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

Issuing agency name and address:

Agency DFA code:

Contact person's name:

Phone number:

E-mail address:

(ALD Use Only)

Type of rule action:

New ☐ Amendment ☒ Repeal ☐ Emergency ☒ Renumber ☐

Most recent filing date:

Title number:

Title name:

Chapter number:

Chapter name:

Part number:

Part name:

Amendment description (If filing an amendment):

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

Are there any materials incorporated by reference?

Yes ☐ No ☒

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received?

Yes ☐No ☐Public domain ☐**Specific statutory or other authority authorizing rulemaking:**

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

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## 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.

These amendments are emergency rule amendments under NMSA 1978, §14-4-5.6 These are temporary rule amendments. Pursuant to NMSA 1978, §14-4-5.6 (E), these emergency amendments are not permanent and will expire if no permanent rule is adopted within one hundred eighty days from the effective date of these emergency amendments.

These amendments are necessary for the reasons outlined below. On March 11, 2020, New Mexico Governor Michelle Lujan Grisham issued an executive order (E.O. 2020-004), declaring a state of public health emergency for the State of New Mexico in response to confirmed cases of COVID-19. On March 12, 2020, the Cabinet Secretary for the New Mexico Department of Health issued a Public Health Declaration to limit mass gatherings due to COVID-19. The public health emergency continues with no immediate end in sight.

Due to the COVID-19 outbreak and the resulting executive orders and declarations, there is an emergency need for these amendments. The time required to complete full rulemaking procedures would cause an imminent peril to public health, safety and welfare of children and families in New Mexico due to the need for continuity of child care services for impacted children and families. Moreover, it would cause an unanticipated loss of funding for an agency program, specifically funding for continuity of child care services. The topics addressed by the emergency amendments must be addressed in order to meet federal funding requirements.

For these reasons, these emergency rule amendments are filed, effective immediately, to amend 8.15.2 NMAC, Sections 7, 9, 10, 11, 12, 13, 16 and 19.

#### Summary:

- 8.15.2.7 NMAC adds and amends definitions (1) "demonstration of incapacity" in order for ECECD to better address the needs of children whose parents or household members have disabilities or other conditions that make them incapable of providing care; (2) adds the definition of "fluctuation of earnings" to address the drastic and unpredictable changes many New Mexicans are facing in their finances and incomes; (3) adds "online programs" to the definition of the list of permissible "job training and education programs."; (4) updates the definition of "monthly gross earned and unearned income" to clarify what it encompasses and how ECECD addresses it in applications for services; and (5) updates the definition of "working" to include teleworking.
- 8.15.2.9 NMAC clarifies the "priorities for assistance" for families transitioning off TANF to permit ECECD to better provide services to New Mexican families.
- 8.15.2.10 NMAC clarifies the application process for child care services.
- 8.15.2.11 NMAC addresses the "eligibility requirements" and (1) adds parents looking for employment for up to three months to the list of those eligible for services; (2) clarifies that household income is determined on a monthly basis; (3) clarifies what ECECD may consider as exempt income; (4) clarifies the manner in which ECECD reviews immigration status; (5) ensure that all post-graduate coursework qualifies to meet a client's education requirement; and (6) permits ECECD to consider the impact of incapacity on any work/education requirement.
- 8.15.2.12 NMAC addresses ECECD's "recertification" process to clarify the procedure and hopefully permit ECECD to provide better continuity of child care services during the pandemic.
- 8.15.2.13 NMAC updates the website that New Mexicans can use to access the current co-payment schedule. It also clarifies how clients notify ECECD about household changes.
- 8.15.2.16 NMAC removes the requirement for a "mid-certification communication" between ECECD and the clients.
- 8.15.2.19 NMAC clarifies that ECECD will only seek recoupment for overpayments from providers, not clients, unless the client has committed substantiated fraud.

Rule effective date: September 18, 2020

Statutory authority authorizing rule-making: NMSA 1978, § 9-29-6(E)

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

Name:

Elizabeth Groginsky

Check if authority has been delegated

☐

Title:

Secretary

Signature: (BLACK ink only)

Date signed:

*Elizabeth Groginsky*

9/18/20



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This is an emergency amendment to 8.15.2 NMAC Sections 7, 9, 10, 11, 12, 13, 16, and 19, effective September 18, 2020.

**8.15.2.7 DEFINITIONS:**

- A. "Attending a job training or educational program"** means actively participating in a job training or educational program.
- B. "At-risk child care"** means a program for families at-risk of child protective services involvement as determined by the department.
- C. "CACFP"** means the child and adult care food program, administered by the children, youth and families department.
- D. "Child with a disability or special needs"** means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.
- E. "Child support enforcement division"** means the child support enforcement program administered by New Mexico's human services department, which collects child support from non-custodial parents.
- F. "Closure"** means the child care case is closed.
- G. "Co-payment"** means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department's payment to the provider is reduced by the co-payment amount.
- H. "Demonstration of incapacity"** means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician's/medical professional's/treatment provider's letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.
- ~~[H.]~~ **I. "Department"** means the New Mexico children, youth and families department (CYFD).
- ~~[I.]~~ **J. "Earned income"** means income received as wages from employment or as profit from self-employment.
- K. "Fluctuation of earnings"** means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:
- (1) average family earnings over a period of time (e.g., 12 months); or
  - (2) choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.
- ~~[J.]~~ **L. "Homeless children and youth"** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:
- (1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
  - (2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
  - (3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
  - (4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.
- ~~[K.]~~ **M. "Incidental money"** means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.
- ~~[L.]~~ **N. "Infant, toddler, preschool, school age"** means the age categories used for assigning child care provider reimbursement rates, defined as follows:
- (1) infant: zero - 23 months;
  - (2) toddler: 24 -35 months;
  - (3) preschool: three to five year olds; and
  - (4) school age: six year olds and older.
- ~~[M.]~~ **O. "Job training and educational program"** means participation in a short or long term educational

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

**P.** **“Monthly gross earned and unearned income”** means the monthly average, taking into account the frequency of payment per type of income.

