

TITLE 8 SOCIAL SERVICES
CHAPTER 26 FOSTER CARE AND ADOPTION
PART 4 LICENSING REQUIREMENTS FOR FOSTER AND ADOPTIVE CARE

8.26.4.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD), Protective Services Division (PSD).
[8.26.4.1 NMAC - Rp, 8.26.4.1 NMAC, 2/11/2020]

8.26.4.2 SCOPE: PSD staff and all PSD licensed agencies providing foster care services in New Mexico.
[8.26.4.2 NMAC - Rp, 8.26.4.2 NMAC, 2/11/2020]

8.26.4.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, Section 9-2A-7 D, NMSA 1978; New Mexico Children’s Code Adoption Act, Section 32A-5-6 A, NMSA 1978; Child Placement Licensing Act, Section 40-7A-4 D, NMSA 1978.
[8.26.4.3 NMAC - Rp, 8.26.4.3 NMAC, 2/11/2020]

8.26.4.4 DURATION: Permanent.
[8.26.4.4 NMAC - Rp, 8.26.4.4 NMAC, 2/11/2020]

8.26.4.5 EFFECTIVE DATE: February 11, 2020, unless a later date is cited at the end of a section.
[8.26.4.5 NMAC - Rp, 8.26.4.5 NMAC, 2/11/2020]

8.26.4.6 OBJECTIVE: To create standards for licensing of relative, fictive kin, non-relative foster and adoptive care providers in New Mexico which are consistent with the best interest, safety, permanency, and well-being of children by:

A. enabling protective services division or licensed child placement agencies (CPA) to license and monitor foster and adoptive homes;

B. enabling protective services division to set standards for the application and operation of non-relative foster and adoptive families to protect the best interest of children in foster or adoptive placement;

C. enabling protective services division to set standards for the application and operation of relative and fictive kin care providers to protect the best interest of children in foster, guardianship or adoptive placements; and

D. complying with the New Mexico Children’s Code, the New Mexico Adoption Act and regulations, the Indian Child Welfare Act, the Adoption and Safe Families Act, the Interstate Compact on Placement of Children, the Interstate Compact on Adoption and Medical Assistance, the Multi-Ethnic Placement Act, as amended by the Inter-Ethnic Adoption Provisions of 1996, the Safe and Timely Interstate Placement of Foster Children Act, the Adam Walsh Act, the Fostering Connections for Success and Increasing Adoptions Act, the Child Abuse Prevention and Treatment Act Reauthorization of 2010, Every Student Succeeds Act, Family First Prevention Services Act, and the New Mexico Administrative Code.

E. The agency shall give placement preference to relatives and fictive kin as foster care providers. In the event that a child is not placed in a relative foster care placement, the agency shall continue to make diligent efforts to search for, identify, and assess relatives throughout the life of the case for potential placement of the child. The agency shall assist relatives with meeting licensing requirements through identifying barriers, informing the applicant, and providing support. If a relative cannot be licensed to provide foster care for a child, this shall not preclude the relative from maintaining a meaningful relationship with the child while in foster care.

[8.26.4.6 NMAC - Rp, 8.26.4.6 NMAC, 2/11/2020]

8.26.4.7 DEFINITIONS:

A. **“Administrative appeal”** is a formal hearing for foster care providers whose license have been revoked, suspended, or not renewed. Foster care providers have 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 foster care providers whose application for licensure 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 care provider licensed by PSD or by a licensed child placement agency who has finalized the adoption of a foster child.

F. “**Adult**” refers to a person 18 years of age and older, not participating in the extended foster care program.

G. “**Agency**” or “**child placement agency**” means any PSD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking the placement of 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 providers, treatment foster care providers, or other levels of foster care as developed by PSD.

H. “**Applicant**” is any person who applies to become licensed as a foster care provider to be considered as a potential foster care provider, treatment foster care provider, or an adoptive parent.

I. “**Application**” is the document by which persons who wish to become foster or adoptive care providers request an assessment of their home and family, and the issuance of a license. The document also authorizes protective services division 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 there are no willful misrepresentations in the application.

J. “**Assessment**” is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine suitability of an applicant for a foster care license.

K. “**Child,**” “**children**” or “**youth**” refers to a person who is one of the following:

(1) under the age of 18 years of age; or

(2) up to 21 years of age and participating in the extended foster care program.

L. “**Child abuse and neglect check**” is a review of the PSD family automated client tracking system, also known as FACTS, or another state’s central abuse or neglect registry, to determine if there have been any previous or current referrals on the family to this state’s or any other state’s child protective services division.

M. “**Corporal punishment**” is a form of discipline that is prohibited. Corporal punishment includes touching a child with the primary intent of inducing pain and includes but is not limited to: shaking, spanking, hitting, hair or ear pulling, actions intended to produce fear, shame, or other emotional or physical trauma.

N. “**Criminal records check (CRC)**” means federal, state or local checks for criminal offenses conducted by PSD on potential and current foster and adoptive parents, and of all adults living in the applicant’s home.

O. “**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 the licensing process.

P. “**CYFD**” stands for children, youth and families department. CYFD is a state agency that provides services to families in the state of New Mexico.

Q. “**FACTS**” refers to the family automated client tracking system (FACTS), the official data management system for CYFD.

R. “**Fictive kin**” is a person not related by birth, adoption or marriage with whom the child has an emotionally significant relationship.

S. “**Foster care license**” is the document which contains the names and addresses of those individuals who have met these licensing requirements and are foster care providers for the protective services division or a licensed child placement agency. The license displays the ages and number of foster children the licensees are authorized to care for and the date authorization begins and ends. The license shall include the signature of the authorized person who issued the license.

T. “**Functional literacy**” means a person who can read and write well enough to live independently.

U. “**Foster care provider**” or “**foster parent**” refers to a person, including a relative of the child, or entity licensed by CYFD or by another state’s child welfare agency or by a child placement agency, to provide foster care services for children in the custody of the department or agency.

V. “**Foster child**” or “**child in foster care**” 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.

W. “Gender” or “gender identity” means a person’s internal identification as male, female, or nonbinary. Gender identity may or may not correspond to the sex or gender marker that is listed on the person’s birth certificate.

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

Y. “Household member” refers to any individual, regardless of age, who resides in the home, who moves into the home with the intent to make it their residence, or who is visiting for more than 30 calendar days. Children or youth who are in foster care or participating in the extended foster care program are not considered household members of the foster or pre-adoptive home for the purpose of this policy.

Z. “Initial relative or fictive kin assessment” is an in-home assessment of a relative or fictive kin completed by a PSD worker to determine suitability for a provisional license.

AA. “Licensing agent” is a qualified individual who conducts a home study.

BB. “Non-U.S. citizen” refers to an immigrant to the U.S. who does not have U.S. citizenship, and may have legal residency or may have an undocumented legal status.

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

DD. “Protective services division (PSD)” refers to the state government division within the New Mexico children, youth and families department, and is the state’s designated child welfare agency.

