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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

Volume XXXVI, Issue 21

November 4, 2025

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Notices of Rulemaking and Proposed Rules

HEALTH CARE AUTHORITY

NOTICE OF RULEMAKING

The New Mexico Health Care Authority (HCA), through the Medical Assistance Division (MAD), is proposing to repeal the New Mexico Administrative Code (NMAC) rule 8.314.7 *Long Term Care Services-Waivers Supports Waiver*.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: November 4, 2025
Hearing Date: December 8, 2025
Adoption Date: Proposed as April 1, 2026
Technical Citations: NMAC 8.314.7
Long Term Care Services- Waivers Supports Waiver

Background

The Supports Waiver is a 1915(c) Home and Community Based Services (HCBS) waiver developed in 2019–2020 to provide services and supports to individuals with intellectual and developmental disabilities who were on the Developmental Disabilities (DD) Waiver waitlist. At the time of implementation on July 1, 2020, the waitlist exceeded 13 years.

Since then, the Developmental Disabilities Supports Division (DDSD) has implemented an aggressive strategy to eliminate the waitlist, including a “Super Allocation” initiative that launched in 2021. In addition, the State received funding in its Fiscal Year 2026 budget, via House Bill 2, to create a sustained “no wait list” policy for the comprehensive DD and Mi Via waivers.

On May 1, 2025, the DDSD Pre-Service Intake Bureau (PSIB) sent approximately 700 letters to individuals on the DD Waiver waitlist, including waitlist members receiving services through the Supports Waiver. All individuals currently enrolled in the Supports Waiver have been offered an allocation to the comprehensive DD or Mi Via waivers. As a result of these efforts and the successful elimination of the waitlist, there is no longer a need for the Supports Waiver.

The Health Care Authority is proposing to repeal the rule.

This register and the current NMAC 8.314.7 proposed for repeal are available on the HCA website at: <https://www.hca.nm.gov/lookingforinformation/registers/> and <https://www.hca.nm.gov/comment-period-open-2025/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Health Care Authority proposes to repeal this rule effective April 1, 2026.

A public hearing to receive testimony on this proposed repeal will be held on December 8, 2025, at 9:00 a.m. The hearing will be held in the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and via Microsoft Teams.

Join Teams Meeting

Join the meeting now

Meeting ID: 289 224 705 668 5
Passcode: 2H3fr6wo

Dial in by phone

+1 505-312-4308,,617819414#
United States, Albuquerque
Find a local number
Phone conference ID: 617 819 414#

If you are a person with a disability and you require this information in an alternative format or require special accommodation to participate

in the public hearing, please contact the MAD in Santa Fe at (505) 827-1337. The HCA requests at least ten (10) working days advance notice to provide requested alternative formats and special accommodation.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Interested persons may address written comments to:

New Mexico Health Care Authority
Office of the Secretary
ATTN: Medical Assistance Division
Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HCA-madrules@hca.nm.gov. Written mail, electronic mail and recorded comments must be received **no later than 5:00 p.m. MT on December 8, 2025**. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HCA website at <https://www.hca.nm.gov/lookingforinformation/registers/> and <https://www.hca.nm.gov/comment-period-open-2025/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

Public Hearing

The New Mexico Public Education

Department (PED) gives notice on Tuesday, November 4, 2025, that it will conduct a public hearing for the following proposed rulemaking on Thursday, December 4, 2025, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501.

Amendment of 6.60.11 NMAC, Required Training Program for School District Personnel, School Volunteers, and Contractors

The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comments on the record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comments, please see the Public Comment section of this notice.

Explanation of Purpose of Rulemaking, Summary of Text, and Statutory Authority

6.60.11 NMAC, Required Training Program for School District Personnel, School Volunteers, and Contractors

Explanation: The purpose of the proposed rulemaking is to add provisions for the training of school employees on the use of automated external defibrillators, per 22-33-6 NMSA 1978, and to update provider information for the training on recognizing and reporting child abuse.

Summary: The proposed amendment details sudden cardiac arrest and automated external defibrillator training requirements and what personnel are required to have training consistent with standards adopted by the American Heart Association. Additionally, the amendment clarifies that the state

provides training on recognizing and reporting child abuse, rather than New Mexico State University.

Statutory Authority: Sections 9-24-8, 22-2-1, 22-2-2, 22-10A-32, 22-33-2, and 22-33-6 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment

Interested parties may provide comments at the public hearing or may submit written comments by mail or e-mail.

Mailing Address

Policy and Legislative Affairs
Division
New Mexico Public Education
Department
300 Don Gaspar Avenue, Room 121
Santa Fe, New Mexico 87501

E-Mail Address

Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Thursday, December 4, 2025. The PED encourages early submission of written comments.

Public Comment Period

The public comment period is from Tuesday, November 4, 2025, to Thursday, December 4, 2025, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

Copies of the proposed rule may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Policy and Legislative Affairs webpage titled, "Proposed Rules," at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Terrazas at (505) 470-5303 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

**REGULATION
AND LICENSING
DEPARTMENT
FUNERAL SERVICES BOARD**

**NOTICE OF PUBLIC RULE
HEARING AND FUNERAL
SERVICES BOARD MEETING**

The New Mexico Funeral Services Board and the Regulation and Licensing Department will hold a rule hearing on Friday December 19, 2025, at 10:00 a.m., immediately followed by a meeting of the Funeral Services board for adoption of the proposed rules listed below. The hearing and subsequent board meeting will take place at the Regulation and Licensing Department, located at 5500 San Antonio dr. NE., Albuquerque, New Mexico 87109.

The hearing and subsequent Funeral Services board meeting may also be accessed virtually via Microsoft Teams.

Meeting Link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MTg4YzlhZjgtMTRkNC00M2Y4LTlhOGUtNjc3NzNhMDZiYTVM%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22c32153ee-ab7c-43ed-ab7e-278fdf7f55d0%22%7d

Meeting ID: 264 608 687 123 7
Passcode: 57WH3dH9

Dial in by phone
+1 505-312-4308,,263403694#

United States, Albuquerque
(888) 506-1357,,263403694# United
States (Toll-free)
Find a local number
Phone conference ID: 263 403 694#

The purpose of the rule hearing is to consider the initiation of rulemaking for the following rules:

- a. Rule 16.64.2 NMAC, Fees**
- b. Rule 16.64.4 NMAC, Requirements for Establishments and Crematories**
- c. Rule 16.64.6 NMAC, Continuing Education**

On Friday, November 14, 2025, copies of the proposed rules may be obtained through the New Mexico Funeral Services board website <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/funeral-services/statutes-rules-and-rule-hearings/> Copies may also be obtained by contacting Gary Barela, Board Administrator, at funeral.board@rld.nm.gov

The New Mexico Funeral Services Board and the Regulation and Licensing Department will begin accepting written public comment regarding the proposed rule changes beginning Friday, November 14th, 2025, 8:00 a.m. and ending Thursday December 18, 2025, 8:00 a.m. Written public comment may be submitted either by email to funeral.board@rld.nm.gov

or by postal mail to the following address:

Attn: Funeral Services Board
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period (November 14, 2025 – December 18, 2025) will be posted to the website page linked above. Public comments will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending in-person. The members of the Funeral Services Board will not enter substantive discussion of public

comments during the rule hearing but will consider and deliberate any public comment during the regular board meeting immediately following the conclusion of the public rule hearing.

The agenda for the Funeral Services Board regular meeting, which will begin immediately after the public rule hearing, will be available no less than 72 hours prior to the meeting, and available on the website linked above or by contacting the board administrator Gary Barela.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or the regular board meeting, please contact Gary Barela at (505) 476-4622 at least 7 days prior to the rules hearing and regular board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

For inclement weather: If the New Mexico state offices are placed on a two-hour delay to inclement weather, the rule hearing will be pushed back two hours from the noticed hearing time. If New Mexico state offices are closed due to inclement weather, the rule hearing will be rescheduled as soon as possible.

Statutory Authority: The proposed rule changes are authorized by the Funeral Services Act, §§61-32-1 through §§61-32-31, NMSA 1978. which provides authority to authorize the board to promulgate rules to and carry out the provisions of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, §§ 14-4-1 through -11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25.1 through 1.24.25.16 NMAC.

Purpose of Proposed Rules: The proposed rule changes will repeal

and replace existing rules to reflect updates that will be discussed at the hearing and made available on the Funeral Services Board website. These changes are intended to conform with statutory requirements, introduce additional administrative fees, and revise continuing education requirements. More broadly, the proposed rules aim to clarify existing regulatory and statutory provisions, uphold high standards of professionalism among licensees and certificate holders, and fulfill the Board's statutory obligation to promote, preserve, and protect public health, safety, and welfare.

Summary of Proposed Changes:

The Board summarizes its proposed changes to its administrative rules as follows: **Rule 16.64.2 NMAC – Fees:** Elimination of certain fees and services, including copying costs, licensee lists, and mailing labels. The fee for returned checks and electronic checks (e-checks) will be reduced to \$35. A \$10 application processing fee will be added to support the Board's online services. **Rule 16.64.4 NMAC – Requirements for Establishments and Crematories:** The Board proposes to modernize the rule by removing outdated or redundant language to improve clarity and reduce confusion. Specific operational requirements will be eliminated, including the mandate that a licensed funeral service practitioner reside within a certain distance of the establishment, along with other procedural or logistical requirements that no longer reflect current industry practices or technological capabilities. **Rule 16.64.6 NMAC – Continuing Education:** The Board proposes to implement an audit process for continuing education compliance and update CEU requirements to better align with current professional standards.

**REGULATION
AND LICENSING
DEPARTMENT
MESSAGE THERAPY BOARD**

**NOTICE OF PUBLIC RULE
HEARING AND BOARD
MEETING**

The New Mexico Massage Therapy Board and the Regulation and Licensing Department will hold a rule hearing on Friday, December 5, 2025 at 10:00 a.m., immediately followed by a meeting of the board for adoption of the proposed rules listed below. Public participation is welcomed, and comments may be submitted in writing during the public comment period, or in person during the public rule hearing. The hearing and subsequent meeting will take place at the Regulation and Licensing Department, Toney Anaya Building, located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505.

The hearing and subsequent Massage Therapy Board meeting may also be accessed virtually via Microsoft Teams.

Meeting Link: <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting> Massage Therapy Board - Special Board Meeting | Meeting-Join | Microsoft Teams Meeting ID: 285 895 042 057 4 Passcode: qB6JA7Q9
or
Join by Phone: +1 505-312-4308
Phone conference ID: 685 217 890#

The purpose of the rule hearing is to consider the initiation of rulemaking for the following rules:

Rule 16.7.3 NMAC - FEES

Rule 16.7.4 NMAC -

REQUIREMENTS FOR

LICENSURE BY EXAMINATION

Rule 16.7.8 NMAC - EXPEDITED

LICENSURE BY CREDENTIALS

Rule 16.7.11 NMAC -

CONTINUING EDUCATION

On Tuesday, November 4, 2025, copies of the proposed rules may be obtained through the New Mexico

Massage Therapy Board website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/massage-therapy/statutes-rules-and-rule-hearings/> or by contacting the Senior Manager, Dr. Arthur Culpepper at (505) 470-2298.

The New Mexico Massage Therapy Board and the Regulation and Licensing Department will begin accepting written public comment regarding the proposed rule changes beginning Tuesday, November 4, 2025, 10:00 a.m. and ending Friday, December 5, 2025, 10:00 a.m. Written public comment may be submitted either by email to message.board@rld.nm.gov or by postal mail to the following address:

Attn: New Mexico Massage Therapy Board
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period, beginning Tuesday, November 4, 2025, 10:00 a.m. and ending Friday, December 5, 2025, 10:00 a.m., will be posted to the website page linked above. Public comments will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending in-person. The members of the Massage Therapy Board will not enter substantive discussion of public comments during the rule hearing but will consider and deliberate any public comment during the regular board meeting immediately following the conclusion of the public rule hearing.

The agenda for the New Mexico Massage Therapy Board regular meeting, which will begin immediately after the public rule hearing, will be available no less than 72 hours prior to the meeting, and available on the website above or by contacting the board Senior Manager, Dr. Arthur Culpepper at (505) 470-2298.

If you are an individual with a disability who needs a reader,

amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or the regular board meeting, please contact the Senior Manager, Dr. Arthur Culpepper at (505) 470-2298 at least 7 days prior to the rules hearing and regular board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

For inclement weather: If the New Mexico state offices are placed on a two-hour delay to inclement weather, the rule hearing will be pushed back two hours from the noticed hearing time. If New Mexico state offices are closed due to inclement weather, the rule hearing will be rescheduled as soon as possible.

Statutory Authority:

The proposed rule changes are authorized by the Massage Act, Section 61-12C-7 NMSA 1978, which provides explicit authority for the board to promulgate rules to protect public health and safety and carry out the provisions of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25.1 through 1.24.25.16 NMAC.

Purpose of Proposed Rules:

The proposed rule changes are intended to add an administrative fee for electronic processing to allow the board to pay for the ongoing maintenance and licensing of the NM-Plus system. More generally, the proposed rule changes are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board's statutory obligation to promote, preserve and protect the public health, safety and welfare.

Summary of Proposed Changes:**Rule 16.7.3 NMAC - Fees**

Changes to this rule will allow for a ten dollar (\$10) administrative fee for electronic processing per year to fund the ongoing maintenance and licensing of the NM-Plus system, and changes to this rule will allow for a thirty-five (\$35) returned check or returned electronic check processing fee for returned checks or electronic checks.

Rule 16.7.4 NMAC - Requirements for Licensure by Examination

Changes to this rule will allow for a photograph of a professional licensee to accompany the license providing reassurance that they are doing business with a verified and officially licensed individual.

Rule 16.7.8 NMAC - Expedited Licensure by Credential

Changes to this rule will allow for a photograph of a professional licensee to accompany the license providing reassurance that they are doing business with a verified and officially licensed individual.

Rule 16.7.11 NMAC - Continuing Education

Changes to this rule will allow an individual who submits records or a sworn affidavit on their renewal application to demonstrate compliance with continuing education requirements but is found to be non-compliant during a random audit will be subject to fines and other penalties determined appropriate by the board.

**REGULATION
AND LICENSING
DEPARTMENT
OCCUPATIONAL THERAPY,
BOARD OF EXAMINERS FOR**

**NOTICE OF PUBLIC RULE
HEARING AND BOARD
OF EXAMINERS FOR
OCCUPATIONAL THERAPY
MEETING**

The New Mexico Board of Examiners for Occupational Therapy and the

Regulation and Licensing Department will hold a rule hearing on Friday, December 5, 2025, at 1:30 p.m., immediately followed by a meeting of the board of Occupational Therapy for adoption of the proposed rules listed below. The hearing and subsequent board meeting will take place at the Regulation and Licensing Department, located at 5500 San Antonio dr. SE., Albuquerque, New Mexico 87109.

The hearing and subsequent board of examiners for occupational therapy meeting may also be accessed virtually via Microsoft Teams.

Meeting Link: <https://teams.microsoft.com/join/2119851031815?p=dOJknkgBO8IqwPen3c>
Meeting ID: 211 985 103 1815
Passcode: rK2ib2Qr

Dial in by phone

+1 505-312-4308, 444314375#
United States, Albuquerque
Find a local number
Phone conference ID: 444 314 375#
For organizers: Meeting options |
Reset dial-in PIN

The purpose of the rule hearing is to consider the initiation of rulemaking for the following rules:

16.15.1 NMAC – GENERAL PROVISIONS**16.15.2 NMAC – LICENSING REQUIREMENTS****16.15.3 NMAC – SUPERVISION****16.15.4 NMAC – CONTINUING EDUCATION REQUIREMENTS****16.15.5 NMAC – DISCIPLINARY PROCEEDINGS****16.15.6 NMAC – FEE SCHEDULE****16.15.7 NMAC – EXPEDITED LICENSING REQUIREMENTS**

On Friday, November 4, 2025, copies of the proposed rules may be obtained through the New Mexico

Occupational Therapy Board website at RLD | Occupational Therapy Laws, Rules, and Policies or by contacting the Team Manager, Richard Espinoza at (505) 618-0321.

The New Mexico Occupational Therapy Board and the Regulation and Licensing Department will begin accepting written public comment regarding the proposed rule changes beginning Tuesday November 4, 2025, 8:00 a.m. and ending Friday December 5, 2025, 1:30 p.m. Written public comment may be submitted either by email to occupationaltherapy@rld.nm.gov or by postal mail to the following address:

Attn: New Mexico Board of Examiners for Occupational Therapy
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period (November 4, 2025 – December 5, 2025) will be posted to the website page linked above. Public comments will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending in-person. The members of the New Mexico Board of Examiners for Occupational Therapy will not enter substantive discussion of public comments during the rule hearing but will consider and deliberate any public comment during the regular board meeting immediately following the conclusion of the public rule hearing.

The agenda for the New Mexico Board of Examiners for Occupational Therapy regular meeting, which will begin immediately after the public rule hearing, will be available no less than 72 hours prior to the meeting, and available on the website linked above or by contacting the board Team Manager Richard Espinoza.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of

auxiliary aid or service to attend or participate in the hearing or the regular board meeting, please contact the Team Manager Richard Espinoza at (505) 618-0321 at least 7 days prior to the rules hearing and regular board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

For inclement weather: If the New Mexico state offices are placed on a two-hour delay to inclement weather, the rule hearing will be pushed back two hours from the noticed hearing time. If New Mexico state offices are closed due to inclement weather, the rule hearing will be rescheduled as soon as possible.

Statutory Authority:

The rule changes are authorized by the Occupational Therapy Act (Act), Section 61-12A-1 through 61-12A-25 NMSA 1978, which provides explicit authority for the Occupational Therapy Board to protect public health and safety and adopt rules for the administration of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, Sections 16-15-1 through 16-15-7 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25 through 1.24.25.16 NMAC

Purpose of Proposed Rules:

The proposed rule changes aim to implement changes to the definitions regarding occupational therapy assistant. The changes also update the rules for remote participation, initial application for license renewal to reflect the requirements for the online application and remove references to paper applications, introduce the standard for auditing continuing education requirements for license renewal, and change the current fee for returned checks from \$25.00 to \$35.00. More generally, the proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees

and certificate holders, and to generally satisfy the Board's statutory obligation to promote, preserve and protect public health, safety and welfare.

Summary of Proposed Changes:

16.15.1 NMAC -General Provisions. Clarify the definition of Occupational Therapy assistant, and update remote participation. 16.15.2 NMAC- Licensing Requirements. Update Initial Application for Licensure from using paper to electronic applications. 16.15.3 Supervision. Update the verbiage for the New Mexico Telehealth Act. Add verbiage to task delegation for clarity. 16.15.4 NMAC-Continuing Education Requirements. Add more clarity to annual continuing education requirements, and add clarity to continuing education audit. Add the continuing education (CEU) required to obtain or maintain an active license, allow the board to conduct a random audit and allow the board to impose disciplinary action if the licensee attests to and does not have the CEU's need to renew their license. 16.15.5 NMAC – Disciplinary Proceedings. Add verbiage to Conduct of Hearing Regulations, changing from written complaint to online complaint. 16.15.6 – Fee Schedule Strike out \$20.00 dollars for return checks. and adding \$35.00 dollar fee for return checks, or electronic checks. Add \$10 electronic processing fee. 16.15.7 – Expedited Licensing Requirements. Update Verbiage.

REGULATION AND LICENSING DEPARTMENT RESPIRATORY CARE PRACTITIONERS, ADVISORY BOARD OF

NOTICE OF PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Advisory Board of Respiratory Care Practitioners and the Regulation and Licensing Department will hold a rule hearing on Friday,

December 12, 2025, at 2:00 p.m., immediately followed by a regular meeting of the Advisory Board of Respiratory Care Practitioners for adoption of the proposed rules listed below. The hearing and subsequent board meeting will take place at the Regulation and Licensing Department, located at 5500 San Antonio Dr. NE., Albuquerque, New Mexico 87109.

The hearing and subsequent Advisory Board of Respiratory Care Practitioners meeting may also be accessed virtually via Microsoft Teams.

Meeting Link: <https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting>
Meeting ID: 295 586 804 519
Passcode: zk7u7Co6

Dial in by phone
+1 505-312-4308, 158 032 18#
United States, Albuquerque
(888) 506-1357, 158 032 18# United States (Toll-free)

The purpose of the rule hearing is to consider the initiation of rulemaking for the following rules:

Rule 16.23.2 NMAC, Fees
Rule 16.23.12 NMAC, Continuing Education

On Monday, November 10, 2025, copies of the proposed rules may be obtained through the New Mexico Advisory Board of Respiratory Care Practitioners website at <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/respiratory-care/board-information/respiratory-care-board-meetings/>. Copies may also be obtained by contacting Jen Rodriguez, Board Attorney, at respiratorycarebd@rld.nm.gov.

The New Mexico Advisory Board of Respiratory Care Practitioners and the Regulation and Licensing Department will begin accepting written public comment regarding the proposed rule changes beginning Monday, November 10, 2025, at 8:00 a.m. and ending Friday, December 12, 2025,

at 2:00 p.m. Written public comment may be submitted either by email to respiratorycarebd@rld.nm.gov or by postal mail to the following address:

Attn: Advisory Board of Respiratory Care Practitioners
P.O. Box 25101
Santa Fe, NM 87504

Written comments received during the public comment period (November 10, 2025 to December 12, 2025) will be posted to the website page above. Public comments will also be accepted during the rule hearing and may be submitted in writing or presented orally by those attending in-person. The members of the Advisory Board of Respiratory Care Practitioners will not enter substantive discussion of public comments during the rule hearing but will consider and deliberate any public comment during the regular board meeting immediately following the conclusion of the public rule hearing.

