

Title 8

Chapter 8

Part 3

Public Notices

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 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by Section 9 - 2A - 7 NMSA 1978:

8.8.3.6 NMAC - OBJECTIVE

8.8.3.7 NMAC - DEFINITIONS

8.8.3.11 NMAC - COMPLIANCE EXCEPTIONS

8.8.3.13 NMAC - ARRESTS, CONVICTIONS AND REFERRALS

8.8.3.16 NMAC - ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS

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 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 8.16.2 NMAC and 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 8.8.3 NMAC.

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 "8.8.3 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 con respecto a PROVISIONES GENERALES DEL DEPARTAMENTO DE NIÑOS, JÓVENES Y FAMILIAS, GOVERNANDO LA COMPROBACIÓN DE ANTECEDENTES Y HUELLAS Y VERIFICACION DE HISTORIAL DE EMPLEO según lo autorizado por la sección 9-2A-7 NMSA 1978:

8.8.3.6 NMAC - OBJETIVO

8.8.3.7 NMAC - DEFINICIONES

8.8.3.11 NMAC - EXCEPCIONES DE CONFORMIDAD

8.8.3.13 NMAC - ARRESTOS, CONVICIONES Y REFERENCIAS SUBSTANCIADAS

8.8.3.16 NMAC - SUSPENSION DE ELIGIBILIDAD, REINSTALACIONES Y REVOCACIONES

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 clarificar que la detección de negligencia y abuso en cada estado donde el solicitante ha vivido durante los últimos cinco años, solo será realizada para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. Adicionalmente, lenguaje será añadido para incorporar un proceso de dos pasos de autorización para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. 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 requerimientos federales. Se harán menores cambios adicionales para clarificar el lenguaje actual en el 8.8.3 NMAC.

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 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: "8.8.3 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

8.8.3.6 OBJECTIVE:

C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff [~~and include a screen of abuse and neglect information in databases in New Mexico and in each state where the applicant resided during the preceding five years~~] in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information in each State where the applicant resided during the preceding five years.

8.8.3.7 DEFINITIONS:

V. "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.

[~~V.~~] W. "Relevant Conviction" means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term "relevant conviction" also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31 - 20 - 13 (1994) NMSA 1978, or Section 30 - 31 - 28 (1972) NMSA 1978, or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term "relevant conviction" does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

[~~W.~~] X. "Unreasonable Risk" means the quantum of risk that a reasonable person would be unwilling to take

with the safety or welfare of care recipients.

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

- (1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;
- (2) ~~[until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;]~~ the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to employment;
- (3) ~~[the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to the commencement of supervised services; and]~~ until receiving background eligibility, the applicant shall at all times be under direct physical supervision. See paragraph (4) of Subsection A of Section 8.8.3.11 NMAC for standards regarding applicants required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC;
- (4) a licensee or applicant required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of paragraph (2) of Subsection A of Section 8.8.3.11 NMAC, a notice of provisional employment decision will be provided to the child care center or home within 10 days; and

~~[(4)]~~ (5) no more than 45 days shall have passed since the date of the initial application unless the BCU documents good cause shown for an extension.

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

- (1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;
- (2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;
- (3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;
- (4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;
- (5) the applicant's child is in CYFD or another state's custody ~~[at the time the application is processed by the BCU]~~ ; or
- (6) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

8.8.3.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

A. An applicant's background check eligibility may be suspended for the following:

- (1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a conviction as charged would result in a determination of unreasonable risk;
- (2) a pending child protective services referral or any other CYFD investigation of abuse or neglect; ~~[or]~~
- (3) an outstanding warrant ~~[-]~~ ; or
- (4) any other reason that creates an unreasonable risk determination pursuant to these regulations.

B. It is the duty of the administrator of a facility or the licensee and the background check eligibility holder, upon learning of any of the above, to notify the licensing authority immediately. Failure to immediately notify the licensing authority may result in the revocation of background check eligibility.

C. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the matter is resolved and eligibility is affirmatively reinstated by the BCU.

D. Background check eligibility may be reinstated or revoked as follows:

- (1) If the applicant can provide information relating to the disqualifying criminal charge that would show that a criminal conviction as charged would not lead to an unreasonable risk;
- (2) If the matter causing the suspension is resolved within six months of the suspension, the

applicant may provide documentation to the BCU showing how the matter was resolved and requesting reinstatement of background check eligibility. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

(3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

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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](tel:505.827.7499) or [1.800.832.1321](tel: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](tel:505.827.7499) or [1.800.832.1321](tel: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

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, ...

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**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
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Amended Proposed regulation
changes to 8.15.2 NMAC -
Requirements for Child ...

[See More](#)



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Rule Hearing Search

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Deadline Date: Agency:

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View Details	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

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Children Youth & Families Department

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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

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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

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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

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 decimotavo 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



July 27, 2017

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
- 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

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

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

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

SANTA FE NEW MEXICAN

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PO BOX 5160
SANTA FE, NM 87502

ACCOUNT: 2034
AD NUMBER: 0000261058
LEGAL NO 86063 P.O. #: 0000065936
1 TIME(S) 367.06
AFFIDAVIT 20.00
TAX 31.81
TOTAL 408.87

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
COUNTY OF SANTA FE

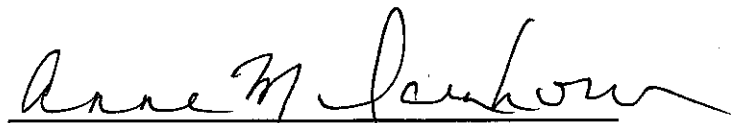
I, C. Valdez, being first duly sworn declare and say that I am Legal Advertising Representative of THE SANTA FE NEW MEXICAN, a daily newspaper published in the English language, and having a general circulation in the Counties of Santa Fe, Rio Arriba, San Miguel, and Los Alamos, State of New Mexico and 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 86063 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.