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

FF. “Relative” means a person related to another person by birth, adoption or marriage, within the fifth degree of consanguinity or affinity.

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

HH. “Respite care” is a short period of time when a foster child is cared for by an alternate foster care provider due to the original foster care provider temporarily unavailable to provide care.

II. “SAFE home study” means the structured analysis family evaluation home study format, which is the only home study format approved for use in the state of New Mexico.

JJ. “Treatment foster care provider” is a foster care provider 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, 8.26.4.7 NMAC, 2/11/2020]

8.26.4.8 FOSTER CARE PROVIDER ELIGIBILITY:

A. All applicants, relative, fictive kin or non-relative, must submit a complete application and accompanying documentation for a foster care provider license, and keep copies in their home.

B. To apply for a foster care provider license:

(1) Applicants must be 18 years or older;

(2) Applicants must be a resident of New Mexico;

(3) Applicants must be able to communicate with the child in the child’s own language, through translation services or other resources;

(4) Applicants must be able to communicate with PSD, licensing agents, health care providers, and other service providers, through translation services or other resources;

(5) At least one applicant in the home must have functional literacy or have access to resources to read, such as having the ability to read labels on medications in order to properly administer them; and

(6) Applicants must have income or resources necessary to make timely payments for shelter, food, utility costs, clothing and other household expenses prior to the addition of a foster child;

C. A foster care provider license shall not be issued to an applicant whose own children are currently in foster care. Suitability will be considered on a case by case basis for applicants whose parental rights have been terminated or relinquished. Applicants whose children have been formerly in foster placement may be licensed if the assessment of their application determines the problems leading to the placement have been resolved.

D. PSD employees and their families who have met all licensing requirements may serve as a foster care provider or as adoptive parents to children outside of their county. A PSD employee and their family members shall not be allowed to foster or adopt any child with whom the employee is working with in any official capacity. A PSD employee may not be foster care providers to children who have been or are actively on their caseload or within their chain of command.

E. PSD and child placement agencies (CPA's) must not deny any individual the opportunity to become a foster parent on the basis of the race, color, or national origin of the individual, or of the child, as required by the federal Multiethnic Placement Act (MEPA), 42 U.S.C.A. sec. 1996b and Title IV-E of the Social Security Act, 42 U.S.C.A. sec. 671(18). MEPA also provides that this law must not be construed to affect the application of the Indian Child Welfare Act, which contains preferences for the placement of eligible American Indian and Alaska Native children in foster care, guardianship, or adoptive homes. PSD and CPA's must not discriminate with regard to the application or licensure of a foster family on the basis of race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; socioeconomic status; language; political affiliation; military or veteran status; status as a victim of domestic violence; sexual assault, or stalking; or any other factor unrelated to suitability to parent.

F. Tribal agencies may also be involved in conducting home studies for American Indian and Alaska Native children. 42 U.S.C.A. sec 671(26)(B) provides that any receiving state must treat any tribal home study report as meeting the requirements imposed by the state for the completion of a home study.

G. Immigration Status: Citizenship or immigration status shall not prevent eligibility for licensure. See 8.24.6.21 NMAC for further guidance on licensing non-US citizens without legal permanent residency. [8.26.4.8 NMAC - Rp, 8.26.4.8 NMAC, 2/11/2020]

8.26.4.9 TYPES OF FOSTER CARE PROVIDER LICENSES:

A. Provisional license: A provisional license is a license issued by PSD to a relative or fictive kin upon satisfactory completion of the initial relative assessment at the time of an emergency placement of a child. A provisional license may be issued to facilitate or expedite placement of a child with a relative or fictive kin. A provisional license is valid for 60 days, with the possibility of one 30 day extension as described herein at Subsection C of 8.26.4.11 NMAC. For emergency placements of American Indian and Alaska Native children, agencies shall work closely with tribal and urban Indian organizations that have expertise in recruiting and licensing tribal foster care providers. If a relative or fictive kin is identified and resides on tribal land, a provisional license may be extended up to 60 additional days by the PSD field deputy director.

B. Foster care provider license: A two year license issued by PSD after all licensing requirements have been completed.

C. Treatment foster care license: A license issued by a child placement agency to a foster care provider to care for a child requiring intensive services after the provider has met both the child placement agency licensing regulations, and the treatment foster care standards contained in 7.20.11.29 NMAC. PSD does not license treatment foster care providers.

[8.26.4.9 NMAC - Rp, 8.26.4.17 NMAC, 2/11/2020]

8.26.4.10 INITIAL LICENSURE:

A. A foster care license shall be granted or denied based upon the assessment and participation in the licensing process. The issuance of an initial foster care provider license is not an entitlement to full licensure.

B. The applicants shall complete all licensing requirements prior to full licensure. In the event of a household member who may not be able to meet all licensing requirements due to a disability, licensing requirements may be waived on a case by case basis by the PSD regional manager.

C. A foster care provider license shall be valid for a period of two years from the date of issuance.

D. An initial foster care provider license memorandum of agreement outlining the stipulations of licensure shall be reviewed by the licensing agent and the applicants. Signing of the agreement is an acknowledgement that all stipulations are understood and accepted by all concerned. The initial agreement shall be signed prior to the issuance of the two year license.

E. Foster care providers shall not be dually licensed by more than one licensing entity. Exceptions may be made for the purpose of adoption in the following situations:

(1) a treatment foster care provider seeks to adopt a child in the custody of PSD who is currently placed in their home; or

(2) a treatment foster care provider seeks to adopt a child in the custody of PSD who has a plan of adoption but does not have an identified resource. Consideration for adoption of a child in PSD custody by a treatment foster care provider shall be approved by a county office manager prior to the SAFE home study update of the potential adoptive family.

F. Individuals who are relative or fictive kin care providers who agree to have non-relative children placed in the home will be assessed in the initial home study or will require an update to their home study.

G. Adoption of a child in the custody of PSD by a treatment foster care provider shall be approved by a PSD regional manager prior to the SAFE home study update of the potential adoptive family. Staffing of these types of licenses must take place between PSD and the CPA to determine which licensing agency will maintain the license.

[8.26.4.10 NMAC - Rp, 8.26.4.15 NMAC, 2/11/2020]

8.26.4.11 APPLICATION FOR INITIAL FOSTER CARE PROVIDER LICENSURE:

A. PSD's relative and fictive kin placement preferences: PSD and child placement agencies (CPAs) shall give placement preference to relatives and fictive kin as foster care providers, regardless of citizenship or immigration status. The licensing agency shall assist relatives with meeting licensing requirements through identifying barriers, informing the applicant, and offering support. If a relative cannot be licensed to provide foster care for a child, this shall not preclude the relative from maintaining a meaningful relationship with the child while in foster care. In the event a child is not placed in a relative or fictive kin foster care placement, PSD shall continue to make diligent efforts to search for, identify and assess relatives throughout the life of the permanency case for potential placement of the child and to maintain familial connections.

