

## **NOTICE OF RULEMAKING AND CONTINUING PUBLIC RULE HEARING**

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rule regarding CHILD CARE ASSISTANCE as authorized by Section 9-2A-7 NMSA 1978:

8.15.2.7 NMAC – DEFINITIONS  
8.15.2.9 NMAC – PRIORITIES FOR ASSISTANCE  
8.15.2.12 NMAC – RECERTIFICATION  
8.15.2.13 NMAC – CLIENT RESPONSIBILITIES  
8.15.2.15 NMAC – PROVIDER REQUIREMENTS  
8.15.2.17 NMAC – PAYMENT FOR SERVICES

No technical scientific information was consulted in drafting this proposed rule.

Purpose of proposed rule: The purpose of the rule is to amend the eligibility levels for child care assistance, to eliminate the waiting list for child care assistance, to provide an explanation of the co-payment calculation and where to find the co-payment schedule, to comply with federal regulation to pay for registration/educational fees for children receiving child care assistance benefits on behalf of client, and to address the overlap of care hours under payment for services. Pursuant to the continuation of this rule change, amendments were made to the following sections: 8.15.2.9 NMAC; 8.15.2.12 NMAC; and 8.15.2.13 NMAC.

Copies of the proposed rule may be found at CYFD's website at <https://www.newmexicokids.org/> or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing that was originally scheduled for July 8, 2019 will held on Friday, August 30, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rule during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rule, from any interested member of the public, may also be submitted via email to [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us) with the subject line "8.15.2 NMAC Public Comment," or via first class mail to, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160 or by hand delivery to Kimberly Brown. The comment period ends at the conclusion of the public hearing on August 30, 2019.

## **AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA**

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se requiere bajo la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que propone adoptar enmiendas a las siguientes reglas con respecto a ASISTENCIA DE CUIDADO INFANTIL según autorizado por la sección 9-2A-7 NMSA 1978:

8.15.2.7 NMAC – DEFINICIONES  
8.15.2.9 NMAC – PRIORIDADES PARA ASISTENCIA  
8.15.2.12 NMAC – RECERTIFICACIÓN  
8.15.2.13 NMAC – RESPONSABILIDADES DEL CLIENTE  
8.15.2.15 NMAC – REQUISITOS DEL PROVEEDOR  
8.15.2.17 NMAC – PAGOS POR SERVICIOS

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

**Propósito de las propuestas leyes administrativas:** El propósito de las leyes administrativas es enmendar los niveles de elegibilidad para la asistencia de cuidado de niños, eliminar la lista de espera para asistencia, proporcionar una explicación del cálculo de copago y dónde encontrar el programa de tarifas para copago, y estar conforme con regulación federal de pagar las tarifas educacionales y de registración para niños recibiendo beneficios de asistencia de cuidado de niños en nombre del cliente, y abordar el traslapo de horas de cuidado bajo pago por servicios. Se hicieron enmiendas a las siguientes secciones: 8.15.29.F. NMAC; 8.15.2.12 NMAC; y 8.15.2.13 B. NMAC.

Copias de las propuestas leyes administrativas pueden ser localizadas en el sitio de la red de CYFD @<https://www.newmexicokids.org/> o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

**Aviso de Audiencia Pública de leyes administrativas:** La audiencia pública de leyes administrativas que originalmente fue programada para el lunes 8 de julio de 2019 será el viernes, 30 de agosto, 2019 a las 10:00 a.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir la audiencia tendrá una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales [debra.gonzales@state.nm.us](mailto:debra.gonzales@state.nm.us). CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

**Aviso de aceptación de comentario público por escrito:** Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a: [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us), especificando en la línea de Asunto: “8.17.2 NMAC Public Comment,” o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se puede entregar en mano a: Kimberly Brown. El período de comentarios termina a la conclusión de la audiencia pública del 30 de agosto de 2019.

## **Amended Sections to Proposed Rule / Reglas Propuestas**

### **8.15.2.9 PRIORITIES FOR ASSISTANCE:**

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

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**8.15.2.12 RECERTIFICATION:** Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be

closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification.

**8.15.2.13 CLIENT RESPONSIBILITIES:** Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

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

B. ~~[Co-payments for each additional child are determined at one half of the co-payment for the previous child.]~~ Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the copayment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.  
(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

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

(1) full time care will be based on one hundred percent of the base co-payment;  
(2) part time 1 care will be based on seventy-five percent of the base co-payment;  
(3) part time 2 care will be based on fifty percent of the base co-payment; and  
(4) part time 3 care will be based on twenty-five percent of the base co-payment.

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### Original Proposed Rule/Reglas Propuestas

#### **8.15.2.7 DEFINITIONS:**

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

~~[GG.]~~ FF. “Working” means employment of any type, including self-employment. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

#### **8.15.2.9 PRIORITIES FOR ASSISTANCE:**

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

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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]~~ one hundred sixty percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time ~~[subject to the~~

~~availability of funds and renewable subject to the availability of funds]~~ and will remain eligible at or below two hundred percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. ~~[The department reserves the right to expand the eligibility requirement up to two hundred percent of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.]~~ The department prioritizes child care services within priority four for children with special needs, disabilities, ~~[teen parents and homeless families]~~ homeless families, and for teen parents.

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**8.15.2.12 RECERTIFICATION:** Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification.

**8.15.2.13 CLIENT RESPONSIBILITIES:** Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

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

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

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

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

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

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

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

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

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

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**8.15.2.15 PROVIDER REQUIREMENTS:**

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

(1) ~~[In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.]~~ Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.

(2) ~~[Providers may charge a registration/educational fee to a child care assistance family comparable to but not to exceed that charged to private pay families. The registration/educational fee shall be charged no more than once every six months and shall be limited to materials and supplies. If the department determines that the provider is charging fees that are unreasonable and pose an undue burden to child care assistance families, the department may suspend the child care assistance contract.]~~ In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

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#### 8.15.2.17 PAYMENT FOR SERVICES:

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

~~[C.]~~ D. The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

~~[D.]~~ E. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of <del>[6]</del> 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

~~[E.]~~ F. Hours of care shall be rounded to the nearest whole number.

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

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

Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

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

~~[H.]~~ I. Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I. below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

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

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

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

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

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

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

Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

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

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

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

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

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

~~[M.]~~ N. If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

~~[N.]~~ O. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

~~[O.]~~ P. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds.