

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE**  
**PART 3 CHILD CARE ASSISTANCE; REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS**

**8.9.3.1 ISSUING AGENCY:** Early Childhood Education and Care Department (“ECECD”).  
[8.9.3.1 NMAC - N, 11/01/2022]

**8.9.3.2 SCOPE:** This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility for child care assistance benefits. (See 8.9.3.8 NMAC for detailed list.)  
[8.9.3.2 NMAC - N, 11/01/2022]

**8.9.3.3 STATUTORY AUTHORITY:** Subsection E of Section 9-29-6 NMSA 1978; Section 7-9-121 NMSA 1978.  
[8.9.3.3 NMAC - N, 11/01/2022; A/E, 07/01/2024]

**8.9.3.4 DURATION:** Permanent  
[8.9.3.4 NMAC - N, 11/01/2022]

**8.9.3.5 EFFECTIVE DATE:** November 1, 2022, unless a later date is cited at the end of section.  
[8.9.3.5 NMAC - N, 11/01/2022]

**8.9.3.6 OBJECTIVE:**

**A.** To establish standards and procedures for the provision of child care assistance benefits to eligible clients and to establish the rights and responsibilities of child care providers who receive payment for providing child care services to clients receiving benefits. To establish minimum requirements for eligibility for program participation and for the provision of child care services to children whose families are receiving benefits and to allow children receiving these benefits access to quality child care settings that promote their physical, mental, emotional, and social development in a safe environment. To establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

**B.** To establish child care assistance rates in accordance with the requirements of the Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF), which is the primary federal funding source of child care assistance to enable parents to work or pursue education and training so that they may better support their families while at the same time promoting the learning and development of their children. The CCDBG requires every state to submit an updated CCDF plan every three years. A key requirement of the CCDBG Act is that lead agencies establish subsidy payment rates that ensure equal access to child care for children receiving child care assistance. States have two options to establish subsidy payment rates that ensure equal access: lead agencies must collect and analyze data through either a statistically valid and reliable market rate survey, or through an ACF pre-approved alternative methodology, such as a cost estimation model. New Mexico’s rates, as set forth herein, and effective August 1, 2023, were informed by a cost estimation model and with extensive statewide stakeholder engagement. This new cost estimation model was developed in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico’s children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

**C.** Permissive language such as "may or may be" when referring to actions taken by the department, address situations where it is not always prudent or practical to apply these actions. It is not meant to reduce the weight of these actions nor should the intent of the policies be circumvented due to this wording. This language is intended to be construed in a fiscally responsible and equitable manner, keeping in mind that consistency in application is the ultimate goal.

[8.9.3.6 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.7 DEFINITIONS:**

**A. Terms beginning with the letter “A”:**

(1) **“Attending a job training or educational program”** means actively participating in an in-person or online job training or educational program.

(2) **“At-risk child care”** means a program for families at-risk as determined by the department.

**B. Terms beginning with the letter “B”: [RESERVED]**

**C. Terms beginning with the letter “C”:**

(1) **“CACFP”** means the child and adult care food program, administered by the Early Childhood Education and Care Department.

(2) **“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, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(3) **“Client”** means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

(4) **“Closure”** means the client’s child care case is closed with the department.

(5) **“Copayment”** 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 copayment amount.

**D. Terms beginning with the letter “D”:**

(1) **“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; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

(2) **“Department”** means the New Mexico Early Childhood Education and Care Department (“ECECD”).

**E. Terms beginning with the letter “E”:**

(1) **“Earned income”** means income received as gross wages from employment or as profit from self-employment.

(2) **“Essential worker”** means those who conduct a range of operations and services in industries that are essential to ensure the continuity of critical functions in the economy of our nation and state. During this period of economic recovery and subject to budgetary considerations, the presumption is that all workers are essential to the well being of the state’s economy.

**F. Terms beginning with the letter “F”:**

(1) **“Federal poverty level”** means a measure of income issued every year by the U.S. Department of Health and Human Services (HHS) that is used to determine eligibility for various programs and benefits, including New Mexico’s Child Care Assistance Program.