The agenda for the Advisory Board of Respiratory Care Practitioners regular meeting, which will begin immediately after the public rule hearing, will be available no less than 72 hours prior to the meeting, and available on the website above or by contacting the board attorney, Jen Rodriguez.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or the regular board meeting, please contact Jen Rodriguez at (505) 476-4622 at least 7 days prior to the rules hearing and regular board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

For inclement weather: If the New Mexico state offices are placed on a two-hour delay to inclement weather, the rule hearing will be pushed back

two hours from the noticed hearing time. If New Mexico state offices are closed due to inclement weather, the rule hearing will be rescheduled as soon as possible.

Statutory Authority: The proposed rule changes are authorized by the Respiratory Care Act, §§61-12B-1 through -17, NMSA 1978, which provides explicit authority for the board to promulgate rules to protect public health and safety and carry out the provisions of the Act. The rulemaking and public rule hearing is governed by the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978, and the Default Procedural Rule for Rulemaking promulgated by the New Mexico Department of Justice, Parts 1.24.25.1 through 1.24.25.16 NMAC.

Purpose of Proposed Rules: The proposed rule changes are intended to amend the rules to provide for additional administrative fees and revise the continuing education audit requirements. More generally, the proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Advisory Board of Respiratory Care Practitioners' statutory obligation to promote, preserve and protect public health, safety and welfare.

Summary of Proposed Changes:

Rule 16.23.2 NMAC, Fees - Changes to this rule will allow for a thirty-five-dollar (\$35) fee for returned checks and e-checks, and a ten dollar (\$10) administrative fee for electronic processing for initial applications and for renewals per year to fund the ongoing maintenance and licensing of the NM-Plus system.

Rule 16.23.12 NMAC, Continuing Education - Changes to this rule will provide clarity on the audit of continuing education requirements and allow the board to impose

disciplinary action on a licensee who is not compliant with the continuing education requirement.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF EXTENSION OF COMMENT PERIOD AND CHANGE IN HEARING DATE

The OSI eDocket Number for this rulemaking is: 2025-0118.

NOTICE IS HEREBY GIVEN that the Office of Superintendent of Insurance (OSI or Superintendent) scheduled a public comment period and a public hearing in person, via video conference, and via telephone conference regarding a repeal and replace of 13.1.3 NMAC, Privacy of Nonpublic Personal Information. **The hearing in this rulemaking is being rescheduled to commence on Tuesday, December 9, 2025, at 10:00 a.m., MDT.** The prior hearing date was Tuesday, October 28, 2025. The comment period is being expanded to cure a failure to post the Notice of Proposed Rulemaking on the Sunshine Portal pursuant to 14-4-2(E) and 14-4-5.2(A) NMSA 1978.

PURPOSE OF THE PROPOSED RULE HAS NOT CHANGED:

Section 59A-2-9.3 NMSA 1978 authorizes the Superintendent to "promulgate rules to reasonably protect the privacy of insurance consumers' nonpublic personal information, including personal health and financial information." The purpose of this rulemaking is to: **1)** update the issuing agency promulgating the rule; **2)** update the scope and text of the rule to consider and reflect current technology used for communication and data gathering and storage by covered entities, insurers, affiliates, and associated third-parties; **3)** amend and update the definitions section of the rule; and **4)** add a new section related to requirement for covered entity insurers and reporting to the

Superintendent when a cyber security event or incident occurs.

STATUTORY AUTHORITY:

Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act, and Sections 59A-2-8, 59A-2-9, and 59A-2-9.3 NMSA 1978.

TO ATTEND THE HEARING IN

PERSON: Office of Superintendent of Insurance - 1120 Paseo de Peralta, (PERA Building), 4th Floor Hearing Room, Santa Fe, NM 87501

PLEASE NOTE: The entrance to the PERA Building is on the ground floor. All guests must sign in with the ground floor receptionist, then each guest will be escorted to the 4th Floor Hearing Room. Please give yourself extra time to check in before 10:00 a.m.

TO ATTEND THE HEARING BY ELECTRONIC VIDEO CONFERENCE VIA MS TEAMS MEETING:

Please copy the link below into your browser to get to the video conference meeting

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTE0NGQ5MmItYWVlZS00MmRILWE2MWYtYzY4YjgyMTA1MWY0%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22b76166d2-adf5-4b1b-b66b-732b2019af27%22%7d

Meeting ID: 215 401 552 168 3 -
Passcode: uj6hu9m2

TO ATTEND VIA TELEPHONE:

+1 505-312-4308,,537863522# -
Phone conference ID: 537 863 522#

PUBLIC COMMENT:

The Superintendent designates David Black, as the hearing officer for this hearing. Oral comments will be accepted at the public hearing from members of the public and other interested parties in-person or via electronic video conference. Copies of the Notice of Proposed

Rulemaking and proposed rule are available by electronic download from the OSI eDocket: <https://edocket.osi.state.nm.us/home>, you must login or register to get access if you are not already registered. You may also request copies if the Notice of Proposed Rulemaking and proposed rule by emailing Gloria Regensberg at: gloria.regensberg@osi.nm.gov or by phone at: 505-500-9079, email communication is preferred. To view all filings in OSI's rulemaking information, please visit the **OSI website** at: <https://www.osi.state.nm.us/en/legal-information/rulemaking/>, the OSI rulemaking record is filed on the eDocket **(please follow the instructions on the web page for using the eDocket, there is no charge for using the eDocket, to find this rulemaking use the following eDocket Number: 2025-0118)**, or on the Sunshine Portal at: https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic (from the "Agency" drop down menu, select "Office of Superintendent of Insurance")

Written comments will be accepted through 4:00 p.m. on Thursday, December 4, 2025. Responses to written comments or to oral comments delivered at the hearing will be accepted through 4:00 p.m. on Wednesday, December 5, 2025. All comments shall be filed electronically through the OSI eDocket. Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/home>, **you must login** or register to get access. **To find this rulemaking use the following Docket Number: 2025-0118.**

Written comments may be sent via U. S. mail to:

**OSI Records and Docketing
NM Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM
87504-1689**

Written comments must be received by OSI and stamped as accepted

between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review and consider all timely submitted written comments and written responses. For help submitting a filing, please send an email to: osi-docketfiling@state.nm.us. **The docket number and title below must be indicated on all written comments submitted to the OSI:**

**Docket Number: 2025-0118
IN THE MATTER OF REPEAL
AND REPLACE OF 13.1.3 NMAC**

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Andrea Padilla, at 505-531-7171 no later than ten (10) business days prior to the hearing.

**WORKERS
COMPENSATION
ADMINISTRATION**

**NOTICE OF TERMINATION OF
RULEMAKING**

The New Mexico Workers' Compensation Administration (WCA) is providing Notice to terminate the rulemaking regarding the proposed amendment to Part 4 – Claims Resolution, specifically, Subsection D of 11.4.4.14 NMAC – (amending existing rule to establish a 90-day time limit after which the WCA clerk of the court shall no longer serve pleadings on attorneys of record following a case being settled or adjudged). The WCA has determined to terminate the rule making process regarding Subsection D of 11.4.4.14 NMAC following receipt of public comment which objected to the proposed amendment without substantial revision to the proposed language. The WCA did not believe such a substantial revision to the proposed rule should be undertaken without the benefit of public comment specifically directed at new amendatory language

substantially different than what the WCA originally proposed. Part 4 had no other proposed rule revisions apart from Subsection D of 11.4.4.14 NMAC and, accordingly, complete rule termination regarding Part 4 is warranted.

Therefore, pursuant to Subsection C of Section 14-4-5, NMSA 1978, the rulemaking noticed on June 10, 2025 in the New Mexico Register (Volume XXXVI, issue 11) is hereby terminated.

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing to receive comments regarding proposed amendments to NMAC 11.1.2 (the Public Works Minimum Wage Act Policy Manual) in the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on December 9, 2025 from 1:00 pm to 3:00 pm.

The purpose and summary of the public comment hearing will be to obtain input and public comment on proposed prevailing wage rates and subsistence and zone pay for job classifications where the Collective Bargaining Agreement was not submitted prior to the deadline for the prior publication as well as to address job classification updates based on comments received from the September 18, 2025 public comments hearing.

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the labor relations division which oversees setting the prevailing wage and fringe benefit rates.

Pursuant to Section 13-4-11, NMSA 1978, the Director of the Labor Relations Division shall determine the prevailing wage rates and the prevailing fringe benefit rates and the Director shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on December 8, 2025. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@dws.nm.gov. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

End of Notices of Rulemaking and Proposed Rules

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Adopted Rules

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 filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

AGING AND LONG-TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS CHAPTER 2 AGE PART 26 CRIMINAL HISTORY RECORDS CHECK

9.2.26.1 ISSUING

AGENCY: Aging and Long-Term Services Department (ALTSD).
[9.2.26.1 NMAC - N, 11/04/2025]

9.2.26.2 SCOPE: These regulations apply to all employees, selected applicants, and volunteers of the adult protective services division, long-term care ombudsman program, and consumer and elder rights division of ALTSD.
[9.2.26.2 NMAC - N, 11/04/2025]

9.2.26.3 STATUTORY AUTHORITY: The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978; Subsections A and E of Section 9-23-6 NMSA 1978; Section 9-23-11 NMSA 1978; and Section 9-23-14 NMSA 1978.
[9.2.26.3 NMAC - N, 11/04/2025]

9.2.26.4 DURATION:
Permanent.
[9.2.26.4 NMAC - N, 11/04/2025]

9.2.26.5 EFFECTIVE DATE: November 4, 2025, unless a later date is cited at the end of a section.
[9.2.26.5 NMAC - N, 11/04/2025]

9.2.26.6 OBJECTIVE:
A. The purpose of these regulations is to set out general provisions regarding background checks required in settings to which these regulations apply.

B. Background checks are conducted in order to identify information in individuals' backgrounds bearing on their employment eligibility.
[9.2.26.6 NMAC - N, 11/04/2025]

9.2.26.7 DEFINITIONS:

A. "Background check" means a screen of ALTSD's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

B. "Criminal history" means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

C. "Eligible" means the determination that an applicant is qualified for employment or volunteer service in the adult protective services division, the long-term care ombudsman program, or the consumer and elder rights division.

D. "Unreasonable risk" means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of others in settings to which these regulations apply.
[9.2.26.7 NMAC - N, 11/04/2025]

9.2.26.8 INVESTIGATION:

A. Compliance with these regulations is a condition of employment or volunteer work in the adult protective services division, long-term care ombudsman program, and consumer and elder rights division.

B. The employee, selected applicant, or volunteer is required to submit a set of electronic fingerprints, as directed by the department, to the department of public safety for processing pursuant

to the Criminal Offender Employment Act, Article 2 of Chapter 28 NMSA 1978.

C. Upon receipt of the results of the background check, ALTSD shall use all of the information compiled as a result of the background check to investigate and determine whether an employee, selected applicant, or volunteer is eligible.

D. ALTSD may, in its discretion, use all reasonably reliable information about an applicant and weigh the evidence about an applicant to determine whether the applicant is eligible.

E. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility.

F. ALTSD shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

G. Criminal history records obtained pursuant to the provisions of this section shall:

- (1) be confidential;
 - (2) not be a public record for purposes of the Inspection of Public Records Act, Article 3 of Chapter 14 NMSA 1978;
 - (3) not be used for any purpose other than determining the eligibility of employees, selected applicants, or volunteers; and
 - (4) not be released or disclosed to any other person, except pursuant to a court order or with the written consent of the person who is the subject of the records.
- [9.2.26.8 NMAC - N, 11/04/2025]

9.2.26.9 ELIGIBILITY:
A. ALTSD shall determine an applicant is not eligible if he or she poses an unreasonable risk to others in settings to which these rules apply.

B. In determining whether an employee, selected applicant, or volunteer poses an unreasonable risk, the department shall comply with the requirements of the Criminal Offender Employment Act, Article 2 of Chapter 28 NMSA 1978.

C. Any ALTSD employee, selected applicant, or volunteer who violates these regulations is subject to denial of employment, suspension, or disciplinary action up to and including termination of employment or volunteer service.

D. If ALTSD determines that an employee, selected applicant, or volunteer is ineligible for employment, the department will provide written findings as required by the Criminal Offenders Employment Act.
[9.2.26.9 NMAC - N, 11/04/2025]

9.2.26.10 REHABILITATION PETITION:

A. Any employee, selected applicant, or volunteer whom ALTSD concludes is ineligible may submit to ALTSD a rehabilitation petition describing with specificity all information that tends to demonstrate that the individual is not ineligible. The petition may include, but need not be limited to, a description of what actions the individual has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur. The petitioner shall submit the rehabilitation petition within 15 days of receipt of ALTSD's written findings.

B. The department will review the petition and provide a written determination of whether the petitioner will be deemed eligible based on the information provided in the rehabilitation petition.
[9.2.26.10 NMAC - N, 11/04/2025]

**History of 9.2.26 NMAC:
[RESERVED]**

**COUNCIL FOR
PURCHASING FROM
PERSONS WITH
DISABILITIES**

The Council for Purchasing from Persons with Disabilities approved at its October 8, 2025 meeting, to repeal rule 2.40.5 NMAC - Purchasing of Services from Persons with Disabilities, (filed 3/30/2007 and amended 1/15/2011) and replace it with 2.40.5 NMAC - Purchasing of Services from Persons with Disabilities, adopted 10/8/2025, and effective 11/4/2025.

**COUNCIL FOR
PURCHASING FROM
PERSONS WITH
DISABILITIES**

**TITLE 2 PUBLIC
FINANCE
CHAPTER 40 EXPENDITURE
OF PUBLIC FUNDS
PART 5 PURCHASING
OF SERVICES FROM PERSONS
WITH DISABILITIES**

2.40.5.1 ISSUING AGENCY: New Mexico Council for Purchasing from Persons with Disabilities, 435 Saint Michael's Drive, Building D, Santa Fe, New Mexico.
[2.40.5.1 NMAC - Rp., 2.40.5.1, 11/04/2025]

2.40.5.2 SCOPE: All state agencies and local public bodies.
[2.40.5.2 NMAC - Rp., 2.40.5.2, 11/04/2025]

2.40.5.3 STATUTORY AUTHORITY: Section 13-1C-1 through Section 13-1C-7, NMSA 1978.
[2.40.5.3 NMAC - Rp., 2.40.5.3, 11/04/2025]

2.40.5.4 DURATION:
Permanent.
[2.40.5.4 NMAC - Rp., 2.40.5.4, 11/04/2025]

2.40.5.5 EFFECTIVE DATE: November 4, 2025, unless a later date is cited at the end of a section.
[2.40.5.5 NMAC - Rp., 2.40.5.5, 11/04/2025]

2.40.5.6 OBJECTIVE:
This regulation establishes certain procedures with respect to purchasing of services from persons with disabilities and clarifies which services provided by persons with disabilities are suitable for sale to state agencies and local public bodies.
[2.40.5.6 NMAC - Rp., 2.40.5.6, 11/04/2025]

2.40.5.7 DEFINITIONS:
A. "Appreciable contribution" means significant labor of individuals with disabilities applied to a service.

B. "Brokering" means negotiating contracts, as an agency, between organizations or individuals, not in the state use program. See Subsections C and D of 2.40.5.8 NMAC for further information on brokering rules.

C. "Central nonprofit agency" means a nonprofit agency approved pursuant to rules of the council to facilitate the equitable distribution of orders and services of:

- (1) qualified individuals; and
- (2) community rehabilitation programs.

D. "Council" means the New Mexico council for purchasing from persons with disabilities.

E. "Community rehabilitation program" means a nonprofit entity:

- (1) that is organized under the laws of the United States or this state, operated in the interest of persons with disabilities and operated so that no part of the income which inures to the benefit of any shareholder or other person;

(2) that complies with applicable occupational health and safety standards as required by federal or state law; and

(3) that, in the provision of services procured under the State Use Act, employs during the state fiscal year at least the statutorily required percentile under Paragraph (3) of Subsection B of Section 13-1C-3 NMSA 1978 persons with disabilities in direct labor for the provision of services.

F. "Integration" means equal access for non-disabled and individuals with disabilities: the process of ensuring employment opportunities to all regardless of disability including the opportunity for integration of disabled individuals with non-disabled individuals as defined in the State Use Act Paragraph (8) of Subsection A of Section 13-1C-5 NMSA 1978.

G. "Local public body" means a political subdivision of the state and political subdivision agencies, instrumentalities and institutions.

H. "Persons with disabilities" means persons who have a mental, intellectual or physical impairment that constitutes or results in substantial impediment to employment as defined by the federal Rehabilitation Act of 1973 and shall be certified eligible for participation by completing council approved documentation through the central nonprofit agency, unless the person has prior presumptive eligibility as follows. A person who is receiving, or has received, services pursuant to an individualized plan for employment from a state vocational rehabilitation agency or is assessed with a fifty percent or more disability rating by the federal veterans affairs administration shall be presumed to be a person with a disability, as shall a person who is receiving supplemental security income or social security benefits based on disability. A person who is presumptively disabled in an individual who continues to meet the eligibility criteria for the program that was the basis for the presumptive eligibility.

I. "Provider" means a community rehabilitation program or qualified individual who has been approved to offer services under contract to the central nonprofit agency, as allowed under the State Use Act Paragraph (4) of Subsection A of Section 13-1C-5 NMSA 1978.

J. "Qualified individual" means a person with a disability who is a business owner, or a business that is primarily owned and operated by persons with disabilities that employs under State Use contracts at least the statutorily required percentile under Paragraph (3) of Subsection B of Section 13-1C-3 of the State Use Act NMSA 1978 persons with disabilities in the provision of direct labor, which has been approved by the council to provide services to state agencies and local public bodies.

K. "State use eligible services" means all services which are to be provided by persons with disabilities and which the council determines are suitable for sale to state agencies and local public bodies.

L. "State purchasing agent" means the director of the state purchasing division of the general services department.

M. "State Use Act program" means a program enacted through legislation by the New Mexico state legislature that allows meaningful employment opportunities through state and local government contracts to persons with disabilities.

N. "Value added" means direct labor involved in delivering services performed by persons with disabilities.
[2.40.5.7 NMAC – Rp. 2.40.5.7 NMAC, 11/04/2025]

2.40.5.8 DETERMINATION OF WHICH SERVICES PROVIDED BY PERSONS WITH DISABILITIES ARE SUITABLE FOR SALE TO STATE AGENCIES AND LOCAL PUBLIC BODIES:

A. Services provided by persons with disabilities suitable for sale to state agencies and local public bodies:

(1) must be within the competency of the prospective provider;

(2) must have potential to provide positive, integrated employment outcome for persons with disabilities;

(3) may be approved as statewide, or by specific contract offering by a state agency or local public body;

(4) require the approval by the council prior to being offered.

B. Council determination of suitability extends to specific individual contracts procured under a given service; the council may accept or reject a given contract as suitable based on criteria established under rule and statute, such as meeting appreciable contribution requirements, ratio requirements, impact or fair market pricing requirements.

C. Any potential contract that entails brokering solely on the part of the community rehabilitation program is disallowed for the State Use Act program. An appreciable contribution to the services must be made by persons with disabilities employed by the provider.

D. The decision that the labor of persons with disabilities constitutes appreciable contribution shall be at the discretion of the council.

[2.40.5.8 NMAC - Rp., 2.40.5.8, 11/04/2025]

2.40.5.9 ESTABLISHING, MAINTAINING AND PUBLISHING A LIST OF ALL SUITABLE SERVICES:

A. The council shall establish, approve and revise a list of suitable services through a contract with a central nonprofit agency on an as needed basis.

B. Copies of the list shall be published at the state purchasing office and on-line at appropriate state websites, on a website maintained by the central nonprofit agency, and may also be advertised in New Mexico business publications.

C. The council requires that the central nonprofit agency to establish procedures to submit a given service for council approval. The central nonprofit agency shall be responsible for providing the council with information to substantiate the conditions for service determination.

D. Once approved by the council, services shall be included in a master list of approved services.

E. New services may be added to the list upon a majority vote at any council meeting.
[2.40.4.9 NMAC - Rp., 2.40.5.9, 11/04/2025]

2.40.5.10 ESTABLISHING AND VERIFYING FAIR MARKET PRICE:

A. The council shall verify and revise the fair market prices on an as needed basis.

B. The council shall revise the fair market prices in accordance with the changing market conditions to ensure that contracted services offer the best value for state agencies and local public bodies.

C. The pricing standard for services should be as close as possible to prevailing market price not including the central nonprofit agency fee.

D. The council shall set the price within a range submitted by the central nonprofit agency taking into consideration the benefits associated with employment of persons with disabilities.

E. Fair market price may be established based on:

(1) prices paid for similar services by federal, state and local public bodies and by private businesses; or

(2) the actual cost of performing the services at a community rehabilitation program, determined by use of a council approved cost analysis worksheet, taking into consideration the benefits associated with employing persons with disabilities; or

(3) any other accepted business method acceptable to the council.

