

**NOTICE OF PUBLIC RULEMAKING AND CONTINUED PUBLIC 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 proposes it to adopt amendments to the following rules regarding CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by Section 9-2A-7 NMSA 1978:

8.8.3.6 NMAC - OBJECTIVE

8.8.3.10 NMAC - COMPLIANCE

No technical scientific information was consulted in drafting these proposed rules.

**Purpose of proposed rules:** The purpose of the rules is to amend the background check requirements under 8.8.3 NMAC to comply with federal regulations for applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC. All prospective and existing staff (hired after October 1, 2016) will be required to obtain an inter-state criminal repository check in states where they resided during the preceding five years. In addition, language is added in 8.8.3.10 NMAC Compliance to clarify the requirement of both a screen of abuse and neglect (currently listed under 8.8.3.6 NMAC Objective) and an inter-state criminal repository check in each state where the applicant resided during the preceding five years.

Copies of the proposed rules may be found at end of this notice and at CYFD's website at <https://www.newmexicokids.org/> 30 days prior to the Public Hearing.

**Notice of public rule hearing:** The public rule hearing that was originally scheduled for March 17, 2020, at 1:00 p.m., will be held on June 9, 2020 at 1:00 pm. The hearing will be held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. 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 rules 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 rules, from any interested member of the public, may be submitted via email to [CYFD-ECS-PublicComment@state.nm.us](mailto:CYFD-ECS-PublicComment@state.nm.us) with the subject line "8.8.3 NMAC Public Comment" or via first class mail to P.O. Drawer 5160, Santa Fe, New Mexico 87502 – 5160. The comment period ends at the conclusion of the public hearing on June 9, 2020.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/j/98975572473>, and follow the instructions indicated on the screen – Meeting ID (access code): **98975572473**. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

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

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 PROVISIONES GENERALES DEL DEPARTAMENTO DE NIÑOS, JÓVENES Y FAMILIAS, GOVERNANDO LA REVISIÓN DE ANTECEDENTES Y HUELLAS Y VERIFICACION DE HISTORIAL DE EMPLEO según lo autorizado por la sección 9-2A-7 NMSA 1978:

#### 8.8.3.6 NMAC – OBJETIVO

#### 8.8.3.10 NMAC –CONFORMIDAD

No se consultó información técnica científica cuando se redactaron estas leyes propuestas.

**Propósito de las leyes propuestas:** El propósito de las leyes es enmendar los requisitos bajo 8.8.3 NMAC para el cumplimiento con las regulaciones federales para solicitantes con requisitos de obtener la revisión de antecedentes y huellas conforme a 8.16.2 NMAC y 8.17.2 NMAC. Todos los empleados potenciales y existentes (contratados a partir del 1 de octubre del 2016) requerirán obtener una comprobación de datos del repositorio penal interestatal en cada estado donde el solicitante ha vivido durante los últimos cinco años. Adicionalmente, lenguaje se ha añadido en 8.8.3.10 NMAC en conformidad para clarificar ambos requisitos; la detección de negligencia y abuso (ahora enlistado bajo el Objetivo 8.8.3.6 NMAC) y la comprobación de datos del repositorio penal interestatal en cada estado donde el solicitante ha vivido durante los últimos cinco años.

Copias de las leyes propuestas pueden ser localizadas al final de este aviso y en la página de internet de CYFD <https://www.newmexicokids.org/> 30 días antes de la Audiencia Pública.

**Aviso de Audiencia Pública de Leyes:** La audiencia pública de leyes que estaba originalmente programada para el martes 17 de marzo del 2020 a la 1:00 p.m. se llevara acabo el día 9 de junio del 2020 a la 1:00 pm. La audiencia se llevara acabo vía internet, correo electrónico, y medios telefónicos a causa concerniente a COVID-19 y en acuerdo a la Orden Ejecutiva 2020-004, de Declaración de Emergencia de Salud Pública y la Orden del 12 de marzo del 2020, Emergencia de Salud Pública con limitación de Grandes Agrupaciones a causa del COVID-19, de la Gobernadora Michelle Lujan Grisham. 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 puede asistir a la audiencia y se le proveerá una oportunidad razonable para ofrecer sus comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista s o argumentos, sobre las propuestas durante la audiencia. 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 peticiones razonables, pero no puede garantizar acomodar peticiones que no sean recibidas por lo menos diez días antes de la fecha programada para la audiencia.

**Aviso de aceptación de comentario público por escrito:** Comentario público por escrito, incluso presentación de datos, puntos de vista o argumentos sobre las leyes propuestas, de cualquier miembro del público interesado 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: “8.8.3 NMAC Public Comment,” o por correo de primera clase a P.O. Drawer 5160, Santa Fe, New Mexico 87502 – 5160. El período de comentarios termina con la conclusión de la audiencia pública del 9 de junio del 2020.

Cualquier miembro del público puede asistir a la audiencia por medio del internet o por teléfono y ofrecer durante la audiencia comentarios públicos sobre las leyes propuestas. Para accesar la audiencia por medio telefónico marque el número: 1-346-248-7799. Podra escuchar toda la audiencia y sus comentarios por telefono seran grabados. Para accesar a la audiencia por medio de internet dirijase a: <https://zoom.us/j/98975572473>, y siga las instrucciones indicadas en la pantalla-Meeting ID (numero de identificacion) Access code (codigo de acceso): **98975572473**. Esta sera una audiencia en vivo. Podra proveer su comentario por Chat durante la presentacion en vivo.

#### **Proposed Rules/Reglas Propuestas**

**Explanatory sentence for purposes of this Notice:** In 8.8.3.6 NMAC, Subsections A and B were not published as there are no changes. In 8.8.3.10 NMAC, Subsections A, C and D were not published as there are no changes.

#### 8.8.3.6

#### OBJECTIVE:

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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 8.16.2 NMAC and 8.17.2 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.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 10/1/2016, A, 10/1/2019, xx/xx/2020]

#### **8.8.3.10 COMPLIANCE:**

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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 8.16.2 NMAC or 8.17.2 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 8.16.2 NMAC and 8.17.2 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.

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[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 10/1/2016, A, 10/1/2019, xx/xx/2020]