

TITLE 8 SOCIAL SERVICES
CHAPTER 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS
PART 2 PROTECTIVE SERVICES GENERAL POLICIES

8.8.2.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD), Protective Services Division (PSD).
[8.8.2.1 NMAC - Rp, 8.8.2.1 NMAC, 03/31/10]

8.8.2.2 SCOPE: Protective services staff and the general public.
[8.8.2.2 NMAC - Rp, 8.8.2.2 NMAC, 03/31/10]

8.8.2.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, Section 9-2A-7 D, NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (Cum. Supp. 2009); and New Mexico Children's Court Rules SCRA 10-1 et seq.
[8.8.2.3 NMAC - Rp, 8.8.2.3 NMAC, 03/31/10]

8.8.2.4 DURATION: Permanent.
[8.8.2.4 NMAC - Rp, 8.8.2.4 NMAC, 03/31/10]

8.8.2.5 EFFECTIVE DATE: March 31, 2010 unless a later date is cited at the end of a section.
[8.8.2.5 NMAC - Rp, 8.8.2.5 NMAC, 03/31/10]

8.8.2.6 OBJECTIVE: To establish policies for the administrative functioning of the protective services division.
[8.8.2.6 NMAC - Rp, 8.8.2.6 NMAC, 03/31/10]

8.8.2.7 DEFINITIONS:

A. "Administrative hearing" in PSD, administrative hearings are used in the circumstances described herein at Paragraphs (1) - (3) of Subsection B of 8.8.2.13 NMAC.

B. "Administrative review" is an informal process, which may include an informal conference or may include only a record review. The administrative review does not create any substantive rights for the client.

C. "AFCARS" refers to the federally-required automated foster care and adoptions reporting system. States are required to submit AFCARS data semi-annually. This includes case level information on all children in PSD custody, children who are adopted under the auspices of PSD, and information on foster and adoptive parents.

D. "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 referrals on the family to this state's or any other state's child protective services division.

E. "Children's Code" refers to the New Mexico Children's Code, Section 32A-1-1, et. seq., NMSA 1978.

F. "Client" means a person who is receiving services from PSD.

G. "Communicable disease" means any infectious disease that is both potentially communicable through common social or sexual contact and poses a significant health risk if contracted.

H. "Criminal records check (CRC)," as discussed herein, means federal, state or local checks for criminal offenses conducted on PSD employees as well as volunteers and students working in a PSD office. The level of CRC depends on duties performed, as per 8.8.2.22 NMAC herein. Requirements for CRC in reference to foster or adoptive parents are outlined in "Licensing Requirements for Foster and Adoptive Homes," 8.26.4.10 NMAC.

I. "CYFD" refers to the children, youth and families department.

J. "FACTS" refers to the family automated client tracking system (FACTS), the official data management system for CYFD.

K. "NCANDS" refers to the national child abuse and neglect data system (NCANDS), a voluntary national data collection and analysis system created in response to the requirements of the Child Abuse Prevention and Treatment Act.

L. "Need to know" is the standard by which individual(s) are identified as required to receive confidential information, based upon risk of transmission of a specific disease.

M. “**NYTD**” refers to the national youth in transition (NYTD) database, a national data collection and analysis system created in response to the requirements of the Foster Care Independence Act of 1999.

N. “**Policies**” are those regulations that govern CYFD activities and have the force of law.

O. “**Procedures**” direct PSD staff in how to implement policies.

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

Q. “**Provider**” refers to foster care and adoptive families.

R. “**RMS**” means random moment sample and is the process used by CYFD to collect information to support claims for reimbursement from the state and federal funding sources.

S. “**SACWIS**” means the statewide automated child welfare information systems (SACWIS), a comprehensive automated case management tool that supports foster care and adoptions assistance case management practice. FACTS is the state of New Mexico’s SACWIS system.

T. “**Secretary**” means the secretary of CYFD.

U. “**Stipend students**” are students in an undergraduate or graduate social work program in New Mexico who have been selected to receive stipends to support their education in return for working for PSD for a specified period of time.

V. “**Universal precautions**” are the standardized protocols for the prevention of communicable disease.

W. “**Vendor**” refers to individuals or businesses from which PSD purchases goods and services for the needs of our clients.

[8.8.2.7 NMAC - Rp, 8.8.2.7 NMAC, 03/31/10; A, 02/29/12]

8.8.2.8 PROTECTIVE SERVICES DIVISION: The protective services division is New Mexico’s officially designated child welfare agency, responsible for providing child protective services to individuals and families.

