

Title 8
Chapter 15
Part 2

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Section 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJECTIVE
- 8.15.2.7 NMAC DEFINITIONS
- 8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE
- 8.15.2.10 NMAC APPLICATION PROCESS
- 8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS
- 8.15.2.12 NMAC RECERTIFICATION
- 8.15.2.13 NMAC CLIENT RESPONSIBILITIES
- 8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES
- 8.15.2.15 NMAC PROVIDER REQUIREMENTS
- 8.15.2.17 NMAC PAYMENT FOR SERVICES
- 8.15.2.21 NMAC SANCTIONS

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

Purpose and summary of proposed rules: The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. In summary, the proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico as well as make changes required by the CCDF grant. A summary of the proposed amendments is attached to this notice.

As part of the amendment process, ECECD will hold a public rule hearing for the proposed amendments on October 28, 2021 from 1:00 to 4:00 p.m. The deadline for submittal to the New Mexico Register is on August 26, 2021, with a publication date of September 14, 2021.

Copies of the proposed amended rules may be found at ECECD's website at <https://www.newmexicokids.org/> no later than September 14, 2021.

Notice of public rule hearing: The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the schedule hearing.

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may be delivered to the Old PERA building at 1120 Paseo de Peralta on Thursday, October 28, 2021 from 1:00 p.m. to 4:00 p.m. The comment period ends at the conclusion of the public hearing October 28, 2021.

Any interested member of the public may attend the hearing in person or via the virtual web platform or telephone, and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-720-707-2699, access code 823 7497 1518. You will be able to hear the hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/82374971518>, and follow the instructions indicated on the screen – Meeting ID (access code): 823 7497 1518#. This will be a live stream of the hearing. You may also provide comments via Chat during the live stream.

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT'S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.15.2 NMAC

8.15.2.6 NMAC OBJECTIVE: ECECD proposes amendments that include non-discrimination language and an objective related to the federal Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF).

8.15.2.7 NMAC DEFINITIONS: ECECD proposes updates to the definitions of various terms (“Job Training and Educational Program,” “Temporary Change of Activity,” and “Family, Friend, or Neighbor (FFN)”) and includes new proposed terms (“Essential Worker” and “Termination”).

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE: ECECD proposes updates to the child care priorities for assistance requirements that include the provision of a new category, “priority four plus,” for increased eligibility.

8.15.2.10 NMAC APPLICATION PROCESS: ECECD proposes updates to the child care assistance application process requirements that include a list of acceptable documents for eligibility and related issues.

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS: ECECD proposes updates to the eligibility requirements for child care assistance in order to clarify the eligibility period, placement agreements and related issues.

8.15.2.12 NMAC RECERTIFICATION: ECECD proposes updates to the recertification process for child care assistance in order to increase eligibility based on income and for essential workers.

8.15.2.13 NMAC CLIENT RESPONSIBILITIES: ECECD proposes updates to the requirements related to client responsibilities to remove restrictions placed on the co-payment for child care.

8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES: ECECD proposes updates to the requirements related to case suspensions and closures to clarify that the eligibility period for child care assistance lasts for 12 months.

8.15.2.15 NMAC PROVIDER REQUIREMENTS: ECECD proposes updates to the provider requirements that removes the five dollar registration/education fee paid to providers, clarifies that owners and licensees cannot receive child care assistance for their own children, and requires updated policies and procedures.

8.15.2.17 NMAC PAYMENT FOR SERVICES: ECECD proposes updates to the requirements related to the payment for services that increases the child care subsidy rates paid to providers, based on a cost estimation model, makes related updates, and removes outdated requirements.

8.15.2.21 NMAC SANCTIONS: ECECD proposes updates to the requirements related to sanctions and removes the provision that requires placement on a conditional eligibility status for clients who fail to update non-temporary changes in status.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

El Departamento de Niños, Jóvenes y Familias (CYFD) y el Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México notifican por el presente, según lo establecido por la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que se proponen adoptar enmiendas a las siguientes reglas relativas a SERVICIOS SOCIALES AYUDA PARA CUIDADO INFANTIL REQUISITOS PARA PROGRAMAS DE AYUDA PARA CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL, según lo autorizado por las Secciones 9-2A-1 a 9-2A-16, NMSA 1978 y 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJETIVO
- 8.15.2.7 NMAC DEFINICIONES
- 8.15.2.9 NMAC PRIORIDADES PARA CONCEDER AYUDA
- 8.15.2.10 NMAC PROCESO DE SOLICITUD
- 8.15.2.11 NMAC REQUISITOS DE ELEGIBILIDAD
- 8.15.2.12 NMAC RECERTIFICACIÓN
- 8.15.2.13 NMAC RESPONSABILIDADES DEL CLIENTE
- 8.15.2.14 NMAC SUSPENSIONES Y CIERRES DE CASOS
- 8.15.2.15 NMAC REQUISITOS DEL PROVEEDOR
- 8.15.2.17 NMAC PAGO DE SERVICIOS
- 8.15.2.21 NMAC SANCIONES

Para la redacción de las reglas propuestas no se consultó ninguna información técnico científica.

El propósito y resumen de las reglas propuestas: El propósito de la elaboración de reglamentos es promulgar enmiendas permanentes a la sección 8.15.2 del NMAC, que inicialmente fueron publicadas como enmiendas de emergencia con validez al 1 de julio de 2021 y el 1 de agosto de 2021, junto con los cambios necesarios adicionales. Debido a la emergencia para la salud planteada por el COVID-19 y a la orden ejecutiva y las declaraciones resultantes, junto con la subvención del Fondo para el Desarrollo y Cuidado Infantil (CCDF), hubo una necesidad de emergencia de enmendar el 8.15.2 del NMAC con el fin de proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y familias de Nuevo México y garantizar la continuidad del financiamiento federal. En resumen, las reglas propuestas actualizarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también realizarán los cambios requeridos por la subvención de CCDF. Se adjunta a la presente comunicación un resumen de las modificaciones propuestas.

Como parte del proceso de enmienda, ECECD llevará a cabo una audiencia pública de reglas para las enmiendas propuestas el 28 de octubre de 2021 de 1:00 a 4:00 p.m. La fecha límite para la presentación al Registro de Nuevo México es el 26 de agosto de 2021, con fecha de publicación el 14 de septiembre de 2021.

Puede encontrar copias de las propuestas leyes administrativas en el sitio web de ECECD en <https://www.newmexicokids.org/> a más tardar el 14 de septiembre de 2021.

Anuncio de audiencia pública sobre reglamentos: La audiencia pública sobre reglamentos se celebrará el jueves, 28 de octubre de 2021, de 1:00 p.m. a 4:00 p.m. La audiencia se llevará a cabo en el Apodaca Hall del edificio Old PERA situado en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502 y a través de una plataforma web a distancia (Zoom), de correo electrónico y de medios telefónicos. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará todo lo posible por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto “8.15.2 NMAC Public Comment” o por correo postal de primera clase al apartado postal Drawer 5619, Santa Fe, New Mexico 87502-5619. Los comentarios por escrito se pueden entregar el jueves, 28 de octubre de 2021 de 1:00 p.m. a 4:00 p.m. en el edificio Old PERA, en 1120 Paseo De Peralta. El período para presentar comentarios termina al concluir la audiencia pública el 28 de octubre de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia de manera presencial o a través de la plataforma web o por teléfono, y ofrecer sus comentarios públicos sobre las reglas propuestas. Para participar por teléfono: llame al 1-720-707-2699, usando el código de acceso 823 7497 1518. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite <https://zoom.us/j/82374971518> y siga las instrucciones indicadas en la pantalla – ID de la reunión (código de acceso): 823 7497 1518#. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

RESUMEN DEL ECECD (*EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT*) DE MODIFICACIONES PROPUESTAS PARA EL NMAC 8.15.2

8.15.2.6 OBJETIVO DE NMAC: El ECECD propone modificaciones que incluyen un lenguaje de no discriminación y un objetivo relacionado con la Subvención federal para el desarrollo y el cuidado infantil (CCDBG, por sus siglas en inglés) y el Fondo para el desarrollo del cuidado infantil (CCDF, por sus siglas en inglés).

8.15.2.7 DEFINICIONES DE NMAC: El ECECD propone actualizaciones a las definiciones de varios términos (“Programa educativo y de capacitación laboral”, “Cambio temporal de actividad” y “Familiar, amigo o vecino (FFN, por sus sigla en inglés)”) e incluye nuevos términos propuestos (“Trabajador esencial” y “Rescisión”).

8.15.2.9 PRIORIDADES DE NMAC PARA CONCEDER ASISTENCIA: El ECECD propone actualizaciones a las prioridades de cuidado infantil para los requisitos de asistencia que incluyen la provisión de una nueva categoría, “prioridad cuatro más”, para una mayor elegibilidad.

8.15.2.10 NMAC PROCESO DE SOLICITUD: El ECECD propone actualizaciones a los requisitos del proceso de solicitud de asistencia para el cuidado infantil que incluyen una lista de documentos aceptables para la elegibilidad y asuntos relacionados.

8.15.2.11 REQUISITOS DE ELEGIBILIDAD DE NMAC: El ECECD propone actualizaciones a los requisitos de elegibilidad para la asistencia de cuidado infantil con el fin de aclarar el período de elegibilidad, los acuerdos de colocación y asuntos relacionados.

8.15.2.12 RECERTIFICACIÓN DE NMAC: El ECECD propone actualizaciones al proceso de recertificación para la asistencia de cuidado infantil con el fin de aumentar la elegibilidad según los ingresos y para los trabajadores esenciales.

8.15.2.13 RESPONSABILIDADES DEL CLIENTE DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con las responsabilidades del cliente para eliminar las restricciones impuestas al copago del cuidado infantil.

8.15.2.14 SUSPENSIONES Y CIERRES DE CASOS DE NMAC: El ECECD propone actualizaciones a los requisitos relacionados con las suspensiones y cierres de casos para aclarar que el período de elegibilidad para la asistencia de cuidado infantil dura 12 meses.

8.15.2.15 REQUISITOS DEL NMAC PARA PROVEEDORES: El ECECD propone actualizaciones a los requisitos para proveedores que eliminan la tarifa de inscripción/educación de cinco dólares que se paga a los proveedores, aclara que los propietarios y los titulares de licencias no pueden recibir asistencia de cuidado infantil para sus propios hijos y exige políticas y procedimientos actualizados.

8.15.2.17 PAGO DE NMAC POR SERVICIOS: El ECECD propone actualizaciones de los requisitos relacionados con el pago de servicios que aumentan las tarifas de subsidio de cuidado infantil pagadas a los proveedores, según un modelo de estimación de costos, realiza actualizaciones relacionadas y elimina requisitos obsoletos.

8.15.2.21 SANCIONES DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con sanciones y elimina la disposición que exige la colocación de un estado de elegibilidad condicional para clientes que no actualicen cambios de estado no temporales.

**PROPOSED RULE in
underline and
strikethrough format**

TITLE 8 SOCIAL SERVICES
CHAPTER 15 CHILD CARE ASSISTANCE
PART 2 REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 10/1/2016]

8.15.2.2 SCOPE: This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility for child care assistance benefits. (See 8.15.2.8 NMAC for detailed list.)
[8.15.2.2 NMAC - Rp, 8.15.2.2 NMAC, 10/1/2016]

8.15.2.3 STATUTORY AUTHORITY: NMSA section 9-2A-7 (1991).
[8.15.2.3 NMAC - Rp, 8.15.2.3 NMAC, 10/1/2016]

8.15.2.4 DURATION: Permanent
[8.15.2.4 NMAC - Rp, 8.15.2.4 NMAC, 10/1/2016]

8.15.2.5 EFFECTIVE DATE: October 1, 2016, unless a later date is cited at the end of section.
[8.15.2.5 NMAC - Rp, 8.15.2.5 NMAC, 10/1/2016]

8.15.2.6 OBJECTIVE:

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

B. To establish child care assistance rates in accordance with the requirements of the Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF), which is the primary federal funding source of child care assistance to enable parents to work or pursue education and training so that they may better support their families while at the same time promoting the learning and development of their children. The CCDBG requires every state to submit an updated CCDF plan every three years. A key requirement of the CCDBG Act is that lead agencies establish subsidy payment rates that ensure equal access to child care for children receiving child care assistance. States have two options to establish subsidy payment rates that ensure equal access: lead agencies must collect and analyze data through either a statistically valid and reliable market rate survey, or through an ACF pre-approved alternative methodology, such as a cost estimation model. New Mexico's rates, as set forth herein, and effective July 1, 2021 were informed by a cost estimation model and with extensive statewide stakeholder engagement. This new cost estimation model was developed in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico's children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

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

[8.15.2.6 NMAC - Rp, 8.15.2.6 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.15.2.7 DEFINITIONS:

A. Terms beginning with the letter "A":

[A-] (1) "Attending a job training or educational program" means actively participating in an

in-person or online job training or educational program.

~~[B.]~~ (2) "At-risk child care" means a program for families at-risk as determined by the department.

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

C. Terms beginning with the letter "C":

~~[C.]~~ (1) "CACFP" means the child and adult care food program, administered by the children, youth and families department.

~~[D.]~~ (2) "Child with a disability or special needs" means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

~~[E.]~~ (3) "Client" means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

~~[F.]~~ (4) "Closure" means the client's child care case is closed with the department.

~~[G.]~~ (5) "Co-payment" means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department's payment to the provider is reduced by the co-payment amount.

~~[H.]~~ **D. Terms beginning with the letter "D":**

(1) "Demonstration of incapacity" means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician's/medical professional's/treatment provider's letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

~~[I.]~~ (2) "Department" means the New Mexico children, youth and families department (CYFD).

~~[J.]~~ **E. Terms beginning with the letter "E":**

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

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

F. Terms beginning with the letter "F": "Fluctuation of earnings" means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:

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

(2) choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

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

~~[L.]~~ **H. Terms beginning with the letter "H":**

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

~~(1)~~ (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;

~~(2)~~ (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;

~~(3)~~ (c) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

~~(4)~~ (d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in [Paragraphs (1) through (3)] Subparagraphs (a) through (c) of this [subsection] Paragraph.

~~[M.]~~ (2) "Household" means the household as defined below in Paragraph (1) of Subsection C of

8.15.2.11 NMAC.

~~[N.]~~ (3) "Household income" means household income as defined below in Paragraph (3) of Subsection C of 8.15.2.11 NMAC.

~~[O.]~~ I. Terms beginning with the letter "I":

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

~~[P.]~~ (2) "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

~~[(1)]~~ (a) infant: zero - 23 months;

~~[(2)]~~ (b) toddler: 24 -35 months;

~~[(3)]~~ (c) preschool: three to five year olds; and

~~[(4)]~~ (d) school age: six year olds and older.

~~[Q.]~~ J. Terms beginning with the letter "J": "Job training and educational program" means participation in a short or long term educational or training program, including online programs that provide specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions. Educational programs include graduate and post graduate programs or classes.

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

~~[S.]~~ L. Terms beginning with the letter "L": [RESERVED]

~~[T.]~~ M. Terms beginning with the letter "M": [RESERVED]

~~[U.]~~ 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 CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

~~[(1)]~~ (a) The following are the only national accrediting bodies that are approved by CYFD:

~~[(a)]~~ (i) the association of Christian schools international (ACSI);

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

~~[(c)]~~ (iii) the international Christian accrediting association (ICAA);

~~[(d)]~~ (iv) the national accreditation commission for early care and education programs (NAC);

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

~~[(f)]~~ (vi) the national association of family child care (NAFCC); or

~~[(g)]~~ (vii) the national early childhood program accreditation (NECPA).

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

~~[S.]~~ (2) "Non-temporary change in activity" means the family has experienced a change in activity that does not meet the definition of a "temporary change in activity" as defined in ~~[Section HH below]~~ Paragraph (3) of Subsection T of 8.15.2.9 NMAC.

~~[T.]~~ (3) "Non-traditional hours of care" means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

~~[U.]~~ O. Terms beginning with the letter "O":

(1) "Open case" means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

~~[V.]~~ (2) "Overpayment" means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

~~[W.]~~ P. Terms beginning with the letter "P": "Provider types" means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) "In-home" care means care provided in the child's own home.

(2) "Registered home" means child care provided in the home of a provider who is

registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) **“Licensed family child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) **“Licensed group child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) **“Out-of-school time care”** means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

(7) ~~“Friend, family, or neighbor (FFN)”~~ **“Family, friend, or neighbor (FFN)”** means care [to be] provided temporarily in a home [to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months. In] and only in the case of a public health emergency. [the department may extend the temporary status.]

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

~~[X.]~~ R. Terms beginning with the letter “R”:

(1) **“Recertification”** means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

~~[Y.]~~ (2) **“Registration/educational fee”** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

~~[Z.]~~ S. Terms beginning with the letter “S”:

(1) **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

~~[AA.]~~ (2) **“SNAP”** means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

~~[BB.]~~ (3) **“Special supervision”** means the special supervision for child(ren) as defined below in Subsection G of 8.15.2.11 NMAC.

~~[CC.]~~ (4) **“Star level”** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

~~[DD.]~~ (5) **“Suspension”** means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

~~[EE.]~~ T. Terms beginning with the letter “T”:

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

~~[FF.]~~ (2) **“Teen parent”** means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

~~[GG.]~~ **“Termination”** means the client’s child care case will be closed due to cause.

~~[HH.]~~ (3) **“Temporary change of activity”** means one of the following events [that does not exceed three months]:

~~[(1)]~~ (a) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;

~~[(2)]~~ (b) interruption in work for a seasonal worker who is not working between regular industry work seasons;

~~[(3)]~~ (c) student holiday or break for a parent or legal guardian participating in training or education;

~~[(4)]~~ (d) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and

~~[(4)]~~ (e) cessation of work or attendance at a training or education program less than three months.

(4) **“Termination”** means the client’s child care case will be closed due to cause.

~~[H.]~~ U. Terms beginning with the letter “U”:

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

[JJ.] (2) "Unearned income" means income in the form of benefits such as TANF, workmen's compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, grants and other income which does not meet the definition of earned income.

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

[KK.] W. Terms beginning with the letter "W": "Working" means employment of any type, including self-employment and teleworking. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

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

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

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

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020; A, 3/1/2021, A/E, 7/1/2021; A, 1/1/2022]

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

- A. licensed child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;
- B. licensed child care programs administered by tribal entities;
- C. licensed child care programs administered by church or religious organizations;
- D. in-home care;
- E. licensed child care centers;
- F. registered family childcare homes;
- G. licensed family and group childcare homes;
- H. licensed out of school time programs;
- I. licensed programs operated by employers for their employees; and
- J. FFN.

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 10/1/2016; A, 3/1/2021]

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

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

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

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

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

B. Priority one A: [RESERVED]

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The

department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

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

E. Priority three: [RESERVED]

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

G. Priority four plus: During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below three hundred fifty percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below four hundred percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents. Co-payments for families in priority four plus are not waived. Co-payments for families will be capped at three hundred percent of the federal poverty level.

[G.] H. Priority five: In addition to these priorities, the department pays for at-risk child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority. [8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A; 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021; A, 1/1/2022]

8.15.2.10 APPLICATION PROCESS:

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

- (1) a completed signed application form;
- (2) documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.15.2.11 NMAC;
- (3) documentation of the applicant's TANF eligibility or participation, if applicable, and can include applicant's social security number or assigned TANF identification number;
- (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- (6) verification of birth for all applicant's household children;
- (7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;
- (8) verification of custody of children, if applicable;
- (9) verification of dependency of a child or adult household member, if applicable;
- (10) documentation of New Mexico residency; ~~and~~
- ~~(9)~~ (11) identification for parent/guardian; and
- (12) department approved provider.

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

Verification Type	Acceptable documentation or information (examples)

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

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

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

~~C.~~ **D.** Assistance is provided effective the first day of the month of application if all of the following apply:

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

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A, 1/1/2022]

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

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

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

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

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

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

(3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

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

(5) If a client experiences a non-temporary change in activity, the child care placement agreement may close; however, the client will [no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.] remain eligible for the approved 12-month eligibility period.

C. Income eligibility determination:

(1) The household includes biological parents, stepparents, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit. Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, medical or other treatment, or military service.

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

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

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

(5) Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; alimony payments; veterans administration (VA) payments except VA payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; workman's compensation; railroad retirement benefits; pensions; royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

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

(7) Verification of household countable earned and unearned income: Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current documentation of income for biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

(8) **Calculating income:**

(a) Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.15.2.11 NMAC

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

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

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

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

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

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

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

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

G. Special supervision: Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

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

I. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity. [8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.12 RECERTIFICATION: Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below ~~two hundred fifty~~ two hundred and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC. Clients designated as essential workers who recertify must be at or below four hundred percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous child care placement agreement. At time of recertification, clients must provide documentation of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B of 8.15.2.11 NMAC.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021; A, 1/1/2022]

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

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for at-risk child care and qualified grandparents or legal guardians. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [~~https://cyfd.org/child-care-services~~ <https://www.nmeccd.org/child-care-assistance/>]. In the case of an emergency, or under extenuating circumstances, the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required co-payments.

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

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

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

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

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

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

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

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

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

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

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

~~(2)~~ (4) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

~~(3)~~ (5) If the client has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

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

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021; A; 1/1/2022]

8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

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

B. If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, ~~[the client will be granted a three-month grace period in which the client will remain eligible. This three-month grace period is for the purpose of giving the client an opportunity to secure new employment or another approved activity. The three-month grace period will start on the date of required notification for the non-temporary change of activity pursuant to section 8.15.2.13 G NMAC.]~~ the child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

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

- (1) any non-temporary change in activity ~~[and failure to obtain an activity after the three-month grace period];~~
- (2) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred and fifty percent of the federal poverty level;
 - ~~[(3) — moving out of state;]~~
 - ~~[(4)] (3) failing to recertify at the end of approved eligibility period; or~~
 - ~~[(5) — at the option of the client;]~~
 - ~~[(6)] (4) being disqualified from participation in the program [;or].~~
 - ~~[(7) — failure to use authorized child care.]~~

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

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

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

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

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

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

(1) If the above notification was met, the provider will be paid through the 14th calendar day following the first date of nonattendance.

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

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

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.15.2.21 NMAC.

E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care

placement agreement. Failure to comply with this requirement may result in sanctions.

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. ~~[The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.]~~ The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

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

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

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

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

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

I. Providers must promote the equal access of services for all children and families by developing and implementing policies and procedures that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

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

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

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

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

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

F. Child care assistance workers must inform parents or legal guardians of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

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

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

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

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

payment to be issued to the provider. The following circumstances under which the department may close placements or discontinue payment at a time other than the end of the month:

A. When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. Payment for notification of changes:

(1) If a client fails to notify the department within 14 calendar days of their expected last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.

(2) If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.

(3) If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

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

C. ~~[The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.]~~ The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

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

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

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

F. Hours of care shall be rounded to the nearest whole number.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
[\$720.64] <u>880.00</u>	[\$589.55] <u>635.00</u>	[\$490.64] <u>575.00</u>	[\$436.27] <u>441.00</u>
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
[\$586.07] <u>855.00</u>	[\$487.11] <u>830.00</u>	[\$427.13] <u>680.00</u>	[\$422.74] <u>428.00</u>
Licensed family homes (capacity: 6 or less)			

Infant	Toddler	Pre-school	School-age
\$[566.98] 875.00	\$[463.50] 850.00	\$[411.62] 700.00	\$[406.83] 412.00
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$[289.89] 350.00	\$[274.56] 350.00	\$[251.68] 350.00	\$[251.68] 350.00

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

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

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

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

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

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$[88.00]	\$[88.00]	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age

\$250.00	\$250.00	[250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00]

<u>Licensed Child Care Centers</u>			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$335.00	\$290.00	\$250.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$640.00	\$550.00	\$350.00	\$250.00

<u>Licensed Family and Group Homes</u>			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$195.00	\$195.00	\$195.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$260.00	\$260.00	\$260.00	\$250.00

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

[L. — Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.]

[M.] L. The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional

care will be paid according to the following charts:

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

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

[N-] **M.** If a significant change occurs in the client's circumstances, (see Subsection [G] F of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

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

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

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

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

[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 10/1/2016; A, 3/1/2021]

8.15.2.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

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

[8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 10/1/2016; A, 3/1/2021]

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

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

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

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

during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

~~[D. — Clients who fail to notify the department of any non-temporary change of activity may be placed on conditional eligibility status up to one year on the following eligibility period. Any further violations within the conditional eligibility period may result in termination.]~~

[E.] **D.** Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current.
[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016; A, 3/1/2021; A, 1/1/2022]

8.15.2.22 FAIR HEARINGS: Clients who have been denied benefits, whose benefits have been reduced, terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

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

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

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

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

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department. If TANF benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp, 8.15.2.22 NMAC, 10/1/2016]

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

[8.15.2.23 NMAC - Rp, 8.15.2.23 NMAC, 10/1/2016]

8.15.2.24 CO-PAYMENT SCHEDULE: The department will develop and publish an annual co-payment schedule based on the federal poverty guidelines.

[8.15.2.24 NMAC - Rp, 8.15.2.24 NMAC, 10/1/2016]

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

- A.** to the client upon request;
- B.** to an individual who has written authorization from the client;
- C.** to department employees and agents who need it in connection with program administration, including program auditors; or
- D.** to other agencies or individuals including law enforcement officers who satisfy the following

conditions:

- (1) agency or individual is involved in the administration of a federal or a federally-assisted program, which provides assistance in cash, in kind or in services directly to individuals on the basis of need;
- (2) information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;
- (3) agency or individual is subject to standards of confidentiality comparable to those contained herein; and
- (4) agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if the client has made application to the inquiring agency for a benefit of service;

E. as requested in a subpoena or subpoena duces tecum.

[8.15.2.25 NMAC - Rp, 8.15.2.25 NMAC, 10/1/2016]

HISTORY OF 8.15.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records B State Records Center and Archives:

ISD CCAP 200, Child Care Assistance Programs, 11/4/1991.

ISD CCAP 300, Hours Of Child Care, 11/4/1991.

ISD CCAP 700, Working Family Child Care Assistance Eligibility, 11/4/1991.

ISD CCAP 800, Income Eligible Child Care Assistance, 2/10/1992.

History of Repealed Material:

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/1999.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/2000.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/2001.

8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 11/01/2002.

8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 2/14/2005.

8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 10/1/2016.

Public Notices

Proof of Posting

Proposed Rule Name:

8.15.2 NMAC SOCIAL SERVICES CARE ASSISTANCE REQUIREMENTS

Agency:

Early Childhood Education and Care Department (ECECD)

Purpose:

The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes.

Summary:

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Section 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978.

8.15.2.6 NMAC OBJECTIVE

8.15.2.7 NMAC DEFINITIONS

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE

8.15.2.10 NMAC APPLICATION PROCESS

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS

8.15.2.12 NMAC RECERTIFICATION

8.15.2.13 NMAC CLIENT RESPONSIBILITIES

8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES

8.15.2.15 NMAC PROVIDER REQUIREMENTS

8.15.2.17 NMAC PAYMENT FOR SERVICES

8.15.2.21 NMAC SANCTIONS

Rule Complete Copy :

Copies of the proposed amended rules may be found at ECECD's website at <https://www.nmcecd.org/> and New Mexico Kids website at <https://www.newmexicokids.org/> 30 days prior to the Public Hearing.

Corrections:

Not available

Rule Explanatory Statement:

Not available

Related New Mexico Register Publications:

Not available

For any additional information or questions concerning this rule making or posting please contact:

Devi Gajapathi

devi.gajapathi2@state.nm.us

(505) 231-5820

Last Updated Date

9/9/2021 1:46 PM

How to submit Comments:

ECECD-EC-S-PublicComment@state.nm.us

When are comments due:

10/28/2021 4:00 PM

Hearing Date:

10/28/2021 1:00 PM

Public Hearing Location:

The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. (10/28/2021 (1:00 PM -4:00 PM)

How to participate:

Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-EC-S-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the schedule hearing.

If the document is not visible on the previewer, please download the file.

File	File Name	File Type	Description
View Document	8.15.2 NMAC Public Notice_EN SP	WORD_X	
View Document	8.15.2 NMAC	WORD_X	

secure.force.com/public/SSP_RuleHearingSearchPublic#





Rule Hearing

8.15.2 NMAC SOCIAL SERVICES CARE ASSISTANCE REQUIREMENTS

8.15.2.21 NMAC SANCTIONS

Purpose (Brief) ⓘ	Proposing amendments to 8.15.2 NMAC.	
Purpose	The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes.	
Owner	Ashleigh Smith	

Information to Constituents

Hearing Start Date and Time	10/28/2021 1:00 PM	
Hearing End Date and Time	10/28/2021 4:00 PM	
Public Hearing Location	The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded.	
How To Participate	Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the scheduled hearing.	
How To Obtain Copy of Proposed Rule	Copies of the proposed amended rules may be found at ECECD's website at https://www.nmcecd.org/ and New Mexico Kids website at https://www.newmexicokids.org/ 30 days prior to the Public Hearing.	
Rule Hearing Contact Name ⓘ	Devi Gajapathi	
Rule Hearing Contact Email ⓘ	devi.gajapathi2@state.nm.us	
Rule Hearing Contact Phone Number ⓘ	(505) 231-5820	
When Are Comments Due	10/28/2021 4:00 PM	
How to Submit Comments	ECECD-ECS-PublicComment@state.nm.us	

Related Links

Link to Rule Explanatory Statement			
Link to Rule Corrections			
Related New Mexico Register Publications			
Administrative Code			
Created By	Ashleigh Smith, 9/9/2021 1:42 PM	Last Modified By	Ashleigh Smith, 9/9/2021 1:46 PM



NEW MEXICO

Early Childhood

Education & Care Department



Select Language

Notice of Rulemaking and Public Rule Hearing 8.15.2 NMAC



**NOTICE OF RULEMAKING AND PUBLIC RULE
HEARING**



- Download English and Spanish Notice: 8.15.2 NMAC Public Notice (PDF)
- Uploaded September 10, 2021

Notice of public rule hearing: The public rule hearing will be held on **Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m.** The hearing will be held in **Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502** and **via virtual web platform (Zoom)**, email, and telephonic means.

The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at **ECECD-ECS-PublicComment@state.nm.us** or call **(505) 231-5820**. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to **ECECD-ECS-PublicComment@state.nm.us** with the subject line “8.15.2 NMAC Public Comment” or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may be delivered to the Old PERA building at 1120 Paseo de Peralta on Thursday, October 28, 2021 from 1:00 p.m. to 4:00 p.m. The comment period ends at the conclusion of the public hearing October 28, 2021.