(2) **“Fluctuation of earnings”** means a family with inconsistent or variable income Throughout the year. To calculate fluctuation of earnings the department may:

(a) average family earnings over a period of time (e.g., 12 months); or

(b) 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.

**G. Terms beginning with the letter “G”: [RESERVED]**

**H. Terms beginning with the letter “H”:**

(1) **“Homeless children and youth”** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a) 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;

(b) 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;

(c) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Subparagraphs (a) through (c) of this Paragraph.

(2) **“Household”** means the household as defined below in Paragraph (1) of Subsection C of 8.9.3.11 NMAC.

(3) **“Household income”** means household income as defined below in Paragraph (3) of Subsection C of 8.9.3.11 NMAC.

**I. Terms beginning with the letter “I”:**

(1) **“Incidental money”** means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

(2) **“Infant, toddler, preschool, school age”** means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(a) infant: zero - 23 months;

(b) toddler: 24 -35 months;

(c) preschool: three to five year olds; and

(d) school age: six year olds and older.

**J. Terms beginning with the letter “J”:** **“Job training and educational program”** means participation in a short or long term educational or training program, including online programs that provide 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. Educational programs include graduate and post graduate programs or classes.

**K. Terms beginning with the letter “K”:** [RESERVED]

**L. Terms beginning with the letter “L”:** [RESERVED]

**M. Terms beginning with the letter “M”:** [RESERVED]

**N. Terms beginning with the letter “N”:**

(1) **“National accreditation status”** means the achievement and maintenance of accreditation status by an accrediting body that has been approved by ECECD. ECECD determines the program criteria and standards to evaluate and approve accrediting bodies.

(a) The following are the only national accrediting bodies that are approved by ECECD:

(i) the association of Christian schools international (ACSI);  
(ii) the council on accreditation (COA) for early childhood education and after school programs;

(iii) the international Christian accrediting association (ICAA);  
(iv) the national accreditation commission for early care and education programs (NAC);

(v) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(vi) the national association of family child care (NAFCC); or

(vii) the national early childhood program accreditation (NECPA).

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

(2) **“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 Paragraph (3) of Subsection T of 8.9.3.7 NMAC.

(3) **“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.

**O. Terms beginning with the letter “O”:**

(1) **“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.

(2) **“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.

**P. Terms beginning with the letter “P”:** “**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.
- (7) “**Family, friend, or neighbor (FFN)**” means care provided temporarily in a home and only in the case of a public health emergency.

**Q. Terms beginning with the letter “Q”:** [RESERVED]

**R. Terms beginning with the letter “R”:**

- (1) “**Recertification**” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.
- (2) “**Registration/educational fee**” means a fee charged to private pay and families receiving child care assistance for materials and supplies.

**S. Terms beginning with the letter “S”:**

- (1) “**Sanctions**” means a measure imposed by the department for a violation or violations of applicable regulations.
- (2) “**SNAP**” means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.
- (3) “**Special supervision**” means the special supervision for child(ren) as defined below in Subsection G of 8.9.3.11 NMAC.
- (4) “**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.
- (5) “**Suspension**” means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

**T. Terms beginning with the letter “T”:**

- (1) “**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.
- (2) “**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.
- (3) “**Temporary change of activity**” means one of the following events:
  - (a) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;
  - (b) interruption in work for a seasonal worker who is not working between regular industry work seasons;
  - (c) student holiday or break for a parent or legal guardian participating in training or education;
  - (d) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and
  - (e) cessation of work or attendance at a training or education program less than three months.
- (4) “**Termination**” means the client’s child care case will be closed due to cause.

(5) **“Tribal per capita payments”** means cash distributions from tribal trust funds or casino revenues to individual tribal members.

**U. Terms beginning with the letter “U”:**

(1) **“Underpayment”** means a payment made by the department for services provided which did not fully reimburse the client or provider.

(2) **“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, grants and other income which does not meet the definition of earned income.

