

(f) assessment of children and programs; and

(g) professionalism.

(4) 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.

(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 (3).

(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.

(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. [8.9.4.33 NMAC - N, 11/01/2022]

8.9.4.34 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.

(5) Children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

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 physician justifying the sleeping arrangement. A physician's note must contain a timeframe for the specific sleep arrangement. The facility shall adhere to the timeframe recommended by the doctor.

(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.

Illumination must be enough to see the entire room, clearly observe sleeping children and allow for quiet activities for non-sleeping children.

(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 the most current 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. No child shall be allowed to sleep in a play pen, pack and play, infant swing, car seat and/or bouncer. Only a crib meeting the CPSC 16 CFR 1219 or 1220 guidelines will be allowed.

(3) No child will be allowed to sleep in a playpen, pack and play, car seat, stroller, swings, bouncers or highchairs, or other equipment not intended for sleep purposes.

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

(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. Children that are awake should be moved every 30 minutes to offer new stimulation.

(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) Children will not be allowed to walk or run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers will not be tied to the child. Pacifiers that contact the floor or ground will be cleaned and sanitized appropriately.

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

(13) 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. The provider will ensure drinking water is available and maintained at a cool temperature while playing 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. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection N of 8.9.4.8 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 by providing shade (as necessary), sunscreen, proper attire and limiting the time of exposure to the elements. The provider must also consider instructions by the child’s parent or guardian. Drinking water should be available as needed and outlined in Paragraph (9) of Subsection I of 8.9.4.34 NMAC.

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 8.9.4.32 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.
[8.9.4.34 NMAC - N, 11/01/2022]

8.9.4.35 FOOD SERVICE REQUIREMENTS FOR HOMES:

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

B. MEALS AND SNACKS:

(1) A home will provide a child a meal or snack at least every three hours except when the child is sleeping at night.

(2) A home will serve if necessary a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the educators.

(3) A home shall make water freely available to children.

(4) A home that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA’s current dietary guidelines for Americans, to include the following. Parents of children who have special dietary

needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

(a)

Only one hundred percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than one hundred percent or artificially flavored drinks for meals or snacks is prohibited. one hundred percent fruit or vegetable juice may be diluted with water.

(b)

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

(c)

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

(5)

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

C. MENUS:

(1)

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

(2)

Menus shall be posted at least one week in

advance, in a conspicuous place, for review by parents, educators and children.

(3)

Menus shall include a variety of foods. The same menu will not be served twice in one week.

D. KITCHENS:

(1)

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

(2)

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

(3)

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

(4)

A home will protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A home will label and date all leftover food.

(5)

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

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

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

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

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

(10) A home will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

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

E. MEAL TIMES:

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

(2) A home will provide sanitary cups or glasses for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home will not allow children to share drinking or eating utensils. Disposable plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups may not be used at any time.

(3) Time allowed for meals shall enable children to eat at a reasonable rate. [8.9.4.35 NMAC - N, 11/01/2022]

8.9.4.36 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;

(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.

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

B. FIRST AID REQUIREMENTS:

(1) A 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 8.9.4.36 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) 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. [8.9.4.36 NMAC - N, 11/01/2022]

8.9.4.37 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, fully-charged 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, use e-cigarettes or vaporizers 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.

H. Vehicles operated by the home provider 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 provider will ensure the vehicle is heated.

I. Providers will conduct frequent head counts on all trips and when loading and unloading the vehicle. [8.9.4.37 NMAC - N, 11/01/2022]

8.9.4.38 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES:

A. HOUSEKEEPING:

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

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

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

B. PEST CONTROL:

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

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

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

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides, herbicides, weed killer and other natural repellants.

C. MECHANICAL SYSTEMS:

(1) A home will maintain comfortable

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

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

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

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

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

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

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

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

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

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

E. EXITS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be useable for an emergency exit. All activity spaces for children under the age of two and a half years shall be on the "level of exit discharge" or ground floor.

F. TOILET AND BATHING FACILITIES:

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

(2) All closets and bathroom locks must have an outside release. A home will enclose all bathrooms. Bathrooms must be accessible to the children in care and fully functional.

G. SAFETY COMPLIANCE:

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

(2) A home must be equipped with carbon monoxide detectors to cover all licensed areas of the home if the child care program uses any sources of coal, wood, charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions.

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

(4) A home 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 home 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.

(5) A home will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. Emergency numbers shall be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only telephone in the home. The cellular telephone will remain in the same room, always charged and accessible to a caregiver.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home will prohibit smoking, e-cigarettes, vaporizers, and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. A home will unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. PETS:

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

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

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

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

(5) An educator must be physically present during the handling of all pets or other animals.
[8.9.4.38 NMAC - N, 11/01/2022]

8.9.4.39 REGULATIONS FOR PROGRAMS OFFERING ONLY OUT OF SCHOOL TIME CARE: APPLICABILITY: A child care program required to be licensed under 8.9.4.40 NMAC through 8.9.4.47 NMAC of this regulation provides a variety of developmentally appropriate activities that are both educational and recreational at a specific site, usually a school, on a regular basis before or after school or when school is not in regular session to children age five to 18 years, and not exempted from regulation under any of the exceptions listed in 8.9.4.9 NMAC.
[8.9.4.39 NMAC - N, 11/01/2022]

8.9.4.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:
A. LICENSING REQUIREMENTS:

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

(2) A program will submit a new application to the licensing authority before changing

anything that is stated on the license such as dates, capacity, director, address, etc.

(3) BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department’s background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department’s background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 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 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) ZONING, BUILDING AND OTHER APPROVALS: An applicant will use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department’s requirements. Acceptable documents will be provided to the licensing authority before licensure. Otherwise, an applicant will have:

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

(b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

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

(d) current written approval from the New Mexico environment department or other environmental health authority for:

(i) a kitchen, if meals are prepared and served on site in the program;

(ii) private water supply, if applicable;

(iii) private waste or sewage disposal, if applicable; and,

(iv) a swimming pool, if applicable.

(5) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES: Accessibility for individuals with disabilities is provided in all new facilities and will include the following.

(a) Main entry into the facility is level or has a ramp to allow for wheelchair access.

(b) Building layout allows for access to the main activity area.

(c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.

(d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.

(e) Ramps exceeding a six-inch rise are provided with handrails.

(f) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the facility.

(6) SCHEDULE: All applications for a new license will include a description of the programs proposed activities and schedule.

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

B. CAPACITY OF A PROGRAM:

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

(2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site. Children shall not be cared for in unlicensed areas of the facility.

(3) A program must meet the following space requirements:

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

(b) A program must have an outdoor activity space.

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

C. INCIDENT REPORTING REQUIREMENTS:

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

(a) a lost, missing, or unattended child;

(b) a serious injury;

(c) the abuse or neglect of a child;

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

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

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

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

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

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

(2) A program will notify parents and guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.40 NMAC. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury.

(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. [8.9.4.40 NMAC - N, 11/01/2022]

8.9.4.41 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. FAMILY HANDBOOK: All facilities using these regulations must have a family handbook. Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The family handbook will include the following.

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

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

<p>(d) name of director and how he/she may be reached;</p>	<p>(m) guidance policy;</p>	<p>guardian; these records may be kept at a central location;</p>
<p>(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);</p>	<p>(n) emergency procedures, safety policies, and disaster preparedness plan;</p>	<p>(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;</p>
<p>(f) daily schedule;</p>	<p>(o) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and</p>	<p>(g) a record of the time the child arrived and left the program and dates of attendance initiated by a parent, guardian, or person authorized to pick up the child; and</p>
<p>(g) a statement supportive of family involvement that includes an open door policy to the classroom;</p>	<p>(p) employee cellular telephone usage policy that directs and defines safe and appropriate use.</p>	<p>(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.</p>
<p>(h) appropriate dress for children, including request for extra change of clothes;</p>	<p>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:</p>	<p>(2) EMERGENCY INFORMATION:</p>
<p>(i) celebrating holidays, birthdays and parties; and</p>	<p>(1) PERSONAL INFORMATION:</p>	<p>(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;</p>
<p>(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.</p>	<p>(a) name of the child; date of birth, gender, home address, mailing address and telephone number;</p>	<p>(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;</p>
<p>(2) POLICIES AND PROCEDURES:</p>	<p>(b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, and pager, cellular and work telephone numbers;</p>	<p>(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;</p>
<p>(a) enrollment procedures;</p>	<p>(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;</p>	<p>(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.</p>
<p>(b) disenrollment procedures;</p>	<p>(d) date the child first attended the program and the date of the child's last day at the program;</p>	<p>E. PERSONNEL RECORDS:</p>
<p>(c) expulsion procedures;</p>	<p>(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</p>	<p>(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with</p>
<p>(d) fee payment procedures, including penalties for tardiness;</p>		
<p>(e) notification of absence;</p>		
<p>(f) fee credits, if any (e.g. for vacations, absences, etc.);</p>		
<p>(g) field trip policies;</p>		
<p>(h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);</p>		
<p>(i) emergency procedures and safety policies;</p>		
<p>(j) snow days and school closure;</p>		
<p>(k) confidentiality policy;</p>		
<p>(l) child abuse/neglect reporting procedure;</p>		

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 except the following items which shall be kept on site: background clearances, abuse and neglect statements, staff emergency numbers and first aid/CPR certificates. 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 8.9.6 NMAC. A copy must be kept onsite;
- (g) documentation of first-aid and cardiopulmonary resuscitation 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. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook will include 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) employee cellular telephone usage policy that directs and defines safe and appropriate use.

(16) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(17) child guidance policy;

(18) confidentiality statement;

(19) 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 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans; and

(20) 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. [8.9.4.41 NMAC - N, 11/01/2022]

8.9.4.42 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 8.9.6 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 8.9.4.42 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 8.9.4.42 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) 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) 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.

(6) Program administrators may count hours in personnel and business training toward the training requirement. [8.9.4.42 NMAC - N, 11/01/2022]

8.9.4.43 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.
 - (5) Children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.
- 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; and
 - (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. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection N of 8.9.4.8 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.
- (4) Licensees shall protect children from the sun during outdoor play by providing shade (as necessary), sunscreen, proper attire and limiting the time of exposure to the elements. The program must also consider instruction by the child’s parent or guardian. Drinking water shall be available as needed and maintained at a cool temperature while children are playing outside.

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 8.9.4.41 NMAC for requirements concerning field trip permission slips.

(2) Children will not go to a private residence unless accompanied by two adults. [8.9.4.43 NMAC - N, 11/01/2022]

8.9.4.44 FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

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

B. MEALS AND SNACKS:

(1) A program will provide a child a meal or snack at least every three hours.

(2) A program will serve a child a therapeutic or special diet with a written prescription/diet order from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the program staff.

(3) A program will serve snacks each day and will include a selection of two different food group components from the four food group components.

(4) A program shall serve only one hundred percent fruit or vegetable juice. The use of fruit drinks that contain less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent fruit or vegetable juice may be diluted with water.

(5) A program shall serve a wide variety of fruits and vegetables, with a preference for fresh or frozen fruits and vegetables over canned.

(6) A program shall make water freely available to children.

(7) Menus shall contain a variety of foods. The same menu must not be served twice in one week.

C. KITCHENS:

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

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

(3) A program will serve food promptly and refrigerate immediately after use.

(4) A program will discard any leftover milk.

(5) A program will keep food requiring refrigeration, at 41 degrees Fahrenheit or below and frozen food at 0 degrees Fahrenheit or below.

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

(7) A program will protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A program will label and date all leftover food.

(8) A program will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps:

(a) wash with soapy water;

(b) rinse with clean warm water; and

(c) sanitize

(9) A program will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

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

(11) A program will provide sanitary cups or glasses or a drinking fountain for drinking water. A program will not allow children to share drinking or eating utensils.

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

(13) Disposable plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups shall not be used at any time. [8.9.4.44 NMAC - N, 11/01/2022]

8.9.4.45 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;

(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.

[8.9.4.45 NMAC - N, 11/01/2022]

8.9.4.46 TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. All vehicles used for transportation of children will have an operable, fully-charged 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, use e-cigarettes or vaporizers 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.

I. Providers will conduct frequent head counts on all trips and when loading and unloading the vehicle.
[8.9.4.46 NMAC - N, 11/01/2022]

8.9.4.47 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. HOUSEKEEPING:

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

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

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

B. PEST CONTROL:

(1) All licensed programs must use a New Mexico licensed applicator whenever applying pesticides in or on the program's buildings and grounds.

(2) The applicator may not apply pesticides when children are on the premises.

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

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

C. MECHANICAL SYSTEMS:

(1) A program will maintain comfortable temperatures (68 degrees Fahrenheit through 82 degrees Fahrenheit) in all rooms used by children. A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees Fahrenheit in the summer

months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

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

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

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

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

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

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

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

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

(3) Use of electrical cords and outlets:

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

(b)

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

E. EXITS AND

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

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

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

F. TOILET AND BATHING FACILITIES:

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

(2) All toilets and sinks must be accessible, functional, and located within 100 feet of the licensed area. The staff member shall maintain a direct line of sight of the child until the child enters the bathroom and from the time the child leaves the bathroom until the child returns. A staff member will accompany children to the bathroom door when maintaining a line of sight is impossible due to bathrooms being not located within a direct line of sight.

G. SAFETY COMPLIANCE:

(1) A program will conduct emergency preparedness practice drills at least quarterly beginning of each school calendar year.

(2) A program will conduct at least one fire drill each month. A program will:

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

(b) use the fire alarm, detector system or a simulated fire alarm;

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

(d) a program will keep on file a record of the drills with the date, time, number of adults and children participating, and any problems encountered during the drills. Records will be kept for one year.

(3) A program shall request an annual fire inspection from the fire authority having jurisdiction. If the policy of the fire authority having jurisdiction does not provide for an annual inspection of the program, the program must document the date the request was made and to whom. A copy of the latest inspection must be posted in the program.

(4) A program will post evacuation plans for each room used by children in the appropriate room.

(5) A program will keep a working telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. A pay phone will not fulfill this requirement. If cordless phones are used, emergency numbers shall be posted on the phone itself. Facilities shall post the program's telephone number and address in a conspicuous location next to the emergency phone numbers.

(6) A program must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement.

(7) A program must have a minimum of two fully-charged 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the program.

(8) Fire extinguishers, alarm systems, automatic detection equipment, and other firefighting must be properly maintained and inspected on at least a yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection D of 8.9.4.47 NMAC for emergency lighting requirements.

