

This is an amendment to 8.17.2 NMAC, Sections 7, 10, 11, 12, 22 and 24, effective 7/1/2021.

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

8.17.2.7 DEFINITIONS:

A. “Abuse” means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

- (1) physical contact that harms or is likely to harm a child;
- (2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;
- (3) punishment that is hazardous to the physical, emotional or mental state of the child; and
- (4) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

B. “Adult” means a person who has a chronological age of 18 years or older.

C. “Child” means any person who is under the chronological age of 18 years.

D. “Child care assistance program (CCAP)” means the state of New Mexico's child care services bureau (CCSB) which administers the federal child care and development fund (CCDF).

E. “Child and adult care food program (CACFP)” means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.

F. “Child with a disability or special needs” means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

G. “Clean” means to physically remove all dirt and contamination.

~~[G.]~~ **H. “Drop-in”** means a child who attends a child care home on an occasional or unscheduled basis.

~~[H.]~~ **I. “Emergency caregiver”** means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, eight hours or less, on behalf of the primary caregiver.

~~[I.]~~ **J. “Exempt caregiver”** means a child care home primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

~~[J.]~~ **K. “Expulsion”** means the involuntary termination of the enrollment of a child or family.

~~[K.]~~ **L. “Guidance”** means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

~~[L.]~~ **M. “Homeless children and youth”** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

- (1) children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- (2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- (3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

~~[M.]~~ **N. “Infant”** means a child from birth to one-year-old.

O. “Media” means the use of televisions, video games, and non-educational on-line streaming such as video and social media.

~~[N.]~~ **P.** “Neglect” means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

~~[O.]~~ **Q.** “Non-resident child” means any child who does not reside in the primary caregiver's home.

~~[P.]~~ **R.** “Notice of Provisional Employment” means a written notice issued to a child care center or home applicant indicating the Background Check Unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

~~[Q.]~~ **S.** “Notifiable diseases” means confirmed or suspected diseases/conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

~~[R.]~~ **T.** “Primary caregiver” means a registered child care home caregiver 18 years of age or older who is personally providing care to children, less than 24 hours a day, in his/her own residence and has completed the registration process, paid the required fee and has no other employment during hours of care. The primary caregiver must reside in the home.

~~[S.]~~ **U.** “Registered authority” means the child care services bureau - registration section of the early childhood services division of the New Mexico children, youth and families department.

~~[T.]~~ **V.** “Registered family child care home” means the residence of an independent primary caregiver who registers the home under these regulations to participate in the child and adult care food program or in the state and federal child care assistance programs.

~~[U.]~~ **W.** “Registered family child care food-only home” means the residence of an independent primary caregiver who registers the home under these regulation to participate in the child and adult care food program only and does not participate in the state and federal child care assistance program.

~~[V.]~~ **X.** “Resident child” means any child who resides in the home, such as the primary caregiver’s own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the residential unit.

~~[W.]~~ **Y.** “Serious injury” means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

Z. “Significant amount of time” someone who is on the premises for more than one hour per day during hours of care.

~~[X.]~~ **AA.** “Substitute caregiver” means someone 18 years of age or older who is authorized by the primary caregiver and the registered authority to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions.

~~[Y.]~~ **BB.** “Substantiated” means an incident or complaint determined to be factual, based on an investigation of events.

~~[Z.]~~ **CC.** “Supervision” means the direct observation and guidance of children at all times and requires being physically present with them.

~~[AA.]~~ **DD.** “Survey” means a representative of CYFD’s authority to enter a home, observes activity, examine the records and premises, interviews parents and records deficiencies.

~~[BB.]~~ **EE.** “Unattended” means a caregiver is not physically present with a child or children under care.

~~[CC.]~~ **FF.** “Unsubstantiated” means an incident or complaint not determined to be factual based on an investigation of events.

[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.17.2.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

C. Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions. A request for a background check must be submitted prior to a substitute caregiver employment. A substitute caregiver must receive a notice of provisional employment prior to beginning employment or obtain a background check in accordance with 8.8.3 NMAC.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Emergency caregivers must comply with background check requirements, and be certified in first-aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Emergency caregivers may be exempted from all other training requirements. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

F. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

G. All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their date of initial registration. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

- (1) prevention and control of infectious diseases (including immunization);
- (2) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) administration of medication, consistent with standards for parental consent;
- (4) prevention of and response to emergencies due to food or other allergic reactions;
- (5) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (6) prevention of shaken baby syndrome and abusive head trauma;
- (7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
- (8) handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
- (9) precautions in transporting children (if applicable);
- (10) first aid and cardiopulmonary resuscitation (CPR) [~~certification~~] awareness with a pediatric component; and
- (11) recognition and reporting of child abuse and neglect.

