

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) 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 rule regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Subsection (E) of Section 9-29-6 NMSA 1978

8.9.3 NMAC - CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

8.9.3.6 NMAC OBJECTIVES

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8.9.3.15 NMAC PROVIDER REQUIREMENTS

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8.9.3.21 NMAC SANCTIONS

8.9.3.24 NMAC CO-PAYMENT SCHEDULE

No technical scientific information was consulted in drafting these proposed rules.

Purpose of proposed rules: The purpose of the rulemaking is to promulgate amendments to 8.9.3 NMAC. In summary, the proposed rules will update necessary changes for the provision of child care assistance services in New Mexico as well as make changes required by the federal Child Care Development Fund (CCDF) grant. The Child Care and Development Block Grant (CCDBG) Act is the law (along with Section 418 of the Social Security Act) that authorizes the federal child care subsidy program known as CCDF. CCDF requires that states receiving such federal funds must establish a sliding fee scale that provides for cost-sharing by families receiving these child care services. **The proposed amendments also include a rate increase for child care providers participating in ECECD's Child Care Assistance program.**

A summary of the proposed amendments is attached to this notice. As part of the amendment process, ECECD will hold a public rule hearing for the proposed amendments on June 22, 2023, from 9:00 a.m. to 11:00 a.m.

Copies of the proposed amended rules may also be found at ECECD's website at Regulation Changes | Early Childhood Education and Care Department (nmececd.org) / 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on June 22, 2023, from 9:00 a.m. to 11:00 a.m. for proposed amendments to 8.9.3 NMAC. The hearing will be held in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided with 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 ECECD at ECECD-ECS-PublicComment@ECECD.NM.Gov or call (505)231-5820. ECECD 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 be submitted via email to ECECD-ECS-PublicComment@ECECD.NM.Gov with the subject line "8.9.3 Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA

building at 1120 Paseo De Peralta on June 22, 2023, from 9:00 a.m. to 11:00 a.m. The deadline to submit comments is at the end of the public hearing on June 22, 2023.

Any interested member of the public may attend the hearing in person, or via the virtual web platform or telephone, and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-669-444-9171, access code 86234950863#. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://nmececd.org.zoom.us/j/86234950863>, and follow the instructions indicated on the screen – Meeting ID (access code): 86234950863. This will be a live stream of the hearing. You may also provide comment via chat during the live streaming.

Summary of Proposed Amendments to 8.9.3 NMAC:

8.9.3.6 NMAC OBJECTIVES

ECECD's proposed amendment to this section includes updating the date that the child care assistance rate increases becomes effective, which will be August 1, 2023, if the proposed rate increases are adopted following public comment and hearing.

8.9.3.7 NMAC DEFINITIONS

ECECD's proposed amendments to this section include changing the word "co-payment" to "copayment" for stylistic and conformity purposes. This section also includes new proposed definitions for "federal poverty level" and "tribal per capita payments."

8.9.3.11 NMAC ELIGIBILITY REQUIREMENTS

ECECD's proposed amendments to this section include changing the word "co-payment" to "copayment" for stylistic and conformity purposes. ECECD also proposes adding "tribal per capita payments" to the list of the categories of exempt income.

8.9.3.12 NMAC RECERTIFICATION

ECECD's proposed amendments to this section include changing the word "co-payment" to "copayment" for stylistic and conformity purposes.

8.9.3.13 NMAC CLIENT RESPONSIBILITIES

ECECD proposes amendments to this section of the regulation to substantively change how ECECD calculates and charges copayments to child care assistance clients. ECECD's proposed amendments to this section also include changing the word "co-payment" to "copayment" for stylistic and conformity purposes. It also includes required copayments for families based on the first two children receiving child care assistance, but waives copayments for any additional children. ECECD is proposing to add a new chart to this section to clarify how copayments are calculated based on the Federal Poverty Level and the family's income. This formula is used to create the actual copayment each family must pay based on income and the number of children, which is published on ECECD's website. In addition, ECECD is adding language requiring that it give families and providers three months' notice prior to reinstating copayments if ECECD waives copayments again in the future.

8.9.3.15 NMAC PROVIDER REQUIREMENTS

ECECD's proposed amendments to this section include changing the word "co-payment" to "copayment" for stylistic and conformity purposes. This section also includes a new change to the fees that child care providers are allowed to pass onto client or family. ECECD proposes to now prohibit child care providers from charging child care assistance families applicable gross receipts taxes (GRT), whereas these providers are currently allowed to pass on such costs to the families. The new proposed rate increases for child care providers set forth in 8.9.3.17 NMAC, however, include expenses for the payment of GRT. Child care providers are now required to pay applicable GRT out of the child care assistance payments they receive.

8.9.3.17 NMAC PAYMENT FOR SERVICES

ECECD proposes amending this section by adding additional language about when the department may close placements or discontinue payments in order make the requirements in this section consistent with those found in 8.9.3.15(D) NMAC. Language is also being inserted clarifying that ECECD will require documentation to verify when such payments should be discontinued. ECECD also proposes amending this section to increase child care

provider rates based on the cost estimation model. The proposed increase in child care assistance rates was formulated using the cost estimation model to (1) address increased inflation and (2) hopefully ensure a \$15.00 hourly minimum wage for all child care employees.

8.9.3.21 NMAC SANCTIONS

ECECD's proposed amendments to this section include changing the word "co-payment" to "copayment" for stylistic and conformity purposes.

8.9.3.24 NMAC CO-PAYMENT SCHEDULE

ECECD's proposed amendments to this section include changing the word "co-payment" to "copayment" for stylistic and conformity purposes.