

Title 8

Chapter 17

Part 2

Public Notices

[Home](#) » [Here](#)

Child Care Services

The Child Care Services Bureau (CCSB) administers the Child Care Assistance, Child Care Licensing and Registered Child Care Home programs. In collaboration with CYFD's Office of Child Development and Family Nutrition Bureau, the Child Care Services Bureau plans and coordinates quality child care services (including training, technical assistance, health and safety and monitoring) and works to build child care capacity statewide. More information on these programs can be found at www.NewMexicoKids.org.

- For more information on [Child Care Assistance](#), contact your [regional Child Care Assistance office](#), or call Early Childhood Services at (505) 827-7499 or 1-800-832-1321 or by email at cyfd-ecs-customerservice@state.nm.us.
- For information on [Child Care Licensing](#), contact your [regional Child Care Licensing office](#), or call Early Childhood Services at (505) 827-7499 or 1-800-832-1321 or by email at cyfd-ecs-customerservice@state.nm.us.

Children, Youth and Families Department (CYFD) will hold two formal public hearings to propose regulation changes.

The [first public hearing](#) will be held on **Thursday, August 29, 2019, at 10:00 am**. CYFD is proposing changes to the following regulations:

- 8.8.3 NMAC – Social Services - Children, Youth and Families General Provisions, Governing Background Checks and Employment History Verification
- 8.16.2 NMAC – Child Care Licensing, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs
- 8.17.2 NMAC – Social Services – Non-Licensed Child Care, Requirements Governing Registration of Non-Licensed Family Child Care Homes

The [second public hearing](#) will be held on **Friday, August 30, 2019, at 10:00 am**. CYFD is proposing changes to the following regulations:

- Amended - 8.15.2 NMAC - Requirements for Child Care Assistance Programs for Clients and Child Care Providers

Click [here](#) to view the proposed regulation changes, Notice of Rulemaking and Public Rule Hearing and any written comments received by Children, Youth and Families Department.

- To review Child Care Licensed and Registered Provider Surveys, [click here](#).

• [Child Care Assistance](#)

• [Child Care Licensing and Registered Homes](#)

Child Care Links

- [Child Care Assistance Application \(PDF\)](#)
- [Solicitud de Asistencia de Cuidado Infantil \(PDF\)](#)
- [Parents' Guide to Selecting Quality Child Care \(PDF\)](#)
- [Child Care Assistance Applicant Checklist](#)
- [Child Care Assistance Field Offices \(PDF\)](#)
- [Regional Child Care Licensing Offices \(PDF\)](#)
- [Review Child Care Licensed Provider Surveys](#)
- [Income Guidelines \(PDF\)](#)
- [Copayment Chart \(PDF\)](#)
- [NM Child Care Emergency Preparedness Plan 2017-18 \(PDF\)](#)
- [NM Child Care and Development Fund \(CCDF\) Plan \(PDF\)](#)
- [NewMexicoKids.org](#)
- [Healthy Child Care America](#)
- [Zero to Three: National Center for Infants, Toddlers and Families](#)
- [Childhood Immunization Info](#)
- [RFP](#)

Early Childhood Services

- › [Child Development](#)
- › [Home Visiting](#)
- › [Child Care Services](#)
- › [PreK](#)
- › [Family Nutrition](#)

Protective Services

- › [PS Overview](#)
- › [Adoptions](#)
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Juvenile Justice Services

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- › [Reintegration Centers](#)
- › [Transition Services](#)
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- › [Volunteer Services](#)

Behavioral Health Services

- › [BHS Overview](#)
- › [Domestic Violence](#)

- › [Infant & Early Childhood Mental Health](#)
- › [Licensing & Certification](#)

Additional Services

- › [RFP](#)

ANNOUNCEMENTS - (View All)

**PROPOSED REGULATION
CHANGES TO 8.17.2 NMAC -
NON-LICENSED CHILD CARE,
REQUIREMENTS GOVERNING
REGISTRATION OF NON-
LICENSED FAMILY CHILD CARE
HOMES AND NOTICE OF
RULEMAKING AND PUBLIC RULE
HEARING**

Click on the links below to view or
download the following documents:
Proposed regulation changes to
8.17.2 NMAC - Non-Licensed Child
Care, ...

[See More](#)

**PROPOSED REGULATION
CHANGES TO 8.16.2 NMAC -
CHILD CARE LICENSING, CHILD
CARE CENTERS, OUT OF
SCHOOL TIME PROGRAMS,
FAMILY CHILD CARE HOMES,
AND OTHER EARLY CARE AND
EDUCATION PROGRAMS AND
NOTICE OF RULEMAKING AND
PUBLIC RULE HEARING**

Click on the links below to view or
download the following documents:
Proposed regulation changes to
8.16.2 NMAC - Child Care
Licensing, Child ...

[See More](#)

**PROPOSED REGULATION
CHANGES TO 8.8.3 NMAC -
SOCIAL SERVICES - CHILDREN,
YOUTH AND FAMILIES GENERAL
PROVISIONS, GOVERNING
BACKGROUND CHECKS AND
EMPLOYMENT HISTORY
VERIFICATION AND NOTICE OF
RULEMAKING AND PUBLIC RULE
HEARING**

Click on the links below to view or
download the following documents:
Proposed regulation changes to
8.8.3 NMAC - Social Services -
Children, ...

[See More](#)

**PROPOSED REGULATION
CHANGES TO 8.15.2 NMAC -
REQUIREMENTS FOR CHILD
CARE ASSISTANCE PROGRAMS
FOR CLIENTS AND CHILD CARE
PROVIDERS AND NOTICE OF
RULEMAKING AND PUBLIC RULE
HEARING**

Click on the links below to view or
download the following documents:
Amended Proposed regulation
changes to 8.15.2 NMAC -
Requirements for Child . .

[See More](#)

Rule Hearing Search

Hearing Date: All
Deadline Date: All

Agency: Children Youth & Families Department

[Search](#)

Total Results: 5 - Page #1

| View | | Agency | Public Hearing | Purpose | Hearing Date | Comments Due Date |
|------------------------------|--|--------------------------------------|---|--|--------------|--------------------|
| View Details | | Children Youth & Families Department | PUBLIC RULE HEARING 8.15.2 NMAC-Child Care Assistance Programs - Continuing | Proposing regulation changes to 8.15.2 NMAC - Requirements for Child Care Assistance Programs for Clients and Child Care Providers | 8/30/2019 | 8/30/2019 2:00 PM |
| View Details | | Children Youth & Families Department | 8.8.3 NMAC, BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION | Proposing regulation changes to 8.8.3 NMAC - CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION | 8/29/2019 | 8/29/2019 2:00 PM |
| View Details | | Children Youth & Families Department | 8.17.2 NMAC, NON-LICENSED CHILD CARE | Proposing regulation changes to 8.17.2 NMAC - NON-LICENSED CHILD CARE - REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES | 8/29/2019 | 8/29/2019 2:00 PM |
| View Details | | Children Youth & Families Department | 8.16.2 NMAC, CHILD CARE LICENSING | Proposing regulation changes to 8.16.2 NMAC - CHILD CARE LICENSING - CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS | 8/29/2019 | 8/29/2019 2:00 PM |
| View Details | | Children Youth & Families Department | 8.14.14 NMAC, New Mexico Juvenile Detention Standards | update Detention Standards | 12/12/2018 | 12/12/2018 5:00 PM |

[First](#) [Last](#)

Gonzales, Debra A., CYFD

From: Gonzales, Debra A., CYFD
Sent: Friday, July 26, 2019 2:01 PM
To: Brown, Kimberly, CYFD; Steward, Patricia A., CYFD
Cc: RebolledoRea, Alejandra, CYFD; Raymond Vigil (raymond.vigil@state.nm.us)
Subject: Please post in all of ECS offices
Attachments: CYFDearly_Notice_Amend_Final.docx; CYFD_8 8 3NMACNotice_Rev7_18_2019np.docx; CYFD_8 16 2NMACNoticeRev7_18_2019np.docx; CYFD_8 17 2NMACNoticeRev7_18_2019np.docx

| Tracking: | Recipient | Read |
|-----------|---|--------------------------|
| | Brown, Kimberly, CYFD | Read: 07/26/2019 3:05 PM |
| | Steward, Patricia A., CYFD | Read: 07/26/2019 2:28 PM |
| | RebolledoRea, Alejandra, CYFD | Read: 07/26/2019 2:46 PM |
| | Raymond Vigil (raymond.vigil@state.nm.us) | |

Hello,

We need to make that attached notices available in all field and regional child care offices.

Thank you😊

Debra

Debra A. Gonzales, Policy Compliance and Quality Assurance Manager

Office: 505.231-5820

Mobile: 505.231.5820

Fax: 505.476.0143

Email: Debra.Gonzales@state.nm.us

Web: www.cyfd.org



New Mexico Children,
Youth & Families Department

Early Childhood Services
Information Governance
Program, Policy, Audit and Reports

...providing essential data services for New Mexico children

PULLTOGETHER.ORG

We are improving the quality of life for our children.

Report suspected child abuse or neglect by calling #SAFE (#7233) from a cell phone or 1-855-333-SAFE.

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



BRIAN BLALOCK
CABINET SECRETARY

TERRY L. LOCKE
DEPUTY CABINET SECRETARY

Estimado proveedor de cuidado infantil:

29 de julio de 2019

Esta carta sirve como aviso de que el Departamento de Niños, Jóvenes y Familias (CYFD) llevará a cabo dos audiencias públicas formales para proponer cambios en la regulación.

La primera audiencia pública se llevará a cabo el **jueves 29 de agosto de 2019** a las 10:00 a.m. CYFD propone cambios a las siguientes regulaciones:

- 8.8.3 NMAC - Servicios sociales - Disposiciones generales para niños, jóvenes y familias, verificación de antecedentes penales y verificación del historial de empleo
- 8.16.2 NMAC - Licencias de cuidado infantil, centros de cuidado infantil, programas de tiempo fuera de la escuela, hogares de cuidado infantil familiar y otros programas de educación y cuidado temprano
- 8.17.2 NMAC - Servicios sociales - Cuidado infantil sin licencia, requisitos que rigen el registro de hogares de cuidado infantil familiar sin licencia

Los cambios significativos propuestos a las reglas son para enmendar los requisitos de verificación de antecedentes penales y agregar lenguaje incorporando un proceso de autorización de dos pasos para los miembros del personal. Se requerirá obtener un aviso de empleo provisional o elegibilidad de verificación de no-antecedentes antes de comenzar el empleo e incluirá un cronograma para la emisión del aviso. Estas enmiendas son necesarias para que CYFD cumpla con los requisitos federales. Además, el lenguaje se incluirá en 8.16.2 NMAC y 8.17.2 NMAC, lo que requiere políticas y procedimientos que garanticen que ningún delincuente sexual registrado tenga acceso a la instalación donde los niños están presentes y que los miembros del hogar que cumplen 18 años presenten su verificación de antecedentes dentro de los 30 días posteriores a su decimoctavo cumpleaños.

La segunda audiencia pública se llevará a cabo el **viernes 30 de agosto de 2019** a las 10:00 a.m. CYFD propone cambios a las siguientes regulaciones:

- 8.15.2 NMAC: requisitos para los programas de asistencia de cuidado infantil para clientes y proveedores de cuidado infantil

Los cambios significativos propuestos a la regla son enmendar los niveles de elegibilidad para asistencia de cuidado infantil, eliminar la lista de espera para asistencia de cuidado infantil, proporcionar una explicación del cálculo del copago y dónde encontrar el cronograma de copago, para cumplir con la regulación federal y pagar los cargos de inscripción / educacionales para los niños que reciben beneficios de asistencia de cuidado infantil en nombre del cliente, y por último para corregir la superposición de los horarios de cuidado bajo el pago de los servicios. En virtud con la continuación de este cambio de regla, se hicieron enmiendas a las siguientes secciones: 8.15.2.9 NMAC; 8.15.2.12 NMAC; y 8.15.2.13 NMAC.

Las audiencias públicas se llevarán a cabo en el Salón Apodaca del Edificio PERA ubicado en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502. El propósito de estas audiencias públicas es para recibir comentarios públicos sobre los cambios propuestos a las regulaciones mencionadas anteriormente. Cualquier miembro del público interesado puede asistir a las audiencias donde se brindará una oportunidad razonable para ofrecer comentarios públicos, ya sea oralmente o por escrito, incluida la presentación de datos, puntos de vista o argumentos sobre las reglas propuestas durante la audiencia. Las copias de las reglas propuestas se pueden encontrar en el sitio web de CYFD en <https://www.newmexicokids.org/> o se pueden obtener en 1120 Paseo de Peralta, Santa Fe, Nuevo México, 30 días antes de la Audiencia Pública.

