TITLE 8 SOCIAL SERVICES
CHAPTER 15 CHILD CARE ASSISTANCE
PART 2 REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 10/1/16]

8.15.2.2 SCOPE: This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility for child care assistance benefits. (See 8.15.2.8 NMAC for detailed list.)
[8.15.2.2 NMAC - Rp, 8.15.2.2 NMAC, 10/1/16]

8.15.2.3 STATUTORY AUTHORITY: NMSA section 9-2A-7 (1991).
[8.15.2.3 NMAC - Rp, 8.15.2.3 NMAC, 10/1/16]

8.15.2.4 DURATION: Permanent
[8.15.2.4 NMAC - Rp, 8.15.2.4 NMAC, 10/1/16]

8.15.2.5 EFFECTIVE DATE: October 1, 2016, unless a later date is cited at the end of section.
[8.15.2.5 NMAC - Rp, 8.15.2.5 NMAC, 10/1/16]

8.15.2.6 OBJECTIVE:

A. To establish standards and procedures for the provision of child care assistance benefits to eligible clients and to establish the rights and responsibilities of child care providers who receive payment for providing child care services to clients receiving benefits. To establish minimum requirements for eligibility for program participation and for the provision of child care services to children whose families are receiving benefits and to allow children receiving these benefits access to quality child care settings that promote their physical, mental, emotional, and social development in a safe environment.

B. Permissive language such as "may or may be" when referring to actions taken by the department, address situations where it is not always prudent or practical to apply these actions. It is not meant to reduce the weight of these actions nor should the intent of the policies be circumvented due to this wording. This language is intended to be construed in a fiscally responsible and equitable manner, keeping in mind that consistency in application is the ultimate goal.
[8.15.2.6 NMAC - Rp, 8.15.2.6 NMAC, 10/1/16]

8.15.2.7 DEFINITIONS:

A. “Attending a job training or educational program” means actively participating in a job training or educational program.

B. “At-risk child care” means a program for families at-risk of child protective services involvement as determined by the department.

C. “CACFP” means the child and adult care food program, administered by the children, youth and families department.

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

E. “Child support enforcement division” means the child support enforcement program administered by New Mexico’s human services department, which collects child support from non-custodial parents.

F. “Closure” means the child care case is closed.

G. “Co-payment” means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department’s payment to the provider is reduced by the co-payment amount.

H. “Department” means the New Mexico children, youth and families department (CYFD).

I. “Earned income” means income received as wages from employment or as profit from self-employment.

J. “Homeless children and youth” means individuals who lack a fixed, regular, and adequate

DRAFT

nighttime residence, which includes:

(1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

K. "Incidental money" means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

L. "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(1) infant: zero - 23 months;

(2) toddler: 24 -35 months;

(3) preschool: three to five year olds; and

(4) school age: six year olds and older.

M. "Job training and educational program" means participation in a short or long term educational or training program which provides specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions.

N. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

(1) The following are the only national accrediting bodies that are approved by CYFD:

(a) the association of Christian schools international (ACSI);

(b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);

(d) the national accreditation commission for early care and education programs (NAC);

(e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(f) the national association of family child care (NAFCC); or

(g) the national early childhood program accreditation (NECPA).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

O. "Non-temporary change in activity" means the family has experienced a change in activity that does not meet the definition of a "temporary change in activity" as defined in Section CC below.

P. "Non-traditional hours of care" means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

Q. "Open case" means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

R. "Overpayment" means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

S. "Child Protective services (CPS) child care" means child care services for children placed in the custody of the child protective services of the department.

T. "Provider types" means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) "In-home" care means care provided in the child's own home.

(2) "Registered home" means child care provided in the home of a provider who is registered

DRAFT

with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) "Licensed family child care home" means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) "Licensed group child care home" means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) "Licensed center" means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) "Out-of-school time care" means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

U. "Recertification" means the process by which a client's eligibility to continue to receive child care assistance benefits are determined.

V. "Registration/educational fee" means a fee charged to private pay and families receiving child care assistance for materials and supplies.