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

I. PETS:

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

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

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

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

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

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

[8.9.4.47 NMAC - N, 11/01/2022]

HISTORY OF 8.9.4 NMAC: [RESERVED]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

**TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 5 NON-LICENSED CHILD CARE; REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES**

8.9.5.1 ISSUING AGENCY: Early Childhood Education and Care Department ("ECECD").
[8.9.5.1 NMAC - N, 11/01/2022]

8.9.5.2 SCOPE: All non-licensed family child care homes within the state of New Mexico who are intending to participate in the child and adult care food program or the child care services programs.
[8.9.5.2 NMAC - N, 11/01/2022]

8.9.5.3 STATUTORY AUTHORITY: The requirements (regulations) set forth herein, are established pursuant to the federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, the New Mexico Public Health Act, Sections 24-1-2 and 24-1-5 NMSA 1978, and the New Mexico Children's Code, Section 32A-15-3 NMSA 1978. These regulations are promulgated by the authority set forth in Subsection E of Section 9-29-6 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) with Early Child Education and Care Department, are health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978. See also Paragraph (3) of Subsection

A of Section 9-29-3 NMSA 1978.
[8.9.5.3 NMAC - N, 11/01/2022]

8.9.5.4 DURATION:
Permanent.
[8.9.5.4 NMAC - N, 11/01/2022]

8.9.5.5 EFFECTIVE DATE: November 1, 2022, unless a later date is cited at the end of a section.
[8.9.5.5 NMAC - N, 11/01/2022]

8.9.5.6 OBJECTIVE:
The objective of 8.9.5 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulation 8.9.4 NMAC to participate in the federal child and adult care food program and the state and federal child care assistance programs through the registration process. The objective of 8.9.5 NMAC is also to establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).
[8.9.5.6 NMAC - N, 11/01/2022]

8.9.5.7 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;
 - (c) punishment that is hazardous to the physical, emotional or mental state of the child; and
 - (d) 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) **“Adult”**
means a person who has a chronological age of 18 years or older.

(3) **“Attended”**
means the physical presence of a staff member of educator supervising children under care. Merely being within eyesight of hearing of the children does not mean actively engaged or meet the intent of this definition.

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

C. Terms beginning with the letter “C”:

(1) **“Care”**
means the provisions of what is necessary to meet the needs of the health, welfare, maintenance, and protection of a child.

(2) **“Cease and desist letter”** means a formal letter from the registered authority to a provider outlining any ongoing violation of applicable regulations and providing 24 - 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the registered authority.

A cease and desist letter is usually issued when a registered care giver violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the registered authority will take if the violation(s) is not corrected by that deadline.

(3) **“Child”**
means any person who is under the chronological age of 18 years.

(4) **“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.

(5) **“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).

(6) **“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.

(7) **“Clean”**
means to physically remove all dirt and contamination.

(8) **“Conditions of operation”** means a written plan that applies to a registered home and is developed by the licensing authority when the registered authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the caregiver must take within a specified timeframe.

(9) **“Corrective action plan”** means the plan submitted by the caregiver addressing how and when identified deficiencies will be corrected.

D. Terms beginning with the letter “D”:

(1) **“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.

(2) **“Drop-in”** means a child who attends a child care home on an occasional or unscheduled basis to include children who come to play with provider’s children without parent being present.

E. Terms beginning with the letter “E”:

(1) **“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.

(2) **“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.

(3) **“Exploitation”** of a child consists of the act or process, performed intentionally, knowingly, or recklessly, or 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”: **“Family, friend or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

G. Terms beginning with the letter “G”: **“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 registered under these regulations where children receive care, services, and supervision. The caregiver will reside in the home and be the primary caregiver. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special considerations will be made for homes on tribal lands.

(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 subparagraphs (a) through (c) of this Paragraph.

I. Terms beginning with the letter “I”:

(1) **“Infant”** means a child from birth to 12 months.

(2) **“In-home care”** means care provided in the child’s own home. In-home care registrations are limited to care of children with documented special needs or a medical condition, and the siblings of qualifying child. In-home care registrations must comply with the following:

(a) 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.

(b) Parents or guardians are responsible for submitting documentation from a medical professional detailing the need for in-home care.

(c) Parent or guardians must consent to initial and annual inspections in accordance with 8.9.5.13 NMAC.

(d) In-home care registrations are exempt from the health and safety requirements outlined in Subsections C, D, E, F, G, H, I, J, R, T, U, V, W, X, Z of 8.9.5.22 NMAC; 8.9.5.23 NMAC; and Subsections D and I of 8.9.5.25 NMAC.

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

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

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

M. Terms beginning with the letter “M”: **“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) **“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.

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

(3) **“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.

(4)

“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.

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

P. Terms beginning with the letter “P”:

(1) **“Pacifier”**

means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2)

“Premises” means all parts of the buildings, grounds, and equipment of a non-licensed home pursuant to these regulations.

(3) **“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.

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

R. Terms beginning with the letter “R”:

(1)

“Registered authority” means the child care services bureau - regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department (ECECD).

(2)

“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.

(3)

“Registered family child care food-only 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 only and does not participate in the state and federal child care assistance program.

(4) **“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.

S. Terms beginning with the letter “S”:

(1) **“Serious**

injury” means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(2)

“Significant amount of time” means someone who is on the premises for more than one hour per day during hours of care.

(3)

“Substantiated” means an incident or complaint determined to factual, based on an investigation of events.

(4)

“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 8.9.6 NMAC governing background checks and employment history verification provisions.

(5)

“Supervision” means the direct observation and guidance of children at all times and requires being physically present with them.

(6) **“Survey”**

means a representative of ECECD’s authority to enter a home, observes activity, examine the records and premises, interviews parents 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)

“Unattended” means a caregiver is not physically present with a child or children under care.

(2)

“Unsubstantiated” means an incident or complaint not determined to be factual based on an investigation of events.

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

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

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

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

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

[8.9.5.7 NMAC - N, 11/01/2022]

8.9.5.8 APPLICATION:

A. An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must apply as a registered family child care home by submitting an application, receiving an on-site health and safety inspection by ECECD, completing the registration process and paying the processing charge. One primary caregiver per household can be registered or licensed with CCSB. All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are exempt. Primary caregivers must provide photo identification to prove identity and documentation of proof of address.

B. An applicant will complete an application form provided by the registered 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 applicant 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. In home care registrations are exempt from the application fee.

C. A home will submit a new application to the registered authority before changing anything required to be stated on the registration such as: change of name, dates, status or address.
[8.9.5.8 NMAC - N, 11/01/2022]

8.9.5.9 REGISTERED AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY):

The child care services bureau - regulatory oversight unit of the early education, care and nutrition division of ECECD, hereafter called the registered authority, has been granted the responsibility by ECECD for the administration and enforcement of these regulations pursuant to the Early Childhood Education and Care Department Act, Sections 9-29-1 to 9-29-12 NMSA 1978, as amended.
[8.9.5.9 NMAC - N, 11/01/2022]

8.9.5.10 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 8.9.6 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 8.9.6 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. A substitute caregiver is anyone who provides care repeatedly or in reasonably foreseeable circumstances and must have the required background checks and training.

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

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

H. 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 original 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) awareness with a pediatric component; and

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

I. 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.

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

K. 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.

L. Primary and substitute caregivers are required to obtain current first aid and CPR certification with a pediatric component prior to becoming registered and maintain this certification 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.

M. 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.

[8.9.5.10 NMAC - N, 11/01/2022]

8.9.5.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.9.6 NMAC governing background checks and employment history verification provisions as promulgated by ECECD. 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 8.9.6 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 8.9.6.11 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 (8.9.6 NMAC). A household member reaching the age of 18, must submit their background check in accordance with the most current provisions of 8.9.6 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 8.9.6 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 months.

[8.9.5.11 NMAC - N, 11/01/2022]

8.9.5.12 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 ECECD, by submitting a registration application and paying the processing charge with cashier’s check or a money order. In-home care registrations are exempt from the application fee.

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 ECECD and sponsoring agencies.

[8.9.5.12 NMAC - N, 11/01/2022]

8.9.5.13 VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY:

Caregivers will grant the registered authority representative the right to enter the premises and, conduct visits, including unannounced and complaint investigations when child care children are present and during the caregiver’s stated normal hours of operation.

A. The registered authority will conduct a survey at least once a year at each registered residence using these regulations as the criteria. The registered authority will conduct additional surveys or visit the registered residence additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate any complaints.

B. Upon the completion of a survey, the registered authority will discuss the findings with the caregiver or their substitute caregiver and will provide an official written report of the findings and a request for a plan or plans of correction, if appropriate. Each survey will be made available for review on a public web portal.

C. By applying for either a new registration or a registration renewal, the caregiver grants the registering authority representative the right to enter the premises and survey the registered residence, including inspecting and copying of child care records, both while the application is being processed and, if registered, at any time during the registration period.

D. The registering authority may or may not announce a survey. A substitute caregiver knowledgeable in the daily operations, that has access to all records and locked areas, and can represent the caregiver for survey purposes, must be present in the residence if the primary caregiver is not present.

[8.9.5.13 NMAC - N, 11/01/2022]

8.9.5.14 NON-TRANSFERABILITY OF REGISTRATION:

A. The primary caregiver’s registration agreement is personal, and not transferable to any other person or location.

B. A registration will expire automatically at midnight of the expiration date unless earlier suspended or revoked, or:

- (1) if the primary caregiver moves; or

(2) changes their name.

C. If the primary caregiver moves to a new location or has a change of name, the primary caregiver must register again by submitting a new application and pay the processing charge. The caregiver must report a new location or change of name prior to the occurrence and receive a new on-site health and safety inspection by ECECD.

D. A caregiver with only a change in name will not need to pay an amended fee or processing charge.

[8.9.5.14 NMAC - N, 11/01/2022]

8.9.5.15 INCIDENT REPORTS: Registered caregiver shall notify the appropriate authorities immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger. After making a report to the appropriate authorities, the caregiver shall notify ECECD of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report shall first be made by telephone and followed with written notification. The caregiver shall report to the appropriate authorities the following incidents, including but not limited to:

A. Any incident that has threatened or could threaten the health and safety of children, including but not limited to:

- (1) a lost, missing child or unattended child;
- (2) a serious injury;
- (3) the suspected abuse or neglect of a child;
- (4) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
- (5) any of the illnesses on the current list of notifiable diseases and communicable published by the office of epidemiology of the New Mexico department of health;
- (6) any legal action against a caregiver or household member;

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

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

(9) any known change in a caregiver’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.

B. A home will notify parents or guardians in writing of any incident, including notifiable illnesses that have threatened the health or safety of children in the home. The provider shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The provider shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Subsection A of 8.9.5.15 NMAC.

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

[8.9.5.15 NMAC - N, 11/01/2022]

8.9.5.16 COMPLIANCE:

By completing the ECECD registration process and annual renewals, the primary caregiver is agreeing to comply with these regulations to include the following:

A. The primary caregiver agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

B. The caregiver must grant the registered authority the right

to enter the premises and survey the caregiver's home and the inspection and copying of records. This includes any investigations which are announced or un-announced. [8.9.5.16 NMAC - N, 11/01/2022]

8.9.5.17 NON-COMPLIANCE:

A. ECECD may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with these regulations, or is unable to maintain compliance with registration standards.

B. Violation of any provisions of these regulations, especially when the registered authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children may be grounds to suspend, revoke, issue a cease and desist letter or decline to renew registration include but are not limited to:

- (1) failure to comply with the group composition requirement;
- (2) any health and safety violations which place the children in immediate danger, including but not limited to:
 - (a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;
 - (b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface; and
 - (c) unlocked or unsecured firearms and weapons in the home;
- (3) background check denial or suspension;
- (4) failure to timely obtain required background checks;
- (5) misrepresentation or falsification of any information given to ECECD or CACFP;

(6) failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;

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

(8) discovery of repeat violations of these regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous certification periods;

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

(10) substantiated non-compliance with caregiver requirements to care for children in the registered home as defined in these regulations;

(11) substantiated abuse or neglect of children by the caregiver or household member as determined by the Children, Youth and Families Department (CYFD), ECECD or a law enforcement agency;

(12) allowing any person to be active in the child care home who is or would be disqualified as a primary caregiver under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC; this will include all adults and teenaged children living in a family child care home operated in a private residence whether or not they are active in the child care operation;

(13) situations where the children in care are placed in unreasonable or unnecessary danger, including but not limited to: evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender

maintaining residence in the home, a convicted sex offender in the home when children are present, accusations of sexual child abuse against a caregiver or household member, or pending the outcome of a child protective services referral; and

(14) any serious violation or other circumstance which reasonably leads the department to determine that the caregiver cannot reliably safeguard the health and safety of children.

C. Commencement of an ECECD, CYFD, or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

D. A suspension, revocation, or conditions of operations imposed pursuant to part A of this section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

E. The Early Childhood Education and Care Department notifies the primary caregiver in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The primary caregiver may obtain an administrative appeal of the department's action.

F. The child care services bureau notifies the family nutrition bureau of any revocation or suspension of registration for a primary caregiver participating in the child care assistance programs.

G. Primary caregivers whose registration has previously been suspended or revoked may re-apply for registration through the regular registration process. The child care services bureau may consider the reasons for the previous action, as well as changed and

current circumstances, in determining whether to allow the new application. The Early Childhood Education and Care Department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

H. The Early Childhood Education and Care Department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to maintain registered status. Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the primary caregiver’s home.

Examples:

(1) The department may require caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

(2) The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to health or safety, or otherwise create a risk of harm to children.

I. Caregivers who are required to implement actions or to agree to conditions pursuant to Subsections G or H, are notified in writing, and shall have the opportunity for administrative appeal.

J. There shall be no right to an appeal or administrative review when the registered authority issues a cease and desist letter; provided, however, that the registered care giver shall have the right to an appeal or administrative review of any subsequent action taken by the registered authority as set forth herein.

[8.9.5.17 NMAC - N, 11/01/2022]

8.9.5.18 COMPLAINTS:

A. Complaints received by ECECD shall be investigated promptly.

B. An authorized ECECD representative receiving complaints will ask complainants to identify themselves and provide all information necessary to document the complaint.

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

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

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

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

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

D. The caregiver shall cooperate in good faith with any investigation by the authorized ECECD authority. Obstruction of an investigation may subject the primary caregiver to sanctions, up to and including revocation.

E. Action by the authorized ECECD representative:

(1) The registered authority will provide a written letter on the results of the investigation to the registered home primary caregiver that is the subject of the complaint and the complainant if an action is taken.

