

TITLE 8 SOCIAL SERVICES
CHAPTER 17 NON-LICENSED CHILD CARE
PART 2 REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES

8.17.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.17.2.1 NMAC - Rp 8.17.2.1 NMAC, 11/01/02]

8.17.2.2 SCOPE: All non-licensed family child care homes within the state of New Mexico who are intending to participate in the child and adult care food program or the child care assistance program.
[8.17.2.2 NMAC - Rp 8.17.2.2 NMAC, 11/01/02]

8.17.2.3 STATUTORY AUTHORITY: The requirements (regulations) set forth herein, are established pursuant to the state and federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, Parts 255, 256, 257 Title 4-E. These regulations are promulgated by authority of Section 9-7-7 and 9-7-12 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) are not health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978.
[8.17.2.3 NMAC - Rp 8.17.2.3 NMAC, 11/01/02]

8.17.2.4 DURATION: Permanent.
[8.17.2.4 NMAC - Rp 8.17.2.4 NMAC, 11/01/02]

8.17.2.5 EFFECTIVE DATE: November 1, 2002, unless a later date is cited at the end of a section.
[8.17.2.5 NMAC - Rp 8.17.2.5 NMAC, 11/01/02]

8.17.2.6 OBJECTIVE: The objective of 8.17.2 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulations to participate in the federal child and adult care food program (CACFP) and the state and federal child care assistance programs (CCAP) through self-certification and registration.
[8.17.2.6 NMAC - Rp 8.17.2.6 NMAC, 11/01/02]

8.17.2.7 DEFINITIONS:

A. "Child" means any person twelve (12) years old or younger; children of migrant workers fifteen (15) years old or younger, any person with certain disabilities who is eligible under federal child and adult care food program standards; or any person eligible under state and federal child-care assistance programs standards.

B. "Child Care Assistance Program (CCAP)" means the state of New Mexico's child care services bureau which administers the federal child care and development fund (CCDF).

C. "Child and Adult Care Food Program (CACFP)" means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.

D. "Emergency caregiver" means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, 48 hours or less, on behalf of the primary caregiver.

E. "Infant" means a child from birth to one-year-old.

F. "Nonresident child" means any child who does not reside in the caregiver's home.

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

H. "Primary caregiver" means a family day care home provider 18 years of age or older who is personally providing care to non- resident children, less than 24 hours a day, in his/her own residence and has completed a self certification registration form and paid the required fee.

I. "Registered Family Child Care Home" means the residence of an independent caregiver who registers the home under these regulations to participate in the child and adult care food program or as a vendor in the state and federal child care assistance programs.

J. "Resident child" means any child who resides in the home, such as provider's own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the residential unit.

K. "Second caregiver" means someone 18 years of age or older who is authorized by the primary caregiver and the day care home sponsoring organization to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including TB tests, CRC fingerprint clearance, annual training hours and initial orientation and training for participation in the CACFP and/or the child care assistance program.

[8.17.2.7 NMAC - Rp 8.17.2.7 NMAC, 11/01/02]

8.17.2.8 APPLICATION: An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must register as a family child care home provider by submitting a completed self-certification and registration agreement and paying the processing charge.

[8.17.2.8 NMAC - Rp 8.17.2.8 NMAC, 11/01/02]

8.17.2.9 COMPLIANCE: By completing and submitting the self-certification registration agreement, the independent caregiver certifies the caregiver's home complies with these regulations. The caregiver also agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

A. All caregivers, and all adults over 18 years of age residing in a caregiver's home will undergo a protective services division screening for a history of substantiated child abuse or neglect referrals.

B. Complaints received by CYFD shall be investigated within ten days by family nutrition bureau staff or by the sponsoring organization.

[8.17.2.9 NMAC - Rp 8.17.2.9 NMAC, 11/01/02]

8.17.2.10 STATE AND FEDERAL CRIMINAL RECORDS CHECKS:

A. Criminal records checks (CRC) are required for all providers caring for children not related to them. Federal criminal records checks are not required for providers who care only for children related to them up to the fourth degree of consanguinity. The sponsoring organizations who register family child care home providers shall provide CRC fingerprint cards to all providers, including their employees, second caregivers, or volunteers, who care for children who are not related to the provider. A request for federal background checks, along with the appropriate fee, must be submitted within one week of registration to the children, youth and families department.

(1) Providers caring only for related children shall undergo a state department of public safety clearance check by submitting the required forms and the required fee.

(2) Providers receiving subsidy from CYFD shall submit their finger print cards at the time of registration.

B. In situations where requests for state criminal records checks have been submitted but clearance letters have not yet been issued, those providers, second caregivers and volunteers who are providing service to children may provide care if federal clearance has been received.

C. A provider shall not be eligible for continued registration upon notification that a federal background check has revealed information that would disqualify an individual from receiving a letter of clearance.

D. Any provider, second caregiver or volunteer who has received state and federal clearance through another child care facility or sponsoring organization within one year of application for registration as a family child care provider, is not required to undergo an additional federal background check unless the children, youth and families department believes it has cause to request it.