Los comentarios públicos escritos, incluyendo la presentación de datos, puntos de vista o argumentos sobre las reglas propuestas, de cualquier miembro interesado del público, también se pueden enviar por correo electrónico a CYFD-ECS-PublicComment@state.nm.us con la línea de asunto "Comentario público", O por correo de primera clase, o entregado en persona a Kimberly Brown, Oficina de Servicios de Cuidado Infantil, Departamento de Niños, Jóvenes y Familias, PO Drawer 5160, Santa Fe, Nuevo México 87502-5160. El período de comentarios finaliza a la conclusión de la audiencia pública.

TENGA EN CUENTA QUE ESTOS CAMBIOS DE REGULACIÓN PROPUESTOS NO AFECTAN LA ELEGIBILIDAD ACTUAL A LAS FAMILIAS. Si tiene alguna pregunta, llame a Kimberly Brown al 505-841-4821 o al 1-800-832-1321.

Sinceramente,

Alejandra Rebolledo Rea, Acting Division Director
Early Childhood Services
Children, Youth and Families Department

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



BRIAN BLALOCK
CABINET SECRETARY

TERRY L. LOCKE
DEPUTY CABINET SECRETARY

Estimado familias:

29 de julio de 2019

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TENGA EN CUENTA QUE ESTOS CAMBIOS DE REGULACIÓN PROPUESTOS NO AFECTAN LA ELEGIBILIDAD ACTUAL A LAS FAMILIAS. Si tiene alguna pregunta, llame a Kimberly Brown al 505-841-4821 o al 1-800-832-1321.

Sinceramente,

Alejandra Rebolledo Rea, Acting Division Director
Early Childhood Services
Children, Youth and Families Department

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



July 27, 2019

BRIAN BLALOCK
CABINET SECRETARY

TERRY L. LOCKE
DEPUTY CABINET SECRETARY

Provider Name
Address
City, State and Zip

Dear Child Care Provider:

This letter serves as notice that Children, Youth and Families Department (CYFD) will hold two formal public hearings to propose regulation changes.

The first public hearing will be held on Thursday, August 29, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.8.3 NMAC – Social Services - Children, Youth and Families General Provisions, Governing Background Checks and Employment History Verification
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- 8.17.2 NMAC – Social Services – Non-Licensed Child Care, Requirements Governing Registration of Non-Licensed Family Child Care Homes

The significant proposed changes to the rules are to amend the background check requirements to add language to incorporate a two-step clearance process for staff members. 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 required for CYFD to comply with federal requirements. In addition, language will be included in 8.16.2 NMAC and 8.17.2 NMAC, requiring policies and procedures ensuring that a registered sex offender does not have access to the facility 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.

The second public hearing will be held on Friday, August 30, 2019, at 10:00 am. CYFD is proposing changes to the following regulation:

- 8.15.2 NMAC - Requirements for Child Care Assistance Programs for Clients and Child Care Providers

The significant proposed changes to the rule are to amend the eligibility levels for child care assistance, to eliminate the waiting list for child care assistance, to provide an explanation of the co-payment calculation and where to find the co-payment schedule, to comply with federal regulation to pay for registration/educational fees for children receiving child care assistance benefits on behalf of client, and to address the overlap of care hours under payment for services. Pursuant to the continuation of this rule change, amendments were made to the following sections: 8.15.2.9 NMAC; 8.15.2.12 NMAC; and 8.15.2.13 NMAC.

The public hearings will be held in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The purpose of these public hearings is to receive public comment regarding proposed changes to the above regulations. Any interested member of the public may attend the hearings 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. 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.

Written public comment, including presentation of data, views or arguments on 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 "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.

PLEASE BE ADVISED THAT THESE PROPOSED REGULATION CHANGES DO NOT AFFECT CURRENT ELIGIBILITY TO FAMILIES. If you have any questions, please call Kimberly Brown at 505-841-4821 or 1-800-832-1321.

Sincerely,

Alejandra Rebolledo Rea, Acting Division Director
Early Childhood Services, Children, Youth and Families Department

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



BRIAN BLALOCK
CABINET SECRETARY

TERRY L. LOCKE
DEPUTY CABINET SECRETARY

«Full_Name»
«Address_1» «Address_2» «Address_3»
«City», «State» «Zip_Code»

Dear Family:

July 29, 2019

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PLEASE BE ADVISED THAT THESE PROPOSED REGULATION CHANGES DO NOT AFFECT CURRENT ELIGIBILITY TO FAMILIES. If you have any questions, please call Kimberly Brown at 505-841-4821 or 1-800-832-1321.

Sincerely,

Alejandra Rebolledo Rea, Acting Division Director
Early Childhood Services, Children, Youth and Families Department

Gonzales, Debra A., CYFD

From: Gonzales, Debra A., CYFD
Sent: Monday, July 29, 2019 4:40 PM
To: 'lcs@nmlegis.gov'
Cc: RebolledoRea, Alejandra, CYFD; Montoya, Thomas, CYFD; Brown, Kimberly, CYFD; Jim Cowan (James.Cowan@state.nm.us); Raymond Vigil (raymond.vigil@state.nm.us)
Subject: Children, Youth and Families Department - Notice of Rulemaking and Public Rule Hearings
Attachments: 08.008.003_NMAC_Notice.pdf; 08.0016.0002_NMAC_Notice.pdf; 08.017.0002_NMAC_Notice.pdf; CYFDearly_Notice_Amend_Final.pdf

| Tracking: | Recipient | Read |
|------------------|---|--------------------------|
| | 'lcs@nmlegis.gov' | |
| | RebolledoRea, Alejandra, CYFD | Read: 07/29/2019 5:00 PM |
| | Montoya, Thomas, CYFD | Read: 07/29/2019 4:49 PM |
| | Brown, Kimberly, CYFD | |
| | Jim Cowan (James.Cowan@state.nm.us) | Read: 07/29/2019 4:45 PM |
| | Raymond Vigil (raymond.vigil@state.nm.us) | Read: 07/29/2019 4:41 PM |

As part of the New Mexico State Rules Act requirement of providing notice to the New Mexico Legislative Council for distribution to appropriate interim and standing legislative committees, attached are four (4) Notice of Rulemaking and Public Rule Hearings for the following proposed changes:

- 8.8.3 NMAC – Social Services - Children, Youth and Families General Provisions, Governing Background Checks and Employment History Verification
- 8.16.2 NMAC – Child Care Licensing, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs
- 8.17.2 NMAC – Social Services – Non-Licensed Child Care, Requirements Governing Registration of Non-Licensed Family Child Care Homes
- 8.15.2 NMAC - Requirements for Child Care Assistance Programs for Clients and Child Care Providers

Please let us know if you have any questions or comments.

Thank you!

Debra

Debra A. Gonzales, Policy Compliance and Quality Assurance Manager

Office: 505.231-5820
Mobile: 505.231.5820
Fax: 505.476.0143
Email: Debra.Gonzales@state.nm.us
Web: www.cyfd.org



New Mexico Children,
Youth & Families Department

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LAS CRUCES SUN-NEWS

AFFIDAVIT OF PUBLICATION

Ad No.
0001292134

IMAGE
ATTACHED

CINDY RITCH
CHILDREN YOUTH & FAMILIES
PO DRAWER 5160

SANTA FE NM 875025160

I, a legal clerk of the **Las Cruces Sun-News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof on the date as follows, to wit:

07/30/19

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.



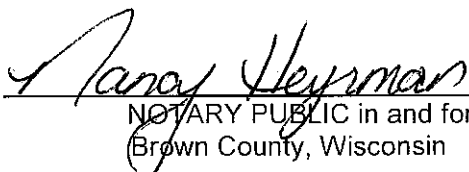
Legal Clerk

STATE OF WISCONSIN

County of Brown

ss.

Subscribed and sworn before me this
30th of July 2019.


NOTARY PUBLIC in and for
Brown County, Wisconsin

5.15.23

My Commission Expires

Ad#:0001292134
P O : 0000065935
of Affidavits :0.00

NANCY HEYRMAN
Notary Public
State of Wisconsin

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 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 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 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.



PUBLICATION

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-52 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.

and, on oath states that she is an authorized Representative of newspaper is duly qualified to publish legal notices of Section 3, Chapter 167, Session Laws of 1937, and that assessed as court cost; that the notice, copy of which hereto in the regular daily edition, for 1 time(s) on the following



a Notary Public, in and of New Mexico this of 2019

Se requiere a las siguientes reglas no se requiere de licencia para el personal que trabaja en las casas familiares sin licencia según autorizado por la Ley 1978:

- 8.17.2.7 NMAC - DEFINICIONES
- 8.17.2.10 NMAC - REQUISITOS PARA PROVEEDORES
- 8.17.2.11 NMAC - COMPROBACION 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. Es importante:

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 Mexico, 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 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 recibidas 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 en la audiencia pública del 29 de Agosto de 2019.

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LEGAL NO 86062 P.O. #: 0000065936
1 TIME(S) 360.44
AFFIDAVIT 20.00
TAX 31.26
TOTAL 401.70

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
COUNTY OF SANTA FE

I, C. Valdez, being first duly sworn declare and say that I am Legal Advertising Representative of THE SANTA FE NEW MEXICAN, a daily newspaper published in the English language, and having a general circulation in the Counties of Santa Fe, Rio Arriba, San Miguel, and Los Alamos, State of New Mexico and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 on Session Laws of 1937; that the Legal No 86062 a copy of which is hereto attached was published in said newspaper 1 day(s) between 07/30/2019 and 07/30/2019 and that the notice was published in the newspaper proper and not in any supplement; the first date of publication being on the 30th day of July, 2019 and that the undersigned has personal knowledge of the matter and things set forth in this affidavit.

ISI

C. Valdez
LEGAL ADVERTISEMENT REPRESENTATIVE

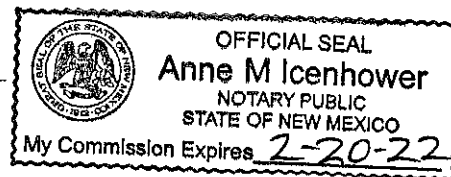
Subscribed and sworn to before me on this 30th day of July, 2019

Notary

Anne M Icenhower

Commission Expires:

2-20-22



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
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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 Paralta,

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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 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.

[R.] 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 age 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.

Gonzales, Debra A., CYFD

From: Gonzales, Debra A., CYFD
Sent: Tuesday, July 30, 2019 7:55 AM
To: Gonzales, Debra A., CYFD
Subject: Notice of Rulemaking and Public Rule Hearings
Attachments: 08.008.003_NMAC_Notice.pdf; 08.0016.0002_NMAC_Notice.pdf; 08.017.0002_NMAC_Notice.pdf; 08.0015.0002_NMAC_Notice.pdf

Children, Youth and Families Department (CYFD) will hold two formal public hearings to propose regulation changes.

The first public hearing will be held on Thursday, August 29, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.8.3 NMAC – Social Services - Children, Youth and Families General Provisions, Governing Background Checks and Employment History Verification
- 8.16.2 NMAC – Child Care Licensing, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs
- 8.17.2 NMAC – Social Services – Non-Licensed Child Care, Requirements Governing Registration of Non-Licensed Family Child Care Homes

The second public hearing will be held on Friday, August 30, 2019, at 10:00 am. CYFD is proposing changes to the following regulation:

- Amended - 8.15.2 NMAC - Requirements for Child Care Assistance Programs for Clients and Child Care Providers

Attached are the four (4) Notice of Rulemaking and Public Rule Hearings.

They can also be found on the NM Kids website at www.newmexicokids.org

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New Mexico Children,
Youth & Families Department

Early Childhood Services
Information Governance
Program, Policy, Audit and Reports

...providing essential data services for New Mexico children

PULLTOGETHER.ORG

We are improving the quality of life for our children.

Report suspected child abuse or neglect by calling #SAFE (#7233) from a cell phone or 1-855-333-SAFE.

**List of individuals to whom notice was mailed
or sent electronically as required by
1.24.25.14.A**

- **Names of child care assistance recipients who were notified may be requested through an IPRA.**
- **Names of child care providers who were notified may be requested through an IPRA.**

**PROPOSED RULE in
underline and
strikethrough format**

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, 10/1/16]

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 services programs.
[8.17.2.2 NMAC - Rp, 8.17.2.2 NMAC, 10/1/16]

8.17.2.3 STATUTORY AUTHORITY: The requirements (regulations) set forth herein, are established pursuant to the federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, the New Mexico Public Health Act, Sections 24-1-2 and 24-1-5 NMSA 1978, and the New Mexico Children's Codes, Section 32A-15-2-3 NMSA 1978. These regulations are promulgated by authority 9-2A-7 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) with children, youth and families department (CYFD), are 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, 10/1/16]

8.17.2.4 DURATION: Permanent.
[8.17.2.4 NMAC - Rp, 8.17.2.4 NMAC, 10/1/16]

8.17.2.5 EFFECTIVE DATE: October 1, 2016, unless a later date is cited at the end of a section.
[8.17.2.5 NMAC - Rp, 8.17.2.5 NMAC, 10/1/16]

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 regulation 8.16.2 NMAC to participate in the federal child and adult care food program and the state and federal child care assistance programs through the registration process.
[8.17.2.6 NMAC - Rp, 8.17.2.6 NMAC, 10/1/16]

8.17.2.7 DEFINITIONS:

A. "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

- (1) physical contact that harms or is likely to harm a child;
- (2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;
- (3) punishment that is hazardous to the physical, emotional or mental state of the child; and
- (4) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

B. "Adult" means a person who has a chronological age of 18 years or older.

C. "Child" means any person who is under the chronological age of 18 years.

D. "Child care assistance program (CCAP)" means the state of New Mexico's child care services bureau (CCSB) which administers the federal child care and development fund (CCDF).