**V. Terms beginning with the letter “V”:** [RESERVED]

**W. Terms beginning with the letter “W”:** **“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.

**X. Terms beginning with the letter “X”:** [RESERVED]

**Y. Terms beginning with the letter “Y”:** [RESERVED]

**Z. Terms beginning with the letter “Z”:** [RESERVED]

[8.9.3.7 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.8 TYPES OF CHILD CARE:** These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents or legal guardians have a variety of child care services from which to choose:

**A.** licensed child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;

**B.** licensed child care programs administered by tribal entities;

**C.** licensed child care programs administered by church or religious organizations;

**D.** in-home care;

**E.** licensed child care centers;

**F.** registered family childcare homes;

**G.** licensed family and group childcare homes;

**H.** licensed out of school time programs;

**I.** licensed programs operated by employers for their employees; and

**J.** FFN.

[8.9.3.8 NMAC - N, 11/01/2022]

**8.9.3.9 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 to include TANF diversionary payment, are considered priority one clients.

(1) Participation exemption: The human services department (HSD) grants participation exemptions to TANF clients who cannot locate child care. The Early Childhood Education and Care 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 Early Childhood Education and Care 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 HSD. HSD is responsible for providing notice of the approval or denial of a participation exemption.

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

**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 or disregards 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 8.9.3.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

**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 four 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 four hundred and twenty-five percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.9.3.11 NMAC. The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents.

**H.** Priority five: In addition to these priorities, the department pays for at-risk child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority.  
[8.9.3.9 NMAC - N, 11/01/2022]

**8.9.3.10 APPLICATION PROCESS:**

**A.** Clients apply for child care assistance benefits by presenting the following documents to establish eligibility:

- (1) a completed signed application form;
- (2) documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.9.3.11 NMAC;
- (3) documentation of the applicant’s TANF eligibility or participation, if applicable, and can include applicant’s social security number or assigned TANF identification number;
- (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- (6) verification of birth for all applicant’s household children;
- (7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;
- (8) verification of custody of children, if applicable;
- (9) verification of dependency of a child or adult household member, if applicable;
- (10) documentation of New Mexico residency;
- (11) identification for parent/guardian; and
- (12) department approved provider.

**B.** The following are acceptable documents to use to verify eligibility. Other documents may be considered and taken to the supervisor to be reviewed for eligibility.

Verification Type	Acceptable documentation or information (examples)
Verification of Birth	-Birth certificate -Hospital or public health records -Certificate of Indian blood

	-Birth center records
Countable Earned Income	<ul style="list-style-type: none"> <li>-Paystubs</li> <li>-Employer statement/verification of work form (for new employment)</li> <li>-Client statement, if earning wages from various odd jobs/day labor</li> <li>-Employer contract/work agreement</li> <li>-Payroll/gross wage history</li> </ul> <p>For self-employed individuals:</p> <ul style="list-style-type: none"> <li>-Income tax return</li> <li>-Profit and loss (must be verified by a bookkeeper or accountant)</li> <li>-Common reporting standard (CRS) statements from New Mexico taxation and revenue department</li> </ul>
Countable Unearned Income	<ul style="list-style-type: none"> <li>-Benefit award letter (i.e. – social security, veteran administration (VA))</li> <li>-Letter or document from agency making payment</li> <li>-Court records or other legal documents</li> <li>-Statement from tribal agency</li> <li>-Bank or other financial statement</li> <li>-Divorce or separation decree</li> <li>-Trust documents</li> <li>-Workers’ compensation documents</li> <li>-Rental income information</li> </ul>
Qualifying Activity	<ul style="list-style-type: none"> <li>-Proof of TANF participation (example: work participation agreement (WPA))</li> <li>-School schedule</li> <li>-Statement from educational institution</li> <li>-Work schedule</li> <li>-Paystubs</li> <li>-Employer statement</li> <li>-Client statement</li> <li>-Contract/work agreement</li> <li>-Proof of new business registration with state</li> </ul>
Documentation of Incapacity	<ul style="list-style-type: none"> <li>-Statement or letter from medical professional on letterhead/stationary</li> <li>-Statement/record/letter from a federal government agency that issues or provides disability benefits</li> <li>-Statement/records/letters from a state vocational rehabilitation agency counselor</li> <li>-Records/letters from a treatment facility/counselor</li> <li>-Certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits</li> </ul>
Custody	<ul style="list-style-type: none"> <li>-Court order, or other legal records</li> <li>-Adoption records</li> <li>-Statement signed under penalty of perjury</li> <li>-Attorney records</li> </ul>