E. Criminal background checks will be conducted in accordance with the most current provisions of 8.3.3 NMAC, Criminal Records and Employment History Verification Provisions as promulgated by the children, youth and families department.

[8.17.2.10 NMAC - Rp 8.17.2.10 NMAC, 11/01/02]

8.17.2.11 RENEWAL: Caregivers must renew registration annually, and only after receiving an onsite inspection by the sponsoring organization, by submitting a self-certification registration agreement and paying the processing charge with cashier's check or a money order. Providers who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.

[8.17.2.11 NMAC - Rp 8.17.2.11 NMAC, 11/01/02]

8.17.2.12 VISITATION: Caregivers must consent to visits by the children, youth and families department or the child and adult care food program sponsoring agency any time nonresident children are present and/or, for relative care only providers, during the provider's stated normal hours of operation.

[8.17.2.12 NMAC - Rp 8.17.2.12 NMAC, 11/01/02]

8.17.2.13 NON-COMPLIANCE: The children, youth and families department may deny, suspend or revoke registration at any time if the caregiver is not in compliance with the registration standards.

A. CYFD may revoke or suspend the registration of a provider for serious violations such as:

- (1) Failure to comply with the group size and/or capacity requirement
- (2) Health and safety violations which place the children in immediate danger, including:
 - (a) A dwelling infested with vermin, including rodents, with no effort to correct the problem;
 - (b) Lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto

the ground surface:

- (c) Unlocked or unsecured firearms in the home.
- (3) Criminal records check denial;
- (4) Substantiated fraudulent activity in the CACFP or the child care assistance programs;
- (5) Substantiated non-compliance with provider requirements to care for children in the registered

home as defined in the enrollment documents;

Substantiated abuse and/or neglect of children as determined by the protective services division of CYFD or a law enforcement agency;

(6) Situations where the children in care are placed in eminent danger, including but not limited to; evidence of illegal drug use in the home, when a convicted sex offender maintains residence in the home, when a household member is accused of sexual child abuse or when the outcome of a child protective services referral is pending.

B. CYFD notifies all providers in writing when registration is to be revoked or suspended and affords appeal rights to any provider whose registration is revoked or suspended, as described in 8.17.2.27 of this policy.

C. The family nutrition bureau notifies the child care services bureau of any revocation or suspension of registration for a provider participating in the child care assistance programs.

D. Providers may be eligible for reinstatement of registration upon written request to CYFD and upon written approval by the family nutrition bureau or the child care services bureau.

[8.17.2.13 NMAC - Rp 8.17.2.13 NMAC, 11/01/02]

8.17.2.14 ANNUAL CERTIFICATION: Independent caregivers shall certify upon renewal that they, or any other adult living in the home, have not been convicted of a disqualifying offense during the last twelve months.

[8.17.2.14 NMAC - N, 11/01/02]

8.17.2.15 INCIDENT REPORTS: Registered providers shall notify CYFD immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger, such as but not limited to:

- A. A lost or missing child;
- B. The death of a child;
- C. The abuse or neglect of a child;

[8.17.2.15 NMAC - N, 11/01/02]

8.17.2.16 - 19 [RESERVED]

8.17.2.20 REQUIRED STANDARDS: Independent caregivers will certify when they apply for registration that they comply with and maintain the standards in 8.17.2.21 through 8.17.2.24 NMAC.

[8.17.2.20 NMAC - Rp 8.17.2.20 NMAC, 11/01/02]

8.17.2.21 GROUP COMPOSITION REQUIREMENTS:

- A. A caregiver will care for no more than four (4) non-resident children at any one time.
- B. A caregiver will care for no more than two (2) children under two (2) years old at any one time, including the provider's own children.

C. A caregiver will care for no more than six (6) children under six (6) years old at any one time, including the provider's own children.

D. Shifts are allowed provided there are never more than four (4) non-resident children present at any one time, including change of shifts.

E. The primary caregiver will be physically present and actively involved in the care of nonresident children during the designated hours of child care as noted in the child enrollment forms, except for short absences when another approved caregiver is present. Regular outside employment is not considered a short absence.

[8.17.2.21 NMAC - Rp 8.17.2.21 NMAC, 11/01/02]

8.17.2.22 HEALTH AND SAFETY REQUIREMENTS:

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

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

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

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees (fahrenheit).

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

F. All gas-fired equipment and water heaters must have a 100% cutoff valve.

G. A caregiver must provide safe playing areas inside and outside the home.

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

I. The home must have a telephone or the caregiver must have applied for installation of a telephone. The caregiver must have the telephone within sixty (60) days of registration. The CYFD may waive the telephone requirement if the caregiver lives in a rural area where phone service is not available or for other circumstances as approved by CYFD.

J. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center by the telephone.

K. A caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, or other hazardous area. The fence will have one latched gate for emergency exits.

L. A caregiver will install at least one working smoke detector in an appropriate area in the home.

M. A caregiver will store all firearms, such as rifles and handguns, in a locked area inaccessible to children.

N. A caregiver will prohibit smoking and the consumption of alcoholic beverages or illegal drugs when nonresident children or, for relative care only providers, when related children are present.