Click on the links below to view or download:

Zoom Meeting Details +

8.15.2 NMAC Proposed Amendments effective January 1, 2022

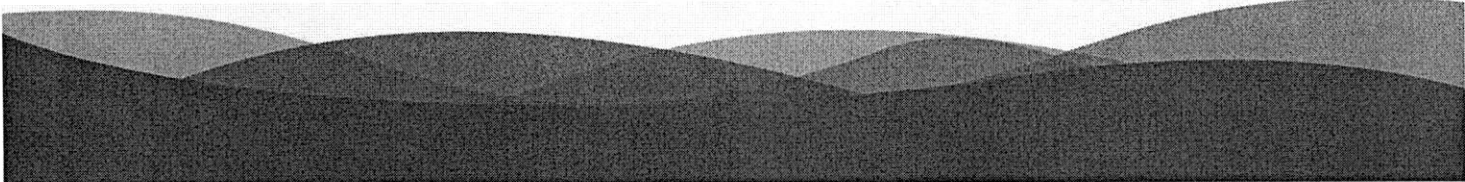
- Uploaded September 10, 2021 (PDF)

Notice of Emergency Amendment for 8.15.2 NMAC (7/1) effective July 1, 2021

- Click here for English text: Notice of Emergency Amendment (PDF)
- Click here for Spanish text: Aviso en español (PDF)

Notice of Emergency Amendment for 8.15.2 NMAC (7/1) effective July 1, 2021

- Click here for English text: Notice of Emergency Amendment (PDF)
- Click here for Spanish text: Aviso en español (PDF)



**NEW MEXICO EARLY CHILDHOOD EDUCATION & CARE
DEPARTMENT**

PO Drawer 5619 Santa Fe, NM 87502-5619 | Toll free: (800) 832-1321

Smith, Ashleigh, ECECD

From: Rachel Nowak <rachelmitchell@unm.edu>
Sent: Tuesday, September 14, 2021 9:05 AM
To: Smith, Ashleigh, ECECD; Garrett Massey; Malisa Kasparian; Kathleen Carroll
Cc: ECECD-ECS-PublicComment
Subject: [EXTERNAL] RE: 8.15.2 NMAC Public Comment

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Good morning, Ashleigh!

The notice and public comments for 8.15.2 can be found here:

<https://www.newmexicokids.org/home/notice-of-rulemaking-and-public-rule-hearing-for-8-15-2-nmac-10-28-21/>

Best regards,

Rachel Eryn Nowak

Program Manager

NewMexicoKids Resource and Referral

Resource and Support Hub

Early Childhood Services Center

University of New Mexico

1634 University Blvd. NE

Albuquerque, NM 87102

1-800-691-9067 Support Line

(505) 252-8744 Cell Phone

(505) 277-2570 Fax

www.newmexicokids.org

www.newmexicoprek.org

www.nmels.org



Early Childhood Services Center

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From: Smith, Ashleigh, ECECD <Ashleigh.Smith@state.nm.us>

Sent: Monday, September 13, 2021 3:10 PM

To: Garrett Massey <garrettmassey@unm.edu>; Rachel Nowak <rachelmitchell@unm.edu>; Malisa Kasparian <mkaspari@unm.edu>; Kathleen Carroll <carrollk@unm.edu>

Cc: ECECD-ECS-PublicComment <ECECD-ECS-PublicComment@state.nm.us>

SANTA FE NEW MEXICAN

Founded 1849

EARLY CHILDHOOD EDUCATION
AND CARE DEPT
PO Drawer 5619
Santa Fe, NM 875025619

ACCOUNT:	STECEAC	
AD NUMBER:	19768	
LEGAL NO	88739	P.O.#:PAID
1 TIME(S)	856.12	
AFFIDAVIT	10.00	
TAX	73.08	
TOTAL	939.20	

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
COUNTY OF SANTA FE


I, Shaundel Moya, being first duly sworn declare and say that I am Legal Advertising Representative of THE SANTA FE NEW MEXICAN, a daily newspaper published in the English language, and having a general circulation in the Counties of Santa Fe, Rio Arriba, San Miguel, and Los Alamos, State of New Mexico and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 on Session Laws of 1937; that the Legal No 88739 a copy of which is hereto attached was published in said newspaper 1 day(s) between 09/13/2021 and 09/13/2021 and that the notice was published in the newspaper proper and not in any supplement; the first date of publication being on the 13th day of September, 2021 and that the undersigned has personal knowledge of the matter and things set forth in this affidavit.

ISI


LEGAL ADVERTISEMENT REPRESENTATIVE

Subscribed and sworn to before me on this 14th day of September, 2021

Notary


Commission Expires: 11/30/2024



OFFICIAL SEAL
Susan Larine Cahoon
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires 11/30/2024

LEGAL # 88739

8.15.2.17 NMAC PAGO DE SERVICIOS

NOTICE OF RULEMAKING AND PUBLIC HEARING 8.15.2.21 NMAC SANCTIONS

Para la redacción de las reglas propuestas se consultó a la Child Welfare Department (CYFD) and the Early Childhood Education and Care Department (ECECD) ninguna información técnica.

El propósito y resumen de las reglas propuestas: El propósito de la elaboración de los reglamentos es promulgar enmiendas permanentes a la sección 8.15.2 del NMAC, que inicialmente fueron publicadas como enmiendas de emergencia con validez al 1 de julio de 2021 y el 1 de agosto de 2021, junto con los cambios necesarios autorizados por la Sección 9-2A-1 to 9-2A-16, la emergencia para la salud planteada por el COVID-19 y a la orden ejecutiva y las declaraciones resultantes, junto con la subvención del Fondo para el Desarrollo y Cuidado Infantil (CCDF), hubo una necesidad de emergencia de enmendar el 8.15.2 del NMAC con el fin de proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y familias de Nuevo México y garantizar la continuidad del financiamiento federal. En resumen, las reglas propuestas actualizarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también resultarán los cambios requeridos por la subvención de CCDF. Se adjunta a la presente

8.15.2.6 NMAC OBJECTIVE

8.15.2.7 NMAC DEFINITIONS

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE

8.15.2.10 NMAC APPLICATION PROCESS

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS

8.15.2.12 NMAC RECERTIFICATION

8.15.2.13 NMAC CLIENT RESPONSIBILITIES

8.15.2.14 NMAC CASES AND SUSPENSIONS AND CLOSURES

8.15.2.15 NMAC PROVIDER REQUIREMENTS

8.15.2.17 NMAC PAYMENT FOR SERVICES

8.15.2.21 NMAC SANCTIONS

TIONS

No technical scientific information was consulted in drafting these proposed rules. required by the subvention of CCDF. Se adjunta a la presente

Purpose and summary

of proposed rules: Thecomunicacion un re- purpose of the rule-sumen de las modifi- making is to promul-caciones propuestas.

gate permanent amendments to 8.15.2Como parte del pro- NMAC, which were ini-ceso de enmienda, tially published asECECD llevará a cabo emergency amend-una audiencia pública ments effective July 1,de reglas para las en- 2021, and August 1,miendas propuestas el 2021, along with addi-28 de octubre de 2021 tional necessaryde 1:00 a 4:00 p.m. La changes. Due to thefecha límite para la COVID-19 health crisispresentación al Reg- and the resulting exec-Istro de Nuevo México utive orders and dec-es el 26 de agosto de larations, along with2021, con fecha de the federal Child Carepublicación el 14 de Development Fundseptiembre de 2021.

(CCDF) grant, there was an emergencyPuede encontrar need for amendmentscopias de las propues- to 8.15.2 NMAC in ordertas leyes administrati- to protect the publicvas en el sitio web de from an imminent perilECECD en newmexico to public health, safetykids.org/ a más tardar and welfare of chil-el 14 de septiembre de dren and families in2021.

New Mexico and en- sure continued federalAnuncio de audiencia funding. In summary,pública sobre the proposed rules willreglamentos: La audi- update necessaryencia pública sobre health and safetyreglamentos se cele- changes for the provi-brará el jueves, 28 de sion of child care serv-octubre de 2021, de ices in New Mexico as1:00 p.m. a 4:00 p.m. La well as make changesaudiencia se llevará a required by the CCDFcabo en el Apodaca grant. A summary ofHall del edificio Old the proposed amend-PERA situado en 1120 ments is attached toPaseo de Peralta, this notice. Santa Fe, Nuevo Méx- ico 87502 y a través de

As part of the amend-una plataforma web a ment process, ECECDdistancia (Zoom), de will hold a public rulecorreo electrónico y hearing for the pro-de medios telefónicos. posed amendmentsLa audiencia pública la on October 28, 2021conducirá de manera from 1:00 to 4:00 p.m.imparcial y equitativa The deadline for sub-un representante del mittal to the New Mex-ECECD o un fun- ico Register is oncionario de audien- August 26, 2021, withacias, y esta será publication date ofgrabada. Cualquier September 14, 2021. persona del público Copies of the pro-que tenga interés posed amended rulespodrá asistir a la audi- may be found atencia y se le dará una ECECD's website atoportunidad razonable https://www.newmex-de dar sus comentar- icoskids.org/ no laterios públicamente, ya than September 14,sea de manera oral o 2021. por escrito, incluyendo

la presentación de **Notice of public rule**datos, perspectivas o **hearing:** The publicargumentos sobre las rule hearing will bereglas propuestas. A

held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in the Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via a virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD hearing officer and interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos sobre las reglas propuestas, de parte de cualquier interesado del público, pueden presentarse a ECECD-ECS por correo electrónico a PublicComment@ECECD-ECS-PublicCo.state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a postal request that is not received at least ten calendar days before the hearing. Los comentarios por escrito se pueden entregar el

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to Cualquier persona del publico que este interesada puede asistir con la linea de comentario o a la plataforma web o por correo postal a P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619 or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. Los comentarios por escrito se pueden entregar el

New Mexico 87502-comentarios públicos 5619. Written com-sobre las reglas prop-ments may beuestas. Para participar delivered to the Oldpor teléfono: llame al PERA building at 11201-720-707-2699, usando Paseo de Peralta onel código de acceso Thursday, October 28,823 7497 1518. Usted 2021 from 1:00 p.m. topodrá escuchar toda 4:00 p.m. The com-la audiencia y sus com-ent period ends atmentarios telefónicos the conclusion of thequedarán grabados. public hearing Octo-Para participar por In-ber 28, 2021. ternet: visite zoom.

us/j/82374971518 y Any interested mem-siga las instrucciones ber of the public mayindicadas en la pan-attend the hearing intalla - ID de la reunión person or via the vir-(código de acceso): tual web platform or823 7497 1518#. Esta telephone, and offer será una transmisión public comments onen vivo de la audien-the proposed rule dur-cia. También puede ing the hearing. To ac-hacer sus comentarios cess the hearing bypor medio del chat du-telephone: place callrante la transmisión 1-720-707-2699, accesen vivo. code 823 7497 1518.

You will be able to hear the file hearing **RESUMEN DEL ECECD** and your telephone **(EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT) DE MODIFICACIONES PROPUESTAS PARA EL NMAC 8.15.2** comments will be recorded. To access the hearing via the in- ternet: please go to: **zoom.us/82374971518,** and follow the instruc-

tions indicated on the **8.15.2.6 OBJETIVO DE** screen - Meeting ID **NMAC: El ECECD pro-** (access code): 823pone modificaciones 7497 1518#. This willque incluyen un be a live stream of the lenguaje de no dis- hearing. You may also criminación y un obje- provide comments viativo relacionado con la Chat during the liveSubvención federal stream. para el desarrollo y el cuidado infantil

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT'S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.15.2 NMAC (CCDBG, por sus siglas en inglés) y el Fondo para el desarrollo del cuidado infantil (CCDF, por sus siglas en inglés).

8.15.2.7 DEFINICIONES
8.15.2.6 NMAC OBJEC-DE NMAC: El ECECD TIVE: ECECD propone propone actualiza- amendments that in-ciones a las defini- clude non-discrimina- ciones de varios tion language and antérminos ("Programa objective related toeducativo y de capac- the federal Child Care itación laboral", "Cam- and Developmentbio temporal de Block Grant (CCDBG)actividad" y "Familiar, and the Child Care De-amigo o vecino (FFN, velopment Fundpor sus sigla en in- (CCDF). glés)") e incluye nuevos términos prop-

8.15.2.7 NMAC DEFINI-uestos ("Trabajador TIONS: ECECD no-presencial" v

poses updates to the "Rescisión"). definitions of various terms ("Job Training and Educational Program," "Temporary Change of Activity," and "Family, Friend, Neighbor (FFN)") includes new proposed terms ("Essential Worker" and "Termination").

8.15.2.9 NMAC PRIORIDADES DE NMAC PARA CON-CEDER ASISTENCIA: ECECD propone actualizaciones a las prioridades de cuidado para los requisitos de asistencia que incluyen la provisión de una nueva categoría, "prioridad cuatrimás", para una mayor elegibilidad.

ECECD proposes updates to the child care priorities for assistance requirements that include the provision of a new category, "priority four plus," for increased eligibility.

8.15.2.10 NMAC APPLICATION PROCESS: ECECD proposes updates to the child care assistance application process requirements that include a list of acceptable documents and related issues.

ECECD proposes updates to the child care assistance application process requirements that include a list of acceptable documents and related issues.

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS: ECECD proposes updates to the eligibility requirements for child care assistance in order to clarify the eligibility period, placement agreements and related issues.

ECECD proposes updates to the eligibility requirements for child care assistance in order to clarify the eligibility period, placement agreements and related issues.

8.15.2.12 NMAC RECERTIFICATION: ECECD proposes updates to the recertification process for child care assistance in order to increase eligibility based on income and for essential workers.

ECECD proposes updates to the recertification process for child care assistance in order to increase eligibility based on income and for essential workers.

8.15.2.13 NMAC CLIENT RESPONSIBILITIES: ECECD proposes updates to the requirements related to client responsibilities to move restrictions placed on the co-payment for child care.

8.15.2.14 SUSPENSIONES Y CIERRES DE CASOS DE NMAC: ECECD propone actualizaciones al proceso de suspensión y cierre de casos de NMAC.

CASOS DE NMAC: El

8.15.2.14 NMAC CASE ECECD propone actual-
SUSPENSIONS AND CLOSURES: ECECD pro-
updates to the suspen-
requirements related to
to case suspensions and
and closures to clarify
that the eligibility re-
riod for child care as-
sistance lasts for 12
months.

**8.15.2.15 REQUISITOS
DEL NMAC PARA**

**8.15.2.15 NMAC
PROVIDER REQUIRE-
MENTS:** ECECD propone actual-
updates to the requi-
sitions para proveedores
provider requirements que eliminan la tarifa
that removes the five-
dollar registration/edu-
education fee paid to
providers, clarifies los
that owners and li-
censees cannot re-
ceive child care de
assistance for their
own children, and re-
quires updated poli-
cies and procedures. exige
políticas y procedi-
mientos actualiza-

**8.15.2.17 NMAC PAY-
MENT FOR SERVICES:**

ECECD proposes up-
dates to the require-
ments related to the
payment for services
that increases the
child care subsidy
rates paid to
providers, based on
cost estimation model,
makes related up-
dates, and removes
outdated require-
ments.

**8.15.2.17 PAGO DE
NMAC POR SERVICIOS:**

El ECECD propone ac-
tualizaciones de los
requisitos relaciona-
dos con el pago de ser-
vicios que aumentan
las tarifas de subsidio
de cuidado infantil pa-
ra los proveedores, según un
modelo de estimación
de costos, realiza ac-
tualizaciones rela-

**8.15.2.21 NMAC SANC-
TIONS:** ECECD pro-
poses updates to the
requirements related

**8.15.2.21 SANCIONES
DE NMAC:** El ECECD
moves the provision
that requires place-
ment on a conditional
eligibility status for
clients who fail to up-
date non-temporary
changes in status.

**8.15.2.21 SANCIONES
DE NMAC:** El ECECD

propone actualiza-
ciones de los requisi-
tos relacionados con
sanctions and re-
lacionados con
sanctions and elimina
la disposición que exige
la colocación de un es-
tado de elegibilidad
condicional para
clientes que no actual-
icen cambios de es-
tado no temporales.

**NOTIFICACIÓN DE
ELABORACIÓN DE
REGLAMENTOS Y
AUDIENCIA PÚBLICA
SOBRE REGLAMENTOS**

Pub.: Sept. 13, 2021

El Departamento de Niños, Jóvenes y Familias (CYFD) y el Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México notifican por el presente, según lo establecido por la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que se proponen adoptar enmiendas a las siguientes reglas relativas a SERVICIOS SOCIALES AYUDA PARA CUIDADO INFANTIL REQUISITOS PARA PROGRAMAS DE AYUDA PARA CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL, según lo autorizado por las Secciones 9-2A-1 a 9-2A-16, NMSA 1978 y 9-29-6, NMSA 1978:

8.15.2.6 NMAC OBJETIVO

8.15.2.7 NMAC DEFINICIONES

8.15.2.9 NMAC PRIORIDADES PARA CONCEDER AYUDA

8.15.2.10 NMAC PROCESO DE SOLICITUD

8.15.2.11 NMAC REQUISITOS DE ELEGIBILIDAD

8.15.2.12 NMAC RECERTIFICACIÓN

8.15.2.13 NMAC RESPONSABILIDADES DEL CLIENTE

8.15.2.14 NMAC SUSPENSIONES Y CIERRES DE CASOS

8.15.2.15 NMAC REQUISITOS DEL PROVEEDOR

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

8.15.2 NMAC

Elise Rodriguez, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

09/12/2021

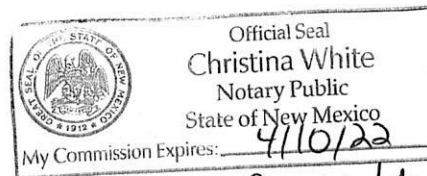
Elise Rodriguez

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this
13 day of September of 2021

PRICE \$1,571.28

Statement to come at the end of month.

ACCOUNT NUMBER 1099142



Christina White

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Section 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJETIVO
- 8.15.2.7 NMAC DEFINICIONES
- 8.15.2.9 NMAC PRIORIDADES PARA ASISTENCIA
- 8.15.2.10 NMAC APPLICACION PROCESS
- 8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS
- 8.15.2.12 NMAC RECERTIFICACION
- 8.15.2.13 NMAC CLIENT RESPONSIBILITIES
- 8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES
- 8.15.2.15 NMAC PROVIDER REQUIREMENTS
- 8.15.2.17 NMAC PAYMENT FOR SERVICES
- 8.15.2.21 NMAC SANCTIONS

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

Purpose and summary of proposed rules: The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. In summary, the proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico as well as make changes required by the CCDF grant. A summary of the proposed amendments is attached to this notice.

As part of the amendment process, ECECD will hold a public rule hearing for the proposed amendments on October 28, 2021 from 1:00 to 4:00 p.m. The deadline for submittal to the New Mexico Register is on August 26, 2021, with a publication date of September 14, 2021.

Copies of the proposed amended rules may be found at ECECD's website at <https://www.newmexicokids.org/> no later than September 14, 2021.

Notice of public rule hearing: The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS DE EMERGENCIA PÚBLICA SOBRE REGLAMENTOS

El Departamento de Niños, Jóvenes y Familias (CYFD) y el Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México notifican por el presente, según lo establecido por la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que se proponen adoptar enmiendas a las siguientes reglas relativas a SERVICIOS SOCIALES AYUDA PARA CUIDADO INFANTIL REQUISITOS PARA PROGRAMAS DE AYUDA PARA CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL, según lo autorizado por las Secciones 9-2A-1 a 9-2A-16, NMSA 1978 y 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJETIVO
- 8.15.2.7 NMAC DEFINICIONES
- 8.15.2.9 NMAC PRIORIDADES PARA CONCEDER AYUDA
- 8.15.2.10 NMAC PROCESO DE SOLICITUD
- 8.15.2.11 NMAC REQUISITOS DE ELEGIBILIDAD
- 8.15.2.12 NMAC RECERTIFICACIÓN
- 8.15.2.13 NMAC RESPONSABILIDADES DEL CLIENTE
- 8.15.2.14 NMAC SUSPENSIONES Y CIERRES DE CASOS
- 8.15.2.15 NMAC REQUISITOS DEL PROVEEDOR
- 8.15.2.17 NMAC PAGO DE SERVICIOS
- 8.15.2.21 NMAC SANCIONES

Para la redacción de las reglas propuestas no se consultó ninguna información técnico científica.

El propósito y resumen de las reglas propuestas: El propósito de la elaboración de reglamentos es promulgar enmiendas permanentes a la sección 8.15.2 del NMAC, que inicialmente fueron publicadas como enmiendas de emergencia con validez al 1 de julio de 2021 y el 1 de agosto de 2021, junto con los cambios necesarios adicionales. Debido a la emergencia para la salud planteada por el COVID-19 y a la orden ejecutiva y las declaraciones resultantes, junto con la subvención del Fondo para el Desarrollo y Cuidado Infantil (CCDF), hubo una necesidad de emergencia de enmendar el 8.15.2 del NMAC con el fin de proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y familias de Nuevo México y garantizar la continuidad del financiamiento federal. En resumen, las reglas propuestas actualizarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también realizarán los cambios requeridos por la subvención de CCDF. Se adjunta a la presente comunicación un resumen de las modificaciones propuestas.

Como parte del proceso de enmienda, ECECD llevará a cabo una audiencia pública de reglas para las enmiendas propuestas el 28 de octubre de 2021 de 1:00 a 4:00 p.m. La fecha límite para la presentación al Registro de Nuevo México es el 26 de agosto de 2021, con fecha de publicación el 14 de septiembre de 2021. Puede encontrar copias de las propuestas leyes administrativas en el sitio web de ECECD en <https://www.newmexicokids.org/> a más tardar el 14 de septiembre de 2021.

Anuncio de audiencia pública sobre reglamentos: La audiencia pública sobre reglamentos se celebrará el jueves, 28 de octubre de 2021, de 1:00 p.m. a 4:00 p.m. La audiencia se llevará a cabo en el Apodaca Hall del edificio Old PERA situado en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502 y a través de una plataforma web a distancia (Zoom), de correo electrónico y de medios telefónicos. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas

hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact [ECECD at ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD@ECECD-ECS-PublicComment@state.nm.us) or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the schedule hearing.

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may be delivered to the Old PERA building at 1120 Paseo de Peralta on Thursday, October 28, 2021 from 1:00 p.m. to 4:00 p.m. The comment period ends at the conclusion of the public hearing October 28, 2021.

Any interested member of the public may attend the hearing in person or via the virtual web platform or telephone, and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-720-707-2699, access code 823 7497 1518. You will be able to hear the hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/j/82374971518>, and follow the instructions indicated on the screen – Meeting ID (access code): 823 7497 1518#. This will be a live stream of the hearing. You may also provide comments via Chat during the live stream.

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT'S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.15.2 NMAC

8.15.2.6 NMAC OBJECTIVE: ECECD proposes amendments that include non-discrimination language and an objective related to the federal Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF).

8.15.2.7 NMAC DEFINITIONS: ECECD proposes updates to the definitions of various terms ("Job Training and Educational Program," "Temporary Change of Activity," and "Family, Friend, or Neighbor (FFN)") and includes new proposed terms ("Essential Worker" and "Termination").

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE: ECECD proposes updates to the child care priorities for assistance requirements that include the provision of a new category, "priority four plus," for increased eligibility.

8.15.2.10 NMAC APPLICATION PROCESS: ECECD proposes updates to the child care assistance application process requirements that include a list of acceptable documents for eligibility and related issues.

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS: ECECD proposes updates to the eligibility requirements for child care assistance in order to clarify the eligibility period, placement agreements and related issues.

8.15.2.12 NMAC RECERTIFICATION: ECECD proposes updates to the recertifica-

o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés podrá asistir a la audiencia y se le dará una oportunidad razonable de presentar comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 231-5820. El ECECD hará todo lo posible por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "8.15.2 NMAC Public Comment" o por correo postal de primera clase al apartado postal Drawer 5619, Santa Fe, New Mexico 87502-5619. Los comentarios por escrito se pueden entregar el jueves, 28 de octubre de 2021 de 1:00 p.m. a 4:00 p.m. en el edificio Old PERA, en 1120 Paseo De Peralta. El período para presentar comentarios termina al concluir la audiencia pública el 28 de octubre de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia de manera presencial o a través de la plataforma web o por teléfono, y ofrecer sus comentarios públicos sobre las reglas propuestas. Para participar por teléfono: llame al 1-720-707-2699, usando el código de acceso 823 7497 1518. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite <https://zoom.us/j/82374971518> y siga las instrucciones indicadas en la pantalla – ID de la reunión (código de acceso): 823 7497 1518#. Esta será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

RESUMEN DEL ECECD (EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT) DE MODIFICACIONES PROPUESTAS PARA EL NMAC 8.15.2

8.15.2.6 OBJETIVO DE NMAC: El ECECD propone modificaciones que incluyen un lenguaje de no discriminación y un objetivo relacionado con la Subvención federal para el desarrollo y el cuidado infantil (CCDBG, por sus siglas en inglés) y el Fondo para el desarrollo del cuidado infantil (CCDF, por sus siglas en inglés).

8.15.2.7 DEFINICIONES DE NMAC: El ECECD propone actualizaciones a las definiciones de varios términos ("Programa educativo y de capacitación laboral", "Cambio temporal de actividad" y "Familiar, amigo o vecino (FFN, por sus sigla en inglés)") e incluye nuevos términos propuestos ("Trabajador esencial" y "Rescisión").

8.15.2.9 PRIORIDADES DE NMAC PARA CONCEDER ASISTENCIA: El ECECD propone actualizaciones a las prioridades de cuidado infantil para los requisitos de asistencia que incluyen la provisión de una nueva categoría, "prioridad cuatro más", para una mayor elegibilidad.

8.15.2.10 NMAC PROCESO DE SOLICITUD: El ECECD propone actualizaciones a los requisitos del proceso de solicitud de asistencia para el cuidado infantil que incluyen una lista de documentos aceptables para la elegibilidad y asuntos relacionados.

8.15.2.11 REQUISITOS DE ELEGIBILIDAD DE NMAC: El ECECD propone actualizaciones a los requisitos de elegibilidad para la asistencia de cuidado infantil con el fin de aclarar el período de elegibilidad, los acuerdos de colocación y asuntos relacionados.

8.15.2.12 RECERTIFICACIÓN DE NMAC: El ECECD propone actualizaciones

documents for eligibility and related issues.

8.15.2.1 NMAC ELIGIBILITY REQUIREMENTS: ECECD proposes updates to eligibility requirements for child care assistance in order to clarify the eligibility period, placement agreements and related issues.

8.15.2.12 NMAC RECERTIFICATION: ECECD proposes updates to the recertification process for child care assistance in order to increase eligibility based on income and for essential workers.

8.15.2.13 NMAC CLIENT RESPONSIBILITIES: ECECD proposes updates to the requirements related to client responsibilities to remove restrictions placed on the co-payment for child care.

8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES: ECECD proposes updates to the requirements related to case suspensions and closures to clarify that the eligibility period for child care assistance lasts for 12 months.

8.15.2.15 NMAC PROVIDER REQUIREMENTS: ECECD proposes updates to the provider requirements that removes the five dollar registration/education fee paid to providers, clarifies that owners and licensees cannot receive child care assistance for their own children, and requires updated policies and procedures.

8.15.2.17 NMAC PAYMENT FOR SERVICES: ECECD proposes updates to the requirements related to the payment for services that increases the child care subsidy rates paid to providers, based on a cost estimation model, makes related updates, and removes outdated requirements.

8.15.2.21 NMAC SANCTIONS: ECECD proposes updates to the requirements related to sanctions and removes the provision that requires placement on a conditional eligibility status for clients who fail to update non-temporary changes in status.

8.15.2.11 REQUISITOS DE ELEGIBILIDAD DE NMAC: El ECECD propone actualizaciones a los requisitos de elegibilidad para la asistencia de cuidado infantil con el fin de aclarar el período de elegibilidad, los acuerdos de colocación y asuntos relacionados.

8.15.2.12 RECERTIFICACIÓN DE NMAC: El ECECD propone actualizaciones al proceso de recertificación para la asistencia de cuidado infantil con el fin de aumentar la elegibilidad según los ingresos y para los trabajadores esenciales.

8.15.2.13 RESPONSABILIDADES DEL CLIENTE DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con las responsabilidades del cliente para eliminar las restricciones impuestas al copago del cuidado infantil.

8.15.2.14 SUSPENSIONES Y CIERRES DE CASOS DE NMAC: El ECECD propone actualizaciones a los requisitos relacionados con las suspensiones y cierres de casos para aclarar que el período de elegibilidad para la asistencia de cuidado infantil dura 12 meses.

8.15.2.15 REQUISITOS DEL NMAC PARA PROVEEDORES: El ECECD propone actualizaciones a los requisitos para proveedores que eliminan la tarifa de inscripción/educación de cinco dólares que se paga a los proveedores, aclara que los propietarios y los titulares de licencias no pueden recibir asistencia de cuidado infantil para sus propios hijos y exige políticas y procedimientos actualizados.

8.15.2.17 PAGO DE NMAC POR SERVICIOS: El ECECD propone actualizaciones de los requisitos relacionados con el pago de servicios que aumentan las tarifas de subsidio de cuidado infantil pagadas a los proveedores, según un modelo de estimación de costos, realiza actualizaciones relacionadas y elimina requisitos obsoletos.

8.15.2.21 SANCIONES DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con sanciones y elimina la disposición que exige la colocación de un estado de elegibilidad condicional para clientes que no actualicen cambios de estado no temporales.

List of individuals to who notice was mailed or send electronically as required by 1.24.25.14 A

- **Names of child care assistance recipients who were notified may be requested through an IPRA**
- **Names of child care providers who were notified may be requested through an IPRA**

Smith, Ashleigh, ECECD

From: Gajapathi, Devi, ECECD
Sent: Monday, September 13, 2021 3:30 PM
To: Smith, Ashleigh, ECECD
Subject: FW: [External] Proposed Regulation Amendments for Child Care Assistance and Regulatory Oversight

Hi Ashleigh,

I received this on Friday and I forgot to send this to you. No comments but just a “thank you”.

Devi

From: Marilyn Wolfe <mwolfe@drnm.org>
Sent: Friday, September 10, 2021 6:42 PM
To: Gajapathi, Devi, ECECD <Devi.Gajapathi2@state.nm.us>
Subject: Re: [External] Proposed Regulation Amendments for Child Care Assistance and Regulatory Oversight

Thank you. Have a great weekend.

Get [Outlook for Android](#)

From: Devi Gajapathi <devi.gajapathi2@state.nm.us>
Sent: Friday, September 10, 2021 4:38:41 PM
To: mwolfe@drnm.org <mwolfe@drnm.org>
Subject: [External] Proposed Regulation Amendments for Child Care Assistance and Regulatory Oversight

Visit the Early Childhood Education and Care Department Regulation Changes webpage [here](#).



NOTICE OF RULEMAKING AND PUBLIC RULE HEARING(S)

Dear Parent, Guardian, Families, and Providers:

The New Mexico Early Childhood Education and Care Department's (ECECD) mission is to ensure that all New Mexican families and young children have equitable access to high-quality early childhood opportunities. As part of this mission, ECECD is making a series of proposed amendments to its regulations governing Child Care Assistance (8.15.2 NMAC), Child Care Licensing (8.16.2 NMAC), and Non-Licensed Child Care (8.17.2 NMAC).

The purpose of the rulemaking is to promulgate permanent amendments to 8.16.2, 8.17.2 and 8.15.2 NMAC, which were initially published as emergency amendments effective July 1 and August 1, 2021, along with additional necessary changes. The proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico, as well as make changes required or recommended by the federal Child Care Development Fund (CCDF) grant, such as updating the child care assistance rates paid to providers and raising the eligibility limits for families. A copy of all proposed changes are available on ECECD's website: [Regulation Changes | Early Childhood Education & Care Department \(nmececd.org\)](https://www.nmececd.org).

PLEASE BE ADVISED THAT THESE PROPOSED REGULATION CHANGES DO NOT AFFECT CURRENT CHILDCARE ELIGIBILITY TO FAMILIES.

As part of the amendment process, ECECD will hold three separate public hearings for the proposed amendments in October to accept comments from the public on each chapter. The public hearing for 8.16.2 NMAC will be held October 14, 2021; 8.17.2 NMAC will be held October 21, 2021, and 8.15.2 NMAC will be held October 28, 2021. Please see the attached notices for more details, such as how to participate in-person or virtually. Please note that attendance of these hearings is not mandatory.