F. When considering a contract award, in order to ensure that services offer the best value for state agencies and other public bodies, the central nonprofit agency shall determine suitability of individual contracts to be provided under each service, including, but not necessarily limited to:

(1) external requirements that proscribe the use of a specific provider, such as:

(a) contracts which must be awarded to providers who are sanctioned by the federal corporation for national and community services;

(b) mandated projects that must be awarded to an area agency on aging pursuant to federal law;

(2) significant adverse impact to a state agency or local public body, when contracting for professional services, resulting in the loss of content knowledge associated with confidential, proprietary, or attorney/client privileged information; in such instances the state or local government's central purchasing office shall notify the central nonprofit in writing to initiate a council-approved appeals process to obtain a council-approved exemption before initiating a contract award under the State Procurement Rule.

G. The council chairperson shall have the authority to give tentative approval for specific contracts for work by the central nonprofit agency, between council meetings, subject to ratification by the full council at its next scheduled meeting, when time is of the essence for the purchaser.

H. The council shall establish procedures for verifying fair market price, which shall be published on the central nonprofit agency's website.

[2.40.5.10 NMAC - Rp., 2.40.5.10, 11/04/2025]

2.40.5.11 PROCEDURE TO CERTIFY ELIGIBLE COMMUNITY REHABILITATION PROGRAMS

AND QUALIFIED INDIVIDUALS:

The certification procedure to determine eligible provider members shall consist of a two part process:

A. Certification of eligibility as a qualified individual with a disability or community rehabilitation program as defined by statute by the direct-service provider, reviewed with recommendation by the central nonprofit agency and approved by the council.

B. Verification of ability to perform the service by the direct-service provider and filed with and approved by the central nonprofit agency.

C. The central nonprofit agency shall, on a regular basis or at the request of the council, review and verify certifications.

D. The central nonprofit agency may, as a result of changing compliance or eligibility, recommend decertification of a qualified individual with a disability or community rehabilitation program with approval by the council.
[2.40.5.11 NMAC - Rp., 2.40.5.11, 11/04/2025]

2.40.5.12 PROCEDURE FOR APPROVAL OF CENTRAL NON-PROFIT AGENCY:

A. The council shall establish a procedure for approval of a central nonprofit agency that shall hold contracts, facilitate the equitable distribution of orders for services to be procured by state agencies and local public bodies and market approved services to state agencies and local public bodies.

B. The council shall request proposals from applicants which provide evidence that the central non-profit agency is a private, nonprofit entity within the state which:

(1) has a mission which includes employment of persons with disabilities;

(2) is not a direct-service provider;

(3) can negotiate contracts;

(4) has knowledge of state and local

governmental contracting policies and procedures;

(5) can demonstrate independence to equitably distribute contracts for procured services;

(6) can manage the scale of operations required; and

(7) has an approved operations manual which details all policies and procedures for operation of the central nonprofit agency.

C. Approval of the central nonprofit agency shall be by a minimum of two-thirds majority vote of the council.

[2.40.5.12 NMAC - Rp., 2.40.5.12, 11/04/2025]

2.40.5.13 PROCEDURES FOR OPERATION OF CENTRAL NON-PROFIT AGENCY, INCLUDING FEE STRUCTURE:

A. The council shall ensure that the central nonprofit agency has an approved operations manual that details all policies and procedures for operation of the central nonprofit agency.

B. The council shall establish a fee to be paid to the central nonprofit agency on the basis of contracts procured from state agencies and other local public bodies. The fee will be added to the fair market price paid by the state agencies and local public bodies.

[2.40.5.13 NMAC - Rp., 2.40.5.13, 11/04/2025]

2.40.5.14 OTHER MATTERS RELATED TO THE STATE USE ACT:

A. It is the council's responsibility to identify, respond to, and equitably distribute, to as broad a base of eligible participants as possible, all relevant contract opportunities.

B. The council reserves the authority to make final contract distribution decisions based on the above policy and process, as well as any other unique factors or special circumstances. The central non-profit agency shall establish

an appeals process for contract distribution or disputes, and for resolving price and quality-related disputes between parties in the exercise and administration of the State Use Act program, with the council being the final determining body. This process shall be applicable to state and local public body purchasers obtaining services under the State Use Act program, and nonprofit agencies and qualified individuals with a disability who own businesses certified by New Mexico abilities and providing services under state use contracts.

C. All regular meetings of the council shall include an agenda item for an open public forum. The council shall set aside a specific time at each meeting for the public, government officials, and businesses to address the council regarding any issues and concerns related to the State Use Act and its implementation. The council shall use this ongoing mechanism to solicit ongoing feedback, to promote the intention of the State Use Act to create employment opportunities for persons with disabilities, while promoting efficiency and best value for state and local government purchasing entities.

D. Meetings shall be conducted according to requirements of the Open Meetings Act.

E. The council shall address any other matter necessary to the proper administration of the State Use Act.

[2.40.5.14 NMAC - Rp., 2.40.5.14, 11/04/2025]

2.40.5.15 INTEGRATION, FAIR PAY AND ADDED VALUE:

A. The council shall ensure that the:

(1) work provides opportunities for integration with non-disabled persons;

(2) work provides fair pay based on prevailing wages;

(3) work provides equitable opportunities for the employment of people with disabilities; and

(4) services provide added value.

B. Community rehabilitation programs and qualified individuals must employ during the state fiscal year at least the statutorily required percentile under Paragraph (3) of Subsection B of Section 13-1C-3 of the State Use Act NMSA 1978 persons with disabilities in the provision of direct labor. In determining ratio calculation, all employees providing direct labor on all state use contracts shall be counted. Hours of work shall be used to determine compliance. Hours of work shall use the standard full time equivalent of 2080 hours per year equating to one person to calculate the ratio.

C. In the event of failure to meet the ratio requirement, the council or central nonprofit agency may request a remediation plan from the provider specifying actions and timelines to meet the requirement, which shall be reported to the council. In the event of provider failure to provide an adequate remediation plan, or meet remediation plan commitments, the council may place a moratorium on new state use work by that provider, or assign the contract to another provider, or failure to resolve persistent ratio problems in a timely manner, ban the provider from eligibility to participate in the State Use Act program for up to a two year period.

D. In exigent circumstances, the council may waive the labor ratio or other requirements of the rules as considered appropriate under the circumstances.

[2.40.5.15 NMAC - Rp., 2.40.5.15, 11/04/2025]

2.40.5.16 RECORDS CUSTODIAN AND PUBLIC INFORMATION REQUESTS:

A. The council shall appoint a records custodian charged with storage and retrieval of all official documents, minutes of meetings, and other related records as defined under the Inspection of Records Act (IPRA) 14-2-12 NMSA 1978. The custodian shall retrieve

records under the request and direction of the council and under response to IPRA records requests.

B. The council shall ensure:

(1) documentation provided under the Inspection of Public Records Act (IPRA) Sections 14-2-1 through 14-2-12 NMSA 1978 shall not include personally identifiable information as defined in Section 14-2-1.1 NMSA 1978.

(2) documentation provided under an IPRA request additionally shall not include medical, occupational or educational identifiable information as defined under the below statutory protections:

(a) Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(b) Family Educational Rights and Privacy Act of 1974 (FERPA);

(c) The Rehabilitation Act of 1973, regulated under 34 CFR 361.38;

(d) Americans with Disabilities Act of 1990 (ADA); and

(e) Veteran's Benefits Act of 2010. [2.40.5.16 NMAC - N, 11/04/2025]

HISTORY OF 2.40.5 NMAC:

History of Repealed Material:
2.40.5 NMAC, Purchasing of Services from Persons with Disabilities, filed 3/15/2007, - Repealed effective 11/04/2025

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.9.3 NMAC, Sections 6 through 22 effective 11/04/2025

8.9.3.6 OBJECTIVE:

A. To establish standards and procedures for the provision of child care assistance benefits to eligible

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

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

in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico's children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

C. Permissive language such as "may or may be" when referring to actions taken by the department, address situations where it is not always prudent or practical to apply these actions. It is not meant to reduce the weight of these actions nor should the intent of the policies be circumvented due to this wording. This language is intended to be construed in a fiscally responsible and equitable manner, keeping in mind that consistency in application is the ultimate goal. [8.9.3.6 NMAC - N, 11/01/2022; A, 8/1/2023; A, 11/04/2025]

8.9.3.7 DEFINITIONS:

A. Terms beginning with the letter "A":

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

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

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

C. Terms beginning with the letter "C":

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

(2) "Child with a disability or special needs" means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized

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

(3) “Client”

means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

(4) “Closure”

means the client’s child care case is closed with the department.

(5)

“Copayment” means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department’s payment to the provider is reduced by the copayment amount.

D. Terms beginning with the letter “D”:

(1)

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

(2)

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

E. Terms beginning with the letter “E”:

(+) **“Earned**

income” means income received as

gross wages from employment or as profit from self-employment.

(2) — “Essential

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

F. Terms beginning with the letter “F”:

(1) “Federal poverty

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

(2)

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

(a)

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

(b)

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

(3) “FOCUS”

is a voluntary tiered quality rating and improvement program that is open to licensed child care programs.

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

H. Terms beginning with the letter “H”:

(1) “Homeless

children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a)

Children and youth who are temporarily sharing the housing of

other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b)

children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c)

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

(d)

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

(2)

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

(3)

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

I. Terms beginning with the letter “I”:

(1)

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

(2) “Infant,

toddler, preschool, school age” means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(a)

infant: zero - 23 months;

(b)

toddler: 24 -35 months;

(c)

preschool: three to five year olds; and

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

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

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

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

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

N. Terms beginning with the letter “N”:

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

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

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

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

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

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

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

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

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

(viii) association Montessori internationale (AMI); or

(ix) American Montessori society (AMS).

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

(2) **“Non-temporary change in activity”** means the family has experienced a change in activity that does not meet the definition of a “temporary change in activity” as defined in Paragraph (3) of Subsection T of 8.9.3.7 NMAC.

(3) **“Non-traditional hours of care”** means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

O. Terms beginning with the letter “O”:

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

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

P. Terms beginning with the letter “P”:

(1) **“Provider types”** means the characteristics of child care providers, which determine

their approved reimbursement rate, capacity, staffing levels etc. as follows:

~~[(1)]~~ (a) **“In-home”** care means care provided in the child’s own home.

~~[(2)]~~ (b) **“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]~~ may enroll[ed] and participate in the child and adult care food program (CACFP) ~~[, unless they are exempt].~~

~~[(3)]~~ (c) **“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)]~~ (d) **“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)]~~ (e) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.

~~[(6)]~~ (f) **“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)]~~ (g) **“Family, friend, or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

(2) **“PreK”** means a statewide, voluntary developmental readiness program funded by ECECD for children who have attained their third or fourth birthday prior to September 1 that delivers to eligible children programs that address their total developmental needs, including their physical, cognitive, social and emotional needs, and that supports their development in the areas of health care, nutrition and safety and multicultural awareness.

(3)

“Presumptive eligibility” in the context of the Child Care and Development Block Grant (CCDBG) refers to a policy that allows for the assumption of eligibility for certain programs based on preliminary information rather than complete documentation. This means that individuals or families may be deemed eligible for assistance before all necessary verification is completed, which can expedite access to services.

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

R. Terms beginning with the letter “R”:

(1)

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

(2)

“Registration/educational fee” means a fee charged to private pay and families receiving child care assistance for materials and supplies.

S. Terms beginning with the letter “S”:

(1)

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

(2) **“SNAP”**

means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

(3) **“Special supervision”**

means the special supervision for child(ren) as defined below in Subsection G of 8.9.3.11 NMAC.

(4) **“Star level”**

means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

(5)

“Suspension” means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

T. Terms beginning with the letter “T”:

(1) **“TANF”**

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

(2) **“Teen parent”**

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

(3)

“Temporary change of activity” means one of the following events:

(a)

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

(b)

interruption in work for a seasonal worker who is not working between regular industry work seasons;

(c)

student holiday or break for a parent or legal guardian participating in training or education;

(d)

reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and

(e)

cessation of work or attendance at a training or education program less than three months.

(4)

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

(5) **“Tribal**

per capita payments” means cash distributions from tribal trust funds or casino revenues to individual tribal members.

U. Terms beginning with the letter “U”:

(1)

“Underpayment” means a payment

made by the department for services provided which did not fully reimburse the client or provider.

(2)

“Unearned income” means income in the form of benefits such as TANF, workmen’s compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, grants and other income which does not meet the definition of earned income.

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

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

means employment of any type, including self-employment and teleworking. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

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

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

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

[8.9.3.7 NMAC - N, 11/01/2022; A, 8/1/2023; A, 11/04/2025]

8.9.3.9 [PRIORITIES] CATEGORIES FOR ASSISTANCE:

A. 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] categories. The department prioritizes child care services for children with special needs, disabilities, families experiencing homelessness, and for teen parents:

[A. — Priority one:—

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

(1)

Participation exemption: The human services department (HSD) grants participation exemptions to TANF clients who cannot locate child care. The Early Childhood Education and Care Department is responsible for the verification of the TANF

participant's inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a)

the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(b)

the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c)

the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2)

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

B. Priority one A:

[RESERVED]

C. Priority one B:

Child care assistance for income-eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

D. Priority two:

Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one

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

E. Priority three:

[RESERVED]

F. Priority four:

Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.9.3.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

G. Priority four plus:

During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below four hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below four hundred and twenty-five percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.9.3.11 NMAC. The department prioritizes child care services within priority four plus for children with special needs, disabilities, homeless families, and for teen parents.

H. Priority five:

In addition to these priorities, the department pays for at-risk child

care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority.]

B. Category One A:

Clients receiving temporary assistance to needy families (TANF) benefits to include TANF diversionary payments, are considered category one clients.

(1)

Participation exemption: The health care authority (HCA) grants participation exemptions to TANF clients who cannot locate child care. The early childhood education and care department is responsible for the verification of the TANF participant's inability to locate child care. Reasons for participation exemption due to lack of child care are as follows:

(a)

the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(b)

the unavailability or unsuitability of informal child care by a relative or under other arrangements; or

(c)

the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person

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

C. Category One B:

This category is 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.

D. Category Two:

This category is for 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 category 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 category two. Category two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for category four child care.

E. Category Three:

[RESERVED]

F. Category Four A:

This category is child care assistance for income eligible 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.

G. Category Four B:

This category is child care assistance for families whose income is above two hundred percent of the federal poverty level but at or below four hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines.

H. Category Four C:

This category is child care assistance for families whose income is above four hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. Families qualifying for child care assistance for category four C do not have an income cap for eligibility purposes.

I. Category Five:

The department pays for at-risk child care as approved by the department to include families involved with,

or children in custody of, Child Protective Services (CPS), families experiencing homelessness, participants in the Comprehensive Addiction and Recovery Act Program (CARA), and other circumstances deemed at-risk by the department. Grandparents with legal custody or kinship guardianship of their own grandchild qualify for child care assistance under this category. Income, work, and education requirements and copayments are waived for clients in this category. [8.9.3.9 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.3.10 APPLICATION PROCESS:

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

- (1) a completed signed application form;
- (2) documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.9.3.11 NMAC;
- (3) documentation of the applicant's TANF eligibility or participation, if applicable, and can include applicant's social security number or assigned TANF identification number;
- (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- (6) verification of birth for all applicant's household children;
- (7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;
- (8) verification of [custody] guardianship 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. The department may be able to obtain certain data from the New Mexico department of workforce solutions or the New Mexico HCA in lieu of the client providing verification of birth, New Mexico residency, citizenship/immigration verification, and proof of income.

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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	-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 For self-employed individuals: -<u>Federal</u> income tax return -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	-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	-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	-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
[E ustody] <u>Guardianship</u>	-Court order, or other legal records [-Adoption records] -Notarized statement -Guardianship documentation -Durable power of attorney -Statement signed under penalty of perjury -Attorney records

Dependency	-Court order [-Notarized statement -Divorce papers -Durable power attorney -Guardianship documentation] -Federal tax documents verifying person is claimed as a dependent -Written statement with supervisor's approval
New Mexico Residency	-Lease/rental agreement -Utility bill -Mortgage receipt -Written statement from person [you are] client is 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.]~~

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. Clients may be given longer than 14 calendar days, but no more than 30 calendar days, to submit required documentation.

D. A client may be determined presumptively eligible for services based on self-attested income and qualifying activity. The department will presumptively determine a client to be eligible once the client meets New Mexico residency requirements, birth verification, and citizenship/qualified immigrant requirements as set forth herein. Clients must submit all other required forms or documents within 60 calendar days to become eligible for the twelve month eligibility period. The department may grant an additional 30 days to submit required documentation if the client shows that extenuating circumstances exist meriting an extension.

(1) In order to receive presumptive eligibility, the client must submit the documentation as listed below and self-attest to the following information per below:

<u>Requirement</u>	<u>Presumptive Self Attested or Required Document</u>
<u>Verification of Birth</u>	<u>Required Documentation</u>
<u>Income Documentation</u>	<u>Self Attested</u>
<u>Qualifying Activity</u>	<u>Self Attested</u>

<u>NM Residency</u>	<u>Required documentation</u>
<u>Guardianship, as applicable</u>	<u>Required documentation</u>
<u>Citizenship/Immigration Verification</u>	<u>Required documentation</u>
<u>Identification</u>	<u>Required documentation</u>
<u>ECECD Approved Provider</u>	<u>Self Attested</u>
<u>Assets over a million dollars</u>	<u>Self Attested</u>

(2) Clients are not eligible for presumptive eligibility if they:

(a) Received child care assistance in the previous month;

(b) Obtained presumptive eligibility in their previous eligibility determination; or

(c) Were denied for presumptive eligibility in their previous eligibility determination.

(3) Payments will be made according to the ECECD regulatory payment process during presumptive eligibility period. Payments made during presumptive eligibility period are not subject to recoupment based on eligibility. If a child is deemed to be ineligible during the presumptive eligibility period, the department will provide timely notice to the provider.

[D.] E. 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 and the child or children are attending child care;

(2) the client is employed, attending school or a training program or seeking employment unless exempted from this requirement. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and

(3) the provider is eligible to be paid. [8.9.3.10 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.3.11 ELIGIBILITY

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

A. Child care staff [with] shall 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 [with] shall 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 [with] shall, however, remain eligible for the approved 12-month eligibility period.

(2) A client may be determined presumptively eligible for up to 90 days pursuant to Subsection D of 8.9.3.10 NMAC. Once the client has supplied all required documentation, the remainder of the 12-month eligibility will be determined by the department.

~~**(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 [with] shall remain eligible if a temporary change of activity occurs.

A child may continue to use services during this temporary change period.

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

(6) If an additional eligible child in need of care is added to the household, the household eligibility will extend for an additional 12-months from the month documentation for the new child is provided to the department, in accordance with 8.9.3.10 NMAC.

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 health related treatment, or military service.

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

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

(4) Family assets: Family assets: ~~[A family's]~~ Family assets ~~[may not exceed]~~ exceeding one million dollars must be reported.

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

(6) Exempt income: The types of income not counted when computing eligibility or

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

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

(8) **Calculating income:**

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

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

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

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

(iii) Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is

defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

(iv)

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

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

E. Citizenship and eligible immigration status: [Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified immigrant as defined by the United States department of health and human services, administration for children and families, office of child care.] A families eligibility for financial assistance shall not be impacted by the citizenship status of the participating child(ren). If a participating child does not have a federally eligible citizenship status the financial assistance will be paid for with state funds.

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 [48] 19 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

H. Work/education requirement:

(1) 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].

(2) Clients who are receiving TANF are required to submit verification of the TANF approved activity unless they are exempt by TANF. [The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.]

(3) Parents or guardians may be exempted from this requirement upon submission of a demonstration of incapacitation.

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

J. Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-k, school or other programs, such as online or home-schooling. Child care benefits are paid during the hours that children are attending a dedicated Early Head Start-Child Care Partnerships Program funded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care.]

I. Determining child care placement type:

(1) The department determines the child care placement type needed in consultation with the parent or legal guardian at the time of certification and needs of the child. The approved placement type will be reflected in the child care placement agreement covering the certification period.

(2) Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico Pre-K, school or other programs, such as online or home-schooling. Child care benefits are paid during the hours that children are attending a dedicated Early Head Start-Child Care Partnerships Program funded by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care.

(3) The department determines the child care placement type needed based on preferences of the family and individual child, availability of the provider to meet the family's preferences, and the units of service set forth below:

Continued Next Page

Full Time Care	Wrap-Around Care	Part-Time Care (cases where a child may need two providers or less than full time care)
Hours of service are approved based on a negotiated arrangement between the family and a single provider with a minimum of 29 hours per week	Head Start, New Mexico PreK, and school age children needing Wrap-Around Care, including summer and breaks for a single provider	In the event one provider is unable to provide services for all child's needs, and care is needed for multiple providers or other purposes and for care needed less than 29 weekly hours

(4) The department, in an attempt to limit burden to families and providers as well as to promote continuous payment throughout a family's certification period used the cost estimation model to calculate wrap-around-care to cover more than the necessary amount of time a parent or guardian working full-time would need for their children if they attended all instructional hours required by the New Mexico Public Education Department, PreK and Head Start curriculum.