Dependency	-Court order -Notarized statement -Divorce papers -Durable power attorney -Guardianship documentation -Federal tax documents verifying person is claimed as a dependent -Written statement with supervisor's approval
New Mexico Residency	-Lease/rental agreement -Utility bill -Mortgage receipt -Written statement from person you are residing with -Current New Mexico driver's license -Statement from landlord -Other records that provide a name and address
Identification for Parent/Guardian	-Current or expired government issued photo identification/passport -School photo identification -Government issued immigration document with photo -Employer identification with photo
Citizenship/Immigration Verification	-United States birth certificate -Military identification -Passport -Naturalization certificate -Permanent resident card -ASPEN/HSD verification (client must be listed as "eligible child") (example: refugees/other qualified aliens may receive services through HSD but also may have United States department of state form) -Numident (from social security office) -Refugee/asylee letter from United States secretary of state or from homeland security -Any document from the immigration and naturalization services (INS), department of homeland security (DHS), or other authoritative document showing a child's immigration status that qualifies the child for assistance

**C.** The department may approve a client to submit their initial application by fax, email, electronic submission, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Upon approval from the child care regional manager, clients may be given longer than 14 calendar days, but no more than 30 calendar days, to submit required documentation.

**D.** 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 or seeking employment. 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 provider is eligible to be paid.

[8.9.3.10 NMAC - N, 11/01/2022]

**8.9.3.11 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 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 legal guardian's request. The parent or legal guardian will, however, remain eligible for the approved 12-month eligibility period.



(2) 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. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

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

(5) If a client experiences a non-temporary change in activity, the child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

C. Income eligibility determination:

(1) The household: The household includes biological parents, stepparents, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit. Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. 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 legal 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, medical or other treatment, or military service.

(2) Legal guardians who are not the parents of the child(ren) for whom child care assistance is sought, are required to qualify for child care assistance as per Paragraph (3) below and, upon qualification, have the required copayment waived.

(3) Household income: The household's gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility as paragraphs (7) and (8) of Subsection C of 8.9.3.11 NMAC. Household income does not include any earned and unearned income received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

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

(5) Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the copayment (if applicable): income from employment by working for others or from self-employment; alimony payments; veterans administration (VA) payments except VA payments that are specifically exempted in Paragraph (6) of Subsection C of 8.9.3.11 NMAC; workman's compensation; railroad retirement benefits; pensions; royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.9.3.11 NMAC; overtime shall be counted at ECECD's discretion if ECECD determines that the applicant is paid overtime on a regular basis.

(6) Exempt income: The types of income not counted when computing eligibility or copayments include but are not limited to: earnings of household dependents; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; 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; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes including graduate and other educational stipends; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or AmeriCorps; 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 ECECD 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; Tribal per capita payments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

(7) Verification of household countable earned and unearned income: Clients applying for

child care assistance benefits are required to verify household countable earned and unearned income by providing current documentation of income for biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. 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 reduced or discontinued.

**(8) Calculating income:**

**(a)** Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.9.3.11 NMAC.

**(b) Conversion factors:** When income is received on a weekly, biweekly, or semimonthly basis, the income shall be converted to monthly amount as follows:

**(i)** Income received on a weekly basis is averaged and multiplied by four and three-tenths. Weekly income is defined as income received once per week.

**(ii)** Income received on a biweekly basis is averaged and multiplied by two and fifteen one-hundredths. Biweekly income is defined as income received once every two weeks. Income is received on the same day of the week each pay period, therefore receiving 26 payments per year.

**(iii)** Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

**(iv)** Income received on a monthly basis is averaged and multiplied by one. Monthly income is defined as income received once per month.

**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 and eligible immigration status: Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified immigrant as defined by the United States department of health and human services, administration for children and families, office of child care.

**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 at-risk child care.

**G.** Special supervision: 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 or treatment professional to require supervision.