W. "SNAP" means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

X. "Star level" means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

Y. "Suspension" means that the child care case remains eligible, but benefits are not paid to the provider.

Z. "TANF" means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

AA. "Teen parent" means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

BB. "Termination" means the child care case will be closed due to cause.

CC. "Temporary change of activity" means one of the following events that does not exceed three months:

(1) limited absence from work for employed parents for periods of family leave (including parental leave) or sick leave;

(2) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(3) student holiday or break for a parent participating in training or education;

(4) reduction in work, training or education hours, as long as the parent is still working or attending training or education; and

(5) cessation of work or attendance at a training or education program less than 90 days.

DD. "Underpayment" means a payment made by the department for services provided which did not fully reimburse the client or provider.

EE. "Unearned income" means income in the form of benefits such as TANF, workmen's compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, and grants which does not meet the definition of earned income.

[~~**FF.** "Waiting list" means a list of families who have applied for child care services during a period of lack of funding.~~]

[~~**GG.**~~] **FF.** "Working" means employment of any type, including self-employment. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/16, A, 02/01/17]

8.15.2.8 TYPES OF CHILD CARE: These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents have a variety of child care services from which to choose:

A. licensed child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;

DRAFT

B. licensed child care programs administered by tribal entities;
C. licensed child care programs administered by church or religious organizations;
D. in-home care;
E. licensed child care centers;
F. registered family childcare homes;
G. licensed family and group childcare homes;
H. licensed out of school time programs; and
I. licensed programs operated by employers for their employees.

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 10/1/16]

8.15.2.9 PRIORITIES FOR ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority one: Clients receiving temporary assistance to needy families (TANF) benefits are considered priority one clients.

(1) Participation exemption: The human services department grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant's inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a) the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any or all of the above reasons is referred to the children, youth & families department child care resource and referral. The child care resource and referral assists the client with location of child care. The final validation/verification of a client's inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with the human services department (HSD). HSD is responsible for providing notice of the approval or denial of a participation exemption.

B. Priority one A: [RESERVED]

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level[~~.~~], adjusted annually in accordance with federal guidelines. [~~If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.~~] The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents. [~~If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds one hundred percent of the federal poverty level but is at or below two hundred percent of the federal poverty level to the priority four category.~~]

D. Priority two: Families transitioning off TANF. Clients must have received TANF for at least one month in the past 12 months in order to qualify for priority two. Only clients whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

E. Priority three: [RESERVED]

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time [~~subject to the availability of funds and renewable subject to the availability of funds~~] and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. [~~The department reserves the right to expand the eligibility requirement up to two hundred percent of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list.~~] The department prioritizes child care services within priority four for children with special needs, disabilities, [~~teen parents and homeless families~~] homeless families, and

DRAFT

for teen parents.

G. Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.

H. At-risk child care: In addition to these priorities, the department pays for at-risk protective services child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income requirements and copayments are waived for clients in this priority.

[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/16]

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation:

(1) a completed signed application form;

(2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support;

(3) school schedule or verification of educational activity, if applicable;

(4) verification of birth for all applicant's household children;

(5) proof of unearned income;

(6) proof of New Mexico home address; and

(7) CYFD approved provider.

B. Assistance is provided effective the first day of the month of application if all of the following apply:

(1) the client is utilizing child care services;

(2) the client is employed, attending school or a training program; and

(3) the eligible provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/16]

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

A. Child care staff will initiate communication at the initial eligibility determination of their eligibility period to provide outreach and consumer education with a case management approach and coordination of services to support families.

B. Eligibility period: Based upon the client meeting all eligibility requirements, a 12-month certification period will be granted.

(1) Eligibility may be granted for less than 12 months at the parent or guardian's request.

(2) Eligibility for CPS and at-risk child care may be granted for less than 12 months as determined by the department.

(3) The client will remain eligible if a temporary change of activity occurs.

