TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 4 CHILD CARE LICENSING; CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS

8.9.4.1 ISSUING AGENCY: Early Childhood Education and Care Department ("ECECD").
[8.9.4.1 NMAC - N, 11/01/2022]

8.9.4.2 SCOPE: All child care centers, out of school time programs, family child care homes, and other early care and education programs within the state of New Mexico.
[8.9.4.2 NMAC - N, 11/01/2022]

8.9.4.3 STATUTORY AUTHORITY: The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico Early Childhood Education and Care Department, by authority of the Early Childhood Education and Care Department Act, Section 9-29-1 to 9-29-12 NMSA 1978, and Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and Section 24-1-5 NMSA 1978 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.
[8.9.4.3 NMAC - N, 11/01/2022]

8.9.4.4 DURATION: Permanent.
[8.9.4.4 NMAC - N, 11/01/2022]

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

8.9.4.6 OBJECTIVE: The objective of 8.9.4 NMAC is to establish standards and procedures for the licensing of facilities and educators who provide child care to children within New Mexico. These standards and procedures are intended to: establish minimum requirements for licensing facilities providing non-residential care to children in order to protect the health, safety, and development of the children; monitor facility compliance with these regulations through surveys to identify any areas that could be dangerous or harmful to the children or staff members; monitor and survey out of school time programs; and encourage the establishment and maintenance of child care centers, homes and facilities for children that provide a humane, safe, and developmentally appropriate environment. These regulations apply during all hours of operation for child care centers, homes and out of school time programs. The objective of 8.9.4 NMAC is also 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).
[8.9.4.6 NMAC - N, 11/01/2022]

8.9.4.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1) "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(a) physical contact that harms or is likely to harm a child;

(b) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(c) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

(2) "Activity area" means space for children's activities where related equipment and materials are accessible to the children.

(3) "Adult" means a person who has a chronological age of 18 years or older.

(4) "Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations). Children's progress also can be assessed formally at least twice a year using a developmental checklist

(checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

(5) "Attended" means the physical presence of a staff member or educator supervising and actively engaging children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See definition of "Supervision", Paragraph (12) of Subsection S of 8.9.4.7 NMAC).

B. Terms beginning with the letter "B": [RESERVED]

C. Terms beginning with the letter "C":

(1) "Capacity" means the maximum number of children a licensed child care facility can care for at any one time.

(2) "Cease and desist letter" means a formal letter from the licensing authority outlining any ongoing violation of applicable regulations and providing 24 to 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the licensing authority. A cease and desist letter is usually issued when a provider violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the licensing authority will take if the violation(s) is not corrected by that deadline.

(3) "Child" means a person who is under the chronological age of 19 years.

(4) "Child care center" means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

(5) "Child with a disability or special needs" means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(6) "Class A deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

(7) "Class B deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

(8) "Class C deficiency" means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

(9) "Clean" means to physically remove all dirt and contamination.

(10) "Conditions of operation" means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

(11) "Core hours" means the daily hours of operation of the child care facility.

(12) "Corrective action plan" means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

(13) "Curriculum" is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program's mission statement, philosophy (which, in turn, is based on assumptions about young children's development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

D. Terms beginning with the letter "D":

(1) "Deficiency" means a violation of these regulations.

(2) "Department" means the New Mexico Early Childhood Education and Care Department ("ECECD").

(3) "Direct provider of care" means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

(4) **"Director"** means the person in charge of the day-to-day operation and program of a child care center.

(5) **"Disinfect"** means to destroy or inactivate most germs, but not bacterial spores, on any inanimate object. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

(6) **"Drop-in"** means a child who attends a child care facility on an occasional or unscheduled basis.

E. Terms beginning with the letter "E":

(1) **"Educator"** means an adult who directly cares for, serves, and supervises children in a licensed child care facility. Educators are considered staff members.

(2) **"Environment"** means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

(3) **"Exploitation"** of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

(4) **"Expulsion"** means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter "F":

(1) **"Facility"** means any premises licensed under these regulations where children receive care, services, and supervision. A facility can be a center, home, program, or other site where children receive childcare.

(2) **"Family child care home"** means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day for no more than six children. The licensee will reside in the home and be the primary educator.

(3) **"Family handbook"** is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

(4) **"FOCUS"** is a voluntary tiered quality rating and improvement program that is open to all licensed child care programs.

G. Terms beginning with the letter "G":

(1) **"Group child care home"** means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary educator.

(2) **"Group size"** is the number of children assigned to an educator or team of educators occupying an individual classroom or well-defined space within a larger room.

(3) **"Guidance"** means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

H. Terms beginning with the letter "H":

(1) **"Home"** means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special consideration will be made for homes on tribal lands.

(2) **"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.

I. Terms beginning with the letter "I": "Infant" means a child age six weeks to 12 months.

J. Terms beginning with the letter "J": [RESERVED]

K. Terms beginning with the letter "K": [RESERVED]

L. Terms beginning with the letter "L":

(1) "License" means a document issued by ECECD to a child care facility licensed and governed by these regulations and granting the legal right to operate.

(2) "**Licensee"** means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

(3) "Licensing authority" means the child care services bureau – regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Early Childhood Education and Care Department Act, Sections 9-29-1 to 9-29-12 NMSA 1978, as amended.

M. Terms beginning with the letter "M":

(1) "Media" means the use of televisions, video games, and non-educational online streaming such as video and social media.

(2) "Mission statement" describes what the program aspires to do and whom the program aspires to serve.

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. The following are the only national accrediting bodies that are approved by ECECD:

(a) the association of Christian schools international (ACSI);

(b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);

(d) the national accreditation commission for early care and education programs (NAC);

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

(f) the national association of family child care (NAFCC);

(g) the national early childhood program accreditation (NECPA);

(**h**) association Montessori internationale (AMI); or

(i) American Montessori Society (AMS).

(2) "Night care" means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

(3) "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

(4) "Notice of provisional employment" means a written notice issued to a child care center or home applicant indicating the Background Check Unit reviewed the applicant's fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

(5) "Notifiable diseases" means confirmed or suspected diseases/conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

O. Terms beginning with the letter "O":

(1) "Orientation" means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

(2) "Out of school time program" means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

P. Terms beginning with the letter "P":

(1) "Pacifier" means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2) "Pest" means any living organism declared a pest pursuant to the Pesticide Control Act.

(3) "Pesticide" means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(4) "Philosophy statement" describes how the program's mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program's perspective on early care and education and the nature of how children learn. The program's philosophy is implemented through the curriculum.

(5) "Policy" is a written directive that guides decision-making. Policies form the basis for authoritative action.

(6) "Premises" means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

(7) "Procedure" is a series of steps to be followed, usually in a specific order, to implement policies.

(8) "Professional development" is an on-going plan for continued professional development for each educator, including the director.

(9) "Professional Development Information System (PDIS)" is a secure, centralized digital platform managed by the department and designed to collect, manage, and analyze data related to the education, training, certification, and ongoing professional development of individuals. It serves as the monitoring system to ensure compliance with professional development and training requirements and supports workforce development.

(10) "Program administrator" means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

(11) "Punishment" means the touching of a child's body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

Q. Terms beginning with the letter "Q": [RESERVED]

R. Terms beginning with the letter "R":

(1) "Ratio" is the maximum number of children one educator can be responsible for.

(2) "Requirements" means the criteria and regulations developed by Early Childhood Education and Care Department in 8.9.4 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

(3) "Restriction" means to control enrollment, service type, capacity, activities, or hours of operation.

(4) "Revocation" means the act of making a license null and void through its cancellation.

S. Terms beginning with the letter "S":

(1) "Sanction" means a measure imposed by the licensing authority for a violation(s) of these standards.

(2) "Sanitize" means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one-half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

(3) "Serious injury" means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(4) "School-age" means a child in care who is at least five years old by 12:01 a.m. on September 1 of the current school year and not older than 18 years old.

(5) "Staff evaluation" means that each staff member is evaluated by the director, using criteria from the individual's job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual's professional development plan.

(6) "Staff member" means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

(7) "Substitute" means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

(8) "Suspension" means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

(9) "Site director" means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

(10) "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.

(11) "Substantiated complaint" means a complaint determined to be factual, based on an investigation of events.

(12) "Supervision" means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

(13) "Survey" means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

T. Terms beginning with the letter "T": "Toddler" means a child age 12 months to 24 months.

U. Terms beginning with the letter "U":

(1) "U/L" means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

(2) "Unattended" means an educator is not physically present with a child or children under care.

(3) "Unsubstantiated complaint" means a complaint not determined to be factual based on an investigation of events.

V. Terms beginning with the letter "V":

(1) "Variance" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

(2) "Volunteer" means any person who is not employed by the child care facility, spends six hours or less per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members or educator.

W. Terms beginning with the letter "W": "Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.

[8.9.4.7 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.8 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to the current versions of the following regulations and codes:

A. New Mexico health department regulations, control of disease and conditions of public health significance, 7.4.3 NMAC.

B. New Mexico health department regulations, governing public access to information in the department records, 7.1.3 NMAC.

C. New Mexico department of health regulations, health facility licensure fees and procedures, 7.1.7 NMAC.

D. New Mexico department of health regulations, health facility sanctions and civil monetary penalties, 7.1.8 NMAC.

E. New Mexico Early Childhood Education and Care Department regulations, governing background check and employment history of licensees and staff of child care facilities, 8.9.6 NMAC.

F. New Mexico environment department, food service and food processing, 7.6.2 NMAC.

G. Latest edition adopted by the New Mexico state fire board of the national fire protection association life safety code handbook 101.

H. Latest edition adopted by the New Mexico state fire board of the international fire code.

I. Latest edition adopted by the New Mexico construction industries division of the uniform building code enacted by the international conference of building officials.

J. Latest edition of the New Mexico building, plumbing/mechanical and electrical codes adopted by the New Mexico construction industries division.

K. New Mexico department of health regulations governing immunizations required for school attendance immunization requirement, 7.5.2 NMAC.

L. Federal Americans with Disabilities Act (ADA).

M. New Mexico department of agriculture Regulations Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 and 21.17.50 NMAC.

N. Latest edition of critical heights of playground equipment for various types and depths of resilient surfaces based on information from the U.S. consumer product safety commission (CPSC Publication No.325), handbook for public playground safety.

O. Any code, ordinance, or rule of a governing body, including but not limited to cities, towns, or counties having jurisdiction over the area in which the facility is situated.

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

8.9.4.9 APPLICATION: These regulations apply to public or private facilities and homes that provide care, education, services, and supervision to children less than 24 hours of any day, come within the statutory definition of "health facilities" set out in Subsection D of Section 24-1-2 of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority. These regulations do not apply to any of the following.

A. Facilities providing child care for 24 hours on a continuous basis. Such facilities are covered by other regulations promulgated by the children, youth and families department that are available upon request from the licensing authority.

B. Child care facilities operated by the federal government or a tribal government.

C. Child care facilities operated by a public school system and governed by the local school board.

D. Private schools accredited or recognized by the New Mexico department of education, operated for educational purposes only for children age five years or older.

E. Child care facilities provided exclusively for children of parents who are simultaneously present in the same premises.

F. Summer religious schools held on a church, religious building or house of worship premises.

G. Summer camps, wilderness camps, and programs operated for recreational purposes only by recognized organizations such as churches, schools, and the boy and girl scouts, provided such camps and programs are not conducted in private residences.

H. Any individual who in their own home provides care, services and supervision to four or fewer nonresident children.

I. Parent’s day out programs held in a church, religious building or house of worship, or public building operating for no more than eight hours per week and no more than four hours on any given day. The program will be staffed by parents participating in the program, or by others who are members of the church or public affiliation.

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

8.9.4.10 LICENSING AUTHORITY (ADMINISTRATION AND ENFORCEMENT RESPONSIBILITY): The child care services bureau regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department, hereafter called the licensing authority, has been granted the responsibility for the administration and enforcement of these regulations by authority of Early Childhood Education and Care Department Act, Section 9-29-1 to 9-29-12, NMSA 1978, as amended.

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

8.9.4.11 LICENSING:

A. TYPES OF LICENSES:

(1) INITIAL LICENSE: A license is issued to a child care facility that has met all requirements of these regulations and shall remain valid as long as the licensee maintains good standing in compliance with all applicable rules of the department, or if not in compliance with a rule, has been granted a waiver or variance of that rule by the department or has entered into a plan of correction during their annual inspection, and

the child care facility certifies on its annual inspection survey its desire to renew the license for another year. A denial of an initial application may only occur pursuant to 8.9.4.12 NMAC.

(a) 1-star level is designated for programs not receiving child care subsidy. 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.9.4.11 NMAC.

(i) for centers: Paragraph (17) of Subsection G of 8.9.4.22 NMAC, Paragraphs (5) through (9) of Subsection G of 8.9.4.24 NMAC, and Subsection H of 8.9.4.24 NMAC;

(ii) for licensed family and group child care homes: Paragraph (4) of Subsection E of 8.9.4.32 NMAC, Paragraph (15) of Subsection F of 8.9.4.32 NMAC, Paragraphs (4) through (8) of Subsection G of 8.9.4.34 NMAC, and Subsection H of 8.9.4.34 NMAC;

(iii) for licensed out of school time programs: Subparagraph (k) of Paragraph (1) of Subsection E of 8.9.4.41 NMAC, Paragraph (14) of Subsection F of 8.9.4.41 NMAC, Paragraphs (5) through (9) of Subsection B of 8.9.4.43 NMAC and Subsection C of 8.9.4.43 NMAC.

(b) 2-star level requires meeting and maintaining licensing requirements at all times.

(c) 2+ star level is voluntary and requires meeting and maintaining licensing requirements as well as meeting the most recent FOCUS eligibility requirements and 2+ star criteria.

(d) 3-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS level 3 quality criteria at all times.

(e) 4-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS levels 3 and 4 quality criteria at all times.

(f) 5-star level is voluntary and requires meeting and maintaining licensing requirements and maintaining at all times either FOCUS levels 3, 4, and 5 quality criteria or ECECD approved national accreditation status.

(2) TEMPORARY LICENSE: The licensing authority will, at its discretion, issue a temporary license when it finds the child care facility in partial compliance with these regulations.

(a) A temporary license can, at the discretion of the licensing authority, be issued for up to 120 days, during which time the child care facility shall correct all specified deficiencies.

(b) The licensing authority will not issue more than two consecutive temporary licenses.

(c) After a second temporary license has been issued, a new application must be submitted within 30 days.

(3) AMENDED LICENSE: A child care facility shall submit a new application to the licensing authority before modifying information required to be stated on the license. Examples of such modifications include dates, capacity, director and number of stars.