**H.** 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 submit verification of the TANF approved activity unless they are exempt by TANF. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

**I.** Calculating Need for Care: The department determines the number of hours of care needed in consultation with the parent or legal guardian at the time of certification and approved hours are reflected in the child care placement agreement covering the certification period. The department determines the number of hours of care needed based on the qualifying activity of the parent or legal guardian and physical custody of the child, as applicable. Clients and caseworkers shall negotiate a reasonable amount of study and travel time, which is an individualized determination based on each client's specific needs, during the application process and special attention shall be paid to the child's specific needs. The department determines the number of hours of care needed based on a maximum weekly need and approved based on the units of service set forth below in Subsection E and F of 8.9.3.17 NMAC.

**J.** 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, such as online or home-schooling. Child care benefits are paid during the hours that children are attending a dedicated Early Head Start-Child Care Partnerships Program funded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care.

[8.9.3.11 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.12 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 8.9.3.7 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. Copayment, 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 8.9.3.11 NMAC.  
[8.9.3.12 NMAC - N, 11/01/2022; A, 8/1/2023]

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

**A.** Copayments: Copayments are paid by all clients receiving child care assistance benefits, except for at-risk child care and qualified grandparents or legal guardians. Copayments are determined by income and household size. The copayment schedule is published yearly at <https://www.nmececd.org/child-care-assistance/>. In the case of an emergency, or under extenuating circumstances, the department secretary may waive copayments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required copayments. If copayments are waived, three months notice will be given to providers and families prior to reinstatement.

**B.** Copayments described in Subsection A of 8.9.3.13 NMAC, are used for determining the base copayment for the first eligible child. The formula for determining the copayment amount based on the copayment schedule is the gross monthly household income multiplied by the applicable percent of the federal poverty level percentage (FPL) for family size (see Subsection D of 8.9.3.13 NMAC), which will equal the monthly copayment. The base copayments for the second child in the family is determined at one half of the copayment for the previous child. If there are more than two children in the household accessing child care assistance, the copayment will be waived for any additional children.

- (1) The first child is identified as the child requiring the most hours of child care.
- (2) The second child is identified as the child with the second most number of hours needed

for child care.

**C.** Each child's copayment will be adjusted based on the units of services described in Subsection E of 8.9.3.17 NMAC, as follows:

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

**D.** Below is the cost sharing chart with the formula used to determine child care copayments as set forth immediately above and as published yearly at <https://www.nmececd.org/child-care-assistance/>:

FPL Percent Income Increments	Percent of Gross Income (Monthly) to Determine Copay
0.00 to 185.00	0.00%
185.01 to 200	0.29%
200.01 to 210	0.59%
210.01 to 220	0.88%
220.01 to 230	1.18%
230.01 to 240	1.47%
240.01 to 250	1.76%
250.01 to 260	2.06%
260.01 to 270	2.35%

270.01 to 280	2.65%
280.01 to 290	2.94%
290.01 to 300	3.24%
300.01 to 310	3.53%
310.01 to 320	3.82%
320.01 to 330	4.12%
330.01 to 340	4.41%
340.01 to 350	4.71%
350+	5.00%

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

**F.** In-home providers: Parents or legal guardians 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 or legal guardian 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 or legal guardian.

**G.** Notification of changes: Clients must provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

(1) A client must notify the department of any non-temporary change in activity or changes to household composition. Notifications must be provided within 14 calendar days of the change.

(2) A client must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income.

(3) A client must notify the department of any changes to their contact information.

(4) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

(5) If the client has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

(6) Clients who do not comply with this requirement may be sanctioned.

[8.9.3.13 NMAC - N, 11/01/2022; A, 8/1/2023]

#### **8.9.3.14 CASE SUSPENSIONS AND CLOSURES:**

**A.** A case may be suspended at the request of the client if child care benefits are not being utilized with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

**B.** If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, the child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

**C.** A case will be closed if the following conditions apply:

(1) 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 8.9.3.9 NMAC, with an income in excess of four hundred and twenty-five percent of the federal poverty level;

(2) failing to recertify at the end of approved eligibility period; or

(3) being disqualified from participation in the program.