E. "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.

F. "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 support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

G. "Drop-in" means a child who attends a child care home on an occasional or unscheduled basis.

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

I. "Exempt caregiver" means a child care home primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

J. "Expulsion" means the involuntary termination of the enrollment of a child or family.

K. "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

L. "Homeless children and youth" means individuals who lack a fixed, regular, and adequate 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.

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

N. "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

O. "Non-resident child" means any child who does not reside in the primary caregiver's home.

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.

[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 10/1/16]

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 apply as a registered family child care home by submitting an application, receiving an on-site health and safety inspection by CYFD, completing the registration process and paying the processing charge. One primary caregiver per household can be registered or licensed with CCSB. All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are exempt. Primary caregivers must provide proof of their physical address for the home being registered.

[8.17.2.8 NMAC - Rp, 8.17.2.8 NMAC, 10/1/16]

8.17.2.9 REGISTERED AUTHORITY (ADMINISTRATION AND ENFORCEMENT

RESPONSIBILITY): The child care services bureau, registration section, of the early childhood services division of the New Mexico children, youth and families department, hereafter called the registered authority, has been granted the responsibility by CYFD for the administration and enforcement of these regulations pursuant to the Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.

[8.17.2.9 NMAC - Rp, 8.17.2.9 NMAC, 10/1/16]

8.17.2.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers 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. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

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.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

F. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

G. All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their date of initial registration. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

- (1) prevention and control of infectious diseases (including immunization);
- (2) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) administration of medication, consistent with standards for parental consent;
- (4) prevention of and response to emergencies due to food or other allergic reactions;
- (5) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (6) prevention of shaken baby syndrome and abusive head trauma;

- (7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
- (8) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (9) precautions in transporting children (if applicable);
- (10) first aid and cardiopulmonary resuscitation (CPR) certification; and
- (11) recognition and reporting of child abuse and neglect.

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

I. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

J. If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

K. Primary and substitute caregivers are required to maintain current first aid and CPR certification at all times. On-line first aid and CPR classes are not valid. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

L. Training shall be within the seven competency areas. The competency areas are:

- (1) child growth, development and learning;
- (2) health, safety, nutrition and infection control;
- (3) family and community collaboration;
- (4) developmentally appropriate content;
- (5) learning environment and curriculum implementation;
- (6) assessment of children and programs; and
- (7) professionalism.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 10/1/16]

8.17.2.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions as promulgated by the children, youth and families department. All non-licensed child care caregivers must adhere to these provisions to maintain their registration status. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

(1) the staff member was found eligible as a direct provider of care in a child care center, licensed child care home, licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

(2) submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

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 ~~[ever]~~ 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.

C. Any adult who is present in the registered primary caregiver's home for significant periods while children are in care, or who commences being present in the registered primary caregiver's home for significant periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.

F. The primary caregiver 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 month.
[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 10/1/16]

8.17.2.12 ANNUAL REGISTRATION: An annual registration is issued for a one-year period to a child care home that has met all requirements of these regulations.

A. Primary caregivers must renew registration annually, and only after receiving an onsite inspection by CYFD, by submitting a registration application and paying the processing charge with cashier's check or a money order.

B. Primary caregiver's 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.

C. Primary caregivers shall ensure that all adults residing in the home are listed on all documentation required by CYFD and sponsoring agencies.

[8.17.2.12 NMAC - N, 10/1/16]

8.17.2.13 VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY: Caregivers must consent to visits, to include unannounced visits, by the children, youth and families department and the child and adult care food program sponsoring agency when child care children are present and during the caregiver's stated normal hours of operation.

[8.17.2.13 NMAC - Rp, 8.17.2.14 NMAC, 10/1/16]

8.17.2.14 NON-TRANSFERABILITY OF REGISTRATION:

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

B. A registration will expire automatically at midnight of the expiration date unless earlier suspended or revoked, or:

- (1) if the primary caregiver moves; or
- (2) changes their name.

C. If the primary caregiver moves to a new location or has a change of name, the primary caregiver must register again by submitting a new application and pay the processing charge. The caregiver must report a new location or change of name prior to the occurrence and receive a new on-site health and safety inspection by CYFD.

[8.17.2.14 NMAC - Rp, 8.17.2.15 NMAC, 10/1/16]

8.17.2.15 INCIDENT REPORTS: Registered caregiver shall notify the appropriate authorities immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger. After making a report to the appropriate authorities, the caregiver shall notify CYFD of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report shall first be made by telephone and followed with written notification. The caregiver shall report to the appropriate authorities the following incidents, including but not limited to:

A. Any incident that has threatened or could threaten the health and safety of children, including but not limited to:

- (1) a lost or missing child;
- (2) a serious injury;
- (3) the suspected abuse or neglect of a child;
- (4) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
- (5) any of the illnesses on the current list of notifiable diseases and communicable published by the office of epidemiology of the New Mexico department of health;
- (6) any legal action against a caregiver or household member;
- (7) any incident that could affect the background check eligibility of any cleared person related to this registration;
- (8) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or
- (9) any known change in a caregiver's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

B. A home will notify parents or guardians in writing of any incident, including notifiable illnesses that have threatened the health or safety of children in the home. Incidents include, but are not limited to, those listed in Subsection A. of 8.17.2.15 NMAC.

C. Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The registered authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.17.2.15 NMAC - Rp, 8.17.2.16 NMAC, 10/1/16]

8.17.2.16 COMPLIANCE: By completing the CYFD registration process and annual renewals, the primary caregiver is agreeing to comply with these regulations to include the following:

A. The primary caregiver 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.

B. The caregiver must grant the registered authority the right to enter the premises and survey the caregiver's home and the inspection and copying of records. This includes any investigations which are announced or un-announced.

[8.17.2.16 NMAC - Rp, 8.17.2.17 NMAC, 10/1/16]

8.17.2.17 NON-COMPLIANCE:

A. The children, youth and families department may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with these regulations, or is unable to maintain compliance with registration standards.

B. Violation of any provisions of these regulations, especially when the registered authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children may be grounds to suspend, revoke or decline to renew registration include but are not limited to:

- (1) failure to comply with the group composition requirement;
- (2) any health and safety violations which place the children in immediate danger, including

but not limited to:

(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; and

(c) unlocked or unsecured firearms and weapons in the home;

(3) background check denial or suspension;

(4) failure to timely obtain required background checks;

(5) misrepresentation or falsification of any information given to CYFD or CACFP;

(6) failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;

(7) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to allow any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(8) discovery of repeat violations of these regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous certification periods;

(9) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present on the premises at any time, regardless of whether children are present;

(10) substantiated non-compliance with caregiver requirements to care for children in the registered home as defined in these regulations;

(11) substantiated abuse or neglect of children by the caregiver or household member as determined by CYFD or a law enforcement agency;

(12) allowing any person to be active in the child care home who is or would be disqualified as a primary caregiver under the most current version of the background checks and employment history verification provisions pursuant to 8.8.3 NMAC; this will include all adults and teenaged children living in a family child care home operated in a private residence whether or not they are active in the child care operation;

(13) situations where the children in care are placed in unreasonable or unnecessary danger, including but not limited to: evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender maintaining residence in the home, a convicted sex offender in the home when children are present, accusations of sexual child abuse against a caregiver or household member, or pending the outcome of a child protective services referral; and

(14) any serious violation or other circumstance which reasonably leads the department to determine that the caregiver cannot reliably safeguard the health and safety of children.

C. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

D. A suspension, revocation, or conditions of operations imposed pursuant to part A of this section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

E. The children, youth and families department notifies the primary caregiver in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The primary caregiver may obtain an administrative appeal of the department's action.

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

G. Primary caregivers whose registration has previously been suspended or revoked may re-apply for registration through the regular registration process. The child care services bureau may consider the reasons for the previous action, as well as changed and current circumstances, in determining whether to allow the new application. The children, youth and families department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

H. The children, youth and families department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to maintain registered status. Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the primary caregiver's home. Examples:

(1) The department may require caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

(2) The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to health or safety, or otherwise create a risk of harm to children.

I. Caregivers who are required to implement actions or to agree to conditions pursuant to Subsections G or H, are notified in writing, and shall have the opportunity for administrative appeal.
[8.17.2.17 NMAC - Rp, 8.17.2.18 NMAC, 10/1/16]

8.17.2.18 COMPLAINTS:

A. Complaints received by CYFD shall be investigated promptly.

B. An authorized CYFD representative receiving complaints will ask complainants to identify themselves and provide all information necessary to document the complaint.

C. The authorized CYFD representative will investigate any complaint in which the health, safety or welfare of a child could be in danger. The complaint will be reviewed and prioritized immediately according to the nature and severity of the complaint. The registered authority will follow established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows:

(1) Priority 1 complaints: investigation will be initiated within 24 hours.

(2) Priority 2 complaints: investigation will be initiated within three working days.

(3) Priority 3 complaints: investigation will be initiated within five working days.

(4) Initiation timeframes for investigations may be shortened based on the severity and nature of the complaint, but timeframes may not be extended.

D. The caregiver shall cooperate in good faith with any investigation by the authorized CYFD authority. Obstruction of an investigation may subject the primary caregiver to sanctions, up to and including revocation.

E. Action by the authorized CYFD representative:

- (1) The registered authority will provide a written letter on the results of the investigation to the registered home primary caregiver that is the subject of the complaint and the complainant if an action is taken.
 - (2) If the authorized CYFD representative finds the complaint is unsubstantiated, it will be so designated and the authorized CYFD representative will take no further action.
 - (3) If the authorized CYFD representative finds that a complaint is substantiated, it will make the complaint part of the authorized CYFD file on the child care registered home. The following additional actions will, at the discretion of the authorized CYFD representative, be taken:
 - (a) the CYFD authority will require the registered home caregiver to submit and comply with a written corrective action plan; or
 - (b) the CYFD authority will sanction the registered home administratively including, without limitation, suspension, revocation, or restriction of a registration; or
 - (c) the CYFD authority will file criminal charges or pursue civil remedies.
- F. The authorized CYFD representative will report all cases of suspected child abuse and neglect to both children's protective services and the local law enforcement agency.
[8.17.2.18 NMAC - Rp, 8.17.2.19 NMAC, 10/1/16]

8.17.2.19 ADMINISTRATIVE APPEAL RIGHTS:

- A. Any primary caregivers who receives notice that registration is denied, revoked, suspended or that renewal is denied, has a right to an administrative appeal of the decision. Any primary caregiver who is required by the department to implement specific actions, or to agree to specific conditions, in order to maintain registered status, has a right to administrative appeal.
- B. Administrative appeals shall be conducted by a hearing officer appointed by the department's secretary pursuant to hearing regulations in 8.8.4 NMAC.
- C. If the suspension or revocation is to take effect immediately, or if required conditions of continued operation are to take effect immediately, the department affords the primary caregiver the opportunity for an administrative appeal within five working days. If registration is suspended pending the results of an investigation, the primary caregiver may elect to postpone the hearing until the investigation has been completed.
- D. If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect or an appeal of the following action is concluded and the action is either upheld or overturned.
- E. If the contemplated action does not take immediate effect, and the primary caregiver is given advance notice of the contemplated action, the primary caregiver is allowed 10 working days from date of notice to request an administrative appeal in writing.
- F. For any action taken by the department pursuant to section 8.17.2.20 NMAC of this regulation, the applicable hearing procedure shall be that contained in section 8.17.2.20 NMAC.
[8.17.2.19 NMAC - Rp, 8.17.2.20 NMAC, A, 10/1/16]

8.17.2.20 PROBABLE CAUSE OF IMMINENT DANGER:

- A. In circumstances in which Public Health Act Paragraph (N) of Section 24-1-5 (2005) NMSA 1978 may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a provider, the provisions of Paragraph (N) of Section 24-1-5 NMSA 1978 shall apply as follows:
 - (1) The department shall consult with the owner or operator of the child care facility.
 - (2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.
 - (3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days.
 - (4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.
 - (5) No later than the conclusion of the fifteen day period, the department shall determine whether other action is warranted under this regulation.

B. Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.
[8.17.2.19 NMAC - Rp, 8.17.2.21 NMAC, 10/1/16]

8.17.2.21 GROUP COMPOSITION REQUIREMENTS:

- A.** A caregiver will care for no more than four non-resident children at any one time.
- B.** A caregiver will care for no more than two children under two years old at any one time, including the caregiver's own children.
- C.** A caregiver will care for no more than six children under six years old at any one time, including the caregiver's own children.
- D.** Drop-in children will be counted in the group composition requirements listed above.
- E.** Shifts are allowed provided there are never more than four non-resident children present at any one time, including change of shifts.
- F.** All caregivers will be physically present and actively involved in the care of all 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, or emergencies. Outside employment is not considered a short absence.
[8.17.2.2 NMAC - Rp, 8.17.2.22 NMAC, 10/1/16]

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 and no more than 82 degrees Fahrenheit. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.
- E.** The home must be adequately ventilated at all times.
- F.** A home will not use un-vented heaters or open flame heaters. Portable heaters will be used in accordance with manufacture instructions. A home will install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.
- G.** All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees Fahrenheit in all areas accessible to children. A home may install a water tempering control valve ahead of all domestic water-heater piping.
- H.** A caregiver must provide safe playing areas inside and outside the home. Outside play areas must be approved by the registered authority.
- I.** A caregiver's outside play area must be safe, clean and free of any debris. The caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, hazardous area or when determined to be necessary for safety by the registered authority. The fence will have one latched gate for emergency exits.
- J.** The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the registered home.
- K.** A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, sharp and pointed objects or any other dangerous materials in a storage area inaccessible to children.
- L.** The primary caregiver must have a working telephone in the home and a valid working phone number on file with CYFD at all times.
- M.** A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.
- N.** A caregiver will install at least one working smoke detector and a carbon monoxide detector in an appropriate area in the home.
- O.** A caregiver will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children.
- P.** A caregiver will keep all weapons in a locked area inaccessible to children.
- Q.** A caregiver will prohibit smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs or non-prescription controlled

substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

R. A home will have a 2A-10B:C fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and will have official tags noting the date of inspection.

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

T. In case of a 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. An up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the registered authority and the department will provide guidance on developing these plans.

U. A home will have two major exits readily accessible to children with no obstructions in the pathways of these exits.

V. Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Cribs will meet federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs.

W. Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

X. The home will have a first aid kit stored in a convenient place inaccessible to children, but easily accessible by caregiver. The kit will contain at least Band-Aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

Y. A caregiver with pets will comply with the following requirements:

(1) A home will inform parents or guardians in writing before pets are allowed at the residence.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the residence.

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily.

(5) A caregiver must be physically present during the handling of all pets or other animals.

Z. A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will wash their hands and the child's hands after every diaper change. A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.

AA. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device.

[8.17.2.22 NMAC - Rp, 8.17.2.23 NMAC, A, 10/1/16]

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.

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 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 refrigerator thermometers.

[8.17.2.23 NMAC - Rp, 8.17.2.24 NMAC, 10/1/16]

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.
- [8.17.2.24 NMAC - Rp, 8.17.2.25 NMAC, 10/1/16]

8.17.2.25 CAREGIVER'S RESPONSIBILITIES:

- A. A caregiver will directly supervise and actively care for children at all times during hours of operation including outdoor playtime and naptime. Caregivers will interact with children and provide a safe and positive learning environment.
- B. Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Caregivers will be onsite, available and responsive to children during all hours of operation.
- C. A caregiver will use guidance that is positive, consistent and age-appropriate. The caregiver will not use:
 - (1) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;
 - (2) withdrawal of food, rest, bathroom access, or outdoor activities;
 - (3) abusive or profane language, including yelling;
 - (4) any form of public or private humiliation, including threats of physical punishment; or
 - (5) unsupervised separation.
- D. Each home must develop policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement.
- 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 age 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.

[8.17.2.25 NMAC - Rp, 8.17.2.26 NMAC, 10/1/16]

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 11/1/02.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 02/14/05.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8/31/06.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 7/30/15.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 10/1/16.

PUBLIC COMMENTS

Smith, Ashleigh, CYFD

From: Mark Schinnerer [REDACTED]
Sent: Tuesday, August 13, 2019 4:38 PM
To: CYFD-ECS-PublicComment
Subject: 8.16.2 NMAC Public Comment

Related to the proposed language in the definitions at 8.16.2.7.RR:

"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.

In light of this new two-step process, how quickly will the BCU complete their initial review and make a determination the applicant may begin employment under direct physical supervision? It is typically not the case we have the luxury of time when hiring new staff. It is most always to fill a vacancy. This 'review' and 'determination' must occur within a short period time, say an hour or two at the most. Otherwise, the applicant will move on to another job position.

Mark Schinnerer
CEO
CARC, INC.
P.O. Drawer 1808
Carlsbad, NM 88221
[REDACTED]

Smith, Ashleigh, CYFD

From: Teena Dehne [REDACTED]
Sent: Wednesday, August 28, 2019 11:00 AM
To: CYFD-ECS-PublicComment
Subject: [EXT] Public Comment

8.16.2.22 E(1)(c) The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;

This proposed revision does not give any direction as to what to do with this information other than retain it in the child's file. If the person on the registry is the child's parent, does this mean the parent will not be able to pick the child up or drop the child off? Participate in parent teacher conferences?

We understand the intention - to keep all our children safe. However, we feel that this proposed revision could have serious unintended consequences. Children who's parents or other close family are on the registries would potentially be ostracized from our facilities. This would be putting children in harm's way - not protecting them.

Also, this would put an undue administrative burden on facilities. No visitor is ever allowed unsupervised access to children - whether they are a child's authorized pickup or not. Is this not sufficient to reasonably ensure the safety of the children in our facilities?

Teena L. Dehne, CFO

Building Bridges Child Development Center, Inc.
Eastern Child Development Center, Inc.
Parkside Child Development Center, Inc.

<http://www.tlcdevelopmentcenters.org/>

Smith, Ashleigh, CYFD

From: Cpc Silver City <cpc.grantcounty.nm@gmail.com>
Sent: Wednesday, August 28, 2019 4:13 PM
To: CYFD-ECS-PublicComment
Subject: [EXT] Public Comment
Attachments: CYFD proposed changes.pdf

The staff of Community Partnership for Children would like to input our concerns for the proposed changes in the attached letter sent by CYFD.

In reference to **background check eligibility** per regulations included in 8.16.2NMAC

Currently the requirement states that an individual without approved background clearance cannot be left alone unsupervised with children.

Aligning the new procedures MUST guarantee that programs will receive an immediate (2-3 days) turn around process on eligibility results. Otherwise, this will greatly impact the operation of the programs in maintaining adult to child ratios.

Perhaps an email notice could be sent out to notify the center that the background check has been approved and is on its way via mail, allowing the employee to report to the classroom to fill the vacancy.

Regards,
Staff of Community Partnership for Children

Terry Anderson
Executive Director/Project Coordinator

Anita Rios
Mentor/Facilitator

Kelli McGhiey
Financial Administrator

Romeo Cruz
Content Manager

Community Partnership for Children
cpc.grantcounty.nm@gmail.com
[REDACTED]

State of New Mexico

CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



BRIAN BLALOCK
CABINET SECRETARY

TERRY L. LOCKE
DEPUTY CABINET SECRETARY

WNMU Preschool/Child Development Center
PO Box 680
Silver City, NM 88062

Dear Child Care Provider:

July 29, 2019

This letter serves as notice that Children, Youth and Families Department (CYFD) will hold two formal public hearings to propose regulation changes.

The first public hearing will be held on Thursday, August 29, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.8.3 NMAC – Social Services - Children, Youth and Families General Provisions, Governing Background Checks and Employment History Verification
- 8.16.2 NMAC – Child Care Licensing, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs
- 8.17.2 NMAC – Social Services – Non-Licensed Child Care, Requirements Governing Registration of Non-Licensed Family Child Care Homes

The significant proposed changes to the rules are to amend the background check requirements to add language to incorporate a two-step clearance process for staff members. 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 required for CYFD to comply with federal requirements. In addition, language will be included in 8.16.2 NMAC and 8.17.2 NMAC, requiring policies and procedures ensuring that a registered sex offender does not have access to the facility 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.

The second public hearing will be held on Friday, August 30, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.15.2 NMAC - Requirements for Child Care Assistance Programs for Clients and Child Care Providers

The significant proposed changes to the rule are to amend the eligibility levels for child care assistance, to eliminate the waiting list for child care assistance, to provide an explanation of the co-payment calculation and where to find the co-payment schedule, to comply with federal regulation to pay for registration/educational fees for children receiving child care assistance benefits on behalf of client, and to address the overlap of care hours under payment for services. Pursuant to the continuation of this rule change, amendments were made to the following sections: 8.15.2.9 NMAC; 8.15.2.12 NMAC; and 8.15.2.13 NMAC.

The public hearings will be held in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The purpose of these public hearings is to receive public comment regarding proposed changes to the above regulations. Any interested member of the public may attend the hearings 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. 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.

Written public comment, including presentation of data, views or arguments on 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 "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.

PLEASE BE ADVISED THAT THESE PROPOSED REGULATION CHANGES DO NOT AFFECT CURRENT ELIGIBILITY TO FAMILIES. If you have any questions, please call Kimberly Brown at 505-841-4821 or 1-800-832-1321.

Sincerely,

Alejandra Rebolledo Rea, Acting Division Director
Early Childhood Services, Children, Youth and Families Department

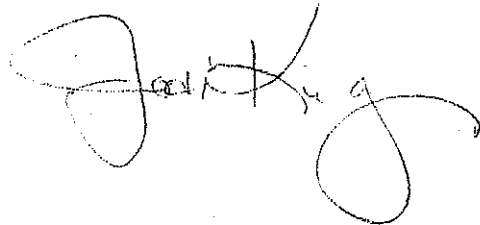
Jodi King

Count Your Blessings Preschool

I am concerned about the unforeseen results of reviewing all aspects of backgrounds of parents who may or may not be on the sex offender registry for all programs licensed through CYFD. Although we absolutely want to ensure our children are safe, our concerns are the following for parents and guardians of children:

- Many sex offenders have their own children or are guardians of children.
- Violating the rights of parents and guardians who have children who by law have the right to parent and have the right to access their own child;
- Potential liability of small businesses and CYFD for violation of providing access to their own children and education;
- Ostracize individuals creating community backlash;
- Children not having the access to safe, quality childcare, because a parent or a guardian is not able to transport their child to and from childcare, pre-k. This may result in children being with unsafe and unlicensed child care situations.
- There is also no guidance from CYFD on what to do or how to handle the situation AFTER the check.

We also are concerned that there is no delineation between child sex offenders and predators from those that might have an adult offense. Again, we want to protect our children, but also need to consider circumstances surrounding individual parents and guardians and their rights as a parent.

A handwritten signature in black ink, appearing to read "Jodi King". The signature is stylized with large loops and a long horizontal stroke at the end.



August 29, 2019

Kimberly Brown
Child Care Services Bureau
Children, Youth and Families Department
P.O. Box 5160
Santa Fe, NM 87502-5160

Thank you for the opportunity to provide public comment with regard to the proposed child care regulatory changes published in the New Mexico Register by the New Mexico Children, Youth and Families Department (CYFD).

We appreciate the opportunity to provide written comments and we will also testify at the public hearing on August 29 and August 30, 2019.

Our comments are based on supporting family economic stability and the healthy development of children. As child care providers, operating small businesses throughout the state, our lens gives us an "on the ground" view of the costs of operating a child care program, as well as the challenges families face every day.

We have reviewed the proposed regulations and offer comments and suggestions aligned with the Child Care and Development Block Grant Act of 2014 to increase the number and percentage of children whose care is paid for with a child care subsidy in high-quality child care.

We look forward to working with you so that together we can support the well-being of New Mexico children.

Sincerely,

Sondra Carpenter

New Mexico Child Care and Education Association (NMCCEA) Public Comments related to the notice of rulemaking impacting the child care subsidy assistance program as published in the New Mexico Register

On June 17, 2019, the Annie E. Casey Foundation 2019 KIDS COUNT Data Book¹ was released, which marked the 30th year that the annual 50 state report ranking states on child well-being was published. New Mexico ranked 50th against all states, below Louisiana ranked 49th and Mississippi ranked 48th. We can and should do better for our children.²

There are many factors related to child well-being (e.g., parents employed earning wages to support their children, young children with access to high-quality child care – not just pre-k, but high-quality child care during the infant and toddler years as brain development is fastest forming the foundation for all future development – social, emotional, physical, and cognitive development, mothers with access to prenatal care to reduce the likelihood of low birthweight babies, which research shows puts them at higher risk for developmental delays, etc.). We know that improving child well-being can't be achieved with a magic wand, but it can be improved through state regulations that guide program implementation and state investments that support both children and family economic stability.

It is through the lens of supporting children and family economic stability that we offer our comments below. We are also glad to meet with you and discuss these concepts further so that one day, the KIDS COUNT Data Book will list New Mexico at the top of all states instead of the bottom.

8.15.2.7 DEFINITIONS and 8.15.2.9 PRIORITIES FOR ASSISTANCE

The proposed regulation eliminates the definition of the "waiting list" for child care services and also reduces eligibility for child care assistance from 200% of the federal poverty level to 160%.

Comment: The dual implication of these changes is concerning. Reducing the income eligibility for assistance affects not just the ability of parents to work, but also the types of child care settings in which the children of low wage parents will spend their time. Either the assumption is that parents who can't afford the cost of child care on their own will reduce their hours or not work, or that their children will be in unlicensed care because without child care assistance, working parents can't access the licensed market.

As of April 2019, there were 20,092 children in New Mexico receiving CYFD child care subsidies.³ This pales in comparison to the 84,002 children under age 6 and 177,043 children between age 6 and 11 below 200% of the federal poverty level.⁴ Since children age 13 and younger are eligible, the universe of potentially eligible children below 200% of the federal poverty level exceeds 261,000 children in New Mexico.

Limiting child care assistance to children in families below 160% of the federal poverty level means at least 36,293 children (16,468 under age 6 and 19,825 between ages 6 and 11) will be in families who are no longer eligible for child care assistance. Maybe their parents will choose not to work or reduce their hours given the cost of child care. Or, maybe their parents will continue to work and choose unlicensed care where the quality and safety are unknown. The only thing we know for sure is that reducing child care assistance for more than 36,000 children is not likely to improve either family economic stability or child well-being.

Household lens. Research shows that a lack of reliable and dependable child care leads to a reduction in parent income, hours worked, work performance and advancement opportunities.⁵ Children live in families. Undermining parent employment means that a child lives in a household that may struggle to pay rent, purchase food, and cover other basic necessities. This in turn undermines child development and well-being, the very policies that child care assistance is designed to promote.

Child lens. Research shows that children with access to high-quality child care are more likely to develop nurturing, responsive, and continuous relationships with their caregivers⁶ which is important for social and emotional development and such children are more likely to experience developmental gains across domains (e.g., social, emotional, physical, and cognitive development).⁷ The first three years of life are crucial for social-emotional and cognitive development and overall mental health.⁸

Employer lens. Research shows a relationship between child care instability and employers' dependability on a stable workforce⁹ as well as a cost to employers in absenteeism due to child care instability resulting in an estimated loss of \$3 billion annually.¹⁰ A study of low income families in Maryland found that the odds of experiencing a child care related work disruption were 75% lower for parents receiving a subsidy than parents not receiving a subsidy.¹¹

Whether the lens is related to parents, children, or employers, reducing eligibility from 200% of the federal poverty level to 160% doesn't promote child well-being. In fact, it is very likely to reduce the well-being of children.

Waiting List elimination. Eliminating the waiting list for child care assistance does not mean that families won't need child care assistance or qualify for it. Instead it means that the public will lose the ability to access data that shows the interest in child care assistance. Waiting lists aren't perfect. They are a snapshot in time and some families may choose not to join the waiting list upon being informed of its length. Regardless, having a waiting list is better than not, so in the event that funding were to be made available, a go-to list would be readily available. In addition, having a waiting list is one type of indicator as to whether current funding is meeting the demand. Eliminating the waiting list is a policy promoting guess work, again, undermining the well-being of families with children.

8.15.2.12 RECERTIFICATION

The regulation proposed that "clients who recertify will qualify at or below 200% of the federal poverty level."

Comment: We are unclear what this means and how it would be implemented. Under the Child Care and Development Block Grant (CCDBG) Act of 2014,¹² states are required to have a graduated phase-out of assistance to ensure that families don't incur a cliff as income rises.

There's a unique problem related to income in New Mexico and the eligibility requirement under CCDBG set at 85% of state median income (SMI). Compared to the US median family income of \$73,891, New Mexico median family income is \$58,308, \$15,583 lower.¹³ This is a challenge for the graduated phase-out tied to 85% of SMI, but nonetheless, important to understand in concept as state policy is set.

The purpose of the graduated phase-out provision is to promote continuity of care and ensure that families are well-positioned to access child care for their children. The CCDF regulations tell states to "show that their exit threshold takes into account typical family expenses such as housing, food, health

care, diapers, transportation, etc., and is set at an income level that promotes and supports family economic stability and reasonably allows a family to continue accessing child care services without unnecessary disruption.”¹⁴ In addition, the final rule uses seven percent of family income as a benchmark for affordable child care.¹⁵

Can a family at 200% of the federal poverty level access high-quality child care at a cost that doesn’t exceed 7 percent of income? Data from the 2018 New Mexico market rate survey shows that the average monthly infant rate for center-based care is \$672 per month.¹⁶ That’s \$8,064 per year. A family of 3 earning 200% of the federal poverty level would earn \$42,660,¹⁷ which means the average cost of center-based infant care would be 18.9% of income – far exceeding the U.S. Department of Health and Human Services recommendation for child care costs at 7% or below of income.

We urge CYFD to rethink the graduated phase-out concept. How could the policy be crafted so that there is a gradual phase-out for New Mexico families so that the cliff effect is avoided, families can still access market-based child care, and costs to families do not exceed 7% of income? This is the concept behind the graduated phase-out provision under CCDBG reauthorization. It’s not meant as a check-box strategy, but instead, it’s meant to support the economic stability of families and access to high-quality child care for children. We can do this, but not under the current proposed policy.

8.15.2.13 CLIENT RESPONSIBILITIES

A series of co-payments are established based on number of children, hours of care, and family income.

Comment: The U.S. Department of Health and Human Services has established 7% of income or below for affordability for families who need child care.¹⁸ The proposed co-payment schedule is complicated, and copayments exceed 7% of family income in many cases. Also, it appears to be tied to hours of care although HHS regulations clarify “that Lead Agencies are not required to limit authorized child care services strictly based on work, training, or educational schedule or the number of hours that a parent spends in work, training, or educational activities.” Furthermore, the preamble to the regulations state, “in some cases, such “matching” works against the interests of the parent or child. Lead agencies are encouraged to authorize adequate hours to allow children to participate in a high quality program, which may be more hours than the parent is working or in education or training.”¹⁹

The reality is that child care is a business. When state regulations set co-payments at a certain level, it is up to child care providers to collect it. At best, it is often what child care providers call “bad debt” – it is simply not collectible, not collectible on time, not collectible in full, or at it’s worst – it is a financial hardship on families. We urge you to review the copayment policy and limit it to at or below 7% of family income.

8.15.2.15 PROVIDER REQUIREMENTS

(D)(1) Registration Fees. *The proposed regulations prohibit child care providers from charging families a registration fee for any child receiving child care assistance, and propose that the department pay a \$5 monthly fee for registration not to exceed \$60 per year.*

Comment: The U.S. Department of Health and Human Services final CCDF regulations closely follow the reauthorization law related to generally-accepted payment policies mirroring the private market. “Consistent with section 658E(c)(2)(s) of the Act, § 98.45(l)(3) of the final rule requires CCDF payment

practices to reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF funded assistance.”²⁰ This includes paying “for reasonable, mandatory registration fees that the provider charges to private-paying parents.”²¹ The final rule is clear that such payment policies and practices should follow customary practices for private paying parents. With regard to annual registration fees, parents pay them upfront – registration fees are not paid \$5 per month over a period of time.

It is understandable under concepts in place prior to CCDBG reauthorization that states may want to pay a smaller share of registration fees over time rather than pay registration fees for families receiving a subsidy upfront. The rationale would have been, at that time, that families churn on and off child care subsidy assistance, and therefore, registration fees that are paid upfront might represent an overpayment in cases where the family has “churned off of assistance.” However, under CCDBG reauthorization, states were required to implement 12 month eligibility for families. Congress enacted 12 month eligibility because in reviewing state practices, it appeared that many states with a shorter recertification period were churning families – meaning that families left assistance but their income wasn’t necessarily higher. They merely failed to comply with document requirements, in-person meetings to recertify or other administrative reasons unrelated to their actual income. Therefore, to make access to child care assistance easier and promote continuity of care for children (e.g., policies that promote healthy child development), Congress required a new minimum eligibility period of 12 months. New Mexico was among the states that had a far shorter eligibility period. It is anticipated that the longer eligibility period will reduce “the churn” which means that paying the annual registration fee upfront, as required for private paying families, is no longer risky since children are generally granted 12 months of assistance.

We urge CYFD to pay annual registration fees upfront for children whose care is paid for with a subsidy, the same policy that applies to private pay parents.

8.15.2.17 PAYMENT FOR SERVICES

(C) \$5 Registration Fees Paid Monthly. (see above)

(D), (E), (F), (G) Payment Rates. *The regulations propose a rate schedule where 100% of the full time rate is paid for 30 or more hours per week of care, 75% of the rate is paid for 8-29 hours per week of care, 50% of the rate is paid for 8-19 hours of care and 25% of the rate is paid for 7 or fewer hours of care.*

Comments: The U.S. Department of Health and Human Services CCDF regulations are clear. The reauthorization law changed the framework for child care subsidy.

- 1) Payments are supposed to be based on the most recent market rate survey or an alternative based on the cost of high-quality care – and, at least at a level to cover health, safety, quality and staffing requirements in the CCDF rule. Lead agencies are also supposed to take into consideration the cost of providing higher-quality care.²²*
- 2) Policies are supposed to delink provider payments from a child’s occasional absences and pay providers based on a child’s enrollment, providing full payment if a child attends at least 85% of the time or providing full payment if a child is absent for 5 or fewer days in a month,²³ and*
- 3) States are to adopt generally accepted payment practices of child care providers who do not receive CCDF subsidies, including paying on a part-time or full-time basis (rather than paying for*

hours of service or smaller increments of time) and paying for reasonable mandatory registration fees that the provider charges to private paying parents.²⁴

Under § 98.21(g) *“lead agencies are encouraged to authorize adequate hours to allow children to participate in a high-quality program, which may be more hours than the parent is working or in education or training. For example, if most local high-quality early learning programs offer only full-time slots, a child whose parent is working part-time may need authorization for full-time care.”²⁵* Under 658E(c)(2)(S)(ii) of the Act, *“states are required to support the fixed costs of providing child care services and follow generally accepted payment practices that typically require parents who pay privately for child care to pay their provider a set fee based on their child’s enrollment.”²⁶*

What this means is that it is time in New Mexico to review the state’s payment policies in comparison to the typical practices of the child care community who serve private paying parents. Do private paying parents pay 75% of the weekly rate if their children attend 28-29 hours per week? No. That would not be a sustainable business model. Staffing and space are based on full time slots. Providers may offer part-time care, but the hourly bands with proportionate payments that CYFD proposes are based on practices that states engaged in prior to CCDBG reauthorization. Under the new law, states are supposed to conform their policies to better support market-based practices. The law and the regulations are clear on this aspect.

Child care is a business. We want to provide high-quality care. Many of us do provide high-quality care. However, the reality for any child care program is that it costs more to offer high-quality care. And, the operating budget of a child care program is related to the fees that private parents pay and subsidies that the state pays. Therefore, the costs of operating a program such as hiring staff, paying staff competitive wages, rent, utilities, maintenance costs, supplies, and materials must all be covered by that operating budget.

For perspective, the 2018 child care market rate survey²⁷ shows that in metro 2+ programs, the percentage of children served through child care subsidies is 50%, for 3 star programs, the percentage of children served through child care subsidies is 57%, in 4 star programs, it’s about 45% and in 5 star programs, it’s about 41%. What this means is that state subsidy policies have an enormous impact on the operating budget of a child care program and in turn, the quality of that program – largely, the type of staff who can be hired and the wages that will support them.

High-quality programs depend on high-quality staff – classroom staff with the education and competencies to support and promote healthy child development, which is why wages are typically the highest cost of operating a child care program. With the minimum wage scheduled to increase to \$9 per hour in January 2020,²⁸ child care wages will increase, which also has an impact on child care program operating budgets. But, there is no recognition of the minimum wage increase in the proposed child care subsidy regulations with regard to payment rates.

An increase in the minimum wage is good news. It will help support economic stability for families. But, there are two collateral impacts of an increase in the minimum wage that the regulations do not address. First, families who are able to earn higher wages may no longer qualify for child care assistance, particularly if the proposed regulations are adopted which would cap initial eligibility at 160% of poverty. Second, child care programs will be required to pay higher wages, but subsidy rates are not increased to absorb the impact on program operating budgets. Both of these policy issues need to be reviewed and adjusted as part of the regulatory review process. Otherwise, the public policy good of increasing the minimum wage is undermined by collateral impact, which could wind up leaving families in a worse economic position rather than better as the law intended.

Another issue that is not addressed in the child care regulations, which should be because of the impact on child care operating budgets is some type of requirement at the local community level to coordinate with community-based child care programs in the provision of public pre-k, not merely plow forward with school-based pre-k expansion because the Department of Public Education (PED) has provided funding. The subsidy regulations are an opportunity to call for coordination and community planning since the economic model for child care programs simply doesn't work to support infant and toddler care when 4 year-old children (and 3 year-old children) are pulled away from the economic model. We all want to provide high-quality care, but that is simply not possible when the economic model for child care is undermined through implementation of a different agency's funding policy for preschool-age children.

We urge that CYFD use the opportunity to adjust child care regulations as an opportunity to rethink child care policy. We don't have to be ranked 50th year after year in child well-being. But, to rise above that ranking, we need policies that promote child well-being. Family economic stability, achieved when parents work, and healthy child development, achieved as young children – particularly infants and toddlers, have access to high-quality child care, can improve child well-being. Such policies will cost more than New Mexico has currently allocated, but research shows a return on investment of 13%.²⁹

It's time to match our policy with the federal law and provide sufficient funding to support access for families who need child care assistance. The federal government recognizes child care as a two generation strategy – it helps parents work and it supports the healthy development of children. It's time that New Mexico shares this vision as well.

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

(3) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present; (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[;]. **The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;**

D. CHILDREN'S RECORDS. (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[;]. **The licensee must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;**

(2) POLICIES AND PROCEDURES:

Page 48

(m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;

D. CHILDREN'S RECORDS:

(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[;]. **The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file.**

Your child deserves to be safe and well cared for at all times. One of your child care provider's most important responsibilities is keeping your child safe from harm. Not only should all adults employed with a licensed childcare provider have had a comprehensive background check, but all those entering and exiting the facility have been screened through both the state and national sex offenders database. We don't disagree. But, keeping a piece of paper in a child's file doesn't protect our children. Also, according to our research there is no other state with this requirement.

The proposed rule lacks clarity on how a licensed childcare provider should implement this new rule, how it will be enforced by CYFD Licensing Department and what the consequences will be if the proposed rule is not implemented properly. Additionally, there will be a cost to providers in the implementation of this new system.

What are public and private elementary schools required to do? Shouldn't the rule for CYFD licensed providers be consistent with that of the Public Education Department? And finally, the rule needs to be consistent throughout. Is it the "licensee" who must check or is it the "director"? The proposed rule is not consistent.

We don't disagree that children should be protected, but a piece of paper in a file isn't going to protect them. Instead of rushing this through, why don't we work together over the next six months and develop something in the best interest of our children.

¹ 2019 KIDS COUNT Data Book, Annie E. Casey Foundation. (2019). <https://www.aecf.org/m/resourcedoc/aecf-2019kidscountdatabook-2019.pdf>

² Ibid.

³ State Backs Off on Child Care Assistance, Albuquerque Journal, May 31, 2019. <https://www.abqjournal.com/1322148/state-backs-off-on-child-care-assistance.html>

⁴ U.S. Census Bureau, Table B17024, 2017 American Community Survey, 1 year estimates.

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B17024&prodType=table

⁵ U.S. Department of Health and Human Services, CCDF final regulations, 2016. <https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf>

⁶ A Secure Base for Babies: Applying Attachment Theory Concepts to the Infant Care Setting, Young Children 51, No. 5, 1996.

<https://qut.rl.talis.com/items/363A211B-16A1-432D-6269-06B8C952E945.html>

⁷ Investing in Our Future: The Evidence Base on Preschool Education, 2013. Foundation for Child Development. <https://www.fcd-us.org/the-evidence-base-on-preschool/>

⁸ Harvard University, Center on the Developing Brain. <https://developingchild.harvard.edu/resources/inbrief-science-of-ecd/>

⁹ Maintaining Work: The Influence of Child Care Subsidies on Child Care-Related Work Disruptions, J Fam Issues. 2011 Mar; 32(3): 346-368.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3242446/>

¹⁰ Child Care & Parent Productivity: Making the Business Case, Shellenback, 2004.

<https://s3.amazonaws.com/mildredwarner.org/attachments/000/000/074/original/154-21008542.pdf>

¹¹ Maintaining Work: The Influence of Child Care Subsidies on Child Care-Related Work Disruptions, J Fam Issues. 2011 Mar; 32(3): 346-368.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3242446/>

¹² Child Care and Development Block Grant Act of 2014, <https://www.govinfo.gov/content/pkg/BILLS-113s1086enr/pdf/BILLS-113s1086enr.pdf>

¹³ U.S. Census Bureau, 2017 American Community Survey, 1 year estimates. <https://www.deptofnumbers.com/income/new-mexico/>

¹⁴ U.S. Department of Health and Human Services, CCDF final regulations, 2016. <https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf>

¹⁵ Ibid.

¹⁶ 2018 New Mexico Child Care Market Rate Survey, funded by the Children, Youth, and Families Department, 2018.

https://www.newmexicokids.org/wp-content/uploads/2018-MRS-Report_5-25.pdf

¹⁷ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS Poverty Guidelines for 2019, <https://aspe.hhs.gov/poverty-guidelines>

¹⁸ U.S. Department of Health and Human Services, CCDF final regulations, 2016. <https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf>

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ 2018 New Mexico Child Care Market Rate Survey, funded by the Children, Youth, and Families Department, 2018.

https://www.newmexicokids.org/wp-content/uploads/2018-MRS-Report_5-25.pdf

²⁸ New Mexico Adopts First Minimum Wage Increase in a Decade, U.S. News & World Report, April 1, 2019.

<https://www.usnews.com/news/best-states/new-mexico/articles/2019-04-01/new-mexico-adopts-first-minimum-wage-increase-in-a-decade>

²⁹ James Heckman, the Heckman Equation. The Lifecycle Benefits of an Influential Early Childhood Program, 2016.

https://heckmanequation.org/www/assets/2017/01/F_Heckman_CBAOnePager_120516.pdf

**Public hearing
comments and
other material
received**

August 29, 2019

NM CYFD Hearing for 8.8.3, 8.16.2 and 8.17.2 NMAC

Exhibit 1

SIGN-IN SHEET

PUBLIC HEARING

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

EARLY CHILDHOOD SERVICES

CHILD CARE SERVICES BUREAU

Public Hearing on **August 29, 2019, at 10:00 a.m.** - in Apodaca Hall (second floor) at the Public Employees Retirement Association (PERA) Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The purpose of the formal public hearing is to receive public comments regarding changes to regulation 8.8.3 NMAC Children, Youth and Families General Provisions Governing Background Checks and Employment History Verification; 8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs; and 8.17.2 NMAC Non-Licensed Child Care Requirements Governing Registration of Non-Licensed Family Child Care Homes.

| NAME | COMPLETE ADDRESS | PHONE # | E-MAIL ADDRESS | ORGANIZATION |
|---------------------|------------------|---------|----------------|-------------------------|
| Jennifer Warren | [REDACTED] | | [REDACTED] | Santa Fe Walden School |
| Gerson Perez | [REDACTED] | | [REDACTED] | CHINS |
| Joyce Denton | [REDACTED] | | [REDACTED] | La Clinica de Familia |
| Elizabeth Fernandez | [REDACTED] | | [REDACTED] | Mothers Day Out |
| Terry Fisher | [REDACTED] | | [REDACTED] | Government Schools |
| Harold Fore-Lana | [REDACTED] | | [REDACTED] | Angel's home child care |
| Maria Ponce | [REDACTED] | | [REDACTED] | CHINS |
| Richard Denton | [REDACTED] | | [REDACTED] | |
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**CHILDREN, YOUTH AND FAMILIES DEPARTMENT
EARLY CHILDHOOD SERVICES
CHILD CARE SERVICES BUREAU**

[illegible]

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT
EARLY CHILDHOOD SERVICES
CHILD CARE SERVICES BUREAU**

[illegible]

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT
EARLY CHILDHOOD SERVICES
CHILD CARE SERVICES BUREAU**

[illegible]

Sarah Dinus - [REDACTED]

Seperate Pg. for to speak:

Name + Organization.

August 29, 2019

NM CYFD Hearing for 8.8.3, 8.16.2 and 8.17.2 NMAC

Exhibit 2

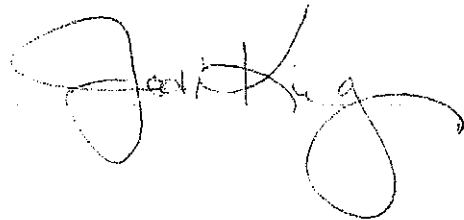
Jodi King

Count Your Blessings Preschool

I am concerned about the unforeseen results of reviewing all aspects of backgrounds of parents who may or may not be on the sex offender registry for all programs licensed through CYFD. Although we absolutely want to ensure our children are safe, our concerns are the following for parents and guardians of children:

- Many sex offenders have their own children or are guardians of children.
- Violating the rights of parents and guardians who have children who by law have the right to parent and have the right to access their own child;
- Potential liability of small businesses and CYFD for violation of providing access to their own children and education;
- Ostracize individuals creating community backlash;
- Children not having the access to safe, quality childcare, because a parent or a guardian is not able to transport their child to and from childcare, pre-k. This may result in children being with unsafe and unlicensed child care situations.
- There is also no guidance from CYFD on what to do or how to handle the situation AFTER the check.

We also are concerned that there is no delineation between child sex offenders and predators from those that might have an adult offense. Again, we want to protect our children, but also need to consider circumstances surrounding individual parents and guardians and their rights as a parent.

A handwritten signature in black ink, appearing to read "Jodi King". The signature is stylized with a large, looping initial "J" and a long, sweeping underline that extends to the right.



August 29, 2019

Kimberly Brown
Child Care Services Bureau
Children, Youth and Families Department
P.O. Box 5160
Santa Fe, NM 87502-5160

Thank you for the opportunity to provide public comment with regard to the proposed child care regulatory changes published in the New Mexico Register by the New Mexico Children, Youth and Families Department (CYFD).

We appreciate the opportunity to provide written comments and we will also testify at the public hearing on August 29 and August 30, 2019.

Our comments are based on supporting family economic stability and the healthy development of children. As child care providers, operating small businesses throughout the state, our lens gives us an "on the ground" view of the costs of operating a child care program, as well as the challenges families face every day.

We have reviewed the proposed regulations and offer comments and suggestions aligned with the Child Care and Development Block Grant Act of 2014 to increase the number and percentage of children whose care is paid for with a child care subsidy in high-quality child care.

We look forward to working with you so that together we can support the well-being of New Mexico children.

Sincerely,

Sondra Carpenter

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The proposed regulation eliminates the definition of the "waiting list" for child care services and also reduces eligibility for child care assistance from 200% of the federal poverty level to 160%.

Comment: The dual implication of these changes is concerning. Reducing the income eligibility for assistance affects not just the ability of parents to work, but also the types of child care settings in which the children of low wage parents will spend their time. Either the assumption is that parents who can't afford the cost of child care on their own will reduce their hours or not work, or that their children will be in unlicensed care because without child care assistance, working parents can't access the licensed market.

As of April 2019, there were 20,092 children in New Mexico receiving CYFD child care subsidies.³ This pales in comparison to the 84,002 children under age 6 and 177,043 children between age 6 and 11 below 200% of the federal poverty level.⁴ Since children age 13 and younger are eligible, the universe of potentially eligible children below 200% of the federal poverty level exceeds 261,000 children in New Mexico.

Limiting child care assistance to children in families below 160% of the federal poverty level means at least 36,293 children (16,468 under age 6 and 19,825 between ages 6 and 11) will be in families who are no longer eligible for child care assistance. Maybe their parents will choose not to work or reduce their hours given the cost of child care. Or, maybe their parents will continue to work and choose unlicensed care where the quality and safety are unknown. The only thing we know for sure is that reducing child care assistance for more than 36,000 children is not likely to improve either family economic stability or child well-being.

Household lens. Research shows that a lack of reliable and dependable child care leads to a reduction in parent income, hours worked, work performance and advancement opportunities.⁵ Children live in families. Undermining parent employment means that a child lives in a household that may struggle to pay rent, purchase food, and cover other basic necessities. This in turn undermines child development and well-being, the very policies that child care assistance is designed to promote.

Child lens. Research shows that children with access to high-quality child care are more likely to develop nurturing, responsive, and continuous relationships with their caregivers⁶ which is important for social and emotional development and such children are more likely to experience developmental gains across domains (e.g., social, emotional, physical, and cognitive development).⁷ The first three years of life are crucial for social-emotional and cognitive development and overall mental health.⁸

Employer lens. Research shows a relationship between child care instability and employers' dependability on a stable workforce⁹ as well as a cost to employers in absenteeism due to child care instability resulting in an estimated loss of \$3 billion annually.¹⁰ A study of low income families in Maryland found that the odds of experiencing a child care related work disruption were 75% lower for parents receiving a subsidy than parents not receiving a subsidy.¹¹

Whether the lens is related to parents, children, or employers, reducing eligibility from 200% of the federal poverty level to 160% doesn't promote child well-being. In fact, it is very likely to reduce the well-being of children.