ECECD will now begin accepting formal public comments concerning the proposed amendments as part of this process. Written comments may be submitted to ECECD-ECS-PublicComment@state.nm.us, or in writing as set forth in the attached notice, and will be accepted up until the beginning of each respective public hearing.

If you have any questions regarding the changes to these regulations, the public hearing or how to submit public comments, please contact ECECD at ECECD-ECS-PublicComment@state.nm.us.

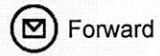
Thank you,

Devi Gajapathi
ECECD Policy Development Manager
Email: Devi.Gajapathi2@state.nm.us

View: Notice of Rulemaking and Public Rule Hearing 8.16.2 NMAC. The public rule hearing is scheduled, **October 14, 2021 at 1:00 p.m.**

View: Notice of Rulemaking and Public Rule Hearing 8.17.2 NMAC. The public rule hearing is scheduled, **October 21, 2021 at 1:00 p.m.**

View: Notice of Rulemaking and Public Rule Hearing 8.15.2 NMAC. The public rule hearing is scheduled, **October 28, 2021 at 1:00 p.m.**



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Smith, Ashleigh, ECECD

From: Castillo, Alejandra, ECECD
Sent: Thursday, September 9, 2021 2:30 PM
To: Brown, Kimberly, ECECD; Steward, Patricia, ECECD; Anderson, Allen, ECECD; Williams, Margaret, ECECD
Cc: Terrazas, Monica, ECECD; Castillo, Samuel, ECECD; Chee, Sandra, ECECD; Boberg, Maryellen, ECECD; Lopez, Linda, ECECD; Vasquez, Racheal, ECECD; McKinley, Melissa, ECECD; Trujillo, Nicole, ECECD; Gajapathi, Devi, ECECD; Kliphuis, Tracy, ECECD; Smith, Ashleigh, ECECD; Egan, Brendan, ECECD
Subject: Posting Notices and Proposed Regulations for: 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC
Attachments: 8.15.2 NMAC.docx; 8.15.2 NMAC Public Notice_EnglishSpanish.docx; 8.16.2 NMAC Public Notice EN_SP.docx; 8.16.2 NMAC.docx; 8.17.2 Public Notice EN_SP.docx; 8.17.2 NMAC.docx

Good afternoon all,

Would you please ask all Child Care field offices to post and make available the attached notices?

This includes Proposed Regulations and Public Hearings for 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC.

We need this done by Tuesday, September 14th, 2021 at the latest.

Please confirm and let us know if you have questions.

Thank you!



ALEJANDRA CASTILLO
Business Operations Specialist
Policy, Research and Quality Initiatives
Division

Old PERA Building Room 226A
1120 Paseo De Peralta
Santa Fe, NM 87505
Email: alejandra.castillo@state.nm.us
Mobile: 505-372-8651

<http://NMECECD.org>

Smith, Ashleigh, ECECD

From: Castillo, Alejandra, ECECD
Sent: Thursday, September 9, 2021 10:17 AM
To: lcs@nmlegis.gov
Cc: Gajapathi, Devi, ECECD; Kliphuis, Tracy, ECECD; Smith, Ashleigh, ECECD; Egan, Brendan, ECECD
Subject: Notice to the New Mexico Legislative Council of 8.15.2 NMAC Public Hearing
Attachments: 8.15.2 NMAC.docx; 8.15.2 NMAC Public Notice Notice EN_ES.docx

Good Morning,

As part of the New Mexico State Rules Act requirement of providing notice to the New Mexico Legislative Council for distribution to appropriate interim and standing legislative committees, attached a Notice of Rulemaking and Public Rule Hearing for the following proposed change:

- 8.15.2 NMAC – SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

Please provide confirmation of receipt and distribution to appropriate interim and standing legislative committees.

Thank you,



ALEJANDRA CASTILLO
Business Operations Specialist
Policy, Research and Quality Initiatives
Division

Old PERA Building Room 226A
1120 Paseo De Peralta
Santa Fe, NM 87505
Email: alejandra.castillo@state.nm.us
Mobile: 505-372-8651

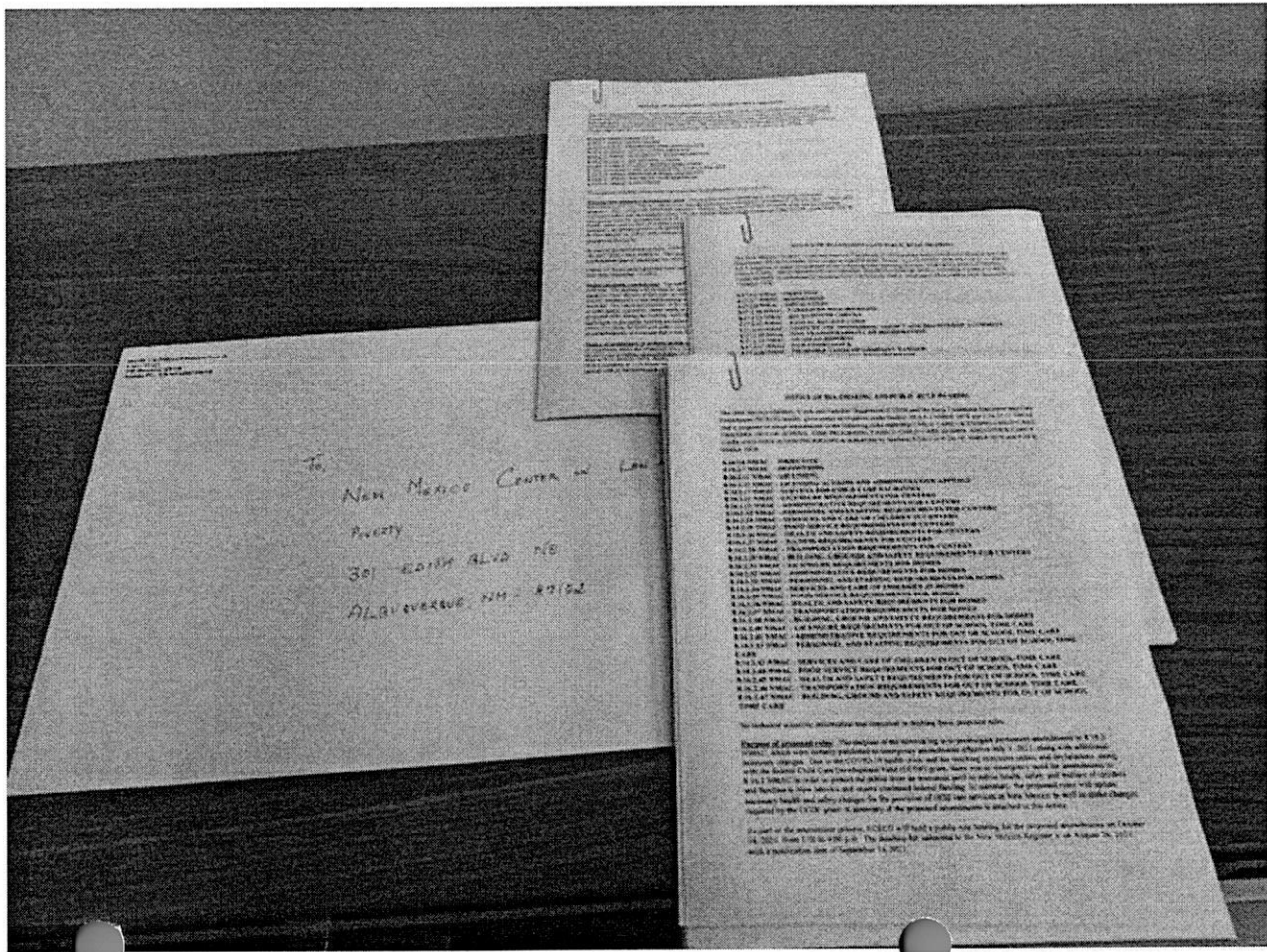
<http://NMECECD.org>

Smith, Ashleigh, ECECD

From: Gajapathi, Devi, ECECD
Sent: Thursday, September 9, 2021 10:33 AM
To: Egan, Brendan, ECECD; Kliphuis, Tracy, ECECD; Smith, Ashleigh, ECECD; Castillo, Alejandra, ECECD
Subject: Notice of Rulemaking and Public Rule Hearing to NM Center on Law And Poverty (NM CLP)

Good morning all,

I mailed NM CLP copies of the notices and proposed regulations for all three NMACs. Below are the screenshots.



To
 New Mexico Center for Law
 Poverty
 301 East Alamo St
 Albuquerque, NM 87102

TABLE OF CONTENTS

1. Introduction

2. The Role of the Center

3. The Center's Programs

4. The Center's Staff

5. The Center's Budget

6. The Center's Future

REPORT OF THE CHAIRMAN, CENTER FOR LAW POVERTY

The Center for Law Poverty was established in 1973 as a non-profit organization to provide legal services to the poor in New Mexico. The Center's primary focus is on providing legal assistance to the poor in the areas of housing, public benefits, and consumer protection. The Center's programs are designed to help the poor understand their legal rights and to provide them with the legal assistance they need to enforce those rights.

The Center's staff consists of attorneys, paralegals, and support staff. The Center's budget is approximately \$100,000 per year. The Center's future plans include expanding its programs to other areas of the state and increasing its staff.

The Center is grateful for the support of the community and the state. We hope that this report will provide a better understanding of the Center's work and the needs of the poor in New Mexico.

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Permit No. 1000000000000000

To,

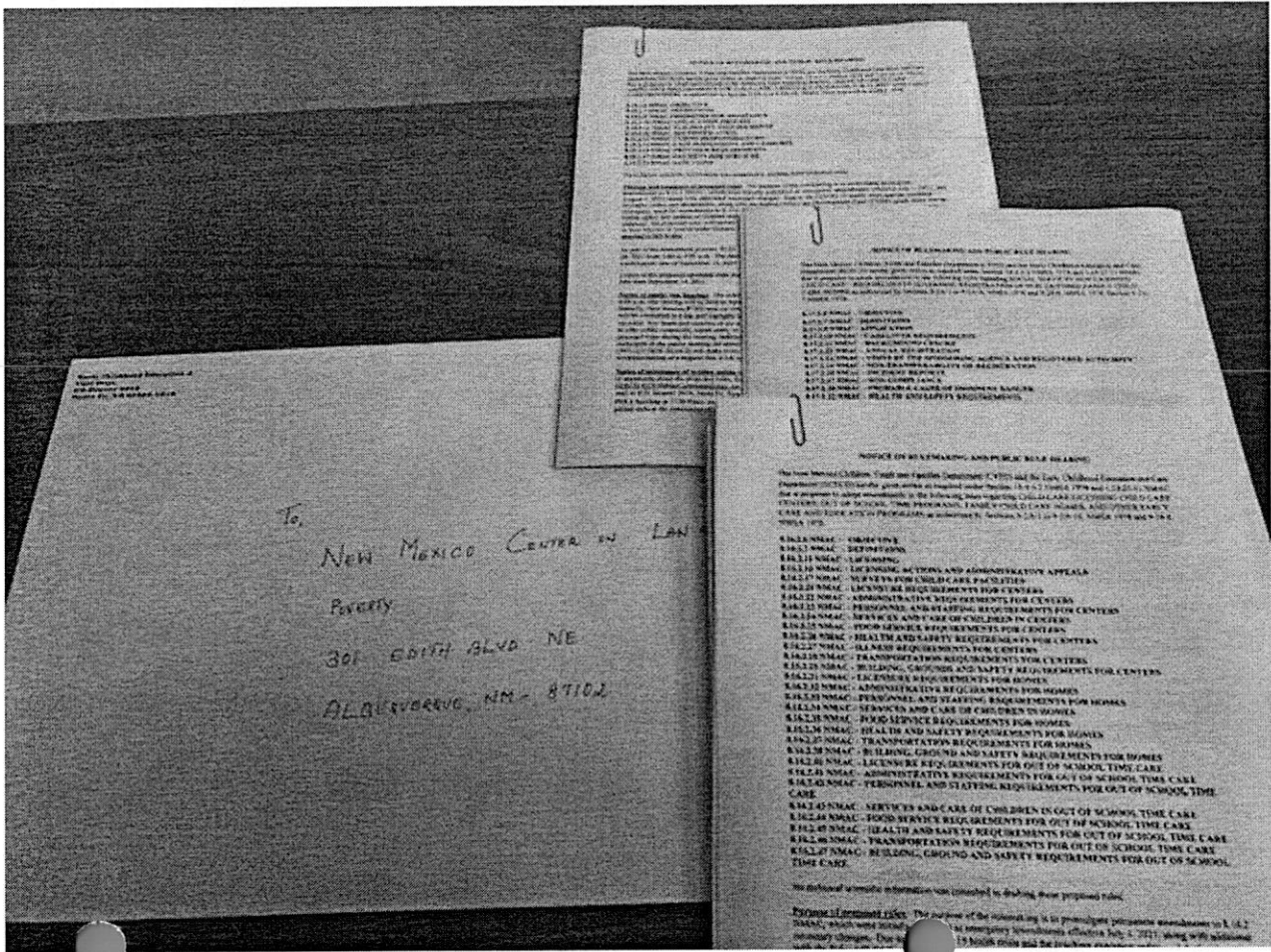
New Mexico Center on LAW AND

POVERTY (Attn: MARIA GRIEGO)

301 EDITH BLVD NE

ALBUQUERQUE, NM - 87102

7



State of New Mexico
Department of Health
301 Edith Blvd. NE
Albuquerque, NM 87102

To,
New Mexico Center for Law
Poverty
301 EDITH BLVD. NE
ALBUQUERQUE, NM - 87102

NOTICE OF RECOMMENDATION FOR PUBLIC BILL HEARING
The State of New Mexico, through the Department of Health, has prepared the following proposed public bill for the purpose of amending the existing laws of the State of New Mexico relating to the regulation of day care centers, child day care centers, and day care homes, and other early care and education programs. The bill is being introduced by Representative [Name] and is assigned to the [Committee Name].

NOTICE OF RECOMMENDATION AND PUBLIC BILL HEARING
The State of New Mexico, through the Department of Health, has prepared the following proposed public bill for the purpose of amending the existing laws of the State of New Mexico relating to the regulation of day care centers, child day care centers, and day care homes, and other early care and education programs. The bill is being introduced by Representative [Name] and is assigned to the [Committee Name].

NOTICE OF RECOMMENDATION AND PUBLIC BILL HEARING
The State of New Mexico, through the Department of Health, has prepared the following proposed public bill for the purpose of amending the existing laws of the State of New Mexico relating to the regulation of day care centers, child day care centers, and day care homes, and other early care and education programs. The bill is being introduced by Representative [Name] and is assigned to the [Committee Name].

- § 14-2-1 NMAC - DEFINITION
- § 14-2-2 NMAC - DEFINITION
- § 14-2-3 NMAC - DEFINITION
- § 14-2-4 NMAC - DEFINITION
- § 14-2-5 NMAC - DEFINITION
- § 14-2-6 NMAC - DEFINITION
- § 14-2-7 NMAC - DEFINITION
- § 14-2-8 NMAC - DEFINITION
- § 14-2-9 NMAC - DEFINITION
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- § 14-2-47 NMAC - DEFINITION
- § 14-2-48 NMAC - DEFINITION
- § 14-2-49 NMAC - DEFINITION
- § 14-2-50 NMAC - DEFINITION

Thanks!
Devi

**Redacted Comments
received prior to the
Hearing**

**New Mexico Register
Publication of
Proposed Rule**

**Other material
received during the
Hearing**

Final Adopted Rule

Full text of the final adopted rule and the concise explanatory statement files with the state records administrator.

Emergency Rules

New Mexico Register / Volume XXXII, Issue 14 / July 20, 2021

This is an amendment to 8.17.2 NMAC, Sections 7, 10, 11, 12, 22 and 24, effective 7/1/2021.

Explanatory statement: ECECD will be issuing emergency rule amendments made pursuant to NMSA 1978, § 14-4-5.6 and effective on July 1, 2021. ECECD is amending this rule in order to protect the health, safety, and welfare of children in child care settings and the general public. ECECD is also making these emergency amendments in order to prevent the anticipated loss of federal funding. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

8.17.2.7 DEFINITIONS:

- A.** “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:
- (1) physical contact that harms or is likely to harm a child;
 - (2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;
 - (3) punishment that is hazardous to the physical, emotional or mental state of the child;
- and
- (4) 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.
- B.** “Adult” means a person who has a chronological age of 18 years or older.
- C.** “Child” means any person who is under the chronological age of 18 years.
- D.** “Child care assistance program (CCAP)” means the state of New Mexico's child care services bureau (CCSB) which administers the federal child care and development fund (CCDF).
- E.** “Child and adult care food program (CACFP)” means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.
- F.** “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.
- G.** “Clean” means to physically remove all dirt and contamination.
- ~~[G.]~~ **H.** “Drop-in” means a child who attends a child care home on an occasional or unscheduled basis.
- ~~[H.]~~ **L.** “Emergency caregiver” means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, eight hours or less, on behalf of the primary caregiver.
- ~~[I.]~~ **J.** “Exempt caregiver” means a child care home primary caregiver who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.
- ~~[J.]~~ **K.** “Expulsion” means the involuntary termination of the enrollment of a child or family.
- ~~[K.]~~ **L.** “Guidance” means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.
- ~~[L.]~~ **M.** “Homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:
- (1) children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
 - (3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.

~~[M.]~~ **N.** “**Infant**” means a child from birth to one-year-old.

~~O.~~ **O.** “Media” means the use of televisions, video games, and non-educational on-line streaming such as video and social media.

~~[P.]~~ **P.** “**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.

~~[Q.]~~ **Q.** “**Non-resident child**” means any child who does not reside in the primary caregiver's home.

~~[R.]~~ **R.** “**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.

~~[S.]~~ **S.** “**Notifiable diseases**” means confirmed or suspected diseases/conditions as identified 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.

~~[T.]~~ **T.** “**Primary caregiver**” means a registered child care home caregiver 18 years of age or older who is personally providing care to children, less than 24 hours a day, in his/her own residence and has completed the registration process, paid the required fee and has no other employment during hours of care. The primary caregiver must reside in the home.

~~[U.]~~ **U.** “**Registered authority**” means the child care services bureau - registration section of the early childhood services division of the New Mexico children, youth and families department.

~~[V.]~~ **V.** “**Registered family child care home**” means the residence of an independent primary caregiver who registers the home under these regulations to participate in the child and adult care food program or in the state and federal child care assistance programs.

~~[W.]~~ **W.** “**Registered family child care food-only home**” means the residence of an independent primary caregiver who registers the home under these regulation to participate in the child and adult care food program only and does not participate in the state and federal child care assistance program.

~~[X.]~~ **X.** “**Resident child**” means any child who resides in the home, such as the primary caregiver’s own children by birth or adoption, foster children, grandchildren, or cohabitant’s children who are part of the residential unit.

~~[Y.]~~ **Y.** “**Serious injury**” means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

~~Z.~~ **Z.** “Significant amount of time” someone who is on the premises for more than one hour per day during hours of care.

~~[AA.]~~ **AA.** “**Substitute caregiver**” means someone 18 years of age or older who is authorized by the primary caregiver and the registered authority to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions.

~~[BB.]~~ **BB.** “**Substantiated**” means an incident or complaint determined to be factual, based on an investigation of events.

~~[CC.]~~ **CC.** “**Supervision**” means the direct observation and guidance of children at all times and requires being physically present with them.

~~[DD.]~~ **DD.** “**Survey**” means a representative of CYFD’s authority to enter a home, observes activity, examine the records and premises, interviews parents and records deficiencies.

~~[EE.]~~ **EE.** “**Unattended**” means a caregiver is not physically present with a child or children under care.

~~[FF.]~~ **FF.** “**Unsubstantiated**” means an incident or complaint not determined to be factual based on an investigation of events.

[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.17.2.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

C. Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions. A request for a background check must be submitted prior to a substitute caregiver employment. A substitute caregiver must receive a notice of provisional employment prior to beginning employment or obtain a background check in accordance with 8.8.3 NMAC.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Emergency caregivers must comply with background check requirements, and be certified in first-aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Emergency caregivers may be exempted from all other training requirements. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

F. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

G. All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their date of initial registration. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

- (1) prevention and control of infectious diseases (including immunization);
- (2) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (3) administration of medication, consistent with standards for parental consent;
- (4) prevention of and response to emergencies due to food or other allergic reactions;
- (5) 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;
- (6) prevention of shaken baby syndrome and abusive head trauma;
- (7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
- (8) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (9) precautions in transporting children (if applicable);
- (10) first aid and cardiopulmonary resuscitation (CPR) [~~certification~~] awareness with a pediatric component; and
- (11) recognition and reporting of child abuse and neglect.

H. Primary and substitute caregivers are required to attend six hours of training annually. Training documentation must be maintained for three years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

I. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

J. If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

K. Primary and substitute caregivers are required to maintain current first aid and CPR certification with a pediatric component at all times. On-line first aid and CPR classes are not valid unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. A caregiver

cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

L. Training shall be within the seven competency areas. The competency areas are:

- (1) child growth, development and learning;
- (2) health, safety, nutrition and infection control;
- (3) family and community collaboration;
- (4) developmentally appropriate content;
- (5) learning environment and curriculum implementation;
- (6) assessment of children and programs; and
- (7) professionalism.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.17.2.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC governing background checks and employment history verification provisions as promulgated by the children, youth and families department. All non-licensed child care caregivers must adhere to these provisions to maintain their registration status. A background check must be conducted in accordance with 8.8.3 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:

- (1) 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
- (2) submits an application for transfer and is found eligible pursuant to 8.8.3.11 NMAC.

B. The primary caregiver will be responsible for obtaining background checks on all adults residing in the home using the requirements outlined in the department's most current version of the background checks and employment history verification provisions (8.8.3 NMAC). A household member reaching the age of 18, must submit their background check in accordance with the most current provisions of 8.8.3 NMAC within 30 days after their eighteenth birthday. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

C. Any adult who is present in the registered primary caregiver's home for significant periods while children are in care, or who commences being present in the registered primary caregiver's home for significant periods, may be required by the department to obtain either a background check or criminal history and child abuse and neglect screen. Family members or guests visiting for temporary periods (less than five days) are not considered as spending significant periods of time. However, such visiting family or guests must not have unsupervised access to the children in care at any time.

D. All requirements of the current background checks and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial registration.

E. The registered primary caregiver must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section and make them available to the registered authority upon request.

F. The primary caregiver shall certify upon renewal that they, or any other adult living in the home have not been convicted of a disqualifying offense during the last twelve month.

[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 10/1/2016, A, 10/1/2019; A/E, 7/1/2021]

8.17.2.12 ANNUAL REGISTRATION: An annual registration is issued for a one-year period to a child care home that has met all requirements of these regulations.

A. Primary caregivers must renew registration annually, and only after receiving an onsite inspection by CYFD, by submitting a registration application and paying the processing charge with cashier's check or a money order.

B. Primary caregiver's who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance

program.

C. Primary caregivers shall ensure that all adults residing in the home as well as secondary caregivers and adults spending a significant amount of time in the home are listed on all documentation required by CYFD and sponsoring agencies.
[8.17.2.12 NMAC - N, 10/1/2016; A/E, 7/1/2021]

8.17.2.22 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees Fahrenheit and no more than 82 degrees Fahrenheit. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.

E. The home must be adequately ventilated at all times.

F. A home will not use un-vented heaters or open flame heaters. Portable heaters will be used in accordance with manufacture instructions. A home will 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, fireplaces, fireplace inserts and wood stoves.

G. All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees Fahrenheit in all areas accessible to children. A home may install a water tempering control valve ahead of all domestic water-heater piping.

H. A caregiver must provide safe playing areas inside and outside the home. Outside play areas must be approved by the registered authority.

I. A caregiver's outside play area must be safe, clean and free of any debris. The caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, hazardous area or when determined to be necessary for safety by the registered authority. The fence will have one latched gate for emergency exits.

J. The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the registered home.

K. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, sharp and pointed objects or any other dangerous materials in a storage area inaccessible to children.

L. The primary caregiver must have a working telephone in the home and a valid working phone number on file with CYFD at all times.

M. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.

N. A caregiver will install at least one working smoke detector and a carbon monoxide detector in an appropriate area in the home.

O. A caregiver will unload all guns, such as pellet or BB guns, rifles and handguns, and keep them in a locked area inaccessible to children.

P. A caregiver will keep all weapons in a locked area inaccessible to children.

Q. A caregiver will prohibit smoking and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

R. A home will have a 2A-10B:C fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and will have official tags noting the date of inspection.

S. A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, heaters, fireplaces or laundry rooms.

T. In case of a fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available. 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 registered authority and the department will provide guidance on developing these plans.

U. A caregiver will conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A caregiver will 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.

~~[U:]~~ Y. A home will have two major exits readily accessible to children with no obstructions in the pathways of these exits.

~~[V:]~~ W. Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Toys will 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.

X. Cribs will meet 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.

~~[W:]~~ Y. Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

~~[X:]~~ Z. The home will have a first aid kit stored in a convenient place inaccessible to children, but easily accessible by caregiver. The kit will contain at least Band-Aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

~~[Y:]~~ AA. A caregiver with pets will comply with the following requirements:

- (1) A home will inform parents or guardians in writing before pets are allowed at the residence.
- (2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the residence.
- (3) A home will 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.
- (5) A caregiver must be physically present during the handling of all pets or other animals.

~~[Z:]~~ BB. A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will wash their hands and the child's hands after every diaper change. A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.

~~[AA:]~~ CC. 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. A child shall only be transported if the child is properly secured in an age appropriate restraining device. [8.17.2.22 NMAC - Rp, 8.17.2.23 NMAC, A, 10/1/2016; A/E, 7/1/2021]

8.17.2.24 RECORD KEEPING REQUIREMENTS: Caregivers must keep an information card for each child (including drop-in children) with:

- A. the child's full name;
- B. the child's birth date;
- C. any known food or drug allergies or unusual physical condition;
- D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
- E. the name and telephone number of the child's physician;
- F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
- G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent;

H. an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health. A grace period of a maximum of 30 days will be granted for children in foster care or homeless children and youth; ~~and~~

I. written permission from parent to transport children outside of the registered home [-] ; and

J. 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. The attendance log must be kept on file for 12 months.

[8.17.2.24 NMAC - Rp, 8.17.2.25 NMAC, 10/1/2016; A/E, 7/1/2021]

TRANSMITTAL FORM FOR 8.15.2 NMAC

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NMAC

Transmittal Form

NEW MEXICO
State Records Center and Archives
COMMISSION OF PUBLIC RECORDS
Your Access to Public Information

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

Issuing agency name and address: Agency DFA code:

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

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

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):

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

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

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

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

2021 NOV 24 AM 9: 23

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of the rule making is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. Those amendments, along with additional necessary changes, are now being made permanent without any additional amendments after the department's review and consideration of all written and oral comments received during the public comment period.

Reasons for not accepting substantive arguments made through public comment: See attached document.

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

Name:


Elizabeth Groginsky

Check if authority has been delegated

Title:

Cabinet Secretary, ECECD

Signature: (BLACK ink only OR Digital Signature)



Date signed:

11/23/21

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Written Comments submitted prior to the October 28, 2021, public hearing

[REDACTED]
Comment 1:

I would like to state the impact that the recent rule changes have had on my family.

I left a physically abusive marriage, and initially I had no job or income and was living with my children in my mom's house after I separated. I got a job and was able to live on my own with my kids, but my income was still not enough to cover all my expenses, including legal fees for my divorce.

Over the past year, I have been able to save some money in a college savings account for my kids due to the fact that I didn't need to pay my son's daycare co-payment. I never dreamed that I would be able to set aside money for my kids' college when I could barely pay for everyday expenses. This last year has allowed us to look to the future, instead of being trapped.

I hope more families, especially single mothers, can have the same experience and that these policies are made permanent.

Thank you.

Department response: ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

[REDACTED]
Comment 2:

The increases that were given were a great help. We have many school age children and feel that those children should of also relieved an increase. That age group requires lots of time and materials, replaced due to use and breakage. I hope they look at this a bit closer. Thank you.

Department response: ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

Department response: New Mexico's latest rate increases, including those for school age children, were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. ECECD will continue to review and study subsidy rates to ensure that rates are based on the cost of providing high quality care.

[REDACTED]

Note: The Department received comments from different individuals at this provider's office, and they are consolidated here.

Comment 3:

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TLC Development Centers has been serving low income New Mexican families for over 20 years. Currently we have 7 locations across 3 counties in New Mexico. In September of 2021, we served 371 children receiving child care assistance. Pre-COVID, our average was approximately 560 per month. Historically, our centers collected roughly 40% of total family copayments each month. This has always caused us to operate on a shoestring budget. This year, with co-payments being waived by the department, we're finally able to feel a little bit of financial 'breathing room'. We've issued extra bonuses to our teachers, increased hourly wages (above the minimum wage increases), provided tons of PPE for staff and children, and more. We thank you very much! Our primary concern is: What will happen July 1, 2022? The copayments we're seeing on the contracts - though waived right now - are going to be even higher and more unaffordable when minimum wage goes up again. We fully understand the need to balance the budget - and certainly the desire to serve more families with limited funds. The cost/benefit analysis just seems a bit off balance from a co-payment standpoint. 2 Please accept our attached public comments in reference to NMAC 8.15.2. Thank you

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Please accept the following comments on the proposed revisions for 8.15.2 NMAC:

Affordability 8.15.2.13 B, 8.15.2.13 B (1), 8.15.2.13 B (2) The current co-payment methodology is not affordable for families. From the CCDF Final Rule: We establish a new Federal benchmark for affordable family co-payments of seven percent of family income and allow Lead Agencies more flexibility to waive co-payments for vulnerable families. (Federal Register / Vol. 81, No. 190 / Friday, September 30, 2016 / Rules and Regulations 67440) Currently, a single parent with 2 children will pay 10.36% of their gross income at 200% FPL. With 3 children, it jumps up to 12.21%. 13% for 4 children and 13.37% for 5 children. This is far above the federal benchmark of 7% and highlights the fact that the current co-payment methodology is not affordable for families. The Child Care and Development Fund Plan for New Mexico for FFY 2022-24 requires Lead Agencies to establish and periodically revise a sliding-fee scale for CCDF families that varies based on income and the size of the family to determine each family's contribution (i.e., co-payment) that is not a barrier to families receiving CCDF funds (658E(c)(5)). 3.2.2 Gives options for calculating the co-payments. The best of which is 3.2.2 b v – The fee is a percent of income, and the fee is per family. Given that the CCDF Final Rule sets a 7% benchmark, it seems logical that this should be the standard for New Mexican families.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Stricken Language: 8.15.2.13 E The co-payment for a child shall not exceed the base monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the base monthly provider reimbursement rate. This language should remain in regulation (with the addition of 'base') if the copayment calculation is not changed. Otherwise, this becomes a barrier to accessing quality. A family could have a higher copayment by attending a higher star level program. Removing the language as proposed; or leaving the language in without adding 'base', does not meet the objectives of these regulations or the spirit of the CCBDBG Act.

2021 NOV 24 AM 11:02

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates. With respect to 8.15.2.13(E) NMAC, the department is removing this section as it is an administrative burden to implement.