[8.9.3.14 NMAC - N, 11/01/2022]

**8.9.3.15 PROVIDER REQUIREMENTS:** Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care placement agreement, are paid for by the client.

**A.** All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

**B.** Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within 30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

**C.** Child care providers collect required copayments from clients and provide child care according to the terms outlined in the child care placement agreement.

**D.** Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client. If a client notifies the provider of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks following the first date of nonattendance.

**(1)** If the provider notifies the department of the above, the provider will be paid through the period of nonattendance, not to exceed six weeks.

**(2)** If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

**(3)** If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

**(4)** Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.9.3.21 NMAC.

**E.** Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care placement agreement. Failure to comply with this requirement may result in sanctions.

**(1)** Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.9.3 NMAC. The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.9.3 NMAC.

**(2)** In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

**(3)** Child care providers are not allowed to charge child care assistance families the ~~applicable~~ gross receipts tax for the sum of the child care assistance benefit and copayment. Child care providers may claim the gross receipts tax deduction pursuant to Section 7-9-77.2 NMSA1978 as applicable.

**F.** Under emergency circumstances, when ECECD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another ECECD approved provider.

**G.** Owners and licensees may not receive child care subsidy payments to provide care for their own children.

**H.** Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program.

**I.** Providers must promote the equal access of services for all children and families by developing

and implementing policies and procedures that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).  
[8.9.3.15 NMAC - N, 11/01/2022; A, 8/1/2023; [A/E, 07/01/2024](#)]

**8.9.3.16 DEPARTMENT RESPONSIBILITIES:**

- A.** The department pays child care providers who provide child care services to department clients in a timely manner.
- B.** Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.
- 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.
- 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.
- 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.
- F.** Child care assistance workers must inform parents or legal guardians of their right to choose their child care providers and provide information on how to look for quality child care in a provider.
- 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 or legal guardians and providers.
- H.** The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent or legal guardian 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 or legal guardians and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.9.3.16 NMAC - N, 11/01/2022]

**8.9.3.17 PAYMENT FOR SERVICES:** The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. A signed child care placement agreement must be returned to the department for payment to be issued to the provider. The following circumstances under which the department may close placements or discontinue payment at a time other than the end of the month:

- A.** When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.
- B.** Payment for notification of changes:
  - (1)** If a client fails to notify the department within 14 calendar days of their expected last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.
  - (2)** If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.
  - (3)** If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.
  - (4)** If a provider notifies the department that it has received notification from a client of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks, following the period of non-attendance. The provider must submit documentation of the client notification and reasoning to the department.
  - (5)** If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

**C.** The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.9.3 NMAC.

**D.** The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent or legal guardian at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care placement agreement covering the certification period.

**E.** The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

**F.** Hours of care shall be rounded to the nearest whole number. Hours for seeking employment is set at full-time.

**G.** Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$1,075.00	\$775.00	\$700.00	\$500.00
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$1,040.00	\$1,000.00	\$830.00	\$475.00
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$1,100.00	\$1,075.00	\$870.00	\$530.00
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$425.00	\$425.00	\$375.00	\$ 350.00

**H.** The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

**I.** Providers holding and maintaining ECECD approved national accreditation status will receive the differential rate listed in Subsection I below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain ECECD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The licensee shall notify the licensing authority within

48 hours of any adverse action by the national accreditation body against the licensee’s national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

**J.** The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

Licensed Child Care Centers			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$75.00	\$90.00	\$100.00	\$50.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$75.00	\$90.00	\$100.00	\$50.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$425.00	\$325.00	\$300.00	\$150.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$850.00	\$725.00	\$425.00	\$ 250.00

Licensed Family and Group Homes			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$75.00	\$50.00	\$80.00	\$70.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$75.00	\$50.00	\$80.00	\$70.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$175.00	\$175.00	\$205.00	\$150.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$275.00	\$250.00	\$290.00	\$195.00

**K.** In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

**L.** The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%



**M.** If a significant change occurs in the client's circumstances, (see Subsection F of 8.9.3.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

**N.** The department may conduct provider, parent, or legal guardian, audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

**O.** Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds.

[8.9.3.17 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.18 UNDER PAYMENTS:** If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the department's knowledge or receipt of notification. Notification of the department by the client or provider must occur within three months of the occurrence of alleged underpayment or underpayment may be denied.