(5) Monthly base reimbursement payment rates will be paid for the child care placement types as noted in Subsection G of 8.9.3.17 NMAC. The department will routinely review and periodically make adjustments to these rates.
[8.9.3.11 NMAC - N, 11/01/2022; A, 8/1/2023; A, 11/04/2025]

8.9.3.12 RECERTIFICATION:

Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. ~~[Clients who recertify will qualify at or below two hundred and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Paragraph (2) of Subsection E of 8.9.3.7 NMAC. Clients designated as essential workers who recertify must be at or below four hundred and twenty-five percent of the federal poverty level.]~~ The department will use the requirements set forth in 8.9.3.9 NMAC to determine eligibility for purposes of

recertification. 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 a completed application and documentation of income, [or] proof of school enrollment and employment. Changes in income, household size, employment, training or educational status are noted in the client's record. Copayment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B of 8.9.3.11 NMAC.
[8.9.3.12 NMAC - N, 11/01/2022; A, 8/1/2023; A, 11/04/2025]

8.9.3.13 CLIENT

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

A. Copayments: Copayments are paid by all clients receiving child care assistance benefits, except for at-risk child care and qualified grandparents or legal guardians. Copayments are determined by income and household size. The copayment schedule is published yearly at <https://www.nmeccd.org/child-care-assistance/>. In the case of an emergency, or under extenuating circumstances, the department secretary may waive copayments for families receiving

child care, and for certain categories set forth in 8.9.3.9 NMAC, during which period, the department will pay providers the client's approved rate, including required copayments. If copayments are waived, three months notice will be given to providers and families prior to reinstatement.

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

(1) The first child is identified as the child requiring the ~~most~~ highest number of hours of child care.

(2) The second child is identified as the child with the second ~~most~~ highest number of hours needed for child care.

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

(1) full time care will be based on one hundred percent of the base copayment;

(2) ~~[part time-
1-care]~~ Wrap-Around-Care will be based on seventy-five percent of the base copayment;

(3) part time [2] care will be based on fifty percent of the base copayment; and

~~[(4) — part time-
3-care will be based on twenty-five
percent of the base copayment.]~~

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

FPL Percent Income Increments	Percent of Gross Income (Monthly) to Determine Copay
0.00 to 185.00	0.00%
185.01 to [200] 250	[0.29%] 0.01%
[200.01 to 210] 250.01 to 325	[0.59%] 0.02%
[210.01 to 220] 325.01 to 400	[0.88%] 0.03%
[220.01 to 230]	1.18%
230.01 to 240	1.47%
240.01 to 250	1.76%
250.01 to 260	2.06%
260.01 to 270	2.35%
270.01 to 280	2.65%
280.01 to 290	2.94%
290.01 to 300	3.24%
300.01 to 310	3.53%
310.01 to 320	3.82%
320.01 to 330	4.12%
330.01 to 340	4.41%
340.01 to 350	4.71%
350+ ₊	5.00%]
400.01 to 475	0.04%
475.01 to 500	0.05%
500.01 and above	1.50%

E. Clients pay copayments directly to their child care provider and must remain current in

their payments. A client who does not pay copayments may be subject to sanctions. Copayment cost-sharing will be deducted from payment rates as determined in Subsections G through M of 8.9.3.17 NMAC. Copayments are currently waived and ECECD will provide three months' notice to clients and providers if it reinstates copayment requirements.

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

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

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

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

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

(4) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will

be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

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

(6) Clients who do not comply with this requirement may be sanctioned. [8.9.3.13 NMAC - N, 11/01/2022; A, 8/1/2023; A, 11/04/2025]

8.9.3.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended at the request of the client if child care benefits are not being utilized with payment being discontinued to the provider. The client [will] shall 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] shall remain eligible for the approved 12-month eligibility period.

C. A case will be closed [if the following conditions apply:] for failing to recertify at the end of approved eligibility period.

~~[(4) — income-
in excess of two hundred and fifty-
percent federal poverty level or a
client designated as an essential-
worker, as defined in Paragraph (2) of
Subsection E of 8.9.3.9 NMAC, with
an income in excess of four hundred
and twenty-five percent of the federal
poverty level;~~

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

~~(3) being disqualified from participation in the program.]~~
[8.9.3.14 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.3.15 PROVIDER

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

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. ~~[Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies.]~~

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

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

client notifies the provider of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks following the first date of nonattendance.

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

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

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

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

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

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

(2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to

charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are not allowed to charge child care assistance families the ~~[applicable]~~ gross receipts tax for the sum of the child care assistance benefit and copayment. Child care providers may claim the gross receipts tax deduction pursuant to Section 7-9-77.2 NMSA 1978, as applicable.

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

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

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

[8.9.3.15 NMAC - N, 11/01/2022; A, 8/1/2023; A 10/08/2024; A, 11/04/2025]

8.9.3.16 DEPARTMENT RESPONSIBILITIES:

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

B. Child care assistance workers perform all

casework functions in a timely manner, including the processing of payments and notifications of case actions.

C. Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required documentation from the client. The department will seek to obtain such data from the New Mexico department of workforce solutions and the New Mexico HCA.

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]~~ HCA.

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

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

H. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent or legal guardian and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and

other topics of interest to parents or legal guardians and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

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

8.9.3.17 PAYMENT FOR SERVICES:

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

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

B. Payment for notification of changes:

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

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

(3)

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

(4)

If a provider notifies the department that it has received notification from a client of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks, following the period of non-attendance. The provider must submit documentation of the client notification and reasoning to the department.

(5)

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

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

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

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

Continued Next Page

[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]

<u>Full Time Care</u>	<u>Wrap-Around Care</u>	<u>Part-Time Care (cases where a child may need two providers or less than full time care)</u>
<u>Hours of service are approved based on a negotiated arrangement between the family and a single provider with a minimum of 29 hours per week</u>	<u>Head Start, New Mexico PreK, and school age children needing Wrap-Around Care, including summer and breaks for a single provider</u>	<u>In the event one provider is unable to provide services for all child's needs, and care is needed for multiple providers or other purposes and for care needed less than 29 weekly hours</u>

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

G. Monthly reimbursement rates:

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

LICENSED CENTERS (2 STAR)[illegible]

\$1,200	\$600	\$720	\$875	\$438	\$525	\$735	\$368	\$552	\$689	\$525	\$263
LICENSED FAMILY HOMES (2 STAR)											
<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap-Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap-Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part time</u>	<u>Preschool Wrap-Around Care</u>	<u>School age Full time</u>	<u>School age (Wrap-Around Care, full year)</u>	<u>School age Part Time</u>
\$1,325	\$663	\$795	\$1,275	\$638	\$765	\$914	\$457	\$686	\$730	\$557	\$278
LICENSED GROUP HOMES (2 STAR)											
<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap-Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap-Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part time</u>	<u>Preschool Wrap-Around Care</u>	<u>School age Full time</u>	<u>School age (Wrap-Around Care, full year)</u>	<u>School age Part Time</u>
\$1,200	\$600	\$720	\$1,150	\$575	\$690	\$872	\$436	\$654	\$654	\$499	\$249.52
REGISTERED HOMES AND FFN (2 STAR)											
<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap-Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap-Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part time</u>	<u>Preschool Wrap-Around Care</u>	<u>School age Full time</u>	<u>School age (Wrap-Around Care, full year)</u>	<u>School age Part Time</u>
\$750	\$375	\$450	\$750	\$375	\$450	\$425	\$213	\$255	\$459	\$350	\$175.00

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

I. Providers holding and maintaining ECECD approved national accreditation status will receive the differential rate listed in [Subsection I] 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 home) and age of child. All providers who maintain ECECD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

J. The department will pay a [differential] higher 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, maintaining ECECD approved national accreditation status, or status as head start, or early head start, as follows:

<u>[Licensed Child Care Centers]</u>			
2+ Star FOCUS			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
\$75.00	\$90.00	\$100.00	\$50.00
3 Star FOCUS			

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

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

LICENSED CENTERS

	Infant Full Time	Infant Part Time	Infant Wrap- Around Care	Toddler Full Time	Toddler Part Time	Toddler Wrap- Around Care	Preschool Full Time	Preschool Part time	Preschool Wrap- Around Care	School age Full time	School age (Wrap- Around Care, full year)	School age Part Time
2 + Star												
	\$1,300	\$650	\$780	\$975	\$488	\$585	\$840	\$420	\$630	\$758	\$578	\$263
3 Star												
	\$1,300	\$650	\$780	\$975	\$488	\$585	\$840	\$420	\$630	\$758	\$578	\$289
4 Star												
	\$1,650	\$825	\$990	\$1,250	\$625	\$750	\$1,051	\$525	\$788	\$895	\$683	\$289
5 Star FOCUS, ECECD approved national accreditation, or Head Start, or Early Head Start												
	\$2,175	\$1,088	\$1,305	\$1,700	\$850	\$1020	\$1,182	\$591	\$886	\$1,033	\$788	\$341

LICENSED FAMILY HOMES

	<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap- Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap- Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part time</u>	<u>Preschool Wrap- Around Care</u>	<u>School age Full time</u>	<u>School age (Wrap- Around Care, full year)</u>	<u>School age Part Time</u>
<u>2+ Star</u>												
	<u>\$1,450</u>	<u>\$725</u>	<u>\$870</u>	<u>\$1,375</u>	<u>\$688</u>	<u>\$825</u>	<u>\$998</u>	<u>\$499</u>	<u>\$749</u>	<u>\$826</u>	<u>\$630</u>	<u>\$315</u>
<u>3 Star</u>												
	<u>\$1,450</u>	<u>\$725</u>	<u>\$870</u>	<u>\$1,375</u>	<u>\$688</u>	<u>\$825</u>	<u>\$998</u>	<u>\$499</u>	<u>\$749</u>	<u>\$826</u>	<u>\$630</u>	<u>\$315</u>
<u>4 Star</u>												
	<u>\$1,700</u>	<u>\$850</u>	<u>\$1,020</u>	<u>\$1,575</u>	<u>\$788</u>	<u>\$945</u>	<u>\$1,129</u>	<u>\$565</u>	<u>\$847</u>	<u>\$937</u>	<u>\$714</u>	<u>\$357</u>
<u>5 Star FOCUS, ECECD approved national accreditation, or Head Start, or Early Head Start</u>												
	<u>\$1,900</u>	<u>\$950</u>	<u>\$1,140</u>	<u>\$1,800</u>	<u>\$900</u>	<u>\$1,080</u>	<u>\$1,219</u>	<u>\$609</u>	<u>\$914</u>	<u>\$999</u>	<u>\$762</u>	<u>\$381</u>

LICENSED GROUP HOMES

	<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap- Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap- Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part time</u>	<u>Preschool Wrap- Around Care</u>	<u>School age Full time</u>	<u>School age (Wrap- Around Care, full year)</u>	<u>School age Part Time</u>
<u>2+ Star</u>												
	<u>\$1,300</u>	<u>\$650</u>	<u>\$780</u>	<u>\$1,250</u>	<u>\$625</u>	<u>\$750</u>	<u>\$956</u>	<u>\$478</u>	<u>\$717</u>	<u>\$751</u>	<u>\$573</u>	<u>\$286.29</u>
<u>3 Star</u>												
	<u>\$1,300</u>	<u>\$650</u>	<u>\$780</u>	<u>\$1,250</u>	<u>\$625</u>	<u>\$750</u>	<u>\$956</u>	<u>\$478</u>	<u>\$717</u>	<u>\$751</u>	<u>\$573</u>	<u>\$286.29</u>
<u>4 Star</u>												
	<u>\$1,575</u>	<u>\$788</u>	<u>\$945</u>	<u>\$1,500</u>	<u>\$750</u>	<u>\$900</u>	<u>\$1,087</u>	<u>\$544</u>	<u>\$816</u>	<u>\$861</u>	<u>\$657</u>	<u>\$328.32</u>
<u>5 Star FOCUS, ECECD approved national accreditation, or Head Start, or Early Head Start</u>												
	<u>\$1,750</u>	<u>\$875</u>	<u>\$1,050</u>	<u>\$1,700</u>	<u>\$850</u>	<u>\$1,020</u>	<u>\$1,177</u>	<u>\$588</u>	<u>\$883</u>	<u>\$923</u>	<u>\$704</u>	<u>\$351.95</u>

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. The department pays a higher rate to providers who provide at least ten hours of care during the day, at least five days a week (not including holidays, breaks, or special programming such as parent teacher conferences and professional development), and meet the following minimum pay requirements for their floaters, assistant teachers, and assistant educators:

	<u>2 Star</u>	<u>2+ Star Focus</u>	<u>3 Star Focus</u>	<u>4 Star Focus</u>	<u>5 Star Focus</u>
<u>Entry-level staff</u>	<u>16/ hour</u>	<u>\$17/hour</u>	<u>\$17/hour</u>	<u>\$18/hour</u>	<u>\$19/hour</u>

N. The department pays the following enhanced rates to providers who comply with the requirements as outlined in Subsection M of 8.9.3.17 NMAC:

LICENSED CENTERS — ENHANCED RATE

	<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap-Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap-Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part Time</u>	<u>Preschool Wrap-Around Care</u>
<u>2 Star</u>									
	<u>\$1,350</u>	<u>\$675</u>	<u>\$810</u>	<u>\$1,015</u>	<u>\$508</u>	<u>\$609</u>	<u>\$825</u>	<u>\$413</u>	<u>\$619</u>
<u>2+ Star</u>									
	<u>\$1,400</u>	<u>\$700</u>	<u>\$840</u>	<u>\$1,075</u>	<u>\$538</u>	<u>\$645</u>	<u>\$890</u>	<u>\$445</u>	<u>\$668</u>
<u>3 Star</u>									
	<u>\$1,400</u>	<u>\$700</u>	<u>\$840</u>	<u>\$1,075</u>	<u>\$538</u>	<u>\$645</u>	<u>\$890</u>	<u>\$445</u>	<u>\$668</u>
<u>4 Star</u>									
	<u>\$1,950</u>	<u>\$975</u>	<u>\$1,170</u>	<u>\$1,525</u>	<u>\$763</u>	<u>\$915</u>	<u>\$1,150</u>	<u>\$575</u>	<u>\$863</u>
<u>5 Star FOCUS, ECECD approved national accreditation, or Head Start, or Early Head Start</u>									
	<u>\$2,500</u>	<u>\$1,250</u>	<u>\$1,500</u>	<u>\$1,975</u>	<u>\$988</u>	<u>\$1,185</u>	<u>\$1,375</u>	<u>\$688</u>	<u>\$1,031</u>

LICENSED FAMILY HOMES — ENHANCED RATE

	<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap-Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap-Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part Time</u>	<u>Preschool Wrap-Around Care</u>
2 Star									
	<u>\$1,500</u>	<u>\$750</u>	<u>\$900</u>	<u>\$1,425</u>	<u>\$713</u>	<u>\$855</u>	<u>\$1,050</u>	<u>\$525</u>	<u>\$788</u>
2+ Star									
	<u>\$1,625</u>	<u>\$813</u>	<u>\$975</u>	<u>\$1,525</u>	<u>\$763</u>	<u>\$915</u>	<u>\$1,175</u>	<u>\$588</u>	<u>\$881</u>
3 Star									
	<u>\$1,625</u>	<u>\$813</u>	<u>\$975</u>	<u>\$1,525</u>	<u>\$763</u>	<u>\$915</u>	<u>\$1,175</u>	<u>\$588</u>	<u>\$881</u>
4 Star									
	<u>\$1,975</u>	<u>\$988</u>	<u>\$1,185</u>	<u>\$1,850</u>	<u>\$925</u>	<u>\$1,110</u>	<u>\$1,375</u>	<u>\$688</u>	<u>\$1031</u>
5 Star FOCUS, ECECD approved national accreditation, or Head Start, or Early Head Start									
	<u>\$2,175</u>	<u>\$1,088</u>	<u>\$1,305</u>	<u>\$2,025</u>	<u>\$1,013</u>	<u>\$1,215</u>	<u>\$1,450</u>	<u>\$725</u>	<u>\$1088</u>

LICENSED GROUP HOMES — ENHANCED RATE

<u>Group Homes</u>	<u>Infant Full Time</u>	<u>Infant Part Time</u>	<u>Infant Wrap-Around Care</u>	<u>Toddler Full Time</u>	<u>Toddler Part Time</u>	<u>Toddler Wrap-Around Care</u>	<u>Preschool Full Time</u>	<u>Preschool Part Time</u>	<u>Preschool Wrap-Around Care</u>
2 Star									
	<u>\$1,375</u>	<u>\$688</u>	<u>\$825</u>	<u>\$1,300</u>	<u>\$650</u>	<u>\$780</u>	<u>\$975</u>	<u>\$488</u>	<u>\$731</u>
2+ Star									

	<u>\$1,475</u>	<u>\$738</u>	<u>\$885</u>	<u>\$1,400</u>	<u>\$700</u>	<u>\$840</u>	<u>\$1,075</u>	<u>\$538</u>	<u>\$806</u>
3 Star									
	<u>\$1,475</u>	<u>\$738</u>	<u>\$885</u>	<u>\$1,400</u>	<u>\$700</u>	<u>\$840</u>	<u>\$1,075</u>	<u>\$538</u>	<u>\$806</u>
4 Star									
	<u>\$1,775</u>	<u>\$888</u>	<u>\$1,065</u>	<u>\$1,700</u>	<u>\$850</u>	<u>\$1,020</u>	<u>\$1,200</u>	<u>\$600</u>	<u>\$900</u>
5 Star FOCUS, ECECD approved national accreditation, or Head Start, or Early Head Start									
	<u>\$1,940</u>	<u>\$970</u>	<u>\$1,164</u>	<u>\$1,850</u>	<u>\$925</u>	<u>\$1,110</u>	<u>\$1,300</u>	<u>\$650</u>	<u>\$975</u>

<u>LICENSED CENTERS—ENHANCED RATE – SCHOOL AGE</u>			
<u>Star Rating</u>	<u>School Age Full Time</u>	<u>School Age Part-time</u>	<u>School Age Wrap-Around Care</u>
<u>2 Star</u>	<u>\$699</u>	<u>\$268</u>	<u>\$535</u>
<u>2+ Star</u>	<u>\$768</u>	<u>\$294</u>	<u>\$588</u>
<u>3 Star</u>	<u>\$768</u>	<u>\$ 294</u>	<u>\$588</u>
<u>4 Star</u>	<u>\$905</u>	<u>\$ 347</u>	<u>\$693</u>
<u>5 Star</u>	<u>\$1,043</u>	<u>\$ 399</u>	<u>\$798</u>

<u>LICENSED FAMILY HOMES—ENHANCED RATE– SCHOOL AGE</u>			
<u>Star Rating</u>	<u>School Age Full Time</u>	<u>School Age Part-time</u>	<u>School Age Wrap-Around Care</u>
<u>2 Star</u>	<u>\$740</u>	<u>\$284</u>	<u>\$567</u>
<u>2+ Star</u>	<u>\$836</u>	<u>\$320</u>	<u>\$640</u>
<u>3 Star</u>	<u>\$836</u>	<u>\$320</u>	<u>\$640</u>
<u>4 Star</u>	<u>\$947</u>	<u>\$362</u>	<u>\$724</u>
<u>5 Star</u>	<u>\$1,009</u>	<u>\$386</u>	<u>\$772</u>

<u>LICENSED GROUP HOMES—ENHANCED RATE– SCHOOL AGE</u>			
<u>Star Rating</u>	<u>School Age Full Time</u>	<u>School Age Part-time</u>	<u>School Age Wrap-Around Care</u>
<u>2 Star</u>	<u>\$664</u>	<u>\$255</u>	<u>\$509</u>
<u>2+ Star</u>	<u>\$761</u>	<u>\$292</u>	<u>\$583</u>
<u>3 Star</u>	<u>\$761</u>	<u>\$292</u>	<u>\$583</u>
<u>4 Star</u>	<u>\$871</u>	<u>\$334</u>	<u>\$667</u>
<u>5 Star</u>	<u>\$933</u>	<u>\$357</u>	<u>\$714</u>

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

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

[8.9.3.17 NMAC - N, 11/01/2022; A, 8/1/2023; A, 11/04/2025]

8.9.3.20 FRAUD: The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility, is fraud and appropriate sanctions, including recoupment, termination of benefits, and referral to law enforcement, [are] shall be initiated by the department. Fraudulent cases are reported

to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined. In cases where substantiated fraud has been determined, the department may disqualify a client or provider until their debt has been paid in full. [8.9.3.20 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.3.22 FAIR

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

A. The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone or virtual format 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]~~ HCA. If TANF benefits are modified or terminated by ~~[HSD]~~ HCA, then the client applies for a fair hearing to ~~[HSD]~~ HCA. [8.9.3.22 NMAC - N, 11/01/2022; A, 11/04/2025]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.9.4 NMAC, Section 7, 11, 12, 16, 17, 19, 21 through 38, and 40 through 47, effective 11/04/2025

8.9.4.7 DEFINITIONS:

A. Terms beginning with the letter "A":

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

(a)

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

(b)

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

(c)

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

(2) "Activity area"

means space for children's activities where related equipment and materials are accessible to the children.

(3)

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

(4)

"Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations). Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

(5)

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

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

C. Terms beginning with the letter "C":

(1)

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

(2) "Cease and desist letter"

means a formal letter from the licensing authority

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

(3) "Child"

means a person who is under the chronological age of [18] 19 years.