B. Initial licensure application requirements for all applicants: During the initial licensure, all persons wishing to become a licensed foster care provider for PSD or for a CPA are required to complete the following:

- (1) a foster care application;
- (2) a home study, which is PSD's written comprehensive family assessment;
- (3) a criminal records check and child abuse and neglect check; and
- (4) pre-service training.

C. Provisional licensure for relative or fictive kin providers only: A child may be placed in a home with a relative or fictive-kin on an emergency basis with a provisional licensure for 60 days, with one possible 30 day extension, for a maximum of 90 calendar days. PSD may place a child with a relative or fictive kin on a provisional license if all of the following takes place by the PSD staff:

(1) Complete federal, state, and local (as applicable) criminal background checks of applicants and any other adult household member. To determine eligibility, the results of the check shall be assessed using the criteria described herein at 8.26.4.12 NMAC. PSD shall immediately inform the relative or fictive kin foster care provider of the requirements to submit an application for a criminal background check, and complete the application for background check no later than three business days from the child's placement in the home, as described in the New Mexico Children's Code Adoption Act, Section 32A-4-8, NMSA 1978.

(2) State, tribal, and local child abuse and neglect registry and adult protective services registry check of applicants and any other adult household member. To determine eligibility, the results of the check shall be assessed using the criteria described herein at 8.26.4.13 NMAC.

(3) Child abuse and neglect registry and adult protective services registry checks from any other state in which applicants and other adult household members have resided in the preceding five years.

(4) State and national sex offender registry check of applicants and any other household member who is an adult. To determine eligibility, the results of the check shall be assessed using the criteria described herein at 8.26.4.13 NMAC.

(5) Preliminary visual home inspection to assess the safety of the home.

(6) Preliminary assessment of the ability of the applicants to meet the needs of the child.

(7) Discuss assurance agreement, as described herein Subsection C of 8.26.4.17 NMAC, complete the initial relative assessment documentation, and obtain applicant signatures on the agreement.

(8) The safety of the child is the primary consideration. If this is ever in conflict with the placement of a child with a potential relative or fictive kin provider, PSD makes the final placement decision in favor of the child's safety and may deny licensure based on PSD's initial relative assessment.

D. 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 8.26.3.17 NMAC.

E. The placement of a child in a non-relative placement upon emergency removal shall be approved by the county office manager prior to placement of the child.

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

G. Upon receipt of the initial application of a relative or fictive kin care provider, the licensing agent has three business days to contact the family, as described in the New Mexico Children's Code Adoption Act, Section 32A-4-8, NMSA 1978.

H. From the date of application, the licensing agent shall complete the licensure process within the following timeframes:

(1) For a relative or fictive kin applicant provisional license: 60 days with one possible 30 day extension approved by the PSD regional manager. If the relative or fictive kin is not licensed within the initial 60 day period, PSD must conduct a staffing 15 days prior to the 60 day expiration date to include: the placement worker, permanency worker, placement supervisor, children's court attorney and county office manager to determine if the child shall be removed. Removal may be appropriate unless:

(a) A direct placement of the child in the home is ordered by the court while the child is still in the custody of PSD;

(b) The applicant files for and receives care and custody of the child directly from the court; or

(c) The PSD regional manager grants an extension of up to an additional 60 calendar days for applicants to complete licensure if it is determined removal of the child would be detrimental to the child's best interests.

(2) For all other applicants:

(a) Non-relatives: The licensing agent shall complete the licensure process within 120 days of receipt of the application.

(b) Relatives and fictive kin applicants who apply to become foster care providers through a regular licensing process: The licensing agent shall complete the licensure process within 60 days of receipt of the application, with one possible 30 day extension approved by the PSD regional manager.

[8.26.4.11 NMAC - Rp, 8.26.4.9 NMAC, 2/11/2020]

8.26.4.12 CRIMINAL RECORDS CHECKS (CRC) FOR FOSTER CARE PROVIDER LICENSURE:

A. All persons wishing to become licensed foster care providers for PSD or for a child placement agency must complete a CRC. CRCs are required for all applicants and adults living home.

B. Applicants who have a completed home study by a private agency must complete the CRC requirement for foster care providers.

C. CRC clearance letter for all adult household members must be received by PSD or the child placement agency (CPA) prior to issuing full licensure. The CRC unit conducts federal and state criminal record checks for all adults living in the home.

D. PSD staff and CPA staff shall register applicants and adult household members to be fingerprinted.

E. PSD staff and CPA staff shall complete the CRC application and submit to the PSD CRC Unit.

F. PSD and CPA staff shall conduct a search of the applicant and all adult household members through www.nmcourts.gov and a national sex offender registry through <https://www.nsopw.gov/>. Results shall be confirmed in the CRC clearance letter.

G. PSD and CPA staff shall request a check of any other child abuse or neglect registry in a state or tribe in which any such applicant or other adult household member has resided in the preceding five years of the date of application.

H. Licensure shall not be approved in any case in which the CRC results for the applicant or any adult household member reveal any of the following federally mandated automatic disqualifiers:

(1) a felony conviction for child abuse or neglect;

(2) a felony conviction for spousal abuse, domestic abuse, or abuse against a household member;

(3) a felony conviction for a crime against children, including child pornography;

(4) a felony conviction for any crime involving violence, including rape, sexual assault, homicide, robbery, and aggravated assault, but not including other assault (not aggravated) or battery; or

(5) a felony conviction within the past five years for assault, battery, or a drug or alcohol related offense.

I. Applicants who have a conviction for crimes other than those noted above are not automatically disqualified; however this information shall be used to determine suitability for licensure. All police or court records relating to the applicant or other adult living in the home shall be considered in determining suitability for licensure. Applicants are responsible for obtaining a certified court disposition of criminal records and police reports and are required to return these documents to the CRC unit within 30 days of the date of the CRC letter. PSD must also consider the following:

- (1) type of crime;
- (2) number of crimes;
- (3) nature of offenses;
- (4) age of the individual at the time of conviction;
- (5) length of time that has elapsed since the last conviction;
- (6) relationship of the crime and the capacity to care for children;
- (7) evidence of rehabilitation; and
- (8) opinions of community members concerning the individual in question.

J. The home study process for any applicant or adult living in the home with a pending criminal charge and no disposition shall be closed. The applicant may reapply after disposition of the charge.

K. Applicants and all household members have an ongoing duty to report any juvenile offenses committed by another household member. The existence of a household member with a juvenile offense does not automatically exclude the applicants. PSD must consider the suitability of the home based on the criteria used to assess crimes set forth described herein Paragraphs (1) through (8) of Subsection I of 8.26.4.12 NMAC. [8.26.4.12 NMAC - Rp, 8.26.4.10 NMAC, 2/11/2020]

8.26.4.13 CHILD ABUSE AND NEGLECT CHECK FOR FOSTER CARE PROVIDER LICENSURE:

A. For families applying to be licensed by PSD, staff shall conduct a FACTS search for abuse and neglect referrals on the applicant and all adult household members. If the applicant or any other adult household member resided in any state(s) other than New Mexico in the five years prior to the date of the application, PSD shall request each such state search its abuse and neglect information system or registry for information on the applicant or other adult household members and submit the results of that search to PSD. PSD must receive the results of the check or a letter from the other state if they do not have central registry prior to the issuing of a license and prior to a child being placed in a home. If during any time in the five years prior to the date of application the applicant resided in another country, PSD shall attempt to obtain an abuse and neglect check from the other country. Efforts to obtain abuse and neglect checks in another country shall be documented but inability to obtain abuse and neglect checks from another country shall not be a disqualifier for licensure.