(4) If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

C. Income eligibility determination:

(1) The household: The household includes biological parents, stepparents, and legal guardians living in the household, thereby constituting an economic unit, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and are applying for child care benefits on behalf of the children.

(2) Allowed exclusions from the household for co-payment calculation only: Excluded from the household for co-payment calculation purposes only are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or

DRAFT

children. Grandparents or legal guardians in this situation are required to qualify for child care assistance as per Paragraph (4) below and, upon qualification, have the required co-payment waived.

(3) Adult dependent children: 18 year old dependent children must be attending school to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.

(4) Household income: Income eligibility for benefits is determined by the number of members in the household and the total countable gross earned and unearned income. Eligibility determinations will take into account irregular fluctuations of earnings to income based on the client's individual circumstances.

(5) Family assets: A family's assets may not exceed one million dollars.

(6) Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; child support payments; alimony payments; veterans administration (VA) payments except VA payments for educational purposes and disability; union payments; unemployment or workman's compensation; railroad retirement benefits; pensions; TANF benefits, including diversion payments; royalties; income from rental property; social security benefits; work study income; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

(7) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of a dependent child who is under 18 and in school; SNAP; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001"; third party payments; energy assistance benefits; foster care payments; adoption subsidies; VA payments for educational purposes and disability; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or Americorp; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts.

(8) Verification of income: Clients applying for child care assistance benefits are required to verify income by providing current proof of income for all members of the household who receive income. Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined. A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be discontinued.

D. Residency requirement: An applicant of child care assistance and a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

E. Citizenship: Any child receiving child care assistance must be a citizen of the United States; or a qualified alien as determined by applicable federal laws. If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship or alien status of the child's parent or parents.

F. Age requirement: Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for CPS or at-risk child care.

G. Failure to use authorized child care: If authorized child care has not been used for five consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, payment may discontinue to the provider and the client will remain eligible for the remainder of their eligibility period. The provider or the client shall notify the department within three business days after the fifth day of non-attendance. Upon receiving notice from the provider or the client within the prescribed timeframe, the department shall issue a notice to the client stating when the client's placement will be closed and shall simultaneously issue a notice to the provider stating when the last date of payment will be made. Providers shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed above. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.

H. Change in Provider: If the parent or guardian changes providers, the provider shall be paid

DRAFT

through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.

I. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses. Child care benefits for clients who are preparing for the acquisition of a GED shall be limited to one year.

J. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, or military service.

K. Special supervision: Child care benefits may be provided to children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.

L. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/16]

8.15.2.12 RECERTIFICATION: Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/16]

8.15.2.13 CLIENT RESPONSIBILITIES: Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. [~~Co-payments are based upon the size and income of the household.~~] Co-payments are determined by income and household size. The co-payment schedule is published yearly at https://cyfd.org/child-care-services.

B. [~~Co-payments for each additional child are determined at one half of the co-payment for the previous child.~~] Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for calculating the co-payment for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the copayment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. [~~Co-payments for children in part-time care are determined based upon the block of time that the child is in care.~~] Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

(1) full time care will be based on one hundred percent of the base co-payment;

DRAFT

(2) part time 1 care will be based on seventy-five percent of the base co-payment;
(3) part time 2 care will be based on fifty percent of the base co-payment; and
(4) part time 3 care will be based on twenty-five percent of the base co-payment.

D. Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

F. In-home providers: Parents who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent.

G. Notification of changes: Clients must notify the department of changes that affect the need for care, which include but are not limited to any non-temporary change in activity, or household members moving in or out, within five business days of the change. Clients who do not comply with this requirement may be sanctioned.

H. Required application with New Mexico human services department's child support enforcement division (CSED):

(1) When one or both of the child's parents are absent from the home, the client shall apply for child support though CSED within 12 months of initial application with the child care assistance program.

(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at-risk child care; a parent is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists.