(a) A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director's appointment is valid for 90 days.

(b) An application must be submitted for a change of capacity. Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

(c) A child care facility will apply to the licensing authority for an amended license in order to change the number of stars. An application for a different star level will not be approved nor an amended license issued until on-site visits have been made and it has been determined that the child care facility meets all applicable criteria.

(4) PROVISIONAL 2-STAR LICENSE: Newly licensed programs receiving child care subsidy will be given a provisional 2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

(5) MILITARY LICENSE:

(a) Centers on military installations and United States department of defense (DoD) certified homes serving only military families on or off the installation are governed and inspected by the DoD and

must obtain national accreditations. Therefore, such centers and DoD certified homes are not subject to inspection by the New Mexico licensing authority.

(b) In order to participate in the child care assistance program, providers licensed by the DoD must submit the following:

(i) Licensing application

(ii) Annual submission of a letter or memo detailing the approved DoD background clearance status for the director and all staff members in accordance with 8.9.6 NMAC, to include the individual's name, date of birth, and home address. For certified homes, the letter or memo must include the names of the licensee, household members over 18 years old, and all secondary educators;

(iii) DoD annual certification;

(iv) DoD approved accreditation, if applicable; and

(v) W-9 form and supporting documentation, if applicable.

(6) TRIBAL GOVERNMENT LICENSE:

(a) Centers and child care homes operating on sovereign tribal lands are governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency or may maintain status as Tribal head start or early head start. Therefore, such centers and homes do not require an inspection by the New Mexico licensing authority.

(b) Centers and child care homes governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency, or who maintains status as Tribal head start or early head start, may choose to apply for a Tribal Government License from ECECD.

(i) A Tribal Government license may be issued for the purposes of receiving child care assistance subsidies through 8.9.3 NMAC.

(ii) Centers and licensed homes operating under a Tribal Government license must comply with their sponsoring Tribal Child Care and Development Lead Agency or Tribal head start and early head start requirements, and are not required to be inspected by the New Mexico licensing authority or comply with any other regulations under this part other than 8.9.4.11(A)(6) NMAC.

(iii) A Tribal Government license may be revoked if the New Mexico licensing authority is notified by the center or licensed home's Tribal Child Care and Development Lead agency of the center or home's non-compliance with their rules and requirements or is notified of a loss of Tribal head or early head start status.

(c) Providers wishing to receive a Tribal Government license must submit the following to obtain licensure from ECECD:

(i) Licensing application;

(ii) Proof of Tribal CCDF Lead Agency approval;

(iii) Annual submission of a letter or memorandum attesting that the Tribal CCDF's programs' director and all staff are in compliance with state, federal or Tribal background check clearances;

(iv) Annual submission of a list of the director and all staff employed by the provider, listing each individual staff member's name, date of birth, and home address; and

(v) W-9 form and supporting documentation, if applicable.

(d) As an alternative to a Tribal Government license, centers and homes operating on sovereign tribal lands may choose to apply for a state license. To receive a state license, the center or home must follow the full process outlined in 8.9.4 NMAC and agree to follow and be subject to all the rules and requirements of 8.9.4 NMAC.

B. POSTING OF LICENSE: A child care facility shall post the license on the licensed premises in an area readily visible to parents, staff members, and visitors.

C. NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A licensee will not transfer a license by assignment or otherwise to any other person or location. The license will be void and the licensee will return it to the licensing authority when:

(1) the owner of the child care facility changes;

(2) the child care facility moves;

(3) the licensee of the child care facility changes; or

(4) the child care facility closes.

D. AUTOMATIC EXPIRATION OF LICENSE: A license will expire automatically at midnight on the date the following occurs:

(1) on the day a child care facility closes;

(2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;

(3) on the day a child care facility moves.

E. ACCREDITED PROGRAMS: Accredited programs must meet and maintain all licensing standards and their ECECD-approved national accreditation without a lapse in order to be designated as a 5-star facility. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.9.4.11 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

A. The licensing authority may revoke, suspend, or restrict a license, reduce star status, deny an initial or renewal license application, impose monetary sanctions pursuant to 8.370.4 NMAC, put in place conditions of operation, issue a cease and desist letter, impose other sanctions or requirements against a licensee, or reduce to a base level of child care assistance reimbursement a licensee who is in receipt of a higher than base level of child care assistance reimbursement, for any of the following reasons:

(1) violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the licensee cannot reasonably safeguard the health and safety of children;

(2) failure to allow access to the licensed premises by authorized representatives of the licensing authority;

(3) misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;

(4) allowing any person to be active in the child care facility who is or would be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC; this will include all adults and teenaged children living in a family child care or group child care home operated in a private residence whether or not they are active in the child care operation;

(5) failure to timely obtain required background checks;

(6) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to employ any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(7) allowing the number of children in the child care facility to exceed its licensed capacity;

(8) substantiated abuse or neglect of children by an educator, staff member, volunteer, or household member as determined by ECECD, CYFD, or a law enforcement agency;

(9) failure to comply with provisions of the other related regulations listed herein;

(10) discovery of repeat violations of the regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous licensure periods;

(11) discovery of prior revocations or suspensions that may be considered when reviewing a facility's application for licensure or license renewal;

(12) loss of accreditation, regardless of reason, will result in a reduction in star status;

(13) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present or sold on the premises at any time, regardless of whether children are present;

(14) making false statements or representations to the licensing authority with the intent to deceive, which the licensee knows, or should know to be false; or

(15) background clearance suspension or denial.

B. Commencement of an ECECD, CYFD or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department my take such further action as is supported by the investigation results.

C. A suspension, revocation, or conditions of operations imposed pursuant to Subsection A of this Section may take effect immediately if in the discretion of the department, the health, safety or welfare of a child is at risk.

D. The Early Childhood Education and Care Department notifies the licensee in writing of any action taken or contemplated against the license/licensee. The notification shall include the reasons for the department's action.

E. The licensee may obtain administrative review of any action taken or contemplated against the license/licensee.

F. The administrative review shall be conducted by a hearing officer appointed by the department's secretary.

G. If the action is to take effect immediately, the department affords the licensee the opportunity for an administrative appeal within five working days. If the license is suspended pending the results of an investigation, the licensee may elect to postpone the hearing until the investigation has been completed.

H. If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect or an appeal of the following action is concluded and the action is either upheld or overturned.

I. If the contemplated action does not take immediate effect, and the licensee is given advance notice of the contemplated action, the licensee is allowed 10 working days from date of notice to request an administrative appeal.

J. In circumstances in which Public Health Act, Subsection N of Section 24-1-5 NMSA 1978 (2005) may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a licensee, the provisions of Subsection N of Section 24-1-5 shall apply as follows.

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of 15 days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

(5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.

(6) Nothing in Subsection J of 8.9.4.12 NMAC shall be construed to require licensure that is not otherwise required in this regulation.

K. The licensing authority may require a direct provider of care to undergo an additional background check if information shows any of the following:

(1) that the direct provider of care has pending charges for any criminal offense;

(2) that the direct provider of care has a pending or substantiated CYFD protective services or juvenile justice service referral;

(3) that the direct provider of care has any criminal history or history of a referral to CYFD protective services or juvenile justice services discovered after the most recent background check; or

(4) that the direct provider of care is the subject of an allegation of abuse and neglect in any licensed facility.

L. There shall be no right to administrative review for reduction in star level resulting from loss of, or failure to maintain, national accreditation status. The licensee shall be bound by the rules, regulations, policies and procedures implemented by the national accreditation body that governs its accreditation process.

M. There shall be no right to an appeal or administrative review when the licensing authority issues a cease and desist letter; provided, however, that the licensee shall have the right to an appeal or administrative review of any subsequent action taken by the licensing authority as set forth herein.

N. 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. The licensing authority shall reduce the star level of a provider granted national accreditation status by the department to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. If a provider holding accreditation from an accrediting body no longer approved by ECECD fails to maintain these requirements, this will result in the provider reimbursement reverting to the base reimbursement rate. The provider may increase their star level only by meeting FOCUS criteria or by attaining ECECD approved national accreditation status. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.

[8.9.4.12 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.13 CIVIL MONETARY PENALTIES:

A. The following factors shall be considered by the licensing authority when determining whether to impose civil monetary penalties:

(1) death or serious injury to a child;

(2) abuse, neglect or exploitation of a child;

(3) regulatory violations which immediately jeopardize the health and safety of a child;

(4) numerous violations, which combined, jeopardize the health and safety of a child;

(5) repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a child care facility;

(6) failure of a child care facility to correct violations found during previous surveys or visits;

(7) intentional misrepresentation regarding condition of the facility;

(8) effect of a civil monetary penalty on financial viability of the facility; or

(9) extenuating circumstances, which allow the licensing authority greater discretion to consider both mitigating and exacerbating circumstances not specifically defined.

B. An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B, and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation.

C. The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

(1) Class A deficiency: not less than $500 and not greater than $5,000.

(2) Class B deficiency: not less than $300 and not greater than $3,000.

(3) Class C deficiency: not less than $100 and not greater than $500.

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

8.9.4.14 WAIVERS:

A. Programs, facilities or homes licensed under these regulations may request a waiver from any of the requirements of these regulations by applying, in writing, to the licensing authority for a waiver. The request should identify the regulatory requirement for which a waiver is requested, the reason for the waiver, and any action proposed to meet the intent of the regulation.

B. Requests for waivers that involve construction of any type on a current licensed premise must be reviewed and approved by the licensing authority prior to the initiation of the construction.

C. Requests for waivers will be reviewed and approved or denied within 30 calendar days of receipt by the licensing authority.

D. Requests for waivers may include temporary operating standards following an ECECD recognized disaster.

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

8.9.4.15 VARIANCES - CURRENTLY LICENSED FACILITIES:

A. If a child care facility licensed on the date these regulations are promulgated provides the services prescribed but fails to meet all building requirements, the licensing authority will grant a variance, provided that the variances granted:

(1) will not create a hazard to the health, safety, or welfare of children and staff members; and

(2) is for building requirements that cannot be corrected without an unreasonable expense to the child care facility.

B. Variances granted will continue in force as long as the child care facility continues to provide services pursuant to these regulations and will not violate the criteria of Subsection A of this section.

C. The licensing authority will grant a variance for those requirements contained in 8.9.4.8 NMAC related regulations and codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

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

8.9.4.16 VARIANCES - NEW CHILD CARE FACILITY: A new child care facility may be located in an existing building or a newly constructed building.

A. If opened in an existing building, the licensing authority may grant a variance for those building requirements the child care facility cannot meet provided any variance is not in conflict with existing building and fire codes.

B. A new child care facility opened in a newly constructed building shall meet all requirements of these regulations.

C. The licensing authority will make all variances granted a permanent part of the child care facility file.

D. The licensing authority may grant a variance for those requirements contained in 8.9.4.8 NMAC related regulations and codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.9.4.16 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.17 SURVEYS FOR CHILD CARE FACILITIES:

A. The licensing authority will conduct a survey at least twice a year in each child care facility using these regulations as criteria. The licensing authority will conduct additional surveys or visit the child care facility additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate complaints.

B. Upon the completion of a survey, the licensing authority will discuss the findings with the licensee or their representative and will provide the child care facility with an official written report of the findings and a request for a plan or plans of correction, if appropriate.

C. The licensee, director, or operator, will submit within 10 working days after the date of the survey, a corrective action plan to the licensing authority for deficiencies found during the survey. The corrective action plan will be specific on how and when the child care facility shall correct the deficiency or deficiencies.

D. The licensing authority may accept the corrective action plan as written or require modifications of the plan.

E. By applying for a new license, the licensee grants the licensing authority representative the right to enter the premises and survey the child care facility, including inspection and copying of child care facility records, both while the application is being processed and, if licensed, at any time during the licensure period.

F. The licensing authority may or may not announce a survey. The licensee must grant immediate access upon the licensing authority's arrival. At all times, a person who is knowledgeable in the daily operations, has access to all records and locked areas, and can represent the licensee or director for survey purposes shall be present in the child care facility.

G. If a facility has video cameras on the premises that have recording capabilities, footage must be accessible to the licensing authority upon request.

[8.9.4.17 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.18 COMPLAINTS:

A. The licensing authority will process any complaint regarding any child care facility licensed or required to be licensed under these regulations. The investigatory authority of the licensing authority is limited to matters pertaining to these regulations.

B. A licensing authority representative receiving complaints will ask complainants to identify themselves and provide all information necessary to document the complaint.

C. The licensing authority will investigate any complaint in which the health, safety, or welfare of a child could be in danger. The complaint will be reviewed and prioritized immediately according to the nature and severity of the complaint. The licensing authority follows established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows.

(1) Priority 1 complaints: investigation will be initiated within 24 hours.

(2) Priority 2 complaints: investigation will be initiated within three working days.

(3) Priority 3 complaints: investigation will be initiated within five working days.

(4) Initiation timeframes for investigations may be shortened based on the severity and nature of the complaint, but timeframes may not be extended.

D. The licensee shall cooperate in good faith with any investigation by the licensing authority. Obstruction of an investigation may subject the licensee to sanctions, up to revocation.

E. Action by the licensing authority:

(1) The licensing authority will provide a written letter on the results of the investigation to both the licensee of the child care facility that is the subject of the complaint and the complainant.

(2) If the licensing authority finds the complaint is unsubstantiated, it will be so designated and the licensing authority will take no further action.

(3) If the licensing authority finds that a complaint is substantiated, it will make the complaint part of the licensing authority's file on the child care facility. The following additional actions will, at the discretion of the licensing authority, be taken:

(a) the licensing authority will require the child care facility to submit and comply with a written corrective action plan; or

(b) the licensing authority will sanction the child care facility administratively including, without limitation, suspension, revocation, or restriction of a license; or

(c) the licensing authority will file criminal charges or pursue civil remedies.

F. The licensing authority will report all cases of suspected child abuse and neglect to both CYFD's children's protective services and the local law enforcement agency.

[8.9.4.18 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.19 BACKGROUND CHECKS: Background checks will be conducted in accordance with the most current regulations related to background checks and employment history verification provisions as promulgated by the Early Childhood Education and Care Department pursuant to 8.9.6 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

A. the staff member was found eligible as a direct provider of care in a child care center, licensed child care home, licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

B. submits an application for transfer and is found eligible pursuant to 8.9.6.11 NMAC.

[8.9.4.19 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.20 CHILD CARE CENTER REGULATIONS:

A. APPLICABILITY TO CHILD CARE CENTERS: A center required to be licensed under regulations in 8.9.4.21 NMAC through 8.9.4.29 NMAC is one that provides care, education, services and supervision to children for less than 24 hours a day to children in a non-residential setting, and is not exempted from regulation under any of the exceptions listed in 8.9.4.9 NMAC.