B. For families seeking to become foster care providers through agencies other than PSD, the agency shall submit a signed and notarized PSD approved "child abuse and neglect check" form to request the CRC unit conduct a FACTS search for abuse and neglect referrals on the applicant and each adult living in the applicant's home. If the applicant or any other adult household member resided in any state(s) other than New Mexico in the five years prior to the date of the application, the licensing agency shall request that each such state search its abuse and neglect information system or registry for information on the applicant or other adult household member and submit the results of that search to the requesting agency. CPA's must receive the results of the check or a letter from the other state if they do not have central registry prior to the issuing of a license and prior to a child being placed in a home.

C. If the applicant or any adult household member has been the subject of a substantiated allegation of sexual exploitation or sexual abuse of a child, or has been substantiated for child abuse that resulted in a child fatality, then the applicant shall not be licensed.

D. In the event of a substantiated report of child abuse or neglect, other than substantiated sexual exploitation, sexual abuse or child abuse resulting in death as listed above, involving the applicant or any adult household member, the application is assessed on a case-by-case basis to determine if the safety of any child in the home can be assured. In addition, applicants who have been referred to PSD for investigation of unsubstantiated allegations of child abuse, neglect or exploitation may be considered for licensure. The best interest of the child is paramount. This information shall be used to determine suitability for licensure.

E. The application process for any applicant or adult household member with a pending child abuse or neglect investigation and no disposition shall be closed. The applicant may reapply when the investigation is complete.

F. PSD staff must comply with any request described herein in Subsections A and B of 8.26.4.13 NMAC that is received from another state.
[8.26.4.13 NMAC - Rp, 8.26.4.11 NMAC, 2/11/2020]

8.26.4.14 PHYSICAL AND MENTAL HEALTH STANDARDS FOR FOSTER CARE PROVIDER LICENSURE:

A. All applicants must be assessed to be physically and mentally capable of caring for a foster child in their home. The following are the minimum documentation requirements for licensure; however, these requirements shall not prevent placement of a relative or fictive kin if efforts are made to obtain documentation or appointments:

(1) a physical exam within the past 12 months from the application date, from a licensed health care professional recognized by PSD. The exam results must indicate the applicants are capable of caring for an additional child. PSD may require additional documentation and evaluation to make such a determination. The applicant is responsible for obtaining and paying for their physical exam, however, relative or fictive kin applicants who may need financial assistance shall contact PSD for further guidance.

(2) immunization records for any child residing in the home must be provided to PSD. All children who are household members must be up to date on all immunizations jointly recommended by the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless a waiver has been issued by the department of health; and

(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. All household members who will be caregivers of infants or children with special medical 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 health care professional.

B. Applicants and all household members must disclose any past or current physical, mental health and substance abuse history, including any history of drug or alcohol abuse or treatment. PSD may require further documentation and evaluation to determine the suitability of the home.
[8.26.4.14 NMAC - Rp, 8.26.4.12 NMAC, 2/11/2020]

8.26.4.15 HOME SAFETY, CAPACITY AND OTHER SPACE STANDARDS FOR FOSTER CARE PROVIDER LICENSURE:

A. Living space: The applicant's home may be a house, mobile home, housing unit or apartment occupied by an individual or family.

B. Condition of the home: The applicant's home and all structures on the grounds of the property must be maintained in a clean, safe, and sanitary condition and in a reasonable state of repair within community standards. The home must satisfy the following living space standards:

(1) be free from objects, materials, and conditions that constitute a danger;
(2) prevent or eliminate rodent and insect infestation;
(3) have capability for regular disposal of trash and recycling, if recycling is available in the area;

(4) have a working phone or access to a working phone in close walking proximity;

(5) have at least one toilet, sink, and tub or shower in safe operating condition;

(6) have kitchen facilities with a sink, refrigerator, stove, and oven in safe operating condition;

(7) have heating and or cooling as required by the geographic area, consistent with the accepted community standards and in safe operating condition;

(8) have ventilation where household members and children in foster care eat, sleep, study and play. This includes ventilation for fuel-burning equipment for heating.

(9) have adequate lighting as required by the geographic area, consistent with the accepted community standards and in safe operating condition;

(10) have access to or a continuous supply of safe drinking water; and

(11) have proper water heater temperature. Any water heater must be set in accordance with the manufacturer's recommendations.

C. Household pets and animals:

(1) Any animal that poses a threat to the safety or health of a child in foster care must be confined in a place away from and inaccessible to the child, but in a manner that is in compliance with state and local animal control codes and statutes.

(2) Pets that are required to be vaccinated by state, county, local or tribal law must be vaccinated against diseases that can transmit to humans, including but not limited to rabies.

D. Pools, hot tubs and spas:

(1) Shall have a barrier on all sides, such as a fence or pool cover, and have a safety locking device such as a bolt lock. If a barrier cannot be installed on all sides, children shall not have access or be around to the area surrounding the pool without direct adult caregiver line of sight supervision at all times;

(2) Shall be equipped with a life saving device, such as a life preserver;

(3) If the swimming pool cannot be emptied after each use, the swimming pool must have a working pump and filtering system;

(4) Spas or hot tubs must have safety covers that are locked when not in use; and

(5) All children using swimming pools or hot tubs must be accompanied by an adult.

E. Capacity standards: The total number of children in a foster care provider's home must not exceed eight, of which no more than six may be children in foster care. PSD may determine lower capacities based on the family assessment and home study. The number of foster children cared for in a foster care provider home may exceed this numerical limitation at the approval of the regional manager for one or more of the following reasons:

(1) To allow a parenting youth in foster care to remain with the child of the parenting youth;

(2) To allow siblings to remain together;

(3) To allow a child with an established meaningful relationship with the applicant's family to remain with the family;

(4) To allow a foster care provider with special training or skills to provide care to a child who has a severe disability; and

(5) Other extenuating circumstances approved at the discretion of the PSD regional manager.

F. Sleeping arrangements: The applicant's home must provide the following sleeping standards, to include each child in foster care has a safe sleeping space and are treated equitably.