A. PSD shall be responsible for administering and supervising the state of New Mexico’s child welfare services plan pursuant to Section 422(a) of the Social Security Act, 42 U.S.C. 622(a), and the agency responsible for the state plans under Title IV-B and IV-E of the Social Security Act and the social services block grant program pursuant to Title XX.

B. The protective services division shall maintain community based offices and maintains a toll free number that is posted in protective services division offices. Access to emergency protective services is available 24 hours a day, seven days a week.

[8.8.2.8 NMAC - Rp, 8.8.2.8 NMAC, 03/31/10; A, 02/29/12]

8.8.2.9 LEGAL AUTHORITY AND GUIDELINES: PSD and its contractors shall provide services and issue licenses and certifications in accordance with federal and state constitutional, statutory and regulatory requirements, without regard to race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity in accordance with law.

[8.8.2.9 NMAC - Rp, 8.8.2.10 NMAC, 03/31/10]

8.8.2.10 INTERAGENCY AND INTEROFFICE COLLABORATION AND COOPERATION:

A. PSD shall work with the other service areas within CYFD and other state and local agencies to enhance the provision of services to clients.

B. PSD county offices shall work together to provide one another with mutual support and assistance, including, but not limited to, providing cross-county interviews, home studies and supervision.

[8.8.2.10 NMAC - Rp, 8.8.2.19 NMAC, 03/31/10]

8.8.2.11 POLICY AND PROCEDURES DEVELOPMENT AND REVIEW:

A. PSD shall hold a public hearing prior to the inclusion, amendment or repeal of any portion of the New Mexico administrative code in accordance with the State Rules Act.

B. PSD shall file policies with the New Mexico state records center and archives in accordance with the State Rules Act.

C. Emergency rules:

(1) For good cause, PSD may issue rules on an emergency basis without notice or hearing if the secretary determines that the immediate implementation is necessary for public peace, health, safety, or general welfare. An emergency rule is effective for no longer than 30 days unless published in the New Mexico register in

accordance with 1.24.20 NMAC. Upon publication in the New Mexico register, emergency rules are converted to regular rules with such duration as stated in the published rule.

(2) Under CYFD's enabling statute, 9-2A-2(E) NMSA, PSD may also engage in "interim rule making," if the CYFD secretary certifies to the department of finance and administration that the CYFD has insufficient state funds to operate any of the programs it administers and that reductions in services or benefit levels are necessary.

D. Maintenance of policies: PSD shall regularly review policies and make revisions as necessary to reflect changes in practice to comply with federal and state laws as well as changes in CYFD standards of practice and funding. PSD shall consider requests for revisions to policies by any individual. Revisions to policies shall be made as provided by statute and regulations.

E. PSD policies are published in the New Mexico administrative code, which is available at <http://www.nmcpr.state.nm.us/NMAC> under Title 8, Social Services. Copies of policies and procedures are available for public inspection in PSD county offices; reasonable copying charges are assessed for duplication. [8.8.2.11 NMAC - Rp, 8.8.2.11 NMAC, 03/31/10; A, 02/29/12]

8.8.2.12 PROVISION OF SERVICES:

A. PSD shall make reasonable efforts to protect reported children from abuse and neglect, and when safely possible, to preserve the integrity of the family unit.

B. Provision of services is based upon the results of the assessment of the safety of the child, an assessment of the risk to the child, the protective capacities of the parent or guardian, and the availability of services.

C. Services shall be provided in a setting most consistent with the least restrictive alternatives and the case plan developed.

D. Provision of services shall not be dependent upon income certification or recertification for persons receiving the following services:

- (1) child protective services;
- (2) youth services;
- (3) in-home services;
- (4) child protective services childcare;
- (5) permanency planning service for children; or
- (6) adoption services for children.

E. PSD shall provide services in accordance with the Americans with Disabilities Act (ADA).

F. There shall be no residency or citizenship requirements for the provision of protective services.

G. Protective services shall be provided when indicated (see Subsection B above) to children who are infected with a communicable disease. PSD staff and providers use universal precautions for the prevention of communicable disease.

[8.8.2.12 NMAC - Rp, 8.8.2.13 NMAC, 03/31/10; A, 02/29/12]

8.8.2.13 ADMINISTRATIVE REVIEWS AND APPEALS: PSD shall provide a client with either an administrative review or an administrative hearing to appeal a PSD decision, as outlined below. The outcome of an administrative review or hearing is final except as otherwise provided by law or these policies.