B. NEW OR INNOVATIVE PROGRAMS FOR PROVIDING CHILD CARE TO CHILDREN: A new or innovative service for child care that is typically not governed by these regulations will be licensed if there is a substantiated need for the service and if it meets all requirements outlined in Paragraphs (1), (2) and (3) of Subsection C. New or innovative programs shall adhere to all basic licensing standards regulations except that the licensing authority may grant waiver(s) to the extent necessary to accommodate new and innovative services which may conflict with any regulations pertaining to curriculum and environment.

C. SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE CHILD CARE CENTERS: Applicants for new or innovative child-care services that do not fit under these regulations will submit a proposal to the licensing authority for review and approval. Applications shall be presented to the department for review. The proposal will include:

(1) an explanation of any special needs or modifications for the children who will be receiving these services;

(2) identification of those portions of the proposed program that would conflict with these regulations; and

(3) statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations.

D. SPECIAL REQUIREMENTS FOR CENTERS LOCATED ON OR NEAR THE PREMISES OF CORRECTIONAL FACILITIES: Applicants for centers located on or near correctional facilities will submit a proposal to the licensing authority for review and approval. The proposal will include:

(1) an explanation of security modifications that are deemed necessary to ensure the safety of the staff, parents, and children using the child care center; and

(2) statement of how the proposed center will modify or provide alternative measures, policies and procedures that meet the intent of these regulations if the proposed program is in conflict with these regulations.

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

8.9.4.21 LICENSURE REQUIREMENTS FOR CENTERS:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant shall complete an application form provided by the licensing authority. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45-day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers or any person who may have unsupervised physical access to children as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(3) ZONING, BUILDING AND OTHER APPROVALS: An applicant shall have the following:

(a) current written finalized zoning approval from the appropriate city, county or state authority;

(b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

(c) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority;

(d) current written approval from the New Mexico environment department or other environmental health authority for:

(i) a kitchen, if meals are prepared on site and served in the center;

(ii) private water supply, if applicable;

(iii) private waste or sewage disposal, if applicable; and

(iv) a swimming pool, if applicable.

(4) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW CENTERS:

(a) Accessibility to individuals with disabilities is provided in all new centers and shall include the following:

(i) main entry into the center is level or has a ramp to allow for wheelchair access;

(ii) building layout allows for access to the main activity area;

(iii) access to at least one bathroom is required to have a door clearance of 32 inches; the toilet unit also provides a 60-inch diameter turning radius;

(iv) if ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise; and

(v) ramps exceeding a six-inch rise are provided with handrails.

(b) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the center.

(5) SCHEDULE: All applications for a new license shall include a description of the center's proposed activities and schedule.

(6) INITIAL SURVEY: The licensing authority will schedule a survey for a center when it receives a complete application with all supporting documents.

B. CAPACITY OF CENTERS:

(1) The number of children in a center, either in total or by age, shall not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed facility, including school-age children and the children of staff members and volunteers, in the capacity of the facility, even if the children are on a field trip or other outing outside the licensed premises. The licensed capacity must not be exceeded by the presence of school-age children.

(3) Children shall not be cared for in unlicensed areas of the facility.

(4) A center must meet the following space requirements.

(a) 35 square feet of indoor activity space measured wall to wall on the inside for each child in a center, excluding single-use areas, such as restrooms, kitchens, halls and storage areas, and excluding offsets and built-in fixtures.

(b) 75 square feet of outdoor activity space for each child using the area at one time. The center shall post on the doors to the playground the maximum capacity of the playground.

(c) Centers must post classroom capacities, ratios, and group sizes in an area of the room that is easily visible to parents, staff and visitors.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee shall report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(a) a lost, missing or unattended child;

(b) a serious injury;

(c) the abuse or neglect of a child;

(d) fire, flood, or other natural disaster that creates structural damages to a center or poses a health hazard;

(e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(f) any legal action against a center or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(h) any declaration of intention or determination to inflict punishment, loss, injury or pain on child or staff member by the commission of an unlawful act, such as, but not limited to, a bomb threat;

(i) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(j) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A center shall notify parents or guardians in writing of any incident, including notifiable illnesses, that have threatened the health or safety of children in the center. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.21 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.9.4.21 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

A. ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, staff and visitors:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the center;

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

(5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

C. POLICY AND PROCEDURES: All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended, the facility shall update the revision and date it. The written policies and procedures must cover the following areas:

(1) actions to be taken in case of accidents or emergencies involving a child, parents or staff members;

(2) policies and procedures for admission and discharge of children;

(3) policies and procedures for expulsion of children. Policies and procedures shall include how the center will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The center must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;

(4) policies and procedures for the handling of medications;

(5) policies and procedures for the handling of complaints received from parents or any other person;

(6) policies and procedures for actions to be taken in case children are discovered unattended or missing from the center;

(7) policies and procedures for the handling of children who are ill;

(8) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations (see waivers, Subsection D of 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans and

(9) policies and procedures that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

D. FAMILY HANDBOOK: All facilities operating under these regulations must have a family handbook. Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following:

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, license information, days and hours of operation, services offered);

(d) name of director and their contact information;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open-door policy to the classroom;

(h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays and parties; and

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) expulsion procedures;

(d) fee payment procedures, including penalties for tardiness;

(e) notification of absence;

(f) fee credits, if any (e.g. for vacations, absences, etc.);

(g) field trip policies;

(h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i) emergency procedures, safety policies, and disaster preparedness plan;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) guidance policy;

(n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

(o) employee cellular telephone usage policy that directs and defines safe and appropriate use.

E. CHILDREN'S RECORDS: A center shall maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records shall be kept at the center for 12 months after the child's last day of attendance. Records shall contain at least:

(1) PERSONAL INFORMATION:

(a) name of the child; date of birth, gender, home address, mailing address and telephone number;

(b) names of parents or guardians, parents or guardians current places of employment, addresses, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the center and the date of the child's last day at the center;

(e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth, or at-risk children and youth as determined by the department;

(f) a record of any accidents, injuries or illnesses which require first aid or medical attention which must be reported to the parent or guardian;

(g) a record of observations of recent bruises, bites or signs of potential abuse or neglect, which must be reported to CYFD and ECECD;

(h) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain activity destination, date and time of activity and expected return time from activity;

(i) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child.

(j) a record of the time the child arrived and left the center and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;

(k) an enrollment agreement form which must be signed by a parent or guardian with an outline of the services and the costs being provided by the facility; and

(l) a signed acknowledgment that the parent or guardian has read and understands the family handbook.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child.

(b) the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

(c) the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency.

(d) a document giving a center permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian.

(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

F. PERSONNEL RECORDS: A center shall keep and maintain an up-to-date personnel file with all information required by ECECD for each staff member, including substitutes and volunteers who work more than six hours in any week and have direct contact with children. Personnel files shall be updated as soon as practicable, but not longer than thirty days after any changes.

(1) The following items, at minimum, shall be maintained in ECECD's Professional Development Information System (PDIS):

(a) name;

(b) current position;

(c) dates of hire and termination;

(d) documentation of a background check and employment history verification; if background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in file. A background check must be conducted at least once per five-year interval on all required individuals;

(e) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

(f) documentation of current first-aid and cardiopulmonary resuscitation training;

(g) documentation of all appropriate training by date, time, hours and area of competency;

(h) written plan for ongoing professional development for each educator, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals; and

(i) signed acknowledgment that the staff have read and understand the personnel handbook.

(2) The following items, at minimum, shall be maintained by the provider outside of PDIS and shall be made available for review upon request:

(a) current and past duties and responsibilities;

(b) emergency contact number;

(c) results of performance evaluations; and

(d) administrative actions or reprimands.

(3) A center shall maintain dated weekly work schedules for the director, all staff, all educators, and all volunteers and keep the records on file for at least 12 months. The record shall include the time the workers arrived at and left work and include breaks and lunch.

G. PERSONNEL HANDBOOK: The center shall give each employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title;

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(4) code of conduct;

(5) training requirements, career lattice, professional development opportunities;

(6) procedures and criteria for performance evaluations;

(7) policies on absence from work;

(8) grievance procedures;

(9) procedures for resignation or termination;

(10) copy of licensing regulations;

(11) policy on parent involvement;

(12) health policies related to both children and staff;

(13) policy on sexual harassment;

(14) child guidance policy;

(15) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(16) confidentially statement; and

(17) a plan for retention of qualified staff.

[8.9.4.22 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.23 PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) An employer shall not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.9.6 NMAC to continue to work directly or unsupervised with children.

(2) All educators shall demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) Clerical, cooking and maintenance personnel who also care for children and are included in the staff/child ratio shall have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios shall not have as their primary responsibility cooking, clerical or cleaning duties while caring for children.

(5) Volunteers shall not be counted in the staff/child ratios or left alone with children unless they meet all requirements for an educator.

(6) Substitutes and part-time educators counted in the staff/child ratios shall meet the same requirement as regular educators except for training requirements, professional development plan and evaluations. Substitutes, volunteers, and educators routinely employed in a center but working 20 hours or fewer a week, shall complete half the required training hours. Such employees working more than 20 hours a week shall meet full training requirements and have professional development plans and evaluations. See Paragraph (2) of Subsection B of 8.9.4.23 NMAC for additional training requirements.

(7) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of fifty percent of the center's daily core hours of operation. The licensing authority may require proof of the director's time on-site. See Paragraph (2) of Subsection F of 8.9.4.22 NMAC.

(8) During any absence, the director shall assign a person to be in charge and will post a notice stating the assignment.

(9) A program shall maintain staff/child ratios and group sizes at all times based on the age of the majority of children in the group. Children must never be left unattended whether inside or outside the facility. Staff will be onsite, available and responsive to children during all hours of operation. All educators shall perform head counts at regular intervals throughout the day.

(10) A center shall have a minimum of two staff members present at all times, with one being an educator. If the center has fewer than seven children, the second staff member may conduct other activities such as cooking, cleaning, or bookkeeping.

(11) A center shall keep a list of people who can substitute for any staff member. The list will include the people's names, telephone numbers, background check, health certificates and record of orientation.

(12) Each room of the center and its premises shall be inspected at closing time on a daily basis to assure the center is secure, free of hazards, and that no child has been left unattended.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

(a) Unless exempted under Subparagraph (b) below, a child care center shall have a director who is at least 21 years old and meets the requirements outlined in the table below.

Professional Preparation		**Experience**

Program Administration The first of three AA-level Early Childhood Program Administration courses in the Early Childhood Program Administration career pathway: *Program Management 1* Or The National Administrator Credential (NAC)*	and	Child Development/Early Childhood Education *Child Growth, Development and Learning* (one of the AA-level "common core courses")**	and	Two-years experience in an early childhood growth and development setting
The Provisional AA-Level NM Early Childhood Program Administration Certificate (All three AA-level Early Childhood Program Administration Courses and Practicum: *Program Management 1, Effective Program Development for Diverse Learners and Their Families & Practicum, Professional Relationships & Practicum*)				
The New Mexico Child Development Certificate (CDC) (Includes the following four courses as well as additional non-coursework requirements: *Child Growth, Development and Learning; Health, Safety and Nutrition; Family and Community Collaboration; and Assessment of Children and Evaluation of Programs*)				
The Child Development Associate (CDA) certificate				
The Child Care Professional (CCP) certificate				
The New Mexico Early Childhood Program Administration Certificate				
Montessori Teacher Certification				
The New Mexico One-Year Vocational Certificate				
Associate of Arts (AA) or Applied Sciences (AA or AAS) in child development or early childhood education				
Or				
A bachelor's degree or higher in early childhood education or a related field. Related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or any bachelor's degree with a transcript containing two or more Early Childhood courses.			and	One year of experience in an early childhood growth and development setting

*The NAC and two years of experience in an early childhood growth and development setting will be accepted as sufficient qualification for a director under the following conditions: a) The NAC was received prior to November 30, 2012 and b) the NAC has been maintained and has not expired subsequent to November 30, 2012.
**Directors shall be given until the end of the first full academic semester following their start date to successfully complete this course.

(b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as a director. Current directors having a break in employment of more than one year must meet the requirements as specified in Subparagraph (a) above.

(2) TRAINING:

(a) The director shall develop and document an orientation and training plan for new staff members and volunteers and shall provide information on training opportunities. The director shall have on file a signed acknowledgment of completion of orientation by employees, volunteers and substitutes as well as the director. New staff members shall participate in an orientation before working with children. Initial orientation shall include training on the following:

(i) scope of services, activities, and the program offered by the center;

(ii) emergency first aid procedures, recognition of childhood illness and indicators of child abuse;

(iii) fire prevention measures, emergency evacuation plans and disaster preparedness plans;

(iv) review of licensing regulations;

(v) policies regarding guidance, child abuse and neglect reporting, and handling of complaints;

(vi) review of written policies and procedures as defined in Subsection C of 8.9.4.22 NMAC;

(vii) center/parental agreement;

(viii) sanitation procedure;

(ix) written goals of the program;

(x) personnel handbook;

(xi) family handbook;

(xii) names and ages of children;

(xiii) names of parents;

(xiv) tour of the facility; and

(xv) introduction to other staff and parents.

(b) All new staff members working directly with children regardless of the number of hours employed per week shall complete the following training within three months of their date of hire. Training must be approved by ECECD to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators shall have three months to comply with the following training from the date these regulations are promulgated:

(i) prevention and control of infectious diseases (including immunization);

(ii) prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) administration of medication, consistent with standards for parental consent;

(iv) prevention of and response to emergencies due to food or other allergic reactions;

(v) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(vi) prevention of shaken baby syndrome and abusive head trauma;

(vii) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;

(viii) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(ix) precautions in transporting children (if applicable);

(x) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component;

(xi) recognition and reporting of child abuse and neglect; and

(xii) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund in 45 CFR § 98.44 Training and Professional development, or approved three-credit early care and education course or an equivalent approved by the department.

(c) New staff members working directly with children regardless of the number of hours employed per week shall complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

(i) Learning Environment: How Classroom Arrangement Impacts Behavior

(ii) Challenging Behavior: Reveal the Meaning

(iii) Building Strong Relationships with Families

(iv) Honoring All Families

(d) Each staff person working directly with children and more than 20 hours per week, including the director, is required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. The competency areas are:

(i) child growth, development and learning;

(ii) health, safety, nutrition and infection control;

(iii) family and community collaboration;

(iv) developmentally appropriate content;

(v) learning environment and curriculum implementation;
(vi) assessment of children and programs; and
(vii) professionalism.