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

(3) If the

authorized ECECD representative finds that a complaint is substantiated, it will make the complaint part of the authorized ECECD file on the child care registered home. The following additional actions will, at the discretion of the authorized ECECD representative, be taken:

(a) the ECECD authority will require the registered home caregiver to submit and comply with a written corrective action plan; or

(b) the ECECD authority will sanction the registered home administratively including, without limitation, suspension, revocation, or restriction of a registration; or

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

F. The authorized ECECD representative will report all cases of suspected child abuse and neglect to both CYFD’s protective services and the local law enforcement agency.

[8.9.5.18 NMAC - N, 11/01/2022]

8.9.5.19 ADMINISTRATIVE APPEAL RIGHTS:

A. Any primary caregivers who receives notice that registration is denied, revoked, suspended or that renewal is denied, has a right to an administrative appeal of the decision. Any primary caregiver who is required by the department to implement specific actions, or to agree to specific conditions, in order to maintain registered status, has a right to administrative appeal.

B. Administrative appeals shall be conducted by a hearing officer appointed by the department’s secretary pursuant to ECECD’s identified administrative hearing regulations.

C. If the suspension or revocation is to take effect immediately, or if required conditions of continued operation are to take effect immediately, the department affords the primary caregiver the opportunity for an administrative appeal within five working days. If

registration is suspended pending the results of an investigation, the primary caregiver may elect to postpone the hearing until the investigation has been completed.

D. If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect or an appeal of the following action is concluded and the action is either upheld or overturned.

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

F. For any action taken by the department pursuant to 8.9.5.20 NMAC of this regulation, the applicable hearing procedure shall be that contained in 8.9.5.20 NMAC. [8.9.5.19 NMAC - N, 11/01/2022]

8.9.5.20 PROBABLE CAUSE OF IMMINENT DANGER:

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

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

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

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

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the care of the registered home of the notice and opportunity for hearing given to the caregiver.

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

B. Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.

[8.9.5.20 NMAC - N, 11/01/2022]

8.9.5.21 GROUP COMPOSITION REQUIREMENTS:

A. A caregiver will care for no more than four non-resident children at any one time.

B. A caregiver will care for no more than two children under two years old at any one time, including the caregiver's own children.

C. A caregiver will care for no more than six children under six years old at any one time, including the caregiver's own children.

D. Drop-in children will be counted in the group composition requirements listed above.

E. Shifts are allowed provided there are never more than four non-resident children present at any one time, including change of shifts.

F. All caregivers will be physically present and actively involved in the care of all children during the designated hours of child care as noted in the child enrollment

forms, except for short absences when another approved caregiver is present, or emergencies. Outside employment is not considered a short absence. [8.9.5.21 NMAC - N, 11/01/2022]

8.9.5.22 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, infrared heaters, ceramic heaters, 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. A caregiver's

inside and outside play areas must be safe, clean and free of any debris.

I. A caregiver’s outside play area must be on the premises and approved by the registered authority. The caregiver will fence the outside play area when determined to be necessary for safety by the registered authority. The fence must be at least four feet high and will have one latched gate for emergency exits. For apartment buildings or residences with no outdoor play areas, a common park/playground can be used for outdoor play but will not be inspected or approved by the registered authority. The provider will ensure the play area is safe from hazards prior to allowing children to play.

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, alcoholic beverages, prescriptions and over the counter medications, intoxicating substances, 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 ECECD at all times. Emergency numbers will be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only phone in the home. The cellular telephone will remain in the same room, charged and accessible to the provider a caregiver 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, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. For purposes of this regulation, a weapon is (including but not limited to): firearms, tasers and stun guns, pepper spray, knives, swords and other items designed or used for inflicting bodily harm or physical damage.

P. A caregiver, will prohibit smoking, the use of e-cigarettes/vaporizers and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

Q. A home will have a fully - charged 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.

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

S. 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 by the caregiver , 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 plans shall be approved annually by the registered authority and the department will provide guidance on developing these plans.

T. Caregiver’s 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.

U. A home will have two major exits readily accessible to children with no obstructions in the pathways of these exits.

V. 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.

W. Cribs will meet federal standards (CPSC 16 CFR1219,1220), be kept in good repair, and not be used for storage. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. Animals and pets will not be allowed in cribs or on sleeping materials.

X. Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

Y. 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.

Z. 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

AA. 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.

BB. 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. Persons who have been convicted in the last seven years of a misdemeanor or felony driving while intoxicated/ driving under the influence cannot transport children under the auspices of a registered home certification.

CC. 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 if the vehicle is equipped with a deactivation switch for the passenger-side air bag.

DD. Children one year of age through four years of age, regardless of weight, or children who weigh 40 pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

EE. 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.

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

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

HH. Vehicles operated by the home 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

II. 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.

JJ. No one will smoke, use e-cigarettes or vaporizers - in a vehicle used for transporting children.

KK. Persons transporting children will also take the safe transportation practices training. [8.9.5.22 NMAC - N, 11/01/2022]

8.9.5.23 MEAL REQUIREMENTS:

A. Children will not use shared eating or drinking utensils.

B. Children will not use common eating or drinking utensils.

C. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.

D. Meals must meet age-appropriate USDA requirements.

E. A caregiver must keep a daily menu.

F. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.

G. Caregivers will feed children a meal or snack every three hours.

H. Caregivers and children will wash their hands regularly and before each meal time.

I. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below.

J. Refrigerators and freezers shall have working thermometers.

[8.9.5.23 NMAC - N, 11/01/2022]

8.9.5.24 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, or at-risk children and youth as determined by the department;

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.
[8.9.5.24 NMAC - N, 11/01/2022]

8.9.5.25 CAREGIVER'S RESPONSIBILITIES:

A. A caregiver will directly supervise and actively care for children at all times during hours of operation including outdoor playtime and naptime. Caregivers will interact with children and provide a safe and positive learning environment.

B. Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Caregivers will be onsite, available and responsive to children during all hours of operation.

C. A caregiver will use guidance that is positive, consistent and age-appropriate. The caregiver will not use:

- (1) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;
- (2) withdrawal of food, rest, bathroom access, or outdoor activities;
- (3) abusive or profane language, including yelling;
- (4) any form of public or private humiliation, including threats of physical punishment; or
- (5) unsupervised separation; or
- (6) children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

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

E. Each home must develop an anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 and older).

F. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well-being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

G. Caregivers of infants will allow them to crawl or toddle. Infants shall not be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

H. 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. Caregivers will allow infants to eat and sleep on their own schedules. Children will not be allowed to walk/run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers

will be labeled and not shared. Pacifiers will not be tied to the child. Dropped pacifiers shall be cleaned using warm water and soap.

I. Caregivers will ensure age appropriate naps or rest periods as follows:

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

(2) Caregivers shall ensure that nothing covers the face or head of a child age 12 months or younger when the child is laid down to sleep and while the child is sleeping.

(3) Caregivers 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.

(4) No child(ren) shall be allowed to sleep behind closed doors.

J. Swimming, wading and water:

(1) A caregiver must obtain written permission from a parent or guardian before a 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, fish pond 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 ensure adequate safety for the ages, abilities and type of water hazard in use. [8.9.5.25 NMAC - N, 11/01/2022]

HISTORY OF 8.9.5 NMAC:
[RESERVED]

**EARLY CHILDHOOD
EDUCATION AND CARE
DEPARTMENT**

**TITLE 8 SOCIAL
SERVICES
CHAPTER 9 EARLY
CHILDHOOD EDUCATION AND
CARE
PART 6 GOVERNING
BACKGROUND CHECKS AND
EMPLOYMENT HISTORY
VERIFICATION**

**8.9.6.1 ISSUING
AGENCY:** Early Childhood
Education and Care Department
("ECECD")
[8.9.6.1 NMAC - N, 11/01/2022]

8.9.6.2 SCOPE: This rule has general applicability to operators, volunteers, including student interns, employees, and prospective operators, staff and employees, of child-care facilities, including every facility, ECECD contractor, program receiving ECECD funding or reimbursement, or other program that has or could have primary custody of children for twenty hours or more per week, and direct providers of care for children including, but not limited to the following settings: licensed and registered child care, home visiting programs, and Family Infant Toddler (FIT) programs.
[8.9.6.2 NMAC - N, 11/01/2022]

**8.9.6.3 STATUTORY
AUTHORITY:** The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Section 28-2-1 to 28-2-6 NMSA and in the New Mexico Children's and Juvenile Facility Criminal Records Screening

Act, Section 32A-15-1 to 32A-15-4 NMSA 1978 Amended. ECECD's rule making authority for this rule arises from Subsection E of Section 9-29-6 NMSA 1978; Subsection H of Section 9-29-8 NMSA 1978; and Section 9-29-8.1 NMSA 1978.
[8.9.6.3 NMAC - N, 11/01/2022]

8.9.6.4 DURATION:
Permanent
[8.9.6.4 NMAC - N, 11/01/2022]

**8.9.6.5 EFFECTIVE
DATE:** November 1, 2022, unless a later date is cited at the end of a section.
[8.9.6.5 NMAC - N, 11/01/2022]

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

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

C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.9.4 NMAC and 8.9.5 NMAC will also undergo a screen of abuse and neglect information and an inter-state criminal history check in each State where the applicant resided during the preceding five years.
[8.9.6.6 NMAC - N, 11/01/2022]

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

B. "Administrator" means the adult in charge of the day-to-day operation of a facility. The

administrator may be the licensee or an authorized representative of the licensee.

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

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

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

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

G. "BCU" means the ECECD background check unit.

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

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

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

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

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

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

N. "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.

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

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

Q. “Licensed” means authorized to operate by the licensing authority by issuance of an operator’s license or certification certificate.

R. “Licensee” means the holder of, or applicant for, a license, certification, or registration pursuant to 8.9.4 NMAC, 8.9.5 NMAC or other program or entity within the scope of these regulations. ECECD LICENSEE means program or entity within the scope of these regulations.

S. “Licensing authority” means the ECECD division having authority over the licensee.

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

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

V. “Relevant conviction” means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term RELEVANT CONVICTION also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31-20-13 (1994) NMSA 1978, or Section 30-31-28 (1972) NMSA 1978, or a comparable provision of another state’s law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term RELEVANT CONVICTION does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

W. “Unreasonable risk” means the quantum of risk that a reasonable person would be unwilling to take with the safety or

welfare of care recipients. [8.9.6.7 NMAC - N, 11/01/2022]

8.9.6.8 APPLICABILITY: These regulations apply to all licensees and direct providers of care in the following settings:

- A.** licensed child care homes;
- B.** licensed child care centers;
- C.** registered child care homes;
- D.** home visiting programs;
- E.** licensed before and after school care;
- F.** non-licensed or exempt after school programs participating in the at risk component of the child and adult care food program;
- G.** family infant toddler (FIT) programs;
- H.** ECECD contractors, and any other programs receiving ECECD funding or reimbursement, that:

(1) has or could have primary custody of children for twenty hours or more per week; or

(2) will have direct contact with children in the provision of ECECD sponsored services.

[8.9.6.8 NMAC - N, 11/01/2022]

8.9.6.9 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except to the extent that such a program receives funding or reimbursement from ECECD:

- (1)** hospitals or infirmaries;
- (2)** intermediate care facilities;
- (3)** children’s psychiatric centers;
- (4)** home health agencies;
- (5)** diagnostic and treatment centers; and
- (6)** unlicensed or unregistered child care homes.

- (7) behavior management skills development;
- (8) case management services;
- (9) day treatment services;
- (10) residential treatment services;
- (11) treatment foster care services agency staff;
- (12) licensed shelter care;
- (13) comprehensive community support services;
- (14) AOC (administrative office of the courts) supervised visitation and safe exchange program providers.

B. These regulations do not apply to the following adults:

- (1) treatment foster care parents;
- (2) relative care providers who are not otherwise required to be licensed or registered;
- (3) foster grandparent volunteers; and
- (4) all other volunteers for any program or entity within the scope of these regulations if the volunteer spends less than six hours per week at the program, is under direct physical supervision, and is not counted in the facility ratio. [8.9.6.9 NMAC - N, 11/01/2022]

8.9.6.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification or renewal, or continuation of same or participation in any other program or contract within the scope of these regulations.

B. The licensee is required to:

- (1) submit an electronic fingerprint submission receipt and the required forms for all direct providers of care, household members in licensed and registered child care homes, or any staff member, employee, or volunteer present while care recipients are present, or other adult as required by the applicable regulations prior to the commencement of service,

whether employment or, contractual, or volunteer. In the case of a licensed child care home and a registered home, the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members or for any adult who is required to obtain a background check pursuant to 8.9.4 NMAC or 8.9.5 NMAC as applicable. 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.

(2) Applicants required to obtain background checks pursuant to 8.9.4 NMAC and 8.9.5 NMAC must indicate states where they resided during the preceding five years and obtain the following:

(a) a screen of abuse and neglect information in each state where the applicant resided during the preceding five years; and

(b) an inter-state criminal history check in each state where a new applicant resided during the preceding five years. An inter-state criminal history check is not required if a new applicant has resided in a state that participates in the federal bureau of investigation’s national fingerprint file. All existing staff hired after October 1, 2016, must undergo an inter-state criminal history check in each state where the applicant resided during the preceding five years at the time of application. An inter-state criminal history check is not required if an applicant has resided in a state that participates in the federal bureau of investigation’s national fingerprint file.

(3) Verify the employment history of any prospective direct provider of care by contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: verification of employment history is not required for registered home

providers or child care homes licensed for six or fewer children.

(4) submit an adult household member written statement form for each adult household member in a registered family child care food-only home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home; the licensee must submit the required forms for new adult household members pursuant to 8.9.5 NMAC.

(5) provide such other information BCU staff determines to be necessary; and

(6) maintain documentation of all applications, correspondence and eligibility relating to the background checks required; in the event that the licensee does not have a copy of an applicant’s eligibility documentation and upon receipt of a written request for a copy, the BCU may issue duplicate eligibility documentation to the original licensee provided that the request for duplicate eligibility documentation is made within one year of the applicant’s eligibility date.

C. If there is a need for any further information from an applicant at any stage of the process, the BCU shall request the information in writing from the applicant. If the BCU does not receive the requested information within fifteen calendar days of the date of the request, the BCU shall deny the application and send a notice of background check denial.

D. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility.