Clarification Required: 8.15.2.13 E (2) A client must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income. Will the SMI tables be published to ensure clients are able to meet this requirement? Currently, a family of 4 is at 86.27% of SMI at maximum income level for 200% FPL. A family of 5 is at 93.28% of SMI. 250% FPL puts families of 2 @ 104.09% of SMI, families of 3 @ 116.59%, families of 4 @ 126.58% and families of 5 @ 137.17%. These calculations do not take into account typical family expenses such as housing, food, health care, diapers, transportation, etc., as required by the CCDF Final Rule (Federal Register / Vol. 81, No. 190 / Friday, September 30, 2016 / Rules and Regulations 67467). Will the department revise the income guidelines to allow for standard deductions similar to LIHEAP and SNAP as suggested by the CCDF Final Rule?

Department response: ECECD appreciates the comment and understands it to reference 8.15.2.13(F)(2) NMAC. ECECD proposed this change in order to comply with federal CCDF requirements to include the language proposed. While CCDF requires this provision in regulation, ECECD will not penalize any client who fails to comply with this provision. In addition, state funds are available for those individuals whose median income exceeds eighty-five percent of the state medium income. Finally, at this time ECECD does not have any plans to additionally revise the income guidelines but will continue to review and monitor the issue.

8.15.2.15 E (1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. [The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.] The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC. 'And child and family activities' must be stricken. This contradicts the next item in regulation: 8.15.2.15 E (2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families. We recommend adding: In addition, providers may charge reasonable fees for transportation to and from schools for school aged children, provided the cost does not exceed that charged to private pay families. The ability to charge reasonable transportation fees allows providers to recoup some of the extra costs that this imposes on the program. These are services that many working parents need and can be very costly to programs. The rates for school aged children effectively went down by \$0.27/ month with the stricken language as proposed in 8.15.2.15 E (1).

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. Transportation expenses were taken into consideration in the cost estimation model and therefore, ECECD will not add the recommended language. Further, the language in 8.15.2.15 NMAC does not contradict itself and, other than removing the five dollar monthly education

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fee and adding language about the cost estimation model, the department did not add or remove the referenced requirements in regulation.

8.15.2.15 G Owners and licensees may not receive child care subsidy payments to provide care for their own children. This language directly violates the spirit of the CCDBG Act. This would prevent access to many otherwise qualified families. We recommend changing the language to read: "Owners and licensees may not receive child care subsidy payments to provide care for their own children if they are the only children in care."

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

8.15.2.17 C The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC. 'And child and family activities' must be stricken.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. "Child and family activities" were taken into consideration in the cost estimation model and therefore, ECECD will not make the recommended change.

Notable Discrepancies: 8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department. [8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 10/1/2016] The Department is now New Mexico Early Childhood Education and Care Department. Children, youth and families department or CYFD is also cited in the following: 8.15.2.7 C (1), 8.15.2.7 D (2), 8.15.2.7 N (1), 8.15.2.7 N (1) (b) (this information is no longer relevant and should be stricken), 8.15.2.9 A (1), 8.15.2.9 A (2), 8.15.2.11 C (5), 8.15.2.11 C (6), 8.15.2.17 I, 8.15.2.17 I (1), 8.15.2.17 I (1) (a) (this information is no longer relevant and should be stricken), 8.15.2.17 I (1) (b), 8.15.2.17 I Providers holding and maintaining CYFD a department approved national accreditation status will receive the differential rate listed in Subsection I Subsection J below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family CYFD should be changed to 'a department'. Subsection I should be changed to subsection J 8.15.2.7 N (1) (b) This information is no longer relevant and should be stricken. 8.15.2.17 I (1) This information is no longer relevant and should be stricken. 8.15.2.17 I (1) (a) This information is no longer relevant and should be stricken.

Department response: Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the

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licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

[REDACTED]

Comment 4:

My name is [REDACTED], I have taken an hour off from my work (I am a school teacher) and I have a very important case to make about child care as a single mother. I am hoping to speak between 1-2 today because I only have one hour of coverage for my classroom. As a single emom a school teacher I was only granted 150 dollars for help, but I am unable to pay for rent bills , still due to the guidelines and the parameters of the salary. It's imperative that I speak and make a case today for the workers like myself who are suffering due to preschool for our children. Thank you so much again. My name is [REDACTED] and I will be joining via zoom, from Salazar elementary school. [REDACTED]

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need.

[REDACTED]

Comment 5:

Unaffordable co-pays for child care are going to set the clock back on all the strides that have been made for children's welfare and early education. We again are going to see latch key kids. Older siblings in the role of caregivers. Single and even double income families are going to have some tough decisions to make. Universal Child care... at the very least birth to five should be available to all families.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need.

[REDACTED]

Comment 6:

To Whom it May Concern:

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Please accept the following comments on the proposed revisions to 8.15.2 NMAC regarding the New Mexico Early Childhood Education & Care Department (ECECD) child care assistance program. The undersigned organizations have extensive experience working with low-income families in New Mexico to ensure they have access to services that improve the lives of our state's children. We pay particular attention to the child care assistance program as it is a critical work support for low-income households. We have first-hand experience assisting families in accessing child care in New Mexico. We are hopeful that the new department, ECECD, will bring about increased access to much-needed child care and continue to work toward removing administrative barriers that prevent eligible families from receiving assistance.

We thank ECECD for making these important changes to the Child Care Assistance Regulations. The proposed changes improve access to affordable childcare that parents can trust to provide a safe space for their children to learn while they work to further their education and to support their families. Child care assistance allows parents to work toward attaining economic security for their family, and it provides a safe learning environment for New Mexico's children. While we support the proposed rules, we urge the Department to take the additional steps outlined below and promulgate a final rule which incorporates our specific suggestions.

Eligibility

As to the matter of eligibility, we ask that the Department consider expanding the child care assistance program to all low income families, regardless of their immigration status, through the use of state subsidies. This change would benefit many New Mexicans who play valuable roles in our state and are often essential workers.

Department response: ECECD appreciates the comment and will look into expanding eligibility for all low income families in New Mexico, regardless of immigration status, if additional state and/or federal funds become available. ECECD made recent regulation changes to support immigrants seeking child care by updating its definition of a "qualified immigrant" in order to ensure all qualified immigrants and refugees can apply for and receive child care subsidies.

I. Regulation Changes We Support

A. Section 8.15.2.10- We support the additions to the application process. 2

We support all of the changes to this section, including the addition of the full list of eligibility verification documents to the regulation. This list is a complete list of the documents that the Department requires.

B. Section 8.15.2.11 (C)(6)- We support the addition to exempt income.

The Department's proposal to exempt the income of graduate and other educational stipends aligns with the purposes of the CDBG Act to provide access to children to quality child care and recognizes the economic realities of parents who are furthering their education. We support this proposal and thank the Department for addressing this issue.

C. Section 8.15.2.15 (I)- We support this addition promoting equal access.

We thank and support the Department for adding this section to prohibit discrimination and explicitly state that providers must provide equal access to children and families. We commend the Department for taking into consideration the diversity of our state and ensuring that all New Mexicans have equal access to these services.

Department response: ECECD appreciates the comment and your participation in this process.

II. Regulations We Recommend Changing

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A. One general suggestion is related to **Section 8.15.2.7 (D)(2), (N)(1)-(b); 8.15.2.11(C)(5)-(6); 8.15.2.15 (F), 8.15.2.17 (I)-(I)(1)(b)- Change the Department Name to ECECD**

All of these sections of the regulation continue to refer to the Department as "CYFD." We ask that the change be made so that the department in the regulation is ECECD. Thank you to the Department for making this minor change to match the new Department as the issuing agency.

Department response: Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

B. **Section 8.15.2.7(P)(7)- Permit the Use of Family, Friends or Neighbors upon request.**

We support the proposed change, however, we ask that the Department consider allowing FFN Caregiving upon request, not only in the case of a public health emergency. This is permitted under federal law, is the type of care that some parents choose and need, and it opens the door to connect FFN providers with supports that can help them provide quality care.

Department response: ECECD appreciates the comments but cannot expand the FFN program at this time. During the COVID-19 pandemic, ECECD had received a waiver from the federal Office of Child Care (OCC) to implement FFN. That waiver expired in September 2021. Other than FFN, ECECD also offers the registration of non-licensed homes through 8.17.2 NMAC in order to offer home providers an option to care for 4 children or less. This registration option is analogous to what many other states consider an FFN program.

C. **Section 8.15.2.15 (G)- Allow licensed providers to receive benefits for their own children.**

We ask that the Department remove this section prohibiting that child care owners and licensees receive child care subsidy payments. This change will benefit hundreds of people in the community who are providing a valuable resource to the community and also need to use this resource. We know that there is currently a large child care workers shortage.¹ This type of support for child care workers would help not only those workers but would help other people be able to return to work in essential jobs, and all jobs, by supporting the people who can care for their children. As you know, child care workers are designated as essential workers and qualify for free child care funded by ARPA funds.

¹ Heather Long, *'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy*, Washington Post (Oct. 27, 2021, 3:34 AM),

<https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>.

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

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D. Section 8.15.2.11(C) NMAC – Add provisions that ensure grandparents are exempt from the work or education requirement and can receive child care assistance without having to apply for TANF.

The Department should make additional changes to ensure that children being raised by grandparents have access to care. The proposed regulations specify that only grandparents who are legal guardians must qualify under the program's income limits and when they qualify, can have their co-payments waived. This is a positive change that we support. However, grandparents who are retired should not be subject to the work or educational requirements for child care. Current New Mexico law for the TANF cash assistance recognizes this and does not impose a work requirement on participants who are 60 or older.² In its final regulation, we ask the Department to amend its rules to allow for waiving the work or educational requirement for grandparents raising grandchildren.

² NMSA 1978 §27-2B-5(I)(2); 8.102.420.11(A)(1) NMAC.

³ 8.102.400.11 NMAC.

⁴ 8.15.2.9(A) NMAC.

Additionally, when grandparents are the legal guardians of the children and do work, their income should not be counted towards the eligibility limit. Again, the TANF cash assistance program also provides that grandparents can participate in that program regardless of income level.³ Current child care assistance regulations provide that TANF families are eligible for child care regardless of income level.⁴ However, we should not ask grandparents to apply for and participate in TANF to qualify for child care assistance. Instead, the Department should mirror the child care regulations to reflect the TANF program, and qualify children being raised by grandparents without regard to income.

Department response: ECECD appreciates the comment but cannot amend the regulations to allow for grandparents to receive child care subsidies without a qualifying activity, such as work or educational activities, as the federal CCDF grant does not permit funds to be spent in such a manner. ECECD could use federal CCDF funds to pay for child care for grandparents if it deemed those children "at-risk." ECECD will continue to monitor the situation and will revisit this issue in the future if necessary.

E. 8.15.2.7 (E)(2), (J)- We support the addition of the "Essential worker" definition and the addition to the definition of "Job training and educational program."

We commend the department for defining "Essential worker" as that term describes members of our community who are keeping our economy going during the public health emergency and need support to continue to do their jobs. While we support this addition, it is unclear as to what is the "period of economic recovery," is there a timeframe after the public health emergency that benefits will be extended for essential workers? We propose XX months.

Department response: ECECD appreciates the comment and support of its decision to provide additional subsidies for "essential workers." ECECD could not define the time-frame for a "period of economic recovery" in regulation at this time as the economic conditions are fluid amid continued outbreaks of COVID-19 and the related consequences. In addition, it appears that the suggested time frame for a "period of economic recovery" was not included in the comment (see "XX months") and ECECD cannot respond adequately.

We also support and thank the Department for including graduate and post graduate programs or classes in the definition of eligible training and educational programs.

Department response: ECECD appreciates the comment and your participation in the public comment process.

F. Section 8.15.2.11(B)(5) - Clarify that benefits continue only if a household returns to an approved activity

This regulatory language on eligibility is confusing and seems to contradict itself. We suggest revising this section to read as follows:

(5) If a client experiences a non-temporary change in activity, the child care placement agreement will terminate after a 90-day grace period; however, if the client returns to an approved activity they will remain eligible for the prior approved 12-month eligibility period.

Department response: ECECD appreciates the comment but cannot make further amendments to this section. ECECD added this provision as it is required under the current federal CCDF plan. Further, and with all due respect, ECECD does not agree that the language contradicts itself. A “child care placement agreement” is different from the “eligibility period” insofar as the eligibility period always last for a one year period. A client can obtain a new placement agreement anytime during that one year period so long as the client has a qualifying activity.

Conclusion

We thank the Department for its commitment to making childcare more accessible and affordable for New Mexico’s families. While we support all the changes, we ask the Department to include our suggested amendments in the final rule for the reasons discussed above.

Oral Comments received during the NMAC 8.15.2 public hearing Thursday, October 28, 2021.

[REDACTED]

Comment 7:

My name is [REDACTED] and I’m a Preschool teacher at Salazar Elementary School. I’m representing myself. I have a three year old daughter and have applied for ECECD, ECS grant to help me with child care and I would like to speak on that issue because I only got about \$100.00 dollars of assistance and it's not helping me as a single mom. So I’m really concerned about the child care aspect of this whole initiative. So that’s why I’m speaking today, but I feel like I’m speaking on behalf of many people that are in my situation. So, I hope I get to speak today. So. Right now I can speak? Oh great because I have a child, I have coverage for my classroom. I moved here and I'm actually originally from Albuquerque, but I moved with my two daughters, and I have a three-year-old and a 12 year old and I am a public school teacher. I've been teaching for almost 20 years. I applied for preschool assistance. After all of my taxes come out, my retirement, my social security and medical care; I get about \$3,100.00 take home pay a month. Considering what the prices are in Santa Fe to rent a one bedroom and a two bedroom is about \$1,700.00, \$1,800.00. And that's about what I'm paying. Now also, the childcare for preschool, and this the low end, he’s about \$900.00. So that's about what I'm paying now and I did apply because they-and-did, encourage me, to apply for an ECECD grant. And I got about \$150.00 worth of assistance. So, I'm looking at my, I'm looking at my,

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my money that I'm expending out as \$1,700.00 for, for rent, \$995.00 minus \$150.00 that I do get credit for, which I am grateful for, but I'm a single mom. And I represent a lot of people that are just making a certain amount too much but not getting the assistance that we need. Now, I'm a kindergarten teacher here at Salazar Elementary and I'm bilingual, and there's no teachers available so I have almost 30 children in my classroom. Now, I am unable to make my bills because my child care is \$995.00 but minus the \$150.00 now. I'm still unable to make my rent, my bills, my student loan as a public school teacher. Now, I get, I get about the top end salary as a school teacher here in Santa Fe. But the pay is, but the cost of living in Santa Fe is exorbitant as all of you know. And I make too much money to make, to get more assistance, which I'm hoping today that we can take a look at. Making \$3,000 a month and paying almost \$1,000 for childcare is not sustainable. And that a lot of parents are not two parents. There are a lot of single parents. And I could drive to Rio Rancho every day and pay \$1,000 a month but I choose to live here in Santa Fe which is a place that I've moved to. My older daughter just passed away from cancer and I decided to move back to the city that I am from and love. Now, I am hoping that I speak for a lot of people in my situation. And especially me as a school teacher that is part of the community. I am no longer going to be able to, in December, to continue to be a school teacher because I cannot afford preschool and work. Now, if I worked at a fastfood restaurant I would make less money, then I would be able to afford preschool. So it's a double take there. And I'm speaking slower because I know someone's interpreting this in two languages in Sign Language and in Spanish. But my hope is to bring to you today that I know that there's a certain cap on the money. But I really want you to look at where it should be at, because of the costs in Santa Fe, because of people like me that are not making it. Now I've started to work at DoorDash on the weekends, so I can afford childcare. But it makes more sense for me to be a nanny on the weekdays rather than be part of the public schools. Now, I didn't, I, the preschool I chose was the less expensive one and one that I can drop my child off at seven o'clock and pick her up at five because I do work at the public schools all day long.

I hope that those who will be listening to this today because making after, after, after I take all my taxes and all my medical bills it is about \$3,100.00 a month. Now to pay \$1,000.00, one-third of my paycheck is not sustainable. And it is not sustainable for so many people. And I know a lot of school teachers that say "well, I want to go back to work but I can't because I can't afford childcare." So I'm imploring those who are listening, and that can do something about this, is to please change something so that people like myself who do make a certain amount of change, change the salary is what I'm trying to say is because making \$3,000 dollars a month in Santa Fe isn't, is still not sustainable, especially with the considering the rent and food and everything else. So that's my, that's my imploring people today and I hope they will listen and I'm really thankful for any assistance and I know that other people like myself will be as well as single moms. So thank you so much. Gracias por todo.

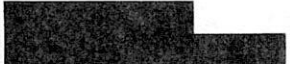
Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need. ECECD will continue to review and study subsidy rates to ensure that rates are based on the cost of providing high quality care.

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Comment 8:

Hello, good afternoon everyone. My name is . I'm an attorney at the New Mexico Center on Law and Poverty. And we partner with many community organizations that have extensive experience working with low-income families in New Mexico to ensure that they have access to services to improve New Mexico's children's lives and the childcare assistance program is critical for, as a support for low income households. We thank ECECD for making important changes to the childcare assistance regulations to improve access to affordable care, childcare, so that parents can have a safe place for their children to be while parents work and also further their education. We support many of the changes that are being made to these regulations. However, we do urge that the department take additional steps to improve the childcare assistance program. As to the matter of eligibility, we asked the department consider expanding the childcare assistance program to allow low income families, regardless of their immigration status, to be eligible for this program through use of state subsidies. This would change, this change would benefit many New Mexicans, many of whom play valuable roles in our state, and also are often the essential workers. We support the addition to exempt, we support the addition to the exempt income section to include graduate and other educational stipends. We support the addition of the term essential worker, but we do ask that the department define the period of economic recovery, just so that we can know what the timeframe is. We support the addition of the section that promotes equal access. We also support the changes that have been made to the application process including the additional of the full list of eligibility verification documents in the, within the regulation. We support the change to include family, friends or neighbors for caregiving, however, we do ask the department consider allowing FFN caregiving upon request and not just in the case of public health emergency. We asked the department removed a section that prohibits that childcare owners and licensees receive childcare subsidy payments. So the section currently prohibits that, but we ask that they be allowed to receive those subsidy payments is that change will benefit hundreds of people in communities who are both providing this valuable resource to people but also need to be able to use childcare assistance. As you know, childcare workers are designated as essential workers and qualify for free childcare, childcare that is funded through ARPA funds. We ask that the department add provisions to ensure that grandparents are exempt from the work or education requirements and can receive childcare systems without having to apply for TANF. Finally, we asked for the department to clarify that benefits continue only if they household returns to approve the activity. So, the regulation language is confusing right now and it seems to contradict itself. It's, we suggest that the revision be made to read something like, "if a client experiences a non-temporary change in activity, the childcare placement agreement will terminate after a 90-day grace period. If a client returns to an approved activity, they will remain eligible for the prior approved 12-month eligibility period." Thank you so much for your time and for letting me comment today.

Department response: Please see ECECD's above responses to the same comments submitted in writing.


Comment 9:

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Thank you very much. My name is [REDACTED], again from TLC development centers. I was quite moved by the comments by Ms. Martinez being a public-school teacher in Santa Fe. And that goes right along with written comments that I did submit. We're encountering many situations like that. We actually received a contract today with, that was backdated and effective August 1 and the copayment for one of the children is, I believe it was \$556.00 and \$271.00 for the second child, and it's, when we did the math, the difference in the reimbursement from what we would receive from licensing versus the copayment, I believe we're getting 26 cents for that child for the month. And we've encountered many of these in the last couple of months and what we have as an organization and trying to do, especially for the P4 Plus category contracts, is we're manually calculating the cash filling versus what our reimbursement is from the state versus what the copay is and kind of trying to subsidize the family's copayment if you will, because they're completely unaffordable for most families. And I did put some recommendations in the, in the written public comment that I made as far as maybe looking at doing a flat percentage of income. That, that is what is recommended by the Feds in their final rule on the Block Grant and I believe it would be very beneficial. Now of course, you still have to balance the budget. That's totally understandable. And we're trying, our goal is to serve as many families as we can. But, is it serving them if it's unaffordable for them? I just, it's a balancing act that I wouldn't want. I wouldn't wish on anybody because I'm sure it's very complex.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

But that was, oh, and then also sorry, about the provider. Currently, there's the recommend-, the addition that's adding the statement saying that owners or licensees may not receive subsidy for their own child. And that totally goes against the spirit of the block grant. And it would prohibit many, otherwise, qualified people from getting the assistance that they need. Now, we had a discussion in the past two weeks, myself and members of BEFORE and members of the ELAC committee, and just you know, I did a lot of research on it too, because I was confused as to why that language would even be proposed. And it did come up that possibly there's, through the friends and family licensing, that emergency licensing that happened, there's perhaps some people still receiving subsidy for their own child, and that's the only child in care. Now I do agree that that's not acceptable. So I just did recommend changing the language to read, "an owner or licensee may not receive subsidy payments for their own child if their own child is the only child in care." I think that makes it so that it, it gets rid of the people who aren't taking possible advantage and still keeps it available for those who are not. And that, that's it. Thank you so much for your time.

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

[REDACTED]
Comment 10:

2021 NOV 24 AM 11: 03

Thank you. Again, my name is [REDACTED]. I'm the Executive Director of BEFORE. We represent childcare owners, educators and families relying on childcare assistance in the childcare system. First of all, I would like to make sure that we are getting the celebrations where celebrations are due with the new ECECD department. And the increased reimbursement levels for infant and toddlers have been great, and the removal of the childcare, the child support requirement, but we do have some concerns with the new proposed regulations and the increase in the eligibility levels. We celebrate the increase and we need that, we need to be covering more families. But the US Department of Health and Human Services does recommend that states require, can require family copayments to be no more than 7% of the family's income. I believe we have a lot of work to do when we're coming to the co-, looking at the copays, especially when we're looking at the higher income families who still can't afford childcare and the copays are also proving to be unaffordable. So for example, a family of three, or with three children, so that would be a family of five, making 250% of the federal poverty level is paying almost 16% of their gross income. And a family of 300% of the federal poverty level with three children is paying over 20% of their income on their copays. We find this unaffordable, and we'd like to recommend that the department look at the federal recommendation of no more than 7%. If we look at and review the Child Development Block Grant, there are areas in the, in the block grant where we can, we can check a box, the department can check a box and say that they're looking at the percentage of income in regards to copayment. And they also state that copayment should not be a barrier to families receiving CCDF funds. Therefore, I think in the increased eligibility we need to really approach copayments. Copayments for families, even on the lower end of FPL, are still unaffordable, when we we're charging this much for the first child and then the second child and so on. As well as copayments once they start kicking in again, there's so, copayment in the chart, assisted families and 100% of the federal poverty level. And I don't believe that they should have copayments at all. So I would really like the department to, to look at and address, the copayments and the copayment model as well as the new regulation that is being proposed. The owners and licensees may not receive childcare subsidy payments to provide care for their own children. This will have a drastic impact on registered homes and licensed homes. Many of these places have started their businesses for, you know, because they were with their own children and childcare was unaffordable. And if their income says that they qualify, they should, they should qualify. The children count in the ratios, they are enrolled in the program and they receive the same services. I don't believe that job title such as director in childcare program should make it impossible for them and their children to receive this education and these services. So with that I, I asked that we drop that regulation or completely rethink it for, maybe, it's true intent, which I'm not sure what that is. So, thank you.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Department response: ECECD appreciates the comment but cannot make the requested change at this time with respect to providers receiving subsidies for their own children. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.



Rule Hearing Search

Search input field

Hearing Date: Comments

Deadline Date:

Search

Return to Search Results

Proposed Rule Name:

8.15.2 NMAC SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS

Agency:

Early Childhood Education and Care Department (ECECD)

Purpose:

The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes.

Summary:

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Section 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJECTIVE
- 8.15.2.7 NMAC DEFINITIONS
- 8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE
- 8.15.2.10 NMAC APPLICATION PROCESS
- 8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS
- 8.15.2.12 NMAC RECERTIFICATION
- 8.15.2.13 NMAC CLIENT RESPONSIBILITIES
- 8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES
- 8.15.2.15 NMAC PROVIDER REQUIREMENTS
- 8.15.2.17 NMAC PAYMENT FOR SERVICES
- 8.15.2.21 NMAC SANCTIONS

Rule Complete Copy :

Copies of the proposed amended rules may be found at ECECD's website at <https://www.nmececd.org> (<https://www.nmececd.org/>) and New Mexico Kids website at <https://www.newmexicokids.org> (<https://www.newmexicokids.org/>) 30 days prior to the Public Hearing.

Corrections:

Not available

Rule Explanatory Statement:

Not available

Related New Mexico Register Publications:

Not available

For any additional information or questions concerning this rule making or posting please contact:

Devi Gajapathi
devi.gajapathi2@state.nm.us
(505) 231-5820

Last Updated Date

10/25/2021 12:59 PM

How to submit Comments:

ECECD-ECS-PublicComment@state.nm.us (<mailto:ECECD-ECS-PublicComment@state.nm.us>)

When are comments due:

10/28/2021 4:00 PM

Hearing Date:

10/28/2021 1:00 PM

Public Hearing Location:

The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. 10/28/2021 (1:00 PM -4:00 PM)

How to participate:

Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us (<mailto:ECECD-ECS-PublicComment@state.nm.us>) or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the schedule hearing.

If the document is not visible on the previewer, please download the file.

File	File Name	File Type Description
View Document (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M000001oYs1/Jm3pXULh16tzSyLxiu.dLT8gwxR65OIIZ5MdsbY.c0c)	8.15.2 NMAC Public Notice_EN SP	PDF

File Name	File Type	Description
View Document (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M000001oYs2/snd76y_iDdnYkNuytpxdXoZu63acPPOnQn1r9YpPSIM)	8.15.2 NMAC	PDF
View Document (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M000001z78k/gexedyT9FdEIHTtWF_8MVMHtSJCyvmUdFsMRt57eqq0)	Hearing Recording NMAC 8.15.2_10.28.21	MP4
View Document (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M000001zmlJ/JduA4Mv_pVXqimHi0HNU1PpwhXBIf_QV.beNhmYqRMg)	8.15.2 Transmittal with filed comments	PDF

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Education & Care Department



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Notice of Rulemaking and Public Rule Hearing 8.15.2 NMAC

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING



- Download English and Spanish Notice: 8.15.2 NMAC Public Notice (PDF)
- Uploaded September 10, 2021

Notice of public rule hearing: The public rule hearing will be held on **Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m.** The hearing will be held in **Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502** and **via virtual web platform (Zoom)**, email, and telephonic means.

The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at **ECECD-ECS-PublicComment@state.nm.us** or call **(505) 231-5820**. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comments, including presentation of

data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may be delivered to the Old PERA building at 1120 Paseo de Peralta on Thursday, October 28, 2021 from 1:00 p.m. to 4:00 p.m. The comment period ends at the conclusion of the public hearing October 28, 2021.

Click on the links below to view or download:

Zoom Meeting Details



8.15.2 NMAC Proposed Amendments effective January 1, 2022



- Uploaded September 10, 2021 (PDF)

Notice of Emergency Amendment for 8.15.2 NMAC (7/1) effective July 1, 2021



- Click here for English text: Notice of Emergency Amendment (PDF)
- Click here for Spanish text: Aviso en español (PDF)

Notice of Emergency Amendment for 8.15.2 NMAC (7/1) effective July 1, 2021



- [Click here for English text: Notice of Emergency Amendment \(PDF\)](#)
- [Click here for Spanish text: Aviso en español \(PDF\)](#)

Public Comments / ECECD Response



- English | Spanish
 - [Uploaded December 2, 2021 \(PDF\)](#)
- Combined Comments
 - [Uploaded November 1, 2021 \(PDF\)](#)
 - English, excludes ECECD responses

0:00 / 3:00:15

PO Drawer 5619 Santa Fe, NM 87502-5619 | Toll free: (800) 832-
1321

CONTACT US

EMPLOYEE RESOURCES

List of individuals to whom notice was mailed or sent electronically as required by 1.24.25.14.A

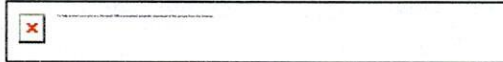
The following may be requested through an IPRA:

- **Names of child care assistance recipients who were notified**
- **Names of child care providers who were notified**
- **Names of individuals who have participated in the rulemaking process**

Gajapathi, Devi, ECECD

From: Devi Gajapathi <devi.gajapathi2@state.nm.us>
Sent: Friday, September 10, 2021 4:39 PM
To: ECECD-ECS-PublicComment
Subject: Proposed Regulation Amendments for Child Care Assistance and Regulatory Oversight

Visit the Early Childhood Education and Care Department Regulation Changes webpage [here](#).



NOTICE OF RULEMAKING AND PUBLIC RULE HEARING(S)

Dear Parent, Guardian, Families, and Providers:

The New Mexico Early Childhood Education and Care Department's (ECECD) mission is to ensure that all New Mexican families and young children have equitable access to high-quality early childhood opportunities. As part of this mission, ECECD is making a series of proposed amendments to its regulations governing Child Care Assistance (8.15.2 NMAC), Child Care Licensing (8.16.2 NMAC), and Non-Licensed Child Care (8.17.2 NMAC).

The purpose of the rulemaking is to promulgate permanent amendments to 8.16.2, 8.17.2 and 8.15.2 NMAC, which were initially published as emergency amendments effective July 1 and August 1, 2021, along with additional necessary changes. The proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico, as well as make changes required or recommended by the federal Child Care Development Fund (CCDF) grant, such as updating the child care assistance rates paid to providers and raising the eligibility limits for families. A copy of all proposed changes are available on ECECD's website: [Regulation Changes | Early Childhood Education & Care Department \(nmececd.org\)](#).

PLEASE BE ADVISED THAT THESE PROPOSED REGULATION CHANGES DO NOT AFFECT CURRENT CHILDCARE ELIGIBILITY TO FAMILIES.

As part of the amendment process, ECECD will hold three separate public hearings for the proposed amendments in October to accept comments from the public on each chapter. The public hearing for 8.16.2 NMAC will be held October 14, 2021; 8.17.2 NMAC will be held October 21, 2021, and 8.15.2 NMAC will be held October 28, 2021. Please see the attached notices for more details, such as how to participate in-person or virtually. Please note that attendance of these hearings is not mandatory.

ECECD will now begin accepting formal public comments concerning the proposed amendments as part of this process. Written comments may be submitted to ECECD-ECS-PublicComment@state.nm.us, or in writing as set forth in the attached notice, and will be accepted up until the beginning of each respective public hearing.

If you have any questions regarding the changes to these regulations, the public hearing or how to submit public comments, please contact ECECD at ECECD-ECS-PublicComment@state.nm.us.

Thank you,

Devi Gajapathi
ECECD Policy Development Manager
Email: Devi.Gajapathi2@state.nm.us

View: **Notice of Rulemaking and Public Rule Hearing 8.16.2 NMAC**. The public rule hearing is scheduled, **October 14, 2021 at 1:00 p.m.**

View: **Notice of Rulemaking and Public Rule Hearing 8.17.2 NMAC**. The public rule hearing is scheduled, **October 21, 2021 at 1:00 p.m.**

View: **Notice of Rulemaking and Public Rule Hearing 8.15.2 NMAC**. The public rule hearing is scheduled, **October 28, 2021 at 1:00 p.m.**



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Gajapathi, Devi, ECECD

From: Castillo, Alejandra, ECECD
Sent: Thursday, September 9, 2021 2:30 PM
To: Brown, Kimberly, ECECD; Steward, Patricia, ECECD; Anderson, Allen, ECECD; Williams, Margaret, ECECD
Cc: Terrazas, Monica, ECECD; Castillo, Samuel, ECECD; Chee, Sandra, ECECD; Boberg, Maryellen, ECECD; Lopez, Linda, ECECD; Vasquez, Racheal, ECECD; McKinley, Melissa, ECECD; Trujillo, Nicole, ECECD; Gajapathi, Devi, ECECD; Kliphuis, Tracy, ECECD; Smith, Ashleigh, ECECD; Egan, Brendan, ECECD
Subject: Posting Notices and Proposed Regulations for: 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC
Attachments: 8.15.2 NMAC.docx; 8.15.2 NMAC Public Notice_EnglishSpanish.docx; 8.16.2 NMAC Public Notice EN_SP.docx; 8.16.2 NMAC.docx; 8.17.2 Public Notice EN_SP.docx; 8.17.2 NMAC.docx

Good afternoon all,

Would you please ask all Child Care field offices to post and make available the attached notices?