/s/

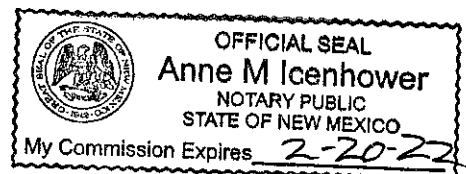

LEGAL ADVERTISEMENT REPRESENTATIVE

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

Notary



Commission Expires: 2-20-22



NOTICE OF RULEMAKING AND PUBLIC HEARING

The New Mexico Division of Health and Family Services hereby gives notice as required under Section 19-2-3, 5-2 NMSA 1978 and 1-24-25.11 NMAC that proposed amendments to the following rules regarding CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by Section 19-2-3, 5-2 NMSA 1978:

- 8836 NMAC - OBJECTIVE
- 8837 NMAC - DEFINITIONS
- 8838 NMAC - COMPLIANCE EXCEPTIONS
- 8839 NMAC - APPEALS, OBJECTIONS AND REFERRALS
- 8840 NMAC - EXEMPTIONS, SUSPENSIONS, PENALTIES AND REVOCATIONS

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 provisions to clarify that arrest and conviction records impact rules which are applied within the law. The rules will only be conducted for individuals who are subject to 2-16.2 NMAC and 2-17.2 NMAC. It is further intended to amend to incorporate the child clearance process for applicants and to amend to 2-16.2 NMAC and 2-17.2 NMAC. A notice of proposed rulemaking of background check rules will be required under the proposed amendment and will include a timeline for issuance of the rules. Rules amendments are consistent with federal requirements. Background changes will be made to clarify existing language within 2-16.2 NMAC.

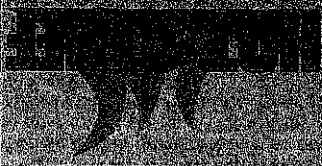
Copies of the proposed rules may be found at OPR's website at <http://www.opr.state.nm.us> or may be obtained from 1100 Plaza de Santa Rosa, Santa Fe, NM 87501, or by mail to the Public Hearing.

Notice of public hearing: The public hearing will be held on Thursday, December 10, 2008, at 10:00 a.m. in the Conference Room of the Division of Health and Family Services, 1100 Plaza de Santa Rosa, Santa Fe, NM 87501.

505-920-5583
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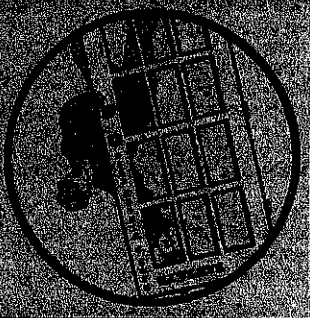
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LAS CRUCES SUN-NEWS

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Ad No.
0001292136

IMAGE
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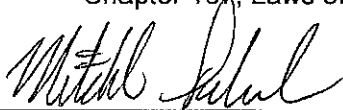
CINDY RITCH
CHILDREN YOUTH & FAMILIES
PO DRAWER 5160

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:

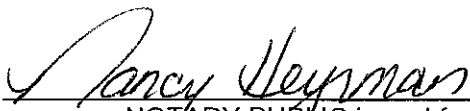
07/30/19

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 ss.
County of Brown

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#: 0001292136
P O : 0000065935
of Affidavits : 0.00

NANCY HEYRMAN
Notary Public
State of Wisconsin

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 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by Section 9 - 2A - 7 NMSA 1978:

- 8.8.3.6 NMAC - OBJECTIVE
- 8.8.3.7 NMAC - DEFINITIONS
- 8.8.3.11 NMAC - COMPLIANCE EXCEPTIONS
- 8.8.3.13 NMAC - ARRESTS, CONVICTIONS AND REFERRALS
- 8.8.3.16 NMAC - ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS

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 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 8.16.2 NMAC and 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 8.8.3 NMAC.

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 "8.8.3 NMAC Comment," or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services, 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 con respecto a PROVISIONES GENERALES DEL DEPARTAMENTO DE NIÑOS, JÓVENES Y FAMILIAS, GOVERNANDO LA COMPROBACIÓN DE ANTECEDENTES Y HUELLAS Y VERIFICACIÓN DE HISTORIAL DE EMPLEO según lo autorizado por la sección 9-2A-7 NMSA 1978:

- 8.8.3.6 NMAC - OBJETIVO
- 8.8.3.7 NMAC - DEFINICIONES
- 8.8.3.11 NMAC - EXCEPCIONES DE CONFORMIDAD
- 8.8.3.13 NMAC - ARRESTOS, CONVICIONES Y REFERENCIAS SUBSTANCIADAS
- 8.8.3.16 NMAC - SUSPENSIÓN DE ELIGIBILIDAD, REINSTALACIONES Y REVOCACIONES

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 clarificar que la detección de negligencia y abuso en cada estado donde el solicitante ha vivido durante los últimos cinco años, solo será realizada para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. Adicionalmente, lenguaje será añadido para incorporar un proceso de dos pasos de autorización para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. 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 requerimientos federales. Se harán menores cambios adicionales para clarificar el lenguaje actual en el 8.8.3 NMAC.

