

This is an emergency amendment to 8.26.4 NMAC, Sections 7, 8 and 12, effective 8/21/2019.

CYFD will be issuing a temporary emergency rule. CYFD is amending the rule to be in compliance with the federal law which would otherwise place CYFD in violation. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

8.26.4.7 DEFINITIONS:

- A. “Administrative appeal”** is a formal hearing for families whose license has been revoked, suspended, or not renewed. The family has the opportunity to present evidence to an impartial hearing officer in accordance with CYFD’s Administrative Appeals regulations 8.8.4 NMAC.
- B. “Administrative review”** is an informal process for families whose application for license has been denied. The review may include an informal conference or a record review, and does not create any substantive rights for the family.
- C. “Adoptee”** refers to any person who is the subject of an adoption petition.
- D. “Adoption”** is the establishment of a court sanctioned legal parental relationship between an adult and a child.
- E. “Adoptive parent”** refers to a foster parent licensed by PSD or by a licensed child placement agency who has finalized the adoption of a foster child.
- F. “Agency”** means any PSD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services. An agency may be licensed as an adoption agency, a foster care agency or both.
 - (1) “Adoption agency”** means an agency licensed by PSD to facilitate the adoption of a child or perform a service within the adoption process.
 - (2) “Foster care agency”** means an agency licensed by PSD for the purpose of supervising foster care homes, treatment foster care homes, or other levels of foster care as developed by PSD.
- G. “Applicant”** is any person who applies to become licensed as a foster parent to be considered as a potential foster care provider, treatment foster care provider, or an adoptive parent.
- H. “Application”** is the document by which persons who wish to become foster or adoptive parents request an assessment of their home and family, and the issuance of a license. The document also authorizes the department or licensed child placement agency to obtain relevant information from the applicant and other authorized persons in order to conduct an assessment of the applicant’s qualifications. The applicant shall certify that there are no willful misrepresentations in the application.
- I. “Assessment”** is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine the suitability of an applicant for a foster parent license.
- J. “Child abuse and neglect check”** is a review of the PSD information management system (also known as FACTS), or another state’s central abuse or neglect registry to determine if there have been any previous referrals on the family to this state’s or any other state’s child protective services division.
- K. “Client”** means a foster care or adoptive parent applicant, foster care or adoptive family, a foster or adoptive child, or the child’s biological family who receives services from a child placement agency or protective services.
- L. “Criminal records check (CRC)”** means federal, state or local checks for criminal offenses conducted by CYFD on potential and current foster and adoptive parents, and of all adults living in the foster or adoptive home.
- M. “CRC Clearance letter”** is a document provided to the licensing agent to inform them if the prospective foster or adoptive parent is cleared to proceed with licensing process.
- N. “CYFD”** means the New Mexico children, youth and families department.
- O. “FACTS”** means the PSD management information system.
- P. “Fictive kin”** means a person not related by birth, adoption or marriage with whom a child has an emotionally significant relationship.
- Q. “Foster care provider” or “foster parent”** means a person, including a relative of the child,

licensed by the department or a child placement agency to provide care for children in the custody of the department or agency.

R. “Foster child” as referred to as “child” herein, means a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division.

S. “Foster home license” is the document which bears the name and address of those individuals who have met these licensing requirements and are foster parents for the protective services division or licensed child placement agency. The license displays the ages and number of foster children the licensees are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

T. “Home study” is the final written document that results from the assessment process to determine the suitability of an applicant for a foster parent license.

U. “Licensing agent” means the qualified individual who conducts a home study.

V. “Pre-adoptive parent” refers to a foster care provider who has signed an adoption agreement to adopt a foster child, but whose adoption has not yet finalized.

W. “Protective services division (PSD)” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

X. “PSD custody” means custody of children as a result of an action filed pursuant to the New Mexico Children’s Code, 32A-4-1 et seq. NMSA 1978 or 32A-3B-1 et seq. NMSA 1978.

Y. “Relative” means a person related to another person by birth, adoption or marriage, within the fifth degree of consanguinity or affinity. Fictive kin, as defined herein, may be considered a relative if it is determined to be in the best interest of the child.

~~[Z. “Resident of New Mexico” means a person who has become domiciled in the state by establishing legal residence with the intention of maintaining residency indefinitely.]~~

~~[AA]~~ **Z. “Respite care”** is a short period of time when a foster child is cared for by an alternate foster parent because the original foster parent is temporarily unavailable to provide care.

~~[BB]~~ **AA. “SAFE”** means the structured analysis family evaluation home study format, which is the only home study format approved for use in New Mexico.

~~[CC]~~ **BB. “Specialized foster home”** means a family foster home licensed by PSD in which at least one adult has the required education, training or experience necessary to care for a child who has been certified as special needs.

~~[DD]~~ **CC. “Treatment foster care home”** is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

[8.26.4.7 NMAC - Rp, 8 NMAC 27.3.7 & 8.27.2.7 NMAC, 5/29/2009; A, 8/15/2011; A, 7/16/2019; A/E, 8/21/2019]

8.26.4.8 ELIGIBILITY:

A. Any adult age 18 or older ~~[who is a legal resident of the United States and who is a resident of New Mexico can apply to become a licensed foster parent].~~

B. Any person wishing to adopt a child in PSD custody shall be a licensed foster parent and shall obtain approval for adoption from PSD.