(1) Sleeping supplies, such as a mattress and linens to meet their basic needs;

(2) All cribs in the home must be in compliance with Consumer Product Safety Commission standards;

(3) Sleeping arrangements shall be age and developmentally appropriate for children in foster care placed in the home. Co-sleeping or bed sharing, when a parent(s) and infant share a sleeping surface, is prohibited. Room-sharing, when a parent(s) and infant or toddler share a room, but sleeps on a separate sleeping surface, is permitted;

(4) With PSD approval, children, age appropriate, who are relatives, may share a bed;

(5) All bunk beds in the home must have railings or PSD approved barriers on both sides to prevent falling;

(6) There must not be more than four children total sharing a room used as a sleeping space, unless the children are relatives and approved by PSD;

(7) A child over the age of five may share a room with a child of a different gender with PSD approval;

(8) Sleeping quarters for foster children shall be a contiguous part of the main family structure. Exceptions may be made for those children over the age of 16 who are preparing for independent living or for youth participating in the extended foster care program.

G. Emergency preparedness, fire safety, weapon storage, and evacuation plans: The applicant must meet the following safety, fire, weapon storage, and evacuation plan standards. The licensing agency shall assist relatives or fictive kin in bringing their home up to standards, unless there is a major safety issue.

(1) electrical wiring shall be installed and maintained in a manner that will not pose a hazard or risk to a child's safety or health. Electrical extension cords shall not be used for general wiring. If the licensing agent has doubts of the adequacy of electrical wiring, the licensing agent shall request for a local electrical inspector to inspect the wiring and submit a report to the licensing agent. The applicant is responsible for obtaining and paying for this inspection, however, a relative or fictive kin applicant who may need financial assistance shall contact PSD or the licensing agent for further support.

- (2) have at least one smoke detector on each level of occupancy of the home and near all sleeping areas;
- (3) have at least one carbon monoxide detector on each level of occupancy of the home and at least one near all sleeping areas;
- (4) have at least one operable valid fire extinguisher that is readily accessible;
- (5) be free of obvious fire hazards, such as defective heating equipment or improperly stored flammable materials. Household heating equipment must be equipped with appropriate safeguards, maintained as recommended by the manufacture;
- (6) have a written emergency evacuation plan to be reviewed with the child and posted in a prominent place in the home;
- (7) maintain a list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home;
- (8) have a written emergency evacuation plan to be reviewed with the child within 24 hours of placement in the home and posted in a prominent place in the home. The plan must identify multiple exits from the home, and designate a central meeting place close to the home that is known to the child yet at a safe distance from potential danger.
- (9) shall maintain a stock of first aid supplies in the foster home, as recommended by the American Red Cross. Examples of first aid supplies may include but are not limited to:
 - (a) non-medicated adhesive bandages
 - (b) adhesive roller bandage;
 - (c) adhesive tape;
 - (d) sterile first aid dressings in sealed envelopes; and
 - (e) first aid cream or ointment.
- (10) All weapons shall be stored and locked and inaccessible to children. All firearms shall be unloaded, locked and stored separately from ammunition. Ammunition shall be locked and stored separately as per the PSD approved weapons safety agreement. The foster family shall provide a signed copy of the PSD approved weapons safety agreement to the licensing agent. The following items are considered weapons:
 - (a) firearms;
 - (b) air guns;
 - (c) BB guns;
 - (d) hunting bows;
 - (e) hunting slingshots; and
 - (f) any other projectile weapon.
- (11) Applicants who are also law enforcement officials, and can document their jurisdiction requires them to have ready and immediate access to their weapons, may be exempt from these weapons requirements provided the applicants adopt and follow a safety plan approved by PSD.

H. Hazardous materials: The applicant's home must prevent the child's access, as appropriate for their age and development, to all medications (including medical marijuana), poisonous materials, cleaning supplies, other hazardous materials, and alcoholic beverages.

I. Transportation: Applicants shall have access to reliable, legal and safe transportation. Reliable transportation includes access to a properly maintained vehicle or access to public transportation. If the applicant, family member or friend operates an automobile, the applicant, family member or friend providing transportation shall have valid automobile insurance and registration as required by law and a valid driver's license. Motor vehicles shall have safety restraints as required by law and also shall have properly installed car seats for age appropriate children.

J. Additional safety standards: Any material of a sexual nature shall not be accessible by children. Child pornography is illegal and never allowed in a foster home and will be reported to law enforcement. [8.26.4.15 NMAC - Rp, 8.26.4.13 NMAC, 2/11/2020]

8.26.4.16 FOSTER CARE PROVIDER TRAINING:

A. Pre-service training: PSD shall provide pre-service training to all foster care providers. All foster care providers are required to do PSD's pre-service training. Accommodations for trainings may be provided on a case-by-case basis, depending on the foster care provider's needs. Accommodations may include in person group, one-on-one or online training sessions. Pre-service training topics shall include:

- (1) An overview of New Mexico's child welfare system:
 - (a) legal rights, roles, responsibilities and expectations of foster care providers;

in care and (b) PSD's purpose, structure, policies, and services; including the rights of children

(c) courts, applicable laws and regulations.

(2) Importance of maintaining meaningful connections between child and parents;

(3) Reasonable and prudent parenting standard per section 471(a)(24) of the Act;

(4) Additional information, including trauma concepts, culturally relevant topics, and behavioral management;

(5) First aid training, including cardiopulmonary resuscitation (CPR) and medication administration. In person first aid training and CPR may be obtained outside of the licensing agency; and

(6) Foster parent assurances described herein at 8.24.6.17 NMAC.

B. Ongoing training: All foster care providers licensed by PSD or a CPA are required to participate in PSD approved annual training.

(1) Foster care providers licensed by PSD shall participate in approved annual on-going training determined by PSD. All foster care providers shall develop an annual individualized training plan. The training plan shall be jointly developed by the foster care provider and the PSD placement worker. The training plan shall ensure the foster care provider receives ongoing instruction to support their roles and remain up to date on policies, requirements, and services to meet the provider's needs. Further training may also include child specific training (meeting the needs of the child related to their entire identity including race, national origin, religion, gender, gender expression, sexual orientation, or disability) or may address issues relevant to the general population of children in foster care in New Mexico.

(2) Foster care providers licensed by a child placement agency are required to participate in PSD approved annual training. PSD may mandate, at its discretion, no more than six hours of specific topics determined by PSD. Additional training hours may be mandated by the child placement agency.

[8.26.4.16 NMAC - Rp, 8.26.4.14 NMAC, 2/11/2020]

8.26.4.17 FOSTER CARE PROVIDER ASSURANCES:

A. Applicants must sign an agreement containing the following assurances that they and all household members will comply with their roles and responsibilities as discussed with the licensing agency once a child is placed in their care.

B. PSD shall review the assurance agreement with the foster care provider at initial licensing, when a child is placed in their care, and annually thereafter.