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 a 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 las necesidades razonables, pero no puede garantizar acomodar solicitudes que no sean recibidas por lo menos 10 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: "8.8.3 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.

HOME (/NMAC/)

BROWSE COMPILATION (/NMAC/NMAC-TITLES)

AFFIDAVIT OF PUBLICATION

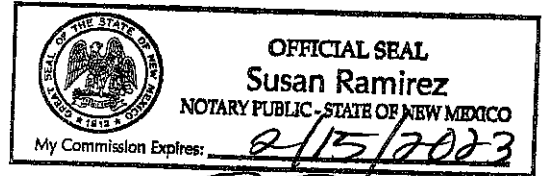
STATE OF NEW MEXICO

County of Bernalillo SS

NOTICE OF RULEMAKING AND PUBLIC HEARING
THE NEW MEXICO CHILDREN'S YOUTH AND FAMILIES DEPARTMENT
MENTHERBYGIVESN
OTICEAS REQUIRED UNDER SECTION 14452

Elise Rodriguez, the undersigned, on oath states that she is an authorized Representative of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, and that payment therefore has been made of assessed as court cost; that the notice, copy of which hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

07/30/2019



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 30 day of July of 2019

PRICE \$571.33

Statement to come at the end of month.

ACCOUNT NUMBER 1031081

AVISO DE PUBLICACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PUBLICA
El Departamento de Niños, Jóvenes y Familias del Estado de Nuevo México, por esta vez de acuerdo con lo establecido en el artículo 14452 del NMAC, publica el presente aviso de audiencia pública para que los interesados en las propuestas de modificación de las leyes administrativas que se encuentran en trámite en el presente departamento, puedan presentar sus comentarios y sugerencias antes de que se emita el decreto final de la ley.
Las leyes administrativas que se encuentran en trámite son:
20.6.4 NMAC - OBJETIVO
20.6.5 NMAC - DEFINICIONES
20.6.6 NMAC - PROCEDIMIENTO DE MODIFICACION
20.6.7 NMAC - PROCEDIMIENTO DE MODIFICACION
20.6.8 NMAC - PROCEDIMIENTO DE MODIFICACION
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Hearing (/nmac/nmregister

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er Proposed Amendments to 20.6.4 NMAC - Standard for
Isidro Arroyo and Tributaries (/nmac/nmregister

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

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.

**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 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS
PART 3 GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY
VERIFICATION

8.8.3.1 ISSUING AGENCY: Children, Youth and Families Department
[8.8.3.1 NMAC - Rp, 8.8.3.1 NMAC, 10/1/16]

8.8.3.2 SCOPE: This rule has general applicability to operators, volunteers, including student interns, staff and employees, and prospective operators, staff and employees, of child-care facilities, including every facility, CYFD contractor, program receiving CYFD funding or reimbursement, the administrative office of the courts (AOC) supervised visitation and safe exchange program, or other program that has or could have primary custody of children for twenty hours or more per week, juvenile treatment facilities, and direct providers of care for children in including, but not limited to the following settings: Children's behavioral health services and licensed and registered child care, including shelter care.
[8.8.3.2 NMAC - Rp, 8.8.3.2 NMAC, 10/1/16]

8.8.3.3 STATUTORY AUTHORITY: The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Section 28-2-1 to 28-2-6 NMSA and in the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to 32A-15-4 NMSA 1978 Amended.
[8.8.3.3 NMAC - Rp, 8.8.3.3 NMAC, 10/1/16]

8.8.3.4 DURATION: Permanent
[8.8.3.4 NMAC - Rp, 8.8.3.4 NMAC, 10/1/16]

8.8.3.5 EFFECTIVE DATE: October 1, 2016, unless a later date is cited at the end of a section.
[8.8.3.5 NMAC - Rp, 8.8.3.5 NMAC, 10/1/16]

8.8.3.6 OBJECTIVE:

- A.** The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required in settings to which these regulations apply.
- B.** Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.
- C.** Abuse and neglect screens of databases in New Mexico are conducted by BCU staff ~~[and include a screen of abuse and neglect information in databases in New Mexico and in each state where the applicant resided during the preceding five years]~~ in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information in each State where the applicant resided during the preceding five years.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 10/1/16]

8.8.3.7 DEFINITIONS:

- A.** AOC means administrative office of the courts.
- B.** ADMINISTRATIVE REVIEW means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.
- C.** ADMINISTRATOR means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.
- D.** ADULT means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection K below.
- E.** APPEAL means a review of a determination made by the BCU, which may include an administrative review or a hearing.
- F.** APPLICANT means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3.
- G.** ARREST means notice from a law enforcement agency about an alleged violation of law.
- H.** BCU means the CYFD background check unit.