H. Primary and substitute caregivers are required to attend six hours of training annually. Training documentation must be maintained for three years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

I. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

J. If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

K. Primary and substitute caregivers are required to maintain current first aid and CPR certification with a pediatric component at all times. On-line first aid and CPR classes are not valid unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

L. Training shall be within the seven competency areas. The competency areas are:

- (1) child growth, development and learning;
- (2) health, safety, nutrition and infection control;
- (3) family and community collaboration;
- (4) developmentally appropriate content;
- (5) learning environment and curriculum implementation;
- (6) assessment of children and programs; and
- (7) professionalism.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.17.2.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions as promulgated by the children, youth and families department. All non-licensed child care caregivers must adhere to these provisions to maintain their registration status. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

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

(2) submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

B. The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department's most current version of the background checks and employment history verification provisions (8.8.3 NMAC). A household member reaching the age of 18, must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

C. Any adult who is present in the registered primary caregiver's home for significant periods while children are in care, or who commences being present in the registered primary caregiver's home for significant periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen. Family members or guests visiting for temporary periods (less than five days) are not considered as spending significant periods of time. However, such visiting family or guests must not have unsupervised access to the children in care at any time.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.

F. The primary caregiver shall certify upon renewal that they, or any other adult living in the home have not been convicted of a disqualifying offense during the last twelve month.

[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.17.2.12 ANNUAL REGISTRATION: An annual registration is issued for a one-year period to a child care home that has met all requirements of these regulations.

A. Primary caregivers must renew registration annually, and only after receiving an onsite inspection by CYFD, by submitting a registration application and paying the processing charge with cashier's check or a money order.

B. Primary caregiver's who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.

C. Primary caregivers shall ensure that all adults residing in the home as well as secondary caregivers and adults spending a significant amount of time in the home are listed on all documentation required by CYFD and sponsoring agencies.

[8.17.2.12 NMAC - N, 10/1/2016; A/E, 7/1/2021]

8.17.2.22 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees Fahrenheit and no more than 82 degrees Fahrenheit. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.

E. The home must be adequately ventilated at all times.

F. A home will not use un-vented heaters or open flame heaters. Portable heaters will be used in accordance with manufacture instructions. A home will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

G. All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees Fahrenheit in all areas accessible to children. A home may install a water tempering control valve ahead of all domestic water-heater piping.

H. A caregiver must provide safe playing areas inside and outside the home. Outside play areas must be approved by the registered authority.

I. A caregiver's outside play area must be safe, clean and free of any debris. The caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, hazardous area or when determined to be necessary for safety by the registered authority. The fence will have one latched gate for emergency exits.

J. The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the registered home.

K. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, sharp and pointed objects or any other dangerous materials in a storage area inaccessible to children.

L. The primary caregiver must have a working telephone in the home and a valid working phone number on file with CYFD at all times.

M. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.

N. A caregiver will install at least one working smoke detector and a carbon monoxide detector in an appropriate area in the home.

O. A caregiver will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children.

P. A caregiver will keep all weapons in a locked area inaccessible to children.

Q. A caregiver will prohibit smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

R. A home will have a 2A-10B:C fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and will have official tags noting the date of inspection.

S. A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, heaters, fireplaces or laundry rooms.

T. In case of a fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available. An up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the registered authority and the department will provide guidance on developing these plans.

U. A caregiver will conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A caregiver will hold the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

~~[U.]~~ **V.** A home will have two major exits readily accessible to children with no obstructions in the pathways of these exits.

~~[V.]~~ **W.** Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Toys will be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

X. Cribs will meet federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs.

~~[W.]~~ **Y.** Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

~~[X.]~~ **Z.** The home will have a first aid kit stored in a convenient place inaccessible to children, but easily accessible by caregiver. The kit will contain at least Band-Aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

~~[Y.]~~ **AA.** A caregiver with pets will comply with the following requirements:

- (1) A home will inform parents or guardians in writing before pets are allowed at the residence.
- (2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the residence.
- (3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.
- (4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily.
- (5) A caregiver must be physically present during the handling of all pets or other animals.

~~[Z.]~~ **BB.** A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will wash their hands and the child's hands after every diaper change. A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.

~~[AA.]~~ **CC.** Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device.
[8.17.2.22 NMAC - Rp, 8.17.2.23 NMAC, A, 10/1/2016; A/E, 7/1/2021]

8.17.2.24 RECORD KEEPING REQUIREMENTS: Caregivers must keep an information card for each child (including drop-in children) with:

- A.** the child's full name;
- B.** the child's birth date;
- C.** any known food or drug allergies or unusual physical condition;
- D.** the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
- E.** the name and telephone number of the child's physician;
- F.** authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
- G.** written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;
- H.** an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth; ~~and~~
- I.** written permission from parent to transport children outside of the registered home ~~[-]~~ ; and
- J.** a record of the time the child arrived and left the home and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child. The attendance log must be kept on file for 12 months.

[8.17.2.24 NMAC - Rp, 8.17.2.25 NMAC, 10/1/2016; A/E, 7/1/2021]