(4) "Child

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

(5) "Child with a disability or special needs"

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

(6) "Class

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

(7) "Class

B deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the

facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

(8) "Class

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

(9) "Clean"

means to physically remove all dirt and contamination.

(10)

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

(11) "Core

hours" means the daily hours of operation of the child care facility.

(12)

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

(13)

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

D. Terms beginning with the letter "D":

(1)

"Deficiency" means a violation of these regulations.

(2)

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

[~~(2)~~] (3)

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

[~~(3)~~] (4) "Director"

means the person in charge of the day-to-day operation and program of a child care center.

[~~(4)~~] (5)

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

[~~(5)~~] (6) "Drop-

in" means a child who attends a child care facility on an occasional or unscheduled basis.

E. Terms beginning with the letter "E":

(1)

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

(2)

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

(3)

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

(4)

"Expulsion" means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter “F”:

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

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

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

(4) **“(FOCUS)”** is a voluntary tiered quality rating and improvement program that is open to all [registered and] licensed child care programs.

G. Terms beginning with the letter “G”:

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

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

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

H. Terms beginning with the letter “H”:

(1) **“Home”** means a private residence and its premises licensed under these

regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special consideration will be made for homes on tribal lands.

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

(a) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

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

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

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

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

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

L. Terms beginning with the letter “L”:

(1) **“License”** means a document issued by ECECD to a child care facility licensed and governed by these regulations and granting the legal right to operate [for a specified period of time, not to exceed one year].

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

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

M. Terms beginning with the letter “M”:

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

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

N. Terms beginning with the letter “N”:

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

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

(b) the council on accreditation (COA)

for early childhood education and after school programs;

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

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

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

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

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

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

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

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

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

O. Terms beginning with the letter “O”:

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

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

P. Terms beginning with the letter “P”:

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

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

(3) (2) **“Pest”** means any living organism declared a pest pursuant to the Pesticide Control Act.

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

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

(6) (5) **“Policy”**

is a written directive that guides decision-making. Policies form the basis for authoritative action.

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

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

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

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

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

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

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

R. Terms beginning with the letter "R":

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

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

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

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

S. Terms beginning with the letter "S":

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

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

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

(4) **"School-age"** means a child in care who is age five to 18 years.

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

into the individual's professional development plan.

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

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

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

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

(10) **"Star level"** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

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

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

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

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

U. Terms beginning with the letter "U":

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

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

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

V. Terms beginning with the letter "V":

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

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

W. Terms beginning with the letter "W":

"Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority. [8.9.4.7 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.11 LICENSING: A. TYPES OF LICENSES:

(1) [ANNUAL] INITIAL LICENSE:
[An annual] A license is issued[for a one-year period] to a child care facility that has met all requirements of these regulations and shall remain valid as long as the licensee maintains good standing in compliance with all applicable rules of the department, or if not in compliance with a rule,

has been granted a waiver or variance of that rule by the department or has entered into a plan of correction during their annual inspection, and the child care facility certifies on its annual inspection survey its desire to renew the license for another year. A denial of an initial or renewal application may only occur pursuant to 8.9.4.12 NMAC.

(a)

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

(i)

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

(ii)

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

(iii)

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

(b)

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

(c)

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

(d)

3-star level is voluntary and requires meeting and maintaining licensing

requirements and FOCUS level 3 quality criteria at all times.

(e)

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

(f)

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

(2)

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

(a)

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

(b)

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

(c)

After a second temporary license has been issued, a new application ~~[and the required application fee]~~ must be submitted within 30 days ~~[in order to renew the license for the remainder of that one year period].~~

(3)

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

(a)

A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director ~~[, submit an application (fee~~

\$20)] and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director's appointment is valid for 90 days.

(b)

A notarized application must be submitted for a change of capacity ~~[(fee \$20)]~~. Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

(c)

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

(4)

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

(5)

MILITARY LICENSE:

(a)

Centers on military installations are governed and inspected by the United States department of defense (DoD) and obtain national accreditations. Therefore, such centers do not require an inspection by the New Mexico licensing authority.

(b)

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

Licensing application Annual submission of a letter or memo detailing the approved DoD background clearance status for the director and all staff members in accordance with 8.9.6 NMAC, to include the individual's name, date of birth, and home address; DoD annual certification; DoD approved accreditation, if applicable; and W-9 form and supporting documentation, if applicable. (6) TRIBAL GOVERNMENT LICENSE: (a) Centers and <u>child care</u> homes operating on sovereign tribal lands are governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency <u>or may maintain status as Tribal head start or early head start</u>. Therefore, such centers and homes do not require an inspection by the New Mexico licensing authority. (b) <u>Centers and child care homes governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency, or who maintains status as tribal head start or early head start, may choose to apply for a Tribal Government License from ECECD.</u> (i) <u>A Tribal Government license may be issued for the purposes of receiving child care assistance subsidies through 8.9.3 NMAC.</u> (ii) <u>Centers and licensed homes operating under a Tribal Government license must comply with their sponsoring Tribal Child Care and Development Lead Agency or Tribal head start and early head start requirements, and are not required to be inspected by the New Mexico licensing authority or comply with any other regulations under this part other than Paragraph (6) of Subsection A of 8.9.4.11 NMAC.</u>	(iii) <u>Centers and licensed homes operating under a Tribal Government license must comply with their sponsoring Tribal Child Care and Development Lead Agency or Tribal head start and early head start rules and requirements.</u> (iv) <u>A Tribal Government license may be revoked if the New Mexico licensing authority is notified by the center or licensed home's Tribal Child Care and Development Lead agency of the center or home's non-compliance with their rules and requirements or is notified of a loss of Tribal head or early head start status.</u> (c) Providers [licensed by the Tribal CCDF Lead Agency program] wishing to receive a Tribal Government license must submit the following to obtain licensure from ECECD: (i) Licensing application; (ii) Proof of Tribal CCDF Lead Agency approval; (iii) Annual submission of a letter or memorandum attesting that the tribal CCDF's programs' director and all staff are in compliance with state, federal or tribal background check clearances; (iv) Annual submission of a list of the director and all staff employed by the [Tribal CCDF program] provider, listing each individual staff member's name, date of birth, and home address; and (v) W-9 form and supporting documentation, if applicable. (d) <u>As an alternative to a Tribal Government license, centers and homes operating on sovereign tribal lands may choose to apply for a state license. To receive a state license, the center or home must follow the full process outlined in 8.9.4 NMAC and agree to follow and be subject to all the rules and requirements of 8.9.4 NMAC.</u>	[B.] RENEWAL OF LICENSE: (1) A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. ECECD-approved nationally accredited centers, homes and out-of-school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a \$25 late fee must be submitted with the renewal fee. (2) All licensed facilities must maintain an original background check eligibility letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence. The teenage child's guardian shall sign the annual statement on behalf of the teenage child. (3) Upon receipt of a notarized renewal application, the required fee and the completion of an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the child care facility is in compliance with these regulations. (4) If a licensee fails to submit a notarized renewal application with the required fee before the current license expires, the licensing authority may require the agency to cease operations until all licensing requirements are completed.] [C.] B. POSTING OF LICENSE: A child care facility [will] shall post the license on the licensed
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premises in an area readily visible to parents, staff members, and visitors.

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

- (1) the owner of the child care facility changes;
- (2) the child care facility moves;
- (3) the licensee of the child care facility changes; or
- (4) the child care facility closes.

[E-] D. AUTOMATIC EXPIRATION OF LICENSE: A license will expire automatically at midnight on ~~[the expiration date noted on the license unless earlier suspended or revoked, or]~~ the date the following occurs:

- (1) on the day a child care facility closes;
- (2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;
- (3) on the day a child care facility moves.

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

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

8.9.4.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

A. The licensing authority may revoke, suspend, or restrict a license, reduce star status, deny an initial or renewal license application, impose monetary sanctions pursuant to [7-1-8] 8.370.4 NMAC, put in place conditions of operation, issue a cease and desist

letter, impose other sanctions or requirements against a licensee, or reduce to a base level of child care assistance reimbursement a licensee who is in receipt of a higher than base level of child care assistance reimbursement, for any of the following reasons:

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

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

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

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

(5) failure to timely obtain required background checks;

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

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

(8) substantiated abuse or neglect of

children by an educator, staff member, volunteer, or household member as determined by ECECD, CYFD, or a law enforcement agency;

(9) failure to comply with provisions of the other related regulations listed ~~[in these regulations]~~ herein;

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

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

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

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

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

(15) background clearance suspension or denial.

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

C. A suspension, revocation, or conditions of operations imposed pursuant to Subsection A of this section may take effect immediately if in the discretion of the department ~~[that], the health, safety or welfare of a child is at risk [or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children].~~

D. The early childhood education and care department

notifies the licensee in writing of any action taken or contemplated against the license/licensee. The notification shall include the reasons for the department's action.

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

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

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

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

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

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

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

(2) Upon a finding of probable cause, the

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

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

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

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

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

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

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

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

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

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

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

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

N. The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. The licensing authority shall reduce the star level of a provider granted national accreditation status by the department to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. If a provider holding accreditation from an accrediting body no longer approved by ECECD fails to maintain these requirements, this will result in the provider reimbursement reverting to the base reimbursement rate. The provider may increase their star level only by meeting FOCUS criteria or by attaining ECECD approved national accreditation status. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.

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

8.9.4.16 VARIANCES - NEW CHILD CARE FACILITY:

A new child care facility may be located in an existing building or a newly constructed building.

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

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

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

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

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

8.9.4.17 SURVEYS FOR CHILD CARE FACILITIES:

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

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

C. The licensee, director, or operator, will submit within 10 working days after the date of the survey, a corrective action plan to the licensing authority for deficiencies found during the survey. The corrective action plan will be

specific on how and when the child care facility ~~[with]~~ shall correct the deficiency or deficiencies.

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

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

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

G. If a facility has video cameras on the premises that have recording capabilities, footage must be accessible to the licensing authority upon request.
[8.9.4.17 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.18 COMPLAINTS:

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

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

C. The licensing authority will investigate any complaint in which the health, safety, or welfare of a child could be in danger. The complaint will be

reviewed and prioritized immediately according to the nature and severity of the complaint. The licensing authority follows established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows.

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

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

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

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

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

E. Action by the licensing authority:

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

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

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

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

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

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

F. The licensing authority will report all cases of suspected child abuse and neglect to both CYFD's children's protective services and the local law enforcement agency.
[8.9.4.18 NMAC - N, 11/01/2022; A, 11/04/2025]

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

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

B. submits an application for transfer and is found eligible pursuant to 8.9.6.11 NMAC.
[8.9.4.19 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.21 LICENSURE REQUIREMENTS FOR CENTERS:

A. LICENSING REQUIREMENTS:

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

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

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

- (a) current written finalized zoning approval from the appropriate city, county or state authority;
 - (b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;
 - (c) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority;
 - (d) current written approval from the New Mexico environment department or other environmental health authority for:
 - (~~(a)~~) (i) a kitchen, if meals are prepared on site and served in the center;
 - (~~(b)~~) (ii) private water supply, if applicable;
 - (~~(c)~~) (iii) private waste or sewage disposal, if applicable; and
 - (~~(d)~~) (iv) a swimming pool, if applicable.
- (4) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW CENTERS:
- (a) Accessibility to individuals with disabilities is provided in all new centers and [with] shall include the following:
 - (i) main entry into the center is level or has a ramp to allow for wheelchair access;
 - (ii) building layout allows for access to the main activity area;
 - (iii) access to at least one bathroom is required to have a door clearance of 32 inches; the toilet unit also provides a 60-inch diameter turning radius;
 - (iv) if ramps are provided to the building, the slope of each ramp is at least a 12-

inch horizontal run for each inch of vertical rise; and

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

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

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

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

B. CAPACITY OF CENTERS:

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

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

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

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

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

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

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

C. INCIDENT REPORTING REQUIREMENTS:

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

(a) a lost, missing or unattended child;

(b) a serious injury;

(c) the abuse or neglect of a child;

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

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

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

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

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

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

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

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

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures. [8.9.4.21 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

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

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

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

(5) the current list of notifiable diseases and communicable diseases published by

the office of epidemiology of the New Mexico department of health.

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

- (1) mission statement;
- (2) philosophy statement; and
- (3) curriculum statement.

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

- (1) actions to be taken in case of accidents or emergencies involving a child, parents or staff members;
- (2) policies and procedures for admission and discharge of children;
- (3) policies and procedures for expulsion of children. Policies and procedures shall include how the center will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The center must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- (4) policies and procedures for the handling of medications;
- (5) policies and procedures for the handling of complaints received from parents or any other person;
- (6) policies and procedures for actions to be taken

in case ~~[a child is found]~~ children are discovered unattended or missing from the center;

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

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

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

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

- (1) GENERAL INFORMATION:
 - (a) mission statement;
 - (b) philosophy statement;
 - (c) program information (location, license information, days and hours of operation, services offered);
 - (d) name of director and ~~[how he/she may be reached]~~ their contact information;

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

(f) daily schedule;

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

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

(i) celebrating holidays, birthdays and parties; and

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

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) expulsion procedures;

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

(e) notification of absence;

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

(g) field trip policies;

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

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

(j) snow days and school closure;

(k) confidentiality policy;

(l) child abuse/neglect reporting procedure;

(m) guidance policy;

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

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

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

(1) PERSONAL INFORMATION:

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

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

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

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

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

(f) a record of any accidents, injuries or illnesses which require first aid

or medical attention which must be reported to the parent or guardian;

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

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

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

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

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

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

(2) EMERGENCY INFORMATION:

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

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

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

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

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

F. PERSONNEL RECORDS:

(1) A licensee [with] shall keep and maintain a complete up-to-date file in ECECD's professional development information system (PDIS), for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. ~~[A center will keep the file for one year after the staff member's last day of employment.]~~ If the center chooses to retain duplicate physical copies of these records, these records shall be stored in a secure location for the privacy of the staff members. New information shall be updated in a timely manner in PDIS. Providers will have six months to comply from the date these regulations are promulgated. Records [with] shall contain at [least] a minimum the following:

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

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

(f) an annual signed statement that the

staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;

(g)

documentation of current first-aid and cardiopulmonary resuscitation training;

(h)

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

(i)

emergency contact number;

(j)

universal precaution acknowledgment form;

(k)

confidentiality form;

(l)

results of performance evaluations (shall be maintained outside of PDIS);

(m)

administrative actions or reprimands (shall be maintained outside of PDIS);

(n)

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

(o)

signed acknowledgment that the staff have read and understand the personnel handbook;

(p)

signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan; and

~~(q)~~

~~form I-9, employment eligibility verification.]~~

(2) A center

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

G. PERSONNEL HANDBOOK: The center [will]

shall give each employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority.

After any changes, notice must be sent out to families, parents, or guardians and posted in a common area. The handbook [will] shall include the following critical contents:

(1)

organizational chart;

(2) job

descriptions of all employees by title;

(3) benefits,

including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(4) code of

conduct;

(5)

training requirements, career lattice, professional development opportunities;

(6) procedures

and criteria for performance evaluations;

(7) policies on

absence from work;

(8) grievance

procedures;

(9) procedures

for resignation or termination;

(10) copy of

licensing regulations;

(11) policy on

parent involvement;

(12) health

policies related to both children and staff;

(13) policy on

sexual harassment;

(14) child

guidance policy;

(15) anti-

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

(16)

confidentiality statement; and

(17) a plan for retention of qualified staff.

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

8.9.4.23 PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

(6)

Substitutes and part-time educators counted in the staff/child ratios [will] shall meet the same requirement as regular educators except for training requirements, professional development plan and evaluations. Substitutes, volunteers, and educators routinely employed in

a center but working 20 hours or fewer a week, [with] shall complete half the required training hours. Such employees working more than 20 hours a week [with] shall meet full training requirements and have professional development plans and evaluations. See Paragraph (2) of Subsection B of 8.9.4.23 NMAC for additional training requirements.

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

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

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

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

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

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

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

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

Professional Preparation			Experience
Program Administration		Child Development/ Early Childhood Education	
The first of three AA-level Early Childhood Program Administration courses in the Early Childhood Program Administration career pathway: <i>Program Management I</i>	and	<i>Child Growth, Development and Learning</i> (one of the AA-level “common core courses”)**	Two-years experience in an early childhood growth and development setting
Or			
The National Administrator Credential (NAC)*			
The Provisional AA-Level NM Early Childhood Program Administration Certificate (All three AA-level Early Childhood Program Administration Courses and Practicum: <i>Program Management I, Effective Program Development for Diverse Learners and Their Families & Practicum, Professional Relationships & Practicum</i>)			
The New Mexico Child Development Certificate (CDC) (Includes the following four courses as well as additional non-coursework requirements: <i>Child Growth, Development and Learning; Health, Safety and Nutrition; Family and Community Collaboration; and Assessment of Children and Evaluation of Programs</i>)			
The Child Development Associate (CDA) certificate			
The Child Care Professional (CCP) certificate			
The New Mexico Early Childhood Program Administration Certificate			
Montessori Teacher Certification			
The New Mexico One-Year Vocational Certificate			
Associate of Arts (AA) or Applied Sciences (AA or AAS) in child development or early childhood education			
Or			

A bachelor's degree or higher in early childhood education or a related field. Related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or any bachelor's degree with a transcript containing two or more Early Childhood courses.	and	One year of experience in an early childhood growth and development setting
*The NAC and two years of experience in an early childhood growth and development setting will be accepted as sufficient qualification for a director under the following conditions: a) The NAC was received prior to November 30, 2012 and b) the NAC has been maintained and has not expired subsequent to November 30, 2012. **Directors shall be given until the end of the first full academic semester following their start date to successfully complete this course. (b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as a director. Current directors having a break in employment of more than one year must meet the requirements as specified in Subparagraph (a) above.	review of licensing regulations; (iv) policies regarding guidance, child abuse and neglect reporting, and handling of complaints; (v) review of written policies and procedures as defined in Subsection C of 8.9.4.22 NMAC; (vi) center/parental agreement; (vii) sanitation procedure; (viii) written goals of the program; (ix) personnel handbook; (x) [parent] family handbook; (xi) names and ages of children; (xii) names of parents; (xiii) tour of the facility; and (xiv) introduction to other staff and parents. (xv) (b) All new staff members working directly with children regardless of the number of hours employed per week shall complete the following training within three months of their date of hire. Training must be approved by ECECD to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators [with] shall have three months to comply with the following training from the date these regulations are promulgated:	(iv) prevention of and response to emergencies due to food or other allergic reactions; (v) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; (vi) prevention of shaken baby syndrome and abusive head trauma; (vii) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters; (viii) handling and storage of hazardous materials and the appropriate disposal of bio contaminants; (ix) precautions in transporting children (if applicable); (x) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component; [and] (xi) recognition and reporting of child abuse and neglect; and (xii) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund [(https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii)] in 45 CFR § 98.44 Training and Professional development, or approved three-credit early care and education course or an equivalent approved by the department. (c) New staff members working directly with children regardless of the number of hours employed per week [with] shall complete the following, or a three-credit early care and education
(2) TRAINING: (a) The director [with] shall develop and document an orientation and training plan for new staff members and volunteers and [with] shall provide information on training opportunities. The director [with] shall have on file a signed acknowledgment of completion of orientation by employees, volunteers and substitutes as well as the director. New staff members [with] shall participate in an orientation before working with children. Initial orientation [with] shall include training on the following: (i) scope of services, activities, and the program offered by the center; (ii) emergency first aid procedures, recognition of childhood illness and indicators of child abuse; (iii) fire prevention measures, emergency evacuation plans and disaster preparedness plans;	prevention and control of infectious diseases (including immunization); (i) prevention of sudden infant death syndrome and use of safe sleeping practices; (ii) administration of medication, consistent with standards for parental consent; (iii)	

course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

- (i) Learning Environment: How Classroom Arrangement Impacts Behavior
- (ii) Challenging Behavior: Reveal the Meaning
- (iii) Building Strong Relationships with Families
- (iv) Honoring All Families

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

- (i) child growth, development and learning;
- (ii) health, safety, nutrition and infection control;
- (iii) family and community collaboration;
- (iv) developmentally appropriate content;
- (v) learning environment and curriculum implementation;
- (vi) assessment of children and programs; and
- (vii) professionalism.

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

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

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

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

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

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

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

(l)

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

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

C. STAFF/CHILD RATIOS AND GROUP SIZES:

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

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

Centers Where Age Groups Are Combined

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

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

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

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

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

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

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

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

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

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

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

(b) assignment of a group of children to

an educator or team of educators; and

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

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

(5) The same educator who cares for the children under age two years [with] shall supervise those children when they play with children over two years. [8.9.4.23 NMAC - N, 11/01/2022; A, 10/08/2024; A, 11/04/2025]

8.9.4.24 SERVICES AND CARE OF CHILDREN IN CENTERS:

A. GUIDANCE:

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

(2) Guidance [with] shall be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of

physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

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

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

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

(c) abusive or profane language, including yelling;

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

(e) unsupervised separation.

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

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

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

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

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

(4) Each

child [with] shall have an individual bed, cot, or mat clearly labeled to ensure each child uses the same items between washing.