I. BACKGROUND CHECK means a screen of CYFD's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

J. CARE RECIPIENT means any person under the care of a licensee.

K. CHILD means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.

L. CONDITIONAL EMPLOYMENT means a period of employment status for a new applicant prior to the BCU's final disposition of the applicant's background check.

M. CRIMINAL HISTORY means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

N. DIRECT, PHYSICAL SUPERVISION means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients.

O. DIRECT PROVIDER OF CARE means any individual who, as a result of employment or, contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

P. ELIGIBILITY means the determination that an applicant does not pose an unreasonable risk to care recipients after a background check is conducted.

Q. EMPLOYMENT HISTORY means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.

R. LICENSED means authorized to operate by the licensing authority by issuance of an operator's license or certification certificate.

S. LICENSEE means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC or other program or entity within the scope of these regulations, including AOC supervised visitation and safe exchange program providers. CYFD LICENSEE means program or entity within the scope of these regulations except the AOC supervised visitation and safe exchange program providers.

T. LICENSING AUTHORITY means the CYFD division having authority over the licensee.

U. MORAL TURPITUDE means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

V. 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.

[V-JW]. RELEVANT CONVICTION means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term RELEVANT CONVICTION also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31-20-13 (1994) NMSA 1978, or Section 30-31-28 (1972) NMSA 1978, or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term RELEVANT CONVICTION does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

[W-X]. UNREASONABLE RISK means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

[8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 10/1/16]

8.8.3.8 APPLICABILITY: These regulations apply to all licensees and direct providers of care in the following settings:

- A. behavior management skills development;
- B. case management services;
- C. group home services;
- D. day treatment services;
- E. residential treatment services;
- F. treatment foster care services agency staff;
- G. licensed child care homes;
- H. licensed child care centers;
- I. registered child care homes;
- J. licensed shelter care;
- K. licensed before and after school care;
- L. non-licensed or exempt after school programs participating in the at risk component of the child and adult care food program;
- M. comprehensive community support services;
- N. CYFD contractors and any other programs receiving CYFD funding or reimbursement; and
- O. AOC supervised visitation and safe exchange program providers.

[8.8.3.8 NMAC - Rp, 8.8.3.8 NMAC, 10/1/16]

8.8.3.9 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except when otherwise required by applicable certification requirements for child and adolescent mental health Services 7.20.11 NMAC or to the extent that such a program receives funding or reimbursement from CYFD:

- (1) hospitals or infirmaries;
- (2) intermediate care facilities;
- (3) children's psychiatric centers;
- (4) home health agencies;
- (5) diagnostic and treatment centers; and
- (6) unlicensed or unregistered child care homes.

B. These regulations do not apply to the following adults:

- (1) treatment foster care parents;
- (2) relative care providers who are not otherwise required to be licensed or registered;
- (3) foster grandparent volunteers; and
- (4) all other volunteers for any program or entity within the scope of these regulations if the

volunteer spends less than six hours per week at the program, is under direct physical supervision, and is not counted in the facility ratio.

[8.8.3.9 NMAC - Rp, 8.8.3.9 NMAC, 10/1/16]

8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification or renewal, or continuation of same or participation in any other program or contract within the scope of these regulations.

B. The licensee is required to:

(1) submit an electronic fingerprint submission receipt and the required forms for all direct providers of care, household members in licensed and registered child care homes, or any staff member, employee, or volunteer present while care recipients are present, or other adult as required by the applicable regulations prior to the commencement of service, whether employment or, contractual, or volunteer. In the case of a licensed child care home and a registered home, the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members or for any adult who is required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC as applicable. 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.

(2) verify the employment history of any prospective direct provider of care by contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION:

verification of employment history is not required for registered home providers or child care homes licensed for six or fewer children.

(3) submit an adult household member written statement form for each adult household member in a registered family child care food-only home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home; the licensee must submit the required forms for new adult household members pursuant to 8.17.2 NMAC.

(4) provide such other information BCU staff determines to be necessary; and

(5) maintain documentation of all applications, correspondence and eligibility relating to the background checks required; in the event that the licensee does not have a copy of an applicant's eligibility documentation and upon receipt of a written request for a copy, the BCU may issue duplicate eligibility documentation to the original licensee provided that the request for duplicate eligibility documentation is made within one year of the applicant's eligibility date.

C. If there is a need for any further information from an applicant at any stage of the process, the BCU shall request the information in writing from the applicant. If the BCU does not receive the requested information within fifteen calendar days of the date of the request, the BCU shall deny the application and send a notice of background check denial.

D. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility.

[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 10/01/016]

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

(1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;

(2) ~~[until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;]~~ the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to employment;

(3) ~~[the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to the commencement of supervised services; and]~~ until receiving background eligibility, the applicant shall at all times be under direct physical supervision. See 8.8.3.11A(4) NMAC for standards regarding applicants required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC;

(4) a licensee or applicant required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of 8.8.3.11A(2), a notice of provisional employment decision will be provided to the child care center or home within 10 days; and

~~[(4)]~~ (5) no more than 45 days shall have passed since the date of the initial application unless the BCU documents good cause shown for an extension.

