

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding NON-LICENSED CHILD CARE - REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES as authorized by Section 9-2A-7 NMSA 1978:

- 8.17.2.7 NMAC - DEFINITIONS
- 8.17.2.10 NMAC - CAREGIVER REQUIREMENTS
- 8.17.2.11 NMAC - BACKGROUND CHECKS
- 8.17.2.24 NMAC - RECORD KEEPING REQUIREMENTS
- 8.17.2.25 NMAC - CAREGIVER'S RESPONSIBILITIES

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

Purpose of proposed rules: The purpose of the rules is to amend the background check requirements to add language to incorporate a two-step clearance process for caregivers. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are to comply with federal requirements. In addition, language will be included requiring policies and procedures ensuring that a registered sex offender does not have access to the home where children are present and requiring household members reaching the age of 18 to submit their background check within 30 days after their eighteenth birthday.

Copies of the proposed rules may be found at CYFD's website at <https://www.newmexicokids.org/> or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on Thursday, August 29, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at debra.gonzales@state.nm.us. CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may also be submitted via email to CYFD-ECS-PublicComment@state.nm.us with the subject line "8.17.2 NMAC Public Comment," or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160. The comment period ends at the conclusion of the public hearing on August 29, 2019.

AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se requiere bajo la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC propone adoptar enmiendas a las siguientes reglas leyes administrativas con respecto a CUIDADO DE NIÑOS SIN LICENCIA- REQUISITOS GOVERNANDO LA REGISTRACIÓN DE CASAS DE CUIDADO DE NIÑOS EN CASAS FAMILIARES SIN LICENCIA según autorizado por la sección 9-2A-7 NMSA 1978:

- 8.17.2.7 NMAC - DEFINICIONES
- 8.17.2.10 NMAC - REQUISITOS PARA PROVEEDORES
- 8.17.2.11 NMAC - COMPROBACIÓN DE ANTECEDENTES Y HUELLAS
- 8.17.2.24 NMAC - REQUISITOS PARA MANTENER ARCHIVOS

8.17.2.25 NMAC - RESPONSABILIDADES DE LOS PROVEEDORES

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

Propósito de las propuestas leyes administrativas: El propósito de las leyes administrativas es enmendar los requisitos para comprobación de antecedentes y huellas añadiendo lenguaje para incorporar un proceso de dos pasos de autorización para proveedores. Un aviso de empleo provisional (o comprobación de antecedentes y huellas elegibles - aprobada) será requerido antes de empezar empleo e incluirá un cronograma cuando el aviso será emitido. Estas enmiendas tienen que estar conformes con los requerimientos federales. Adicionalmente, lenguaje será incluido requiriendo pólizas y procesos que aseguren que un delincuente sexual registrado no tenga acceso a una casa donde niños estén presentes y requiriendo que miembros del hogar a punto de cumplir los 18 años de edad tienen que proporcionar su comprobación de antecedentes y huellas dentro de 30 días de haber cumplido su decimoctavo cumpleaños.

Copias de las propuestas leyes administrativas pueden ser localizadas en el sitio de la red de CYFD @<https://www.newmexicokids.org/> o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

Aviso de Audiencia Pública de leyes administrativas: La audiencia pública de leyes administrativas será el jueves, 29 de agosto, 2019 a las 10:00 a.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir la audiencia tendrá una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista s o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales, debra.gonzales@state.nm.us. CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

Aviso de aceptación de comentario público por escrito: Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a: CYFD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: “8.17.2 NMAC Public Comment,” o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se pueden entregar en mano a: Kimberly Brown. El período de comentarios termina a la conclusión de la audiencia pública del 29 de Agosto de 2019.

Proposed Rules/Reglas Propuestas

8.17.2.7 DEFINITIONS:

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

[P-]Q. **“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.

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

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

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

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

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

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

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

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

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

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

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

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

8.17.2.10 CAREGIVER REQUIREMENTS:

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

8.17.2.11 BACKGROUND CHECKS:

B. The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department’s most current version of the background checks and employment history verification provisions (8.8.3 NMAC). A household member ~~[over]~~ reaching the age of 18, ~~[who is currently approved but does not have an individual background check clearance, shall comply with the background check requirements no later than one year after these regulations are in effect.]~~ must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

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

- A. the child's full name;
- B. the child's birth date;
- C. any known food or drug allergies or unusual physical condition;
- D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
- E. the name and telephone number of the child's physician;

- F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
- G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;
- H. an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth; ~~and~~
- I. written permission from parent to transport children outside of the registered home [-] ; and
- J. signed acknowledgement by the parent acknowledging that a check through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry will be conducted by the caregiver on all persons authorized to pick up the child(ren) to include parents and guardians.

8.17.2.25 CAREGIVER'S RESPONSIBILITIES:

E. Policies and procedures ensuring that a registered sex offender does not have access to the home where children are present. The caregiver is responsible for conducting a check through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry on persons authorized to pick up the child(ren), to include parents and guardians, and keep this documentation in the child's file.

~~E.]F.~~ 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. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

~~F.]G.~~ Caregivers of infants will allow them to crawl or toddle. Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted. Caregivers will allow infants to eat and sleep on their own schedules.

~~G.]H.~~ Caregivers will ensure age appropriate naps or rest periods as follows:

- (1) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.
- (2) Caregivers shall ensure that nothing covers the face or head of a child 12 months or younger when the child is laid down to sleep and while the child is sleeping.
- (3) Caregivers shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.
- (4) No child(ren) shall be allowed to sleep behind closed doors.

~~H.]I.~~ Swimming, wading and water:

- (1) A caregiver must obtain written permission from a parent or guardian before a child enters a pool;
- (2) If a home has a portable wading pool:
 - (a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;
 - (b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children; and
 - (c) a home will not use a portable wading pool placed on concrete or asphalt.
- (3) If a home has a built in or above ground swimming pool, ditch, fish pond or other water hazard:
 - (a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;
 - (b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and ensure adequate safety for the ages, abilities and type of water hazard in use.