(e) Training must be provided by individuals who are registered on the New Mexico trainer registry.

(f) Training provided by center employees, directors, owners, and direct affiliates of the provider shall count for no more than half of the required 24 hours of training each year.

(g) Online first aid and CPR training will not be approved, unless there is a hands-on component included. In-person requirements may be waived in case of an emergency.

(h) Identical trainings shall not be repeated for the purpose of obtaining credit.

(i) Directors may count hours in personnel and business training toward the training requirement.

(j) Infant and toddler educators must have at least four hours of training in infant and toddler care annually and within three months of starting work. The four hours shall count toward the 24-hour requirement.

(k) A center shall keep a training log on file for all staff with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate.

(l) A college credit hour in a field relevant to the competency areas listed above shall be considered equivalent to a minimum of 15 clock hours. Basic level pre-requisites, such as math and English courses, leading to a degree in early childhood development shall be considered equivalent to a minimum of 15 clock hours per credit hour.

(m) See Paragraph (6) of Subsection A of 8.9.4.23 NMAC for requirements for centers that operate less than 20 hours per week.

C. STAFF/CHILD RATIOS AND GROUP SIZES:

(1) Ratios and group sizes shall be observed as outlined in the tables below:

Centers where children are grouped by age		
Age Group	Adult to child ratio	Maximum group size
Infants	1:6 or fraction of group thereof	12*
Toddlers	1:6 or fraction of group thereof	12*
two years	1:10 or fraction of group thereof	20
three years	1:12 or fraction of group thereof	24
four years	1:12 or fraction of group thereof	24
five years	1:15 or fraction of group thereof	30
six years and older	1:15 or fraction of group thereof	30

Centers Where Age Groups Are Combined		
Age Group	Adult to child ratio	Maximum group size
six weeks through 24 months	1:6 or fraction of group thereof	12*
two through four years	1:12 or fraction of group thereof	24
three through five years	1:14 or fraction of group thereof	28
six years and older	1:15 or fraction of group thereof	30
18 to 24 months with children ages 24 through 35 months	1:6 or fraction of group thereof	12*

*Providers whose group size exceeds the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated shall continue with their current group size as long as ratios are maintained at all times. Providers whose group size meets the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated must continue to meet the maximum group size. All new licensed providers and those requesting an infant or toddler capacity change after the date these regulations are promulgated must meet the maximum group size as indicated above.

In accordance with AMI or AMS accreditation standards, providers applying for or maintaining AMI or AMS accreditation may combine age groups as follows:		
Age Group	**Adult to Child Ratio**	**Maximum Group Size**
2 months – 15 months	1:3	10
12 months –3 years	1:6	12
2.5 – 6 years	1:15	30
6 years and older	1:15	30

(2) The number of children who may be in a group and the number of caregivers is specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) the room is divided so that different activity/interest areas are well-defined (i.e. creative art, dramatic play, books, manipulatives, blocks, science, and math);

(b) each activity/interest area shall have a posted capacity, which may vary according to the activity and size of the space, and shall not exceed the group size requirement as specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC;

(c) placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

(d) individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

(e) a single educator is responsible for supervising up to the number of children allowed in the adult to child ratio age grouping specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC in one or more interest area as long as every child is in direct eyesight of the educator; and

(f) the total number of children in a larger room must not exceed the room capacity based on activity space. For example, if a three to five year old classroom has a capacity of 40, and the maximum group size is 28, the room must be divided by at least two well-defined spaces that include various activity/interest areas and be supervised by at least three educators, who are spread out so that every child is "attended."

(3) Child care facilities not meeting the requirements as specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC, must be able to clearly demonstrate the intent of group sizing through written procedures that must be approved by ECECD. The written procedures shall address the following:

(a) maintenance of adult to child ratio within the group size in Paragraph (1) of Subsection C of 8.9.4.23 NMAC. to facilitate adult to child interaction and constructive activity among children;

(b) assignment of a group of children to an educator or team of educators; and

(c) demonstrate how the educators shall meet the needs of all children in the assigned classroom and account for all children at all times.

(4) A center shall schedule staff to minimize the number of primary educators a child has during the day and the week. A child shall have no more than three primary, consecutive educators in any day including educators in the early morning and late afternoon. Each child must have an educator who is aware of details of the child's habits, interests, and any special concerns.

(5) The same educator who cares for the children under age two years shall supervise those children when they play with children over two years.

[8.9.4.23 NMAC - N, 11/01/2022; A, 10/08/2024; A, 11/04/2025; A, 9/09/2026]

8.9.4.24 SERVICES AND CARE OF CHILDREN IN CENTERS:

A. GUIDANCE:

(1) A center shall have written policies and procedures clearly outlining guidance practices. Centers shall give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance shall be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A center shall not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

(5) Children shall not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

B. NAPS OR REST PERIOD: A center shall provide physical care appropriate to each child's developmental needs that shall include a supervised rest period.

(1) Children under the age of six years in the centers for more than five hours shall have a rest period.

(2) A center shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats. Cribs which have sneeze guards installed may be placed end-to-end as long as they remain easily accessible.

(4) Each child shall have an individual bed, cot, or mat clearly labeled to ensure each child uses the same items between washing.

(5) Cots or mats shall have a nonabsorbent, cleanable surface. Mats shall be at least three-fourths of an inch thick. Mats and cots shall be cleaned and sanitized after each use regardless of the same child using the mat or cot. Linens may be used multiple times over the course of a week but must be laundered before being used by another child.

(6) Educators shall ensure that nothing covers the face or head of a child aged 12 months or younger when the child is laid down to sleep and while the child is sleeping. Educators shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(7) Children with disabilities or medical conditions that require unusual sleeping arrangements shall have written authorization from physician justifying the sleeping arrangement. A physician's note must contain a timeframe for the specific sleep arrangement. The facility shall adhere to the timeframe recommended by the doctor.

(8) Staff must be physically available to sleeping children at all times. Children must not be isolated for sleeping or napping in an un-illuminated room unless attended by an educator.

(9) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping. Illumination must be enough to see the entire room, clearly observe sleeping children and allow for quiet activities for non-sleeping children.

(10) Staff/child ratios and group sizes shall be maintained at naptime.

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS

(1) The center shall provide a crib for each infant and, when appropriate, for a toddler.

(2) Cribs shall meet federal standards and be kept in good repair. The center shall not use plastic bags or lightweight plastic sheeting to cover a mattress and shall not use pillows in cribs. Stacking cribs is prohibited. Cribs shall not be used for storage. Animals and pets will not be allowed in cribs or on sleeping materials.

(3) No child shall be allowed to sleep in a playpen, pack and play, car seat, stroller, swings, bouncers or high chairs, or other equipment not intended for sleep purposes.

(4) Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician.

(5) Toys that are mouthed by infants and toddlers shall be cleaned after mouthing by one child before other children do the same.

(6) A center shall not admit any child under the age of six weeks except with the written approval of a licensed physician.

(7) A center shall care for children under age two years in self-contained rooms separate from those used by older children. Children age six weeks to 12 months may be in the same room with children age

13 to 24 months, when they are physically separated from the older children. A center may group toddlers ages 18 to 24 months with children ages 24 through 35 months.

(8) Throughout the day, an educator shall give each infant and toddler physical contact and attention. A caregiver shall hold, talk to, sing to and take inside and outside walks with the child. A caregiver shall respond immediately to all cries of infants and to the cries of all children within two minutes.

(9) An educator shall use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(10) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

(11) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping and waking periods.

(12) A center shall arrange the sleeping and play areas so that children in the play area do not disturb sleeping children. Infant rooms shall be arranged so that placement of cribs in an area used by other children does not encroach upon the minimum usable floor space requirements.

(13) Infants shall either be held or fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a supine position while drinking via bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

(14) Children shall not be allowed to walk or run with pacifiers.
Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers shall not be tied to the child. Pacifiers that contact the floor or ground shall be cleaned and sanitized appropriately.

(15) Foods served shall meet the nutritional needs of the infant or toddler. Foods shall be developmentally appropriate for each infant served.

(16) A center shall provide an evacuation crib with wheels suitable for the surfaces around the facility and placed closest to the means of egress (exit).

D. DIAPERING AND TOILETING:

(1) An educator shall plan toilet training with a parent so the toilet routine is consistent. A center shall not attempt to toilet train a child who is not developmentally ready.

(2) A center shall change wet and soiled diapers and clothing promptly. Staff members shall wear non-porous, single-use gloves when changing a diaper and wash their hands after changing a diaper. Food service gloves are not permissible for diaper changing.

(3) A center shall have a change of clothes on hand, including dry, clean clothing and diapers sufficient to meet the needs of each child. A center shall label diapers and diapering supplies for each child and store them properly. Diaper bags shall be inaccessible to children. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

(4) An educator shall change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If center staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

(3) Providers must comply with all state and federal laws to include children with disabilities. Providers must allow children with disabilities who receive early intervention services to be served in accordance with the child's individualized family service plan and allow ECECD Family, Infant Toddler (FIT) providers access to the center to provide services pursuant to the child's Individualized Family Service Plan (IFSP) unless the provider documents with the department that the inclusion of each individual disabled child's services is not required pursuant to the applicable state or federal law. Providers may require FIT providers to sign and agree to standard center policies and procedures. Providers may temporarily exclude a FIT provider from their facility in cases in which their presence has caused a temporary undue burden or undue hardship as defined by the applicable

state or federal law. Providers who temporarily exclude a FIT provider must provide detailed written notification of reason for the exclusion to the department within 48 hours.

F. ADDITIONAL REQUIREMENTS FOR NIGHT CARE:

(1) A center that provides night care shall have 50 square feet of activity area per child for night care.

(2) Staff shall be awake and immediately available to children who need attention during the night.

(3) The beds and cots provided for children shall be completely furnished with mattress, waterproof mattress protectors, sheets under and over the child, blanket, pillow and pillowcase and shall meet all requirements for nap or rest period in accordance with Paragraphs (3) through (10) of Subsection B of 8.9.4.24 NMAC.

(4) Linens shall be changed immediately in case of soiling.

(5) The same menu shall not be used for lunch and supper.

G. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age-appropriate functional, and identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

(a) dramatic play;

(b) creative art;

(c) books;

(d) blocks and accessories;

(e) manipulatives;

(f) music;

(g) science;

(h) math/number; and

(i) sensory.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room shall be posted in an area of the room that is readily visible to parents, staff members and visitors.

(5) Learning areas have adequate space and noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(6) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(7) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(8) Floor surface is suitable for activities that will occur in each learning area.

(9) File and storage space is available for educators' materials.

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

(1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily. Toys shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

(2) A center shall not use accordion-style baby gates.

(3) A child care center shall provide activities that encourage children to be actively involved in the learning process and to experience a variety of developmentally appropriate activities and materials.

(4) A center shall provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time, each child can be individually involved.

(5) Each child at a center shall have a designated space for storage of clothing and personal belongings.

(6) A center shall store equipment and materials for children's use within easy reach of the children, including those with disabilities. A center shall store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(7) A center shall provide children with toys and other materials that are safe and encourage the child's creativity, social interaction, and a balance of individual and group play.

(8) A center shall post a daily activity schedule. A center shall follow a consistent pattern for routine activities such as meals, snacks and rest.

(9) Media viewing shall not be permitted for children under two years of age. Non-educational viewing for children two years and older shall be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing includes all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

(10) Children and family members shall be acknowledged upon arrival and departure.

(11) Children in full time care shall have a minimum of 60 minutes of physical activity daily, weather permitting, preferably outside. Children in part time care shall have a minimum of 30 minutes of physical activity daily, preferably outside. The center shall ensure drinking water is available and maintained at a cool temperature while playing outside.

(12) Equipment and program requirements apply during all hours of operation of the licensed facility.

J. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment used in child care centers shall be:

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer's instructions; or

(b) if intended for residential use, shall be safe and securely anchored.

(2) A center shall enclose the outdoor play area with a fence at least four feet high and with at least one latched gate available for an emergency exit. Outside play areas must be on the premises and approved by the licensing authority.

(3) A center shall place sufficient energy absorbing surfaces beneath climbing structures, swings, and slides (as determined by Subsection N of 8.9.4.8 NMAC). Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material.

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.
When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

(4) Playground equipment shall be inspected and inspections documented weekly.

(5) An outdoor play area for children under age two years shall have an area protected from the general traffic where the children can crawl in safety.

(6) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.

(7) Children shall be protected from the sun during outdoor play by providing shade (as necessary), sunscreen (as permitted by parent, family or guardian), proper attire and limiting the time of exposure to the elements. The center must also consider additional instructions by the child's parent or guardian. Drinking water should be available as needed and outlined in Paragraph (11) of Subsection I of 8.9.4.24 NMAC.

K. SWIMMING, WADING AND WATER:

(1) Each child shall have written permission from a parent or guardian before the child enters the pool.

(2) Children shall be constantly supervised while swimming, wading, or in or near, and the number of adults present must be proportional to the ages and abilities of the children and type of water hazard in use.

(3) If a center has a portable wading pool:

(a) a center shall drain and fill the wading pool with fresh water daily and disinfect pool before and after each use;

(b) a center shall empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a center shall not use a portable wading pool placed on concrete or asphalt.

(4) If a center has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture shall be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture shall be constructed and protected so that, when not in use, it is inaccessible to children; and

(5) The following ratios shall be observed for swimming pools more than two feet deep:

	Ratio for swimming pools more than two feet deep	
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
0-23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:

(1) A center shall ensure the children's safety on field trips and excursions. See Subparagraph (h) of Paragraph (1) of Subsection E of 8.9.4.22 NMAC for requirements for permission slips.

(2) Children shall not go to a private residence unless accompanied by two adults.

[8.9.4.24 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.25 FOOD SERVICE REQUIREMENTS FOR CENTERS:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the center shall conform to the guidelines from United States Department of Agriculture's (USDA's) Child and Adult Care Food Program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A center shall provide a child a meal or snack at least every three hours except when the child is sleeping at night.

(2) A center shall serve, if necessary, a child a therapeutic or special diet with written prescription/diet orders from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the center staff.

(3) A center shall make water freely available to children.

(4) A center that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA's current dietary guidelines for Americans, to include the following. Parents or guardians of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary.

(a) Only one hundred percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent fruit or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.

(5) A center shall vary snacks each day and shall include a selection of two different food group components from the four food group components.

C. MENUS:

(1) Menus shall include a variety of foods. The same menu shall not be served twice in one week.