(3) Good cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:

(a) there is possible physical or emotional harm to the child, parent or guardian;
(b) the child was conceived as a result of incest or rape;
(c) legal proceedings for adoption of the child are pending before a court; or
(d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(4) The applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

(5) If the client is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/16]

8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended by the client if child care benefits are not being utilized for a period not to exceed three months with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

B. If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, the client will be granted a three-month grace period in which the client will remain eligible. This three-month grace period is for the purpose of giving the client an opportunity to secure new employment or another approved activity. The three-month grace period will start on the date of required notification for the non-temporary change of activity pursuant to section 8.15.2.13 G NMAC.

C. A case will be closed if the following conditions apply:

(1) any non-temporary change in activity and failure to obtain an activity after the three-month grace period;

DRAFT

(2) income in excess of two hundred percent federal poverty level or eighty-five percent state median income, whichever is greater;
(3) moving out of state;
(4) failing to recertify at the end of approved eligibility period;
(5) at the option of the client;
(6) being disqualified from participation in the program; or
(7) failure to use authorized child care.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/16]

8.15.2.15 PROVIDER REQUIREMENTS: Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care agreement, are paid for by the client.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

B. Child care providers collect required co-payments from clients and provide child care according to the terms outlined in the child care agreement.

C. Child care providers must notify the department within three business days after the fifth day of non-attendance if the child is disenrolled or is absent for five consecutive scheduled days. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided by Subsection G of 8.15.2.11 NMAC.

D. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the placement agreement. Failure to comply with this requirement may result in sanctions or suspension of the child care assistance agreement.

(1) ~~[In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.]~~ Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.

(2) ~~[Providers may charge a registration/educational fee to a child care assistance family comparable to but not to exceed that charged to private pay families. The registration/educational fee shall be charged no more than once every six months and shall be limited to materials and supplies. If the department determines that the provider is charging fees that are unreasonable and pose an undue burden to child care assistance families, the department may suspend the child care assistance contract.]~~ In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

E. Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assists clients with choosing another CYFD approved provider.

F. Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program.

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/16]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

A. The department will initiate mid-certification communication with the client to provide outreach

DRAFT

and consumer education with a case management approach and coordination of services to support families.

B. The department pays child care providers who provide child care services to department clients in a timely manner.

C. Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

D. Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required documentation from the client.

E. Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

F. Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department.

G. Child care assistance workers must inform parents of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

H. The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents and providers.

I. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/16]

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. Upon a change of provider the client and former provider have three days after the fifth day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.

C. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.

[~~C.~~]**D.** The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

[~~D.~~]**E.** The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases	Part time 3

DRAFT

		where a child may have two providers)	
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of [~~6~~]8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

[~~E.~~]**F.** Hours of care shall be rounded to the nearest whole number.

[~~F.~~]**G.** Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
$720.64	$589.55	$490.61	$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
$586.07	$487.11	$427.13	$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
$566.98	$463.50	$411.62	$406.83
Registered homes and in-home child care			
Infant	Toddler	Pre-school	School-age
$289.89	$274.56	$251.68	$251.68

[~~G.~~]**H.** The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable.

[~~H.~~]**I.** Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I. below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional $150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

DRAFT

[~~I.~~]J. The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
$88.00	$88.00	$88.00	$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
$100.00	$100.00	$100.00	$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
$180.00	$180.00	$180.00	$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
$250.00	$250.00	$250.00	$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
$280.00	$280.00	$250.00	$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
$550.00	$550.00	$350.00	$250.00

[~~J.~~]K. In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

[~~K.~~]L. Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at $88.00 per month per child for full time care above the base reimbursement rate; 4-Star at $122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at $150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

[~~L.~~]M. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

[~~M.~~]N. If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

DRAFT

[~~N.~~]O. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

[~~O.~~]P. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/16]

8.15.2.18 UNDER PAYMENTS: If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the department's knowledge or receipt of notification. Notification of the department by the client or provider must occur within 90 calendar days of the occurrence of alleged underpayment.

[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 10/1/16]

8.15.2.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/16]

8.15.2.20 FRAUD: The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility is fraud and appropriate sanctions, including recoupment, termination of benefits, and referral to law enforcement, are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined.

