

# Instructions for completing the NMAC TRANSMITTAL FORM



## Your agency must complete the following:

Volume, Issue and Publication Date. [Example: Volume: XXXII , Issue: 10, Publication date: May 25, 2021.](#)

Provide the total number of pages of the paper version of the new rule, amendment, repeal, or emergency document. [Note: Do not include the pages of the transmittal form, billing sheet, PO, etc.](#)

Sequence number is for **ALD use only**.

Issuing agency's name and mailing address.

Agency's 3-digit DFA code. [Example: 123](#)

Contact person's Name, Phone number, E-mail address.

Check type of rule action: **New** (brand new rule or replacement rule), **Amendment**, **Repeal** (repeal and do not replace or repeal and replace), **Emergency**, or **Renumber**. **For a repeal and replacement rule, the agency must provide TWO signed transmittal forms; one for the repeal statement and another for the new (replacement) rule.**

Most Recent Filing Date of the Part for **ALD use only**.

Identify NMAC Title, Chapter and Part numbers and Title, Chapter and Part names.

[Example:](#)

Title 19 Natural Resources and Wildlife  
Chapter 30 Wildlife Administration Aquatic  
Part 14 Invasive Species

Description of Amendment: (if amending) [Example: "Amending three sections "](#)

Amendment's NMAC citation: (if amending) [Example: "Sections 9, 10 and 18 of 7.1.13 NMAC".](#)

Are any materials incorporated by reference? [Check: Yes or No. If Yes, please list attachments or provide Internet site.](#)

If incorporated, has copyright permission been granted? [Check Yes or No or check if document is in the public domain.](#)

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## **Concise Explanatory Statement for rulemaking adoption See 1.24.25.14 NMAC:**

Provide your agency's specific statutory or other authority authorizing rulemaking: Check with your agency's general counsel office to determine the correct citation(s) authorizing your agency to make rules.

Provide your Notice date(s) ([when notice of rulemaking was published in Register](#)): Hearing date(s) (if agency has board or commission): Rule adoption date: ([see note below](#)) and Rule effective date (date rulemaking becomes effective)

### **Note:**

- There must be at least **30** days between the notice publication date and hearing date.
- Your agency **must file** your rule within **15** days from rule adoption date. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement. Unless your rule is an emergency filing, the rule effective date cannot be any earlier than the publication date in the New Mexico Register.

Findings required for rulemaking adoption. If attaching a separate document as findings or as concise explanatory statement, please indicate as such in findings section.

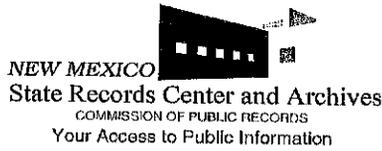
[Check with your agency's general counsel office regarding substance of any required findings to be filed.](#)

Issuing Authority: Name, Title Date signed and original Signature of issuing authority or their delegate in **black** ink:

[Note: If authority has been delegated, this box must be checked. A letter of delegation must be on file with the State Records Center and Archives, Administrative Law Division.](#)

**NMAC**

**Transmittal Form**



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

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action: New  Amendment  Repeal  Emergency  Renumber  (ALD Use) Recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):

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

Are there any materials incorporated by reference? Yes  No

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

**Specific statutory or other authority authorizing rulemaking:**

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

# Concise Explanatory Statement For Rulemaking Adoption:

## 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.

Please see attached document.

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

Name:

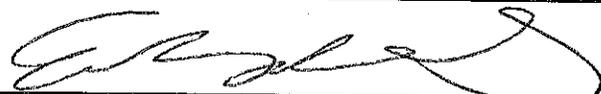
Check if authority has been delegated

Elizabeth Groginsky

Title:

Cabinet Secretary, ECECD

Signature: (BLACK ink only OR Digital Signature)



Date signed:

5/6/2022

## **8.15.2 NMAC Concise Explanatory Statement For Rulemaking Adoption:**

These amendments are emergency rule amendments made pursuant to 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 and eighty (180) days from the effective date of these emergency amendments. These emergency amendments are necessary because the Early Childhood Education and Care Department (ECECD) finds that the time required to complete the normal rulemaking procedures would (1) cause an imminent peril to the public health, safety and welfare of families receiving or needing child care assistance subsidies from ECECD; and, (2) to ensure that the child care assistance subsidy system remains economically viable for all intended recipients in New Mexico and provides an incentive for parents and guardians to return to work or remain in the workforce.