(2) Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.

(3) Dated weekly menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

D. KITCHENS: Centers shall comply with current New Mexico environment department requirements regarding food service.

(1) A center shall not allow children in the kitchen except under careful supervision.

(2) A food preparer shall thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A center shall serve food promptly and refrigerate immediately after use.

(4) A center shall protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A center shall label and date all leftover food.

(5) If food is brought from the child's home, a center shall label it with the child's name and refrigerate if necessary. A center shall label and refrigerate bottles of infant formula or breast milk. The center must ensure children are fed the food or bottle provided by their parent/guardian and as instructed by them.

(6) A center's refrigerators and separate freezers shall have working internal thermometers and keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below, and frozen food at zero degrees Fahrenheit or below.

(7) A center shall discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

(8) A center shall sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: a) wash with soapy water; b) rinse with clean warm water; and c) sanitize. Disposable plates and cups and plastic utensils of food-grade, medium weight may be used for single service, but Styrofoam cups may not be used.

(9) A center shall use cleaning materials for the kitchen and food preparation areas only in the kitchen and shall store the materials separately from food.

(10) A center shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A center shall equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and sanitize the areas before and after use.

(2) Staff/child ratios and group size must be maintained at meal times.

(3) Adults must sit with the children at meal and snack times to assist children with eating, drinking, and self-feeding and to encourage family-style dining and socialization.

(4) Time allowed for meals shall enable the children to eat at reasonable rate.

(5) A center shall provide sanitary cups or glasses or a drinking fountain for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A center shall not allow children to share drinking or eating utensils.

[8.9.4.25 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.26 HEALTH AND SAFETY REQUIREMENTS FOR CENTERS:

A. HYGIENE:

(1) Children and staff members shall wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children shall wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating;

(e) before and after feeding a child;

(f) after handling pets or animals or items used by animals such as water and food bowls; and

(g) after handling trash.

(2) A center shall label with the child's name and store separately any item used for an individual child's personal hygiene.

(3) If a center promotes tooth brushing activities, the center shall store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

B. FIRST AID REQUIREMENTS:

(1) All educators, staff, and management in direct contact with children must be certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component. From the date of hire, staff shall have three months to obtain the first aid and CPR certification. All staff must maintain first aid and CPR certification with a pediatric component. Prior to licensure, at a minimum, the director shall have first aid and CPR certification.

(2) A center shall keep a first-aid kit and a first-aid manual together in the center in a location inaccessible to children and easily accessible to adults. The first aid kit shall contain, at a minimum, band aids, gauze pads, adhesive tape, scissors, soap, nonporous gloves, and a thermometer.

(3) A center shall treat blood spills cautiously and promptly disinfect the area. Staff members shall wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A center shall clean contaminated surfaces first with hot soapy water then with a disinfecting solution effective against HIV and hepatitis B.

C. MEDICATION:

(1) All staff and children's medications must be labeled. A center shall keep all medications in a locked and identified container inaccessible to children and shall refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Facilities shall give medication only with written permission from a parent or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellant may be shared. Diaper cream shall not be shared.

(3) A designated staff member shall be responsible for giving medication to children. The designated staff member shall ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the center. A center shall keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member shall keep and sign a written record of the dosage, date and time a child is given medication with the signature of the staff who administered the medication. This information shall be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The center shall not administer expired medication.

[8.9.4.26 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.27 ILLNESS REQUIREMENTS FOR CENTERS:

A. Children or staff members absent due to any notifiable disease shall not return to the center without a signed statement from a physician.

B. A center shall separate and constantly observe a child who becomes sick at the center and promptly notify a parent or guardian of the child's illness.

C. A center shall send a child home when:

(1) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

(2) an educator observes signs of contagious disease or severe illness.

D. The center shall have a cot or mat available for sick children and it will be disinfected thoroughly after each use.

E. The center must perform daily health check/screenings of all children in care. Findings will be documented and maintained for review.

[8.9.4.27 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.28 TRANSPORTATION REQUIREMENTS FOR CENTERS:

A. When a center provides transportation to children, it is responsible for the care of children from the time of pick up to the time of delivery to a responsible adult. All vehicles used for transportation of children will have an operable fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.

B. A center shall license all vehicles used for transporting children and shall meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(1) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(2) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(4) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Vehicles used for transporting children shall be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

D. Vehicles operated by the center to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the center shall ensure the vehicle is heated.

E. A center shall load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The center shall ensure children do not cross a street unsupervised after leaving the vehicle.

F. No one shall smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

G. A second adult shall accompany the driver of the vehicle when a center transports five or more children under age five years.

H. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

I. At least one adult transporting children, shall be currently certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component.

J. At all times, drivers shall have a way to communicate to the facility the number of children being transported. Drivers shall maintain a log to include the name of child, drop off and pick up times of all children being transported. The log shall be kept for a minimum of 12 months for review.

[8.9.4.28 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.29 BUILDING, GROUNDS AND SAFETY REQUIREMENTS FOR CENTERS:

A. HOUSEKEEPING:

(1) A center shall keep the premises, including furniture, fixtures, floors, drinking fountains, toys and equipment clean, safe, and in good repair. The center and premises shall be free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will be durable, constructed of materials that will not absorb liquids and have tight fitting lids.

B. PEST CONTROL:

(1) All licensed child care centers must use a New Mexico licensed pest control professional whenever applying pesticides on the center's buildings or grounds.

(2) The licensed pest control professional may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides, herbicides, and other natural repellants and kept out of reach of children.

C. MECHANICAL SYSTEMS:

(1) A center shall maintain comfortable temperatures (68 degrees through 82 degrees Fahrenheit) in all rooms used by children. A center may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a center exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A center must maintain all heating and cooling equipment so that it is in good working order.

(3) A center shall not use heaters without vents, open flame heaters or portable heaters. A center shall install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, infrared heaters, ceramic heaters, fireplaces, fireplace inserts and wood stoves.

(4) A center shall provide fresh air and control odors by either mechanical or natural ventilation. If a center uses a window for ventilation, it shall have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet shall be below 110 degrees Fahrenheit. A center shall install a tempering valve ahead of all domestic water-heater piping.

D. WATER AND WASTE: All food preparation areas, sinks, washrooms, laundries, bathrooms and any self-contained area for infants and toddlers in diapers will have hot and cold running water pressure.

E. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas shall have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A center shall have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A center shall use U/L approved equipment only and will properly maintain this equipment.

(b) All electrical outlets within reach of children shall be safety outlets or will have protective covers.

(c) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

F. EXITS AND WINDOWS:

(1) When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

(2) There must be at least two exits remote from each other in each activity area of the center.

(a) All exits must be marked, including fire exits, by signs having letters at least six inches high whose principal strokes are at least three-fourths of an inch wide.

(b) When illuminated exit signs are installed they must be maintained in operable condition.

(c) All activity spaces for children under the age of two and a half years shall be on the "level of exit discharge" or ground floor.

(3) Exit ways must be kept free from obstructions at all times.

(4) Activity areas for children must have windows or skylight area of at least one-twentieth of the floor area. A skylight means an opening in a roof or ceiling, framed, and fitted with glass for admitting natural light. A skylight is also a tubular skylight, solar tube, or light tunnel. Tubular skylights are devices which uses a rooftop dome to transfer light indoors through reflective tubing running from the roof to the ceiling. Natural lighting received from an adjacent room will not meet the natural lighting requirements.

G. TOILET AND BATHING FACILITIES:

(1) A center shall have one sink in any room for infants, toddlers, and combination thereof. Centers licensed after November 30, 2012 shall have one sink and one toilet in any room that has children ages 24 - 35 months, which shall be used exclusively by the children in this room. All sinks referred to in this paragraph shall have permanent plumbing, hot and cold running water, and shall not be used for food preparation or bottle cleaning. A basin with multiple compartments with a shared faucet will be considered one sink.

(2) All toilet rooms shall have toilet paper, soap and disposable towels at a height accessible to children. A center shall not use a common towel or wash cloth.

(3) All closets and bathroom locks must have an outside release. A center shall enclose all bathrooms. Bathrooms must be accessible and functional.

(4) Toilets and lavatories must be provided in the following ratios. These ratios also apply to programs that share lavatories with unlicensed facilities.

(a) one toilet and one lavatory for one to 12 children;

(b) two toilets and two lavatories for 13 to 25 children;

(c) one toilet and one lavatory for up to an additional 15 children; or

(d) when a center's capacity exceeds 30 children a separate toilet room must be provided for staff.

H. SAFETY COMPLIANCE:

(1) A center shall conduct emergency preparedness practice drills at least quarterly beginning January of each calendar year.

(2) A center shall conduct at least one fire drill each month.

(3) A center shall:

(a) hold the drills at different times of the day;

(b) use the fire alarm or detector system;

(c) emphasize an orderly rather than a speedy evacuation;

(d) a center shall keep a record of the fire drills and emergency preparedness practice drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill on file for at least 12 months;

(e) a center shall request an annual fire inspection from the fire authority having jurisdiction over the center; if the policy of the fire authority having jurisdiction does not provide for an annual inspection of the center, the center must document the date the request was made and to whom; a copy of the latest inspection must be posted in the center;

(f) a center shall post an evacuation plan in each room used by children;

(g) a center shall keep a telephone in an easily accessible place for calling for help in an emergency and shall post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone; if cordless phones or cellular telephones and devices are used, emergency numbers shall be posted on the phone itself; facilities shall post the center's telephone number and address in a conspicuous location next to the emergency phone numbers; a center shall have at least one corded phone or cell phone for use in the case of a power outage;

(h) a center must be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction;

(i) a center must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement;

(j) a center must be equipped with carbon monoxide detectors to cover all licensed areas of the center if the child care program uses any sources of coal, wood, charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions.

(k) a center must have a minimum of two 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the center; and

(l) fire extinguishers, alarm systems, automatic detection equipment, and other firefighting devices must be properly maintained and inspected on a least yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection E of 8.9.4.29 NMAC for emergency lighting requirements.

I. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A center shall prohibit smoking, e-cigarettes, nicotine and cannabis vaporizers, and any other vaporizing device not prescribed by a licensed medical professional in all areas, including vehicles. A center shall not allow any alcoholic beverages, cannabis, firearms, lethal or non-lethal weapons or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

J. PETS:

(1) A center shall inform parents or guardians in writing before pets are allowed in the center.

(2) A center shall not allow pets in the kitchen, food serving, food storage areas, bathrooms, or infant room.

(3) A center shall inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the center.

(4) A center shall not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

[8.9.4.29 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.30 FAMILY CHILD CARE HOME AND GROUP CHILD CARE HOME REGULATIONS: APPLICABILITY: A private dwelling required to be licensed under regulations in 8.9.4.31 NMAC through 8.9.4.38 NMAC which meets one of the following criteria.

A. Family child care home - A private dwelling required to be licensed pursuant to these regulations which provides care, services, and supervision to at least five but no more than six children for a period of less than 24 hours of any day. The licensee shall reside in the home and be the primary educator. A family day care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose.

B. Group child care home - A private dwelling or other building on the premises required to be licensed pursuant to these regulations which provides care, services, and supervision for at least seven but not more than 12 children for a period of less than 24 hours of any day. The licensee shall reside in the home and be the primary educator. A group day care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose.

[8.9.4.30 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.31 LICENSURE REQUIREMENTS FOR HOMES:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant will complete an application form provided by the licensing authority. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45-day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A home will submit a new application to the licensing authority before changing anything required to be stated on the license such as dates, capacity, operator, or address.

(3) BACKGROUND CHECK: In addition to the basic requirements at 8.9.4.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee shall be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. A household member reaching the age of 18 must submit their background check in accordance with the most current provisions of 8.9.6 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) ZONING AND OTHER APPROVALS: An applicant shall have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority if applicable;

(c) current written approval from the New Mexico environment department or other environmental health authority for: (i) Private water supply, if applicable; (ii) Private waste or sewage disposal, if applicable; and (iii) A swimming pool, if applicable.

(5) SCHEDULE: All applications for a new license will include a description of the home's proposed activities and schedule.

(6) INITIAL SURVEY: The licensing authority will schedule a survey for a home when it receives a complete application with all supporting documents.

B. CAPACITY OF A HOME:

(1) The number of children in a home, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed home, including the educator's own children under the age of six, in the capacity of a home, even if the children are on a field trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of non-residential school age children.

(3) A home may be licensed for up to 12 children.

(4) A home licensed as a family day care home under these regulations providing care for a maximum capacity of six children may care for up to four children under the age of two providing a second educator is present in the home and the home is licensed to provide such care. A home licensed as a group day care home under these regulations providing care for a maximum of 12 children may care for up to four children under age two providing a second educator is present in the home and the home is licensed to provide such care.

(5) A home must have 35 square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than 12 children. A home must have at least one bathroom with a toilet and sink. For a home licensed for no more than six children, one activity room will be measured. For a home licensed for 12 children, no more than two rooms will be measured. Children shall not be cared for in unlicensed areas of the home.

(6) The home shall have an outdoor play area, which must be contained by a fence. Outside play areas must be on the premises or approved by the licensing authority.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee shall report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(a) a lost, or missing or unattended child;

(b) a serious injury;

(c) the abuse or neglect of a child;

(d) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;

(e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(f) any legal action against a home, household member, or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(i) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the home. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.31 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.9.4.31 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

A. ADMINISTRATIVE RECORDS: A licensee shall post the child care home license in an area readily visible to parents and visitors. The licensee shall also keep on file:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;

(2) the current child care regulations;

(3) the guidance policy;

(4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and

(5) an up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

C. FAMILY HANDBOOK: All facilities using these regulations must have a family handbook. Upon updating the family handbook, changes must be approved and submitted to licensing and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following:

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, license information, days and hours of operation, services offered);

(d) name of licensee and how they may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open-door policy to the family or group child care home;

(h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays and parties; and

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES: All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended, the facility shall update the revision and date it. The written policies and procedures must cover the following areas:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;

(d) fee payment procedures, including penalties for tardiness;

(e) notification of absence;

(f) fee credits, if any (e.g. for vacations, absences, etc.);

(g) field trip policies;

(h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i) emergency procedures, safety policies, and disaster preparedness plan;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) guidance policy;

(n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

(o) employee cellular telephone usage policy that directs and defines safe and appropriate use.