[8.9.6.10 NMAC - N, 11/01/2022]

8.9.6.11 COMPLIANCE EXCEPTIONS:

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

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

(2) the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to employment;

(3) until receiving background eligibility, the applicant shall at all times be under direct physical supervision. See next paragraph for standards regarding applicants required to obtain a background check pursuant to 8.9.4 NMAC or 8.9.5 NMAC;

(4) a licensee or applicant required to obtain a background check pursuant to 8.9.4 NMAC or 8.9.5 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of Paragraph 2 of this subsection, a notice of provisional employment decision will be provided to the child care center or home within five days unless the BCU determines there is good cause shown for an extension; and

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

B. With the exception of the provision under 8.9.4.19 NMAC and 8.9.5.11 NMAC, if a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the BCU, the direct provider of care must re-comply with 8.9.6.10 NMAC. A direct provider of care may transfer employment, as permitted by 8.9.4.19 NMAC and 8.9.5.11 NMAC, or for a period of 180 days after the date of an eligibility letter from the BCU

without complying with 8.9.6.10 NMAC only if the direct provider of care submits a preliminary application that meets the following conditions:

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

(2) the direct provider of care submits an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the BCU to determine if further background checks or a new application is necessary; and

(3) the BCU determines within 15 days that the direct provider of care's prior background check is sufficient for the employment or position the direct provider of care is going to take. [8.9.6.11 NMAC - N, 11/01/2022]

8.9.6.12 PROHIBITIONS:

A. Any ECECD licensee who violates these regulations is subject to revocation, suspension, sanctions, denial of licensure, certification, or registration or termination of participation in any other program within the scope of these regulations.

B. Licensure, certification, registration or participation in any other program within the scope of these regulations is subject to receipt by the licensing authority of a satisfactory background check for the licensee or the licensee's administrator.

C. Except as provided in 8.9.6.13 NMAC below, licensure, certification, registration or participation in any other program within the scope of these regulations may not be granted by the licensing authority if a background check of the licensee or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service

or contract with any direct provider of care for whom a background check reveals an unreasonable risk. The BCU shall deliver one copy of the notice of unreasonable risk to the facility or program by U.S. mail, facsimile transmission, secure (or encrypted) e-mail or hand delivery, and to the licensing authority by facsimile transmission, secure (or encrypted) e-mail or hand delivery.

E. A licensee shall be in violation of these regulations if it retains a direct provider of care for more than ten working days following the issuing of a notice of background check denial for failure to respond by the BCU.

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.9.6.11 NMAC.

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk to care recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate sanctions up to and including immediate emergency revocation of license or registration pursuant to the regulations applicable to that entity or termination of participation in any other program within the scope of these regulations. [8.9.6.12 NMAC - N, 11/01/2022]

8.9.6.13 ARRESTS, CONVICTIONS AND REFERRALS:

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

(1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe,

responsible and morally positive setting for care recipients;

(2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;

(4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;

(5) the applicant's child is in New Mexico's Children, Youth, and Families Department (CYFD) or another state's custody; or

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

B. A disqualifying conviction may be proven by:

(1) a copy of the judgment of conviction from the court;

(2) a copy of a plea agreement filed in court in which a defendant admits guilt;

(3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;

(4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;

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

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

D. If a background check shows a pending CYFD child protective services referral or any other investigation of abuse or neglect by ECECD, CYFD, or any other state or federal agency with authority to investigate, there shall be a determination of unreasonable risk.

E. If a background check shows that an applicant has an outstanding warrant, there shall be a determination of unreasonable risk. [8.9.6.13 NMAC - N, 11/01/2022]

8.9.6.14 UNREASONABLE RISK:

A. The BCU may, in its discretion, use all reasonably reliable information about an applicant and weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to care recipients. The BCU may also consult with legal staff, treatment, assessment or other professionals in the process of determining whether the cumulative weight of credible evidence establishes unreasonable risk.

B. In determining whether an applicant poses an unreasonable risk, the BCU need not limit its reliance on formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

(1) reliable disclosures by the applicant or a victim of abuse or neglect;

(2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;

(3) circumstances indicating the applicant is or has been a victim of domestic violence;

(4) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or

(5) any other evidence with similar indicia of reliability. [8.9.6.14 NMAC - N, 11/01/2022]

8.9.6.15 REHABILITATION PETITION: Any applicant whom the BCU concludes is an unreasonable risk on any basis other than those described at Paragraphs (1), (3), (4), (5), or (6) of Subsection A of 8.9.6.13 NMAC, may submit to the BCU a rehabilitation petition describing with specificity all information that tends to demonstrate that the applicant is not an unreasonable risk. The petition may include, but need not be limited to, a description of what actions the applicant has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur. [8.9.6.15 NMAC - N, 11/01/2022]

8.9.6.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

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

(1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a

conviction as charged would result in a determination of unreasonable risk;

(2) a pending CYFD child protective services referral or any other investigation of abuse or neglect by ECECD, CYFD, or any other state or federal agency with authority to investigate allegations of abuse or neglect;

(3) an outstanding warrant; or
 (4) any other reason that creates an unreasonable risk determination pursuant to these regulations.

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

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

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

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

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

(3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply

for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation. [8.9.6.16 NMAC - N, 11/01/2022]

8.9.6.17 APPEAL RIGHTS:

A. Denials: Any applicant who is found ineligible after completion of background check may request an administrative review from ECECD. The request for an administrative review shall be in writing and the applicant shall cause the BCU to receive it within 15 days of the date of the BCU's written notice of a determination of unreasonable risk. If the request is mailed, three days are added after the period would otherwise expire. The administrative review shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to:

(1) whether the BCU's conclusion of unreasonable risk is supported by any section of these regulations; and

(2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer and includes the applicant's written request for an administrative review and other relevant evidence provided by the applicant. The hearing officer conducts the administrative review and submits a recommendation to the cabinet secretary no later than 60 days after the date the request for administrative review is received unless ECECD and the applicant agree otherwise.

B. Suspensions and revocations: A previously cleared applicant whose eligibility has been suspended or revoked may appeal that decision to ECECD and shall be entitled to a hearing pursuant to ECECD's identified administrative

hearing regulations. The request for appeal shall be in writing and the applicant shall cause the BCU to receive it within 15 days of the date of the BCU's written notice of suspension. If the request is mailed, three days are added after the period would otherwise expire. [8.9.6.17 NMAC - N, 11/01/2022]

HISTORY OF 8.9.6 NMAC: [RESERVED]

HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY EDUCATION
 CHAPTER 3 POST-SECONDARY EDUCATION INSTITUTION FINANCES
 PART 14 TECHNOLOGY ENHANCEMENT FUND**

5.3.14.1 ISSUING AGENCY: State of New Mexico Higher Education Department. [5.3.14.1 NMAC - N, 10/25/2022]

5.3.14.2 SCOPE: Provisions for 5.3.14 NMAC apply to state research institutions and tribal colleges in New Mexico. [5.3.14.2 NMAC - N, 10/25/2022]

5.3.14.3 STATUTORY AUTHORITY: Section 21-1-27.2 NMSA 1978. [5.3.14.3 NMAC - N, 10/25/2022]

5.3.14.4 DURATION: Permanent. [5.3.14.4 NMAC - N, 10/25/2022]

5.3.14.5 EFFECTIVE DATE: October 25, 2022 unless a later date is cited at the end of a section. [5.3.14.5 NMAC - N, 10/25/2022]

5.3.14.6 OBJECTIVE: The objective and purpose of 5.3.14 NMAC is to outline the distribution of monies in the technology enhancement fund. Money in the technology enhancement fund is appropriated by the legislature to

the higher education department. The department shall distribute funds to New Mexico state research institutions or tribal colleges that submit proposals and receive award determinations from the department for purposes outlined in Section 21-1-27 NMSA 1978 and 5.3.14 NMAC. [5.3.14.6 NMAC - N, 10/25/2022]

5.3.14.7 DEFINITIONS:

- A. "Committee"** means the technology enhancement committee.
- B. "Department"** means the New Mexico higher education department.
- C. "Eligible institution"** means a state research university or tribal college located in New Mexico.
- D. "Fund"** means the technology enhancement fund.
- E. "Institutional share"** means funds to be matched by the technology enhancement fund. No portion of the institutional share may be derived from any other state appropriation.
- F. "Proposal"** means a formal request submitted to the technology enhancement committee for the purposes of the fund.
- G. "State research institution"** means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico conducting research within the scope of Section 21-1-27.2 NMSA 1978.
- H. "Tribal College"** means a tribally, federally or congressionally chartered postsecondary educational institution located wholly or partly in New Mexico conducting research within the scope of Section 21-1-27.2 NMSA 1978. [5.3.14.7 NMAC - N, 10/25/2022]

5.3.14.8 TECHNOLOGY ENHANCEMENT FUND:

A. The technology enhancement fund is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests.

B. The technology enhancement fund shall be administered by the department. Money shall be disbursed only on warrant of the secretary of finance and administration upon receipt of voucher signed by the secretary of higher education or the secretary's authorized representative.

C. Money in the fund shall be used to provide matching funds to state research universities to support innovative foundational and applied research and equipment that advances knowledge and creates new products and production processes in the fields of agriculture, biotechnology, biomedicine, energy, materials science, microelectronics, water resources, aerospace, telecommunications, manufacturing science and similar research areas.

D. Grants from the fund are available to eligible institutions that are conducting collaborative research with corporate organizations, nonprofit organizations, other eligible institutions, or other public entities as determined by the department. An eligible institution may apply for a grant from the fund pursuant to an application schedule issued by the department.

E. Allocations from the fund shall be based on a competitive process with applications reviewed by the committee.

F. Following an award determination, an eligible institution shall not receive a distribution until that institution provides documentation to the department that it has received or will receive institutional share funding equal or greater than the state contribution. Distributions from the technology enhancement fund are made at least quarterly. Allocations not matched or not currently obligated to a proposal in review during any quarter of the cycle are made available during the following quarter for supplemental or second round matching by the corporate organization, nonprofit organization, other eligible institution, or other public entity as determined by the department pursuant to Subsection D of 5.3.14.8 NMAC. [5.3.14.8 NMAC - N, 10/25/2022]

5.3.14.9 TECHNOLOGY ENHANCEMENT COMMITTEE:

The committee is composed of panel of scientific and business experts established by the department. The committee shall judge proposals based on excellence in research design and possible innovation in cross-disciplinary, multi-campus and higher education-industry research collaboration. The review panel may determine new research areas.

- A.** The committee shall consist of the following representatives:
 - (1)** The vice presidents for research from the New Mexico institute of mining and technology, New Mexico state university, the university of New Mexico or their designates;
 - (2)** a representative from the research community of the health sciences center at the university of New Mexico;
 - (3)** a representative from the appropriate entities at New Mexico institute of mining and technology, New Mexico state university and the university of New Mexico that have expertise in economic development; and
 - (4)** other designees as appointed by the cabinet secretary of the department.
- B.** The responsibilities of the committee shall include:
 - (1)** review proposals submitted to the committee for sufficiency, quality and merit;
 - (2)** determine whether the proposals and award determinations meet the purposes of the fund;
 - (3)** determine whether funds are being distributed pursuant to the provisions of this section;
 - (4)** recommend ways to support or change award and distribution processes;
 - (5)** make recommendations to the department for the purpose of distribution of funds; and

(6) give advice or other assistance to the department as requested.

C. The committee shall meet as needed, but no less than four times per year, to review proposals and make award determinations. [5.3.14.9 NMAC - N, 10/25/2022]

5.3.14.10 PROPOSAL REQUIREMENTS:

To be considered eligible for a distribution from the technology enhancement fund, a proposal submitted by an eligible institution shall:

A. demonstrate how the funds will be used to enhance public post-secondary education and research that benefits New Mexico;

B. indicate which of the purposes specified within Subsection C of 5.3.14.8 NMAC the proposal addresses; and

C. identify the source and eligibility of the institutional share. [5.3.14.10 NMAC - N, 10/25/2022]

5.3.14.11 SELECTION OF PROPOSALS:

A. The committee shall develop a timeline of quarterly application periods setting forth deadlines for proposal submission and a schedule of review. The department may accept applications on nonstandard intervals upon request of the institution submitting the proposal.

B. The committee shall develop a scoring rubric that scores all proposals received pursuant to the requirements of 5.3.14.10 NMAC.

C. No award determination shall be made until all proposals submitted within an application period have been reviewed and scored by the committee. [5.3.14.11 NMAC - N, 10/25/2022]

5.3.14.12 REPORTS:

Institutions shall report annually the status of awards made pursuant to 5.3.14.11 NMAC. The department shall report annually to the legislative finance committee on award determinations made pursuant to this section. The report shall include

the number of proposals submitted by each institution, the number of proposals selected for funding from each institution, the amounts requested by each institution, the amounts awarded to each institution, the amount of matching funds and their sources and the purposes of the awards. [5.3.14.12 NMAC - N, 10/25/2022]

HISTORY OF 5.3.14 NMAC: [RESERVED]

HIGHER EDUCATION DEPARTMENT

**TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 55 PUBLIC POST-SECONDARY EDUCATION
GENERAL PROVISIONS
PART 8 STATEWIDE
ADVANCED PLACEMENT
POLICY**

5.55.8.1 ISSUING AGENCY: New Mexico Higher Education Department (NMHED). [5.55.8.1 NMAC - N, 10/25/2022]

5.55.8.2 STATUTORY AUTHORITY: Section 21-2-5 NMSA 1978 and Section 21-1-47 NMSA 1978. [5.55.8.2 NMAC - N, 10/25/2022]

5.55.8.3 SCOPE: The provisions of 5.55.8 NMAC apply to all public higher education institutions operating within and receiving financial support from the state of New Mexico. [5.55.8.3 NMAC - N, 10/25/2022]

5.55.8.4 DURATION: Permanent. [5.55.8.4 NMAC - N, 10/25/2022]

5.55.8.5 EFFECTIVE DATE: October 25, 2022, unless a later date is cited at the end of a section. [5.55.8.5 NMAC - N, 10/25/2022]

5.55.8.6 OBJECTIVE:
A. Establish and maintain a statewide advanced

placement exam policy that includes a comprehensive list of lower-division college-level courses for which a student shall receive credit when the student earns a score of three or above on an advanced placement exam.

B. When the college-level course is also designated as a general education course, ensure that the student receives general education credit in the associated content area for that course.

C. Establish a process by which advanced placement exam equivalencies are reviewed and approved by the department to be included within the statewide advanced placement exam policy. [5.55.8.6 NMAC - N, 10/25/2022]

5.55.8.7 DEFINITIONS:

A. **“Committee”** means the New Mexico curriculum and articulation committee as provided in 5.55.6.9 NMAC.

B. **“Department”** means the New Mexico higher education department.

C. **“Elective credit”** means course credit that does not meet general education, degree, or other university requirements.

D. **“General education”** means a program that imparts knowledge to students and develops essential skills necessary for success in education and the workforce.

E. **“General education course”** means a course that has been approved by the New Mexico curriculum and articulation committee as fulfilling the requirements of a content area that is part of the general education curriculum.

F. **“Institution”** means a New Mexico public post-secondary institution or accredited tribal college. [5.55.8.7 NMAC - N, 10/25/2022]

5.55.8.8 GENERAL REQUIREMENTS:

A. The department, in consultation with faculty, shall develop the statewide advanced placement exam policy that includes a

comprehensive list of lower-division college-level courses for which a student shall receive credit when the student earns a score of three or above on an advanced placement exam.