C. The following are the foster care provider assurances. Foster care providers:

(1) shall have ongoing collaboration and communication with PSD regarding their needs or barriers to carrying out foster care provider responsibilities;

(2) shall not engage in discriminatory treatment on the basis of a child's race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; socioeconomic status; language; political affiliation; military or veteran status; status as a victim of domestic violence, sexual assault or stalking; and housing status, including homelessness; or any other non-merit factor;

(3) shall not attempt to change or discourage a child's sexual orientation, gender identity, or gender expression or prohibit expression, including through clothing or grooming, consistent with the child's gender or gender expression;

(4) shall not use corporal punishment or degrading punishment on any children living in the home or that they may be providing care to;

(5) shall not use illegal substances, abuse alcohol, or abuse legal prescription or non-prescription drugs, using them contrary to as indicated, or using them in a way that impacts the safety and well-being of children placed in their home. They shall agree that any use of prescription medications will require an assessment as to the safety of the children in the initial or updated home study.

(6) shall inform PSD immediately of prescription medical marijuana use and provide PSD with a copy of the New Mexico state issued card, along with the directive and reason for use from a licensed medical or psychiatric physician. They shall agree to keep any legal prescription medical marijuana in a locked container, inaccessible by children. They shall agree to not use medical marijuana while solely caring for the children and shall not operate a vehicle or any other motorized machinery while under the influence. They shall

agree that any use of prescription medical marijuana will require assessment as to the safety of the children in the initial or updated home study.

(7) shall not use or allow any other persons to smoke cigarettes, marijuana or other smoking devices in the foster family home, in any vehicle used to transport a child, or in the presence of the child in foster care.

(8) shall closely supervise the child in foster care when the child is in close proximity to any swimming pool or body of water. When they cannot supervise, they must restrict the child's access to swimming pools or bodies of water. The child must never be left to swim alone. Exceptions may be made for youth participating in the extended foster care program.

(9) shall provide water safety instruction to the child in foster care as appropriate for their age and development if the home is adjacent to any body of water or has a swimming pool. Water safety instruction addresses key knowledge and skills on how to be safe around water and does not necessarily mean swim lessons.

(10) shall maintain the swimming pool in safe condition, including testing and maintaining the chlorine and pH levels as required by the manufacturer's specifications.

(11) shall lock all entry points when the swimming pool is not in use.

(12) shall remove or secure any steps or ladders to the swimming pool to make them unusable when the pool is not in use.

(13) shall set up and maintain wading pools according to the manufacturer's instructions, and empty and store them when not in use.

(14) shall closely supervise the child in foster care when the child is in close proximity to or using a trampoline of any size. When they cannot supervise, they must restrict the child's access to trampolines. The child must never be left to play, sit or jump on a trampoline without adult supervision. Foster care providers shall ensure trampolines are used in accordance to the manufacturer's recommendations. Exceptions may be made for youth participating in the extended foster care program.

(15) shall ensure the child in foster care has legal and safe transportation to and from health care, therapy and agency appointments; school; extracurricular activities; social events; and scheduled meetings or visitation with parents, siblings, extended family members and friends, in accordance with prudent parenting.

(16) shall ensure that if a privately-owned vehicle, owned by the applicant, family or friend is used to transport the child in foster care, registered and insured, and meets all applicable state or tribal requirements to be an operable vehicle on the road.

(a) The driver shall have a valid driver's license.

(b) Safety restraints shall be used that are appropriate to the child's age, height, and weight.

(c) Weapons must not be transported in any vehicle in which the child is riding unless the weapons are made inoperable and inaccessible or the foster care provider is law enforcement and has documentation that they are required to carry their weapon.

(17) shall follow PSD's approved weapons agreement. No foster children are to be in the presence of firearms, unless prior approval is obtained from PSD.

(18) shall ensure any off road vehicles, boats, jet skis or other recreational vehicles the foster child may ride or drive are used according to the manufacturers recommendations are adhered to and that use of these types of vehicles may be dependent on the age and any cognitive and behavioral challenges of the child.

(19) shall positively and actively participate in the case plan goals for the child, including but not limited to reunification with their family, placement or guardianship with a relative or fictive kin, or planned permanent living arrangement. They shall not negatively speak of, write of or provide influence to the child regarding their family.

(20) may need to take additional steps for the safety of the child in foster care, depending on the home, the area in which it is located, and the age and any cognitive and behavioral challenges of the child. For example, applicants may be required to child proof their home or place a barrier to prevent the child from accessing nearby railroad tracks, river or another hazard.

(21) shall adhere to the PSD reasonable and prudent parent standards per 8.26.2.13 NMAC.

(22) shall acknowledge receipt of and intent to comply with the foster child and youth bill of rights.

(23) shall acknowledge receipt of and intent to comply with the memorandum of agreements for foster parents.

[8.26.4.17 NMAC - Rp, 8.26.4.22 NMAC, 2/11/2020]

8.26.4.18 CHANGES IN HOUSEHOLD EFFECTING LICENSURE STATUS:

A. Licensed foster parents must notify their licensing agent immediately of any circumstance that may impact their license. Such circumstances may include but are not limited to:

- (1) birth or death of any household member;
- (2) serious illness of any household member;
- (3) criminal investigation, arrest or conviction of any household member;
- (4) child abuse or neglect referrals involving a household member;
- (5) new person living in the home or a person leaving the home;
- (6) significant financial changes, such as a change in employment status or bankruptcy;
- (7) a minor child reaching the age of 18; or
- (8) change in address.

B. Any adult intending to move into the foster home must complete a background check 30 calendar days prior to moving into the foster home. Any adult intending to move into the foster home with the intent of becoming a caregiver to a child in care must complete all licensing requirements prior to moving into the home. Any minor reaching the age of 18 shall complete a background check within 30 days of turning 18 years old.

C. The licensing agent shall assess changes within the foster home and that of the foster care providers that may affect licensing status and take appropriate action based upon the assessment.

[8.26.4.18 NMAC - Rp, 8.26.4.23 NMAC, 2/11/2020]

8.26.4.19 REVIEW AND RENEWAL OF FOSTER CARE PROVIDER LICENSURE:

A. Annual review: An annual review is a yearly review of a foster care provider's license to ensure the foster care provider continues to meet licensing standards related to criminal record checks, incident reports, training and assurances. An annual review shall be conducted one year from the date the license was issued. The licensing agent shall conduct an annual review of each foster care provider to include the following:

- (1) documentation of completion of the training requirements and the plan for ongoing training as described herein at 8.26.4.16 NMAC;
- (2) an abuse and neglect check on all adults living in the home;
- (3) a check of nmcourts.com and the national sex offender registry on all adults living in the home;
- (4) a review of the agreement between the foster care provider and the licensing agency. The agreement shall be signed again to cover the remainder of the licensing period or the new licensing period;
- (5) a review of placements made during the year, identification of strengths and training needs, and a review of current policies affecting foster care;
- (6) a review of incident reports or investigations made during the year;
- (7) a review with the foster care provider of their duty to disclose any arrests or abuse and neglect referrals; and
- (8) a review and acknowledgement of receipt of the foster parent assurances with the foster care provider.

B. Renewal: Foster care provider licenses are valid for a period of two years. PSD must assist foster care providers in renewing their license prior to the expiration of the license. Foster care providers, with the assistance of PSD, must meet the following renewal requirements every two years from the date of licensure. The SAFE home study update shall be used for re-assessment for renewal. The reassessment shall include all requirements listed above in Paragraphs (1) through (8) of Subsection A of 8.26.4.19 NMAC.