D. CHILDREN'S RECORDS: A home shall maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for 12 months after the child's last day of attendance. Records shall contain at minimum:

(1) PERSONAL INFORMATION:

(a) name of the child, date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardians current places of employment, addresses, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the home and the date of the child's last day at the home;

(e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth, or at-risk children and youth as determined by the department;

(f) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or potential signs of abuse or neglect, both of which must be reported to a parent or guardian;

(g) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain activity destination, date and time of activity and expected return time from activity;

(h) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child;

(i) a record of the time the child arrived and left the home and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;

(j) an enrollment agreement must be signed by a parent or guardian with an outline of the services and the costs being provided by the home; and

(k) a signed acknowledgement that the parent or guardian has read and understands the family handbook.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child;

(b) the name and telephone number of two people to contact in the local area in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times.

(c) the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency;

(d) a document giving a home permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian; and

(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

E. PERSONNEL RECORDS: A licensed home shall maintain complete and up to date personnel records for the licensee and all second educators, including substitutes and volunteers working more than six hours per week. Records must be updated as soon as practicable, but no later than thirty days after any change.

(1) The following items, at minimum, shall be maintained in ECECD's Professional Development Information System (PDIS):

(a) documentation of background check and employment history verification for all staff members; if a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals;

(b) an annual signed statement that the individual would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

(c) documentation of all completed training, including first-aid and CPR;

(d) a written plan for ongoing professional development for each educator that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals (family child care homes who do not have employees are exempted from this requirement); and

(e) signed acknowledgment that the individual has read and understands the personnel handbook.

(2) The following items, at minimum, shall be maintained by the home provider outside of PDIS and made available upon request:

(a) documentation of a background check and employment history verification for all adults living in the home. A background check must be conducted at least once every five years on all required individuals;

(b) records of arrival and departure times for second educators, including breaks and lunch;

(c) current and past duties and responsibilities for second educators;

(d) emergency contact information for second educators;

(e) results of performance evaluations for second educators;

(f) administrative actions or reprimands for second educators.

F. PERSONNEL HANDBOOK: The educator shall give each non-resident employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following critical contents:

(1) job description of second educator;

(2) benefits, if provided, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(3) code of conduct;

(4) training requirements, professional development opportunities;
(5) procedures and criteria for performance evaluations;
(6) policies on absence from work;
(7) procedures for resignation or termination;
(8) copy of licensing regulations;
(9) policy on parent involvement;
(10) health policies related to both children and staff;
(11) policy on sexual harassment;
(12) child guidance policy;
(13) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);
(14) confidentially statement;
(15) plan for retention of qualified staff; and
(16) employee cellular telephone usage policy that directs and defines safe and appropriate use.

[8.9.4.32 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.33 PERSONNEL AND STAFFING REQUIREMENTS FOR HOMES:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) A licensee shall not allow any staff member, including the licensee, or any other adult living in the home involved in an incident which would disqualify that staff member or other adult under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children or to reside in the home.

(2) All staff members shall demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) The licensee shall be in the licensed child care home during at least seventy-five percent of the home's core hours of operation.

(5) Substitutes, volunteers and part time second educators counted in the staff/child ratios shall meet the same requirements as regular staff members, except for training requirements. Substitutes and part time second educators routinely employed in the home but working 20 hours or less a week shall complete half the required training hours. Such employees working more than 20 hours per week shall complete all required training hours. The primary educator in a licensed home shall complete all required training hours, regardless of the number of hours worked.

(6) A home licensed to provide care for six or fewer children shall have at least one educator in the home at all times. A home licensed to provide care for more than two children under the age of two shall have at least two educators in the home at all times.

(7) A home licensed for seven to 12 children shall have at least two educators at the home when more than six children are present or when more than two children under the age of two are present.

(8) Children shall never be left unattended. An educator shall be with the children at all times whether activities are inside or outside of the home. Educators shall be onsite, available and responsive to children during all hours of operation. Providers and secondary caregivers shall perform head counts at regular intervals throughout the day.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) All new staff members working directly with children regardless of the number of hours employed per week shall complete the following training within three months of their date of hire. Training must be approved to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators shall have three months to comply with the following training from the date these regulations are promulgated:

(a) prevention and control of infectious diseases (including immunization);
(b) prevention of sudden infant death syndrome and use of safe sleeping practices;
(c) administration of medication, consistent with standards for parental consent;
(d) prevention of and response to emergencies due to food or other allergic reactions;

(e) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(f) prevention of shaken baby syndrome and abusive head trauma;

(g) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;

(h) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(i) precautions in transporting children (if applicable);

(j) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component;

(k) recognition and reporting of child abuse and neglect; and

(l) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund in 45 CFR § 98.44 Training and Professional development, or approved three-credit early care and education course or an equivalent approved by the department.

(2) New staff members working directly with children regardless of the number of hours employed per week shall complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

(a) Learning Environment: How Classroom Arrangement Impacts Behavior

(b) Challenging Behavior: Reveal the Meaning

(c) Building Strong Relationships with Families

(d) Honoring All Families

(3) A home shall keep a training log on file including the date of the training, name of educator, hours earned, subject/competency area, source of training, and training certificates.

(4) Educators working for a home shall receive at least 12 documented hours of training during each year, including six hours in child growth and development and three hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven competency areas. The competency areas are:

(a) child growth, development and learning;

(b) health, safety, nutrition and infection control;

(c) family and community collaboration;

(d) developmentally appropriate content;

(e) learning environment and curriculum implementation;

(f) assessment of children and programs; and

(g) professionalism.

(5) An educator cannot count more than three hours in first aid or CPR training toward the total hours required. Online first aid and CPR training shall not be approved unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. A year begins and ends at the anniversary date of employment. Training must be provided by individuals who are registered on the New Mexico trainer registry. Identical trainings shall not be repeated for the purpose of obtaining credit.

(6) Infant and toddler educators must have at least two hours of training in infant and toddler care within six months of starting work. The two hours shall count toward the 12-hour requirement in Paragraph (3).

(7) A home must have all educators certified in first aid and cardio-pulmonary resuscitation (CPR) with a pediatric component. Staff shall obtain the first aid and CPR certification within three months of being hired. All staff shall maintain current first aid and CPR certification. Prior to licensure, the primary caregiver shall have CPR certification.

[8.9.4.33 NMAC - N, 11/01/2022; A, 10/08/2024; A, 11/04/2025]

8.9.4.34 SERVICES AND CARE OF CHILDREN IN HOMES:

A. GUIDANCE:

(1) A home shall have written policies and procedures clearly outlining guidance practices. Care-givers will give this information to all parents and staff who shall sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A home shall not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

(5) Children shall not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

B. NAPS OR REST PERIOD:

(1) A home shall provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(2) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Each child shall have an individual bed, cot, or mat that is sanitized after each use, regardless of whether the same child is using the same mat or cot. Linens can be used multiple times over the course of a week but must be laundered before being used by another child.

(4) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats. Cots or mats shall have a nonabsorbent, cleanable surface. Mats shall be at least three-fourths of an inch thick. Mats and cots shall be cleaned and linens must be laundered before being used by another child.

(5) Educators shall ensure that nothing covers the face or head of a child aged 12 months or younger when the child is laid down to sleep and while the child is sleeping. Educators shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(6) Children with disabilities or medical conditions that require unusual sleeping arrangements shall have written authorization from physician justifying the sleeping arrangement. A physician's note must contain a timeframe for the specific sleep arrangement. The facility shall adhere to the timeframe recommended by the doctor.

(7) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping. Illumination must be enough to see the entire room, clearly observe sleeping children and allow for quiet activities for non-sleeping children.

(8) Children shall be directly supervised during naptime.

(9) All children shall sleep in the licensed area of the home. No children shall be allowed to sleep behind closed doors.

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS:

(1) The home shall provide a crib for each infant and, when appropriate, for a toddler.

(2) Cribs shall meet the most current federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. No child shall be allowed to sleep in a play pen, pack and play, infant swing, car seat and/or bouncer. Only a crib meeting the CPSC 16 CFR 1219 or 1220 guidelines will be allowed.

(3) No child shall be allowed to sleep in a playpen, pack and play, car seat, stroller, swings, bouncers or highchairs, or other equipment not intended for sleep purposes.

(4) Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician. Providers shall place infants in cribs for safe sleeping.

(5) A home shall not admit any child under the age of six weeks except with the written approval of a licensed physician.

(6) Throughout the day, an educator shall give each infant and toddler physical contact and attention. An educator shall hold, talk to, sing to and take inside and outside walks with the child. An educator shall respond immediately to all cries of infants and to the cries of all children within two minutes.

(7) An educator shall use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(8) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

(9) A home shall arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(10) Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a supine position while drinking via bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

(11) Children shall not be allowed to walk or run with pacifiers. Pacifiers shall not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers shall be labeled and not shared. Pacifiers shall not be tied to the child. Pacifiers that contact the floor or ground will be cleaned and sanitized appropriately.

(12) Each infant shall be allowed to form and observe his or her own pattern of feeding, sleeping, and waking periods.

(13) Food served shall meet the nutritional needs of the infant or toddler. Foods shall be developmentally appropriate for each infant served.

D. DIAPERING AND TOILETING:

(1) An educator shall plan toilet training with a parent to facilitate a consistent toileting routine. A home shall not attempt to toilet train a child who is not developmentally ready.

(2) A home shall change wet and soiled diapers and clothing promptly. Staff members shall wear non-porous, single use gloves when changing a diaper and wash their hands after changing a diaper. Food service gloves are not permissible for diaper changing.

(3) A home shall have a supply of dry, clean clothing and diapers sufficient to meet the needs of the child. A home shall label diapers and diapering supplies for each child and store them separately. Diaper bags shall be inaccessible to children.

(4) An educator shall change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If family or group home educators believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents or guardians when appropriate. No referral for special needs services to an outside agency will be made without a parent or guardian's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

(**3)** Providers must comply with all state and federal laws to include children with disabilities. Providers must allow children with disabilities who receive early intervention services to be served in accordance with the child's individualized family service plan and allow ECECD Family, Infant Toddler (FIT) providers access to the center to provide services pursuant to the child's Individualized Family Service Plan (IFSP) unless the provider documents with the department that the inclusion of each individual disabled child's services is not required pursuant to state and federal law, or poses an undue burden to the provider as defined by state and federal law. Providers may require FIT providers to sign and agree to standard center policies and procedures. Providers may temporarily exclude a FIT provider from their facility in cases in which their presence has caused a temporary undue burden. Providers who temporarily exclude a FIT provider must provide detailed written notification of reason for the exclusion to the department within 48 hours.

F. NIGHT CARE: In addition to all other requirements, a home providing night care shall have an educator onsite, physically available and responsive to children who need attention during the night.

G. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into functional identifiable learning areas. Family child care homes that have dedicated space shall have at least four of the following learning areas. Family child care homes that do not have dedicated space shall have at least three of the following learning areas:

(a) a place for messy play;

(b) a place for loud, active play;

(c) a place for playing quietly;

(d) a place to pretend; and

(e) a place to read.

(2) Each learning area is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) Learning areas have adequate space and noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(5) Materials are properly cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(6) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(7) Floor surface is suitable for activities that will occur in each learning area.

(8) File and storage space is available for educators' materials.

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

(1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily. Toys shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, by following appropriate guidance.

(2) A home shall not use accordion-style baby gates.

(3) A home shall provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time, each child can be individually involved.

(4) A home shall store equipment and materials for children's use within easy reach of the children, including those with disabilities. A home shall store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(5) A home shall provide children with toys and other materials that are safe, developmentally appropriate, and encourage the child's creativity, social interaction, and a balance of individual and group play.

(6) A home shall post a daily activity schedule. A home shall follow a consistent pattern for routine activities such as meals, snacks and rest.

(7) Media viewing shall not be permitted for children less than two years of age. Media viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing includes all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

(8) Children and family members shall be acknowledged upon arrival and departure.

(9) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part-time enrolled children shall have a minimum of 30 minutes of physical activity daily, preferably outside. The provider shall ensure drinking water is available and maintained at a cool temperature while playing outside.

(10) Equipment and program requirements apply during all hours of operation of the licensed facility.

J. OUTDOOR PLAY:

(1) Outdoor play equipment used in child care homes shall be:

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer's instructions; or

(b) if intended for residential use, shall be safe and securely anchored.

(2) A home shall enclose the outdoor play area with a fence at least four feet high and with at least one latched gate available as an emergency exit.

(3) A home shall place sufficient energy absorbing surfaces beneath climbing structures, swings and slides. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection N of 8.9.4.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.
When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches
For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.						

(4) The use of a trampoline is prohibited at all time during the hours of operation or by any children receiving care at the facility.

(5) Children shall be protected from the sun during outdoor play by providing shade (as necessary), sunscreen (as permitted by parent/guardian), proper attire and limiting the time of exposure to the elements. The provider must also consider instructions by the child's parent or guardian. Drinking water should be available as needed and outlined in Paragraph (9) of Subsection I of 8.9.4.34 NMAC.

K. SWIMMING, WADING AND WATER:

(1) Each child shall have written permission from a parent or guardian before the child enters a pool.

(2) Children shall be constantly supervised while swimming, wading, or in or near, and the number of adults present must be proportional to the ages and abilities of the children and type of water hazard in use.

(3) If a home has a portable wading pool:

(a) a home shall drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home shall empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a home shall not use a portable wading pool placed on concrete or asphalt.

(4) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture shall be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture shall be constructed and protected so that, when not in use, it is inaccessible to children; and

(5) The following ratios shall be observed for swimming pools more than two feet deep:

	Ratio for swimming pools more than two feet deep	
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children

0-23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:

(1) A home shall ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection D of 8.9.4.32 NMAC for information on permission slips.

(2) Children shall not go to a private residence other than the licensed home unless accompanied by two adults.

[8.9.4.34 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.35 FOOD SERVICE REQUIREMENTS FOR HOMES:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home shall conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A home shall provide a child a meal or snack at least every three hours except when the child is sleeping at night.

(2) A home shall serve to a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the educators.

(3) A home shall make water freely available to children.

(4) A home that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA's current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

(a) Only one hundred percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than one hundred percent or artificially flavored drinks for meals or snacks is prohibited. one hundred percent fruit or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.

(5) A home shall vary snacks each day and shall include a selection of two different food group components from the four food group components.

C. MENUS:

(1) Weekly menus must be dated and posted in an area easily visible to parents.

(2) Menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

(3) Menus shall include a variety of foods. The same menu shall not be served twice in one week.

D. KITCHENS:

(1) A home shall not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A home shall serve food promptly and refrigerate immediately after use. Foods served shall meet the nutritional needs of the infant or toddler. Foods shall have the proper texture and consistency for each infant served.

(4) A home shall protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A home shall label and date all leftover food.