This includes Proposed Regulations and Public Hearings for 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC.

We need this done by Tuesday, September 14th, 2021 at the latest.

Please confirm and let us know if you have questions.

Thank you!



Early Childhood



ALEJANDRA CASTILLO
Business Operations Specialist
Policy, Research and Quality Initiatives
Division

Old PERA Building Room 226A
1120 Paseo De Peralta
Santa Fe, NM 87505
Email: alejandra.castillo@state.nm.us
Mobile: 505-372-8651

<http://NMECECD.org>

Gajapathi, Devi, ECECD

From: Castillo, Alejandra, ECECD
Sent: Thursday, September 9, 2021 10:17 AM
To: lcs@nmlegis.gov
Cc: Gajapathi, Devi, ECECD; Kliphuis, Tracy, ECECD; Smith, Ashleigh, ECECD; Egan, Brendan, ECECD
Subject: Notice to the New Mexico Legislative Council of 8.15.2 NMAC Public Hearing
Attachments: 8.15.2 NMAC.docx; 8.15.2 NMAC Public Notice Notice EN_ES.docx

Good Morning,

As part of the New Mexico State Rules Act requirement of providing notice to the New Mexico Legislative Council for distribution to appropriate interim and standing legislative committees, attached a Notice of Rulemaking and Public Rule Hearing for the following proposed change:

- 8.15.2 NMAC – SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

Please provide confirmation of receipt and distribution to appropriate interim and standing legislative committees.

Thank you,



ALEJANDRA CASTILLO
Business Operations Specialist
Policy, Research and Quality Initiatives
Division

Old PERA Building Room 226A
1120 Paseo De Peralta
Santa Fe, NM 87505
Email: alejandra.castillo@state.nm.us
Mobile: 505-372-8651

<http://NMECECD.org>

Gajapathi, Devi, ECECD

From: Smith, Ashleigh, ECECD
Sent: Thursday, September 9, 2021 2:07 PM
To: Garrett Massey; Rachel Nowak; Malisa Kasparian; Kathleen Carroll
CC: ECECD-ECS-PublicComment
Subject: Posting Notices and Proposed Regulations: 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC
Attachments: 8.15.2 NMAC.docx; 8.15.2 NMAC Public Notice_EnglishSpanish.docx; 8.16.2 NMAC Public Notice EN_SP.docx; 8.16.2 NMAC.docx; 8.17.2 Public Notice EN_SP.docx; 8.17.2 NMAC.docx

Good afternoon,

We will have 3 public hearings coming up:
8.16.2 NMAC Hearing: Thursday, October 14, 2021
8.17.2 NMAC Hearing: Thursday, October 21, 2021
8.15.2 NMAC Hearing: Thursday, October 28, 2021

Please add the attached documents (Notice and Proposed Rule) to NM Kids website. As before, we will need three new separate sections very similar to the past hearings posted on the announcement page. They should read:

“NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.16.2 NMAC”
“NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.15.2 NMAC”
“NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.17.2 NMAC”

Also as a reminder, once posted, I will be sending emails daily, for each regulation separately, notifying you if we did or did not receive comments (8.16.2 NMAC, 8.17.2 NMAC, and 8.15.2 NMAC). If comments are received, they will need to be posted within 3 business days, but it is suggested sooner rather than later.

Please let me know if you have any questions.

Thank you!



Ashleigh C. Smith

Lead Case Analyst
Ashleigh.Smith@state.nm.us
Mobile: 505-372-8644
1120 Paseo De Peralta
Santa Fe, NM 87502

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Gajapathi, Devi, ECECD

From: Garrett Massey <garrettmasey@unm.edu>
Sent: Thursday, September 9, 2021 4:34 PM
To: Smith, Ashleigh, ECECD; Rachel Nowak; Malisa Kasparian; Kathleen Carroll
Cc: ECECD-ECS-PublicComment
Subject: Re: Posting Notices and Proposed Regulations: 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC

Hi Ashleigh,

we will have these documents up by EOD tomorrow and we will continue to monitor emails for any updates and public comments.

Thank you and let me know if you need anything further!

Garrett Massey
Programmer Analyst II
NewMexicoKids Resource and Referral
Resource and Support Hub
Early Childhood Services Center
University of New Mexico
1634 University Blvd. NE
Albuquerque, NM 87102
[1-800-691-9067](tel:1-800-691-9067) Support Line
[\(575\) 649 - 6798](tel:575-649-6798) Cell Phone
[\(505\) 277 - 0376](tel:505-277-0376) Office
www.newmexicokids.org
www.newmexicoprek.org
www.nmels.org



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From: Smith, Ashleigh, ECECD <Ashleigh.Smith@state.nm.us>
Sent: Thursday, September 9, 2021 2:07 PM
To: Garrett Massey <garrettmasey@unm.edu>; Rachel Nowak <rachelmitchell@unm.edu>; Malisa Kasparian <mkaspari@unm.edu>; Kathleen Carroll <carrollk@unm.edu>
Cc: ECECD-ECS-PublicComment <ECECD-ECS-PublicComment@state.nm.us>
Subject: Posting Notices and Proposed Regulations: 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC

[EXTERNAL]

Good afternoon,

We will have 3 public hearings coming up:

8.16.2 NMAC Hearing: Thursday, October 14, 2021

8.17.2 NMAC Hearing: Thursday, October 21, 2021

8.15.2 NMAC Hearing: Thursday, October 28, 2021

Please add the attached documents (Notice and Proposed Rule) to NM Kids website. As before, we will need three new separate sections very similar to the past hearings posted on the announcement page. They should read:

"NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.16.2 NMAC"

"NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.15.2 NMAC"

"NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.17.2 NMAC"

Also as a reminder, once posted, I will be sending emails daily, for each regulation separately, notifying you if we did or did not receive comments (8.16.2 NMAC, 8.17.2 NMAC, and 8.15.2 NMAC). If comments are received, they will need to be posted within 3 business days, but it is suggested sooner rather than later.

Please let me know if you have any questions.

Thank you!



Ashleigh C. Smith

Lead Case Analyst

Ashleigh.Smith@state.nm.us

Mobile: 505-372-8644

1120 Paseo De Peralta

Santa Fe, NM 87502

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Home » ANNOUNCEMENTS » NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.15.2 NMAC 10-28-21

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.15.2 NMAC 10-28-21

8.15.2 NMAC Public Hearing

Oct 28, 2021, 1 – 4 p.m.

Join Zoom Meeting: <https://nmececd.org.zoom.us/j/82374971518>

Meeting ID: 823 7497 1518

[Proposed Amendments to 8.15.2 NMAC 10-28-21](#)

[Notice of Rulemaking and Public Rule Hearing 8.15.2 NMAC 10-28-21](#)

[Read Public Comments](#)

[Final Combined Public Comments](#)

For information on how to submit a written public comment, please see the Notice of Rulemaking and Public Rule Hearing document.

[— Announcements](#)



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Gajapathi, Devi, ECECD

From: Smith, Ashleigh, ECECD
Sent: Thursday, September 9, 2021 2:08 PM
To: Martinez, Sonya, ECECD; McCoy, Micah, ECECD
Cc: ECECD-ECS-PublicComment
Subject: Posting Notices and Proposed Regulations: 8.16.2 NMAC, 8.15.2 NMAC, and 8.17.2 NMAC
Attachments: 8.15.2 NMAC.docx; 8.15.2 NMAC Public Notice_EnglishSpanish.docx; 8.16.2 NMAC.docx; 8.16.2 NMAC Public Notice EN_SP.docx; 8.17.2 NMAC.docx; 8.17.2 Public Notice EN_SP.docx
Importance: High

Good afternoon,

We will have 3 public hearings coming up:

8.16.2 NMAC Hearing: Thursday, October 14, 2021

8.17.2 NMAC Hearing: Thursday, October 21, 2021

8.15.2 NMAC Hearing: Thursday, October 28, 2021

Please update the Notices for each regulation and add the Proposed Regulations to the ECECD website for the following:

“NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.16.2 NMAC”

“NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.15.2 NMAC”

“NOTICE OF RULEMAKING AND PUBLIC HEARING FOR 8.17.2 NMAC”

For all 3 proposed regulations, the effective date is 1/1/22.

Also as a reminder, once posted, I will be sending emails daily, for each regulation separately, notifying you if we did or did not receive comments (8.16.2 NMAC, 8.17.2 NMAC, and 8.15.2 NMAC). If comments are received, they will need to be posted within 3 business days, but it is suggested sooner rather than later.

Please let me know if you have any questions.

Thank you!



Ashleigh C. Smith

Lead Case Analyst
Ashleigh.Smith@state.nm.us
Mobile: 505-372-8644
1120 Paseo De Peralta
Santa Fe, NM 87502

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Notice of Rulemaking and Public Rule Hearing 8.15.2 NMAC



data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to **ECECD-ECS-PublicComment@state.nm.us** with the subject line “8.15.2 NMAC Public Comment” or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may be delivered to the Old PERA building at 1120 Paseo de Peralta on Thursday, October 28, 2021 from 1:00 p.m. to 4:00 p.m. The comment period ends at the conclusion of the public hearing October 28, 2021.

Click on the links below to view or download:

Zoom Meeting Details



8.15.2 NMAC Proposed Amendments effective January 1, 2022

- Uploaded September 10, 2021 (PDF)

Notice of Emergency Amendment for 8.15.2 NMAC (7/1) effective July 1, 2021

- Click here for English text: Notice of Emergency Amendment (PDF)
- Click here for Spanish text: Aviso en español (PDF)

Notice of Emergency Amendment for 8.15.2 NMAC (7/1) effective July 1, 2021

PO Drawer 5619 Santa Fe, NM 87502-5619 | Toll free: (800) 832-1321

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EMPLOYEE RESOURCES



Rule Hearing Search

Hearing Date:
 Comments:
 Agency:

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Proposed Rule Name:

8.15.2 NMAC SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS

Agency:

Early Childhood Education and Care Department (ECECD)

Purpose:

The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes.

Summary:

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Section 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJECTIVE
- 8.15.2.7 NMAC DEFINITIONS
- 8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE
- 8.15.2.10 NMAC APPLICATION PROCESS
- 8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS
- 8.15.2.12 NMAC RECERTIFICATION
- 8.15.2.13 NMAC CLIENT RESPONSIBILITIES
- 8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES
- 8.15.2.15 NMAC PROVIDER REQUIREMENTS
- 8.15.2.17 NMAC PAYMENT FOR SERVICES
- 8.15.2.21 NMAC SANCTIONS

Rule Complete Copy :

Copies of the proposed amended rules may be found at ECECD's website at <https://www.nmececd.org> (<https://www.nmececd.org>) and New Mexico Kids website at <https://www.newmexicokids.org> (<https://www.newmexicokids.org>)/ 30 days prior to the Public Hearing.

Corrections:

Not available

Rule Explanatory Statement:

Not available

Related New Mexico Register Publications:

Not available

For any additional information or questions concerning this rule making or posting please contact:

Devi Gajapathi
devi.gajapathi2@state.nm.us
(505) 231-5820

Last Updated Date
10/25/2021 12:59 PM

How to submit Comments:

ECECD-ECS-PublicComment@state.nm.us (<mailto:ECECD-ECS-PublicComment@state.nm.us>)

When are comments due:

10/28/2021 4:00 PM

Hearing Date:

10/28/2021 1:00 PM

Public Hearing Location:

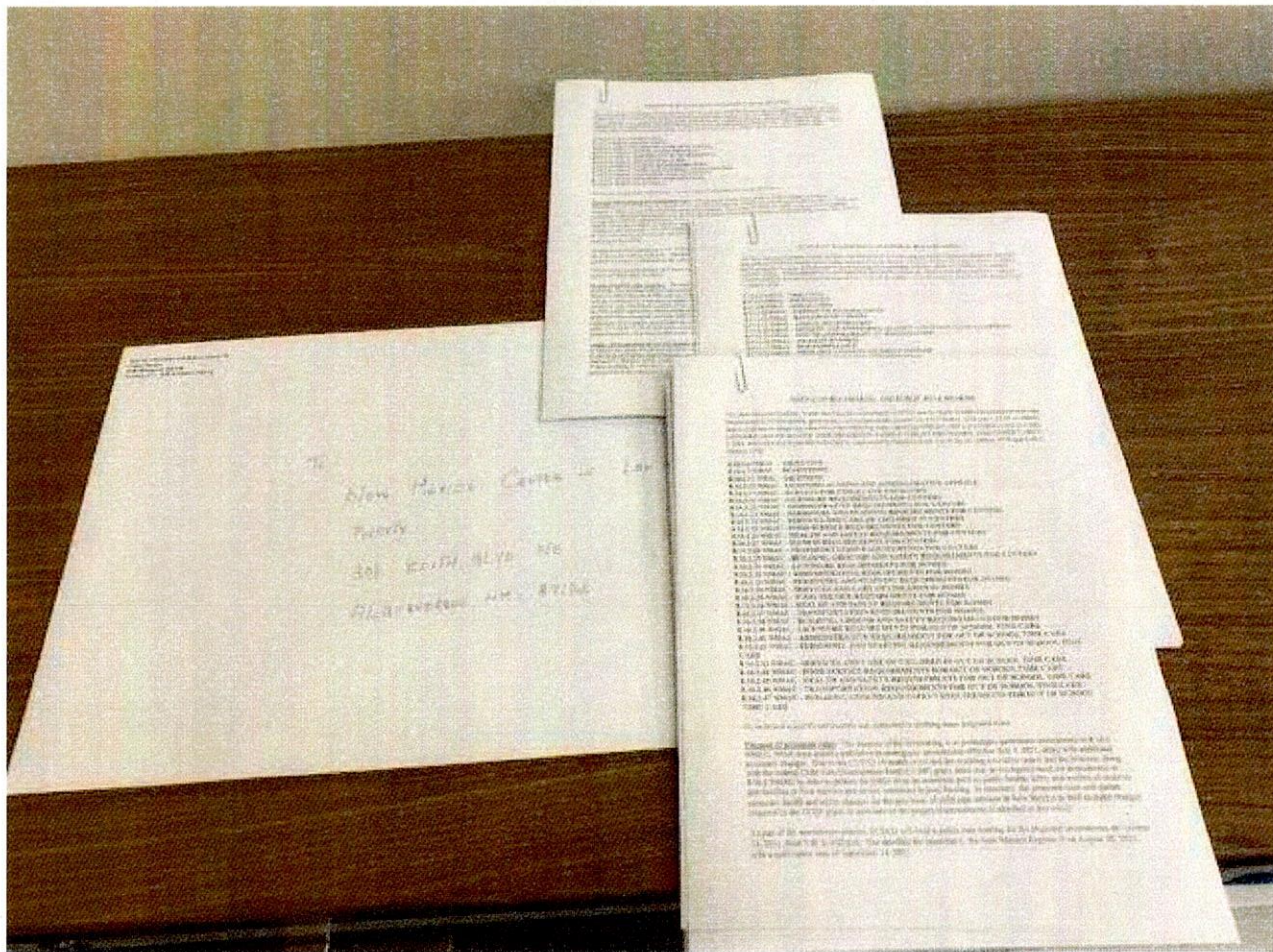
The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. 10/28/2021 (1:00 PM -4:00 PM)

How to participate:

Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us (<mailto:ECECD-ECS-PublicComment@state.nm.us>) or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the schedule hearing.

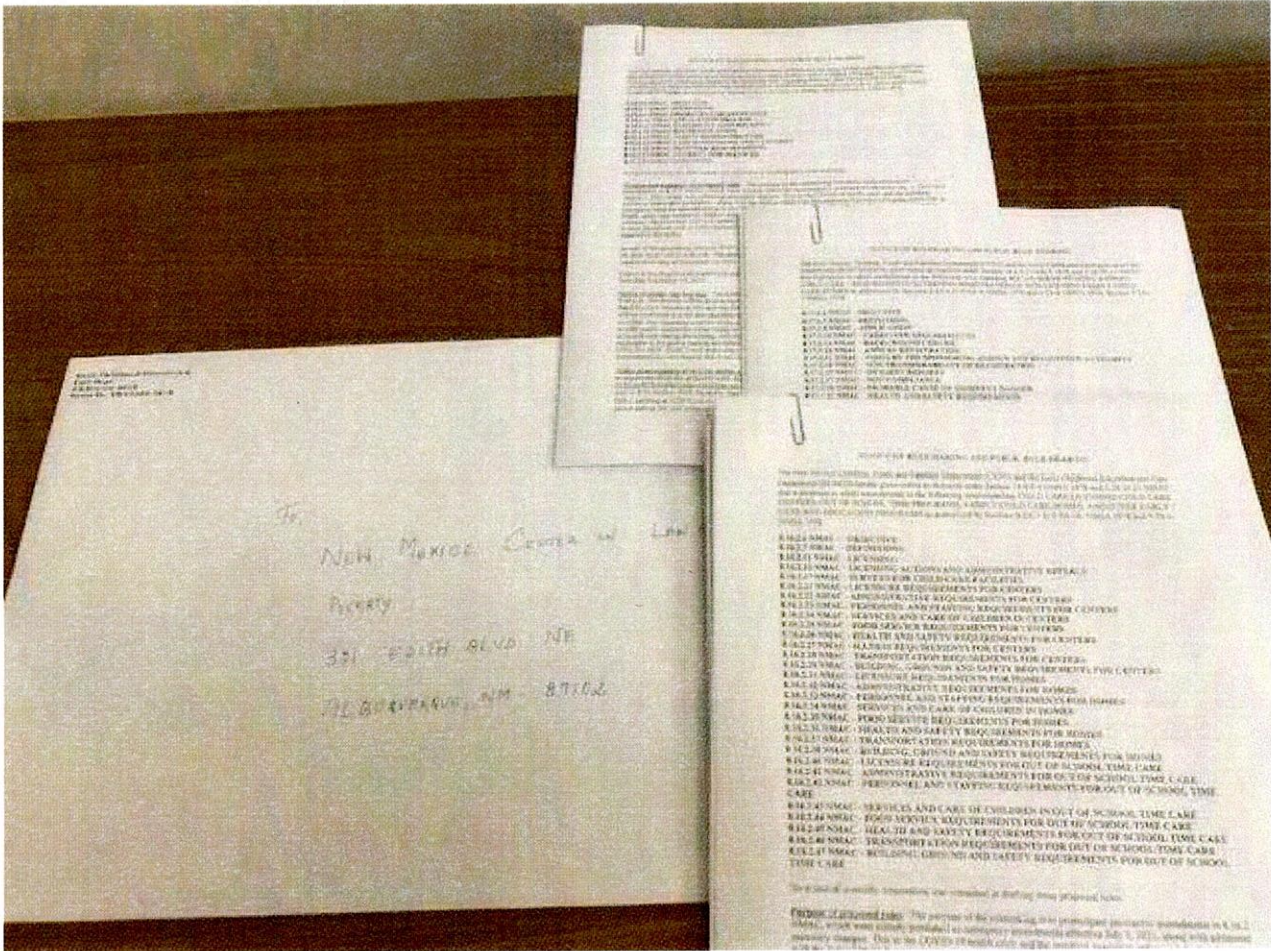
ⓘ If the document is not visible on the previewer, please download the file.

File	File Name	File Type	Description
View Document	8.15.2 NMAC	PDF	Public



New Mexico Center
Tulsey
201 North Blvd NE
Albuquerque, NM 87102

- THE FOLLOWING IS A LIST OF THE ITEMS WHICH WERE RECEIVED FROM THE ABOVE NAMED PARTY ON THE DATE INDICATED.
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NEW MEXICO CENTER FOR EARLY CHILDHOOD DEVELOPMENT
1000 UNIVERSITY AVENUE, SUITE 100
ALBUQUERQUE, NM 87102

To:
New Mexico Center for Early Childhood Development
Betty
351 SOUTH ALBUQUERQUE
ALBUQUERQUE, NM 87102

NEW MEXICO CENTER FOR EARLY CHILDHOOD DEVELOPMENT
1000 UNIVERSITY AVENUE, SUITE 100
ALBUQUERQUE, NM 87102

- STANDARDS FOR EARLY CHILDHOOD EDUCATION
- THE NEW MEXICO CENTER FOR EARLY CHILDHOOD DEVELOPMENT (NMCED) HAS DEVELOPED THESE STANDARDS FOR EARLY CHILDHOOD EDUCATION (ECE) TO PROVIDE A FRAMEWORK FOR THE DESIGN, IMPLEMENTATION, AND EVALUATION OF EARLY CHILDHOOD EDUCATION PROGRAMS. THESE STANDARDS ARE BASED ON THE NATIONAL EARLY CHILDHOOD EDUCATION STANDARDS (NCEES) AND THE EARLY CHILDHOOD EDUCATION STANDARDS FOR ALBUQUERQUE, NEW MEXICO (ECCES-AM).
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NEW MEXICO CENTER ON LAW AND
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ALBUQUERQUE, NM - 87102

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Home » Announcements

ANNOUNCEMENTS

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.15.2 NMAC 10-28-21

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.17.2 NMAC 10-21-21

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.16.2 NMAC 10-14-21

Emergency Rulemaking for 8.17.2 NMAC 7-1-21

Emergency Rulemaking for 8.16.2 NMAC 7-1-21

Emergency Rulemaking for 8.15.2 NMAC 8-1-21

Emergency Rulemaking for 8.15.2 NMAC 7-1-21

CHILD CARE EMERGENCY PREPAREDNESS PLAN

CCDF State Plan Public Hearing

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING FOR 8.9.8 NMAC

AFFIDAVIT

SANTA FE NEW MEXICAN

Founded 1849

EARLY CHILDHOOD EDUCATION
AND CARE DEPT
PO Drawer 5619
Santa Fe, NM 875025619

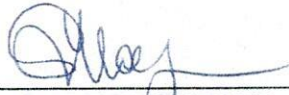
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LEGAL NO	88739	P.O.#:PAID
1 TIME(S)	856.12	
AFFIDAVIT	10.00	
TAX	73.08	
TOTAL	939.20	

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
COUNTY OF SANTA FE

I, Shaundel Moya, being first duly sworn declare and say that I am Legal Advertising Representative of THE SANTA FE NEW MEXICAN, a daily newspaper published in the English language, and having a general circulation in the Counties of Santa Fe, Rio Arriba, San Miguel, and Los Alamos, State of New Mexico and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 on Session Laws of 1937; that the Legal No 88739 a copy of which is hereto attached was published in said newspaper 1 day(s) between 09/13/2021 and 09/13/2021 and that the notice was published in the newspaper proper and not in any supplement; the first date of publication being on the 13th day of September, 2021 and that the undersigned has personal knowledge of the matter and thngs set forth in this affidavit.

ISI


LEGAL ADVERTISEMENT RESPRESENTATIVE

Subscribed and sworn to before me on this 14th day of September, 2021

Notary

Commission Expires: 11/30/2024



OFFICIAL SEAL
Susan Larine Cahoon
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires 11/30/2024

LEGAL # 88739

8.15.2.17 NMAC PAGO DE SERVICIOS

NOTICE OF RULEMAKING AND PUBLIC HEARING 8.15.2.21 NMAC SANCTIONS

Para la redacción de las reglas propuestas se consultó ninguna información (CYFD) and the Early Childhood Education and Care Department (ECECD) and the Early Childhood Education and Care Department.

El propósito y resumen de las reglas propuestas: El propósito de la elaboración de los reglamentos es proporcionar enmiendas permanentes a la sección 8.15.2 del NMAC, que inicialmente fueron publicadas como enmiendas de emergencia con validez al 1 de julio de 2021 y el 1 de agosto de 2021, junto con los cambios necesarios autorizados por la emergencia para la salud planteada por el COVID-19 y a la orden ejecutiva y las declaraciones resultantes, junto con la subvención del Fondo para el Desarrollo y Cuidado Infantil (CCDF), hubo una necesidad de emergencia de enmendar el 8.15.2 del NMAC con el fin de proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y familias de Nuevo México y garantizar la continuidad del financiamiento federal. En resumen, las reglas propuestas actuarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también resultarán los cambios requeridos por la subvención de CCDF. Se adjunta a la presente

8.15.2.6 NMAC OBJECTIVE

8.15.2.7 NMAC DEFINITIONS

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE

8.15.2.10 NMAC APPLICATION PROCESS

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS

8.15.2.12 NMAC RECERTIFICATION

8.15.2.13 NMAC CLIENT RESPONSIBILITIES

8.15.2.14 NMAC CASES AND SUSPENSIONS AND CLOSURES

8.15.2.15 NMAC PROVIDER REQUIREMENTS

8.15.2.17 NMAC PAYMENT FOR SERVICES

8.15.2.21 NMAC SANCTIONS

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

Purpose and summary

of proposed rules: Thecomunicacion un re- purpose of the rule-sumen de las modifi- making is to promul-caciones propuestas. gate permanent amendments to 8.15.2Como parte del pro- NMAC, which were ini-ceso de enmienda, tially published asECECD llevará a cabo emergency amend-una audiencia pública ments effective July 1,de reglas para las en- 2021, and August 1,miendas propuestas el 2021, along with addi-28 de octubre de 2021 tional necessaryde 1:00 a 4:00 p.m. La changes. Due to thefecha límite para la COVID-19 health crisispresentación al Reg- and the resulting exec-istro de Nuevo México utive orders and dec-es el 26 de agosto de larations, along with2021, con fecha de the federal Child Carepublicación el 14 de Development Fundseptiembre de 2021. (CCDF) grant, there was an emergencyPuede encontrar need for amendmentscopias de las propues- to 8.15.2 NMAC in ordertas leyes administrati- to protect the publicvas en el sitio web de from an imminent perilECECD en newmexico to public health, safetykids.org/ a más tardar and welfare of chil-el 14 de septiembre de dren and families in2021.

New Mexico and en- sure continued federal**Anuncio de audiencia** funding. In summary,**pública sobre** the proposed rules will**reglamentos:** La audi- update necessaryencia pública sobre health and safetyreglamentos se cele- changes for the provi-brará el jueves, 28 de sion of child care serv-octubre de 2021, de ices in New Mexico as1:00 p.m. a 4:00 p.m. La well as make changesaudiencia se llevará a required by the CCDFcabo en el Apodaca grant. A summary ofHall del edificio Old the proposed amend-PERA situado en 1120 ments is attached toPaseo de Peralta, this notice. Santa Fe, Nuevo Méx- ico 87502 y a través de

As part of the amend-una plataforma web a ment process, ECECDdistancia (Zoom), de will hold a public rulecorreo electrónico y hearing for the pro-de medios telefónicos. posed amendmentsLa audiencia pública la on October 28, 2021conducirá de manera from 1:00 to 4:00 p.m.imparcial y equitativa The deadline for sub-un representante del mittal to the New Mex-ECECD o un fun- ico Register is oncionario de audien- August 26, 2021, withacias, y esta será publication date ofgrabada. Cualquier September 14, 2021. persona del público Copies of the pro-que tenga interés posed amended rulespodrá asistir a la audi- may be found atencia y se le dará una ECECD's website atoportunidad razonable [https://www.newmex- de dar sus comentar- ics.org/](https://www.newmex-de dar sus comentar- ics.org/) no laterios públicamente, ya than September 14,sea de manera oral o 2021. por escrito, incluyendo la presentación de

Notice of public ruledatos, perspectivas o hearing: The publicargumentos sobre las rule hearing will bereglas propuestas. A

held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in the Apodaca Hall of the Old PERA building at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via a virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate reasonable requests but cannot guarantee accommodations of a certain kind. Requests should be received at least ten business days before the hearing. Comments should be submitted to ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate reasonable requests but cannot guarantee accommodations of a certain kind. Requests should be received at least ten business days before the hearing.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo datos, perspectivas o argumentos sobre las reglas propuestas, de cualquier interesado del público, pueden presentarse a ECECD-ECS-PublicComment@state.nm.us o llamar al (505) 231-5820. ECECD con el asunto "8.15.2 NMAC Public Comment" o por correo postal de primera clase al apartado 5619, Santa Fe, New Mexico 87502-5619. Los comentarios por escrito se pueden entregar el jueves, 28 de octubre de 2021 de 1:00 p.m. a 4:00 p.m. en el edificio Old PERA, en 1120 Paseo De Peralta. El período para presentar comentarios termina al concluir la audiencia pública el 28 de octubre de 2021. Cualquier persona del público que esté interesada puede asistir a la audiencia de manera presencial o a través de la plataforma web o por correo postal a P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. ECECD ofrecerá asistencia a personas con discapacidades para garantizar su acceso a la audiencia. ECECD se compromete a hacer todos los esfuerzos razonables para acomodar las solicitudes razonables, pero no puede garantizar que se hagan todos los arreglos. Las solicitudes deben recibirse con suficiente tiempo antes de la audiencia.

Notice of acceptance of written public comment: Written public comments, including data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us or by first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502-5619. ECECD will make every effort to accommodate reasonable requests but cannot guarantee accommodations of a certain kind. Requests should be received at least ten business days before the hearing. Comments should be submitted to ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every effort to accommodate reasonable requests but cannot guarantee accommodations of a certain kind. Requests should be received at least ten business days before the hearing.

New Mexico 87502-comentarios públicos 5619. Written com-sobre las reglas propments may beuestas. Para participar delivered to the Oldpor teléfono: llame al PERA building at 11201-720-707-2699, usando Paseo de Peralta onel código de acceso Thursday, October 28,823 7497 1518. Usted 2021 from 1:00 p.m. topodrá escuchar toda 4:00 p.m. The com-la audiencia y sus com-ent period ends atmentarios telefónicos the conclusion of thequedarán grabados. public hearing Octo-Para participar por In-ber 28, 2021. ternet: visite zoom.

us/j/82374971518 y Any interested mem-siga las instrucciones ber of the public mayindicadas en la pan-attend the hearing intalla - ID de la reunión person or via the vir-(código de acceso): tual web platform or823 7497 1518#. Esta telephone, and offerseirá una transmisión public comments onen vivo de la audien-the proposed rule dur-cía. También puede ing the hearing. To ac-hacer sus comentarios cess the hearing bypor medio del chat du-telephone: place callrante la transmisión 1-720-707-2699, accessen vivo.

code 823 7497 1518. You will be able to hear the file hearing **RESUMEN DEL ECECD** and your telephone **(EARLY CHILDHOOD** comments will be **EDUCATION AND CARE** recorded. To access **DEPARTMENT) DE** the hearing via the in- **MODIFICACIONES** ternet: please go to: **PROPUESTAS PARA EL** zoom.us/82374971518, **NMAC 8.15.2**

and follow the instruc-tions indicated on the**8.15.2.6 OBJETIVO DE** screen - Meeting ID**NMAC: El ECECD pro-** (access code): 823pone modificaciones 7497 1518#. This willque incluyen un be a live stream of theenguaje de no dis-hearing. You may also criminación y un obje- provide comments viativo relacionado con la Chat during the liveSubvención federal stream.

para el desarrollo y el cuidado infantil (CCDBG, por sus siglas en inglés) y el Fondo para el desarrollo del cuidado infantil (CCDF, por sus siglas en inglés).