[8.9.3.18 NMAC - N, 11/01/2022]

**8.9.3.19 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 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.

[8.9.3.19 NMAC - N, 11/01/2022]

**8.9.3.20 FRAUD:** The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility is fraud and appropriate sanctions, including recoupment, termination of benefits, and referral to law enforcement, are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined. In cases where substantiated fraud has been determined, the department may disqualify a client or provider until their debt has been paid in full.

[8.9.3.20 NMAC - N, 11/01/2022]

**8.9.3.21 SANCTIONS:** Sanctions may be imposed according to the severity of the infraction as determined by the department as detailed below.

**A.** Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency.

**B.** The department may initiate the recoupment process against any provider who fail to report in a timely manner that a child has not been in attendance for 14 consecutive calendar days.

**C.** Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

**D.** Clients who fail to pay copayments may be disqualified until the copayment is paid or until an agreement is made between the client and the provider to bring the copayment current.

[8.9.3.21 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.22 FAIR HEARINGS:** Clients who have been denied benefits, whose benefits have been reduced, terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned,

disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

**A.** The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone is permitted. The claimant may request a change of date, provided that the 60 calendar day time limit is not exceeded.

**B.** The department appoints a hearing officer. The department is not responsible or liable for a claimant's travel costs, legal costs, or any other costs associated with the claimant's request for a fair hearing.

**C.** The hearing officer reviews all of the relevant information and makes a final decision within 30 calendar days of the hearing. The final decision is binding upon the department and claimant and implemented within 14 calendar days of the hearing decision. The claimant is notified in writing of the hearing officer's decision within 14 calendar days of the hearing decision.

**D.** At the claimant's option the case may remain open at the same benefit level until disposition. If the decision is in favor of the department, the claimant is responsible for repayment of all monies received to which the claimant was not entitled, unless the hearing decision provides otherwise or the early childhood services director authorizes otherwise in exceptional circumstances. The fair hearing process is not intended as a means to extend the time for receipt of child care assistance payments to which the recipient is not otherwise entitled, and therefore exceptional circumstances must be explicitly stated.

**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. If TANF benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.9.3.22 NMAC - N, 11/01/2022]

**8.9.3.23 COMPLAINTS:** Clients or providers who are dissatisfied with the services provided by the department may express their complaints orally or in writing to the local field office, the central office, the director's office or the office of the department secretary. The department's toll free number is posted in each office and made available to clients and providers upon request. The local supervisor, bureau chief, director or secretary responds to complaints by clients or providers orally or in writing as is deemed appropriate in each case.

[8.9.3.23 NMAC - N, 11/01/2022]

**8.9.3.24 COPAYMENT SCHEDULE:** The department will develop and publish an annual schedule based on the federal poverty guidelines.

[8.9.3.24 NMAC - N, 11/01/2022; A, 8/1/2023]

**8.9.3.25 CONFIDENTIALITY:** Client files are established and maintained solely for use in the administration of the child care assistance program. Information contained in the records is confidential and is released only in the following limited circumstances:

**A.** to the client upon request;  
**B.** to an individual who has written authorization from the client;  
**C.** to department employees and agents who need it in connection with program administration, including program auditors; or

**D.** to other agencies or individuals including law enforcement officers who satisfy the following conditions:

**(1)** agency or individual is involved in the administration of a federal or a federally-assisted program, which provides assistance in cash, in kind or in services directly to individuals on the basis of need;

**(2)** information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;

**(3)** agency or individual is subject to standards of confidentiality comparable to those contained herein; and

**(4)** agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if the client has made application to the inquiring agency for a benefit of service;

**E.** as requested in a subpoena or subpoena duces tecum.  
[8.9.3.25 NMAC - N, 11/01/2022]

**HISTORY OF 8.9.3 NMAC: [RESERVED]**