Waiting List elimination. Eliminating the waiting list for child care assistance does not mean that families won't need child care assistance or qualify for it. Instead it means that the public will lose the ability to access data that shows the interest in child care assistance. Waiting lists aren't perfect. They are a snapshot in time and some families may choose not to join the waiting list upon being informed of its length. Regardless, having a waiting list is better than not, so in the event that funding were to be made available, a go-to list would be readily available. In addition, having a waiting list is one type of indicator as to whether current funding is meeting the demand. Eliminating the waiting list is a policy promoting guess work, again, undermining the well-being of families with children.

8.15.2.12 RECERTIFICATION

The regulation proposed that "clients who recertify will qualify at or below 200% of the federal poverty level."

Comment: We are unclear what this means and how it would be implemented. Under the Child Care and Development Block Grant (CCDBG) Act of 2014,¹² states are required to have a graduated phase-out of assistance to ensure that families don't incur a cliff as income rises.

There's a unique problem related to income in New Mexico and the eligibility requirement under CCDBG set at 85% of state median income (SMI). Compared to the US median family income of \$73,891, New Mexico median family income is \$58,308, \$15,583 lower.¹³ This is a challenge for the graduated phase-out tied to 85% of SMI, but nonetheless, important to understand in concept as state policy is set.

The purpose of the graduated phase-out provision is to promote continuity of care and ensure that families are well-positioned to access child care for their children. The CCDF regulations tell states to "show that their exit threshold takes into account typical family expenses such as housing, food, health

care, diapers, transportation, etc., and is set at an income level that promotes and supports family economic stability and reasonably allows a family to continue accessing child care services without unnecessary disruption.¹⁴ In addition, the final rule uses seven percent of family income as a benchmark for affordable child care.¹⁵

Can a family at 200% of the federal poverty level access high-quality child care at a cost that doesn't exceed 7 percent of income? Data from the 2018 New Mexico market rate survey shows that the average monthly infant rate for center-based care is \$672 per month.¹⁶ That's \$8,064 per year. A family of 3 earning 200% of the federal poverty level would earn \$42,660,¹⁷ which means the average cost of center-based infant care would be 18.9% of income – far exceeding the U.S. Department of Health and Human Services recommendation for child care costs at 7% or below of income.

We urge CYFD to rethink the graduated phase-out concept. How could the policy be crafted so that there is a gradual phase-out for New Mexico families so that the cliff effect is avoided, families can still access market-based child care, and costs to families do not exceed 7% of income? This is the concept behind the graduated phase-out provision under CCDBG reauthorization. It's not meant as a check-box strategy, but instead, it's meant to support the economic stability of families and access to high-quality child care for children. We can do this, but not under the current proposed policy.

8.15.2.13 CLIENT RESPONSIBILITIES

A series of co-payments are established based on number of children, hours of care, and family income.

Comment: The U.S. Department of Health and Human Services has established 7% of income or below for affordability for families who need child care.¹⁸ The proposed co-payment schedule is complicated, and copayments exceed 7% of family income in many cases. Also, it appears to be tied to hours of care although HHS regulations clarify *"that Lead Agencies are not required to limit authorized child care services strictly based on work, training, or educational schedule or the number of hours that a parent spends in work, training, or educational activities."* Furthermore, the preamble to the regulations state, *"In some cases, such "matching" works against the interests of the parent or child. Lead agencies are encouraged to authorize adequate hours to allow children to participate in a high quality program, which may be more hours than the parent is working or in education or training."*¹⁹

The reality is that child care is a business. When state regulations set co-payments at a certain level, it is up to child care providers to collect it. At best, it is often what child care providers call "bad debt" – it is simply not collectible, not collectible on time, not collectible in full, or at it's worst – it is a financial hardship on families. We urge you to review the copayment policy and limit it to at or below 7% of family income.

8.15.2.15 PROVIDER REQUIREMENTS

(D)(1) Registration Fees. *The proposed regulations prohibit child care providers from charging families a registration fee for any child receiving child care assistance, and propose that the department pay a \$5 monthly fee for registration not to exceed \$60 per year.*

Comment: The U.S. Department of Health and Human Services final CCDF regulations closely follow the reauthorization law related to generally-accepted payment policies mirroring the private market. *"Consistent with section 658E(c)(2)(s) of the Act, § 98.45(l)(3) of the final rule requires CCDF payment*

practices to reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF funded assistance.”²⁰ This includes paying “for reasonable, mandatory registration fees that the provider charges to private-paying parents.”²¹ The final rule is clear that such payment policies and practices should follow customary practices for private paying parents. With regard to annual registration fees, parents pay them upfront – registration fees are not paid \$5 per month over a period of time.

It is understandable under concepts in place prior to CCDBG reauthorization that states may want to pay a smaller share of registration fees over time rather than pay registration fees for families receiving a subsidy upfront. The rationale would have been, at that time, that families churn on and off child care subsidy assistance, and therefore, registration fees that are paid upfront might represent an overpayment in cases where the family has “churned off of assistance.” However, under CCDBG reauthorization, states were required to implement 12 month eligibility for families. Congress enacted 12 month eligibility because in reviewing state practices, it appeared that many states with a shorter recertification period were churning families – meaning that families left assistance but their income wasn’t necessarily higher. They merely failed to comply with document requirements, in-person meetings to recertify or other administrative reasons unrelated to their actual income. Therefore, to make access to child care assistance easier and promote continuity of care for children (e.g., policies that promote healthy child development), Congress required a new minimum eligibility period of 12 months. New Mexico was among the states that had a far shorter eligibility period. It is anticipated that the longer eligibility period will reduce “the churn” which means that paying the annual registration fee upfront, as required for private paying families, is no longer risky since children are generally granted 12 months of assistance.

We urge CYFD to pay annual registration fees upfront for children whose care is paid for with a subsidy, the same policy that applies to private pay parents.

8.15.2.17 PAYMENT FOR SERVICES

(C) \$5 Registration Fees Paid Monthly. (see above)

(D), (E), (F), (G) Payment Rates. The regulations propose a rate schedule where 100% of the full time rate is paid for 30 or more hours per week of care, 75% of the rate is paid for 8-29 hours per week of care, 50% of the rate is paid for 8-19 hours of care and 25% of the rate is paid for 7 or fewer hours of care.

Comments: The U.S. Department of Health and Human Services CCDF regulations are clear. The reauthorization law changed the framework for child care subsidy.

- 1) Payments are supposed to be based on the most recent market rate survey or an alternative based on the cost of high-quality care – and, at least at a level to cover health, safety, quality and staffing requirements in the CCDF rule. Lead agencies are also supposed to take into consideration the cost of providing higher-quality care.²²
- 2) Policies are supposed to delink provider payments from a child’s occasional absences and pay providers based on a child’s enrollment, providing full payment if a child attends at least 85% of the time or providing full payment if a child is absent for 5 or fewer days in a month,²³ and
- 3) States are to adopt generally accepted payment practices of child care providers who do not receive CCDF subsidies, including paying on a part-time or full-time basis (rather than paying for

hours of service or smaller increments of time) and paying for reasonable mandatory registration fees that the provider charges to private paying parents.²⁴

Under § 98.21(g) *“lead agencies are encouraged to authorize adequate hours to allow children to participate in a high-quality program, which may be more hours than the parent is working or in education or training. For example, if most local high-quality early learning programs offer only full-time slots, a child whose parent is working part-time may need authorization for full-time care.”²⁵* Under 658E(c)(2)(S)(ii) of the Act, *“states are required to support the fixed costs of providing child care services and follow generally accepted payment practices that typically require parents who pay privately for child care to pay their provider a set fee based on their child’s enrollment.”²⁶*

What this means is that it is time in New Mexico to review the state’s payment policies in comparison to the typical practices of the child care community who serve private paying parents. Do private paying parents pay 75% of the weekly rate if their children attend 28-29 hours per week? No. That would not be a sustainable business model. Staffing and space are based on full time slots. Providers may offer part-time care, but the hourly bands with proportionate payments that CYFD proposes are based on practices that states engaged in prior to CCDBG reauthorization. Under the new law, states are supposed to conform their policies to better support market-based practices. The law and the regulations are clear on this aspect.

Child care is a business. We want to provide high-quality care. Many of us do provide high-quality care. However, the reality for any child care program is that it costs more to offer high-quality care. And, the operating budget of a child care program is related to the fees that private parents pay and subsidies that the state pays. Therefore, the costs of operating a program such as hiring staff, paying staff competitive wages, rent, utilities, maintenance costs, supplies, and materials must all be covered by that operating budget.

For perspective, the 2018 child care market rate survey²⁷ shows that in metro 2+ programs, the percentage of children served through child care subsidies is 50%, for 3 star programs, the percentage of children served through child care subsidies is 57%, in 4 star programs, it’s about 45% and in 5 star programs, it’s about 41%. What this means is that state subsidy policies have an enormous impact on the operating budget of a child care program and in turn, the quality of that program – largely, the type of staff who can be hired and the wages that will support them.

High-quality programs depend on high-quality staff – classroom staff with the education and competencies to support and promote healthy child development, which is why wages are typically the highest cost of operating a child care program. With the minimum wage scheduled to increase to \$9 per hour in January 2020,²⁸ child care wages will increase, which also has an impact on child care program operating budgets. But, there is no recognition of the minimum wage increase in the proposed child care subsidy regulations with regard to payment rates.

An increase in the minimum wage is good news. It will help support economic stability for families. But, there are two collateral impacts of an increase in the minimum wage that the regulations do not address. First, families who are able to earn higher wages may no longer qualify for child care assistance, particularly if the proposed regulations are adopted which would cap initial eligibility at 160% of poverty. Second, child care programs will be required to pay higher wages, but subsidy rates are not increased to absorb the impact on program operating budgets. Both of these policy issues need to be reviewed and adjusted as part of the regulatory review process. Otherwise, the public policy good of increasing the minimum wage is undermined by collateral impact, which could wind up leaving families in a worse economic position rather than better as the law intended.

Another issue that is not addressed in the child care regulations, which should be because of the impact on child care operating budgets is some type of requirement at the local community level to coordinate with community-based child care programs in the provision of public pre-k, not merely plow forward with school-based pre-k expansion because the Department of Public Education (PED) has provided funding. The subsidy regulations are an opportunity to call for coordination and community planning since the economic model for child care programs simply doesn't work to support infant and toddler care when 4 year-old children (and 3 year-old children) are pulled away from the economic model. We all want to provide high-quality care, but that is simply not possible when the economic model for child care is undermined through implementation of a different agency's funding policy for preschool-age children.

We urge that CYFD use the opportunity to adjust child care regulations as an opportunity to rethink child care policy. We don't have to be ranked 50th year after year in child well-being. But, to rise above that ranking, we need policies that promote child well-being. Family economic stability, achieved when parents work, and healthy child development, achieved as young children – particularly infants and toddlers, have access to high-quality child care, can improve child well-being. Such policies will cost more than New Mexico has currently allocated, but research shows a return on investment of 13%.²⁹

It's time to match our policy with the federal law and provide sufficient funding to support access for families who need child care assistance. The federal government recognizes child care as a two generation strategy – it helps parents work and it supports the healthy development of children. It's time that New Mexico shares this vision as well.

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

(3) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present; (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[;]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;

D. CHILDREN'S RECORDS. (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[;]. The licensee must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;

(2) POLICIES AND PROCEDURES:

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(m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;

D. CHILDREN'S RECORDS:

(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up[;]. **The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file.**

Your child deserves to be safe and well cared for at all times. One of your child care provider's most important responsibilities is keeping your child safe from harm. Not only should all adults employed with a licensed childcare provider have had a comprehensive background check, but all those entering and exiting the facility have been screened through both the state and national sex offenders database. We don't disagree. But, keeping a piece of paper in a child's file doesn't protect our children. Also, according to our research there is no other state with this requirement.

The proposed rule lacks clarity on how a licensed childcare provider should implement this new rule, how it will be enforced by CYFD Licensing Department and what the consequences will be if the proposed rule is not implemented properly. Additionally, there will be a cost to providers in the implementation of this new system.

What are public and private elementary schools required to do? Shouldn't the rule for CYFD licensed providers be consistent with that of the Public Education Department? And finally, the rule needs to be consistent throughout. Is it the "licensee" who must check or is it the "director"? The proposed rule is not consistent.

We don't disagree that children should be protected, but a piece of paper in a file isn't going to protect them. Instead of rushing this through, why don't we work together over the next six months and develop something in the best interest of our children.