- (1) Before the end of the licensure period, both the foster care provider and the licensing agent shall ensure all requirements are met to qualify the family for a renewed license.
- (2) PSD or child placement agency foster care provider licenses shall be issued every two years, if the foster care provider continues to meet requirements.

C. Break in licensure: A break in licensure means requirements for license renewal were not completed prior to expiration of the foster care provider license, for a period of one calendar day past licensure expiration. Any break in licensure longer than one calendar day requires the foster care provider, with the assistance of PSD or the licensing agent, to complete all renewal requirements described herein Subsection B of 8.26.4.19 NMAC, the home safety checks, and CRC checks. If a break in licensure is less than one calendar day, PSD or the licensing agent shall complete the process for normal renewal described herein Subsection B of 8.26.4.19 NMAC.

[8.26.4.19 NMAC - Rp, 8.26.4.18 NMAC, 2/11/2020]

8.26.4.20 DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF A FOSTER CARE PROVIDER LICENSE:

A. Denial of a license:

(1) PSD or child placement agency staff may deny an applicant's request for licensure based on a documented professional assessment using the PSD approved home study format and supervisory tool. When a denial is recommended by the PSD worker, concurrence by the supervisor, county office manager, juvenile justice bureau chief, clinical director or agency executive director is required. Denial for a relative or fictive kin shall require a team review to include the PPW worker, PPW supervisor, placement worker, placement supervisor and COM. Denial, revocation, suspension, or non-renewal must clearly document that in the professional assessment using the approved PSD home study format of the licensing agent, documenting that the prospective or current foster care applicant cannot adequately provide safety, permanency, and well-being for a child in foster care and any concerns cannot be mitigated.

(2) Applicant's may be denied licensure at any point in the licensing process. The applicant shall be notified in writing of the denial within 10 business days of PSD or child placement agency's final decision by certified return receipt mail.

(3) Applicants who have been denied an initial foster parent license may request an administrative review of the reasons for the denial of the initial license. The request must be in writing and within 10 days of the return receipt of the notice of denial. This review is an informal process completed by the licensing agent and third party that was not directly supervising the licensing agent, which may include an informal conference or record review. The administrative review does not create any substantive rights for the family.

B. Revocation or non-renewal of a license: A foster care license may be revoked or not renewed by the licensing agent at any time for reasons which may include but are not limited to:

(1) disqualifying criminal records check results as described herein at Subsection H of 8.26.4.12 NMAC;

(2) disqualifying abuse and neglect check results as described herein at Subsection C of 8.26.4.13 NMAC;

(3) failure to comply with 8.26.2 NMAC, 8.26.4 NMAC, 8.26.5 NMAC or PSD policies;

(4) failure to immediately report any arrests to PSD or CPA;

(5) failure to report changes in the family, including the addition of new adult household members within five days of the change;

(6) willful misrepresentation of any information during the home study process;

(7) failure to comply with health and safety measures, including those requirements described herein at 8.26.4.15 NMAC;

(8) returning a child to PSD or another agency without seeking support services provided by PSD, the agency or community service providers in order to preserve the placement;

(9) refusal to comply with case plan;

(10) inability to adequately meet the needs of the child;

(11) failure to include children in family activities;

(12) overuse or inappropriate use of respite care and reasonable and prudent parenting;

(13) failure to actively preserve connections with or failure to make reasonable efforts to maintain connections between foster children and their birth families and community of origin such as:

(a) siblings or other birth relatives;

(b) school or community providers;

(b) church community; and

(c) fictive kin, or the child's friends.

(14) failure to demonstrate the ability to provide emotional support during fundamental times of a child's life;

(15) repeated refusals by non-relative foster care providers to accept children who have been matched for placements;

(16) failure to participate in required training;

(17) failure to comply with PSD's decisions regarding the child's safety, permanency, and well-being;

(18) misuse use or abuse of substances including but not limited to:

(a) alcohol;

(b) illegal substances; and

(c) legal prescription drugs and non-prescription drugs.

(19) exposure of the child to cigarette smoking and tobacco products; and
(20) a documented professional assessment that continued licensure would be contrary to the safety, permanency, and well-being of the child, or in the opinion of the licensing agent, conditions in the foster home are not conducive to the fostering of children.

C. Corrective Action Plan (CAP): Corrective action plans may be implemented as an alternative to revocation of a license when, in PSD or the child placement agency's assessment, the foster care provider is capable of resolving the violations within a period of six months.

(1) It shall be PSD's or the child placement agency's sole discretion whether a foster care provider may continue to have children placed in their home during the pendency of a CAP;

(2) A CAP must be in writing, signed and dated by the foster care provider and the licensing agent;

(3) The CAP shall set forth the policy violations of the foster care provider as described herein at Paragraphs (1) through (20) of Subsection B of 8.26.4.19 NMAC;

(4) The CAP shall set forth the conditions the foster care provider must meet in order to rectify the policy violations and the deadline within which they must meet the conditions. Conditions may include, but are not limited to the following:

(a) additional training;

(b) increased scheduled or unscheduled home visits by PSD or the child placement agency staff;

(c) compliance with the case plan for the child;

(d) participation in therapeutic, parenting, or other services.

(5) Failure of the foster care provider to agree to the terms of a CAP may result in revocation for the policy violations that led to the proposed CAP;

(6) Failure to comply with the conditions of the CAP may result in revocation of the foster care license.

D. Suspension of a license: Suspension of a license is involuntary and may not last more than 12 months. Reasons for suspension may include all the reasons described herein at Paragraphs (1) through (20) of Subsection B of 8.26.4.20 NMAC, as well as:

(a) substantiated abuse or neglect referrals; or

(b) during the period of a corrective action plan.

E. Voluntary placement hold: A foster care provider may voluntarily decide to temporarily defer their licensure and not accept placements for a period of up to 12 months. Voluntary placement holds must be approved by the licensing agency. A foster care provider may opt for a voluntary placement hold for the following reasons:

(a) medical conditions;

(b) adoption; or

(c) life changes within the household.

F. Notification: The foster care provider shall be notified in writing, by return of receipt mail, of the reason for revocation, suspension or non-renewal of the license and shall provide the foster care provider the opportunity to request an appeal before an impartial hearing officer appointed by or approved by the CYFD secretary where the family has the opportunity to present evidence on their behalf and to be assisted by counsel. The foster care provider shall request an appeal within 10 business days of receipt of the notification of the proposed action. If the family does not request an appeal within the 10 business days, then the decision to revoke, suspend or not renew a license shall be final. Administrative hearings are conducted in accordance with 8.8.4 NMAC.