C. CYFD employees and their families who have met all licensing requirements may serve as foster or adoptive parents. A CYFD employee and their family members shall not be allowed to foster or adopt any child with whom the employee is working with in an official capacity.

D. A foster or adoptive family may be a single parent, a married couple or an unmarried couple.

E. No persons shall be licensed as foster parents whose own children are currently in foster care. No person shall be licensed as a foster parent whose parental rights have been terminated. Persons whose children have been formerly in foster placement may be licensed if the assessment of their application determines that the problems leading to the placement have been resolved.

F. To be considered for foster care, applicants shall have sufficient income, apart from the reimbursement, to support themselves and their families, which includes shelter, food, utility cost, clothing, and other household expenses;

G. Applicants must be able to communicate with the child, the licensing agency, health care providers and other service providers.

H. At least one applicant in the home must have functional literacy such as having the ability to read medication labels.

[8.26.4.8 NMAC - N, 5/29/2009; A, 8/15/2011; A, 6/25/2019; A, 7/16/2019; A/E, 8/21/2019]

8.26.4.12 ASSESSMENT PROCESS FOR FOSTER OR ADOPTIVE HOME LICENSE:

A. Only qualified PSD and CPA staff or individuals certified by PSD as licensing agents shall conduct home studies. (See process for certification as a licensing agent as set forth in the Adoption Act Regulations, 8.26.3.17 NMAC)

B. Upon receipt of the application to become a foster care provider, the licensing agent has five days to contact the family.

C. Home study forms and requirements are determined by PSD. The SAFE home study is the approved format to be used in New Mexico.

D. All applicants are assessed for their suitability to care for children who might be placed in their home. Although any previous foster care assessments and home studies that are obtainable shall be considered, the licensing agent shall conduct an independent assessment and home study.

E. In addition to the CRC and abuse and neglect checks, as described herein at 8.26.4.10 and 8.26.4.11 NMAC, the minimum documentation required for the assessment process includes:

(1) a physical exam report, paid for by the applicant, which certifies that all applicants are in good mental and physical health with a statement from the physician as to whether any medical or mental health conditions may affect the applicant's ability to care for a foster child. The medical report shall be dated within 12 months of the application date and include a list of any prescribed medications and the reasons for which they are prescribed to include use of medical marijuana;

(2) immunization records or waiver issued by the department of health for any child residing in the home;

(3) all household members who will be caregivers of infants must have an up to date pertussis (whooping cough) vaccine consistent with the recommendations of the Advisory Committee on Immunization Practices (ACIP), unless the immunization is contrary to the individual's health as documented by a licensed care professional;

(4) all household members who will be caregivers of infants and children with special needs must have an up to date annual influenza vaccine consistent with the recommendations of the ACIP, unless the immunization is contrary to the individual's health as documented by a licensed care professional;

(5) a copy of the applicant's current and valid driver's license and proof of motor vehicle insurance for any vehicle used to transport a foster child;

(6) a copy of the applicant's current marriage license and all previous divorce decrees, if applicable;

(7) proof of school enrollment or home schooling for all school aged children residing in the home;

~~[(8) the applicant's Permanent Residency Card or proof of U.S. citizenship such a birth certificate or certificate of naturalization;]~~

~~[(9)] (8)~~ a signed PSD approved release of information form; and

~~[(10)] (9)~~ a signed foster parent agreement.

F. The licensing agent shall contact the four (two related and two non-related) references provided by each applicant and shall contact any adult children living in and out of the parental home. The purpose of the contact is to assist in determining the applicant's suitability to become a foster care provider. In addition to completion of the SAFE reference form, the licensing agent shall contact the adult children in person or by phone.

G. The licensing agent shall conduct at least one individual interview with each person living in the applicant's home, including children and any relatives or other adults living in the home. The individual interviews shall be conducted separately, in private, and away from other household members. If any person(s) who lives in the home declines to be interviewed or participate in the home study process, the foster care provider shall not be licensed.

H. A minimum of three home visits shall be made to the prospective foster care provider.

I. The licensing agent shall assess the physical and mental health history of the applicant, including any history of drug and alcohol abuse or treatment. This information shall be used to determine suitability for licensure.

J. If it is determined by the licensing agent that the applicant has willfully misrepresented any information during the home study process, the licensing agent may deny licensure.

K. The results of a foster home home study are documented in PSD's approved home study format and filed in the foster care provider record maintained by the licensing agent.

L. From the date of application, the licensing agent shall complete the home study within the following timeframes:

- (1) For a non-relative applicant: 120 days;
- (2) For a relative or fictive kin applicant who takes placement of the child upon the child's initial entry into foster care: 60 days with one possible 30 day extension approved by the regional manager;
- (3) For a relative or fictive kin applicant who is applying for placement of a child already in a currently licensed foster home: 90 days.

[8.26.4.12 NMAC - Rp, 8 NMAC 27.3.14 & 15, 5/29/2009; A, 3/31/2010; A, 8/15/2011; A, 7/16/2019; A/E, 8/21/2019]