B. With the exception of the provision under 8.16.2.19 NMAC and 8.17.2.11 NMAC, if a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the BCU, the direct provider of care must re-comply with 8.8.3.10 NMAC. A direct provider of care may transfer employment, as permitted by 8.16.2.19 NMAC and 8.17.2.11 NMAC, or for a period of 180 days after the date of an eligibility letter from the BCU without complying with 8.8.3.10 NMAC only if the direct provider of care submits a preliminary application that meets the following conditions:

(1) the direct provider of care submits a statement swearing under penalty of perjury that he or she has not been arrested or charged with any crimes, has not been an alleged perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct provider of care submits an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the BCU to determine if further background checks or a new application is necessary; and

(3) the BCU determines within 15 days that the direct provider of care's prior background check is sufficient for the employment or position the direct provider of care is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 10/1/16]

8.8.3.12 PROHIBITIONS:

A. Any CYFD licensee who violates these regulations is subject to revocation, suspension, sanctions, denial of licensure, certification, or registration or termination of participation in any other program within the scope of these regulations. AOC supervised visitation and safe exchange program providers will be monitored and sanctioned by the AOC.

B. Licensure, certification, registration or participation in any other program within the scope of these regulations is subject to receipt by the licensing authority of a satisfactory background check for the licensee or the licensee's administrator.

C. Except as provided in 8.8.3.13 NMAC below, licensure, certification, registration or participation in any other program within the scope of these regulations may not be granted by the licensing authority if a background check of the licensee or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service or contract with any direct provider of care for whom a background check reveals an unreasonable risk. The BCU shall deliver one copy of the notice of unreasonable risk to the facility or program by U.S. mail and to the licensing authority or the AOC by facsimile transmission, e-mail or hand delivery.

E. A licensee shall be in violation of these regulations if it retains a direct provider of care for more than ten working days following the mailing of a notice of background check denial for failure to respond by the BCU.

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.8.3.11 NMAC.

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk to care recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate sanctions up to and including immediate emergency revocation of license or registration pursuant to the regulations applicable to that entity or termination of participation in any other program within the scope of these regulations.

[8.8.3.12 NMAC - Rp, 8.8.3.12 NMAC, 10/1/16]

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

(1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;

(4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;

(5) the applicant's child is in CYFD or another state's custody [~~at the time the application is processed by the BCU~~]; or

(6) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

B. A disqualifying conviction may be proven by:

(1) a copy of the judgment of conviction from the court;

(2) a copy of a plea agreement filed in court in which a defendant admits guilt;

(3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;

(4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;

(5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed or is pending completion of a conditional discharge for the disqualifying conviction.

C. If a background check shows pending charges for a felony offense, any misdemeanor offense involving domestic violence, child abuse, any other misdemeanor offense of moral turpitude, or an arrest but no disposition for any such crime, there shall be a determination of unreasonable risk if a conviction as charged would result in a determination of unreasonable risk.

D. If a background check shows a pending child protective services referral or any other CYFD investigation of abuse or neglect, there shall be a determination of unreasonable risk.

E. If a background check shows that an applicant has an outstanding warrant, there shall be a determination of unreasonable risk.

[8.8.3.13 NMAC - Rp, 8.8.3.13 NMAC, 10/1/16]

8.8.3.14 UNREASONABLE RISK:

A. The BCU may, in its discretion, use all reasonably reliable information about an applicant and weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to care recipients. The BCU may also consult with legal staff, treatment, assessment or other professionals in the process of determining whether the cumulative weight of credible evidence establishes unreasonable risk.

B. In determining whether an applicant poses an unreasonable risk, the BCU need not limit its reliance on formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

- (1) reliable disclosures by the applicant or a victim of abuse or neglect;
- (2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;
- (3) circumstances indicating the applicant is or has been a victim of domestic violence;
- (4) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or

- (5) any other evidence with similar indicia of reliability.

[8.8.3.14 NMAC - Rp, 8.8.3.14 NMAC 10/1/16]

8.8.3.15 REHABILITATION PETITION: Any applicant whom the BCU concludes is an unreasonable risk on any basis other than those described at Paragraphs (1), (3), (4), (5), or (6) of Subsection A of 8.8.3.13 NMAC, may submit to the BCU a rehabilitation petition describing with specificity all information that tends to demonstrate that the applicant is not an unreasonable risk. The petition may include, but need not be limited to, a description of what actions the applicant has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur.

[8.8.3.15 NMAC - Rp, 8.8.3.15 NMAC 10/1/16]

8.8.3.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

A. An applicant's background check eligibility may be suspended for the following:

- (1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a conviction as charged would result in a determination of unreasonable risk;
- (2) a pending child protective services referral or any other CYFD investigation of abuse or neglect; [or]
- (3) an outstanding warrant[-]; or
- (4) any other reason that creates an unreasonable risk determination pursuant to these regulations.

B. It is the duty of the administrator of a facility or the licensee and the background check eligibility holder, upon learning of any of the above, to notify the licensing authority immediately. Failure to immediately notify the licensing authority may result in the revocation of background check eligibility.

C. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the matter is resolved and eligibility is affirmatively reinstated by the BCU.

D. Background check eligibility may be reinstated or revoked as follows:

(1) If the applicant can provide information relating to the disqualifying criminal charge that would show that a criminal conviction as charged would not lead to an unreasonable risk;

(2) If the matter causing the suspension is resolved within six months of the suspension, the applicant may provide documentation to the BCU showing how the matter was resolved and requesting reinstatement of background check eligibility. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If, the applicant's eligibility is revoked, the applicant may appeal the revocation.