B. The department shall adopt a statewide advanced placement exam policy that includes a comprehensive list of lower-division college-level courses for which a student shall receive credit when the student earns a score of three or above on an advanced placement exam.

C. The department shall maintain and publish a list of the courses approved that are also general education courses and the content area associated with that course so that general education credit can be awarded by the institution.

D. Each institution shall publish and make available to students the statewide advanced placement exam policy, including the course credits that fulfill general education requirements. The institution may meet the requirement by providing a link to the published policy on the department's website.

E. Students should consult with advisors at their institution to ensure that their advanced placement credits are recognized as listed in the policy.

F. If an institution does not offer the course approved for a specific advanced placement exam score, the institution shall bring in the advanced placement course as if it was a transfer course, and ensure it meets general education credit if listed as general education in the policy.

G. A single advanced placement exam score may fulfill both general education and degree requirements.

H. Prior to participating in the statewide advanced placement exam policy, an accredited tribal college shall execute a memorandum of understanding with the department expressing its intent to implement the statewide advanced placement exam policy.

[5.55.8.8 NMAC - N, 10/25/2022]

5.55.8.9 MAINTENANCE OF STATEWIDE ADVANCED PLACEMENT EXAM POLICY:

A. The department shall create and make available a form to be used by institutions to request changes to the statewide advanced placement exam policy.

B. Completed forms shall be submitted to the department by the institution's chief academic officer or designee only after receiving approval by the chief academic officer.

C. If the form is submitted on or before the deadline published by the department, consideration of the form shall be placed on the next committee meeting agenda. If the institution submits the form after the published deadline, consideration of the form shall be postponed until the subsequent committee meeting.

D. The department shall conduct an initial review of the form to determine whether it has been correctly and fully completed. The department may request additional information from the institution for use in its initial review. If the department determines that the form has met the initial review criteria, the department shall submit the form and all supporting material to the committee and require that the form be considered by the committee. If the department determines that a form is not correctly and fully completed, the department shall return the form to the institution with recommendations as to how deficiencies may be remedied. A form shall not be presented to the committee until the department has completed initial review and determines that the form is correctly and fully completed.

E. In reviewing the form and supporting materials, the committee may request more information from the institution. If additional information is requested, the institution shall submit the additional information by the deadline set by the department. If the additional information is not received by the deadline, consideration of

the form shall be postponed to the subsequent committee meeting.

F. The department shall have a representative present during the advisory committee meeting to present the form. The department shall not make any recommendation to committee regarding the advanced placement exam policy.

G. A representative from the applicant institution shall be present during the committee meeting and shall be prepared to respond to questions presented by committee members.

H. The committee shall consider the form, any supporting materials, and information presented during its meeting. The chair shall conduct a vote. Each institution shall cast a single vote. Based on the majority vote, the committee may approve, deny, table, or send the request to a subcommittee for further review. The vote shall be certified by the committee chair and the department shall issue official notice of the committee decision to the institution.

I. An institution shall not publish and makes available to students the courses it offers that fulfill the statewide advanced placement exam policy prior the institution's receipt of notice of the committee decision from the department.

J. Institutions shall notify the department if any courses that are part of the statewide advanced placement exam policy will no longer be offered at least 90 days prior to the time the course will no longer be offered.

K. The department shall update the statewide advanced placement exam policy to reflect all changes to institution's curriculum. [5.55.8.9 NMAC - N, 10/25/2022]

5.55.8.10 COMPLAINTS RELATED TO THE STATEWIDE ADVANCED PLACEMENT EXAM POLICY:

A. Institutions shall establish appropriate policies and practices for receiving and resolving

complaints from students or other complainants regarding the transfer of general education curriculum. Such policies shall include at least the following components:

(1)

Complainants shall be required to first seek resolution of their complaint directly within the institution.

(2)

A time frame within which the institution shall investigate the complaint and respond to the complainant shall be specified.

(3)

The institution shall assure that an impartial party is involved in consideration of the complaint.

(4)

The institution shall assure that no adverse action shall be taken against the student or complainant as a result of registering the complaint.

(5)

The institution shall identify the department as the agency to be contacted in cases where the complaint remains unresolved.

B.

When a student or other complainant contacts the department with a complaint, the department shall require that the complaint be submitted in writing. The complaint shall include a summary of the process followed by the complainant to resolve the complaint through the institution's internal procedures.

C.

Following receipt of a written complaint, the department shall contact the relevant institution to ascertain whether the complaint is bona fide, that is, whether the institution's internal complaint process has been followed sufficiently to warrant filing of the complaint with the department.

D.

Upon determination that the complainant has not followed the institution's internal process to a sufficient extent, the department shall refer the complainant to the institution to follow the institution's complaint procedure.

E.

Upon determination that the complaint is bona fide, the department shall request a response to the complaint from the institution,

summarizing its position and justification for its course of action. Such response shall be provided in writing to the department within 10 days of receipt by the institution.

F.

The department shall conduct an analysis of the complaint, considering all information submitted by both parties, and may at its discretion solicit additional information relevant to the complaint. The analysis shall be consistent with the general principles and other specifications of 5.55.8 NMAC.

G.

The department shall render its decision as to the appropriateness of the actions of the parties to each complaint. If a student's articulation complaint includes commonly numbered courses or courses contained in a meta-major or transfer module and is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution. [5.55.8.10 NMAC - N, 10/25/2022]

5.55.8.11 REPORTING:

A.

Upon a request by the department, an institution shall report to the department on its advanced placement policy in a timely manner. The report shall be on a form provided by the department.

B.

The department shall use the information and data provided by the institutions to prepare its annual report to the legislative finance committee and the governor. [5.55.8.11 NMAC - N, 10/25/2022]

**HISTORY OF 5.55.8 NMAC:
[RESERVED]**

**HOMELAND SECURITY
AND EMERGENCY
MANAGEMENT,
DEPARTMENT OF
STATE FIRE MARSHAL
OFFICE**

This is an emergency amendment to 10.25.2 NMAC, Sections 1, 8, and 9, effective 10/7/2022.

10.25.2.1 ISSUING

AGENCY: [~~New Mexico Public Regulation Commission~~]; Department of Homeland Security and Emergency Management.

[10.25.2.1 NMAC - N, 11/15/2007; A/E, 10/7/20222]

10.25.2.8 TYPES OF CERTIFICATES REQUIRED:

A.

When required. No person shall install, inspect, maintain, service, tag or repair fire protection equipment or systems unless he has obtained a certificate of fitness from the fire marshal in compliance with these rules. Any person holding a certificate of fitness shall have a copy of it available in all service vehicles and offices for review if requested during inspection by the fire marshal or AHJ. Certificates of fitness are not transferable.

B.

Types of certificates. The fire marshal or AHJ may issue certificates of fitness for installation, inspection, maintenance, repair, recharging or tagging in the following disciplines:

(1)

automatic fire suppression systems and fire pumps;

(2)

automatic fire detection and alarm systems;

(3)

chemical fire suppression systems; ~~and~~

(4)

portable fire extinguishers; and

(5)

fire and smoke dampers.

[10.25.2.8 NMAC - N, 11-15-07; A/E, 10/7/20222]

10.25.2.9 APPLICATION

PROCEDURE: Any person may apply for a certificate of fitness by submitting the required application to the fire marshal as provided in 10.25.1.9 NMAC or to an AHJ. The mandatory applications described in 10.25.1.9 NMAC are available as indicated in 10.25.1.9 NMAC.

A.

Information required for initial application. Each application for a certificate of fitness shall include:

(1)

the applicant's name, mailing address,

telephone number and signature of authorized representative;

(2) the disciplines for which certification is requested, listed in 10.25.2.8 NMAC;

(3) a statement that the applicant agrees to be inspected by the fire marshal, his designees or an AHJ at any time during normal business hours;

(4) for certification for automatic fire suppression systems and fire pumps: the name of the qualified party, the type and number of his CID license and a copy of his license;

(5) for certification for automatic fire detection and alarm systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(6) for certification for chemical fire suppression systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(7) for certification for portable fire extinguishers, a statement indicating that the applicant:

(a) operates from a fixed location, provides mobile recharging service, or both;

(b) agrees to allow only trained personnel to maintain, service and recharge portable fire extinguishers; and

(c) agrees to provide its personnel with all service manuals and documentation, proper tools, recharging materials, lubricants and manufacturers' recommended replacement parts or parts specifically listed for use in fire extinguishers.

(8) for certification to inspect and test fire and smoke dampers, an application shall include:

(a) for mechanically actuated fire and smoke dampers, applicants shall provide documentation of a valid NFPA-Certified Fire Protection Specialist certification

or of an approved fire and life safety certification from a program accredited by the American National Standards Institute (ANSI).

(b) for electrically actuated fire and smoke dampers monitored by a fire alarm system, applicants shall comply with requirements of Paragraph (5) of Subsection A of 10.25.2.9 NMAC.

(c) for fire and smoke dampers with both mechanical and electrical components, the applicant inspecting the mechanical components shall provide documentation pursuant to subparagraph (a) of this paragraph and the applicant inspecting the electrical components shall provide documentation pursuant to subparagraph (b) of this paragraph.

B. Requirements for renewal. Any person seeking to renew a certificate of fitness shall apply following the process provided, and submit all information required, for an initial application.
[10.25.2.9 NMAC - N, 11-15-07; A/E, 10/7/2022]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.119.100 NMAC, Section 7 effective 11/1/2022.

8.119.100.7 DEFINITIONS:

~~(A. Definitions A-L:~~
(1) ~~**Alien:**~~ means an individual residing in the U.S. who does not hold U.S. citizenship.

(2) ~~**Application:**~~ means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.

(3) ~~**Asylee:**~~ means an individual who while in the U.S. is granted permanent residence under section 208 of the Immigration and Nationality Act (INA) and is unable or unwilling to return to his or her country of origin because of persecution or a well-founded fear

of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion:

(4) ~~**Asylee applicant:**~~ means an individual who has applied for, but not yet received, asylum in the U.S. and who is therefore ineligible for the RRP.

(5) ~~**Authorized representative:**~~ means a person aged 18 years or older who is designated, in writing, by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.

(6) ~~**Benefit group:**~~ means an individual or group of individuals authorized to receive cash assistance financed by federal or state funds.

(7) ~~**Case management services:**~~ means the determination of appropriate service(s) to refer a refugee, referral to such services(s), and tracking of the refugee's participation in such services(s).

(8) ~~**Conditional entrant:**~~ means an individual who was admitted to the U.S. under section 203(a)(7) of the INA.

(9) ~~**Cuban/Haitian entrant:**~~ means a citizen of Cuba or Haiti who is admitted to the U.S. under section 212(d)(5) of the INA.

(10) ~~**Date of entry:**~~ means the date established by the department of homeland security as the date a refugee or Cuban/Haitian entrant was lawfully admitted to the U.S. for permanent residence. For asylees it means the date on which asylum was granted.

(11) ~~**Department:**~~ means the human services department.

(12) ~~**Documentation of immigration status:**~~ means documents issued to the individual by DHS or USCIS that identifies the individual's lawful immigration status. The

documentation provided by an individual is copied for the case file.

(13) **Earned income:** means cash or payments-in-kind that are received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from direct provision of services, goods or property, production of goods, management of property or supervision of services.

(14) **Economic self-sufficiency:** means the ability of a refugee to meet his or her basic needs without the need for cash assistance.

(15) **Employability plan:** means an individualized written plan for a refugee, registered for employment services, that sets forth a program of services intended to achieve the earliest possible employment of the refugee.

(16) **Employability services:** means services designed to enable an individual to attain employment and to improve the work skills of the individual.

(17) **Form I-94:** means the white arrival/ departure card issued by the department of homeland security to each alien entering the U.S. which identifies the date of entry and the immigration status granted to that person.

(18) **Individualized employability plan (IEP):** means a written plan, developed by the refugee and the case manager, or the actions to be taken by an employable refugee to achieve employment and economic self-sufficiency.

(19) **Institution of higher education:** means any educational institution which normally requires a high school diploma or equivalency certificate for enrollment, including but not limited to colleges, universities, and vocational or technical schools at the post-high school level.

(20) **Local affiliate:** means a not-for-profit

agency that is affiliated with a national voluntary agency (VOLAG) and has been approved by the U.S. department of state to conduct a refugee resettlement program.

(21) **Local resettlement agency:** means a local affiliate of a VOLAG that has entered into a grant, contract, or cooperative agreement with the U.S. department of state to provide initial reception and placement services to refugees.

(22) **Local sponsor:** means an individual, church, or civic organization that has agreed to assist a refugee to resettle in a specific community.

B. Definitions M-Z:

(1) **Match grant:** means a program sponsored by the office of refugee resettlement (ORR) that provided matching funds to voluntary agencies and local affiliates to provide cash assistance and services to refugees for no more than 6 months after their lawful arrival in the U.S.

(2) **Medicaid:** means medical assistance under Title XIX of the Social Security Act, as amended.

(3) **National voluntary agency (VOLAG):** means one of the national resettlement agencies that has entered into a contract, or cooperative agreement with the U.S. department of state or other federal agency to provide for the resettlement of refugees and to oversee the work of a national network or local affiliates.

(4) **Minor unmarried parent:** means an unmarried parent, who is under the age of 18 years, or is age 18 and enrolled in high school.

(5) **New Mexico works:** means the federally funded temporary assistance for needy families (TANF) program that carries a 60-month term limit for adults in the state of New Mexico and requires participation in a variety of job search and skill development activities to maintain eligibility.

(6) **Payment:** means the amount of the cash assistance benefit.

(7) **Reception and placement grant:** means a grant provided by the U.S. department of state or U.S. department of justice that is intended to assist refugees to meet their basic needs during the first 30 to 90 days after admission to the U.S.

(8) **Recipient:** means a person receiving cash assistance benefits.

(9) **Refugee:** means any person who is admitted into the U.S. under section 207 of the INA and is unable or unwilling to return to his or her country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

(10) **Resources:** tangible assets and property owned by the applicant with the exception of assets and property in the refugee's country of origin and assets and property given to the refugee as part of the reception and placement program.

(11) **Refugee cash assistance (RCA):** means a 100 percent federally funded cash assistance program for non-TANF, non-SSI, eligible needy refugees during their first 8 months in the U.S.

(12) **Refugee medical assistance (RMA):** means a 100 percent federally funded medical assistance program for non-Medicaid-eligible needy refugees during their first 8 months in the U.S.

(13) **Secondary migrant:** means a refugee who was initially resettled in another state but who has relocated his or her residence to New Mexico.