O. The home will have at least one 2A-10BC fire extinguisher mounted near the exit of the kitchen. It must be visible and readily available for use and in operable condition at all times.

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

Q. In case of fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available.

R. A home will have two (2) major exits readily accessible to children.

S. Toys and objects (including high chairs) are safe, durable, easy to clean and nontoxic.

T. Children will not use a common towel or wash cloth.

U. The home will have a first aid kit stored in a convenient place inaccessible to children. The kit will contain at least band-aids, gauze pads, adhesive tape, scissors, soap, non porous latex gloves, Ipecac syrup, and a thermometer.

V. A caregiver will ensure that all pets in the home are inoculated as required by law and will keep proof of inoculations.

W. A caregiver will not change a diaper in a food preparation area. Caregivers will disinfect the diaper-changing surface and wash their hands after every diaper change.

[8.17.2.22 NMAC - Rp 8.17.2.22 NMAC, 11/01/02]

8.17.2.23 MEAL REQUIREMENTS:

A. Children will not use common eating or drinking utensils.

- B. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.
- C. Meals must meet age-appropriate USDA requirements, including the following meal components: one (1) serving of meat or alternate; two (2) servings of fruits or vegetables; one (1) serving of bread or alternate and one (1) serving of fluid milk. A caregiver must serve whole milk to children one to two years old.
- D. A caregiver must keep a daily menu.
- E. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.
- F. Caregivers will feed children a meal or snack every three (3) hours.
- G. Caregivers and children will wash their hands regularly and before each meal time.
- H. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees fahrenheit or below.
- I. Refrigerators shall have working thermometers.

[8.17.2.23 NMAC - Rp 8.17.2.23 NMAC, 11/01/02]

8.17.2.24 RECORD KEEPING REQUIREMENTS:

- A. Caregivers must maintain evidence of tuberculosis screening to show that TB is not active.
- B. Caregivers must keep an information card for each child with;
 - (1) The child's full name;
 - (2) The child's birth date;
 - (3) Any known food or drug allergies or unusual physical condition;
 - (4) The name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
 - (5) The name and telephone number of the child's physician;
 - (6) Authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
 - (7) Written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent; and,
 - (8) An immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health.

[8.17.2.24 NMAC - Rp 8.17.2.24 NMAC, 11/01/02]

8.17.2.25 QUALIFICATIONS AND RESPONSIBILITIES:

- A. Caregivers must be at least 18 years of age. All primary and second caregivers must have documentation of criminal records clearance in accordance with Section 10 of these regulations.
- B. All caregivers must be free of any mental, emotional and physical health problems that would interfere with the appropriate care of the children.
- C. The caregiver is responsible for immediately reporting to the appropriate authorities any symptoms of child abuse or neglect.
- D. A caregiver will use discipline that is positive, consistent and age-appropriate. The caregiver will NOT use:
 - (1) Physical punishment of any type;
 - (2) Withdrawal of food;
 - (3) Restriction of rest or bathroom opportunities;
 - (4) Any form of public or private humiliation, including yelling or threats of physical punishment;
 - (5) Isolation or unsupervised separation; or
 - (6) Any other type of punishment that is hazardous to the physical, emotional or mental state of the child.
- E. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play.

F. Caregivers of infants will allow them to creep, crawl or toddle and will hold them for bottle-feeding and at other times. Caregivers will allow infants to eat and sleep on their own schedules.

G. Primary and secondary caregivers are required to attend six (6) hours of training annually. Training documentation must be maintained for three (3) years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

H. All providers are required to attend first aid training during their first year of registration.

I. Remaining hours of training shall be within the seven competency areas. The competency areas are: a) child growth, development and learning; b) health, safety, nutrition and infection control; c) family and community collaboration; d) developmentally appropriate content; e) learning environment and curriculum implementation; f) assessment of children and programs; and g) professionalism.

[8.17.2.25 NMAC - Rp 8.17.2.25 NMAC, 11/01/02]

8.17.2.26 TRANSFERABILITY OF REGISTRATION:

A. The caregiver's registration agreement is personal, and not transferable to any other person or location.

B. If the caregiver moves to a new location or has a change of name, the caregiver must register again and pay the processing charge.

[8.17.2.26 NMAC - Rp 8.17.2.26 NMAC, 11/01/02]

8.17.2.27 APPEAL RIGHTS: Any registered provider who is sanctioned pursuant to these regulations or has their registration revoked or suspended may appeal that decision to the children, youth and family department. The request for hearing shall be made within fifteen calendar days of the date of notice of action.

[8.17.2.27 NMAC - Rp 8.17.2.27 NMAC, 11/01/02]

HISTORY OF 8.17.2 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

ISD CCAP 400, Provider Registration, 11-4-91

ISD CCAP 500, Provider Selection and Payment, 11-4-91

History of Repealed Material:

8 NMAC 17.2, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8-1-00

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/30/01

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/01/02