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

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

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

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

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

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

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS

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

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

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

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

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

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

(7) A center [with] shall care for children under age two years in self-contained rooms separate from those used by older children. Children age six weeks to 12 months may be in the same room with children age 13 to 24 months, when they are physically separated from the older children. A center may group toddlers ages 18 to 24 months with children ages 24 through 35 months.

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

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

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

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

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

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

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

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

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

D. DIAPERING AND TOILETING:

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

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

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

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

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

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

(2) Child care facilities are responsible for staff awareness of the Americans with

Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

(3) Providers must comply with all state and federal laws to include children with disabilities. Providers must allow children with disabilities who receive early intervention services to be served in accordance with the child's individualized family service plan and allow ECECD Family, Infant Toddler (FIT) providers access to the center to provide services pursuant to the child's Individualized Family Service Plan (IFSP) unless the provider documents with the department that the inclusion of each individual disabled child's services is not required pursuant to the applicable state or federal law. Providers may require FIT providers to sign and agree to standard center policies and procedures. Providers may temporarily exclude a FIT provider from their facility in cases in which their presence has caused a temporary undue burden or undue hardship as defined by the applicable state or federal law. Providers who temporarily exclude a FIT provider must provide detailed written notification of reason for the exclusion to the department within 48 hours.

F. ADDITIONAL REQUIREMENTS FOR NIGHT CARE:

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

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

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

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

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

G. PHYSICAL ENVIRONMENT:

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

- (a) dramatic play;
- (b) creative art;
- (c) books;
- (d) blocks and accessories;
- (e) manipulatives;
- (f) music;
- (g) science;
- (h) math/number; and
- (i) sensory.

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

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

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

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

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

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

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

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

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

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

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

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

I. EQUIPMENT AND PROGRAM:

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

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

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

(4) A center [with] shall provide sufficient

equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time, each child can be individually involved.

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

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

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

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

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

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

(11) [Full-time-children] Children in full time care shall have a minimum of 60 minutes of physical activity daily, weather permitting, preferably outside. [Part-time-children] Children in part time care shall have a minimum of 30

minutes of physical activity daily, preferably outside. The center ~~[with]~~ shall ensure drinking water is available and maintained at a cool temperature while playing outside.

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

J. OUTDOOR PLAY AREAS:

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

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

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

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

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

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

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

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

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

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

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

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

K. SWIMMING, WADING AND WATER:

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

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

~~[(2)]~~ (3) If a center has a portable wading pool:

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

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

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

~~[(3)]~~ (4) If a center has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

- (a) the fixture [with] shall be constructed, maintained and used in accordance with applicable state and local regulations;
- (b) the fixture [with] shall be constructed and protected so that, when not in use, it is inaccessible to children; and
- ~~(c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.]~~
- ~~(4)~~ (5) The following ratios shall be observed for swimming pools more than two feet deep:

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

L. FIELD TRIPS:

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

(2) Children [with] shall not go to a private residence unless accompanied by two adults.
[8.9.4.24 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.25 FOOD SERVICE REQUIREMENTS FOR CENTERS:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the center [with] shall conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

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

(2) A center [with] shall serve, if necessary, a child a therapeutic or special diet with written prescription/diet orders

from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the center staff.

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

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

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

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

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

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

C. MENUS:

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

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

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

D. KITCHENS:

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

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

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

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

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

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

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

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

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

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

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

E. MEAL TIMES:

(1) A center [with] shall equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the

children served and sanitize the areas before and after use.

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

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

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

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

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

8.9.4.26 HEALTH AND SAFETY REQUIREMENTS FOR CENTERS:

A. HYGIENE:

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

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

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

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

(d) before and after eating;

(e) before and after feeding a child;

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

(g) after handling trash.

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

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

B. FIRST AID REQUIREMENTS:

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

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

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

C. MEDICATION:

(1) All staff and children's medications must be labeled. A center [with] shall keep all medications in a locked and identified

container inaccessible to children and [with] shall refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

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

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

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

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

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

8.9.4.27 ILLNESS REQUIREMENTS FOR CENTERS:

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

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

C. A center [with] shall send a child home when:

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

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

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

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

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

8.9.4.28 TRANSPORTATION REQUIREMENTS FOR CENTERS:

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

B. A center [with] shall license all vehicles used for transporting children and [with] shall meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child

passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

8.9.4.29 BUILDING, GROUNDS AND SAFETY REQUIREMENTS FOR CENTERS:

A. HOUSEKEEPING:

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

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

(3) All garbage and refuse receptacles in

kitchens and in outdoor areas will be durable, constructed of materials that will not absorb liquids and have tight fitting lids.

B. PEST CONTROL:

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

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

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

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

C. MECHANICAL SYSTEMS:

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

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

(3) A center ~~[with]~~ shall not use ~~[un-vented]~~ without vents, open flame heaters or portable heaters. A center ~~[with]~~ shall install barriers or take other steps to ensure heating units are inaccessible to children. Heating

units include hot water pipes, hot water baseboard heaters hotter than 110 degrees Fahrenheit, infrared heaters, ceramic heaters, fireplaces, fireplace inserts and wood stoves.

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

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

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

E. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

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

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

(3) Use of electrical cords and outlets:

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

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

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

F. EXITS AND WINDOWS:

(1) When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency

egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

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

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

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

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

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

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

G. TOILET AND BATHING FACILITIES:

(1) A center shall have one sink in any room for infants, toddlers, and combination thereof. Centers licensed after November 30, 2012 shall have one sink and one toilet in any room that has children ages 24 - 35 months, which shall be used exclusively by the children in this room. All sinks

referred to in this paragraph shall have permanent plumbing, hot and cold running water, and shall not be used for food preparation or bottle cleaning. A basin with multiple compartments with a shared faucet will be considered one sink.

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

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

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

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

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

(c) one toilet and one lavatory for [each] up to an additional 15 children [or fraction thereof]; or

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

H. SAFETY COMPLIANCE:

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

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

(3) A center [with] shall:

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

(b) use the fire alarm or detector system;

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

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

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

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

(g) a center [with] shall keep a telephone in an easily accessible place for calling for help in an emergency and [with] shall post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone; ~~[a center will not use a pay-phone to fulfill this requirement;]~~ if cordless phones or cellular telephones and devices are used, emergency numbers shall be posted on the phone itself; facilities shall post the center's telephone number and address in a conspicuous location next to the emergency phone numbers; a center shall have at least one corded phone or cell phone for use in the case of a power outage;

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

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

(j) a center must be equipped with carbon monoxide detectors to cover all licensed areas of the center if the child care program uses any

sources of coal, wood, charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions.

(k)

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

(l)

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

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

J. PETS:

(1) A center

~~[with]~~ shall inform parents or guardians in writing before pets are allowed in the center.

(2) A center

~~[with]~~ shall not allow pets in the kitchen, food serving, food storage areas, bathrooms, or infant room.

(3) A center

~~[with]~~ shall inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the center.

(4) A

center ~~[with]~~ shall not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas

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

(6) A staff

member must be physically present during the handling of all pets or other animals.

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

8.9.4.30 FAMILY CHILD CARE HOME AND GROUP CHILD CARE HOME REGULATIONS:

APPLICABILITY: A private dwelling required to be licensed under regulations in 8.9.4.31 NMAC through 8.9.4.38 NMAC which meets one of the following criteria.

A. Family child care

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

B. Group child care

home - A private dwelling or other building on the premises required to be licensed pursuant to these regulations which provides care, services, and supervision for at least seven but not more than 12 children for a period of less than 24 hours of any day. The licensee ~~[with]~~ shall reside in the home and be the primary educator. A group day care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose. [8.9.4.30 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.31 LICENSURE REQUIREMENTS FOR HOMES:

A. LICENSING

REQUIREMENTS:

(1)

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

(2) A home

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

(3)

BACKGROUND CHECK: In addition to the basic requirements at 8.9.4.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee ~~[with]~~ shall be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. A household member reaching the age of 18 must submit their background check in accordance with the most current provisions

of 8.9.6 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) ZONING AND OTHER APPROVALS: An applicant ~~[will]~~ shall have:

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

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

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

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

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

B. CAPACITY OF A HOME:

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

(2) The licensing authority will count all children in the care of the licensed home, including the educator's own children under the age of six, in

the capacity of a home, even if the children are on a field trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of non-residential school age children.

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

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

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

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

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee ~~[will]~~ shall report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident~~[giving rise to its report]~~ as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and

followed with written notification.

The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

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

(b) a serious injury;

(c) the abuse or neglect of a child;

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

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

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

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

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

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

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

(3) Incident reports involving suspected child abuse and neglect must be reported

immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures. [8.9.4.31 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

A.

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

- (1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;
- (2) the current child care regulations;
- (3) the guidance policy;
- (4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and
- (5) an ~~up-~~ up-to-date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

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

- (1) mission statement;
- (2) philosophy statement; and
- (3) curriculum statement.

C. [PARENT]

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

(1) GENERAL INFORMATION:

- (a) mission statement;
- (b) philosophy statement;
- (c) program information (location, license information, days and hours of operation, services offered);
- (d) name of licensee and how ~~[he/she]~~ they may be reached;
- (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
- (f) daily schedule;
- (g) a statement supportive of family involvement that includes an open~~[-]~~ -door policy to the family or group child care home;
- (h) appropriate dress for children, including request for extra change of clothes;
- (i) celebrating holidays, birthdays and parties; and
- (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) **POLICIES AND PROCEDURES:** All facilities operating under these regulations are required to establish, implement, and adhere to written policies and procedures. These documents must be clearly dated to indicate when they were created and must be updated to reflect any revisions. Whenever policies or procedures are amended,

the facility shall update the revision and date it. The written policies and procedures must cover the following areas:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;
- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures, safety policies, and disaster preparedness plan;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure;
- (m) guidance policy;
- (n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

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

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

(1)
PERSONAL INFORMATION:

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

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

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

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

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

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

(g)
written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must

contain [fieldtrip] activity destination, date and time of [fieldtrip] activity and expected return time from [fieldtrip] activity;

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

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

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

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

(2)
EMERGENCY INFORMATION:

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

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

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

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

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

E. PERSONNEL RECORDS: A home [with] shall keep the following records on file and make them available to the licensing authority.

(1)
Documentation of a background check and employment history verification for all staff members and all adults living in the home. If a background check is in process for a staff member, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals.

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

(3) A record of the time the second educators arrived at and left work, to include breaks and lunch.

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

(5) Licensed child care homes shall maintain the complete, up-to-date personnel records in ECECD's professional development information system, (PDIS), for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. If the home chooses to retain duplicate physical copies of these records, these records shall be stored in a secure location for the privacy of the staff members. New information shall be updated in a timely manner in PDIS. Records shall contain at a minimum the following:

(a)
name, address and telephone number;

(b)
position;

(c)
current and past duties and responsibilities;

(d)
dates of hire and termination;

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

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

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

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

(i)
emergency contact number;

(j)
universal precaution acknowledgment form;

(k)
confidentiality form;

(l)
results of performance evaluations (shall be maintained outside of PDIS);

(m)
administrative actions or reprimands (shall be maintained outside of PDIS);

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

(o)
signed acknowledgment that the staff have read and understand the personnel handbook;

(p)
signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan;

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

(1) job description of second educator;

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

(3) code of conduct;

(4) training requirements, professional development opportunities;

(5) procedures and criteria for performance evaluations;

(6) policies on absence from work;

(7) procedures for resignation or termination;

(8) copy of licensing regulations;

(9) policy on parent involvement;

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

(11) policy on sexual harassment;

(12) child guidance policy;

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

(14) confidentially statement;

(15) plan for retention of qualified staff; and

(16) employee cellular telephone usage policy that directs and defines safe and appropriate use.
[8.9.4.32 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.33 PERSONNEL AND STAFFING REQUIREMENTS FOR HOMES:

A. PERSONNEL AND STAFFING REQUIREMENTS:

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

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

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

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

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

required training hours. The primary educator in a licensed home shall complete all required training hours, regardless of the number of hours worked.

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

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

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

B. STAFF QUALIFICATIONS AND TRAINING:

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

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

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

(c) administration of medication,

consistent with standards for parental consent;

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

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

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

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

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

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

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

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

(l) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund [<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>] in 45 CFR § 98.44 Training and Professional development, or approved three-credit early care and education course or an equivalent approved by the department.

(2) New staff members working directly with children regardless of the number of hours employed per week [with] shall complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or

the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

(a) Learning Environment: How Classroom Arrangement Impacts Behavior

(b) Challenging Behavior: Reveal the Meaning

(c) Building Strong Relationships with Families

(d) Honoring All Families

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

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

(a) child growth, development and learning;

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

(c) family and community collaboration;

(d) developmentally appropriate content;

(e) learning environment and curriculum implementation;

(f) assessment of children and programs; and

(g) professionalism.

(5) An educator cannot count more than three hours in first aid or CPR training toward the

total hours required. Online first aid and CPR training ~~[with]~~ shall not be approved unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. ~~[For this purpose, a]~~ A year begins and ends at the anniversary date of employment. Training must be provided by individuals who are registered on the New Mexico trainer registry. Identical trainings shall not be repeated for the purpose of obtaining credit.

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

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

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

8.9.4.34 SERVICES AND CARE OF CHILDREN IN HOMES:

A. GUIDANCE:

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

(2) Guidance will be consistent and age appropriate.

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

(4) A home ~~[with]~~ shall not use the following disciplinary practices:

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

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

(c) abusive or profane language, including yelling;

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

(e) unsupervised separation.

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

B. NAPS OR REST PERIOD:

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

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

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

(4) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats. Cots or mats ~~[with]~~ shall have a nonabsorbent, cleanable surface. Mats ~~[with]~~ shall be at least

three-fourths of an inch thick. Mats and cots shall be cleaned and linens must be laundered before being used by another child.

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

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

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

(8) Children shall be directly supervised during naptime.

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

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS:

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

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

CFR 1219 or 1220 guidelines will be allowed.

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

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

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

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

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

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

(9) A home [with] shall arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

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

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

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

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

D. DIAPERING AND TOILETING:

(1) An educator [with] shall plan toilet training with a parent [~~so the toilet routine is consistent~~] to facilitate a consistent toileting routine. A home [with] shall not attempt to toilet train a child who is not developmentally ready.

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

(3) A home [with] shall have a supply of dry, clean clothing and diapers sufficient to meet the needs of the child. A home [with] shall label diapers and diapering supplies for each child and store them separately. Diaper bags [with] shall be inaccessible to children.

(4) An educator [with] shall change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

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

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

(3) Providers must comply with all state and federal laws to include children with disabilities. Providers must allow children with disabilities who receive early intervention services to be served in accordance with the child's individualized family service plan and allow ECECD Family, Infant Toddler (FIT) providers access to the center to provide services pursuant to the child's Individualized Family Service Plan (IFSP) unless the provider documents with the department that the inclusion of each individual disabled child's services is not required pursuant to state and federal law, or poses an undue burden to the provider as defined by state and federal law. Providers may require FIT providers to sign and agree to standard center policies and procedures. Providers may temporarily exclude a FIT provider from their facility in cases in which their presence has caused a temporary undue burden. Providers who temporarily exclude a FIT provider must provide detailed written notification of reason for the exclusion to the department within 48 hours.

F. NIGHT CARE: In addition to all other requirements, a

home providing night care [with] shall have an educator onsite, physically available and responsive to children who need attention during the night.

G. PHYSICAL ENVIRONMENT:

(1)

Environment shall be organized into functional identifiable learning areas. Family child care homes that have dedicated space shall have at least four of the following learning areas. Family child care homes that do not have dedicated space shall have at least three of the following learning areas:

- (a)** a place for messy play;
- (b)** a place for loud, active play;
- (c)** a place for playing quietly;
- (d)** a place to pretend; and
- (e)** a place to read.

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

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

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

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

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

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

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

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

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

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

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

I. EQUIPMENT AND PROGRAM:

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

(2) A home [with] shall not use accordion-style baby gates.

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

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

(5) A home [with] shall provide children with toys and other materials that are safe, developmentally appropriate,

and encourage the child's creativity, social interaction, and a balance of individual and group play.

(6) A home [with] shall post a daily activity schedule. A home [with] shall follow a consistent pattern for routine activities such as meals, snacks and rest.

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

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

(9) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part-time enrolled children shall have a minimum of 30 minutes of physical activity daily, preferably outside. The provider [with] shall ensure drinking water is available and maintained at a cool temperature while playing outside.

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

J. OUTDOOR PLAY:

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

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

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

(2) A home [with] shall enclose the outdoor play area with a fence at least four feet

high and with at least one latched gate available [for] as an emergency exit.

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

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

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

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

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

(5) Children shall be protected from the sun during outdoor play by providing shade (as necessary), sunscreen (as permitted by parent/guardian), proper attire and limiting the time of exposure to the elements. The provider must also consider instructions by the child's parent or guardian. Drinking water should be available as needed and outlined in Paragraph (9) of Subsection I of 8.9.4.34 NMAC.

K. SWIMMING, WADING AND WATER:

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

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

~~[(2)]~~ (3) If a home has a portable wading pool:

(a) a home [with] shall drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

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

(c) a home [with] shall not use a portable wading pool placed on concrete or asphalt.

~~[(3)]~~ (4) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

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

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

~~[(c)]~~ ~~when in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.]~~

~~[(4)]~~ (5) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
0-23 months	1	1
2 years	1	2

3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:

(1) A home [with] shall ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection D of 8.9.4.32 NMAC for information on permission slips.

(2) Children [with] shall not go to a private residence other than the licensed home unless accompanied by two adults. [8.9.4.34 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.35 FOOD SERVICE REQUIREMENTS FOR HOMES:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home [with] shall conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

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

(2) A home [with] shall serve [if necessary] to a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the educators.

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

(4) A home that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA's current dietary guidelines for Americans, to include the following. Parents of children who have special dietary

needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.

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

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

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

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

C. MENUS:

(1) Weekly menus must be dated and posted in an area easily visible to parents.

(2) Menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

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

D. KITCHENS:

(1) A home [with] shall not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw

fruits and vegetables before cooking or serving.

(3) A home [with] shall serve food promptly and refrigerate immediately after use. Foods served [with] shall meet the nutritional needs of the infant or toddler. Foods [with] shall have the proper texture and consistency for each infant served.

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

(5) If food is brought from the child's [home] residence, a home [with] shall label it with the child's name and refrigerate if necessary. A home [with] shall label and refrigerate bottles of infant formula or breast milk. Labeling is not necessary if only one child is using bottles.

(6) A home [with] shall keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below, and frozen food at zero degrees Fahrenheit or below.

(7) Refrigerators and separate freezers [with] shall have working internal thermometers.

(8) A home [with] shall discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

(9) A home [with] shall sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: (a) wash with soapy water; (b) rinse with clean warm water; and (c) sanitize.

(10) A home [with] shall use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(11) A home shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A home [with] shall equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served. Areas [with] shall be sanitized before and after each use.

(2) A home v provide sanitary cups or glasses for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home [with] shall not allow children to share drinking or eating utensils. Disposable plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups may not be used at any time.

(3) Time allowed for meals shall enable children to eat at a reasonable rate. [8.9.4.35 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.36 HEALTH AND SAFETY REQUIREMENTS FOR HOMES:

A. HYGIENE:

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

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

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

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

(d) before and after eating or feeding a child;

(e) after handling pets or animals or items

used by animals such as water and food bowls; and

(f)

after handling trash.

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

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

B. FIRST AID REQUIREMENTS:

(1) A home [with] shall keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit [with] shall contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

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

C. MEDICATION:

(1) A home [with] shall keep all medications in a locked and identified container inaccessible to children and [with] shall refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Homes [with] shall give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication,

written instructions must be provided by the parent or guardian. For the purpose of this requirement Paragraph (2) of Subsection C of 8.9.4.36 NMAC) only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.

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

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

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

D. ILLNESS AND NOTIFIABLE DISEASES:

(1) Children or staff members absent due to any notifiable disease [with] shall not return to the home without a signed statement from a physician.

(2) A home [with] shall separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.

(3) A home [with] shall send a child home when:

(a) the child's oral temperature is 101

degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

(b) the educator observes signs of contagious disease or severe illness. [8.9.4.36 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.37 TRANSPORTATION REQUIREMENTS FOR HOMES:

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

B. A home [with] shall license all vehicles used for transporting children and [with] shall meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows.

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

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

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

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

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

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

E. No one [with] shall smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

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

G. At least one adult transporting children shall be currently certified in first aid and cardiopulmonary resuscitation with a pediatric component.

H. Vehicles operated by the home provider to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the provider [with] shall ensure the vehicle is heated.

I. Providers [with] shall conduct frequent head counts on all trips and when loading and unloading the vehicle. [8.9.4.37 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.38 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES:

A. HOUSEKEEPING:

(1) An educator [with] shall keep the

premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

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

(3) All garbage and refuse receptacles in kitchens and in outdoor areas [with] shall have a tight fitting lid, be durable and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed child care homes must use a New Mexico licensed pest applicator whenever applying pesticides on the home's buildings and grounds.

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

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

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

C. MECHANICAL SYSTEMS:

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

(2) A home [with] shall not use [unvented] heaters without vents, open flame heaters or

portable heaters. A home [with] shall install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

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

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

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

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) A home [with] shall use U/L approved equipment only and [with] shall properly maintain this equipment.