(14) **Spend down:** means to deduct incurred medical expenses from countable income, thereby lowering the amount of countable income to a level that may meet the financial eligibility standard.

(15) **Standard of need:** means a maximum cash benefit amount that is based on federal regulation for TANF standard of need.

(16)

Supplemental security income (SSI): means monthly cash payments to income eligible persons over the age of 65 or who are determined to be disabled under the authority of Title XVI of the Social Security Act.

(17) **Uncearned-**

income: means income from one of these sources: old age, survivors and disability insurance payments (social security); railroad retirement benefits; veteran's administration compensation or pension payments; military retirement and allotments; pensions, annuities and retirement benefits; lodge or fraternal benefits; other public or private disability or retirement benefits or pensions; shared shelter payments; individual Indian money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

(18) **Victim-**

of human trafficking: means an individual who has received certification from ORR as a victim of human trafficking.]

A. Definitions**beginning with "A":**(1) **Alien:**

means an individual residing in the U.S. who does not hold U.S. citizenship.

(2)

Application: means a written request for assistance, on the appropriate ISD form, signed by or on behalf of an individual or family.

(3) **Asylee:**

means an individual who while in the U.S. is granted permanent residence under Section 208 of the Immigration and Nationality Act (INA) and is unable or unwilling to return to his or her country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

(4) **Asylee**

applicant: means an individual who has applied for, but not yet received, asylum in the U.S. and who is therefore ineligible for the RRP.

(5)

Authorized representative: means a person aged 18 years or older who is designated, in writing, by the applicant and is sufficiently knowledgeable about the applicant/benefit group's circumstances to complete the application form correctly and represent the benefit group.

B. Definitions

beginning with "B": Benefit group: means an individual or group of individuals authorized to receive cash assistance financed by federal or state funds.

C. Definitions**beginning with "C":**(1) **Case**

management services: means the determination of appropriate service(s) to refer a refugee, referral to such services(s), and tracking of the refugee's participation in such services(s).

(2)

Conditional entrant: means an individual who was admitted to the U.S. under Section 203(a)(7) of the INA.

(3) **Cuban/**

Haitian entrant: means a citizen of Cuba or Haiti who is admitted to the U.S. under section 212(d)(5) of the INA.

D. Definitions**beginning with "D":**(1) **Date of**

entry: means the date established by the department of homeland security as the date a refugee or Cuban/Haitian entrant was lawfully admitted to the U.S. for permanent residence. For asylees it means the date on which asylum was granted.

(2)

Department: means the human services department.

(3)

Documentation of immigration status: means documents issued to the individual by DHS or USCIS that identifies the individual's

lawful immigration status. The documentation provided by an individual is copied for the case file.

E. Definitions**beginning with "E":**(1) **Earned**

income: means cash or payments in-kind that are received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from direct provision of services, goods or property, production of goods, management of property or supervision of services.

(2) **Economic**

self-sufficiency: means the ability of a refugee to meet his or her basic needs without the need for cash assistance.

(3)

Employability plan: means an individualized written plan for a refugee, registered for employment services, that sets forth a program of services intended to achieve the earliest possible employment of the refugee.

(4)

Employability services: means services designed to enable an individual to attain employment and to improve the work skills of the individual.

F. Definitions**beginning with "F": Form I-94:**

means the white arrival/departure card issued by the department of homeland security to each alien entering the U.S. which identifies the date of entry and the immigration status granted to that person.

G. Definitions**beginning with "G": [RESERVED]****H. Definitions****beginning with "H":****[RESERVED]****I. Definitions****beginning with "I":**

(1)

Individualized employability plan (IEP): means a written plan, developed by the refugee and the case manager, or the actions to be taken by an employable refugee to achieve employment and economic self-sufficiency.

(2) Institution of higher education: means any educational institution which normally requires a high school diploma or equivalency certificate for enrollment, including but not limited to colleges, universities, and vocational or technical schools at the post-high school level.

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

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

L. Definitions beginning with “L”:

(1) Local affiliate: means a not-for-profit agency that is affiliated with a national voluntary agency (VOLAG) and has been approved by the U.S. department of state to conduct a refugee resettlement program.

(2) Local resettlement agency: means a local affiliate of a VOLAG that has entered into a grant, contract, or cooperative agreement with the U.S. department of state to provide initial reception and placement services to refugees.

(3) Local sponsor: means an individual, church, or civic organization that has agreed to assist a refugee to resettle in a specific community.

M. Definitions beginning with “M”:

(1) Match grant: means a program sponsored by the office of refugee resettlement (ORR) that provided matching funds to voluntary agencies and local affiliates to provide cash assistance and services to refugees for no more than six months after their lawful arrival in the U.S.

(2) Medicaid: means medical assistance under Title XIX of the Social Security Act, as amended.

(3) Minor unmarried parent: means an unmarried parent, who is under the age of 18 years, or is age 18 and enrolled in high school.

N. Definitions beginning with “N”:

(1) National voluntary agency (VOLAG): means one of the national resettlement agencies that has entered into a contract, or cooperative agreement with the U.S. department of state or other federal agency to provide for the resettlement of refugees and to oversee the work of a national network or local affiliates.

(2) New Mexico works: means the federally funded temporary assistance for needy families (TANF) program that carries a 60 month term limit for adults in the state of New Mexico and requires participation in a variety of job search and skill development activities to maintain eligibility.

O. Definitions beginning with “O”:
[RESERVED]

P. Definitions beginning with “P”: Payment: means the amount of the cash assistance benefit.

Q. Definitions beginning with “Q”:
[RESERVED]

R. Definitions beginning with “R”:

(1) Reception and placement grant: means a grant provided by the U.S. department of state or U.S. department of justice that is intended to assist refugees to meet their basic needs during the first 30 to 90 days after admission to the U.S.

(2) Recipient: means a person receiving cash assistance benefits.

(3) Refugee: means any person who is admitted into the U.S. under Section 207 of the INA and is unable or unwilling to return to his or her country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

(4) Resources: means tangible assets and property owned by the applicant with the exception of assets and property in the refugee’s country of origin and assets

and property given to the refugee as part of the reception and placement program.

(5) Refugee cash assistance (RCA): means a one hundred percent federally funded cash assistance program for non-TANF, non-SSI, eligible needy refugees during their first 12 months in the U.S.

(6) Refugee medical assistance (RMA): means a one hundred percent federally funded medical assistance program for non-Medicaid eligible needy refugees during their first 12 in the U.S.

S. Definitions beginning with “S”:

(1) Secondary migrant: means a refugee who was initially resettled in another state but who has relocated their residence to New Mexico.

(2) Spend down: means to deduct incurred medical expenses from countable income, thereby lowering the amount of countable income to a level that may meet the financial eligibility standard.

(3) Standard of deed: means a maximum cash benefit amount that is based on federal regulation for TANF standard of need.

(4) Supplemental security income (SSI): means monthly cash payments to income eligible persons over the age of 65 or who are determined to be disabled under the authority of Title XVI of the Social Security Act.

T. Definitions beginning with “T”:
[RESERVED]

U. Definitions beginning with “U”: Unearned income: means income from one of these sources: old age, survivors and disability insurance payments (social security); railroad retirement benefits; veteran’s administration compensation or pension payments; military retirement and allotments; pensions, annuities and retirement benefits; lodge or fraternal benefits; other public or private disability or retirement benefits or pensions; shared shelter payments; individual Indian money (IIM); royalty or lease

payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker’s compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

V. Definitions
beginning with “V”: Victim of human trafficking: means an individual who has received certification from ORR as a victim of human trafficking.

W. Definitions
beginning with “W”:
[RESERVED]

X. Definitions
beginning with “X”:
[RESERVED]

Y. Definitions
beginning with “Y”: **[RESERVED]**

Z. Definitions
beginning with “Z”: **[RESERVED]**
 [8.119.100.7 NMAC - N, 11/01/2013; A, 11/1/2022]

**HUMAN SERVICES
 DEPARTMENT
 INCOME SUPPORT DIVISION**

This is an amendment to 8.119.410 NMAC, Section 8 effective 11/1/2022.

8.119.410.8 GENERAL RECIPIENT REQUIREMENTS:

- A. Citizenship**
- (1) To be eligible for inclusion in the RCA benefit group, the applicant must be classified as a “refugee.”
- (2) To be eligible for inclusion in the RRP benefit group the individual must provide proof, in the form of documentation issued by USCIS, of one of the following statuses under the INA as a condition of eligibility:
- (a) paroled as a refugee or asylee under section 212(d)(5) of INA; or
- (b) admitted as a refugee under section 207 of the INA; or

(c) granted asylum under section 208 of the INA; or

(d) Cuban and Haitian entrants including:

(i)

any individual granted parole status as a Cuban/Haitian entrant (status pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(ii) any other national of Cuba or Haiti who was paroled into the U.S. and has not acquired any other status under the INA; is the subject of exclusion or deportation proceedings under the INA; or has an application for asylum pending with the INS; and with respect to whom a final, non-appealable, and legally enforceable order of deportation or exclusion has not been entered; or

(e) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts 1989 (Public Law 100-461 as amended)); or

(f) admitted for permanent residence, provided the individual previously held one of the statuses identified above.

(3) An applicant for asylum is not eligible for assistance under title IV of the INA unless otherwise provided by federal law.

B. Time limits

(1) Eligibility for RCA is limited to [~~eight (8)~~] 12 months from the date of entry, date of asylum, or date deportation was withheld.

(2) For refugee assistance cases involving U.S. born children, the eligibility for

RCA for the child expires when the refugee parent who last arrived in the U.S. has been in the country for eight [~~(8)~~] months.

C. General eligibility requirements

(1) RCA eligibility is limited to those who are ineligible for TANF. The benefit groups’ eligibility for TANF must be determined before determining eligibility for RCA.

(2) An individual who is enrolled full-time in an institution of higher education will be ineligible to participate in the RCA program except where such enrollment has been approved as part of the individual’s individual employability plan (IEP) and in which the enrollment will last for a period of less than one year.

(a) An individual is considered to be enrolled in an institution of higher education, if the individual is enrolled in a business, technical, trade or vocational school, that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) The enrollment status of a student shall begin on the first day of the school term. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and semester breaks. Enrollment status shall terminate when the student graduates, is expelled, does not re-enroll or is suspended for a period in excess of [~~thirty (30)~~] 30 calendar days.

(3) A refugee must provide the name of the resettlement agency which was responsible for his or her resettlement.

(4) Possession of a social security number is not a requirement of eligibility for RCA. [07/01/97; 8.119.410.8 NMAC - Rn, 8 NMAC 3.RRP.412, 03/14/2001; A, 11/1/2013; A, 11/1/2022]

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 9/14/2022 open meeting, to repeal its rule 17.7.3 NMAC - Integrated Resource Plans for Electric Utilities filed 3/30/2007 and replace it with 17.7.3 NMAC - Integrated Resource Plans for Electric Utilities, effective 10/27/2022.

PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 7 ENERGY CONSERVATION
PART 3 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES**

17.7.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.7.3.1 NMAC - Rp, 17.7.3.1 NMAC, 10/27/2022]

17.7.3.2 SCOPE:
A. This rule applies to all electric utilities subject to the commission’s jurisdiction over integrated resource planning.
B. Impact on other rules: Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.

C. Severability: If any part or application of this rule is held invalid, the remainder of its application shall not be affected.
[17.7.3.2 NMAC - Rp, 17.7.3.2 NMAC, 10/27/2022]

17.7.3.3 STATUTORY AUTHORITY: This rule is adopted under the authority vested in this commission by the New Mexico Constitution, Article XI, Section 2; the Public Regulation Commission Act, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978 and

Section 8-8-15 NMSA 1978; the Public Utility Act, Section 62-3-1 NMSA 1978, et seq., Section 62-3-2 NMSA 1978, Subsection H of Section 62-3-3 NMSA 1978, Section 62-6-4 NMSA 1978, Section 62-8-1 NMSA 1978, and Section 62-8-13 NMSA 1978; the Efficient Use of Energy Act, Section 62-17-1 NMSA 1978, et seq., and Section 62-17-10 NMSA 1978; the Renewable Energy Act, Section 62-16-1 NMSA 1978, et seq.; the Energy Transition Act, 62-18-1 NMSA 1978, et seq.; the grid modernization statute, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978, et seq.
[17.7.3.3 NMAC - Rp, 17.7.3.3 NMAC, 10/27/2022]

17.7.3.4 DURATION: Permanent.
[17.7.3.4 NMAC - Rp, 17.7.3.4 NMAC, 10/27/2022]

17.7.3.5 EFFECTIVE DATE: October 27, 2022, unless a later date is cited at the end of a section.
[17.7.3.5 NMAC - Rp, 17.7.3.5 NMAC, 10/27/2022]

17.7.3.6 OBJECTIVE:
A. The objective of this rule is to set forth the commission’s requirements for the preparation, filing, review, and acceptance of integrated resource plans by public utilities supplying electric service in New Mexico in order to identify the most cost-effective portfolio of resources to supply the energy needs of customers. This rule regulates utility integrated resource planning and procurement consistent with the commission’s statutory obligations to ensure fair, just, and reasonable rates.
B. This rule serves the commission’s objectives of increasing transparency, involving stakeholder participation early in the process, and tying the IRP outcome directly to the procurement process.

C. To assist utilities in identifying the most cost-effective portfolio, this rule establishes a transparent, competitive format

for analyzing alternative resource portfolio plans.

D. This format promotes fair and robust competition in selection of resources to ensure consistency, efficiency, and harmony with the integrated resource planning and procurement process.

(1) In proposing cost-effective resources, utilities shall prioritize those that best comply with the state’s requirements for reducing greenhouse gas emissions, fostering equitable clean energy development, and grid modernization.

(2) Utilities shall consider the following resources, including but not limited to: distributed energy resources, demand response, energy efficiency, renewable energy, flexible generation, low-emission or zero carbon resources, energy storage systems, and transmission and distribution grid improvements.
[17.7.3.6 NMAC - Rp, 17.7.3.6 NMAC, 10/27/2022]

17.7.3.7 DEFINITIONS: When used in this rule, unless otherwise specified the following definitions shall apply:

A. Definitions beginning with “A”:
(1) action plan means the proposed process and specific actions the utility shall carry out to implement the integrated resource plan spanning a three year period following the filing of the utility’s integrated resource plan;

(2) availability factor means the ratio of the time a generating facility is available to produce energy at its rated capacity to the total amount of time in the period being measured;

B. Definitions beginning with “B”: [RESERVED]

C. Definitions beginning with “C”: **capacity factor means** the ratio of the net energy produced by a generating facility during a given time period to the amount of net energy that could have been produced if the facility

operated continuously at full capacity during that same time period;

D. Definitions beginning with “D”:

(1) **demand response means** a form of load management that involves changes in electric usage by end-use customers from their normal consumption patterns, either in response to changes in the price of electricity over time, or to incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized;

(2) **demand-side resource means** storage, responsive distributed generation, and loads engaged in demand response programs that can support the grid by responding to market signals or direct load control;

(3) **derating means** a temporary or permanent reduction in the expected power output of a generating facility;

(4) **distributed energy resource (DER) means** the equipment used by an interconnection customer to generate, store, or generate and store electricity that operates in parallel with the electric distribution system.