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT'S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.15.2 NMAC

8.15.2.7 DEFINICIONES

8.15.2.6 NMAC OBJEC-DE NMAC: El ECECD TIVE: ECECD proponepropone actualiza-amendments that in-ciones a las defni-clude non-discrimina-ciones de varios tion language and antérminos ("Programa objective related toeducativo y de capac-the federal Child Careeitación laboral", "Cam-and Developmentbio temporal de Block Grant (CCDBG)actividad" y "Familiar, and the Child Care De-amigo o vecino (FFN, velopment Fundpor sus sigla en in-glés)") e incluye

nuevos términos prop-**8.15.2.7 NMAC DEFINI-uestos ("Trabajador** TIONS: ECECD pro-cesencial" y

poses updates to the "Rescisión").

definitions of various terms ("Job Training and Educational Program," "Temporary Change of Activity," and "Family, Friend, Neighbor (FFN)") includes new proposed terms ("Essential Worker" and "Termination").

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE: ECECD propone actualizaciones a las prioridades de cuidado infantil para los requisitos de asistencia que incluyen la provisión de una nueva categoría, "prioridad cuatrimás", para una mayor elegibilidad.

8.15.2.10 NMAC PROCESO DE SOLICITUD: El ECECD propone actualizaciones a los requisitos del proceso de solicitud de asistencia para el cuidado infantil que incluyen una lista de documentos aceptables para la elegibilidad y asuntos relacionados.

8.15.2.10 NMAC APPLICATION PROCESS: ECECD propone actualizaciones a los requisitos de elegibilidad y asuntos relacionados.

8.15.2.11 REQUISITOS DE ELEGIBILIDAD DE NMAC: El ECECD propone actualizaciones a los requisitos de elegibilidad para la asistencia de cuidado infantil con el fin de aclarar el período de elegibilidad, los acuerdos de colocación y asuntos relacionados.

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS: ECECD propone actualizaciones a los requisitos de elegibilidad para la asistencia de cuidado infantil con el fin de aclarar el período de elegibilidad, los acuerdos de colocación y asuntos relacionados.

8.15.2.12 RECERTIFICACIÓN DE NMAC: El ECECD propone actualizaciones al proceso de recertificación para la asistencia de cuidado infantil con el fin de aumentar la elegibilidad según los ingresos y para los trabajadores esenciales.

8.15.2.12 NMAC RECERTIFICATION: ECECD propone actualizaciones al proceso de recertificación para la asistencia de cuidado infantil con el fin de aumentar la elegibilidad según los ingresos y para los trabajadores esenciales.

8.15.2.13 RESPONABILIDADES DEL CLIENTE DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con las responsabilidades del cliente para eliminar las restricciones impuestas al copago del cuidado infantil.

8.15.2.13 NMAC CLIENT RESPONSIBILITIES: ECECD propone actualizaciones del cliente para eliminar las restricciones impuestas al copago del cuidado infantil.

8.15.2.14 SUSPENSIONES Y CIERRES DE CASOS DE NMAC: El ECECD propone actualizaciones a los requisitos de suspensión y cierre de casos de NMAC.

El Departamento de Niños, Jóvenes y Familias (CYFD) y el Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México notifican por el presente, según lo establecido por la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que se proponen adoptar enmiendas a las siguientes reglas relativas a SERVICIOS SOCIALES AYUDA PARA CUIDADO INFANTIL REQUISITOS PARA PROGRAMAS DE AYUDA PARA CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL, según lo autorizado por las Secciones 9-2A-1 a 9-2A-16, NMSA 1978 y 9-29-6, NMSA 1978:

8.15.2.6 NMAC OBJETIVO

8.15.2.7 NMAC DEFINICIONES

8.15.2.9 NMAC PRIORIDADES PARA CONCEDER AYUDA

8.15.2.10 NMAC PROCESO DE SOLICITUD

8.15.2.11 NMAC REQUISITOS DE ELEGIBILIDAD

8.15.2.12 NMAC RECERTIFICACIÓN

8.15.2.13 NMAC RESPONSABILIDADES DEL CLIENTE

8.15.2.14 NMAC SUSPENSIONES Y CIERRES DE CASOS

8.15.2.15 NMAC REQUISITOS DEL PROVEEDOR

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

Elise Rodriguez, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made or assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

09/12/2021

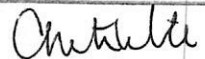
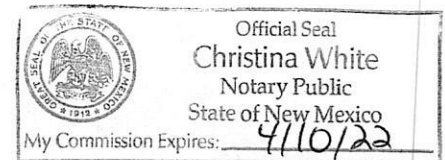


Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 13 day of September of 2021

PRICE \$1,571.28

Statement to come at the end of month.

ACCOUNT NUMBER 1099142



Fund (CCDF) grant, there was an emergency need for amendments to in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. In summary, the proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico as well as make changes required by the CCDF grant. A summary of the proposed amendments is attached to this notice.

As part of the amendment process, ECECD will hold a public rule hearing for the proposed amendments on October 28, 2021 from 1:00 to 4:00 p.m. The deadline for submittal to the New Mexico Register is on August 26, 2021, with a publication date of September 14, 2021.

Copies of the proposed amended rules may be found at ECECD's website at <https://www.newmexicokids.org/> no later than September 14, 2021.

Notice of public rule hearing: The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PERA building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at [ECECD at ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us) or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the scheduled hearing.

inminente para la salud pública, la seguridad y el bienestar de los niños y familias en Nuevo México y garantizar la continuidad del financiamiento federal. Las reglas propuestas actualizarán los cambios de las reglas de servicios de cuidado infantil en el estado y realizarán los cambios requeridos por la subvención CCDF. Se adjunta a esta comunicación un resumen de las modificaciones.

Como parte del proceso de enmienda, ECECD llevará a cabo una audiencia pública de reglas para las enmiendas propuestas el 28 de octubre de 2021 de las 1:00 p.m. a las 4:00 p.m. La fecha límite para la presentación al Registro de Reglas es el 26 de agosto de 2021, con fecha de publicación el 14 de septiembre de 2021. Puede encontrar copias de las propuestas de reglas en el sitio web de ECECD en <https://www.newmexicokids.org/> a más tardar el 14 de septiembre de 2021.

Anuncio de audiencia pública sobre reglamentos: La audiencia pública sobre reglamentos se celebrará el jueves, 28 de octubre de 2021 a las 1:00 p.m. a las 4:00 p.m. La audiencia se llevará a cabo en el Apodaca Hall de la antigua PERA ubicada en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502 y a través de una plataforma web a distancia (Zoom), correo electrónico y medios telefónicos. La audiencia será conducida de manera imparcial y equitativa por un representante o funcionario de audiencias, y esta será grabada. Cualquier miembro del público interesado podrá asistir a la audiencia y ofrecer comentarios, ya sea oralmente o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas. A los individuos con discapacidades se les ofrecerá apoyo auxiliar para poder asistir o participar en la audiencia. Se les pide que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us llamando al teléfono (505) 231-5820. El ECECD hará todo lo posible para acomodar todas las solicitudes razonables, pero no puede garantizar que se reciban cuando menos diez días calendario antes de la audiencia.

Las Cruces Sun News.

PART OF THE USA TODAY NETWORK

Affidavit of Publication

Ad # 0004894061

This is not an invoice

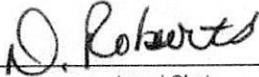
NM EARLY CHILDHOOD EDUCATION AND CARE D
1120 PASEO DE PERALTA

SANTA FE, NM 87502

I, a legal clerk of the Las Cruces Sun News, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof in editions dated as follows:

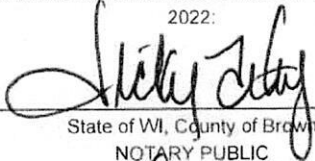
09/10/2021

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.



Legal Clerk

Subscribed and sworn before me this February 16,
2022:



State of WI, County of Brown
NOTARY PUBLIC

9/19/25

My commission expires

VICKY FELTY
Notary Public
State of Wisconsin

Ad # 0004894061
PO #: PUBLIC HEARING 8.15
of Affidavits: 1

This is not an invoice

**NOTICE OF RULEMAKING AND
PUBLIC RULE HEARING**

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by Section 9-2A-1 to 9-2A-16, NMSA 1978 and 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJECTIVE
- 8.15.2.7 NMAC DEFINITIONS
- 8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE
- 8.15.2.10 NMAC APPLICATION PROCESS
- 8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS
- 8.15.2.12 NMAC RECERTIFICATION
- 8.15.2.13 NMAC CLIENT RESPONSIBILITIES
- 8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES
- 8.15.2.15 NMAC PROVIDER REQUIREMENTS
- 8.15.2.17 NMAC PAYMENT FOR SERVICES
- 8.15.2.21 NMAC SANCTIONS

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

Purpose and summary of proposed rules: The purpose of the rulemaking is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. In summary, the proposed rules will update necessary health and safety changes for the provision of child care services in New Mexico as well as make changes required by the CCDF grant. A summary of the proposed amendments is attached to this notice.

As part of the amendment process, ECECD will hold a public rule hearing for the proposed amendments on October 28, 2021 from 1:00 to 4:00 p.m. The deadline for submittal to the New Mexico Register is on August 26, 2021, with a publication date of September 14, 2021.

Copies of the proposed amended rules may be found at ECECD's website at <https://www.newmexicokids.org/> no later than September 14, 2021.

Notice of public rule hearing: The public rule hearing will be held on Thursday, October 28, 2021 at 1:00 p.m. to 4:00 p.m. The hearing will be held in Apodaca Hall of the Old PIRA building located at 1120 Paseo de Peralito, Santa Fe, New Mexico 87502 and via virtual web platform (Zoom), email, and telephonic means. The public hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comments, either orally or in writing, including presentations of data, views or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at ECECD-ECS-PublicComment@state.nm.us or call (505) 231-5820. ECECD will make every ef-

fort to accommodate all reasonable requests but cannot guarantee accommodations of a request that is not received at least ten calendar days before the schedule hearing.

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed Rules, from any interested member of the public, may be submitted via email to ECECD-ECS-PublicComment@state.nm.us with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87507-5619. Written comments may be delivered to the Old PERA building at 1120 Paseo de Peralta on Thursday, October 28, 2021 from 1:00 p.m. to 4:00 p.m. The comment period ends at the conclusion of the public hearing October 28, 2021.

Any interested member of the public may attend the hearing in person or via the virtual web platform or telephone, and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-720-707-2699, access code 823 7497 1518. You will be able to hear the live hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/j/82374971518>, and follow the instructions indicated on the screen - Meeting ID (access code): 823 7497 1518#. This will be a live stream of the hearing. You may also provide comments via Chat during the live stream.

THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT'S (ECECD) SUMMARY OF PROPOSED AMENDMENTS TO 8.15.2 NMAC

8.15.2.6 NMAC OBJECTIVE: ECECD proposes amendments that include non-discrimination language and an objective related to the federal Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF).

8.15.2.7 NMAC DEFINITIONS: ECECD proposes updates to the definitions of various terms ("Job Training and Educational Program," "Temporary Change of Activity," and "Family, Friend, or Neighbor (FFN)") and includes new proposed terms ("Essential Worker" and "Termination").

8.15.2.9 NMAC PRIORITIES FOR ASSISTANCE: ECECD proposes updates to the child care priorities for assistance requirements that include the provision of a new category, "priority four plus," for increased eligibility.

8.15.2.10 NMAC APPLICATION PROCESS: ECECD proposes updates to the child care assistance application process requirements that include a list of acceptable documents for eligibility and related issues.

8.15.2.11 NMAC ELIGIBILITY REQUIREMENTS: ECECD proposes updates to the eligibility requirements for child care assistance in order to clarify the eligibility period, placement agreements and related issues.

8.15.2.12 NMAC RECERTIFICATION: ECECD proposes updates to the recertification process for child care assistance in order to increase eligibility based on income and for essential workers.

8.15.2.13 NMAC CLIENT RESPONSIBILITIES: ECECD proposes updates to the requirements related to client responsibilities to remove restrictions placed on the co-payment for child care.

8.15.2.14 NMAC CASE SUSPENSIONS AND CLOSURES: ECECD proposes updates to the requirements related to case suspensions and closures to clarify that the eligibility pe-

period for child care assistance lasts for 12 months.

8.15.2.15 NMAC PROVIDER REQUIREMENTS: ECECD proposes updates to the provider requirements that removes the five dollar registration/education fee paid to providers, clarifies that owners and licensees cannot receive child care assistance for their own children and requires updated policies and procedures.

8.15.2.17 NMAC PAYMENT FOR SERVICES: ECECD proposes updates to the requirements related to the payment for services that increases the child care subsidy rates paid to providers, based on a cost estimation model, makes related updates, and removes outdated requirements.

8.15.2.21 NMAC SANCTIONS: ECECD proposes updates to the requirements related to sanctions and removes the provision that requires placement on a conditional eligibility status for clients who fail to update non-temporary changes in status.

NOTIFICACIÓN DE ELABORACIÓN DE REGLAMENTOS Y AUDIENCIA PÚBLICA SOBRE REGLAMENTOS

El Departamento de Niños, Jóvenes y Familias (CYFD) y el Departamento de Educación y Cuidado en la Primera Infancia (ECECD) de Nuevo México notifican por el presente, según lo establecido por la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que se proponen adoptar enmiendas a las siguientes reglas relativas a SERVICIOS SOCIALES AYUDA PARA CUIDADO INFANTIL REQUISITOS PARA PROGRAMAS DE AYUDA PARA CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL según lo autorizado por las Secciones 9-2A-1 a 9-2A-16, NMSA 1978 y 9-29-6, NMSA 1978:

- 8.15.2.6 NMAC OBJETIVO
- 8.15.2.7 NMAC DEFINICIONES
- 8.15.2.9 NMAC PRIORIDADES PARA CONCEDER AYUDA
- 8.15.2.10 NMAC PROCESO DE SOLICITUD
- 8.15.2.11 NMAC REQUISITOS DE ELEGIBILIDAD
- 8.15.2.12 NMAC RECERTIFICACIÓN
- 8.15.2.13 NMAC RESPONSABILIDADES DEL CLIENTE
- 8.15.2.14 NMAC SUSPENSIONES Y CIERRES DE CASOS
- 8.15.2.15 NMAC REQUISITOS DEL PROVEEDOR
- 8.15.2.17 NMAC PAGO DE SERVICIOS
- 8.15.2.21 NMAC SANCIONES

Para la redacción de las reglas propuestas no se consultó ninguna información técnico científica.

El propósito y resumen de las reglas propuestas: El propósito de la elaboración de reglamentos es promover enmiendas permanentes a la sección 8.15.2 del NMAC, que inicialmente fueron publicadas como enmiendas de emergencia con validez al 1 de julio de 2021 y el 1 de agosto de 2021, junto con los cambios necesarios adicionales. Debido a la emergencia para la salud planteada por el COVID-19 y a la orden ejecutiva y las declaraciones resultantes, junto con la subvención del Fondo para el Desarrollo y Cuidado Infantil (CCDF), hubo una necesidad de emergencia de enmendar el 8.15.2 del NMAC con el fin de proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y familias de Nuevo México y garantizar la continuidad del financiamiento federal. En resumen, las reglas propuestas actualizarán los cambios de salud y seguridad necesarios para la prestación de servicios de cuidado infantil en Nuevo México, así como también realizaron los cambios requeridos por la subvención de CCDF. Se adjunta a la presente

comunicación un resumen de las modificaciones propuestas.

Como parte del proceso de enmienda, ECECD llevará a cabo una audiencia pública de reglas para las enmiendas propuestas el 28 de octubre de 2021 de 1:00 a 4:00 p.m. La fecha límite para la presentación al Registro de Nuevo México es el 26 de agosto de 2021, con fecha de publicación el 14 de septiembre de 2021.

Puede encontrar copias de las propuestas leyes administrativas en el sitio web de ECECD en <https://www.newmexicokids.org/> o más tardar el 14 de septiembre de 2021.

Anuncio de audiencia pública sobre reglamentos: La audiencia pública sobre reglamentos se celebrará el jueves, 28 de octubre de 2021, de 1:00 p.m. a 4:00 p.m. La audiencia se llevará a cabo en el Apodaca Hall del edificio Old PERA situado en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502 y a través de una plataforma web a distancia (Zoom), de correo electrónico y de medios telefónicos. La audiencia pública la conducirá de manera imparcial y equitativa un representante del ECECD o un funcionario de audiencias, y esta será grabada. Cualquier persona del público que tenga interés podrá asistir a la audiencia y se le dará una oportunidad razonable de dar sus comentarios públicamente, ya sea de manera oral o por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas. A los individuos con discapacidades que necesiten cualquier forma de apoyo auxiliar para poder asistir o participar en la audiencia pública, se les solicita que contacten al ECECD a través de ECECD-ECS-PublicComment@state.nm.us o llamando al teléfono (505) 731-5820. El ECECD hará todo lo posible por adaptarse a las solicitudes razonables, pero no puede garantizar que se adaptará a solicitudes que no se reciban cuando menos diez días calendario antes de la audiencia programada.

Anuncio de aceptación de comentarios públicos por escrito: Los comentarios públicos por escrito, incluyendo la presentación de datos, perspectivas o argumentos sobre las reglas propuestas, de parte de cualquier interesado del público, pueden presentarse por correo electrónico a ECECD-ECS-PublicComment@state.nm.us con el asunto "8.15.2 NMAC Public Comment" o por correo postal de primera clase al apartado postal Drawer 5619, Santa Fe, New Mexico 87502-5619. Los comentarios por escrito se pueden entregar el jueves, 28 de octubre de 2021 de 1:00 p.m. a 4:00 p.m. en el edificio Old PERA, en 1120 Paseo De Peralta. El periodo para presentar comentarios termina al concluir la audiencia pública el 28 de octubre de 2021.

Cualquier persona del público que esté interesada puede asistir a la audiencia de manera presencial o a través de la plataforma web o por teléfono, y ofrecer sus comentarios públicos sobre las reglas propuestas. Para participar por teléfono: llame al 1-720-707-2699, usando el código de acceso 823 7497 1518. Usted podrá escuchar toda la audiencia y sus comentarios telefónicos quedarán grabados. Para participar por Internet: visite <https://zoom.us/j/82374971518> y siga las instrucciones indicadas en la pantalla - ID de la reunión (código de acceso): 823 7497 1518#. Esto será una transmisión en vivo de la audiencia. También puede hacer sus comentarios por medio del chat durante la transmisión en vivo.

RESUMEN DEL ECECD (EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT) DE MODIFICACIONES PROPUESTAS PARA EL NMAC 8.15.2

8.15.2.6 OBJETIVO DE NMAC: El ECECD propone modificaciones que incluyen un lenguaje de no

discriminación y un objetivo relacionado con la Subvención federal para el desarrollo y el cuidado infantil (CCDBG, por sus siglas en inglés) y el Fondo para el desarrollo del cuidado infantil (CCDF, por sus siglas en inglés).

8.15.2.7 DEFINICIONES DE NMAC: El ECECD propone actualizaciones a las definiciones de varios términos ("Programa educativo y de capacitación laboral", "Cambio temporal de actividad" y "Familiar, amigo o vecino (FFN, por sus siglas en inglés)") e incluye nuevos términos propuestos ("Trabajador esencial" y "Rescisión").

8.15.2.9 PRIORIDADES DE NMAC PARA CONCEDER ASISTENCIA: El ECECD propone actualizaciones a las prioridades de cuidado infantil para los requisitos de asistencia que incluyen la provisión de una nueva categoría, "prioridad cuatro más", para una mayor elegibilidad.

8.15.2.10 NMAC PROCESO DE SOLICITUD: El ECECD propone actualizaciones a los requisitos del proceso de solicitud de asistencia para el cuidado infantil que incluyen una lista de documentos aceptables para la elegibilidad y asuntos relacionados.

8.15.2.11 REQUISITOS DE ELEGIBILIDAD DE NMAC: El ECECD propone actualizaciones a los requisitos de elegibilidad para la asistencia de cuidado infantil con el fin de aclarar el período de elegibilidad, los acuerdos de colocación y asuntos relacionados.

8.15.2.12 RECERTIFICACIÓN DE NMAC: El ECECD propone actualizaciones al proceso de recertificación para la asistencia de cuidado infantil con el fin de aumentar la elegibilidad según los ingresos y para los trabajadores esenciales.

8.15.2.13 RESPONSABILIDADES DEL CLIENTE DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con las responsabilidades del cliente para eliminar las restricciones impuestas al copago del cuidado infantil.

8.15.2.14 SUSPENSIONES Y CIERRES DE CASOS DE NMAC: El ECECD propone actualizaciones a los requisitos relacionados con las suspensiones y cierres de casos para aclarar que el período de elegibilidad para la asistencia de cuidado infantil dura 12 meses.

8.15.2.15 REQUISITOS DEL NMAC PARA PROVEEDORES: El ECECD propone actualizaciones a los requisitos para proveedores que eliminan la tarifa de inscripción/educación de cinco dólares que se paga a los proveedores, aclara que los propietarios y los titulares de licencias no pueden recibir asistencia de cuidado infantil para sus propios hijos y exige políticas y procedimientos actualizados.

8.15.2.17 PAGO DE NMAC POR SERVICIOS: El ECECD propone actualizaciones de los requisitos relacionados con el pago de servicios que aumentan las tarifas de subsidio de cuidado infantil pagadas a los proveedores, según un modelo de estimación de costos, realiza actualizaciones relacionadas y elimina requisitos obsoletos.

8.15.2.21 SANCIONES DE NMAC: El ECECD propone actualizaciones de los requisitos relacionados con sanciones y elimina la disposición que exige la colocación de un estado de elegibilidad condicional para clientes que no actualicen cambios de estado no temporales.

Exhibit 1
Public Hearing
comments (redacted)

Written Comments submitted prior to the October 28, 2021, public hearing

[REDACTED]

Comment 1:

I would like to state the impact that the recent rule changes have had on my family.

I left a physically abusive marriage, and initially I had no job or income and was living with my children in my mom's house after I separated. I got a job and was able to live on my own with my kids, but my income was still not enough to cover all my expenses, including legal fees for my divorce.

Over the past year, I have been able to save some money in a college savings account for my kids due to the fact that I didn't need to pay my son's daycare co-payment. I never dreamed that I would be able to set aside money for my kids' college when I could barely pay for everyday expenses. This last year has allowed us to look to the future, instead of being trapped.

I hope more families, especially single mothers, can have the same experience and that these policies are made permanent.

Thank you.

Department response: ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

[REDACTED]

Comment 2:

The increases that were given were a great help. We have many school age children and feel that those children should of also relieved an increase. That age group requires lots of time and materials, replaced due to use and breakage. I hope they look at this a bit closer. Thank you.

Department response: ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

Department response: New Mexico's latest rate increases, including those for school age children, were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. ECECD will continue to review and study subsidy rates to ensure that rates are based on the cost of providing high quality care.

[REDACTED]

Note: The Department received comments from different individuals at this provider's office, and they are consolidated here.

Comment 3:

TLC Development Centers has been serving low income New Mexican families for over 20 years. Currently we have 7 locations across 3 counties in New Mexico. In September of 2021, we served 371 children receiving child care assistance. Pre-COVID, our average was approximately 560 per month. Historically, our centers collected roughly 40% of total family copayments each month. This has always caused us to operate on a shoestring budget. This year, with co-payments being waived by the department, we're finally able to feel a little bit of financial 'breathing room'. We've issued extra bonuses to our teachers, increased hourly wages (above the minimum wage increases), provided tons of PPE for staff and children, and more. We thank you very much! Our primary concern is: What will happen July 1, 2022? The copayments we're seeing on the contracts - though waived right now - are going to be even higher and more unaffordable when minimum wage goes up again. We fully understand the need to balance the budget - and certainly the desire to serve more families with limited funds. The cost/benefit analysis just seems a bit off balance from a co-payment standpoint. 2 Please accept our attached public comments in reference to NMAC 8.15.2. Thank you

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Please accept the following comments on the proposed revisions for 8.15.2 NMAC:

Affordability 8.15.2.13 B, 8.15.2.13 B (1), 8.15.2.13 B (2) The current co-payment methodology is not affordable for families. From the CCDF Final Rule: We establish a new Federal benchmark for affordable family co-payments of seven percent of family income and allow Lead Agencies more flexibility to waive co-payments for vulnerable families. (Federal Register / Vol. 81, No. 190 / Friday, September 30, 2016 / Rules and Regulations 67440) Currently, a single parent with 2 children will pay 10.36% of their gross income at 200% FPL. With 3 children, it jumps up to 12.21%. 13% for 4 children and 13.37% for 5 children. This is far above the federal benchmark of 7% and highlights the fact that the current co-payment methodology is not affordable for families. The Child Care and Development Fund Plan for New Mexico for FFY 2022-24 requires Lead Agencies to establish and periodically revise a sliding-fee scale for CCDF families that varies based on income and the size of the family to determine each family's contribution (i.e., co-payment) that is not a barrier to families receiving CCDF funds (658E(c)(5)). 3.2.2 Gives options for calculating the co-payments. The best of which is 3.2.2 b v – The fee is a percent of income, and the fee is per family. Given that the CCDF Final Rule sets a 7% benchmark, it seems logical that this should be the standard for New Mexican families.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Stricken Language: 8.15.2.13 E The co-payment for a child shall not exceed the base monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the base monthly provider reimbursement rate. This language should remain in regulation (with the addition of 'base') if the copayment calculation is not changed. Otherwise, this becomes a barrier to accessing quality. A family could have a higher copayment by attending a higher star level program. Removing the language as proposed; or leaving the language in without adding 'base', does not meet the objectives of these regulations or the spirit of the CCBDBG Act.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates. With respect to 8.15.2.13(E) NMAC, the department is removing this section as it is an administrative burden to implement.

Clarification Required: 8.15.2.13 E (2) A client must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income. Will the SMI tables be published to ensure clients are able to meet this requirement? Currently, a family of 4 is at 86.27% of SMI at maximum income level for 200% FPL. A family of 5 is at 93.28% of SMI. 250% FPL puts families of 2 @ 104.09% of SMI, families of 3 @ 116.59%, families of 4 @ 126.58% and families of 5 @ 137.17%. These calculations do not take into account typical family expenses such as housing, food, health care, diapers, transportation, etc., as required by the CCDF Final Rule (Federal Register / Vol. 81, No. 190 / Friday, September 30, 2016 / Rules and Regulations 67467). Will the department revise the income guidelines to allow for standard deductions similar to LIHEAP and SNAP as suggested by the CCDF Final Rule?

Department response: ECECD appreciates the comment and understands it to reference 8.15.2.13(F)(2) NMAC. ECECD proposed this change in order to comply with federal CCDF requirements to include the language proposed. While CCDF requires this provision in regulation, ECECD will not penalize any client who fails to comply with this provision. In addition, state funds are available for those individuals whose median income exceeds eighty-five percent of the state medium income. Finally, at this time ECECD does not have any plans to additionally revise the income guidelines but will continue to review and monitor the issue.

8.15.2.15 E (1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. [The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.] The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC. 'And child and family activities' must be stricken. This contradicts the next item in regulation: 8.15.2.15 E (2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families. We recommend adding: In addition, providers may charge reasonable fees for transportation to and from schools for school aged children, provided the cost does not exceed that charged to private pay families. The ability to charge reasonable transportation fees allows providers to recoup some of the extra costs that this imposes on the program. These are services that many working parents need and can be very costly to programs. The rates for school aged children effectively went down by \$0.27/ month with the stricken language as proposed in 8.15.2.15 E (1).

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. Transportation expenses were taken into consideration in the cost estimation model and therefore, ECECD will not add the recommended language. Further, the language in 8.15.2.15 NMAC does not contradict itself and, other than removing the five dollar monthly education

fee and adding language about the cost estimation model, the department did not add or remove the referenced requirements in regulation.

8.15.2.15 G Owners and licensees may not receive child care subsidy payments to provide care for their own children. This language directly violates the spirit of the CCDBG Act. This would prevent access to many otherwise qualified families. We recommend changing the language to read: "Owners and licensees may not receive child care subsidy payments to provide care for their own children if they are the only children in care."

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

8.15.2.17 C The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC. 'And child and family activities' must be stricken.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. "Child and family activities" were taken into consideration in the cost estimation model and therefore, ECECD will not make the recommended change.

Notable Discrepancies: 8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department. [8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 10/1/2016] The Department is now New Mexico Early Childhood Education and Care Department. Children, youth and families department or CYFD is also cited in the following: 8.15.2.7 C (1), 8.15.2.7 D (2), 8.15.2.7 N (1), 8.15.2.7 N (1) (b) (this information is no longer relevant and should be stricken), 8.15.2.9 A (1), 8.15.2.9 A (2), 8.15.2.11 C (5), 8.15.2.11 C (6), 8.15.2.17 I, 8.15.2.17 I (1), 8.15.2.17 I 1 (a) (this information is no longer relevant and should be stricken), 8.15.2.17 I (1) (b), 8.15.2.17 I Providers holding and maintaining CYFD a department approved national accreditation status will receive the differential rate listed in Subsection I Subsection J below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family CYFD should be changed to 'a department'. Subsection I should be changed to subsection J 8.15.2.7 N (1) (b) This information is no longer relevant and should be stricken. 8.15.2.17 I (1) This information is no longer relevant and should be stricken. 8.15.2.17 I (1) (a) This information is no longer relevant and should be stricken.

Department response: Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the

licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

[REDACTED]

Comment 4:

My name is [REDACTED], I have taken an hour off from my work (I am a school teacher) and I have a very important case to make about child care as a single mother. I am hoping to speak between 1-2 today because I only have one hour of coverage for my classroom. As a single emom a school teacher I was only granted 150 dollars for help, but I am unable to pay for rent bills , still due to the guidelines and the parameters of the salary. It's imperative that I speak and make a case today for the workers like myself who are suffering due to preschool for our children. Thank you so much again. My name is [REDACTED] and I will be joining via zoom, from Salazar elementary school. [REDACTED]

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need.

[REDACTED]

Comment 5:

Unaffordable co-pays for child care are going to set the clock back on all the strides that have been made for children's welfare and early education. We again are going to see latch key kids. Older siblings in the role of caregivers. Single and even double income families are going to have some tough decisions to make. Universal Child care... at the very least birth to five should be available to all families.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need.

[REDACTED]

Comment 6:

To Whom it May Concern:

Please accept the following comments on the proposed revisions to 8.15.2 NMAC regarding the New Mexico Early Childhood Education & Care Department (ECECD) child care assistance program. The undersigned organizations have extensive experience working with low-income families in New Mexico to ensure they have access to services that improve the lives of our state's children. We pay particular attention to the child care assistance program as it is a critical work support for low-income households. We have first-hand experience assisting families in accessing child care in New Mexico. We are hopeful that the new department, ECECD, will bring about increased access to much-needed child care and continue to work toward removing administrative barriers that prevent eligible families from receiving assistance.

We thank ECECD for making these important changes to the Child Care Assistance Regulations. The proposed changes improve access to affordable childcare that parents can trust to provide a safe space for their children to learn while they work to further their education and to support their families. Child care assistance allows parents to work toward attaining economic security for their family, and it provides a safe learning environment for New Mexico's children. While we support the proposed rules, we urge the Department to take the additional steps outlined below and promulgate a final rule which incorporates our specific suggestions.