A. Administrative review:

(1) An administrative review shall be used in the following instances:
(a) removal of foster children when the children have been in placement with the family for longer than six months;

(b) removal of adoptive children prior to finalization;
(c) denial of a foster home license application;
(d) denial of the foster family's request to adopt foster children placed in their home, if the children have been placed with the foster family for longer than six months;

(e) denial of transition support services;
(f) the substantiation of an abuse or neglect investigation unless the issue is in litigation in a pending children's court case;

(g) the substantiation of a past abuse or neglect investigation that has been revealed by a present criminal record check where the records fails to show that PSD provided notice or an opportunity for a review, unless the issue was litigated in a children's court case; or

(h) denial of certification as an independent investigator or adoption counselor.

(2) A client seeking an administrative review shall request the review in writing to PSD within ten days of the action or notice of the proposed action.

(3) The decision to initially place children with an adoptive family is not subject to an administrative review, but is made at PSD's sole discretion.

B. Administrative hearing: An administrative hearing shall be used only in the following instances:

(1) the revocation, suspension, or non-renewal of a foster home licensed by PSD (as specified in 8.26.4 NMAC);

(2) the denial, non-renewal, probation, suspension, or revocation of a child placement agency license (as specified in 8.26.5 NMAC); or

(3) the substantiation of an abuse or neglect investigation after it has been upheld in an administrative review, unless the issue is in litigation in a pending children's court case.

C. PSD shall comply with the administrative appeals process governed by 8.8.4 NMAC, Administrative Appeals.

D. A client seeking an administrative hearing shall request the hearing in writing to the PSD director's office within 10 days of the action or notice of proposed action.

[8.8.2.13 NMAC - Rp, 8.8.2.17 NMAC, 03/31/10; A, 04/29/11; A, 02/29/12]

8.8.2.14 DATA COLLECTION AND MANAGEMENT INFORMATION: PSD shall collect client and services information and records that information in the agency's management information system, family automated client tracking system (FACTS).

A. FACTS is the state of New Mexico's SACWIS system and shall be used to conform with federal NCANDS and AFCARS reporting requirements.

B. PSD shall produce reports containing statewide or county-based data for use in monitoring and tracking performance and outcomes.

[8.8.2.14 NMAC - N, 03/31/10]

8.8.2.15 CONFIDENTIALITY: All PSD staff and CFYD contractors shall maintain confidentiality of records and information in accordance with the laws and regulations that apply to specific services.

A. Abuse and neglect records: Abuse and neglect records are confidential pursuant to the New Mexico Children's Code 32A-4-33(A) NMSA. CYFD may release the identity of a reporting party only with the reporting party's consent or with a court order (See Protective Services Legal Policies, Subsection A of 8.10.7.10 NMAC).

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

C. Records related to an adoption proceeding: Records related to an adoption proceeding are confidential pursuant to the Children's Code, Section 32A-5-8 NMSA. Post decree adoption records: Guidance on obtaining access of post decree adoption records by an adult adoptee, biological parent of an adult adoptee, sibling of an adoptee, or adoptive parent of a minor adoptee is outlined in the Adoption Act Regulations, Subsection C of 8.26.3.41 NMAC.

D. Social security administration electronic records: Any information obtained through the social security administration (SSA) data system, ISD2, either directly or from another individual with access to the ISD2, is confidential. Improper access, use or disclosure of ISD information is a violation of the Privacy Act of 1974 (5 U.S.C. Section 552a, Public Law No 93-579), and could result in civil and criminal sanctions pursuant to applicable federal statutes. When a PSD worker becomes aware of a loss or suspected loss of any file containing ISD information (whether a hard copy file, or on a laptop, removable drive, etc.), that worker shall notify CYFD office of the general counsel (OGC) within one hour of the discovery of the loss.

[8.8.2.15 NMAC - Rp, 8.8.2.18 NMAC, 03/31/10; A, 02/29/12]

8.8.2.16 VENDOR AND PROVIDER PAYMENTS:

A. PSD shall collect social security or tax identification numbers for all vendors and providers.

B. PSD seeks recovery of all overpayments made.

C. Any demands for payments shall be submitted within 45 days of the service delivery or the date the charges were incurred or else payment is denied.
[8.8.2.16 NMAC - N, 03/31/10; A, 02/29/12]

8.8.2.17 CRITICAL INCIDENT REVIEW:

A. CYFD office of the general counsel (OGC) may direct PSD to conduct an internal review of any critical incident which may include, but is not limited to:

- (1) a serious injury or death of a child in PSD custody or with a PSD history;
- (2) high profile cases with PSD history or involvement;
- (3) abuse or neglect allegations involving a foster or adoptive parent; and
- (4) allegations involving PSD employees, stipend students, or volunteers.