(a) DER may include, but is not limited to: an electric generator with or without an energy storage system, a prime mover, or combination of technologies capable of injecting power and energy into the electric distribution system, which also includes the interconnection equipment necessary to safely interconnect with the distribution system;

(b) DER may not always be interconnected with the bulk power system;

(c) DER may include distributed generation resources, distributed energy storage, demand response energy efficiency, and electric vehicles and chargers that are connected to the electric distribution power grid;

(e) DER may be capable of exporting active power to an electric power system;

(f) DER includes the customer’s interconnection facilities but shall not include the area electric power system operator’s interconnection facilities.

E. Definitions beginning with “E”:

(1) **emergency procurement means** a utility’s procurement to address a system-based emergency condition including a serious threat to public health, welfare, safety, or property caused by a flood, fire, epidemic, riot, act of terrorism, equipment failure, or similar event.

(2) **energy efficiency means** measures, including energy conservation measures, or programs that target consumer behavior, equipment, or devices, to result in a decrease in consumption of electricity without reducing the quantity or quality of energy services;

(3) **energy storage resource means** a commercially available technology that is capable of absorbing energy, storing it for a period of time, and thereafter delivering the energy.

(a) specifically, it means a commercially available technology that:

(i) uses mechanical, chemical, or thermal processes to:

(ii) store energy, including energy generated from renewable energy resources and energy that would otherwise be wasted, and deliver the stored energy for use at a later time; or

(iii) store thermal energy for direct use for heating or cooling at a later time in a manner that reduces the demand for electricity at the later time;

(iv) is composed of stationary equipment;

(v) if being used for electric grid benefits, is operationally visible and capable of being controlled by the distribution

or transmission entity managing it, to enable and optimize the safe and reliable operation of the electric system; and

(b) achieves any of the following:

(i) reduces peak electrical demand;

(ii) defers the need, or substitutes for, an investment in electric generation, transmission, or distribution assets;

(iii) improves the reliable operation of the electrical transmission or distribution systems; or

(iv) lowers customer costs by storing energy when the cost of generating or purchasing it is low and delivering it to customers when the costs are high.

F. Definitions beginning with “F”:

(1) **facilitated stakeholder process means** the statutory public advisory process pursuant to Section 62-17-10 NMSA 1978, conducted by a commission appointee to facilitate advisory discussions among stakeholders, including members of the public, to advise the public utility and reach potential agreement in the utility’s development of its statement of need and action plan;

(2) **flexibility means** the ability of a power system or resource to timely respond as needed to changes in supply and demand through deployment or curtailment of resources by system managers or other control methods, to maintain a balanced load, and to compensate for the variability of renewable energy resources;

(3) **flexible generation means** generation resources that can start, ramp up, and ramp down quickly and efficiently, can be dispatched, and run at low output levels, and can serve frequency response and ancillary service needs, as needed;

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

H. Definitions beginning with “H”: heat rate means the ratio of energy inputs used

by a generating facility expressed in British thermal units, to the energy output of that facility expressed in kilowatt-hours;

I. Definitions

beginning with “I”:

(1) **integrated resource plan (IRP) means** a public utility’s plan to meet New Mexico jurisdictional retail customers’ existing and future demand in accordance with this rule and applicable state policies.

(a)

specifically, it means a set of resource options that a utility could use to meet the service needs of its customers over a forecast period, including an explanation of the supply and demand circumstances under which, and the extent to which, each resource option would be used to meet those service needs.

(b)

these resource options include, but are not limited to, using, refurbishing, and constructing utility plant and equipment, buying power generated by other entities, controlling customer loads, and implementing customer energy conservation;

(2)

independent monitor (IM) means a person or entity appointed by the commission to oversee the conduct of a utility’s competitive procurement process as addressed in this rule. The IM shall report to the commission regarding the utility’s conformance with the most recently accepted statement of need and action plan and the sufficiency, reasonableness, competitive fairness, and completeness of that process;

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”:

(1) **load**

forecasting means the prediction of the demand for electricity and energy over the planning period for the utility;

(2) **load**

management means measures or programs that target equipment or

devices to decrease peak electricity demand or shift demand from peak to off-peak periods;

M. Definitions

beginning with “M”: **most**

cost-effective resource portfolio means those supply-side resources and demand-side resources that minimize the net present value of revenue requirements proposed by the utility to meet electric system demand during the planning period consistent with reliability and risk considerations;

N. Definitions

beginning with “N”:

(1) **net**

capacity means the amount of flexible capacity necessary to supply instantaneous demand over and above the available capacity from variable energy resources, including wind and solar generation;

(2) **net**

load means the difference between forecasted load and expected electricity production from variable generation resources;

O. Definitions

beginning with “O”: [RESERVED]

P. Definitions

beginning with “P”:

(1) **planning**

period means the future period for which a utility develops its IRP, which, for purposes of this rule, is 20 years;

(2) **public**

utility or utility has the same meaning as in the Public Utility Act, except that it does not include a distribution cooperative utility as defined in the Efficient Use of Energy Act.

Q. Definitions

beginning with “Q”: [RESERVED]

R. Definitions

beginning with “R”:

(1) **regional**

energy market means an organized interstate market for energy, ancillary services, or capacity, operated by an independent entity (independent system operator or regional transmission operator) subject to regulatory authority of the Federal energy regulatory commission;

(2) **renewable**

energy means electrical energy generated by use of renewable energy resources and delivered to a public utility;

(3) **renewable**

energy resource means the following energy resources, with or without energy storage:

(a)

solar, wind and geothermal;

(b)

hydropower facilities brought in service on or after July 1, 2007;

(c)

biomass resources, limited to agriculture or animal waste, small diameter timber, not to exceed eight inches, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico; provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(i) be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii) have zero life cycle carbon emissions; and

(iii) meet scientifically determined restoration, sustainability and soil nutrient principles;

(d)

fuel cells that do not use fossil fuels to create electricity; and

(e)

landfill gas and anaerobically digested waste biogas; and

S. Definitions

beginning with “S”: statement of need means a description and explanation of the amount and type of new resources, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

T. Definitions

beginning with “T”: [RESERVED]

U. Definitions

beginning with “U”: [RESERVED]

V. Definitions

beginning with “V”: [RESERVED]

W. Definitions
beginning with “W”:
[RESERVED]
X. Definitions
beginning with “X”: **[RESERVED]**
Y. Definitions
beginning with “Y”: **[RESERVED]**
Z. Definitions
beginning with “Z”: **[RESERVED]**
 [17.7.3.7 NMAC - Rp, 17.7.3.7 NMAC, 10/27/2022]

17.7.3.8 INTEGRATED RESOURCE PLANS FOR ELECTRIC UTILITIES:

A. A public utility supplying electric service to customers shall file with the commission every three years a proposed integrated resource plan (IRP) to meet the service needs of its customers over the planning period. The plan shall show the resource options the utility intends to use to meet those needs. The plan shall also specify how the implementation and use of those resource options would vary with changes in supply and demand. The utility is only required to identify a resource option type, unless a commitment to a specific resource exists at the time of the filing. The utility shall also discuss any plans to reduce emissions from existing resources through sales, leases, deratings, or retirements.

B. The IRP submitted to the commission by an electric utility shall contain the utility’s New Mexico jurisdictional information as follows:

- (1) description of existing resources, see Appendix A;
- (2) current load forecast, see Appendix A;
- (3) load and resources table, see Appendix A;
- (4) new load and facilities arising from special service agreements, economic development projects, and affiliate transactions;
- (5) identification of resource options, see Appendix A;
- (6) statement of need, see 17.7.3.10 NMAC;

(7) determination of the resource portfolio, see Appendix A; and
 (8) action plan, see 17.7.3.11 NMAC.

C. The utilities shall file their IRP on a staggered schedule, as follows:

(1) Public service company of New Mexico shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2023.

(2) Southwestern public service company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2024.

(3) El Paso electric company shall file an IRP pursuant to 17.7.3.8 NMAC on or before September 1, 2025.

D. A multi-jurisdictional utility shall include in its IRP a description of its resource planning requirements in the other state(s) where it operates, and a description of how it is coordinating the IRP with its out-of-state resource planning requirements.

E. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the statement of need or action plan had those events been recognized when the statement of need or action plan was accepted.

(1) The utility shall, within two weeks of knowledge of the material event or events, submit a filing in its most recent IRP docket detailing the material events and options being considered as proposed modifications to the accepted action plan.

(2) This notice shall occur prior to the development of any proposed action plan modifications to ensure that the commission has advance notice. The utility shall serve the filing on everyone on the service list as well as each commissioner.

(3) The utility bears the burden of explaining why the events qualify as material and whether it shall file a variance,

pursuant to 1.2.2.40 NMAC or 17.7.3.17 NMAC, from the accepted statement of need or action plan. [17.7.3.8 NMAC - Rp, 17.7.3.9 NMAC, 10/27/2022]

17.7.3.9 FACILITATED STAKEHOLDER PROCESS; IRP PROCESS:

A. At least six months prior to the filing of its IRP, the utility shall notify the commission, members of the public, the New Mexico attorney general, and all parties to its most recent base rate case and most recent IRP case of its intent to file an IRP. The commission, upon notification, shall initiate a facilitated process for the utility, commission utility division staff, and stakeholders to reach a potential agreement on a proposed statement of need pursuant to 17.7.3.10 NMAC and an action plan pursuant to 17.7.3.11 NMAC. The commission, aside from utility division staff and the appointed facilitator, shall not participate in the facilitated stakeholder process.

(1) The utility shall provide commission utility division staff and stakeholders who have signed a confidentiality agreement reasonable access to the same modeling software used by the utility on equal footing as the utility, and shall perform a reasonable number of modeling runs, not to exceed five modeling runs per staff or a stakeholder, if requested by staff or a stakeholder, in accordance with commission precedent, and the utility shall share all modeling information.

(2) Nothing in this section shall preclude commission utility division staff from providing an analysis based on an alternative, open-source modeling software.

B. Not later than six months after the facilitated stakeholder process commences, the utility shall file the IRP with the commission, explaining all resolved and unresolved issues resulting from the facilitated process.

(1) Written public comments may be filed within 30 days of the utility’s filing of the IRP.

(a) Written public comments may include the commenter’s own draft statement of need and action plan for commission review.

(b) Written public comments shall be made part of the utility’s IRP as addendums.

(2) The utility shall file, within 60 days of the utility’s filing of the IRP, a written response to all timely filed written public comments, stating whether it adopts any of the written comments as amending the IRP and the reasons why or why not.

(3) The commission’s utility division staff shall consider the filed written public comments and the utility’s written responses and shall file a statement with the commission within 90 days of utility’s filing of the IRP as to whether the statement of need and action plan comply with the policies and procedures of this rule.

(4) If the commission has not acted within 120 days of the filing of the IRP, the statement of need and action plan are deemed accepted as compliant with this rule. If the commission determines that the statement of need or action plan do not comply with the requirements of this rule, the commission shall identify the deficiencies and return it to the utility with instructions for re-filing. [17.7.3.9 NMAC - N, 10/27/2022]

17.7.3.10 STATEMENT OF NEED:

A. The statement of need is a description and explanation of the amount and type of new resources, expressed in terms of energy or capacity, necessary to reliably meet an identified level of electricity demand in the planning horizon and to effect state policies.

B. The statement of need shall not solely be based on projections of peak load. The need may be attributed to, but not limited by, incremental load growth, renewable energy customer programs, or replacement of existing resources,

and may be defined in terms of meeting net capacity, providing reliability reserves, securing flexible resources, securing demand-side resources, securing renewable energy, expanding or modifying transmission or distribution grids, or securing energy storage as required to comply with resource requirements established by statute or commission decisions.

[17.7.3.10 NMAC - N, 10/27/2022]

17.7.3.11 ACTION PLAN:

A. The utility’s action plan shall:

(1) detail the specific actions the utility shall take to implement the IRP spanning a three year period following the filing of the utility’s IRP;

(2) detail the specific actions the utility shall take to develop any resource solicitations or contracting activities to fulfill the statement of need as accepted by the commission; and

(3) include a status report of the specific actions contained in the previous action plan.

B. The utility shall update the commission by filing two reports describing the utility’s implementation of the action plan. These reports shall be filed in the existing IRP docket one year after the filing of the IRP, and two years after the filing of the IRP, respectively.

C. An action plan does not replace or supplant any requirements for applications for approval of resource additions set forth in New Mexico law or commission regulations.

D. The utility shall promptly notify the commission and participants of material events that would have the effect of changing the results of the utility’s action plan had those events been recognized when the action plan was developed.

E. In accepting the action plan, the commission shall take into consideration contractual obligations as between the utility and any regional transmission organizations or balancing authorities

of which the utility is a member. [17.7.3.11 NMAC - N, 10/27/2022]

17.7.3.12 REQUEST FOR PROPOSALS PROCESS:

A. Scope and purpose: Unless the commission grants a public utility’s variance application pursuant to 17.7.3.17 NMAC for a variance from section 12 of this rule, the utility shall follow the request for proposals process to ensure cost competitiveness and fairness in procurement by comparing proposals among bidders through a transparently designed and monitored request for proposals.

B. To address the utility’s procurement need, if any, as described in the statement of need, and to fulfill the objectives of the utility’s action plan, the utility shall issue a request for proposals (RFP) in the current IRP docket, within five months of the commission’s acceptance of its statement of need and action plan.

C. Prior to the utility’s commencement of an RFP solicitation, the utility shall provide the commission, the IM, and parties to the utility’s pending IRP case with the documents and contracts that constitute the RFP solicitation (RFP documents) and a timeline for soliciting, accepting, evaluating, and ranking bids.

D. Within 21 days of receipt of the RFP documents, commissioners, commission utility division staff, and intervenors may submit comments to the utility, including on whether its proposed RFP conforms with its accepted statement of need and action plan and is not unduly discriminatory. Comments shall be considered, and may be incorporated, by the utility prior to the issuance of the RFP.

E. The utility may issue the RFP after comments are submitted on the independent monitor’s design report pursuant to Subsection I of 17.7.3.14 NMAC. The utility shall file a notice with the commission of any final changes to the RFP design upon issuance.