Eligibility

As to the matter of eligibility, we ask that the Department consider expanding the child care assistance program to all low income families, regardless of their immigration status, through the use of state subsidies. This change would benefit many New Mexicans who play valuable roles in our state and are often essential workers.

Department response: ECECD appreciates the comment and will look into expanding eligibility for all low income families in New Mexico, regardless of immigration status, if additional state and/or federal funds become available. ECECD made recent regulation changes to support immigrants seeking child care by updating its definition of a "qualified immigrant" in order to ensure all qualified immigrants and refugees can apply for and receive child care subsidies.

I. Regulation Changes We Support

A. Section 8.15.2.10- We support the additions to the application process. 2

We support all of the changes to this section, including the addition of the full list of eligibility verification documents to the regulation. This list is a complete list of the documents that the Department requires.

B. Section 8.15.2.11 (C)(6)- We support the addition to exempt income.

The Department's proposal to exempt the income of graduate and other educational stipends aligns with the purposes of the CDBG Act to provide access to children to quality child care and recognizes the economic realities of parents who are furthering their education. We support this proposal and thank the Department for addressing this issue.

C. Section 8.15.2.15 (I)- We support this addition promoting equal access.

We thank and support the Department for adding this section to prohibit discrimination and explicitly state that providers must provide equal access to children and families. We commend the Department for taking into consideration the diversity of our state and ensuring that all New Mexicans have equal access to these services.

Department response: ECECD appreciates the comment and your participation in this process.

II. Regulations We Recommend Changing

A. One general suggestion is related to Section 8.15.2.7 (D)(2), (N)(1)-(b); 8.15.2.11(C)(5)-(6); 8.15.2.15 (F), 8.15.2.17 (I)-(I)(1)(b)- Change the Department Name to ECECD

All of these sections of the regulation continue to refer to the Department as "CYFD." We ask that the change be made so that the department in the regulation is ECECD. Thank you to the Department for making this minor change to match the new Department as the issuing agency.

Department response: Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

B. Section 8.15.2.7(P)(7)- Permit the Use of Family, Friends or Neighbors upon request.

We support the proposed change, however, we ask that the Department consider allowing FFN Caregiving upon request, not only in the case of a public health emergency. This is permitted under federal law, is the type of care that some parents choose and need, and it opens the door to connect FFN providers with supports that can help them provide quality care.

Department response: ECECD appreciates the comments but cannot expand the FFN program at this time. During the COVID-19 pandemic, ECECD had received a waiver from the federal Office of Child Care (OCC) to implement FFN. That waiver expired in September 2021. Other than FFN, ECECD also offers the registration of non-licensed homes through 8.17.2 NMAC in order to offer home providers an option to care for 4 children or less. This registration option is analogous to what many other states consider an FFN program.

C. Section 8.15.2.15 (G)- Allow licensed providers to receive benefits for their own children.

We ask that the Department remove this section prohibiting that child care owners and licensees receive child care subsidy payments. This change will benefit hundreds of people in the community who are providing a valuable resource to the community and also need to use this resource. We know that there is currently a large child care workers shortage.¹ This type of support for child care workers would help not only those workers but would help other people be able to return to work in essential jobs, and all jobs, by supporting the people who can care for their children. As you know, child care workers are designated as essential workers and qualify for free child care funded by ARPA funds.

¹ Heather Long, *'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy*, Washington Post (Oct. 27, 2021, 3:34 AM),

<https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>.

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

D. Section 8.15.2.11(C) NMAC – Add provisions that ensure grandparents are exempt from the work or education requirement and can receive child care assistance without having to apply for TANF.

The Department should make additional changes to ensure that children being raised by grandparents have access to care. The proposed regulations specify that only grandparents who are legal guardians must qualify under the program's income limits and when they qualify, can have their co-payments waived. This is a positive change that we support. However, grandparents who are retired should not be subject to the work or educational requirements for child care. Current New Mexico law for the TANF cash assistance recognizes this and does not impose a work requirement on participants who are 60 or older.² In its final regulation, we ask the Department to amend its rules to allow for waiving the work or educational requirement for grandparents raising grandchildren.

² NMSA 1978 §27-2B-5(I)(2); 8.102.420.11(A)(1) NMAC.

³ 8.102.400.11 NMAC.

⁴ 8.15.2.9(A) NMAC.

Additionally, when grandparents are the legal guardians of the children and do work, their income should not be counted towards the eligibility limit. Again, the TANF cash assistance program also provides that grandparents can participate in that program regardless of income level.³ Current child care assistance regulations provide that TANF families are eligible for child care regardless of income level.⁴ However, we should not ask grandparents to apply for and participate in TANF to qualify for child care assistance. Instead, the Department should mirror the child care regulations to reflect the TANF program, and qualify children being raised by grandparents without regard to income.

Department response: ECECD appreciates the comment but cannot amend the regulations to allow for grandparents to receive child care subsidies without a qualifying activity, such as work or educational activities, as the federal CCDF grant does not permit funds to be spent in such a manner. ECECD could use federal CCDF funds to pay for child care for grandparents if it deemed those children "at-risk." ECECD will continue to monitor the situation and will revisit this issue in the future if necessary.

E. 8.15.2.7 (E)(2), (J)- We support the addition of the "Essential worker" definition and the addition to the definition of "Job training and educational program."

We commend the department for defining "Essential worker" as that term describes members of our community who are keeping our economy going during the public health emergency and need support to continue to do their jobs. While we support this addition, it is unclear as to what is the "period of economic recovery," is there a timeframe after the public health emergency that benefits will be extended for essential workers? We propose XX months.

Department response: ECECD appreciates the comment and support of its decision to provide additional subsidies for "essential workers." ECECD could not define the time-frame for a "period of economic recovery" in regulation at this time as the economic conditions are fluid amid continued outbreaks of COVID-19 and the related consequences. In addition, it appears that the suggested time frame for a "period of economic recovery" was not included in the comment (see "XX months") and ECECD cannot respond adequately.

We also support and thank the Department for including graduate and post graduate programs or classes in the definition of eligible training and educational programs.

Department response: ECECD appreciates the comment and your participation in the public comment process.

F. Section 8.15.2.11(B)(5) - Clarify that benefits continue only if a household returns to an approved activity

This regulatory language on eligibility is confusing and seems to contradict itself. We suggest revising this section to read as follows:

(5) If a client experiences a non-temporary change in activity, the child care placement agreement will terminate after a 90-day grace period; however, if the client returns to an approved activity they will remain eligible for the prior approved 12-month eligibility period.

Department response: ECECD appreciates the comment but cannot make further amendments to this section. ECECD added this provision as it is required under the current federal CCDF plan. Further, and with all due respect, ECECD does not agree that the language contradicts itself. A "child care placement agreement" is different from the "eligibility period" insofar as the eligibility period always last for a one year period. A client can obtain a new placement agreement anytime during that one year period so long as the client has a qualifying activity.

Conclusion

We thank the Department for its commitment to making childcare more accessible and affordable for New Mexico's families. While we support all the changes, we ask the Department to include our suggested amendments in the final rule for the reasons discussed above.

Oral Comments received during the NMAC 8.15.2 public hearing Thursday, October 28, 2021.

[REDACTED]

Comment 7:

My name is [REDACTED] and I'm a Preschool teacher at Salazar Elementary School. I'm representing myself. I have a three year old daughter and have applied for ECECD, ECS grant to help me with child care and I would like to speak on that issue because I only got about \$100.00 dollars of assistance and it's not helping me as a single mom. So I'm really concerned about the child care aspect of this whole initiative. So that's why I'm speaking today, but I feel like I'm speaking on behalf of many people that are in my situation. So, I hope I get to speak today. So. Right now I can speak? Oh great because I have a child, I have coverage for my classroom. I moved here and I'm actually originally from Albuquerque, but I moved with my two daughters, and I have a three-year-old and a 12 year old and I am a public school teacher. I've been teaching for almost 20 years. I applied for preschool assistance. After all of my taxes come out, my retirement, my social security and medical care; I get about \$3,100.00 take home pay a month. Considering what the prices are in Santa Fe to rent a one bedroom and a two bedroom is about \$1,700.00, \$1,800.00. And that's about what I'm paying. Now also, the childcare for preschool, and this the low end, he's about \$900.00. So that's about what I'm paying now and I did apply because they-and-did, encourage me, to apply for an ECECD grant. And I got about \$150.00 worth of assistance. So, I'm looking at my, I'm looking at my,

my money that I'm expending out as \$1,700.00 for, for rent, \$995.00 minus \$150.00 that I do get credit for, which I am grateful for, but I'm a single mom. And I represent a lot of people that are just making a certain amount too much but not getting the assistance that we need. Now, I'm a kindergarten teacher here at Salazar Elementary and I'm bilingual, and there's no teachers available so I have almost 30 children in my classroom. Now, I am unable to make my bills because my child care is \$995.00 but minus the \$150.00 now. I'm still unable to make my rent, my bills, my student loan as a public school teacher. Now, I get, I get about the top end salary as a school teacher here in Santa Fe. But the pay is, but the cost of living in Santa Fe is exorbitant as all of you know. And I make too much money to make, to get more assistance, which I'm hoping today that we can take a look at. Making \$3,000 a month and paying almost \$1,000 for childcare is not sustainable. And that a lot of parents are not two parents. There are a lot of single parents. And I could drive to Rio Rancho every day and pay \$1,000 a month but I choose to live here in Santa Fe which is a place that I've moved to. My older daughter just passed away from cancer and I decided to move back to the city that I am from and love. Now, I am hoping that I speak for a lot of people in my situation. And especially me as a school teacher that is part of the community. I am no longer going to be able to, in December, to continue to be a school teacher because I cannot afford preschool and work. Now, if I worked at a fastfood restaurant I would make less money, then I would be able to afford preschool. So it's a double take there. And I'm speaking slower because I know someone's interpreting this in two languages in Sign Language and in Spanish. But my hope is to bring to you today that I know that there's a certain cap on the money. But I really want you to look at where it should be at, because of the costs in Santa Fe, because of people like me that are not making it. Now I've started to work at DoorDash on the weekends, so I can afford childcare. But it makes more sense for me to be a nanny on the weekdays rather than be part of the public schools. Now, I didn't, I, the preschool I chose was the less expensive one and one that I can drop my child off at seven o'clock and pick her up at five because I do work at the public schools all day long.

I hope that those who will be listening to this today because making after, after, after I take all my taxes and all my medical bills it is about \$3,100.00 a month. Now to pay \$1,000.00, one-third of my paycheck is not sustainable. And it is not sustainable for so many people. And I know a lot of school teachers that say "well, I want to go back to work but I can't because I can't afford childcare." So I'm imploring those who are listening, and that can do something about this, is to please change something so that people like myself who do make a certain amount of change, change the salary is what I'm trying to say is because making \$3,000 dollars a month in Santa Fe isn't, is still not sustainable, especially with the considering the rent and food and everything else. So that's my, that's my imploring people today and I hope they will listen and I'm really thankful for any assistance and I know that other people like myself will be as well as single moms. So thank you so much. Gracias por todo.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need. ECECD will continue to review and study subsidy rates to ensure that rates are based on the cost of providing high quality care.

[REDACTED]

[REDACTED]

Comment 8:

Hello, good afternoon everyone. My name is [REDACTED]. I'm an attorney at the New Mexico Center on Law and Poverty. And we partner with many community organizations that have extensive experience working with low-income families in New Mexico to ensure that they have access to services to improve New Mexico's children's lives and the childcare assistance program is critical for, as a support for low income households. We thank ECECD for making important changes to the childcare assistance regulations to improve access to affordable care, childcare, so that parents can have a safe place for their children to be while parents work and also further their education. We support many of the changes that are being made to these regulations. However, we do urge that the department take additional steps to improve the childcare assistance program. As to the matter of eligibility, we asked the department consider expanding the childcare assistance program to allow low income families, regardless of their immigration status, to be eligible for this program through use of state subsidies. This would change, this change would benefit many New Mexicans, many of whom play valuable roles in our state, and also are often the essential workers. We support the addition to exempt, we support the addition to the exempt income section to include graduate and other educational stipends. We support the addition of the term essential worker, but we do ask that the department define the period of economic recovery, just so that we can know what the timeframe is. We support the addition of the section that promotes equal access. We also support the changes that have been made to the application process including the additional of the full list of eligibility verification documents in the, within the regulation. We support the change to include family, friends or neighbors for caregiving, however, we do ask the department consider allowing FFN caregiving upon request and not just in the case of public health emergency. We asked the department removed a section that prohibits that childcare owners and licensees receive childcare subsidy payments. So the section currently prohibits that, but we ask that they be allowed to receive those subsidy payments is that change will benefit hundreds of people in communities who are both providing this valuable resource to people but also need to be able to use childcare assistance. As you know, childcare workers are designated as essential workers and qualify for free childcare, childcare that is funded through ARPA funds. We ask that the department add provisions to ensure that grandparents are exempt from the work or education requirements and can receive childcare systems without having to apply for TANF. Finally, we asked for the department to clarify that benefits continue only if they household returns to approve the activity. So, the regulation language is confusing right now and it seems to contradict itself. It's, we suggest that the revision be made to read something like, "if a client experiences a non-temporary change in activity, the childcare placement agreement will terminate after a 90-day grace period. If a client returns to an approved activity, they will remain eligible for the prior approved 12-month eligibility period." Thank you so much for your time and for letting me comment today.

Department response: Please see ECECD's above responses to the same comments submitted in writing.

[REDACTED]

Comment 9:

Thank you very much. My name is [REDACTED], again from TLC development centers. I was quite moved by the comments by Ms. Martinez being a public-school teacher in Santa Fe. And that goes right along with written comments that I did submit. We're encountering many situations like that. We actually received a contract today with, that was backdated and effective August 1 and the copayment for one of the children is, I believe it was \$556.00 and \$271.00 for the second child, and it's, when we did the math, the difference in the reimbursement from what we would receive from licensing versus the copayment, I believe we're getting 26 cents for that child for the month. And we've encountered many of these in the last couple of months and what we have as an organization and trying to do, especially for the P4 Plus category contracts, is we're manually calculating the cash filling versus what our reimbursement is from the state versus what the copay is and kind of trying to subsidize the family's copayment if you will, because they're completely unaffordable for most families. And I did put some recommendations in the, in the written public comment that I made as far as maybe looking at doing a flat percentage of income. That, that is what is recommended by the Feds in their final rule on the Block Grant and I believe it would be very beneficial. Now of course, you still have to balance the budget. That's totally understandable. And we're trying, our goal is to serve as many families as we can. But, is it serving them if it's unaffordable for them? I just, it's a balancing act that I wouldn't want. I wouldn't wish on anybody because I'm sure it's very complex.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

But that was, oh, and then also sorry, about the provider. Currently, there's the recommend-, the addition that's adding the statement saying that owners or licensees may not receive subsidy for their own child. And that totally goes against the spirit of the block grant. And it would prohibit many, otherwise, qualified people from getting the assistance that they need. Now, we had a discussion in the past two weeks, myself and members of BEFORE and members of the ELAC committee, and just you know, I did a lot of research on it too, because I was confused as to why that language would even be proposed. And it did come up that possibly there's, through the friends and family licensing, that emergency licensing that happened, there's perhaps some people still receiving subsidy for their own child, and that's the only child in care. Now I do agree that that's not acceptable. So I just did recommend changing the language to read, "an owner or licensee may not receive subsidy payments for their own child if their own child is the only child in care." I think that makes it so that it, it gets rid of the people who aren't taking possible advantage and still keeps it available for those who are not. And that, that's it. Thank you so much for your time.

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

[REDACTED]
Comment 10:

Thank you. Again, my name is [REDACTED]. I'm the Executive Director of BEFORE. We represent childcare owners, educators and families relying on childcare assistance in the childcare system. First of all, I would like to make sure that we are getting the celebrations where celebrations are due with the new ECECD department. And the increased reimbursement levels for infant and toddlers have been great, and the removal of the childcare, the child support requirement, but we do have some concerns with the new proposed regulations and the increase in the eligibility levels. We celebrate the increase and we need that, we need to be covering more families. But the US Department of Health and Human Services does recommend that states require, can require family copayments to be no more than 7% of the family's income. I believe we have a lot of work to do when we're coming to the co-, looking at the copays, especially when we're looking at the higher income families who still can't afford childcare and the copays are also proving to be unaffordable. So for example, a family of three, or with three children, so that would be a family of five, making 250% of the federal poverty level is paying almost 16% of their gross income. And a family of 300% of the federal poverty level with three children is paying over 20% of their income on their copays. We find this unaffordable, and we'd like to recommend that the department look at the federal recommendation of no more than 7%. If we look at and review the Child Development Block Grant, there are areas in the, in the block grant where we can, we can check a box, the department can check a box and say that they're looking at the percentage of income in regards to copayment. And they also state that copayment should not be a barrier to families receiving CCDF funds. Therefore, I think in the increased eligibility we need to really approach copayments. Copayments for families, even on the lower end of FPL, are still unaffordable, when we we're charging this much for the first child and then the second child and so on. As well as copayments once they start kicking in again, there's so, copayment in the chart, assisted families and 100% of the federal poverty level. And I don't believe that they should have copayments at all. So I would really like the department to, to look at and address, the copayments and the copayment model as well as the new regulation that is being proposed. The owners and licensees may not receive childcare subsidy payments to provide care for their own children. This will have a drastic impact on registered homes and licensed homes. Many of these places have started their businesses for, you know, because they were with their own children and childcare was unaffordable. And if their income says that they qualify, they should, they should qualify. The children count in the ratios, they are enrolled in the program and they receive the same services. I don't believe that job title such as director in childcare program should make it impossible for them and their children to receive this education and these services. So with that I, I asked that we drop that regulation or completely rethink it for, maybe, it's true intent, which I'm not sure what that is. So, thank you.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Department response: ECECD appreciates the comment but cannot make the requested change at this time with respect to providers receiving subsidies for their own children. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

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EFFECTIVE DATE AND VALIDITY OF RULE FILINGS

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is the records center and published in the New Mexico Register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be of publication in the New Mexico register." Section 14-4-5 NMSA 1978

A = Amended, E = Emergency, N = New, R = Repealed, Rn = Renumbered

Childhood Education and Care Department

- 8.15.2 NMAC A Requirements for Child Care Assistance Programs for Clients and Child Care Providers — pdf version
- 8.16.2 NMAC A Child Care Center, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs — pdf version
- 8.17.2 NMAC A Requirements Covering Registration of Non-Licensed Family Child Care Homes — pdf version

Home Inspectors Board

- 16.66.1 NMAC A General Provisions — pdf version
- 16.66.3 NMAC A Applications and Licenses — pdf version
- 16.66.7 NMAC A Standards of Practice — pdf version

Human Services Department

Child Support Enforcement Division

- 8.50.100 NMAC A General Provisions — pdf version
- 8.50.106 NMAC A Location — pdf version
- 8.50.107 NMAC A Determination of Parentage — pdf version
- 8.50.108 NMAC A Establishment and Modification of Support Order — pdf version
- 8.50.109 NMAC A Medical Support — pdf version

8.50.110 NMAC	A	Income Withholding — pdf version
8.50.111 NMAC	A	General Enforcement of Support Obligations — pdf version
8.50.112 NMAC	A	Administrative Enforcement of Support Obligations — pdf version
8.50.114 NMAC	A	Financial Institution Data Match (FIDM) — pdf version
8.50.125 NMAC	A	Fees, Payments, and Distributions — pdf version
8.50.130 NMAC	A	Administrative Hearings — pdf version

Public Education Department

6.64.11 NMAC	R	TESOL Competencies — pdf version
6.64.11 NMAC	N	TESOL Competencies — pdf version

Regulation and Licensing Department

Athletic Trainers Practice Board

16.3.9 NMAC	R	Disciplinary Proceedings — pdf version
16.3.9 NMAC	N	Disciplinary Proceedings — pdf version
16.3.1 NMAC	A	General Provisions — pdf version
16.3.2 NMAC	A	Scope of Practice — pdf version
16.3.4 NMAC	A	Initial Licensing Requirements — pdf version
16.3.6 NMAC	A	Examinations — pdf version
16.3.7 NMAC	A	Annual Renewal of License — pdf version
16.3.10 NMAC	A	Emergency Licensure — pdf version
16.3.11 NMAC	A	Licensure for Military Service Members, Spouses, Dependent Children and Veterans — pdf version

Cannabis Control Division

16.8.6 NMAC	N/E	Health and Safety, Food and Product Safety, Environmental Impacts, and Natural Resources — pdf version
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16.8.2 NMAC	A/E	Licensing and Operational Requirements for Cannabis Establishments — pdf version

Superintendent of Insurance, Office of the

13.21.1 NMAC	R	General Provisions — pdf version
13.21.2 NMAC	R	Qualifications and Admissions — pdf version
13.21.1 NMAC	N	General Provisions — pdf version
13.21.2 NMAC	N	Qualifications and Admissions — pdf version
13.21.5 NMAC	N	Surcharge Rate Hearings — pdf version
13.21.3 NMAC	A	Procedural Rules for Public Rule Hearings — pdf version
13.21.4 NMAC	A	Administrative Hearings — pdf version

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

Issuing agency name and address: Agency DFA code:

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

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

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):

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

Are there any materials incorporated by reference?
Yes No

Please list attachments or Internet sites if applicable.

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

Specific statutory or other authority authorizing rulemaking:

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

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Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of the rule making is to promulgate permanent amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective July 1, 2021, and August 1, 2021, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, along with the federal Child Care Development Fund (CCDF) grant, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico and ensure continued federal funding. Those amendments, along with additional necessary changes, are now being made permanent without any additional amendments after the department's review and consideration of all written and oral comments received during the public comment period.

Reasons for not accepting substantive arguments made through public comment: See attached document.

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

Name:

Elizabeth Groginsky

Check if authority has been delegated

Title:

Cabinet Secretary, ECECD

Signature: (BLACK ink only OR Digital Signature)



Date signed:

11/23/21

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Written Comments submitted prior to the October 28, 2021, public hearing

Comment 1:

I would like to state the impact that the recent rule changes have had on my family.

I left a physically abusive marriage, and initially I had no job or income and was living with my children in my mom's house after I separated. I got a job and was able to live on my own with my kids, but my income was still not enough to cover all my expenses, including legal fees for my divorce.

Over the past year, I have been able to save some money in a college savings account for my kids due to the fact that I didn't need to pay my son's daycare co-payment. I never dreamed that I would be able to set aside money for my kids' college when I could barely pay for everyday expenses. This last year has allowed us to look to the future, instead of being trapped.

I hope more families, especially single mothers, can have the same experience and that these policies are made permanent.

Thank you.

Department response: ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

Comment 2:

The increases that were given were a great help. We have many school age children and feel that those children should of also relieved an increase. That age group requires lots of time and materials, replaced due to use and breakage. I hope they look at this a bit closer. Thank you.

Department response: ECECD appreciates the comment and will continue to make improvements to New Mexico's early childhood system to ensure all children have access to high quality care.

Department response: New Mexico's latest rate increases, including those for school age children, were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. ECECD will continue to review and study subsidy rates to ensure that rates are based on the cost of providing high quality care.

Note: The Department received comments from different individuals at this provider's office, and they are consolidated here.

Comment 3:

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TLC Development Centers has been serving low income New Mexican families for over 20 years. Currently we have 7 locations across 3 counties in New Mexico. In September of 2021, we served 371 children receiving child care assistance. Pre-COVID, our average was approximately 560 per month. Historically, our centers collected roughly 40% of total family copayments each month. This has always caused us to operate on a shoestring budget. This year, with co-payments being waived by the department, we're finally able to feel a little bit of financial 'breathing room'. We've issued extra bonuses to our teachers, increased hourly wages (above the minimum wage increases), provided tons of PPE for staff and children, and more. We thank you very much! Our primary concern is: What will happen July 1, 2022? The copayments we're seeing on the contracts - though waived right now - are going to be even higher and more unaffordable when minimum wage goes up again. We fully understand the need to balance the budget - and certainly the desire to serve more families with limited funds. The cost/benefit analysis just seems a bit off balance from a co-payment standpoint. 2 Please accept our attached public comments in reference to NMAC 8.15.2. Thank you

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Please accept the following comments on the proposed revisions for 8.15.2 NMAC:

Affordability 8.15.2.13 B, 8.15.2.13 B (1), 8.15.2.13 B (2) The current co-payment methodology is not affordable for families. From the CCDF Final Rule: We establish a new Federal benchmark for affordable family co-payments of seven percent of family income and allow Lead Agencies more flexibility to waive co-payments for vulnerable families. (Federal Register / Vol. 81, No. 190 / Friday, September 30, 2016 / Rules and Regulations 67440) Currently, a single parent with 2 children will pay 10.36% of their gross income at 200% FPL. With 3 children, it jumps up to 12.21%. 13% for 4 children and 13.37% for 5 children. This is far above the federal benchmark of 7% and highlights the fact that the current co-payment methodology is not affordable for families. The Child Care and Development Fund Plan for New Mexico for FFY 2022-24 requires Lead Agencies to establish and periodically revise a sliding-fee scale for CCDF families that varies based on income and the size of the family to determine each family's contribution (i.e., co-payment) that is not a barrier to families receiving CCDF funds (658E(c)(5)). 3.2.2 Gives options for calculating the co-payments. The best of which is 3.2.2 b v – The fee is a percent of income, and the fee is per family. Given that the CCDF Final Rule sets a 7% benchmark, it seems logical that this should be the standard for New Mexican families.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Stricken Language: 8.15.2.13 E The co-payment for a child shall not exceed the base monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the base monthly provider reimbursement rate. This language should remain in regulation (with the addition of 'base') if the copayment calculation is not changed. Otherwise, this becomes a barrier to accessing quality. A family could have a higher copayment by attending a higher star level program. Removing the language as proposed; or leaving the language in without adding 'base', does not meet the objectives of these regulations or the spirit of the CCBDG Act.

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Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates. With respect to 8.15.2.13(E) NMAC, the department is removing this section as it is an administrative burden to implement.

Clarification Required: 8.15.2.13 E (2) A client must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income. Will the SMI tables be published to ensure clients are able to meet this requirement? Currently, a family of 4 is at 86.27% of SMI at maximum income level for 200% FPL. A family of 5 is at 93.28% of SMI. 250% FPL puts families of 2 @ 104.09% of SMI, families of 3 @ 116.59%, families of 4 @ 126.58% and families of 5 @ 137.17%. These calculations do not take into account typical family expenses such as housing, food, health care, diapers, transportation, etc., as required by the CCDF Final Rule (Federal Register / Vol. 81, No. 190 / Friday, September 30, 2016 / Rules and Regulations 67467). Will the department revise the income guidelines to allow for standard deductions similar to LIHEAP and SNAP as suggested by the CCDF Final Rule?

Department response: ECECD appreciates the comment and understands it to reference 8.15.2.13(F)(2) NMAC. ECECD proposed this change in order to comply with federal CCDF requirements to include the language proposed. While CCDF requires this provision in regulation, ECECD will not penalize any client who fails to comply with this provision. In addition, state funds are available for those individuals whose median income exceeds eighty-five percent of the state medium income. Finally, at this time ECECD does not have any plans to additionally revise the income guidelines but will continue to review and monitor the issue.

8.15.2.15 E (1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. [The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.] The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC. 'And child and family activities' must be stricken. This contradicts the next item in regulation: 8.15.2.15 E (2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families. We recommend adding: In addition, providers may charge reasonable fees for transportation to and from schools for school aged children, provided the cost does not exceed that charged to private pay families. The ability to charge reasonable transportation fees allows providers to recoup some of the extra costs that this imposes on the program. These are services that many working parents need and can be very costly to programs. The rates for school aged children effectively went down by \$0.27/ month with the stricken language as proposed in 8.15.2.15 E (1).

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. Transportation expenses were taken into consideration in the cost estimation model and therefore, ECECD will not add the recommended language. Further, the language in 8.15.2.15 NMAC does not contradict itself and, other than removing the five dollar monthly education

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fee and adding language about the cost estimation model, the department did not add or remove the referenced requirements in regulation.

8.15.2.15 G Owners and licensees may not receive child care subsidy payments to provide care for their own children. This language directly violates the spirit of the CCDBG Act. This would prevent access to many otherwise qualified families. We recommend changing the language to read: "Owners and licensees may not receive child care subsidy payments to provide care for their own children if they are the only children in care."

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

8.15.2.17 C The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC. 'And child and family activities' must be stricken.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. "Child and family activities" were taken into consideration in the cost estimation model and therefore, ECECD will not make the recommended change.

Notable Discrepancies: 8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department. [8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 10/1/2016] The Department is now New Mexico Early Childhood Education and Care Department. Children, youth and families department or CYFD is also cited in the following: 8.15.2.7 C (1), 8.15.2.7 D (2), 8.15.2.7 N (1), 8.15.2.7 N (1) (b) (this information is no longer relevant and should be stricken), 8.15.2.9 A (1), 8.15.2.9 A (2), 8.15.2.11 C (5), 8.15.2.11 C (6), 8.15.2.17 I, 8.15.2.17 I (1), 8.15.2.17 I (1) (a) (this information is no longer relevant and should be stricken), 8.15.2.17 I (1) (b), 8.15.2.17 I Providers holding and maintaining CYFD a department approved national accreditation status will receive the differential rate listed in Subsection I Subsection J below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family CYFD should be changed to 'a department'. Subsection I should be changed to subsection J 8.15.2.7 N (1) (b) This information is no longer relevant and should be stricken. 8.15.2.17 I (1) This information is no longer relevant and should be stricken. 8.15.2.17 I (1) (a) This information is no longer relevant and should be stricken.

Department response: Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the

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licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

[REDACTED]

Comment 4:

My name is [REDACTED], I have taken an hour off from my work (I am a school teacher) and I have a very important case to make about child care as a single mother. I am hoping to speak between 1-2 today because I only have one hour of coverage for my classroom. As a single emom a school teacher I was only granted 150 dollars for help, but I am unable to pay for rent bills , still due to the guidelines and the parameters of the salary. It's imperative that I speak and make a case today for the workers like myself who are suffering due to preschool for our children. Thank you so much again. My name is [REDACTED] and I will be joining via zoom, from Salazar elementary school. [REDACTED]

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need.

[REDACTED]

Comment 5:

Unaffordable co-pays for child care are going to set the clock back on all the strides that have been made for children's welfare and early education. We again are going to see latch key kids. Older siblings in the role of caregivers. Single and even double income families are going to have some tough decisions to make. Universal Child care... at the very least birth to five should be available to all families.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need.

[REDACTED]

Comment 6:

To Whom it May Concern:

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Please accept the following comments on the proposed revisions to 8.15.2 NMAC regarding the New Mexico Early Childhood Education & Care Department (ECECD) child care assistance program. The undersigned organizations have extensive experience working with low-income families in New Mexico to ensure they have access to services that improve the lives of our state's children. We pay particular attention to the child care assistance program as it is a critical work support for low-income households. We have first-hand experience assisting families in accessing child care in New Mexico. We are hopeful that the new department, ECECD, will bring about increased access to much-needed child care and continue to work toward removing administrative barriers that prevent eligible families from receiving assistance.

We thank ECECD for making these important changes to the Child Care Assistance Regulations. The proposed changes improve access to affordable childcare that parents can trust to provide a safe space for their children to learn while they work to further their education and to support their families. Child care assistance allows parents to work toward attaining economic security for their family, and it provides a safe learning environment for New Mexico's children. While we support the proposed rules, we urge the Department to take the additional steps outlined below and promulgate a final rule which incorporates our specific suggestions.