B. Critical incident reviews are confidential, as described herein at Subsections A and B of 8.8.2.15 NMAC, and are not for publication or release.

[8.8.2.17 NMAC - Rp, 8.8.2.24 NMAC, 03/31/10; A, 02/29/12]

8.8.2.18 QUALITY ASSURANCE:

A. PSD's quality assurance unit shall provide regularly scheduled case reviews of a sample of cases in PSD county offices to evaluate the provision of services in the areas of safety, permanency and well-being.

(1) The purpose of the quality assurance unit shall be to provide reliable and valid performance and outcome data that will be used to improve safety, permanency and well-being outcomes for children and families.

(2) The quality assurance unit shall use the federally approved child and family services (CFSR) instrument.

(3) The quality assurance unit shall review in-home and foster care cases.

(4) The quality assurance unit shall notify the county office manager and deputy director immediately about specific cases that have safety issues identified during the county office quality assurance review.

B. The results of the county-based quality assurance review shall be provided in writing to PSD management. The overall results of the county based quality assurance review may be made public upon request. However, information about the specific cases that were the basis of the findings is confidential as described herein at Subsections A and B of 8.8.2.15 NMAC.

C. The PSD management at the county office develops and implements a plan to improve outcomes based upon the results of the report.

D. The quality assurance unit shall conduct other quality assurance activities upon the direction of PSD management. The results of these quality assurance activities shall be provided in writing to PSD management. The overall results of these quality assurance reviews may be made public upon request. However, specific case information that provided for the basis for any finding shall be confidential as outlined herein at Subsections A and B of 8.8.2.15 NMAC.

[8.8.2.18 NMAC - Rp, 8.8.2.28 NMAC, 03/31/10; A, 02/29/12]

8.8.2.19 FOSTER CARE GOALS: No more than 22% of the total number of children in foster care will have been in foster care for over 24 months at any given point during the fiscal year.

[8.8.2.19 NMAC - N, 03/31/10; 8.8.2.19 NMAC - Repealed; 02/29/12; 8.8.2.19 NMAC – Rn & A, 8.8.2.26 NMAC, 02/29/12]

8.8.2.20 FAMILY CENTERED MEETINGS: The family-centered meeting (FCM) is a facilitated meeting where PSD workers and supervisors shall meet with parents, guardians, and other for the purpose of safety planning, case planning and decision making.

[8.8.2.20 NMAC - N, 03/31/10; A, 02/29/12]

8.8.2.21 QUALIFICATIONS AND TRAINING OF STAFF: Protective services division staff shall meet minimum qualifications as determined by their positions and job functions, and participate in formal pre-service and annual training as required by CYFD.

A. All PSD staff shall be trained in their legal duties to protect the constitutional and statutory rights of children and families from the initial time of contact, during the investigation and throughout the provision of services.

B. Protective services supervisors and county office managers shall receive training in supervision as soon as possible of commencing supervision or employment as a supervisor or county office manager.

C. All PSD field staff child protective services social and community services coordinators shall receive formal pre-service training as soon as possible after employment. Staff shall not be assigned primary case assignment until they have completed all pre-service training requirements, including on the job training.

D. All PSD field staff, supervisors, and county office managers shall participate in in-service training as required by PSD management.

[8.8.2.21 NMAC - Rp, 8.8.2.26 NMAC, 03/31/10; A, 02/29/12]

8.8.2.22 EMPLOYEE AND STUDENT BACKGROUND CHECKS: PSD requires that employees, as well as volunteers and students working in PSD offices, submit to criminal records checks (CRC) and abuse and neglect background checks prior to beginning employment or other assignment.

A. **Level 1:** Level 1 background checks shall involve a state CRC only. This level shall be required for administrative staff and management where duties do not include direct client contact or providing direct client service.

B. **Level 2:** Level 2 background checks shall involve a state CRC and a FACTS child abuse or neglect check. This level shall be required for volunteers and students (excluding stipend students in practicum placements, for whom Level 3 checks shall be required) who provide services to clients and are supervised by a PSD employee.

C. **Level 3:** Level 3 background checks shall involve state and FBI CRCs and a FACTS child abuse or neglect check. This level shall be required for employees who will have unsupervised direct contact with clients as well as for stipend students in practicum placements, see herein at Subsection T of 8.8.2.7 NMAC.