[8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 10/1/16]

8.15.2.21 SANCTIONS: If a client or provider fails to meet programmatic requirements that affect benefits and result in an overpayment, sanctions may be imposed according to the severity of the infraction as determined by the department and detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency

B. Providers who fail to report in a timely manner that a child is not in attendance for five consecutive, scheduled days will have the payment recoupment process initiated.

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

D. Clients who fail to notify the department of any non-temporary change of activity may be placed on conditional eligibility status up to one year on the following eligibility period. Any further violations within the conditional eligibility period may result in termination.

E. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current. The department assists the provider in collecting the co-payment only if the co-payment has been in arrears 30 calendar days or less.

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/016]

8.15.2.22 FAIR HEARINGS: Clients who have been denied benefits, whose benefits have been reduced, terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment

DRAFT

recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

A. The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone is permitted. The claimant may request a change of date, provided that the 60 calendar day time limit is not exceeded.

B. The department appoints a hearing officer. The department is not responsible or liable for a claimant's travel costs, legal costs, or any other costs associated with the claimant's request for a fair hearing.

C. The hearing officer reviews all of the relevant information and makes a final decision within 30 calendar days of the hearing. The final decision is binding upon the department and claimant and implemented within 14 calendar days of the hearing decision. The claimant is notified in writing of the hearing officer's decision within 14 calendar days of the hearing decision.

D. At the claimant's option the case may remain open at the same benefit level until disposition. If the decision is in favor of the department, the claimant is responsible for repayment of all monies received to which the claimant was not entitled, unless the hearing decision provides otherwise or the early childhood services director authorizes otherwise in exceptional circumstances. The fair hearing process is not intended as a means to extend the time for receipt of child care assistance payments to which the recipient is not otherwise entitled, and therefore exceptional circumstances must be explicitly stated.

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department. If TANF benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp, 8.15.2.22 NMAC, 10/1/16]

8.15.2.23 COMPLAINTS: Clients or providers who are dissatisfied with the services provided by the department may express their complaints orally or in writing to the local field office, the central office, the director's office or the office of the department secretary. The department's toll free number is posted in each office and made available to clients and providers upon request. The local supervisor, bureau chief, director or secretary responds to complaints by clients or providers orally or in writing as is deemed appropriate in each case.

[8.15.2.23 NMAC - Rp, 8.15.2.23 NMAC, 10/1/16]

8.15.2.24 CO-PAYMENT SCHEDULE: The department will develop and publish an annual co-payment schedule based on the federal poverty guidelines.

[8.15.2.24 NMAC - Rp, 8.15.2.24 NMAC, 10/1/16]

8.15.2.25 CONFIDENTIALITY: Client files are established and maintained solely for use in the administration of the child care assistance program. Information contained in the records is confidential and is released only in the following limited circumstances:

A. to the client upon request;

B. to an individual who has written authorization from the client;

C. to department employees and agents who need it in connection with program administration, including program auditors; or

D. to other agencies or individuals including law enforcement officers who satisfy the following conditions:

(1) agency or individual is involved in the administration of a federal or a federally-assisted program, which provides assistance in cash, in kind or in services directly to individuals on the basis of need;

(2) information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;

(3) agency or individual is subject to standards of confidentiality comparable to those contained herein; and

(4) agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if the client has made application to the inquiring agency for a benefit of service;

E. as requested in a subpoena or subpoena duces tecum.

DRAFT

[8.15.2.25 NMAC - Rp, 8.15.2.25 NMAC, 10/1/16]

HISTORY OF 8.15.2 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records B State Records Center and Archives:
ISD CCAP 200, Child Care Assistance Programs, 11/4/91.
ISD CCAP 300, Hours Of Child Care, 11/4/91.
ISD CCAP 700, Working Family Child Care Assistance Eligibility, 11/4/91.
ISD CCAP 800, Income Eligible Child Care Assistance, 2/10/92.

History of Repealed Material:
8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/99.
8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/00.
8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/01.
8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 11/01/02.
8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 2/14/05.
8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 10/1/2016.

DRAFT