Eligibility

As to the matter of eligibility, we ask that the Department consider expanding the child care assistance program to all low income families, regardless of their immigration status, through the use of state subsidies. This change would benefit many New Mexicans who play valuable roles in our state and are often essential workers.

Department response: ECECD appreciates the comment and will look into expanding eligibility for all low income families in New Mexico, regardless of immigration status, if additional state and/or federal funds become available. ECECD made recent regulation changes to support immigrants seeking child care by updating its definition of a "qualified immigrant" in order to ensure all qualified immigrants and refugees can apply for and receive child care subsidies.

I. Regulation Changes We Support**A. Section 8.15.2.10- We support the additions to the application process. 2**

We support all of the changes to this section, including the addition of the full list of eligibility verification documents to the regulation. This list is a complete list of the documents that the Department requires.

B. Section 8.15.2.11 (C)(6)- We support the addition to exempt income.

The Department's proposal to exempt the income of graduate and other educational stipends aligns with the purposes of the CDBG Act to provide access to children to quality child care and recognizes the economic realities of parents who are furthering their education. We support this proposal and thank the Department for addressing this issue.

C. Section 8.15.2.15 (I)- We support this addition promoting equal access.

We thank and support the Department for adding this section to prohibit discrimination and explicitly state that providers must provide equal access to children and families. We commend the Department for taking into consideration the diversity of our state and ensuring that all New Mexicans have equal access to these services.

Department response: ECECD appreciates the comment and your participation in this process.

II. Regulations We Recommend Changing

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A. One general suggestion is related to **Section 8.15.2.7 (D)(2), (N)(1)-(b); 8.15.2.11(C)(5)-(6); 8.15.2.15 (F), 8.15.2.17 (I)-(I)(1)(b)- Change the Department Name to ECECD**

All of these sections of the regulation continue to refer to the Department as "CYFD." We ask that the change be made so that the department in the regulation is ECECD. Thank you to the Department for making this minor change to match the new Department as the issuing agency.

Department response: Thank you for your comment. Currently, ECECD does not have the statutory authority to make these amendments in regulation even though it possesses the authority to enforce them. ECECD is planning on addressing this issue during the 2022 New Mexico legislative session and introducing an authorization bill to make such changes and give ECECD the statutory authority to replace the words "Children, Youth and Families Department" or "CYFD" with "Early Childhood Education and Care Department" or "ECECD." The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated pursuant to the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, which ECECD will seek to amend to provide it the proper statutory authority to make the change in regulation.

B. **Section 8.15.2.7(P)(7)- Permit the Use of Family, Friends or Neighbors upon request.**

We support the proposed change, however, we ask that the Department consider allowing FFN Caregiving upon request, not only in the case of a public health emergency. This is permitted under federal law, is the type of care that some parents choose and need, and it opens the door to connect FFN providers with supports that can help them provide quality care.

Department response: ECECD appreciates the comments but cannot expand the FFN program at this time. During the COVID-19 pandemic, ECECD had received a waiver from the federal Office of Child Care (OCC) to implement FFN. That waiver expired in September 2021. Other than FFN, ECECD also offers the registration of non-licensed homes through 8.17.2 NMAC in order to offer home providers an option to care for 4 children or less. This registration option is analogous to what many other states consider an FFN program.

C. **Section 8.15.2.15 (G)- Allow licensed providers to receive benefits for their own children.**

We ask that the Department remove this section prohibiting that child care owners and licensees receive child care subsidy payments. This change will benefit hundreds of people in the community who are providing a valuable resource to the community and also need to use this resource. We know that there is currently a large child care workers shortage.¹ This type of support for child care workers would help not only those workers but would help other people be able to return to work in essential jobs, and all jobs, by supporting the people who can care for their children. As you know, child care workers are designated as essential workers and qualify for free child care funded by ARPA funds.

¹ Heather Long, *'The pay is absolute crap': Child-care workers are quitting rapidly, a red flag for the economy*, Washington Post (Oct. 27, 2021, 3:34 AM),

<https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>.

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

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D. Section 8.15.2.11(C) NMAC – Add provisions that ensure grandparents are exempt from the work or education requirement and can receive child care assistance without having to apply for TANF.

The Department should make additional changes to ensure that children being raised by grandparents have access to care. The proposed regulations specify that only grandparents who are legal guardians must qualify under the program's income limits and when they qualify, can have their co-payments waived. This is a positive change that we support. However, grandparents who are retired should not be subject to the work or educational requirements for child care. Current New Mexico law for the TANF cash assistance recognizes this and does not impose a work requirement on participants who are 60 or older.² In its final regulation, we ask the Department to amend its rules to allow for waiving the work or educational requirement for grandparents raising grandchildren.

² NMSA 1978 §27-2B-5(I)(2); 8.102.420.11(A)(1) NMAC.

³ 8.102.400.11 NMAC.

⁴ 8.15.2.9(A) NMAC.

Additionally, when grandparents are the legal guardians of the children and do work, their income should not be counted towards the eligibility limit. Again, the TANF cash assistance program also provides that grandparents can participate in that program regardless of income level.³ Current child care assistance regulations provide that TANF families are eligible for child care regardless of income level.⁴ However, we should not ask grandparents to apply for and participate in TANF to qualify for child care assistance. Instead, the Department should mirror the child care regulations to reflect the TANF program, and qualify children being raised by grandparents without regard to income.

Department response: ECECD appreciates the comment but cannot amend the regulations to allow for grandparents to receive child care subsidies without a qualifying activity, such as work or educational activities, as the federal CCDF grant does not permit funds to be spent in such a manner. ECECD could use federal CCDF funds to pay for child care for grandparents if it deemed those children "at-risk." ECECD will continue to monitor the situation and will revisit this issue in the future if necessary.

E. 8.15.2.7 (E)(2), (J)- We support the addition of the "Essential worker" definition and the addition to the definition of "Job training and educational program."

We commend the department for defining "Essential worker" as that term describes members of our community who are keeping our economy going during the public health emergency and need support to continue to do their jobs. While we support this addition, it is unclear as to what is the "period of economic recovery," is there a timeframe after the public health emergency that benefits will be extended for essential workers? We propose XX months.

Department response: ECECD appreciates the comment and support of its decision to provide additional subsidies for "essential workers." ECECD could not define the time-frame for a "period of economic recovery" in regulation at this time as the economic conditions are fluid amid continued outbreaks of COVID-19 and the related consequences. In addition, it appears that the suggested time frame for a "period of economic recovery" was not included in the comment (see "XX months") and ECECD cannot respond adequately.

We also support and thank the Department for including graduate and post graduate programs or classes in the definition of eligible training and educational programs.

Department response: ECECD appreciates the comment and your participation in the public comment process.

F. Section 8.15.2.11(B)(5) - Clarify that benefits continue only if a household returns to an approved activity

This regulatory language on eligibility is confusing and seems to contradict itself. We suggest revising this section to read as follows:

(5) If a client experiences a non-temporary change in activity, the child care placement agreement will terminate after a 90-day grace period; however, if the client returns to an approved activity they will remain eligible for the prior approved 12-month eligibility period.

Department response: ECECD appreciates the comment but cannot make further amendments to this section. ECECD added this provision as it is required under the current federal CCDF plan. Further, and with all due respect, ECECD does not agree that the language contradicts itself. A "child care placement agreement" is different from the "eligibility period" insofar as the eligibility period always last for a one year period. A client can obtain a new placement agreement anytime during that one year period so long as the client has a qualifying activity.

Conclusion

We thank the Department for its commitment to making childcare more accessible and affordable for New Mexico's families. While we support all the changes, we ask the Department to include our suggested amendments in the final rule for the reasons discussed above.

Oral Comments received during the NMAC 8.15.2 public hearing Thursday, October 28, 2021.

[REDACTED]

Comment 7:

My name is [REDACTED] and I'm a Preschool teacher at Salazar Elementary School. I'm representing myself. I have a three year old daughter and have applied for ECECD, ECS grant to help me with child care and I would like to speak on that issue because I only got about \$100.00 dollars of assistance and it's not helping me as a single mom. So I'm really concerned about the child care aspect of this whole initiative. So that's why I'm speaking today, but I feel like I'm speaking on behalf of many people that are in my situation. So, I hope I get to speak today. So. Right now I can speak? Oh great because I have a child, I have coverage for my classroom. I moved here and I'm actually originally from Albuquerque, but I moved with my two daughters, and I have a three-year-old and a 12 year old and I am a public school teacher. I've been teaching for almost 20 years. I applied for preschool assistance. After all of my taxes come out, my retirement, my social security and medical care; I get about \$3,100.00 take home pay a month. Considering what the prices are in Santa Fe to rent a one bedroom and a two bedroom is about \$1,700.00, \$1,800.00. And that's about what I'm paying. Now also, the childcare for preschool, and this the low end, he's about \$900.00. So that's about what I'm paying now and I did apply because they-and-did, encourage me, to apply for an ECECD grant. And I got about \$150.00 worth of assistance. So, I'm looking at my, I'm looking at my,

my money that I'm expending out as \$1,700.00 for, for rent, \$995.00 minus \$150.00 that I do get credit for, which I am grateful for, but I'm a single mom. And I represent a lot of people that are just making a certain amount too much but not getting the assistance that we need. Now, I'm a kindergarten teacher here at Salazar Elementary and I'm bilingual, and there's no teachers available so I have almost 30 children in my classroom. Now, I am unable to make my bills because my child care is \$995.00 but minus the \$150.00 now. I'm still unable to make my rent, my bills, my student loan as a public school teacher. Now, I get, I get about the top end salary as a school teacher here in Santa Fe. But the pay is, but the cost of living in Santa Fe is exorbitant as all of you know. And I make too much money to make, to get more assistance, which I'm hoping today that we can take a look at. Making \$3,000 a month and paying almost \$1,000 for childcare is not sustainable. And that a lot of parents are not two parents. There are a lot of single parents. And I could drive to Rio Rancho every day and pay \$1,000 a month but I choose to live here in Santa Fe which is a place that I've moved to. My older daughter just passed away from cancer and I decided to move back to the city that I am from and love. Now, I am hoping that I speak for a lot of people in my situation. And especially me as a school teacher that is part of the community. I am no longer going to be able to, in December, to continue to be a school teacher because I cannot afford preschool and work. Now, if I worked at a fastfood restaurant I would make less money, then I would be able to afford preschool. So it's a double take there. And I'm speaking slower because I know someone's interpreting this in two languages in Sign Language and in Spanish. But my hope is to bring to you today that I know that there's a certain cap on the money. But I really want you to look at where it should be at, because of the costs in Santa Fe, because of people like me that are not making it. Now I've started to work at DoorDash on the weekends, so I can afford childcare. But it makes more sense for me to be a nanny on the weekdays rather than be part of the public schools. Now, I didn't, I, the preschool I chose was the less expensive one and one that I can drop my child off at seven o'clock and pick her up at five because I do work at the public schools all day long.

I hope that those who will be listening to this today because making after, after, after I take all my taxes and all my medical bills it is about \$3,100.00 a month. Now to pay \$1,000.00, one-third of my paycheck is not sustainable. And it is not sustainable for so many people. And I know a lot of school teachers that say "well, I want to go back to work but I can't because I can't afford childcare." So I'm imploring those who are listening, and that can do something about this, is to please change something so that people like myself who do make a certain amount of change, change the salary is what I'm trying to say is because making \$3,000 dollars a month in Santa Fe isn't, is still not sustainable, especially with the considering the rent and food and everything else. So that's my, that's my imploring people today and I hope they will listen and I'm really thankful for any assistance and I know that other people like myself will be as well as single moms. So thank you so much. Gracias por todo.

Department response: ECECD appreciates the comment. New Mexico's latest rate increases were informed by a cost estimation model with extensive statewide stakeholder engagement and input. ECECD developed this cost estimation model in collaboration with fiscal experts and local stakeholders to set child care subsidy rates at a level that supports the true cost of delivering high quality early childhood services. While ECECD understands the struggles that working families and parents face, it also must make important policy decisions with limited funds amid great need. ECECD will continue to review and study subsidy rates to ensure that rates are based on the cost of providing high quality care.



Comment 8:

Hello, good afternoon everyone. My name is [REDACTED]. I'm an attorney at the New Mexico Center on Law and Poverty. And we partner with many community organizations that have extensive experience working with low-income families in New Mexico to ensure that they have access to services to improve New Mexico's children's lives and the childcare assistance program is critical for, as a support for low income households. We thank ECECD for making important changes to the childcare assistance regulations to improve access to affordable care, childcare, so that parents can have a safe place for their children to be while parents work and also further their education. We support many of the changes that are being made to these regulations. However, we do urge that the department take additional steps to improve the childcare assistance program. As to the matter of eligibility, we asked the department consider expanding the childcare assistance program to allow low income families, regardless of their immigration status, to be eligible for this program through use of state subsidies. This would change, this change would benefit many New Mexicans, many of whom play valuable roles in our state, and also are often the essential workers. We support the addition to exempt, we support the addition to the exempt income section to include graduate and other educational stipends. We support the addition of the term essential worker, but we do ask that the department define the period of economic recovery, just so that we can know what the timeframe is. We support the addition of the section that promotes equal access. We also support the changes that have been made to the application process including the additional of the full list of eligibility verification documents in the, within the regulation. We support the change to include family, friends or neighbors for caregiving, however, we do ask the department consider allowing FFN caregiving upon request and not just in the case of public health emergency. We asked the department removed a section that prohibits that childcare owners and licensees receive childcare subsidy payments. So the section currently prohibits that, but we ask that they be allowed to receive those subsidy payments is that change will benefit hundreds of people in communities who are both providing this valuable resource to people but also need to be able to use childcare assistance. As you know, childcare workers are designated as essential workers and qualify for free childcare, childcare that is funded through ARPA funds. We ask that the department add provisions to ensure that grandparents are exempt from the work or education requirements and can receive childcare systems without having to apply for TANF. Finally, we asked for the department to clarify that benefits continue only if they household returns to approve the activity. So, the regulation language is confusing right now and it seems to contradict itself. It's, we suggest that the revision be made to read something like, "if a client experiences a non-temporary change in activity, the childcare placement agreement will terminate after a 90-day grace period. If a client returns to an approved activity, they will remain eligible for the prior approved 12-month eligibility period." Thank you so much for your time and for letting me comment today.

Department response: Please see ECECD's above responses to the same comments submitted in writing.

Comment 9:

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Thank you very much. My name is [REDACTED], again from TLC development centers. I was quite moved by the comments by Ms. Martinez being a public-school teacher in Santa Fe. And that goes right along with written comments that I did submit. We're encountering many situations like that. We actually received a contract today with, that was backdated and effective August 1 and the copayment for one of the children is, I believe it was \$556.00 and \$271.00 for the second child, and it's, when we did the math, the difference in the reimbursement from what we would receive from licensing versus the copayment, I believe we're getting 26 cents for that child for the month. And we've encountered many of these in the last couple of months and what we have as an organization and trying to do, especially for the P4 Plus category contracts, is we're manually calculating the cash filling versus what our reimbursement is from the state versus what the copay is and kind of trying to subsidize the family's copayment if you will, because they're completely unaffordable for most families. And I did put some recommendations in the, in the written public comment that I made as far as maybe looking at doing a flat percentage of income. That, that is what is recommended by the Feds in their final rule on the Block Grant and I believe it would be very beneficial. Now of course, you still have to balance the budget. That's totally understandable. And we're trying, our goal is to serve as many families as we can. But, is it serving them if it's unaffordable for them? I just, it's a balancing act that I wouldn't want. I wouldn't wish on anybody because I'm sure it's very complex.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

But that was, oh, and then also sorry, about the provider. Currently, there's the recommend-, the addition that's adding the statement saying that owners or licensees may not receive subsidy for their own child. And that totally goes against the spirit of the block grant. And it would prohibit many, otherwise, qualified people from getting the assistance that they need. Now, we had a discussion in the past two weeks, myself and members of BEFORE and members of the ELAC committee, and just you know, I did a lot of research on it too, because I was confused as to why that language would even be proposed. And it did come up that possibly there's, through the friends and family licensing, that emergency licensing that happened, there's perhaps some people still receiving subsidy for their own child, and that's the only child in care. Now I do agree that that's not acceptable. So I just did recommend changing the language to read, "an owner or licensee may not receive subsidy payments for their own child if their own child is the only child in care." I think that makes it so that it, it gets rid of the people who aren't taking possible advantage and still keeps it available for those who are not. And that, that's it. Thank you so much for your time.

Department response: ECECD appreciates the comment but cannot make the requested change at this time. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

[REDACTED]
Comment 10:

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Thank you. Again, my name is [REDACTED]. I'm the Executive Director of BEFORE. We represent childcare owners, educators and families relying on childcare assistance in the childcare system. First of all, I would like to make sure that we are getting the celebrations where celebrations are due with the new ECECD department. And the increased reimbursement levels for infant and toddlers have been great, and the removal of the childcare, the child support requirement, but we do have some concerns with the new proposed regulations and the increase in the eligibility levels. We celebrate the increase and we need that, we need to be covering more families. But the US Department of Health and Human Services does recommend that states require, can require family copayments to be no more than 7% of the family's income. I believe we have a lot of work to do when we're coming to the co-, looking at the copays, especially when we're looking at the higher income families who still can't afford childcare and the copays are also proving to be unaffordable. So for example, a family of three, or with three children, so that would be a family of five, making 250% of the federal poverty level is paying almost 16% of their gross income. And a family of 300% of the federal poverty level with three children is paying over 20% of their income on their copays. We find this unaffordable, and we'd like to recommend that the department look at the federal recommendation of no more than 7%. If we look at and review the Child Development Block Grant, there are areas in the, in the block grant where we can, we can check a box, the department can check a box and say that they're looking at the percentage of income in regards to copayment. And they also state that copayment should not be a barrier to families receiving CCDF funds. Therefore, I think in the increased eligibility we need to really approach copayments. Copayments for families, even on the lower end of FPL, are still unaffordable, when we we're charging this much for the first child and then the second child and so on. As well as copayments once they start kicking in again, there's so, copayment in the chart, assisted families and 100% of the federal poverty level. And I don't believe that they should have copayments at all. So I would really like the department to, to look at and address, the copayments and the copayment model as well as the new regulation that is being proposed. The owners and licensees may not receive childcare subsidy payments to provide care for their own children. This will have a drastic impact on registered homes and licensed homes. Many of these places have started their businesses for, you know, because they were with their own children and childcare was unaffordable. And if their income says that they qualify, they should, they should qualify. The children count in the ratios, they are enrolled in the program and they receive the same services. I don't believe that job title such as director in childcare program should make it impossible for them and their children to receive this education and these services. So with that I, I asked that we drop that regulation or completely rethink it for, maybe, it's true intent, which I'm not sure what that is. So, thank you.

Department response: ECECD appreciates the comment and is studying potential options with respect to co-payment rates.

Department response: ECECD appreciates the comment but cannot make the requested change at this time with respect to providers receiving subsidies for their own children. The federal CCDF grant, as created by the CCDBG Act, requires that the recipients of federal child care subsidies, such as child care providers, not be a "direct beneficiary" of CCDF funds. As such, this amendment is required by CCDF and child care providers cannot receive subsidies for their own children. Child care providers, however, are still eligible to receive the child care subsidy through a *different* provider if they otherwise qualify for the subsidy.

FINAL RULE

TITLE 8 SOCIAL SERVICES
CHAPTER 15 CHILD CARE ASSISTANCE
PART 2 REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 10/1/2016]

8.15.2.2 SCOPE: This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility for child care assistance benefits. (See 8.15.2.8 NMAC for detailed list.)
[8.15.2.2 NMAC - Rp, 8.15.2.2 NMAC, 10/1/2016]

8.15.2.3 STATUTORY AUTHORITY: NMSA section 9-2A-7 (1991).
[8.15.2.3 NMAC - Rp, 8.15.2.3 NMAC, 10/1/2016]

8.15.2.4 DURATION: Permanent
[8.15.2.4 NMAC - Rp, 8.15.2.4 NMAC, 10/1/2016]

8.15.2.5 EFFECTIVE DATE: October 1, 2016, unless a later date is cited at the end of section.
[8.15.2.5 NMAC - Rp, 8.15.2.5 NMAC, 10/1/2016]

8.15.2.6 OBJECTIVE:

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

B. To establish child care assistance rates in accordance with the requirements of the Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF), which is the primary federal funding source of child care assistance to enable parents to work or pursue education and training so that they may better support their families while at the same time promoting the learning and development of their children. The CCDBG requires every state to submit an updated CCDF plan every three years. A key requirement of the CCDBG Act is that lead agencies establish subsidy payment rates that ensure equal access to child care for children receiving child care assistance. States have two options to establish subsidy payment rates that ensure equal access: lead agencies must collect and analyze data through either a statistically valid and reliable market rate survey, or through an ACF pre-approved alternative methodology, such as a cost estimation model. New Mexico's rates, as set forth herein, and effective July 1, 2021 were informed by a cost estimation model and with extensive statewide stakeholder engagement. This new cost estimation model was developed in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico's children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

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

[8.15.2.6 NMAC - Rp, 8.15.2.6 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.15.2.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1) "Attending a job training or educational program" means actively participating in an

in-person or online job training or educational program.

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

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

C. Terms beginning with the letter “C”:

(1) **“CACFP”** means the child and adult care food program, administered by the children, youth and families department.

(2) **“Child with a disability or special needs”** means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

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

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

(5) **“Co-payment”** means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department’s payment to the provider is reduced by the co-payment amount.

D. Terms beginning with the letter “D”:

(1) **“Demonstration of incapacity”** means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician’s/medical professional’s/treatment provider’s letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

(2) **“Department”** means the New Mexico children, youth and families department (CYFD).

E. Terms beginning with the letter “E”:

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

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

F. Terms beginning with the letter “F”: **“Fluctuation of earnings”** means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earnings the department may:

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

(2) choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

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

H. Terms beginning with the letter “H”:

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

(a) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

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

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

(2) **“Household”** means the household as defined below in Paragraph (1) of Subsection C of 8.15.2.11 NMAC.

(3) **“Household income”** means household income as defined below in Paragraph (3) of Subsection C of 8.15.2.11 NMAC.

I. Terms beginning with the letter “I”:

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

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

- (a) infant: zero - 23 months;
- (b) toddler: 24 -35 months;
- (c) preschool: three to five year olds; and
- (d) school age: six year olds and older.

J. Terms beginning with the letter “J”: **“Job training and educational program”** means participation in a short or long term educational or training program, including online programs that provide specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions. Educational programs include graduate and post graduate programs or classes.

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

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

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

N. Terms beginning with the letter “N”:

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

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

- (i) the association of Christian schools international (ACSI);
- (ii) the council on accreditation (COA) for early childhood education and after school programs;
- (iii) the international Christian accrediting association (ICAA);
- (iv) the national accreditation commission for early care and education programs (NAC);
- (v) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
- (vi) the national association of family child care (NAFCC); or
- (vii) the national early childhood program accreditation (NECPA).

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

(2) **“Non-temporary change in activity”** means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Paragraph (3) of Subsection T of 8.15.2.9 NMAC.

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

O. Terms beginning with the letter “O”:

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

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

P. Terms beginning with the letter “P”: **“Provider types”** means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

- (1) **“In-home”** care means care provided in the child’s own home.
- (2) **“Registered home”** means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance

subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) **“Licensed family child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) **“Licensed group child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) **“Out-of-school time care”** means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

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

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

R. Terms beginning with the letter “R”:

(1) **“Recertification”** means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

(2) **“Registration/educational fee”** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

S. Terms beginning with the letter “S”:

(1) **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

(2) **“SNAP”** means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

(3) **“Special supervision”** means the special supervision for child(ren) as defined below in Subsection G of 8.15.2.11 NMAC.

(4) **“Star level”** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

(5) **“Suspension”** means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

T. Terms beginning with the letter “T”:

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

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

(3) **“Temporary change of activity”** means one of the following events:

(a) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;

(b) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(c) student holiday or break for a parent or legal guardian participating in training or education;

(d) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and

(e) cessation of work or attendance at a training or education program less than three months.

(4) **“Termination”** means the client’s child care case will be closed due to cause.

U. Terms beginning with the letter “U”:

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

(2) **“Unearned income”** means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, grants and other income which does not meet the definition of earned income.

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

W. Terms beginning with the letter "W": "Working" means employment of any type, including self-employment and teleworking. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

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

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

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

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020; A, 3/1/2021, A/E, 7/1/2021; A, 1/1/2022]

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

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

B. licensed child care programs administered by tribal entities;

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

D. in-home care;

E. licensed child care centers;

F. registered family childcare homes;

G. licensed family and group childcare homes;

H. licensed out of school time programs;

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

J. FFN.

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 10/1/2016; A, 3/1/2021]

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

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

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

(a) the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

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

B. Priority one A: [RESERVED]

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

D. Priority two: Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF whose TANF cases are

closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

E. Priority three: **[RESERVED]**

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

G. Priority four plus: During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below three hundred fifty percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below four hundred percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents. Co-payments for families in priority four plus are not waived. Co-payments for families will be capped at three hundred percent of the federal poverty level.

H. Priority five: In addition to these priorities, the department pays for at-risk child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority.
[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A; 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021; A, 1/1/2022]

8.15.2.10 APPLICATION PROCESS:

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

- (1) a completed signed application form;
- (2) documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.15.2.11 NMAC;
- (3) documentation of the applicant's TANF eligibility or participation, if applicable, and can include applicant's social security number or assigned TANF identification number;
- (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- (6) verification of birth for all applicant's household children;
- (7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;
- (8) verification of custody of children, if applicable;
- (9) verification of dependency of a child or adult household member, if applicable;
- (10) documentation of New Mexico residency;
- (11) identification for parent/guardian; and
- (12) department approved provider.

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

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

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

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

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

D. Assistance is provided effective the first day of the month of application if all of the following apply:

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

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A, 1/1/2022]

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

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

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

- (1) Eligibility may be granted for less than 12 months at the parent or legal guardian's request. The parent or legal guardian will, however, remain eligible for the approved 12-month eligibility period.
- (2) At-risk child care may be granted for less than 12 months as determined by the department.
- (3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.
- (4) The client will remain eligible if a temporary change of activity occurs.
- (5) If a client experiences a non-temporary change in activity, the child care placement

agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

C. Income eligibility determination:

(1) **The household:** The household includes biological parents, stepparents, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit. Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, medical or other treatment, or military service.

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

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

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

(5) **Countable earned and unearned income:** The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; alimony payments; veterans administration (VA) payments except VA payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; workman's compensation; railroad retirement benefits; pensions; royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

(6) **Exempt income:** The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of household dependents; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001"; third party payments; energy assistance benefits; foster care payments; adoption subsidies; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes including graduate and other educational stipends; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or AmeriCorps; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

(7) **Verification of household countable earned and unearned income:** Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current documentation of income for biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

(8) **Calculating income:**

(a) Current income provided to determine eligibility shall be used as an indicator of

the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.15.2.11 NMAC

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

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

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

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

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

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

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

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

G. **Special supervision:** Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

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

I. **Work/education requirement:** Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.12 RECERTIFICATION: Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC. Clients designated as essential workers who recertify must be at or below four hundred percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous child care placement agreement. At time of recertification, clients must provide documentation of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B of 8.15.2.11 NMAC.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021; A/E, 8/1/2021; A, 1/1/2022]

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

A. **Co-payments:** Co-payments are paid by all clients receiving child care assistance benefits, except for at-risk child care and qualified grandparents or legal guardians. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [<https://cyfd.org/child-care-services>]

<https://www.nmececd.org/child-care-assistance/>. In the case of an emergency, or under extenuating circumstances, the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required co-payments.

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

(1) The first child is identified as the child requiring the most hours of child care.

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

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

(1) full time care will be based on one hundred percent of the base co-payment;

(2) part time 1 care will be based on seventy-five percent of the base co-payment;

(3) part time 2 care will be based on fifty percent of the base co-payment; and

(4) part time 3 care will be based on twenty-five percent of the base co-payment.

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

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

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

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

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

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

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

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

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

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021; A; 1/1/2022]

8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

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

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

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

(1) any non-temporary change in activity;

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

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

(4) being disqualified from participation in the program.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

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

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

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

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

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

(1) If the above notification was met, the provider will be paid through the 14th calendar day following the first date of nonattendance.

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

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

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.15.2.21 NMAC.

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

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

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

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

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

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

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

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

and implementing policies and procedures that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).
[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

- A. The department pays child care providers who provide child care services to department clients in a timely manner.
- B. Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.
- C. Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required documentation from the client.
- D. Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.
- E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department.
- F. Child care assistance workers must inform parents or legal guardians of their right to choose their child care providers and provide information on how to look for quality child care in a provider.
- G. The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents or legal guardians and providers.
- H. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent or legal guardian and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents or legal guardians and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

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

- A. When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.
- B. Payment for notification of changes:
 - (1) If a client fails to notify the department within 14 calendar days of their expected last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.
 - (2) If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.
 - (3) If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.
 - (4) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.
- C. The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.
- D. The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the

parent or legal guardian at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care placement agreement covering the certification period.

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

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

F. Hours of care shall be rounded to the nearest whole number.

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$880.00	\$635.00	\$575.00	\$441.00
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$855.00	\$830.00	\$680.00	\$428.00
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$875.00	\$850.00	\$700.00	\$412.00
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$350.00	\$350.00	\$350.00	\$350.00

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

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

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

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

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

Licensed Child Care Centers			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$335.00	\$290.00	\$250.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$640.00	\$550.00	\$350.00	\$250.00

Licensed Family and Group Homes			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$195.00	\$195.00	\$195.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$260.00	\$260.00	\$260.00	\$250.00

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

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

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

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

M. If a significant change occurs in the client's circumstances, (see Subsection F of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

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

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

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

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

[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 10/1/2016; A, 3/1/2021]

8.15.2.19 OVER PAYMENT AND RECOUPMENT: If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

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

[8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 10/1/2016; A, 3/1/2021]

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

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

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

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

D. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current.

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016; A, 3/1/2021; A, 1/1/2022]

8.15.2.22 FAIR HEARINGS: Clients who have been denied benefits, whose benefits have been reduced, terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing

within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

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

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

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

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

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department. If TANF benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp, 8.15.2.22 NMAC, 10/1/2016]

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

[8.15.2.23 NMAC - Rp, 8.15.2.23 NMAC, 10/1/2016]

8.15.2.24 CO-PAYMENT SCHEDULE: The department will develop and publish an annual co-payment schedule based on the federal poverty guidelines.

[8.15.2.24 NMAC - Rp, 8.15.2.24 NMAC, 10/1/2016]

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

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

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

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

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

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

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

E. as requested in a subpoena or subpoena duces tecum.

[8.15.2.25 NMAC - Rp, 8.15.2.25 NMAC, 10/1/2016]

HISTORY OF 8.15.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records B State Records Center and Archives:

ISD CCAP 200, Child Care Assistance Programs, 11/4/1991.

ISD CCAP 300, Hours Of Child Care, 11/4/1991.

ISD CCAP 700, Working Family Child Care Assistance Eligibility, 11/4/1991.

ISD CCAP 800, Income Eligible Child Care Assistance, 2/10/1992.

History of Repealed Material:

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/1999.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/2000.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/2001.

8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 11/01/2002.

8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 2/14/2005.

8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 10/1/2016.