(3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

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

8.8.3.17 APPEAL RIGHTS:

A. Denials: Any applicant who is found ineligible after completion of background check may request an administrative review from CYFD. The request for an administrative review shall be in writing and the applicant shall cause the BCU to receive it within 15 days of the date of the BCU's written notice of a determination of unreasonable risk. If the request is mailed, three days are added after the period would otherwise expire. The administrative review shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to:

(1) whether the BCU's conclusion of unreasonable risk is supported by any section of these regulations; and

(2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer and includes the applicant's written request for an administrative review and other relevant evidence provided by the applicant. The hearing officer conducts the administrative review and submits a recommendation to the cabinet secretary no later than 60 days after the date the request for administrative review is received unless CYFD and the applicant agree otherwise.

B. Suspensions and revocations: A previously cleared applicant whose eligibility has been suspended or revoked may appeal that decision to CYFD and shall be entitled to a hearing pursuant to CYFD's administrative hearing regulations at 8.8.4 NMAC. The request for appeal shall be in writing and the applicant shall cause the BCU to receive it within 15 days of the date of the BCU's written notice of suspension. If the request is mailed, three days are added after the period would otherwise expire.

[8.8.3.17 NMAC - Rp 8.8.3.16, 10/1/16]

HISTORY OF 8.8.3 NMAC:

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

HED 85-6 (HSD), Regulations Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, 8/30/85.

History of Repealed Material:

HED 85-6 (HSD), Regulations Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, filed - Repealed 7/30/2001.

8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification, filed 7/30/2001 - Repealed effective 3/29/2002.

8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification, filed 3/15/2002 - Repealed effective 10/30/03.

8.8.3 NMAC, Governing Background Checks and Employment History Verification, filed 10/16/2003 - Repealed effective 3/31/2006.

8.8.3 NMAC, Governing Background Checks and Employment History Verification, filed 3/31/2006 - Repealed effective 10/1/2016.

Comments Received Prior to the Hearing

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

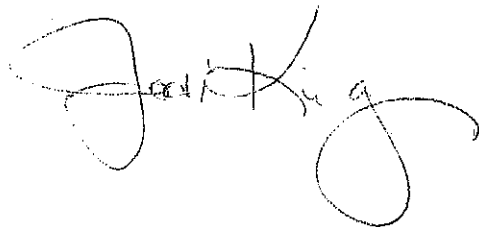
Jodi King

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 a large loop at the end of the last name.



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/resource/doc/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.r.talis.com/items/363A211B-16A1-432D-6269-0680C952E945.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-eecd/>

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.dataofnumbers.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**

**Written
Comments
Introduced
During the
Hearing
(Exhibit 1)**

August 29, 2019

NM CYFD Hearing for 8.8.3, 8.16.2 and 8.17.2 NMAC

Exhibit 1

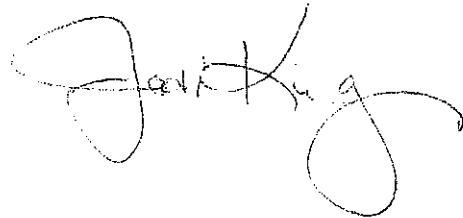
Jodi King

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

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:

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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/resources/doc/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-6269-0688C952E945.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/mlidredwarner.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.dataofnumbers.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

August 29, 2019

NM CYFD Hearing for 8.8.3, 8.16.2 and 8.17.2 NMAC

Exhibit 2

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.

[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]

CHILD CARE SERVICES BUREAU

[illegible]

Sarah Dinus - [REDACTED]

Seperate Pg. for to speak:

Name + Organization

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**

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
Groundwater and Intra-state 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](#))
[/nmregister/xxx/WQCCnotice_spanish_xxx14.pdf](#)) pdf version ([/nmac](#)

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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/>)

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 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by Section 9 - 2A - 7 NMSA 1978:

8.8.3.6 NMAC - OBJECTIVE

8.8.3.7 NMAC - DEFINITIONS

8.8.3.11 NMAC - COMPLIANCE EXCEPTIONS

8.8.3.13 NMAC - ARRESTS, CONVICTIONS AND REFERRALS

8.8.3.16 NMAC - ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS

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 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 8.16.2 NMAC and 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 8.8.3 NMAC.

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 "8.8.3 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 con respecto a PROVISIONES GENERALES DEL DEPARTAMENTO DE NIÑOS, JÓVENES Y FAMILIAS, GOVERNANDO LA COMPROBACIÓN DE ANTECEDENTES Y HUELLAS Y VERIFICACION DE HISTORIAL DE EMPLEO según lo autorizado por la sección 9-2A-7 NMSA 1978:

8.8.3.6 NMAC – OBJETIVO

8.8.3.7 NMAC – DEFINICIONES

8.8.3.11 NMAC – EXCEPCIONES DE CONFORMIDAD

8.8.3.13 NMAC – ARRESTOS, CONVICCIONES Y REFERENCIAS SUBSTANCIADAS

8.8.3.16 NMAC – SUSPENSION DE ELIGIBILIDAD, REINSTALACIONES Y REVOCACIONES

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 clarificar que la detección de negligencia y abuso en cada estado donde el solicitante ha vivido durante los últimos cinco años, solo será realizada para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. Adicionalmente, lenguaje será añadido para incorporar un proceso de dos pasos de autorización para solicitantes que aplican conforme a 8.16.2 NMAC y 8.17.2 NMAC. 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 requerimientos federales. Se harán menores cambios adicionales para clarificar el lenguaje actual en el 8.8.3 NMAC.