G. Reinstatement of a license: A foster care provider whose license has been revoked, suspended, or not renewed may petition the licensing agency that issued the license to have the license reinstated upon proof that the noncompliance with the policies have ceased. The best interest of children shall be the primary consideration in determining whether reinstatement is appropriate. PSD or the child placement agency must ensure all licensing requirements are met prior to reinstatement. A PSD decision to reinstate a license must be approved by the PSD regional manager.

[8.26.4.20 NMAC - Rp, 8.26.4.19 NMAC, 2/11/2020]

8.26.4.21 GUIDANCE FOR LICENSURE OF NON-UNITED STATES CITIZENS WITHOUT LEGAL PERMANENT RESIDENCY:

A. All non-U.S. citizens without legal permanent residency who wish to be considered as relative or fictive kin placements shall comply with all licensure application requirements described herein Subsection B of

8.26.4.11 NMAC. PSD shall be responsible for conducting full licensure of non-U.S. citizens without legal permanent residency. Licensure of non-U.S. citizens without legal permanent residency shall not be contracted to other providers.

B. Criminal record checks (CRC) for non-U.S. citizen relative or fictive kin foster care providers:

(1) Non-U.S. citizen relative or fictive kin applicants without legal permanent residency must meet all requirements for criminal records checks described herein 8.26.4.12 NMAC with the exception of fingerprinting.

(2) Fingerprinting is the preferred method for background checks, however, an individual who is a non-U.S. citizen without legal permanent residency in the United States may choose not to be fingerprinted and may provide other forms of identification for a background check. Other forms of identification accepted for background checks are the following:

(a) Foreign passports

(b) Consular Identification (Matricula Consular)

(c) Non-REAL ID state identification

(d) Active Duty/Retiree/Reservist Military ID Card (000 10-2)

(3) The licensing agency shall provide assistance to the relative or fictive kin applicants with obtaining an acceptable form of identification.

(4) The national crime information center (NCIC) checks and abuse and neglect checks remain a mandated requirement for all relative or fictive kin applying to become licensed foster care providers. Relatives or fictive kin providers who are non-US citizens without legal permanent residency and who choose not to go through the fingerprinting process are still eligible to be foster care providers. PSD workers must notify their region's Title I-VE specialist immediately upon placement of a child with a non-U.S. citizen relative or fictive kin without legal permanent residency.

C. Child abuse and neglect checks for non-U.S. citizen foster care applicants who are not a legal permanent residents shall be conducted in compliance with 8.26.4.13 NMAC. If during any time in the five years prior to the date of application, the applicant resided in another country, PSD shall attempt to obtain an abuse and neglect check from the other country. Efforts to obtain abuse and neglect checks in another country shall be documented but inability to obtain abuse and neglect checks from another country shall not be a disqualifier for licensure.

D. Non-U.S. citizen relative or fictive kin applicants who are not legal permanent residents shall meet all other licensing requirements for:

(1) Physical and Mental Health Standards;

(2) Home Safety, Capacity and other Space Standards; and

(3) Home study requirements: and Training Requirements.

E. Immigration considerations: PSD staff shall notify the PSD Immigration Director and Immigration Specialist of any non-U.S. citizen relative or fictive kin provider without legal permanent residency licensed in New Mexico including through ICPC.

[8.26.4.21 NMAC - N, 2/11/2020]

8.26.4.22 DOCUMENTATION RELATED TO LICENSING OF FOSTER AND ADOPTIVE CARE PROVIDERS:

A. Maintenance of records:

(1) Foster care provider files: PSD and CPA shall maintain records concerning the evaluation of a foster care provider, including but not limited to the application, assessment information, recertification of information, releases of information, criminal records and background checks, medical examination records, a copy of the foster care provider license and correspondence. PSD and licensed agencies shall retain records permanently in accordance with 1.21.2.804 NMAC. If an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC.

(2) Adoption files: The agency, attorney, independent agent or PSD shall maintain records concerning adoptive families, including the foster care provider file as described above at Paragraph (1) of Subsection A of 8.26.4.21 NMAC, as well as adoption case information including but not limited to the adoption decree, annual contact reports, and adoption assistance agreements.

(a) Finalized adoption cases: The agency and CPA's shall retain finalized adoption records in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC.

(b) Disrupted or proposed adoptions not finalized: PSD and CPA's shall retain cases for five years after the case is closed. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC.

B. Confidentiality: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA 1978, the confidentiality provisions of the New Mexico Children's Code, Sections 32A-3B-22 and 32A-4-33 NMSA 1978, the specific authority related to certification of foster care providers, Subsection D of Section 40-7-4 NMSA 1978 and the Adoption Act, Sections 32A-5-6 and 32A-5-8 NMSA 1978, all case records and identifying information including foster and adoptive families, and applicant files are confidential and may not be publicly disclosed.

(1) Release in response to court order: PSD and CPAs may release such files only upon a valid court order provided that confidential criminal and abuse and neglect information may not be released, unless a court order specifically orders such a release.

(2) Release to another agency that is considering a previously licensed family for licensure: An agency that has licensed a foster or adoptive care giver may release assessment information and an unofficial copy of the home study to any agency that is considering the foster or adoptive family for licensure, upon receipt of the signed notification by the foster care provider of its licensure history with previous agencies.

C. Foster care provider files:

(1) Upon request, foster care providers shall be allowed to review their own file with the exception of letters of reference and the identity of any abuse or neglect report source regarding the foster or adoptive parents. Copying the file is not permitted.

(2) The agency shall provide an unofficial copy of the home study to the foster care provider upon written request.

(3) Foster care providers may purchase an official copy of their home study for a reasonable fee to be determined by the PSD director.

[8.26.4.22 NMAC - Rp, 8.26.4.21 NMAC, 2/11/2020]

HISTORY OF 8.26.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

HSSD 75-7, Minimum Requirements for Licensing of Child Placement Agencies, 9/15/1975;
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/1986;
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 1/29/1987;
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 11/18/1987;
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 6/14/1988;
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/1988;
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 9/18/1990;
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 3/15/1991;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 8/22/1986;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 1/29/1987;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 6/18/1987;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 11/18/1987;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 8/22/1988;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/28/1989;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/20/1990;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 9/18/1990;
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/15/1991;
SSD 5.5.0, Foster Care Child Placement Agency Licensing Regulations, 12/7/1989.

History of Repealed Material:

8 NMAC 27.2, Foster Parenting, filed 6/16/1997 - Repealed 2/14/2001;
8.27.2 NMAC, Foster Parenting, filed 2/1/2001 - Repealed 7/15/2004;
8.27.2 NMAC, Foster Parenting, 7/2/2004 - Repealed effective 11/15/2005;
8.27.2 NMAC, Foster Parenting, filed 11/1/2005 - Repealed effective 5/29/2009;
8 27.3 NMAC, Licensing Standards for Foster Care, filed January 13, 1997 - Repealed effective May 29, 2009.
8 26.4 NMAC, Licensing Requirements for Foster and Adoptive Homes, filed May 15, 2009, replaced by 8 26.4 NMAC, Licensing Requirements for Foster and Adoptive Homes, effective February 11, 2020.