D. **Disqualifiers:** If a CRC or FACTS check reveals a criminal record or a substantiated abuse or neglect referral, the application shall be reviewed by CYFD human resources division to determine whether or not that record or referral disqualifies the applicant from employment, service as a volunteer, or student placement.

[8.8.2.22 NMAC - N, 03/31/10]

8.8.2.23 EMPLOYEE SAFETY:

A. PSD requires pre-service training and encourages practice which helps protect the safety of its employees.

B. Workers shall report to management any situations or circumstances that they believe are unsafe. PSD management shall assist the worker in structuring the situation to enhance the safety for the worker.

[8.8.2.23 NMAC - Rp, 8.8.2.25 NMAC, 03/31/10]

8.8.2.24 CONFLICT OF INTEREST: PSD employees shall not have primary responsibility for cases in which the employee has a close personal relationship with the client or a principal in the case or in which the client is a relative. In the event of the above, the employee will immediately report the relationship to the supervisor and another employee will be assigned to the case.

[8.8.2.24 NMAC - Rp, 8.8.2.20 NMAC, 03/31/10]

8.8.2.25 STATE AND FEDERAL REQUIREMENTS:

A. **Audits:** PSD shall participate in required state and federal audits including but not limited to the federal Title IV-E foster care eligibility review, the federal child and family services review, and state audits.

B. **Federal reports:** PSD shall complete federal reporting requirements, including but not limited to, include the child and family services plan, the annual progress and services report, Title XX of the social security block grant, the national youth in transition database, AFCARS, and NCANDS.

[8.8.2.25 NMAC - N, 03/31/10]

8.8.2.26 RANDOM MOMENT SAMPLING (RMS): PSD shall participate in RMS consistent with CYFD's federally approved cost allocation plan.

[8.8.2.26 NMAC - N, 03/31/10; 8.8.2.26 NMAC - N, 02/29/12]

HISTORY OF 8.8.2 NMAC:

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

SSD 2.0.0, General Provisions - Service Availability, filed 8/21/86;

SSD 2.0.0, General Provisions - Service Availability, filed 1/29/87;

SSD 2.0.0, General Provisions - Service Availability, filed 1/13/88;

SSD 2.0.0, General Provisions - Service Availability, filed 6/14/88;
SSD 2.0.0, General Provisions - Service Availability, filed 3/28/89;
SSD 2.0.0, General Provisions - Service Availability, filed 3/15/91;
HSSD 74-12 Social Services Manual filed 3/11/74;
SSD 2.1.0, General Provisions - Regulations, filed 8/21/86;
SSD 2.1.0, General Provisions - Regulations, filed 3/15/91;
SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 8/21/86;
SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 1/29/87;
SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 6/18/87;
SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 11/18/87;
SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 1/13/88;
SSD 2.2.0, General Provisions - Application for Services and Determination of Eligibility, filed 7/14/89;
SSD Rule #435.0000 General Provision - Delivery of Services, filed 10/16/81;
SSD 2.3.0 General Provisions - Delivery of Services, filed 8/21/86;
SSD 2.3.0 General Provisions - Delivery of Services, filed 11/18/87;
SSD 2.3.0 General Provisions - Delivery of Services, filed 9/18/90;
SSD 2.4.0, General Provisions - Termination of Services, filed 8/21/86;
SSD Rule #260.0000, Confidential Nature of Information Obtained in Operation of Program, filed 11/10/81;
SSD 2.5.0, General Provisions - Confidentiality, filed 8/21/86;
SSD Rule #250.0000 Fair Hearings filed 11/10/81;
SSD 2.6.0 General Provisions - Administrative Review, filed 8/21/86;
SSD 2.6.0, General Provisions - Administrative Review, filed 1/29/87;
SSD 2.6.0, General Provisions - Administrative Review of SSD Decisions, filed 9/17/93;
SSD 2.7.0 General Provision - Legal Authority for Services to Children, filed 8/22/86;
SSD 2.8.0, General Provisions - Legal Authority Adult Services, filed 8/22/86;
SSD 2.9.0, General Provisions - Overview of Child and Family Services, filed 8/22/86.

History of Repealed Material:

8 NMAC 8.2, Protective Services Division General Policies, filed 6/16/97 - Repealed effective 2/14/01.
8.8.2 NMAC, Protective Services Division General Policies, filed 2/1/01 - Repealed effective 7/30/04.
8.8.2 NMAC, Protective Services General Policies, filed 7/16/04 - Repealed effective 11/15/05.
8.8.2 NMAC, Protective Services General Policies, filed 11/1/05 - Repealed effective 3/31/10.