(2) All electrical outlets within reach of children [with] shall be safety outlets or [with] shall have protective covers.

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

E. EXITS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be useable for an emergency exit. All activity spaces for children under the age of ~~[two and a half years]~~ two-and-a-half-years shall be on the "level of exit discharge" or ground floor.

F. TOILET AND BATHING FACILITIES:

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

(2) All closets and bathroom locks must have an outside release. A home [with] shall enclose all bathrooms. Bathrooms must be accessible to the children in care and fully functional.

G. SAFETY COMPLIANCE:

(1) A home [with] shall have an operating smoke detector in each child-activity room and in each room in which a child sleeps.

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

(3) A home [with] shall have a fully-charged 210ABC extinguisher mounted in the kitchen in a visible and easily accessible place. A professional [with] shall inspect each fire extinguisher once a year and fire extinguishers will have official tags noting the date of inspection.

(4) A home [with] shall conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A home [with] shall hold the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

(5) A home [with] shall keep a telephone in an easily accessible place for calling for help in an emergency and [with] shall post emergency phone numbers for fire, police, ambulance and the poison

control center next to the phone.

Emergency numbers shall be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only telephone in the home. The cellular telephone [with] shall remain in the same room, always charged and accessible to a caregiver.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home, including any vehicles, will prohibit smoking, e-cigarettes, nicotine and cannabis vaporizers, and any other vaporizing device not prescribed by a licensed medical professional in all areas, when children are present. A home, including any vehicles, will prohibit the drinking of alcoholic beverages in all areas [~~including vehicles~~], when children are present. A home [with] shall unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. ANIMALS OR PETS:

(1) A home [with] shall inform parents or guardians in writing before pets are in the home.

(2) A home [with] shall inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the home.

(3) A home [with] shall not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

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

(5) An educator must be physically present during the handling of all pets or other animals.
[8.9.4.38 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. LICENSING REQUIREMENTS:

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

(2) A program ~~[with]~~ shall submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3) BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The ~~[with]~~ shall be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements of the most current version of the department's background check and employment history verification provisions. All requirements of

the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) ZONING, BUILDING AND OTHER APPROVALS: An applicant ~~[with]~~ shall use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department's requirements. Acceptable documents ~~[with]~~ shall be provided to the licensing authority before licensure. Otherwise, an applicant ~~[with]~~ shall have:

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

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

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

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

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

(ii) private water supply, if applicable;

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

(iv) a swimming pool, if applicable.

(5) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW

FACILITIES: Accessibility for individuals with disabilities is provided in all new facilities and ~~[with]~~ shall include the following.

(a) Main entry into the facility is level or has a ramp to allow for wheelchair access.

(b) Building layout allows for access to the main activity area.

(c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.

(d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.

(e) Ramps exceeding a six-inch rise are provided with handrails.

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

(6) SCHEDULE: All applications for a new license ~~[with]~~ shall include a description of the programs proposed activities and schedule.

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

B. CAPACITY OF A PROGRAM:

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

(2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site. Children shall not be cared for in unlicensed areas of the facility.

(3) A program must meet the following space requirements:

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

(b) A program must have an outdoor activity space.

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

C. INCIDENT REPORTING REQUIREMENTS:

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

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

(b) a serious injury;

(c) the abuse or neglect of a child;

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

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

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

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

(h) the use of physical or mechanical

restraints, unless due to documented emergencies or medically documented necessity; or

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

(2) A program [with] shall notify parents and guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.40 NMAC. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures. [8.9.4.40 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

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

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

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the guidance policy; and

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

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

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

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

(1) **GENERAL INFORMATION:**

(a) mission statement;

(b) philosophy statement;

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

(d) name of director and how [he/she] they may be reached;

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

(f) daily schedule;

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

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

(i) celebrating holidays, birthdays and parties; and

(j) disclosure to parents that the licensee

does not have liability or accident insurance coverage.

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

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) expulsion procedures;
- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures and safety policies;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure;
- (m) guidance policy;
- (n) emergency procedures, safety policies, and disaster preparedness plan;
- (o) anti-discrimination policy that promotes the equal access of services

for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and

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

D. CHILDREN'S RECORDS: A program [will] shall maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records [will] shall be kept at the program, unless otherwise indicated in the list below, for 12 months after the child's last day of attendance. Records [will] shall contain at least:

- (1) **PERSONAL INFORMATION:**
 - (a) name of the child; date of birth, gender, home address, mailing address and telephone number;
 - (b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, [and pager,] cellular and work telephone numbers;
 - (c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;
 - (d) date the child first attended the program and the date of the child's last day at the program;
 - (e) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian; these records may be kept at a central location;
 - (f) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must

contain [fieldtrip] activity destination, date and time of [fieldtrip] activity and expected return time from [fieldtrip] activity;

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

(h) an enrollment agreement; this form [will] shall be signed by a parent or guardian with an outline of the services and the costs; these forms [may] shall be kept at a central location.

(2) **EMERGENCY INFORMATION:**

(a) information on any allergies or medical conditions suffered by the child; the name and telephone number of two people in the local area to contact in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times;

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

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

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

E. PERSONNEL RECORDS:

(1) A licensee [will] shall keep a complete up-to-date file for each staff member, including substitutes and volunteers having direct contact with the children. A program [will] shall keep the file for one year after the staff member's last day of employment. Unless otherwise indicated, a licensee [may] shall keep the items listed

below in a central location except the following items which shall be kept on site: background clearances, abuse and neglect statements, staff emergency numbers and first aid/ CPR certificates. Records [with] shall contain at least the following:

- (a) name, address and telephone number;
- (b) position;
- (c) current and past duties and responsibilities;
- (d) dates of hire and termination;
- (e) documentation of a background check and employment history verification. If a background check is in process, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals. A copy must be kept onsite;
- (f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC. A copy must be kept onsite;
- (g) documentation of first-aid and cardiopulmonary resuscitation with a pediatric component. A copy must be kept onsite;
- (h) documentation of all appropriate training by date, time, hours and area of competency;
- (i) emergency contact number;
- (j) universal precaution acknowledgement; and
- (k) a written plan for ongoing professional development for each staff member, including the director, that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals.

(2) A program [with] shall maintain current work schedules and daily sign in sheets for the director, all staff, all educators, and volunteers and keep the records on file for at least 12 months. The record will include the time the employee arrived at and left work and include breaks and lunch.

(3) Licensed child care centers shall maintain the complete, up-to-date personnel records in ECECD's professional development information system, (PDIS), for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with the children. If the program chooses to retain duplicate physical copies of these records, these records shall be stored in a secure location for the privacy of the staff members. New information shall be updated in a timely manner in PDIS. Records shall contain at a minimum the following:

- (a) name, address and telephone number;
- (b) position;
- (c) current and past duties and responsibilities;
- (d) dates of hire and termination;
- (e) documentation of a background check and employment history verification; if background check is in process then documentation of the notice of provisional employment showing that it is in process, must be placed in file. A background check must be conducted at least once per five-year interval on all required individuals;
- (f) an annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC;
- (g) documentation of current first-aid and cardiopulmonary resuscitation training;

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

(i) emergency contact number;

(j) universal precaution acknowledgment form;

(k) confidentiality form;

(l) results of performance evaluations (shall be maintained outside of PDIS);

(m) administrative actions or reprimands (shall be maintained outside of PDIS);

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

(o) signed acknowledgment that the staff have read and understand the personnel handbook;

(p) signed acknowledgement that all staff have reviewed and are aware of the center's disaster preparedness plan and evacuation plan;

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

- (1) organizational chart;
- (2) job descriptions of all employees by title;
- (3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (4) code of conduct;

(5) training requirements

(6) procedures and criteria for performance evaluations;

(7) policies on absence from work;

(8) grievance procedures;

(9) procedures for resignation or termination;

(10) copy of licensing regulations;

(11) policy on parent involvement;

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

(13) policy on sexual harassment;

(14) plan for retention of qualified staff; and

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

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

(17) child guidance policy;

(18) confidentiality statement;

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

(20) policies and procedures for expulsion of

children. Policies and procedures shall include how the program will maintain a positive environment and will focus on preventing the expulsion of children age five and older. The program must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement.
[8.9.4.41 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.42 PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. PERSONNEL AND STAFFING REQUIREMENTS:

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

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

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

(4) Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios [with] shall not be responsible for cooking, clerical or cleaning duties while caring for children.

(5) Substitutes, volunteers and part-time educators counted in the staff/child ratios [with] shall meet the same requirement as regular staff members except for training requirements. Substitutes and educators routinely

employed in a facility but working 20 hours or fewer a week, will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements. See Paragraph (4) of Subsection C of 8.9.4.42 NMAC for additional training requirements.

(6) Each site [with] shall have a site director. The site director or a designated co-director who meets the same qualifications as the site director will be on site for 50 percent of the program's core hours of operation.

(7) A program [with] shall maintain staff/child ratios and group sizes at all times. Children must never be left unattended whether inside or outside the facility. .

(8) A program [with] shall have a minimum of two staff members present at all times, with one being an educator. If the program has [less] fewer than seven children, the second staff member may be engaged in other duties.

(9) Each site [with] shall have one adult for every 15 children age five or older. Maximum group size of 30.

(10) The number of children who may be in a group and the number of caregivers is specified in Paragraph (9) of Subsection A of 8.9.4.42 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) The room is divided so that different activity/interest areas are well-defined (i.e. art, dramatic play, fine motor, homework, science, math, and quiet homelike area);

(b) Each activity/interest area [with] shall have a posted capacity, which may vary according to the activity and size of the space, and [with] shall not exceed 30;

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

(d) Individual children may freely move from one activity/interest area at their

own pace as long as the capacity of any individual interest area is not exceeded;

(e)

A single educator is responsible for supervising up to 15 children in one or more interest area as long as every child is in direct eyesight; and

(f)

The total number of children in the larger room must not exceed the room capacity based on activity space. For example, if the larger room has a capacity of 90, and the maximum group size is 30, the room must be divided by at least three well-defined activity/interest areas and be supervised by at least six caregivers, who are spread out so that every child is "attended".

B. STAFF

QUALIFICATIONS:

(1)

Unless exempted under Paragraph (3) below, an [out-of-school-time] out-of-school-time program [with] shall have an administrator/director who is at least 21 years old and has proof of a current copy of:

(a)

a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC), or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b)

a bachelor's degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development setting; early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2)

Every site of an [out-of-school-time] out-of-

school-time program [with] shall have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

(3) Program

administrators and site directors employed in a licensed program on the date these regulations become effective, but who are not qualified, will [continue to qualify in] be qualified to continue in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

C. TRAINING:

(1) The

program administrator [with] shall develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members [with] shall participate in an orientation before working with children. Initial orientation [with] shall include training on the following areas:

(a)

scope of services and activities offered by the program;

(b)

emergency first aid procedures;

(c)

indicators of child abuse and neglect;

(d)

fire prevention measures, emergency evacuation plan and disaster preparedness plan;

(e)

review of licensing regulations;

(f)

review of policies regarding guidance;

(g)

child abuse and neglect reporting;

(h)

handling of incidents and complaints; and

(i)

health and safety, including infection and injury prevention and control.

(2) All new

staff members working directly with children regardless of the number of hours employed per week shall complete the following training within

three months of their date of hire.

Training must be approved to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators [with] shall have three months to comply with the following training from the date these regulations are promulgated:

(a)

prevention and control of infectious diseases (including immunization);

(b)

administration of medication, consistent with standards for parental consent;

(c)

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

(d)

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

(e)

abusive head trauma;

(f)

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

(g)

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

(h)

precautions in transporting children (if applicable);

(i)

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

(j)

recognition and reporting of child abuse and neglect; and

(k)

a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund [<https://www.eefr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>] in 45 CFR § 98.44 Training and Professional development, or

approved three-credit early care and education course or an equivalent approved by the department.

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

(a) Learning Environment: How Classroom Arrangement Impacts Behavior

(b) Challenging Behavior: Reveal the Meaning

(c) Building Strong Relationships with Families

(d) Honoring All Families

(4) A program [with] shall keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(5) All educators are required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. Training shall be relevant to school age children. Identical trainings shall not be repeated for the purpose of obtaining credit. The competency areas are:

(a) child growth, development, and learning;

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

(c) family and community collaboration;

(d) developmentally appropriate content;
(e) learning environment and curriculum implementation;

(f) assessment of children and programs; and

(g) professionalism.

(6) Training must be provided by individuals who have education or experience in the competency area (or areas) in which they provide training. Employees or relatives of employees who provide training must have prior approval by the department.

(7) Program administrators may count hours in personnel and business training toward the training requirement. [8.9.4.42 NMAC - N, 11/01/2022; A, 10/08/2024; A, 11/04/2025]

8.9.4.43 SERVICES AND CARE OF CHILDREN IN OUT OF SCHOOL TIME CARE:

A. GUIDANCE:

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

(2) Guidance [with] shall be consistent and age appropriate.

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

(4) A program [with] shall not use the following disciplinary practices:

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

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

(c) abusive or profane language, including yelling;

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

(e) unsupervised separation.

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

B. PHYSICAL ENVIRONMENT:

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

(a) dramatic play;

(b) creative art;

(c) books;

(d) blocks and accessories;

(e) manipulatives;

(f) music;

(g) science;

(h) math/number; and

(i) sensory.

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

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

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

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

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

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

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

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

C. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

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

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

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

D. EQUIPMENT AND PROGRAM:

(1) A program ~~[with]~~ shall provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved. Toys shall

be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

(2) Each child at a program ~~[with]~~ shall have a designated space for storage of clothing and personal belongings.

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

(4) A program ~~[with]~~ shall provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate, and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.

(5) A program ~~[with]~~ shall post a daily activity schedule. A program ~~[with]~~ shall follow a consistent pattern for routine activities such as meals, snacks and rest.

(6) Media viewing ~~[with]~~ shall be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing to include all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.

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

(8) Equipment and program requirements apply during all hours of program operation.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN

WITH SPECIAL NEEDS:

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

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment used in out of school time programs shall be:

(a) intended for public (non-residential) use and installed and maintained according to the manufacturer's instructions; and

(b) if intended for residential use, shall be safe and securely anchored.

(2) A program ~~[with]~~ shall place sufficient energy absorbing surfaces beneath climbing structures, swings and slides. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection N of 8.9.4.8 NMAC).

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Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.

When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.

Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
	Uncompressed Depths of Materials In Fall Zone					
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches

For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.

(3) The use of a trampoline is prohibited[~~at any time~~] during the hours of operation or by any children receiving care at the facility.

(4) Licensees shall protect children from the sun during outdoor play by providing shade (as necessary), sunscreen (as permitted by parent/guardian), proper attire and by limiting the time of exposure to the elements. The program must also consider instruction by the child's parent or guardian. Drinking water shall be available as needed and maintained at a cool temperature while children are playing outside.

G. SWIMMING, WADING AND WATER:

(1) Each child [with] shall have written permission from a parent or guardian before the child enters the pool.

(2) Children shall be constantly supervised while swimming, wading, or in or near, and the number of adults present must be proportional to the ages and abilities of the children and type of water hazard in use.

~~(2)~~ (3) If a program has a portable wading pool:

(a) a program [with] shall drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a program [with] shall empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a program [with] shall not use a portable wading pool placed on concrete or asphalt.

~~(3)~~ (4) If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture [with] shall be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture [with] shall be constructed and protected so that, when not in use, it is inaccessible to children; and

~~(c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.]~~

~~(4)~~ (5) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
5 years	1	10
6 years and older	1	12

H. FIELD TRIPS:

(1) A program [with] shall ensure the children's safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection D of 8.9.4.41 NMAC for requirements concerning field trip permission slips.

(2) Children [with] shall not go to a private residence unless accompanied by two adults. [8.9.4.43 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.44 FOOD SERVICE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the program [with] shall conform to the guidelines from United States department of agriculture's (USDA's) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

(1) A program [with] shall provide a child a meal or snack at least every three hours.

(2) A program [with] shall serve a child a therapeutic or special diet with a written prescription/diet order from a physician or a recognized medical authority. Diet orders must be complete and descriptive, and not subject to interpretation by the program staff.

(3) A program [with] shall serve snacks each day and will include a selection of two different food group components from the four food group components.

(4) A program shall serve only one hundred percent fruit or vegetable juice. The use of fruit drinks that contain less than one hundred percent juice or artificially flavored drinks for meals or snacks is prohibited. One hundred percent fruit or vegetable juice may be diluted with water.

(5) A program shall serve a wide variety of fruits and vegetables, with a preference for fresh or frozen fruits and vegetables over canned.

(6) A program shall make water freely available to children.

(7) Menus shall contain a variety of foods. The same menu must not be served twice in one week.

C. KITCHENS:

(1) A program [with] shall not allow

children in the kitchen except under careful supervision.

(2) A food preparer [with] shall thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A program [with] shall serve food promptly and refrigerate immediately after use.

(4) A program [with] shall discard any leftover milk.

(5) A program [with] shall keep food requiring refrigeration, at 41 degrees Fahrenheit or below and frozen food at 0 degrees Fahrenheit or below.

(6) Refrigerators and separate freezers [with] shall have working internal thermometers.

(7) A program [with] shall protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A program [with] shall label and date all leftover food.

(8) A program [with] shall sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps:

(a) wash with soapy water;

(b) rinse with clean warm water; and

(c) sanitize

(9) A program [with] shall use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(10) A program [with] shall equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served and sanitize the areas before and after use.

(11) A program [with] shall provide sanitary cups or glasses or a drinking fountain for drinking water. A program [with] shall not allow children to share drinking or eating utensils.

(12) A program shall thoroughly sanitize food preparation surfaces before and after each use.

(13) Disposable plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups shall not be used at any time. [8.9.4.44 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.45 HEALTH AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:**A. HYGIENE:**

Children and staff members [with] shall wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children [with] shall wash their hands whenever hands are contaminated with body fluids and always:

(1) after using a toilet;

(2) before and after caring for a sick child;

(3) before any food service activity, including setting the table;

(4) before and after eating;

(5) after handling pets or animals or items used by animals such as water and food bowls; and

(6) after handling trash.

B. FIRST AID REQUIREMENTS:

(1) A program [with] shall have all educators certified in first aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Online first aid and CPR training will not be approved, unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. Staff shall obtain the first aid /CPR certification within three months of being hired. All staff shall maintain current first aid /CPR certification. Prior to licensure, at a minimum, the site director shall have first aid/CPR certification.

(2) A program [with] shall keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to

adults. The first aid kit [with] shall contain, as a minimum, band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.

(3) A program [with] shall treat blood spills cautiously and promptly decontaminate the area. Staff members [with] shall wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program [with] shall clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A program [with] shall keep all medications in a locked and identified container inaccessible to children and [with] shall refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Programs [with] shall give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member [with] shall be responsible for giving medication to children. The designated staff member [with] shall ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the program. A program [with] shall keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member [with] shall keep a written record of the dosage, date, and time a child is given medication with the signature

of the staff who administered the medication. This information [with] shall be provided to the parent or guardian who [with] shall initial/date acknowledgment of the information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The program shall not administer expired medication.

D. ILLNESSES:

(1) Children or staff members absent due to any notifiable disease [with] shall not return to the program without a signed statement from a physician.

(2) A program [with] shall separate and constantly observe a child who becomes sick [at the program] on the premises and promptly notify a parent or guardian of the child's illness.

(3) A program [with] shall send a child home when:

(a) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or

(b) an educator observes signs of contagious disease or severe illness.

(4) The program [with] shall have a cot or mat available for sick children [and it] which will be cleaned and disinfected thoroughly after use.

[8.9.4.45 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.46 TRANSPORTATION REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. All vehicles used for transportation of children [with] shall have an operable, fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.

B. A program [with] shall load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program [with] shall ensure

children do not cross a street unsupervised after leaving the vehicle.

C. No one [with] shall smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

D. A program [with] shall license all vehicles used for transporting children and [with] shall meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows. School buses that are not equipped with passenger restraint devices are exempt from this requirement.

(1) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(2) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

E. Vehicles used for transporting children [with] shall be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

F. Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the program [with] shall ensure the vehicle is heated.

G. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

H. At least one adult transporting children shall be

currently certified in cardiopulmonary resuscitation (CPR) with a pediatric component.

I. Providers [with] shall conduct frequent head counts on all trips and when loading and unloading the vehicle.
[8.9.4.46 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.4.47 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. HOUSEKEEPING:

(1) A program [with] shall keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food [storage or] preparation or storage areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas [with] shall be durable, and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed programs must use a New Mexico licensed [applicator] pest control professional whenever applying pesticides in or on the program's buildings and grounds.

(2) [The applicator may not apply] Pesticides may not be applied when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

C. MECHANICAL SYSTEMS:

(1) A program [with] shall maintain comfortable temperatures (68 degrees Fahrenheit through 82 degrees Fahrenheit) in all rooms used by children. A program may use portable fans if the fans are

secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it v be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A program must maintain all heating and cooling equipment so that it is in good working order.

(3) A program [with] shall not use [unvented] heaters without vents, open flame heaters or portable heaters. A program [with] shall install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

(4) A program [with] shall provide fresh air and control odors by either mechanical or natural ventilation. If a program uses a window for ventilation, it will have a screen. If a door is used for ventilation, it must have a screen door.