(5) If food is brought from the child's residence, a home shall label it with the child's name and refrigerate if necessary. A home shall label and refrigerate bottles of infant formula or breast milk. Labeling is not necessary if only one child is using bottles.

(6) A home shall keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below, and frozen food at zero degrees Fahrenheit or below.

(7) Refrigerators and separate freezers shall have working internal thermometers.

(8) A home shall discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

(9) A home shall sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: (a) wash with soapy water; (b) rinse with clean warm water; and (c) sanitize.

(10) A home shall use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(11) A home shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A home shall equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served. Areas shall be sanitized before and after each use.

(2) A home v provide sanitary cups or glasses for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home shall not allow children to share drinking or eating utensils. Disposable plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups may not be used at any time.

(3) Time allowed for meals shall enable children to eat at a reasonable rate.

[8.9.4.35 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.36 HEALTH AND SAFETY REQUIREMENTS FOR HOMES:

A. HYGIENE:

(1) Children and staff members shall wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children shall wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating or feeding a child;

(e) after handling pets or animals or items used by animals such as water and food bowls; and

(f) after handling trash.

(2) A home shall label with the child's name and store separately any item used for an individual child's personal hygiene.

(3) If a home promotes tooth brushing activities, the provider shall store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

B. FIRST AID REQUIREMENTS:

(1) A home shall keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit shall contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(2) A home shall treat blood spills cautiously and promptly disinfect the area. Staff members shall wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A home shall clean contaminated surfaces first with hot soapy water then with a disinfecting solution, which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A home shall keep all medications in a locked and identified container inaccessible to children and shall refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Homes shall give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement (Paragraph (2) of Subsection C of 8.9.4.36 NMAC) only, non-prescription medications include sunscreen, insect

repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellant may be shared. Diaper cream shall not be shared.

(3) The licensee shall be responsible for giving medication to children. The designated staff member shall ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the home. A home shall keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The licensee shall keep and sign a written record of the dosage, date and time a child is given medication. This information shall be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The home shall not administer expired medication.

D. ILLNESS AND NOTIFIABLE DISEASES:

(1) Children or staff members absent due to any notifiable disease shall not return to the home without a signed statement from a physician.

(2) A home shall separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.

(3) A home shall send a child home when:

(a) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

(b) the educator observes signs of contagious disease or severe illness.

[8.9.4.36 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.37 TRANSPORTATION REQUIREMENTS FOR HOMES:

A. When a home provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children shall have an operable, fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.

B. A home shall license all vehicles used for transporting children and shall meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows.

(1) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(2) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(4) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Vehicles used for transporting children shall be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

D. A home shall load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home shall ensure children do not cross a street unsupervised after leaving the vehicle.

E. No one shall smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

F. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

G. At least one adult transporting children shall be currently certified in first aid and cardiopulmonary resuscitation with a pediatric component.

H. Vehicles operated by the home provider to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the provider shall ensure the vehicle is heated.

I. Providers shall conduct frequent head counts on all trips and when loading and unloading the vehicle.

[8.9.4.37 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.38 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES:

A. HOUSEKEEPING:

(1) An educator shall keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas shall have a tight fitting lid, be durable and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed child care homes must use a New Mexico licensed pest applicator whenever applying pesticides on the home's buildings and grounds.

(2) The pest control company may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides and insecticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides, herbicides, weed killer and other natural repellants.

C. MECHANICAL SYSTEMS:

(1) A home shall maintain comfortable temperatures (68 degrees through 82 degrees Fahrenheit) in all rooms used by children. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a home exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A home shall not use heaters without vents, open flame heaters or portable heaters. A home shall install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

(3) A home must maintain all heating and cooling equipment so that it is in good working order.

(4) A home shall provide fresh air and control odors by either mechanical or natural ventilation. If a home uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet shall be below 110 degrees Fahrenheit. A home shall install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) A home shall use U/L approved equipment only and shall properly maintain this equipment.

(2) All electrical outlets within reach of children shall be safety outlets or shall have protective covers.

(3) The use of multi-prong or gang plugs is not allowed. Surge protectors are not gang plugs under these regulations.

E. EXITS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be useable for an emergency exit. All activity spaces for children under the age of two-and-a-half-years shall be on the "level of exit discharge" or ground floor.

F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms shall have toilet paper, soap and disposable towels at a height accessible to children. A home shall not use a common towel or wash cloth.

(2) All closets and bathroom locks must have an outside release. A home shall enclose all bathrooms. Bathrooms must be accessible to the children in care and fully functional.

G. SAFETY COMPLIANCE:

(1) A home shall have an operating smoke detector in each child-activity room and in each room in which a child sleeps.

(2) A home must be equipped with carbon monoxide detectors to cover all licensed areas of the home if the child care program uses any sources of coal, wood, charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions.

(3) A home shall have a fully-charged 210ABC extinguisher mounted in the kitchen in a visible and easily accessible place. A professional shall inspect each fire extinguisher once a year and fire extinguishers will have official tags noting the date of inspection.

(4) A home shall conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A home shall hold the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

(5) A home shall keep a telephone in an easily accessible place for calling for help in an emergency and shall post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. Emergency numbers shall be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only telephone in the home. The cellular telephone shall remain in the same room, always charged and accessible to a caregiver.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home, including any vehicles, will prohibit smoking, e-cigarettes, nicotine and cannabis vaporizers, and any other vaporizing device not prescribed by a licensed medical professional in all areas, when children are present. A home, including any vehicles, will prohibit the drinking of alcoholic beverages in all areas, when children are present. A home shall unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. ANIMALS OR PETS:

(1) A home shall inform parents or guardians in writing before pets are in the home.

(2) A home shall inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the home.

(3) A home shall not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(5) An educator must be physically present during the handling of all pets or other animals.

[8.9.4.38 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.39 REGULATIONS FOR PROGRAMS OFFERING ONLY OUT OF SCHOOL TIME CARE: APPLICABILITY: A child care program required to be licensed under 8.9.4.40 NMAC through 8.9.4.47 NMAC of this regulation provides a variety of developmentally appropriate activities that are both educational and recreational at a specific site, usually a school, on a regular basis before or after school or when school is not in regular session to children age five to 18 years, and not exempted from regulation under any of the exceptions listed in 8.9.4.9 NMAC.

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

8.9.4.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant shall complete an application form provided by the licensing authority. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45-day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A program shall submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3) BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The shall be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department's background check and employment history verification provisions. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) ZONING, BUILDING AND OTHER APPROVALS: An applicant shall use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department's requirements. Acceptable documents shall be provided to the licensing authority before licensure. Otherwise, an applicant shall have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

(c) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; and

(d) current written approval from the New Mexico environment department or other environmental health authority for:

(i) a kitchen, if meals are prepared and served on site in the program;

(ii) private water supply, if applicable;

(iii) private waste or sewage disposal, if applicable; and,

(iv) a swimming pool, if applicable.

(5) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES: Accessibility for individuals with disabilities is provided in all new facilities and shall include the following.

(a) Main entry into the facility is level or has a ramp to allow for wheelchair access.

(b) Building layout allows for access to the main activity area.

(c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.

(d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.

(e) Ramps exceeding a six-inch rise are provided with handrails.

(f) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the facility.

(6) SCHEDULE: All applications for a new license shall include a description of the programs proposed activities and schedule.

(7) INITIAL SURVEY: The licensing authority will schedule a survey for a program when it receives a complete application with all supporting documents.

B. CAPACITY OF A PROGRAM:

(1) The number of children in a program, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site. Children shall not be cared for in unlicensed areas of the facility.

(3) A program must meet the following space requirements:

(a) 35 square feet of indoor activity space measured wall to wall on the inside for each child in a program, excluding single-use areas, such as restrooms, kitchens, and storage areas, and excluding offsets and built-in fixtures.

(b) 75 square feet of outdoor activity space for each child using the area at one time.

(4) The capacity of each room shall be posted in an area of the room that is readily visible to parents, staff members and visitors.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee shall report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

(a) a lost, missing, or unattended child;

(b) a serious injury;

(c) the abuse or neglect of a child;

(d) fire, flood, or other natural disaster that creates structural damages to a program or poses a health hazard;

(e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;

(f) any legal action against a program or staff members;

(g) any incident that could affect the background check eligibility of any cleared person related to this license;

(h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or

(i) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A program shall notify parents and guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.40 NMAC. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.9.4.40 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. ADMINISTRATION RECORDS: A licensee shall display in a prominent place that is readily visible to parents, guardians, staff and visitors:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the program;

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

(5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

C. POLICY AND PROCEDURES: All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended, the facility shall update the revision and date it. The written policies and procedures must cover the following areas:

(1) actions to be taken in case of accidents or emergencies involving a child, parents, or staff members;

(2) policies and procedures for admission and discharge of children;

(3) policies and procedures for expulsion of children. Policies and procedures shall include how the facility will maintain a positive environment and will focus on preventing the expulsion of school-age

children. The facility must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;

(4) policies and procedures for the handling of medications;

(5) policies and procedures for the handling of complaints received from parents or any other person;

(6) policies and procedures for actions to be taken in case children are discovered unattended or missing from the facility;

(7) policies and procedures for the handling of children who are ill;

(8) an up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, and continuity of operations (see waivers, Subsection D of 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans;

(9) policies and procedures that promote the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(10) policies and procedures that ensure the safe, developmentally appropriate, and intentional delivery of educational and recreational activities. These policies must outline expectations for activity planning, staff responsibilities, supervision practices, safety protocols, and strategies to promote meaningful engagement.

D. FAMILY HANDBOOK: All facilities using these regulations must have a family handbook. Upon updating the family handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The family handbook shall include the following.

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, license information, days and hours of operation, services offered);

(d) name of director and how they may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) a statement supportive of family involvement that includes an open door policy to the classroom;

(h) appropriate dress for children, including request for extra change of clothes;

(i) celebrating holidays, birthdays and parties; and

(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) expulsion procedures;

(d) fee payment procedures, including penalties for tardiness;

(e) notification of absence;

(f) fee credits, if any (e.g. for vacations, absences, etc.);

(g) field trip policies;

(h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);

(i) emergency procedures and safety policies;

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) guidance policy;

(n) education policy;

(o) recreation policy;

(p) emergency procedures, safety policies, and disaster preparedness plan;

(q) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

(r) employee cellular telephone usage policy that directs and defines safe and appropriate use.

E. CHILDREN'S RECORDS: A program shall maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records shall be kept at the program, unless otherwise indicated in the list below, for 12 months after the child's last day of attendance. Records shall contain at least:

(1) PERSONAL INFORMATION:

(a) name of the child; date of birth, gender, home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, cellular and work telephone numbers;

(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;

(d) date the child first attended the program and the date of the child's last day at the program;

(e) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian; these records may be kept at a central location;

(f) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain activity destination, date and time of activity and expected return time from activity;

(g) a record of the time the child arrived and left the program and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child; and

(h) an enrollment agreement; this form shall be signed by a parent or guardian with an outline of the services and the costs; these forms shall be kept at a central location.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child; the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times;

(b) the name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency;

(c) a document giving a program permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian;

(d) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

F. PERSONNEL RECORDS: A program shall keep and maintain an up-to-date personnel file with all information required by ECECD for each staff member, including substitutes and volunteers who work more than six hours in any week and have direct contact with children. Personnel files shall be updated as soon as practicable, but not longer than thirty days after any changes.

(1) A program shall maintain current work schedules and daily sign in sheets for the director, all staff, all educators, and volunteers and keep the records on file for at least 12 months. The record will include the time the employee arrived at and left work and include breaks and lunch.

(2) The following items, at minimum, shall be maintained in ECECD's Professional Development Information System (PDIS):

(a) name;

(b) current position;

(c) dates of hire and termination;

(d) documentation of a background check and employment history verification; if background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in file. A background check must be conducted at least once per five-year interval on all required individuals;

(e) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

(f) documentation of current first-aid and cardiopulmonary resuscitation training;

(g) documentation of all appropriate training by date, time, hours and area of competency;

(h) written plan for ongoing professional development for each educator, including the director, that is based on the seven areas of competency, consistent with the department's career lattice, and based on the individual's goals; and

(i) signed acknowledgment that the staff have read and understand the personnel handbook.

(3) The following items, at minimum, shall be maintained by the provider outside of PDIS and shall be made available for review upon request:

(a) current and past duties and responsibilities

(b) emergency contact number;

(c) results of performance evaluations; and

(d) administrative actions or reprimands.

G. PERSONNEL HANDBOOK: The educator shall give each employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook shall include the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title;

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(4) code of conduct;

(5) training requirements

(6) procedures and criteria for performance evaluations;

(7) policies on absence from work;

(8) grievance procedures;

(9) procedures for resignation or termination;

(10) copy of licensing regulations;

(11) policy on parent involvement;

(12) health policies related to both children and staff;

(13) policy on sexual harassment;

(14) plan for retention of qualified staff; and

(15) employee cellular telephone usage policy that directs and defines safe and appropriate use.

(16) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

(17) child guidance policy;

(18) confidentiality statement;

(19) an up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter in place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, and continuity of operations (see waivers, Subsection D of 8.9.4.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans; and

(20) policies and procedures for expulsion of children. Policies and procedures shall include how the program will maintain a positive environment and will focus on preventing the expulsion of children age five and older. The program must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement. [8.9.4.41 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.42 PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) An employer shall not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.9.6 NMAC to continue to work directly or unsupervised with children;

(2) All educators shall demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators (staff members) who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios shall not be responsible for cooking, clerical or cleaning duties while caring for children.

(5) Substitutes, volunteers and part-time educators counted in the staff/child ratios shall meet the same requirement as regular staff members except for training requirements. Substitutes and educators routinely employed in a facility but working 20 hours or fewer a week, will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements. See Paragraph (4) of Subsection C of 8.9.4.42 NMAC for additional training requirements.

(6) Each site shall have a site director. The site director or a designated co-director who meets the same qualifications as the site director will be on site for 50 percent of the program's core hours of operation.

(7) A program shall maintain staff/child ratios and group sizes at all times. Children must never be left unattended whether inside or outside the facility.

(8) A program shall have a minimum of two staff members present at all times, with one being an educator. If the program has fewer than seven children, the second staff member may be engaged in other duties.

(9) Each site shall have one adult for every 15 children age five or older. Maximum group size of 30.