F. The proposed RFP(s) shall include:

- (1) bid evaluation and ranking criteria;
- (2) the overall amount and duration of power the utility is soliciting and any other details concerning its resource needs;
- (3) a request for bidders' reasonable estimates of any new transmission costs and transmission upgrade costs for resources, if known;
- (4) the extent and degree to which resources shall be dispatchable, including the requirement, if necessary, that resources be able to operate under automatic dispatch control;
- (5) the utility's proposed contract(s) for the acquisition of resources;
- (6) proposed contract term lengths;
- (7) the applicable discount rate;
- (8) the timeline, including the solicitation period, the ranking period, and the expected selection period;
- (9) all security requirements and the rationale behind them; and
- (10) any other information necessary to implement a competitive RFP process.

G. For a proposed RFP, each utility shall provide:

- (1) a description of information that the utility claims is confidential;
- (2) descriptions of proposed protection methods for:
 - (a) bid prices; and
 - (b) other bid details.

H. Not later than 75 days after the utility receives bids for its projected needs, the utility shall provide the IM with a ranking of proposals that meet the above stated criteria, a detailed description of price and non-price criteria, its preferred portfolio of resources, along with a timeline for resource development.

I. The utility shall rank bids submitted in response to an

RFP using the following price and non-price criteria:

- (1) consistency with the terms and requirements of the Efficient Use of Energy Act and the Renewable Energy Act; and other public policies regarding resource preferences adopted by New Mexico or the federal government;
 - (2) cost of the resource that would be borne by ratepayers, described in terms of the net present value of capacity cost and lifetime cost of energy calculation;
 - (3) resource effect on system operations and reliability, credit, and financial risks to the utility;
 - (4) any risks imposed on ratepayers, including assessment of relative amounts of risk inherent among different technologies, fuel sources, or financing arrangements;
 - (5) environmental impacts including, but not limited to, those associated with resources that emit carbon dioxide or create long-term waste disposal issues;
 - (6) resource dispatchability and operational flexibility benefits or constraints;
 - (7) the utility shall include in its evaluation the estimated cost and environmental impact of transmission upgrades or distribution infrastructure upgrades necessary to deliver the project's energy, capacity, or services;
 - (8) each bidder shall be responsible for all costs associated with interconnecting its project to the transmission grid or, if applicable, to local distribution facilities; and
 - (9) completeness and credibility of a detailed critical path schedule, and ability to meet scheduled construction start date and commercial operational date, including completing the interconnection process.
- J.** Additional criteria used by the utility for ranking may not establish a preference for utility ownership or for projects proposed by a utility-affiliated company.

The utility shall not unreasonably discriminate between proposals for a utility-owned or utility affiliate-owned resource and proposals for a resource owned by an independent power producer through a purchased power agreement.

K. The bid evaluation shall ensure that all bids are compared and evaluated on a consistent basis that is competitive, fair, and shall be subject to review by the commission.

L. The utility may issue additional RFPs in the current IRP docket, adhering to the processes and procedures described in 17.7.3.12 NMAC, if prudent following a material event pursuant to Subsection D of 17.7.3.11 NMAC.

M. Nothing in this rule shall be construed to prevent a public utility from procuring resources as required by the REA, Section 62-16-4 NMSA 1978, the EUEA, Section 62-17-5 NMSA 1978, or 17.9.570 NMAC. Such procurements shall be included in the utility's forecasting, statement of need, and action plan. [17.7.3.12 NMAC - N, 10/27/2022]

17.7.3.13 COST RECOVERY:

A. Acceptance of the utility's statement of need and action plan does not constitute a finding of prudence or pre-approval of costs associated with acquiring additional resources.

B. Any costs incurred to implement an accepted action plan shall be considered in a general rate case, resource acquisition proceeding, or appropriate application for a CCN. [17.7.3.13 NMAC - N, 10/27/2022]

17.7.3.14 INDEPENDENT MONITOR:

A. Scope and purpose: The independent monitor's role is to help the commission determine that the request for proposals design and execution is fair, competitive, and transparent. The independent monitor shall advise the commission and report on the RFP process, but the independent monitor shall not make or participate in the public utility's decisions regarding the procurement process or the selection of resources.

B. Following commission acceptance of a public utility's statement of need and action plan, the commission shall appoint an independent monitor to monitor the procurement process of a public utility for competitive resource procurements pursuant to 17.7.3.12 NMAC. The independent monitor, as provided in this section, shall assist the commission in ensuring that all such processes are reasonable and competitively fair and shall report to the commission regarding those matters as provided in this rule. The commission may appoint an IM for emergency procurements pursuant to 17.7.3.17 NMAC.

C. The commission shall, through its designee:

- (1) undertake a process consistent with state purchasing rules and commission policies in recommending a pool of qualified IMs;
- (2) develop an RFP, including the scope, terms of work, and evaluation process to score the RFP responses;
- (3) receive, review, score, and rank the RFP responses;
- (4) confer with the public utility on the recommendation of the IM;
- (5) recommend qualified bidders to the commission for appointment as the IM; and
- (6) administer the contract with the appointed IM, including: confirming that contract deliverables are met, reviewing invoices and related contract performance, and approving utility invoices after staff's review and approval.

D. In selecting the IM, the commission, through its designee, may solicit recommendations of the names of independent firms or individuals that demonstrate independence from public utilities supplying electric service in the state, their affiliates, and likely bidders, and demonstrate the qualifications, expertise, and experience to perform

the functions of an IM as provided in this rule.

(1) The IM shall provide a statement of interest to the commission which discloses any contracts or other economic arrangements of any kind between the IM and any investor-owned electric utility or affiliate within the last four years.

(2) The IM shall notify the commission and utility of any perceived or actual conflicts that arise during the course of the procurement process.

E. The commission, through its designee, shall develop a standard form of contract between an IM and the commission that requires the IM to perform the functions of an IM as provided in this rule in a manner that is not subject to the control of the public utility. The standard form of contract between an IM and the commission for IM services as provided for in this rule shall include, but shall not be limited to, the identification of the IM's functions and scope of work as provided in Subsection G of 17.7.3.14 NMAC.

F. Funding for the services of the IM shall be paid by the utility and treated as a regulatory asset to be recovered through rates established in the utility's next general rate proceeding.

G. Duties of the independent monitor:

(1) The IM shall file a minimum of two reports with the commission. The first report shall analyze the RFP design (design report). The final report shall review the fairness of the RFP execution (final report).

(a) In the design report, the IM shall report to the commission on RFP design within 28 days of the public utility's provision of RFP documents pursuant to Subsection C of 17.7.3.12 NMAC. The IM shall analyze the proposed RFP, including but not limited to its scope, instructions, conditions for eligible proposals, specifications, time schedules, disclosure of bid evaluation methods, and term sheets.

The RFP design report shall state whether the contents of the proposed RFP comply with the requirements of 17.7.3.10 NMAC through 17.7.3.12 NMAC and are otherwise reasonable, competitively fair, designed to promote a robust bid response, and designed to identify a utility's most cost-effective option among resource alternatives to meet its service needs in compliance with this rule.

(b) In the final report, the IM shall, within 30 days of the utility's submission of its shortlist to the IM, review and report on the reasonableness, competitiveness, and fairness of the utility's solicitation, evaluation, and procurement processes, including but not limited to bid screening, comparison, ranking evaluation, and short-listing criteria.

(i) The IM shall state whether the RFP process implemented by the public utility complied with the requirements of 17.7.3.11 NMAC and 17.7.3.12 NMAC.

(ii) The IM's report shall also provide summary information on the results of the bids, including the number of bids sorted by the following criteria: by resource type, capacity or energy, price range by resource type, and whether there were any deficiencies in those respects that should be addressed by the commission in a future proceeding for approval of the solicited projects. The commission may rely on that opinion to request that the utility make modifications in a timely manner.

(2) At any point during the public utility's RFP process the IM may notify the commission and the utility of any deficiency as contemplated in Subsection G of 17.7.3.14 NMAC.

H. The public utility shall provide the IM with prompt and continuing access to all documents, data, assumptions, models, specific model inputs, bidding and weighting criteria used, and any other relevant information reviewed, produced, or relied on by the public utility in the preparation and conduct of its

competitive resource procurement process.

I. All communications, including but not limited to reports pursuant to this section, provided by the IM to the commission, shall be made part of the commission’s public records in a timely manner in the public utility’s most recent IRP docket.

(1) The public utility, commission utility division staff, and any parties to the public utility’s most recent IRP docket may comment within 14 days of the filing of the design report to the public record. After the design report comment deadline of 14 days, the utility may issue the RFP.

(2) In any proceeding filed by a public utility for approvals stemming from its solicitation made pursuant to the RFP process as described in 17.7.3.12 NMAC, the commission may rely upon any reports or findings of the IM assigned to monitor that solicitation as evidence, provided that such evidence shall not be conclusive as to whether or not a resource proposed by the utility shall be approved.

J. All communications between the public utility and any bidders shall be shared at the same time with the IM. Commission utility division staff and any parties are restricted from initiating contacts with the independent monitor. The independent monitor may initiate contact with the utility, commission utility division staff, and any parties.

(1) For all contacts with the public utility, commission utility division staff, and any parties in the resource plan proceeding, the independent monitor shall maintain a log that briefly identifies the entities communicating with the IM, the date and duration of the communication, the means of communication, the topics discussed, and the materials exchanged, if any.

(2) The communications log shall be contained in the IM’s report to the commission pursuant to Subparagraph (b) of Paragraph (1) of Subsection G of 17.7.3.14 NMAC.

K. The independent monitor shall serve as an advisor to the commission and shall not be a party to the proceedings in accordance with 1.2.3.9 NMAC. As such, the independent monitor shall not be subject to discovery nor cross-examination at hearing, if one is held, but the public utility, commission utility division staff, and any parties shall have the opportunity to respond to any reports or findings of the IM pursuant to Paragraph (1) of Subsection I of 17.7.3.14 NMAC.

L. The commission shall not appoint an independent monitor for a utility’s procurement for which the commission grants a variance pursuant to Subsection D of 17.7.3.17 NMAC. [17.7.3.14 NMAC - N, 10/27/2022]

17.7.3.15 CONFIDENTIALITY OF INFORMATION:

A. The utility may submit any portions of its IRP under seal to the extent the utility deems specific information to be confidential.

B. The utility shall seek a protective order under Subsection B of 17.1.2.8 NMAC for those portions of its IRP it considers confidential, and the utility shall have the burden of proving its right to such protection.

(1) Any information submitted under seal pursuant to this paragraph shall remain under seal for a period of three years, after which time it shall become public unless the utility seeks and obtains further protection from the commission.

(2) Information submitted under seal shall be available for review by the commission and its designated representatives and by any person who has entered into a confidentiality agreement with the utility in a form approved by commission order, provided, however, that bidders or potential bidders shall not have access to competitively sensitive information of other bidders.

C. The utility shall not disclose any bid information for which a non-winning bidder has requested confidential treatment except in accordance with a commission protective order limiting disclosure of such information to persons who execute and file a confidentiality agreement with the commission as provided in that order. [17.7.3.15 NMAC - Rp, 17.7.3.11 NMAC, 10/27/2022]

17.7.3.16 EXEMPTIONS:

A. Motion for exemption from rule: Upon motion by a utility and for good cause shown, the commission may exempt public utilities with fewer than five thousand customers and distribution-only public utilities from the requirements of this rule.

B. Multi-state resource planning: The commission shall take into account a public utility’s resource planning requirements in other states and shall authorize utilities that operate in multiple states to implement plans that coordinate the applicable state resource planning requirements. [17.7.3.16 NMAC - Rp, 17.7.3.14 NMAC, 10/27/2022]

17.7.3.17 VARIANCES AND AMENDMENTS:

A. A utility may file a request for a variance from the requirements of this rule.

B. Such application shall:

(1) describe the situation which necessitates the variance;

(2) set out the effect of complying with this rule on the utility and its customers if the variance is not granted;

(3) identify the section(s) of this rule for which the variance is requested;

(4) describe the expected result which the request shall have if granted; and

(5) state how the variance shall aid in achieving the purposes of this rule.

C. The commission may grant a request for a procedural variance through an order issued by the chair, a commissioner, or a designated hearing examiner.

D. The following types of procurements that deviate from the utility’s commission-accepted action plan shall be submitted to the commission as an application for a variance pursuant to 17.7.3.17 NMAC:

(1) emergency procurements;

(2) capacity or energy from newly-constructed, utility-owned, supply-side resources with a nameplate rating of 20 megawatts or less;

(3) capacity or energy from the generation facilities of other utilities or from non-utility generators pursuant to agreements for a two year term or less (including renewal terms) or for 20 megawatts of capacity or less;

(4) improvements or modifications to existing utility generation facilities that change the production capability of the generation facility site in question by 20 megawatts or less based on the utility’s share of the total power generation at the facility site and that have an estimated cost of \$20 million or less;

(5) interruptible service provided to the utility’s electric customers;

(6) modification to, or amendment of, existing power purchase agreements provided that the modification or amendment does not extend the agreement more than four years, does not add more than 20 megawatts of nameplate capacity to the utility’s system, and is cost effective in comparison to other supply-side alternatives available to the utility; and

(7) utility administered demand-side programs. [17.7.3.17 NMAC - Rp, 17.7.3.15 NMAC, 10/27/2022]

HISTORY of 17.7.3 NMAC:

Pre-NMAC History: The material

in this part was derived from that previously filed with the state records center and archives under:

Public Service Commission, NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities, filed 6/30/1988.

History of Repealed Material:

NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 6/30/1988) repealed 4/16/2007.

17.7.3 NMAC - Integrated Resource Plans for Electric Utilities filed 3/30/2007, repealed 10/27/2022.

Other History:

Only that applicable portion of NMPSC Rule 420, Energy Conservation Programs For Electric and Gas Utilities (filed 6/30/1988) was renumbered, reformatted and replaced by 17.7.3 NMAC, Integrated Resource Plans for Electric Utilities, effective 4/16/2007.

17.7.3 NMAC - Integrated Resource Plans for Electric Utilities filed 3/30/2007, replaced by 17.7.3 NMAC - Integrated Resource Plans for Electric Utilities, effective 10/27/2022.

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 13.9.20 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

Section 10: There was a subsection A without a Subsection B. The entire section was renumbered to conform to correct legislative style.

A copy of this Notification will be filed with the official version of each of the above rules.

**End of Other Material
Related to Administrative
Law**

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Submittal Deadlines and Publication Dates

Volume XXXIII, Issues 1-24

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

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The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941.

2023 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXIV, Issues 1-24

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

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