For these reasons, these emergency rule amendments are filed, effective on the dates set forth below, to amend 8.15.2 NMAC, Sections **8.15.2.9(G); 8.15.2.12; and 8.15.2.14(C)(2).**

### **Summary:**

ECECD amends 8.15.2.9(G) NMAC on an emergency basis in order to raise the eligibility income level for New Mexico families to receive cost-free child care, from entry at 350% of the federal poverty level (FPL) up to 400% FPL. ECECD is also amending 8.15.2.12 and 8.15.2.14(C)(2) NMAC, recertification and case closure/suspension, to raise the income levels from 400% FPL to 425% FPL for a family to continue qualifying for cost-free child care. The amendments to these sections, in addition to those emergency amendments ECECD enacted on May 1, 2022, effectively raises the income level for families in New Mexico to be eligible to receive cost-free child care, thereby allowing more parents to return to work. These emergency changes allow a family of four to enter into ECECD's cost-free child care system at 400% FPL and continue receiving cost-free child care up until the family earns 425% FPL. For purposes of reference, the U.S. Health and Human Services (HHS) Department's 2022 federal poverty guidelines for the 48 Contiguous States set 400% of the FPL for a family of four at \$111,000 annually. See <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. That means a family of four in New Mexico can receive cost-free child care if they earn \$111,000 or less annually, and can continue to receive the subsidy until they earn over \$117,937.56.

### **8.15.2.9 NMAC amends the Priorities for Assistance as follows in order to raise the eligibility income level for New Mexico families to receive cost-free child care, from entry at 350% of the federal poverty level (FPL) up to 400% FPL:**

- G.** *Priority four plus: During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below ~~three~~ four hundred ~~fifty~~ 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 four hundred ~~and twenty-five~~ 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 plus for children with special needs, disabilities, homeless families, and for teen parents*

**8.15.2.12 NMAC amends the Recertification as follows in order to raise the income levels from 400% FPL to 425% FPL for a family to continue qualifying for cost-free child care:**

*Recertification: Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC. Clients designated as essential workers who recertify must be at or below four hundred and twenty-five 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 child care placement agreement. At time of recertification, clients must provide documentation 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. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B of 8.15.2.11 NMAC.*

**8.15.2.14 (C)(2) NMAC amends the Case Suspensions and Closure requirements as follows in order to raise the income levels from 400% FPL to 425% FPL for a family to continue qualifying for cost-free child care:**

**C. (2)** *income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred and twenty-five percent of the federal poverty level.*

ECECD amends the above sections on an emergency basis, in addition to those emergency amendments enacted to this chapter on May 1, 2022, to encourage the economic recovery of the state by ensuring that a sufficient workforce exists for the New Mexico economy to recover from the COVID-19 public health emergency, rising national inflation, and other economic stressors affecting New Mexico's working class. ECECD, along with other state agencies and the Governor's Office, witness countless parents and families throughout New Mexico unable to afford quality child care. Parents and families unable to afford the rising costs of child care, and therefore unable to return to the workforce full or even part time, risk New Mexico's economic recovery due to the fact that there is a continued shortage in the workforce. These emergency amendments will ensure that the majority of New Mexico's working class families can attain cost-free child care and help jumpstart New Mexico's economy by allowing parents and guardians to return to work and rely on subsidized child care.

Funds to pay for this benefit expansion will come from the federal American Rescue Plan Act of 2021, also called the COVID-19 Stimulus Package or American Rescue Plan, which is a \$1.9 trillion economic stimulus bill passed by the United States Congress and signed into law by President Joe Biden on March 11, 2021, to speed up the United States' recovery from the economic and health effects of the COVID-19 pandemic and the ongoing recession. The American Rescue Plan includes federal relief funds for child care assistance in order to help parents return to work and jumpstart the economy. It is generally understood and accepted that the lack of high quality, affordable child care is the primary impediment to a parent or guardian's stable employment. Further, it is generally understood and accepted that an otherwise capable adult is unable to enter the workforce if they do not have quality child care to cover for hours of employment and/or educational/vocational classes.

**Effective Date: May 6, 2022**