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: "8.8.3 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 periodo de comentarios termina a la conclusión de la audiencia pública del 29 de agosto de 2019.

Proposed Rules/Reglas Propuestas

8.8.3.6 OBJECTIVE:

C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff ~~[and include a screen of abuse and neglect information in databases in New Mexico and in each state where the applicant resided during the preceding five years]~~ in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information in each State where the applicant resided during the preceding five years.

8.8.3.7 DEFINITIONS:

V. "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.

~~[W.]~~ W. "Relevant Conviction" means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term "relevant conviction" also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31 - 20 - 13 (1994) NMSA 1978, or Section 30 - 31 - 28 (1972) NMSA 1978, or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term "relevant conviction" does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

~~[W.]~~ X. "Unreasonable Risk" means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

- (1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;
- (2) ~~[until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;]~~ the licensee or applicant shall send the BCU a completed

application form and an electronic fingerprint submission receipt prior to employment;

(3) ~~[the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to the commencement of supervised services; and]~~ until receiving background eligibility, the applicant shall at all times be under direct physical supervision. See paragraph (4) of Subsection A of Section 8.8.3.11 NMAC for standards regarding applicants required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC;

(4) a licensee or applicant required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of paragraph (2) of Subsection A of Section 8.8.3.11 NMAC, a notice of provisional employment decision will be provided to the child care center or home within 10 days; and

~~[(4)]~~ (5). no more than 45 days shall have passed since the date of the initial application unless the BCU documents good cause shown for an extension.

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

- (1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;
- (2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;
- (3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;
- (4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;
- (5) the applicant's child is in CYFD or another state's custody ~~[at the time the application is processed by the BCU]~~ ; or
- (6) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

8.8.3.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

A. An applicant's background check eligibility may be suspended for the following:

- (1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a conviction as charged would result in a determination of unreasonable risk;
- (2) a pending child protective services referral or any other CYFD investigation of abuse or neglect; ~~[or]~~
- (3) an outstanding warrant ~~[-]~~ ; or
- (4) any other reason that creates an unreasonable risk determination pursuant to these regulations.

B. It is the duty of the administrator of a facility or the licensee and the background check eligibility holder, upon learning of any of the above, to notify the licensing authority immediately. Failure to immediately notify the licensing authority may result in the revocation of background check eligibility.

C. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the matter is resolved and eligibility is affirmatively reinstated by the BCU.

D. Background check eligibility may be reinstated or revoked as follows:

- (1) If the applicant can provide information relating to the disqualifying criminal charge that would show that a criminal conviction as charged would not lead to an unreasonable risk;
- (2) If the matter causing the suspension is resolved within six months of the suspension, the applicant may provide documentation to the BCU showing how the matter was resolved and requesting reinstatement of background check eligibility. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.
- (3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

**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
Your Access to Public Information

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NEW MEXICO STATE
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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.

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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

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General Services Department

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Interim Director, NM State Law Library

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Commission of Public Records**NMAC****Transmittal Form**

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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Children, Youth and Families Department

Agency DFA code:

690

Contact person's name:

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Type of rule action:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

(ALD Use Only)

Most recent filing date:

Title number:

8

Title name:

SOCIAL SERVICES

Chapter number:

8

Chapter name:

CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS

Part number:

3

Part name:

GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION

Amendment description (If filing an amendment):

Amending five sections

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

Sections 6, 7, 11, 13, and 16 of
8.8.3 NMAC

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:**

Section 9-2A-7 NMSA 1978:

Notice date(s):

July 30, 2019

Hearing date(s):

August 29, 2019

Rule adoption date:

September 12, 2019

Rule effective date:

October 1, 2019

2019 SEP 12 AM 1:55

Concise Explanatory Statement For Rulemaking Adoption:

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 8.16.2 NMAC and 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 8.8.3 NMAC.

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

Based on public comment, the Children, Youth and Families Department made a change to 8.8.3 NMAC from the original proposed rule. The Background Check Unit (BCU) will have 5 days instead of 10 to provide a decision on a notice of provisional employment on an applicant unless BCU determines there is good cause shown for an extension. The provisional employment is to comply with federal requirements to ensure the health and safety of children.

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:

09/12/19

2019 SEP 12 AM 1: 55

This is an amendment to 8.8.3 NMAC Sections 6, 7, 11, 13, and 16 effective October 1, 2019.