(10) The number of children who may be in a group and the number of caregivers is specified in Paragraph (9) of Subsection A of 8.9.4.42 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) The room is divided so that different activity/interest areas are well-defined (i.e. art, dramatic play, fine motor, homework, science, math, and quiet homelike area);

(b) Each activity/interest area shall have a posted capacity, which may vary according to the activity and size of the space, and shall not exceed 30;

(c) Placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

(d) Individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

(e) A single educator is responsible for supervising up to 15 children in one or more interest area as long as every child is in direct eyesight; and

(f) The total number of children in the larger room must not exceed the room capacity based on activity space. For example, if the larger room has a capacity of 90, and the maximum group size is 30, the room must be divided by at least three well-defined activity/interest areas and be supervised by at least six caregivers, who are spread out so that every child is "attended".

B. STAFF QUALIFICATIONS:

(1) Unless exempted under Paragraph (3) below, an out-of-school-time program shall have an administrator/director who is at least 21 years old and has proof of a current copy of:

(a) a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC), or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b) a bachelor's degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development setting; early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every site of an out-of-school-time program shall have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

(3) Program administrators and site directors employed in a licensed program on the date these regulations become effective, but who are not qualified, will be qualified to continue in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

C. TRAINING:

(1) The program administrator shall develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members shall participate in an orientation before working with children. Initial orientation shall include training on the following areas:

(a) scope of services and activities offered by the program;

(b) emergency first aid procedures;

(c) indicators of child abuse and neglect;

(d) fire prevention measures, emergency evacuation plan and disaster preparedness plan;

(e) review of licensing regulations;

(f) review of policies regarding guidance;

(g) child abuse and neglect reporting;

(h) handling of incidents and complaints; and

(i) health and safety, including infection and injury prevention and control.

(2) All new staff members working directly with children regardless of the number of hours employed per week shall complete the following training within three months of their date of hire. Training must be approved to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators shall have three months to comply with the following training from the date these regulations are promulgated:

(a) prevention and control of infectious diseases (including immunization);

(b) administration of medication, consistent with standards for parental consent;

(c) prevention of and response to emergencies due to food or other allergic reactions;

(d) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(e) abusive head trauma;

(f) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;

(g) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;

(h) precautions in transporting children (if applicable);

(i) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component;

(j) recognition and reporting of child abuse and neglect; and

(k) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund in 45 CFR § 98.44 Training and Professional development, or approved three-credit early care and education course or an equivalent approved by the department.

(3) New staff members working directly with children regardless of the number of hours employed per week shall complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

(a) Learning Environment: How Classroom Arrangement Impacts Behavior

(b) Challenging Behavior: Reveal the Meaning

(c) Building Strong Relationships with Families

(d) Honoring All Families

(4) A program shall keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(5) All educators are required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven

competency areas within two years. Training shall be relevant to school age children. Identical trainings shall not be repeated for the purpose of obtaining credit. The competency areas are:

(a) child growth, development, and learning;

(b) health, safety, nutrition, and infection control;

(c) family and community collaboration;

(d) developmentally appropriate content;

(e) learning environment and curriculum implementation;

(f) assessment of children and programs; and

(g) professionalism.

(6) Training must be provided by individuals who have education or experience in the competency area (or areas) in which they provide training. Employees or relatives of employees who provide training must have prior approval by the department.

(7) Program administrators may count hours in personnel and business training toward the training requirement.

[8.9.4.42 NMAC - N, 11/01/2022; A, 10/08/2024; A, 11/04/2025]

8.9.4.43 SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE:

A. GUIDANCE:

(1) A program shall have written policies and procedures clearly outlining guidance practices. Facilities shall give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance shall be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A program shall not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

(5) Children shall not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

B. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into age appropriate functional identifiable learning areas. If any of the selected learning areas are not represented at a given time, the areas shall be rotated to provide children with the opportunity to gain skills supported by a variety of learning experiences. The areas may include:

(a) dramatic play;

(b) creative art;

(c) books;

(d) blocks and accessories;

(e) manipulatives;

(f) music;

(g) science;

(h) math/number; and

(i) sensory.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room shall be posted in an area of the room that is readily visible to parents, staff members, and visitors.

(5) Learning areas have adequate space and quiet areas are arranged so that children's activities can be sustained without interruption.

(6) Materials are properly cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(7) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(8) The floor surface is suitable for activities that will occur in each learning area.

(9) File and storage space is available for educators' materials.

C. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

D. EQUIPMENT AND PROGRAM:

(1) A program shall provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved. Toys shall be disinfected at a minimum of once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

(2) Each child at a program shall have a designated space for storage of clothing and personal belongings.

(3) A program shall store equipment and materials for children's use within easy reach of the children, including those with disabilities. A program shall store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(4) A program shall provide children with toys, educational materials that reinforce and complement the regular academic program, equipment, and other materials and activities that are safe, developmentally appropriate, and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.

(5) A program shall post a daily activity schedule. A program shall follow a consistent pattern for routine activities such as meals, snacks and rest.

(6) Media viewing shall be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing to include all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

(7) Children and family members shall be acknowledged upon arrival and departure.

(8) Equipment and program requirements apply during all hours of program operation.

(9) Programs should reflect local community strengths, cultural knowledge, and student interests.

(10) Programs should create meaningful opportunities for families to engage in student learning. Opportunities may include:

(a) family learning nights;

(b) student showcases;

(c) cultural events;

(d) parent workshops; and

(e) community celebrations.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If staff believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment used in out of school time programs shall be:

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer's instructions; and

(b) if intended for residential use, shall be safe and securely anchored.

(2) A program shall place sufficient energy absorbing surfaces beneath climbing structures, swings and slides. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection N of 8.9.4.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.
When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

(3) The use of a trampoline is prohibited during the hours of operation or by any children receiving care at the facility.

(4) Licensees shall protect children from the sun during outdoor play by providing shade (as necessary), sunscreen (as permitted by parent/guardian), proper attire and by limiting the time of exposure to the elements. The program must also consider instruction by the child's parent or guardian. Drinking water shall be available as needed and maintained at a cool temperature while children are playing outside.

G. SWIMMING, WADING AND WATER:

(1) Each child shall have written permission from a parent or guardian before the child enters the pool.

(2) Children shall be constantly supervised while swimming, wading, or in or near, and the number of adults present must be proportional to the ages and abilities of the children and type of water hazard in use.

(3) If a program has a portable wading pool:

(a) a program shall drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a program shall empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a program shall not use a portable wading pool placed on concrete or asphalt.

(4) If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture shall be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture shall be constructed and protected so that, when not in use, it is inaccessible to children; and

(5) The following ratios shall be observed for swimming pools more than two feet deep:

	Ratio for swimming pools more than two feet deep	
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children

5 years	1	10
6 years and older	1	12

H. FIELD TRIPS:

(1) A program shall ensure the children's safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection D of 8.9.4.41 NMAC for requirements concerning field trip permission slips.

(2) Children shall not go to a private residence unless accompanied by two adults.

[8.9.4.43 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.44 FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the program shall conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A program shall provide a child a meal or snack at least every three hours.

(2) A program shall serve a child a therapeutic or special diet with a written prescription/diet order from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the program staff.

(3) A program shall serve snacks each day and will include a selection of two different food group components from the four food group components.

(4) A program shall serve only one hundred percent fruit or vegetable juice. The use of fruit drinks that contain less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent fruit or vegetable juice may be diluted with water.

(5) A program shall serve a wide variety of fruits and vegetables, with a preference for fresh or frozen fruits and vegetables over canned.

(6) A program shall make water freely available to children.

(7) Menus shall contain a variety of foods. The same menu must not be served twice in one week.

C. KITCHENS:

(1) A program shall not allow children in the kitchen except under careful supervision.

(2) A food preparer shall thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A program shall serve food promptly and refrigerate immediately after use.

(4) A program shall discard any leftover milk.

(5) A program shall keep food requiring refrigeration, at 41 degrees Fahrenheit or below and frozen food at 0 degrees Fahrenheit or below.

(6) Refrigerators and separate freezers shall have working internal thermometers.

(7) A program shall protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A program shall label and date all leftover food.

(8) A program shall sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps:

(a) wash with soapy water;

(b) rinse with clean warm water; and

(c) sanitize

(9) A program shall use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(10) A program shall equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and sanitize the areas before and after use.

(11) A program shall provide sanitary cups or glasses or a drinking fountain for drinking water. A program shall not allow children to share drinking or eating utensils.

(12) A program shall thoroughly sanitize food preparation surfaces before and after each use.

(13) Disposable plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups shall not be used at any time.

[8.9.4.44 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.45 HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. HYGIENE: Children and staff members shall wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children shall wash their hands whenever hands are contaminated with body fluids and always:

(1) after using a toilet;

(2) before and after caring for a sick child;

(3) before any food service activity, including setting the table;

(4) before and after eating;

(5) after handling pets or animals or items used by animals such as water and food bowls; and

(6) after handling trash.

B. FIRST AID REQUIREMENTS:

(1) A program shall have all educators certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Online first aid and CPR training will not be approved, unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. Staff shall obtain the first aid /CPR certification within three months of being hired. All staff shall maintain current first aid /CPR certification. Prior to licensure, at a minimum, the site director shall have first aid/CPR certification.

(2) A program shall keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to adults. The first aid kit shall contain, as a minimum, band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(3) A program shall treat blood spills cautiously and promptly decontaminate the area. Staff members shall wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program shall clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A program shall keep all medications in a locked and identified container inaccessible to children and shall refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Programs shall give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member shall be responsible for giving medication to children. The designated staff member shall ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the program. A program shall keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member shall keep a written record of the dosage, date, and time a child is given medication with the signature of the staff who administered the medication. This information shall provided to the parent or guardian who shall initial/date acknowledgment of the information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The program shall not administer expired medication.

D. ILLNESSES:

(1) Children or staff members absent due to any notifiable disease shall not return to the program without a signed statement from a physician.

(2) A program shall separate and constantly observe a child who becomes sick on the premises and promptly notify a parent or guardian of the child's illness.

(3) A program shall send a child home when:

(a) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

(b) an educator observes signs of contagious disease or severe illness.

(4) The program shall have a cot or mat available for sick children which will be cleaned and disinfected thoroughly after use.

[8.9.4.45 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.46 TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. All vehicles used for transportation of children shall have an operable, fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.

B. A program shall load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program shall ensure children do not cross a street unsupervised after leaving the vehicle.

C. No one shall smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

D. A program shall license all vehicles used for transporting children and shall meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(1) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(2) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

E. Vehicles used for transporting children shall be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

F. Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the program shall ensure the vehicle is heated.

G. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

H. At least one adult transporting children shall be currently certified in cardiopulmonary resuscitation (CPR) with a pediatric component.

I. Providers shall conduct frequent head counts on all trips and when loading and unloading the vehicle.

J. At all times, drivers shall have a way to communicate to the facility the number of children being transported. Drivers shall maintain a log to include the name of children, and drop-off and pick up times of all children being transported. The log shall be kept for a minimum of 12 months for review.

[8.9.4.46 NMAC - N, 11/01/2022; A, 11/04/2025; A, 9/09/2026]

8.9.4.47 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. HOUSEKEEPING:

(1) A program shall keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food preparation or storage areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas shall be durable, and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed programs must use a New Mexico licensed pest control professional whenever applying pesticides in or on the program's buildings and grounds.

(2) Pesticides may not be applied when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

C. MECHANICAL SYSTEMS:

(1) A program shall maintain comfortable temperatures (68 degrees Fahrenheit through 82 degrees Fahrenheit) in all rooms used by children. A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature

limitations, it v be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A program must maintain all heating and cooling equipment so that it is in good working order.

(3) A program shall not use heaters without vents, open flame heaters or portable heaters. A program shall install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

(4) A program shall provide fresh air and control odors by either mechanical or natural ventilation. If a program uses a window for ventilation, it will have a screen. If a door is used for ventilation, it must have a screen door.

(5) Water coming from a faucet shall be below 110 degrees Fahrenheit. A program shall install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms shall have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas shall have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A program shall have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A program shall use U/L approved equipment only and will properly maintain this equipment.

(b) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

E. EXITS AND WINDOWS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

(1) There must be at least two exits remote from each other in each activity area of the program.

(2) Exit access must be kept free from obstructions at all times.

F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms shall have toilet paper, soap and disposable towels at a height accessible to children. A program shall not use a common towel or wash cloth.

(2) All toilets and sinks must be accessible, functional, and located within 100 feet of the licensed area. The staff member shall maintain a direct line of sight of the child until the child enters the bathroom and from the time the child leaves the bathroom and returns to the supervised area. A staff member shall accompany children to the bathroom door if maintaining a line of sight is impossible due to bathrooms being not located within a direct line of sight.

G. SAFETY COMPLIANCE:

(1) A program shall conduct quarterly emergency preparedness practice drills starting at the commencement of each school calendar year.

(2) A program shall conduct at least one fire drill each month. A program shall:

(a) hold the drills at different times of the day;

(b) use the fire alarm, detector system or a simulated fire alarm;

(c) emphasize an orderly evacuation rather than speedy; and

(d) a program shall keep on file a record of the drills with the date, time, number of adults and children participating, and any problems encountered during the drills. Records shall be kept for one year.

(3) A program shall request an annual fire inspection from the fire authority having jurisdiction in the area of the program. If the policy of the fire authority having jurisdiction does not provide for an annual inspection, the program must document the date the request was made and to whom. A copy of the latest inspection must be posted in an easily accessible place.

(4) A program shall post evacuation plans for each room used by children in the appropriate room.

(5) A program shall keep a working telephone in an easily accessible place for calling for help in an emergency and shall post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. If cordless phones are used, emergency numbers shall be posted on the phone itself. Facilities shall post the program's telephone number and address in a conspicuous location next to the emergency phone numbers.

(6) A program must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement.

(7) A program must have a minimum of two fully-charged 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the program.

(8) Fire extinguishers, alarm systems, automatic detection equipment, and other firefighting must be properly maintained and inspected on at least a yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection D of 8.9.4.47 NMAC for emergency lighting requirements.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A program shall prohibit smoking, use of e-cigarettes, nicotine and cannabis vaporizers, and any other vaporizing device not prescribed by a licensed medical professional in all areas, including vehicles, and shall not allow any alcoholic beverages, cannabis, firearms, lethal or non-lethal weapons or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. PETS:

(1) A program shall inform parents or guardians in writing before pets are at the program site.

(2) A program shall not allow pets in the kitchen, food serving, food storage areas, or bathrooms.

(3) A program shall inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the program.

(4) A program shall not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

[8.9.4.47 NMAC - N, 11/01/2022; A, 11/04/2025]

HISTORY OF 8.9.4 NMAC: [RESERVED]