¹ 2019 KIDS COUNT Data Book, Annie E. Casey Foundation. (2019). <https://www.aecf.org/in/resourcedoc/aecf-2019kidscountdatabook-2019.pdf>

² *Ibid.*

³ State Backs Off on Child Care Assistance, Albuquerque Journal, May 31, 2019. <https://www.abqjournal.com/1322148/state-backs-off-on-child-care-assistance.htm>

⁴ U.S. Census Bureau, Table B17024, 2017 American Community Survey, 1 year estimates. https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B17024&prodType=table

⁵ U.S. Department of Health and Human Services, CCDF final regulations, 2016. <https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf>

⁶ A Secure Base for Babies: Applying Attachment Theory Concepts to the Infant Care Setting, Young Children 51, No. 5, 1996. <https://gut.ri.talis.com/items/363A211B-16A1-432D-6269-06B8C952E945.html>

⁷ Investing in Our Future: The Evidence Base on Preschool Education, 2013. Foundation for Child Development. <https://www.fcd-us.org/the-evidence-base-on-preschool/>

⁸ Harvard University, Center on the Developing Brain. <https://developingchild.harvard.edu/resources/inbrief-science-of-ecd/>

⁹ Maintaining Work: The Influence of Child Care Subsidies on Child Care-Related Work Disruptions, J Fam Issues. 2011 Mar; 32(3): 346-368. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3242446/>

¹⁰ Child Care & Parent Productivity: Making the Business Case, Shellenback, 2004.

<https://s3.amazonaws.com/mildredwarner.org/attachments/000/000/974/original/154-21008542.pdf>

¹¹ Maintaining Work: The Influence of Child Care Subsidies on Child Care-Related Work Disruptions, J Fam Issues. 2011 Mar; 32(3): 346-368. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3242446/>

¹² Child Care and Development Block Grant Act of 2014, <https://www.govinfo.gov/content/pkg/BILLS-113s1086enr/pdf/BILLS-113s1086enr.pdf>

¹³ U.S. Census Bureau, 2017 American Community Survey, 1 year estimates. <https://www.deptofnumbers.com/income/new-mexico/>

¹⁴ U.S. Department of Health and Human Services, CCDF final regulations, 2016. <https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf>

¹⁵ Ibid.

¹⁶ 2018 New Mexico Child Care Market Rate Survey, funded by the Children, Youth, and Families Department, 2018. https://www.newmexicokids.org/wp-content/uploads/2018-MRS-Report_5-25.pdf

¹⁷ U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS Poverty Guidelines for 2019, <https://aspe.hhs.gov/poverty-guidelines>

¹⁸ U.S. Department of Health and Human Services, CCDF final regulations, 2016. <https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf>

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ 2018 New Mexico Child Care Market Rate Survey, funded by the Children, Youth, and Families Department, 2018. https://www.newmexicokids.org/wp-content/uploads/2018-MRS-Report_5-25.pdf

²⁸ New Mexico Adopts First Minimum Wage Increase in a Decade, U.S. News & World Report, April 1, 2019. <https://www.usnews.com/news/best-states/new-mexico/articles/2019-04-01/new-mexico-adopts-first-minimum-wage-increase-in-a-decade>

²⁹ James Heckman, the Heckman Equation. The Lifecycle Benefits of an Influential Early Childhood Program, 2016. https://heckmanequation.org/www/assets/2017/01/F_Heckman_CBAOnePager_120516.pdf

NOTE:

List of recipients to whom letters were sent is not posted and may be requested through an IPRA.

**Copy of
Publications in
the New
Mexico
Register**

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 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 age 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.

HOME (/NMAC/) **BROWSE COMPILATION (/NMAC/NMAC-TITLES)**

EXPLANATION OF CODE (/NMAC/EXPLANATION-OF-CODE)

SEARCH ENGINE (/NMAC/SEARCH-ENGINE)

ACCURACY STATEMENT (/NMAC/ACCURACY-STATEMENT)

NEW MEXICO REGISTER (/NMAC/NMREGISTER/HOME)

NOTICES OF RULEMAKING, ISSUE 14

JULY 30, 2019

Children, Youth and Families Department

Notice of Rulemaking and Continuing Public Rule Hearing (/nmac/nmregister
/xxx/CYFDearly_Notice_xxx14.html) pdf version (/nmac/nmregister
/xxx/CYFDearly_Notice_xxx14.pdf)

Notice of Rulemaking and Public Rule Hearing (/nmac/nmregister
/xxx/CYFDnotice1_xxx14.html) pdf version (/nmac/nmregister
/xxx/CYFDnotice1_xxx14.pdf)

Notice of Rulemaking and Public Rule Hearing (/nmac/nmregister
/xxx/CYFDnotice2_xxx14.html) pdf version (/nmac/nmregister
/xxx/CYFDnotice2_xxx14.pdf)

Notice of Rulemaking and Public Rule Hearing (/nmac/nmregister
/xxx/CYFDnotice3_xxx14.html) pdf version (/nmac/nmregister
/xxx/CYFDnotice3_xxx14.pdf)

Superintendent of Insurance, Office of

Notice of Proposed Rulemaking (/nmac/nmregister/xxx/OSInotice_xxx14.html)
pdf version (/nmac/nmregister/xxx/OSInotice_xxx14.pdf)

Water Quality Control Commission

Notice of Public Hearing to Consider Proposed Amendments to 20.6.4 NMAC - Standard for
Interstate and Intrastate Surface Waters - San Isidro Arroyo and Tributaries (/nmac/nmregister

[/xxx/WQCCnotice_xxx14.html](#)
[/xxx/WQCCnotice_xxx14.pdf](#)

pdf version ([/nmac/nmregister](#)

Notificacion de Audiencia Publica para Considerar los Cambios Propuestos a NMAC 20.6.4 –
Estandares Interestatal y Dentro del Estado para Aguas Superficiales - Arroyo San Isidro Y Afluentes ([/nmac/nmregister/xxx/WQCCnotice_spanish_xxx14.html](#))
pdf version ([/nmac/nmregister/xxx/WQCCnotice_spanish_xxx14.pdf](#))

QUICK LINKS

NMAC LINKS

- [NMAC Home \(/nmac/home\)](#)
- [NMAC Explanation \(/nmac/explanation-of-code\)](#)
- [NMAC Titles \(/nmac/nmac-titles\)](#)

NM REGISTER LINKS

- [NM Register Home \(/nmac/nmregister/home\)](#)
- [All Volumes ~ Issues \(/nmac/all-volumes\)](#)
- [Administrative Law Division
\(http://www.nmcpr.state.nm.us/administrative-law/overview\)](#)
- [Commission of Public Records
\(http://www.nmcpr.state.nm.us/\)](#)

**Full text of the final
adopted rule and the
concise explanatory
statement filed with
the state records
administrator.**

NEW MEXICO
State Records Center and Archives

COMMISSION OF PUBLIC RECORDS

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RECORDS CENTER

2019 SEP 12 PM 2:24

NOTIFICATION OF MINOR, NON-SUBSTANTIVE CORRECTION

September 12, 2019

To: Brian Blalock, Secretary, Children, Youth and Families Department
c/o Debra Gonzales, Policy Compliance and Quality Assurance Manager

From: Matthew Ortiz, Administrative Law Division
by designation for the State Records Administrator

Re: 8.8.3 NMAC, 8.15.2 NMAC, 8.16.2 NMAC and 8.17.2 NMAC, filed on September 12, 2019, to be published on September 24, 2019 and effective on October 1, 2019

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

For all official rules and agency copies of all above rules, the file stamp incorrectly identified time of filing as in the **A.M.**, when in fact they were filed in the **P.M.** (this afternoon). There was a power outage earlier in the week, which must have affected the file stamp machine. The filing machine has been corrected.

A copy of this *Notification* will be filed with the official version of each of the above rules.

1205 Camino Carlos Rey | Santa Fe, NM 87507 | nmcpr.state.nm.us

Hon. Hector Balderas
Attorney General

Hon. Brian S. Colón
Chairman/State Auditor

Hon. Maggie Toulouse Oliver
Secretary of State

Debra Garcia y Griego
Department of Cultural Affairs

Kenneth Ortiz
General Services Department

Daniel Cordova
Interim Director, NM State Law Library

NEW MEXICO  2019 SEP 12 AM 1:59
Commission of Public Records**NMAC****Transmittal Form**

Your Access to Public Information

Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No. Issuing agency name and address: Agency DFA code: Contact person's name: Phone number: E-mail address: Type of rule action: (ALD Use Only)
New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐ Most recent filing date: Title number: Title name: Chapter number: Chapter name: Part number: Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?

Yes ☐ No ☒

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes ☐ No ☐ Public domain ☐**Specific statutory or other authority authorizing rulemaking:**

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

2019 SEP 12 AM 1: 59

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of the rules is to amend the background check requirements to clarify that abuse and neglect screens in each state where the applicant resided within the last five years will only be conducted for applicants applying pursuant to 8.17.2 NMAC. In addition, language is added to incorporate a two - step clearance process for applicants applying pursuant to 8.16.2 NMAC and 8.17.2 NMAC. 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. Additional minor changes will be made to clarify existing language within 8.17.2 NMAC.

Reasons for any change between the published proposed rule and the final rule:

Based on public comment, the Children, Youth and Families Department has taken out of the proposed rule for 8.16.2 NMAC and 8.17.2 NMAC, requiring the providers to check persons authorized to pick up children, to include parents and guardians, through the NM Department of Public Safety Sex Offender Registry and United States Department of Justice Sex Offender Register. This includes taking out requiring policies and procedures ensuring that a registered sex offender does not have access to the facility/home where children are present. There are other provisions outlined in the regulation that adequately provide safeguards to children in care, if providers are in compliance with such regulations.

Substantive comments were accepted.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Brian Blalock

Check if authority has been delegated

☐

Title:

Secretary

Signature: (BLACK ink only)

Date signed:

R. Blalock

09/12/19

2019 SEP 12 AM 1: 59

This is an amendment to 8.17.2 NMAC Sections 7, 10, and 11 effective October 1, 2019.

8.17.2.7 DEFINITIONS:

- A.** "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:
- (1) physical contact that harms or is likely to harm a child;
 - (2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;
 - (3) punishment that is hazardous to the physical, emotional or mental state of the child; and
 - (4) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.
- B.** "Adult" means a person who has a chronological age of 18 years or older.
- C.** "Child" means any person who is under the chronological age of 18 years.
- D.** "Child care assistance program (CCAP)" means the state of New Mexico's child care services bureau (CCSB) which administers the federal child care and development fund (CCDF).
- E.** "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.
- F.** "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 support; or children without identified conditions, but requiring specialized services, supports, or monitoring.
- G.** "Drop-in" means a child who attends a child care home on an occasional or unscheduled basis.
- H.** "Emergency caregiver" means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, eight hours or less, on behalf of the primary caregiver.
- I.** "Exempt caregiver" means a child care home primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.
- J.** "Expulsion" means the involuntary termination of the enrollment of a child or family.
- K.** "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.
- L.** "Homeless children and youth" means individuals who lack a fixed, regular, and adequate 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.
- M.** "Infant" means a child from birth to one-year-old.
- N.** "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.
- O.** "Non-resident child" means any child who does not reside in the primary caregiver's home.
- P.** "Notice of Provisional Employment" means a written notice issued to a child care center or home applicant indicating the Background Check Unit 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.

[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 10/1/16, A, 10/01/19]

8.17.2.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers 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. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

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.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

F. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

G. All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their date of initial registration. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

- (1) prevention and control of infectious diseases (including immunization);
- (2) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) administration of medication, consistent with standards for parental consent;
- (4) prevention of and response to emergencies due to food or other allergic reactions;
- (5) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (6) prevention of shaken baby syndrome and abusive head trauma;
- (7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
- (8) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (9) precautions in transporting children (if applicable);
- (10) first aid and cardiopulmonary resuscitation (CPR) certification; and
- (11) recognition and reporting of child abuse and neglect.

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

I. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

J. If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

K. Primary and substitute caregivers are required to maintain current first aid and CPR certification at all times. On-line first aid and CPR classes are not valid. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

L. Training shall be within the seven competency areas. The competency areas are:

- (1) child growth, development and learning;
- (2) health, safety, nutrition and infection control;
- (3) family and community collaboration;
- (4) developmentally appropriate content;
- (5) learning environment and curriculum implementation;
- (6) assessment of children and programs; and
- (7) professionalism.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 10/1/16, A, 10/01/19]

8.17.2.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions as promulgated by the children, youth and families department. All non-licensed child care caregivers must adhere to these provisions to maintain their registration status. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

(1) the staff member was found eligible as a direct provider of care in a child care center, licensed child care home, licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

(2) submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

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.

C. Any adult who is present in the registered primary caregiver's home for significant periods while children are in care, or who commences being present in the registered primary caregiver's home for significant

periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.

F. The primary caregiver 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 month.

[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 10/1/16, A, 10/01/19]