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

- (1) The following are the only national accrediting bodies that are approved by CYFD:
- (a) the association of Christian schools international (ACSI);
  - (b) the council on accreditation (COA) for early childhood education and after school programs;
  - (c) the international Christian accrediting association (ICAA);
  - (d) the national accreditation commission for early care and education programs (NAC);
  - (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
  - (f) the national association of family child care (NAFCC); or
  - (g) the national early childhood program accreditation (NECPA).

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

**[O.] R.** **“Non-temporary change in activity”** means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Section CC below.

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

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

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

**[S.] V.** **“Child Protective services (CPS) child care”** means child care services for children placed in the custody of the child protective services of the department.

**[T.] W.** **“Provider types”** means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

- (1) **“In-home”** care means care provided in the child’s own home.
- (2) **“Registered home”** means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.
- (3) **“Licensed family child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to six children.
- (4) **“Licensed group child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.
- (5) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.
- (6) **“Out-of-school time care”** means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

**[U.] X.** **“Recertification”** means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

**[V.] Y.** **“Registration/educational fee”** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

**[W.] Z.** **“SNAP”** means the supplemental nutrition assistance program administered by the U.S.



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department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

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

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

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

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

[BB.] **EE. "Termination"** means the child care case will be closed due to cause.

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

- (1) limited absence from work for employed parents for periods of family leave (including parental leave) or sick leave;
- (2) interruption in work for a seasonal worker who is not working between regular industry work seasons;
- (3) student holiday or break for a parent participating in training or education;
- (4) reduction in work, training or education hours, as long as the parent is still working or attending training or education; and
- (5) cessation of work or attendance at a training or education program less than 90 days.

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

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

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

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019; A/E, 9/18/2020]

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

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

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

- (a) the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
- (b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or
- (c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

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

**B.** Priority one A: [RESERVED]

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C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

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

E. Priority three: [RESERVED]

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

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

H. At-risk child care: In addition to these priorities, the department pays for at-risk protective services child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income requirements and copayments are waived for clients in this priority.  
[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A; 10/1/2019; A/E, 9/18/2020]

#### 8.15.2.10 APPLICATION PROCESS:

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

- (1) a completed signed application form;
- (2) current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support;
- (3) school schedule or verification of educational activity, if applicable;
- (4) demonstration of incapacity for second parent or legal guardian, if applicable;
- ~~[(4)]~~ (5) verification of birth for all applicant's household children;
- ~~[(5)]~~ (6) proof of unearned income;
- ~~[(6)]~~ (7) proof of New Mexico home address; and
- ~~[(7)]~~ (8) CYFD approved provider.

B. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation.

~~[B.]~~ C. 'Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
- (2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
- (3) the eligible provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020]



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

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

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

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

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

(3) Eligibility may be granted for up to three months for seeking employment.

~~[(3)]~~ (4) The client will remain eligible if a temporary change of activity occurs.

~~[(4)]~~ (5) If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

**C.** Income eligibility determination:

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

(2) Allowed exclusions from the household for co-payment calculation only: Excluded from the household for co-payment calculation purposes only are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents or legal guardians in this situation are required to qualify for child care assistance as per Paragraph (4) below and, upon qualification, have the required co-payment waived.

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

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

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

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

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



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hazard pay.

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

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

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

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

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

H. Change in Provider: If the parent or guardian changes providers, the provider shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.

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

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

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

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

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020]

**8.15.2.12 RECERTIFICATION:** Clients must recertify for services at the end of their eligibility period by



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complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement. At time of recertification, clients must provide proof of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. Recertification period is based upon the client meeting all eligibility requirements. A 12-month certification period will be granted unless one of the following apply:

- A. Eligibility may be granted for less than 12 months at the parent or guardian's request.
- B. Eligibility for CPS and at-risk child care may be granted for less than 12 months as determined by the department.
- C. The client will remain eligible if a temporary change of activity occurs.
- D. If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020]

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

**A. Co-payments:** Co-payments are paid by all clients receiving child care assistance benefits, except for CPS child care, at-risk child care, and qualified grandparents or legal guardians as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC. In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, to include required co-payments, during the time of the public health emergency. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [<https://cyfd.org/child-care-services>] <https://www.nmececd.org/child-care-assistance/>.

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

- (1) The first child is identified as the child requiring the most hours of child care.
- (2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

**C.** Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

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

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

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

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

**G. Notification of changes:** Clients must [~~notify the department of changes~~] provide written notification of changes that affect the need for care to their local child care assistance office. [~~, which~~] Changes include, but are not limited to, any non-temporary change in activity, or changes to household [~~members moving in or out,~~] composition. Notification must be provided within [~~five~~] 10 business days of the change. Clients who do not comply with this requirement may be sanctioned.



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

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

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

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

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

to resolve the issue of whether to keep the child or relinquish the child for adoption.

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

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

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020]

#### 8.15.2.16 DEPARTMENT RESPONSIBILITIES:

~~[A.]~~ The department will initiate mid-certification communication with the client to provide outreach and consumer education with a case management approach and coordination of services to support families.]

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

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

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

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

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

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

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

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

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/2016; A/E, 9/18/2020]

**8.15.2.19 OVER PAYMENT AND RECOUPMENT:** If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood



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services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/2016; A/E, 9/18/2020]