8.8.3.6 OBJECTIVE:

- A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required in settings to which these regulations apply.
- B. Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.
- C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff ~~[and include a screen of abuse and neglect information in databases in New Mexico and in each state where the applicant resided during the preceding five years]~~ in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information in each State where the applicant resided during the preceding five years.
[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 10/1/16, A, 10/01/19]

8.8.3.7 DEFINITIONS:

- A. AOC means administrative office of the courts.
- B. "Administrative review" means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.
- C. "Administrator" means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.
- D. "Adult" means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection K below.
- E. "Appeal" means a review of a determination made by the BCU, which may include an administrative review or a hearing.
- F. "Applicant" means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3.
- G. "Arrest" means notice from a law enforcement agency about an alleged violation of law.
- H. BCU means the CYFD background check unit.
- I. "Background check" means a screen of CYFD's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.
- J. "Care recipient" means any person under the care of a licensee.
- K. "Child" means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.
- L. "Conditional employment" means a period of employment status for a new applicant prior to the BCU's final disposition of the applicant's background check.
- M. "Criminal history" means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.
- N. "Direct, physical supervision" means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients.
- O. "Direct provider of care" means any individual who, as a result of employment or, contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.
- P. "Eligibility" means the determination that an applicant does not pose an unreasonable risk to care recipients after a background check is conducted.
- Q. "Employment history" means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.
- R. "Licensed" means authorized to operate by the licensing authority by issuance of an operator's license or certification certificate.
- S. "Licensee" means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC or other program or entity within the scope of these regulations, including AOC supervised visitation and safe exchange program providers. CYFD

LICENSEE means program or entity within the scope of these regulations except the AOC supervised visitation and safe exchange program providers.

T. "Licensing authority" means the CYFD division having authority over the licensee.

U. "Moral turpitude" means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

V. "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.

[V.] W. "Relevant conviction" means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term relevant conviction also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31-20-13 (1994) NMSA 1978, or Section 30-31-28 (1972) NMSA 1978, or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term relevant conviction does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

[W.] X. "Unreasonable risk" means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

[8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 10/1/16, A, 10/01/19]

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

(1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;

(2) ~~[until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;]~~ the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to employment;

(3) ~~[the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to the commencement of supervised services; and]~~ until receiving background eligibility, the applicant shall at all times be under direct physical supervision. See 8.8.3.11A(4) NMAC for standards regarding applicants required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC;

(4) a licensee or applicant required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of 8.8.3.11A(2), a notice of provisional employment decision will be provided to the child care center or home within five days unless the BCU determines there is good cause shown for an extension; and

~~[(4)]~~ (5) no more than 45 days shall have passed since the date of the initial application unless the BCU documents good cause shown for an extension.

B. With the exception of the provision under 8.16.2.19 NMAC and 8.17.2.11 NMAC, if a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the BCU, the direct provider of care must re-comply with 8.8.3.10 NMAC. A direct provider

of care may transfer employment, as permitted by 8.16.2.19 NMAC and 8.17.2.11 NMAC, or for a period of 180 days after the date of an eligibility letter from the BCU without complying with 8.8.3.10 NMAC only if the direct provider of care submits a preliminary application that meets the following conditions:

(1) the direct provider of care submits a statement swearing under penalty of perjury that he or she has not been arrested or charged with any crimes, has not been an alleged perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct provider of care submits an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the BCU to determine if further background checks or a new application is necessary; and

(3) the BCU determines within 15 days that the direct provider of care's prior background check is sufficient for the employment or position the direct provider of care is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 10/1/16, A, 10/01/19]

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

(1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;

(4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;

(5) the applicant's child is in CYFD or another state's custody [~~at the time the application is processed by the BCU~~]; or

(6) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

B. A disqualifying conviction may be proven by:

(1) a copy of the judgment of conviction from the court;

(2) a copy of a plea agreement filed in court in which a defendant admits guilt;

(3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;

(4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;

(5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed or is pending completion of a conditional discharge for the disqualifying conviction.

C. If a background check shows pending charges for a felony offense, any misdemeanor offense involving domestic violence, child abuse, any other misdemeanor offense of moral turpitude, or an arrest but no disposition for any such crime, there shall be a determination of unreasonable risk if a conviction as charged would result in a determination of unreasonable risk.

D. If a background check shows a pending child protective services referral or any other CYFD investigation of abuse or neglect, there shall be a determination of unreasonable risk.

E. If a background check shows that an applicant has an outstanding warrant, there shall be a determination of unreasonable risk.

[8.8.3.13 NMAC - Rp, 8.8.3.13 NMAC, 10/1/16, A, 10/01/19]

8.8.3.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

A. An applicant's background check eligibility may be suspended for the following:

(1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a conviction as charged would result in a determination of unreasonable risk;

(2) a pending child protective services referral or any other CYFD investigation of abuse or neglect; ~~[or]~~

(3) an outstanding warrant; or

(4) any other reason that creates an unreasonable risk determination pursuant to these regulations.

B. It is the duty of the administrator of a facility or the licensee and the background check eligibility holder, upon learning of any of the above, to notify the licensing authority immediately. Failure to immediately notify the licensing authority may result in the revocation of background check eligibility.

C. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the matter is resolved and eligibility is affirmatively reinstated by the BCU.

D. Background check eligibility may be reinstated or revoked as follows:

(1) If the applicant can provide information relating to the disqualifying criminal charge that would show that a criminal conviction as charged would not lead to an unreasonable risk;

(2) If the matter causing the suspension is resolved within six months of the suspension, the applicant may provide documentation to the BCU showing how the matter was resolved and requesting reinstatement of background check eligibility. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If, the applicant's eligibility is revoked, the applicant may appeal the revocation.

(3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

[8.8.3.16 NMAC - N, 10/1/16, A, 10/01/19]