(5) Water coming from a faucet [with] shall be below 110 degrees Fahrenheit. A program [with] shall install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms [with] shall have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas [with] shall have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A program [with] shall have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A program [with] shall use U/L approved equipment only and will properly maintain this equipment.

(b) The use of multi-prong or gang plugs is prohibited. Surge protectors are not gang plugs under these regulations.

E. EXITS AND WINDOWS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be 24 inches. The minimum net clear opening width dimension must be 20 inches, and the finished sill height must not be more than 44 inches above the floor.

(1) There must be at least two exits remote from each other in each activity area of the program.

(2) Exit [ways] access must be kept free from obstructions at all times.

F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms [with] shall have toilet paper, soap and disposable towels at a height accessible to children. A program [with] shall not use a common towel or wash cloth.

(2) All toilets and sinks must be accessible, functional, and located within 100 feet of the licensed area. The staff member shall maintain a direct line of sight of the child until the child enters the bathroom and from the time the child leaves the bathroom [until the child returns] and returns to the supervised area. A staff member [with] shall accompany children to the bathroom door [when] if maintaining a line of sight is impossible due to bathrooms being not located within a direct line of sight.

G. SAFETY COMPLIANCE:

(1) A program [with] shall conduct quarterly

emergency preparedness practice drills ~~[at least quarterly beginning]~~ starting at the commencement of each school calendar year.

(2) A program ~~[with]~~ shall conduct at least one fire drill each month. A program ~~[with]~~ shall:

(a) hold the drills at different times of the day;

(b) use the fire alarm, detector system or a simulated fire alarm;

(c) emphasize an orderly evacuation rather than speedy; and

(d) a program ~~[with]~~ shall keep on file a record of the drills with the date, time, number of adults and children participating, and any problems encountered during the drills. Records ~~[with]~~ shall be kept for one year.

(3) A program shall request an annual fire inspection from the fire authority having jurisdiction in the area of the program. If the policy of the fire authority having jurisdiction does not provide for an annual inspection ~~[of the program]~~, the program must document the date the request was made and to whom. A copy of the latest inspection must be posted in ~~[the program]~~ an easily accessible place.

(4) A program ~~[with]~~ shall post evacuation plans for each room used by children in the appropriate room.

(5) A program ~~[with]~~ shall keep a working telephone in an easily accessible place for calling for help in an emergency and ~~[with]~~ shall post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. ~~[A pay phone will not fulfill this requirement.]~~ If cordless phones are used, emergency numbers shall be posted on the phone itself. Facilities shall post the program's telephone number and address in a conspicuous location next to the emergency phone numbers.

(6) A program must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement.

(7) A program must have a minimum of two fully-charged 210ABC fire extinguishers, one located in the kitchen or food preparation area, and one centrally located in the program.

(8) Fire extinguishers, alarm systems, automatic detection equipment, and other firefighting must be properly maintained and inspected on at least a yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection D of 8.9.4.47 NMAC for emergency lighting requirements.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A program ~~[with]~~ shall prohibit smoking, use of e-cigarettes ~~[and]~~, nicotine and cannabis vaporizers, and any other vaporizing device not prescribed by a licensed medical professional in all areas, including vehicles, and ~~[with]~~ shall not allow any alcoholic beverages, cannabis, firearms, lethal or non-lethal weapons or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. PETS:

(1) A program ~~[with]~~ shall inform parents or guardians in writing before pets are at the program site.

(2) A program ~~[with]~~ shall not allow pets in the kitchen, food serving, food storage areas, or bathrooms.

(3) A program ~~[with]~~ shall inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the program.

(4) A program ~~[with]~~ shall not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(5) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(6) A staff member must be physically present during the handling of all pets or other animals.

[8.9.4.47 NMAC - N, 11/01/2022; A, 11/04/2025]

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.9.5 NMAC, Sections 3, 7, 8, 10 through 17, and 19 through 25, effective 11/04/2025

8.9.5.3 STATUTORY AUTHORITY: The requirements (regulations) set forth herein, are established pursuant to the federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, the New Mexico Public Health Act, Sections 24-1-2 and 24-1-5 NMSA 1978, and the New Mexico Children's Code, Section 32A-15-3 NMSA 1978. These regulations are promulgated by the authority set forth in Subsection E of Section 9-29-6 NMSA 1978. ~~[Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) with Early Child Education and Care Department.] Pursuant to these regulations for participation in the child care assistance programs (CCAP) with the early childhood education and care department, registered homes are health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978. See also Paragraph (3) of Subsection (A) of~~

Section 9-29-3 NMSA 1978.

[8.9.5.3 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1) "Abuse"

means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(a)

physical contact that harms or is likely to harm a child;

(b)

inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child;

(c)

punishment that is hazardous to the physical, emotional or mental state of the child; and

(d)

an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

(2)

"Adult" means a person who has a chronological age of 18 years or older.

(3)

"Attended" means the physical presence of a staff member of educator supervising children under care. Merely being within eyesight [of] or hearing of the children does not mean actively engaged or meet the intent of this definition.

B. Terms beginning with the letter "B": [RESERVED]

C. Terms beginning with the letter "C":

(1) "Care"

means the provisions of what is necessary to meet the needs of the health, welfare, maintenance, and protection of a child.

(2) "Cease and desist letter"

means a formal letter from the registered authority to a provider outlining any ongoing violation of applicable regulations and providing 24 - 72 hours, depending on the circumstances, to rectify the violation(s) before additional action,

including suspension or revocation, is taken by the registered authority. A cease and desist letter is usually issued when a registered care[-]giver violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the registered authority will take if the violation(s) is not corrected by that deadline.

(3) "Child"

means any person who is under the chronological age of 18 years.

(4) "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.

(5) "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).

(6) "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.

(7) "Clean"

means to physically remove all dirt and contamination.

(8)

"Conditions of operation" means a written plan that applies to a registered home and is developed by the licensing authority when the registered authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the caregiver must take within a specified timeframe.

(9)

"Corrective action plan" means

the plan submitted by the caregiver addressing how and when identified deficiencies will be corrected.

D. Terms beginning with the letter "D":

(1)

"Disinfect" means to destroy or inactivate most germs, but not bacterial spores, on any inanimate object, [~~but not bacterial spores~~]. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

(2) "Drop-in"

means a child who attends a child care home on an occasional or unscheduled basis to include children who come to play with provider's children without parent being present.

E. Terms beginning with the letter "E":

(1)

"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.

(2)

"Environment" means the space meeting all required local, state, and federal regulations. Environment includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

(~~2~~) (3) "Exempt caregiver"

means a child care home primary caregiver who is exempt from participating in the CACFP because [~~he or she is~~] they are caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

(~~3~~) (4)

"Exploitation" of a child consists of the act or process, performed intentionally, knowingly, or recklessly, or using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

(~~4~~) (5)

"Expulsion" means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter “F”: **“Family, friend or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

G. Terms beginning with the letter “G”: **“Guidance”** means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

H. Terms beginning with the letter “H”:

(1) “Home” means a private residence and its premises registered under these regulations where children receive care, services, and supervision. The caregiver ~~[with]~~ shall reside in the home and be the primary caregiver. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special considerations will be made for homes on tribal lands.

(2) “Homeless children and youth” means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a) children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

(b) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(c) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in subparagraphs (a) though (c) of this Paragraph.

I. Terms beginning with the letter “I”:

(1) “Infant” means a child from birth to 12 months.

(2) “In-home care” means care provided in the child’s own home. In-home care registrations are limited to care of children with documented special needs or a medical condition, and the siblings of qualifying child. In-home care registrations must comply with the following:

(a) 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.

(b) Parents or guardians are responsible for submitting documentation from a medical professional detailing the need for in-home care.

(c) Parent or guardians must consent to initial and annual inspections in accordance with 8.9.5.13 NMAC.

(d) In-home care registrations are exempt from the health and safety requirements outlined in Subsections C, D, E, F, G, H, I, J, R, T, U, V, W, X, Z of 8.9.5.22 NMAC; 8.9.5.23 NMAC; and Subsections D and I of 8.9.5.25 NMAC.

J. Terms beginning with the letter “J”: [RESERVED]

K. Terms beginning

with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”: [RESERVED]

M. Terms beginning with the letter “M”: **“Media”** means the use of televisions, video games, and non-educational on-line streaming such as video and social media.

N. Terms beginning with the letter “N”:

(1) “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.

(2) “Non-resident child” means any child who does not reside in the primary caregiver’s home.

(3) ~~“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.]~~

(4) (3) “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.

O. Terms beginning with the letter “O”: [RESERVED]

P. Terms beginning with the letter “P”:

(1) “Pacifier” means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2) “Premises” means all parts of the

buildings, grounds, and equipment of a non-licensed home pursuant to these regulations.

(3) **“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.

Q. Terms beginning with the letter “Q”: [RESERVED]

R. Terms beginning with the letter “R”:

(1) **“Registered authority”** means the child care services bureau - regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department (ECECD).

(2) **“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 (CACFP) or in the state and federal child care assistance programs.

(3) **“Registered family child care food-only 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 (CACFP) only and does not participate in the state and federal child care assistance program.

(4) **“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.

S. Terms beginning with the letter “S”:

(1) **“Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(2) **“Significant amount of time”** means someone who is on the premises for more than one hour per day during hours of care.

(3) **“Substantiated”** means an incident or complaint determined to factual, based on an investigation of events.

(4) **“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 8.9.6 NMAC governing background checks and employment history verification provisions.

(5) **“Supervision”** means the direct observation and guidance of children at all times and requires being physically present with them.

(6) **“Survey”** means a representative of ECECD’s authority to enter a home, observe[s] activity, examine [the] records and premises, interviews parents and record[s] deficiencies.

T. Terms beginning with the letter “T”: “Toddler” means a child age 12 months to 24 months.

U. Terms beginning with the letter “U”:

(1) **“Unattended”** means a caregiver is not physically present with a child or children under care.

(2) **“Unsubstantiated”** means an incident or complaint not determined to be factual based on an investigation of events.

V. Terms beginning with the letter “V”: [RESERVED]

W. Terms beginning with the letter “W”: [RESERVED]

X. Terms beginning with the letter “X”: [RESERVED]

Y. Terms beginning with the letter “Y”: [RESERVED]

Z. Terms beginning

with the letter “Z”: [RESERVED]
[8.9.5.7 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.8 APPLICATION:

A. An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must apply as a registered family child care home by submitting an application, receiving an on-site health and safety inspection by ECECD, and completing the registration process ~~[and paying the processing charge]~~. One primary caregiver per household can be registered or licensed with CCSB. ~~[All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are exempt.]~~ Primary caregivers must provide photo identification to prove identity and documentation of proof of address.

B. An applicant ~~[will]~~ shall complete an application form provided by the registered authority ~~[and include payment for the non-refundable application fee]~~. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the applicant provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, ~~[they have]~~ the applicant has not received responses from these agencies. In home care registrations are exempt from the application fee.

C. A home ~~[will]~~ shall submit a new application to the registered authority before changing anything required to be stated on the registration such as change of name, dates, status or address.

D. Child care homes operating on sovereign tribal lands are governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency. Therefore, such registered homes do

not require an inspection by the New Mexico registered authority.

(1) Homes governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency may choose to apply for a Tribal Government registration from ECECD.

(a) A Tribal Government registration may be issued for the purposes of receiving child care assistance subsidies through 8.9.3 NMAC.

(b) Registered homes operating under a Tribal Government registration must comply with their sponsoring Tribal Child Care and Development Lead Agency and are not required to be inspected by the New Mexico registered home authority comply with any other regulations under this part other than Subsection D of 8.9.5.8 NMAC.

(c) Registered homes operating under a Tribal Government registration must comply with their sponsoring Tribal Child Care and Development Lead Agency rules and requirements.

(d) A Tribal Government registration may be revoked if the New Mexico registered authority is notified by the registered home's Tribal Child Care and Development Lead agency of the registered home's non-compliance with their rules and requirements.

(2) Caregivers registered by the Tribal CCDF Lead Agency program must submit the following to obtain a tribal government child care registration from ECECD:

(a) Application;

(b) Proof of Tribal CCDF Lead Agency approval;

(c) Annual submission of a letter or memorandum attesting compliance with state, federal or Tribal background check clearances;

(d) Annual submission of all caregivers employed by the registered home,

listing each individual staff member's name, date of birth, and home address; and

(e) W-9 form and supporting documentation, if applicable.

(3) As an alternative to a Tribal Government registration, registered homes operating on sovereign tribal lands may choose to apply for a state registration. To receive a state registration, the registered home must follow the full process outlined in 8.9.5 NMAC and agree to follow and be subject to all the rules and requirements of 8.9.5 NMAC. [8.9.5.8 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.10 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 8.9.6 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 8.9.6 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. A substitute caregiver is anyone who provides care repeatedly or in reasonably foreseeable circumstances and must have the required background checks and training.

F. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

G. All caregivers are responsible for immediately reporting to the appropriate authorities any signs or symptoms of child abuse or neglect.

H. 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 original date of initial registration. Training must be approved to fulfill the following requirements. Approved trainings and substitutions [with] shall be listed on the ECECD's website. All current primary and substitute caregivers in a registered family child care home [with] shall 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) awareness with a pediatric component; ~~and~~

(11) recognition and reporting of child abuse and neglect; and

(12) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund [<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>]; in 45 CFR § 98.44 training and professional development, or approved three-credit early care and education course or an equivalent approved by the department.

I. 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.

J. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

K. 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.

L. Primary and substitute caregivers are required to obtain current first aid and CPR certification with a pediatric component prior to becoming registered and maintain this certification 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.

M. 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.

[8.9.5.10 NMAC - N, 11/01/2022; A, 10/08/2024; A, 11/04/2025]

8.9.5.11 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.9.6 NMAC governing background checks and employment history verification provisions as promulgated by ECECD. 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 8.9.6 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

(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 8.9.6.11 NMAC.

B. The primary caregiver ~~with~~ shall 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 (8.9.6 NMAC). A household member reaching the age of 18, must submit their background check in accordance with the most current provisions of 8.9.6 NMAC within 30 days after their eighteenth birthday. 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 home, who is not the primary ~~[caregiver's home]~~ caregiver 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 screening. Family members or guests visiting for temporary periods (~~[less]~~ fewer 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 8.9.6 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 yearly [~~upon renewal~~] that they, or any other adult living in the home have not been convicted of a disqualifying offense during the last twelve months. [8.9.5.11 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.12 ~~[ANNUAL]~~ **INITIAL REGISTRATION:** [~~An annual~~] A registration is issued [~~for a one-year period~~] to a child care home that has met all requirements of these regulations and shall remain valid as long as the registered home maintains good standing in compliance with all applicable rules of the department, or if not in compliance with a rule, has been granted a waiver or variance of that rule by the department or has entered into a plan of correction during their annual inspection, and the registered home certifies on its annual inspection survey its desire to renew the registration for another year. A denial of an initial or renewal application may only occur pursuant to 8.9.5.17 NMAC.

~~[A.] Primary caregivers must renew registration annually, and only after receiving an onsite inspection by ECECD, by submitting a registration application and paying the processing charge with cashier's check or a money order. In-home care registrations are exempt from the application fee.~~

~~**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 ECECD and sponsoring agencies. [8.9.5.12 NMAC - N, 11/01/2022; A, 11/04/2025]~~

8.9.5.13 VISITS BY THE SPONSORING AGENCY AND REGISTERED AUTHORITY:

Caregivers [~~will~~] shall grant the registered authority representative the right to enter the premises and, conduct visits, including unannounced and complaint investigations when child care children are present and during the caregiver's stated normal hours of operation.

A. The registered authority will conduct a survey at least once a year at each registered residence using these regulations as the criteria. The registered authority [~~will~~] shall conduct additional surveys or visit the registered residence additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate any complaints.

B. Upon the completion of a survey, the registered authority will discuss the findings with the caregiver or their substitute caregiver and will provide an official written report of the findings and a request for a plan or plans of correction, if appropriate. Each survey will be made available for review on a public web portal.

C. By applying for [~~either~~] a [~~new~~] registration [~~or a registration renewal~~], the caregiver grants the registering authority representative the right to enter the premises and survey the registered residence, including inspecting and copying of child care records, both while the application is being processed and, if registered, at any time during the registration period.

D. The registering authority may or may not announce a survey. A substitute caregiver knowledgeable in the daily operations, that has access to all records and locked areas, and can represent the caregiver for survey purposes, must be present in the residence if the primary caregiver is not present. [8.9.5.13 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.14 NON-TRANSFERABILITY OF REGISTRATION:

A. The primary caregiver's registration agreement is personal, and not transferable to any other person or location.

B. [~~A~~] The registration will expire [automatically at midnight of the expiration date unless earlier suspended or revoked, or:] if the primary caregiver moves, changes their name, or is suspended or revoked.

~~—[1] if the primary caregiver moves; or~~
~~—[2] changes their name.]~~

C. If the primary caregiver moves to a new location or has a change of name, the primary caregiver must register again by submitting a new application [~~and pay the processing charge~~]. The caregiver must report a new location or change of name prior to the occurrence and receive a new on-site health and safety inspection by ECECD.

~~[D.] A caregiver with only a change in name will not need to pay an amended fee or processing charge.]~~

[8.9.5.14 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.15 INCIDENT REPORTS: The [Registered] registered caregiver shall notify the appropriate authorities immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger. After making a report to the appropriate authorities, the caregiver shall notify ECECD of the incident

[giving rise to its report] as soon as possible but no later than 24 hours after the incident occurred. A report shall first be made by telephone and followed with written notification. The caregiver shall report to the appropriate authorities the following incidents, including but not limited to:

A. Any incident that has threatened or could threaten the health and safety of children, including but not limited to:

- (1) a lost, missing child or unattended child;
- (2) a serious injury;
- (3) the suspected abuse or neglect of a child;
- (4) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
- (5) any of the illnesses on the current list of notifiable diseases and communicable published by the office of epidemiology of the New Mexico department of health;
- (6) any legal action against a caregiver or household member;
- (7) any incident that could affect the background check eligibility of any cleared person related to this registration;
- (8) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or
- (9) any known change in a caregiver's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

B. A home [with] shall notify parents or guardians in writing of any incident, including notifiable illnesses that have threatened the health or safety of children in the home. The provider shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The provider shall immediately notify the parent or guardian in the event of

any head injury. Incidents include, but are not limited to, those listed in Subsection A of 8.9.5.15 NMAC.

C. Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The registered authority follows written protocols/ procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.9.5.15 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.16 COMPLIANCE:

By completing the ECECD registration process[~~and annual renewals~~], the primary caregiver is agreeing to comply with these regulations to include the following:

A. The primary caregiver agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

B. The caregiver must grant the registered authority the right to enter the premises and survey the caregiver's home and the inspection and copying of records. This includes any investigations which are announced or un-announced.

C. The caregiver must comply with all state and federal laws to include children with disabilities. The caregiver must allow children with disabilities who receive early intervention services to be served in accordance with the child's individualized family service plan and allow ECECD Family, Infant Toddler (FIT) providers access to the registered home to provide services pursuant to the child's Individualized Family Service Plan (IFSP) unless the caregiver documents with the department that the inclusion of each individual disabled child's services is not required pursuant to the applicable state or federal law. The caregiver may require FIT providers to sign and agree to standard registered home policies and procedures. The

caregiver may temporarily exclude a FIT provider from their registered home in cases in which their presence has caused a temporary undue burden or undue hardship as defined by the applicable state or federal law. A caregiver who temporarily excludes a FIT provider must provide detailed written notification of reason for the exclusion to the department within 48 hours.

[8.9.5.16 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.17 NON-COMPLIANCE:

A. ECECD may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with these regulations, or is unable to maintain compliance with registration standards.

B. Violation of any provisions of these regulations, especially when the registered authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children may be grounds to suspend, revoke, issue a cease and desist letter or decline to renew registration include but are not limited to:

- (1) failure to comply with the group composition requirement;
- (2) any health and safety violations which place the children in immediate danger, including but not limited to:
 - (a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;
 - (b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface; and
 - (c) unlocked or unsecured firearms and weapons in the home;
- (3) background check denial or suspension;

(4) failure to timely obtain required background checks;

(5) misrepresentation or falsification of any information given to ECECD or CACFP;

(6) failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;

(7) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to allow any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(8) discovery of repeat violations of these regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous certification periods;

(9) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present on the premises at any time, regardless of whether children are present;

(10) substantiated non-compliance with caregiver requirements to care for children in the registered home as defined in these regulations;

(11) substantiated abuse or neglect of children by the caregiver or household member as determined by the Children, Youth and Families Department (CYFD), ECECD or a law enforcement agency;

(12) allowing any person to be active in the child care home who is or would be disqualified as a primary caregiver under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC; this will include all adults and teenaged children living in a family child care home operated in a private residence

whether or not they are active in the child care operation;

(13) situations where the children in care are placed in unreasonable or unnecessary danger, including but not limited to: evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender maintaining residence in the home, a convicted sex offender in the home when children are present, accusations of sexual child abuse against a caregiver or household member, or pending the outcome of a child protective services referral; and

(14) any serious violation or other circumstance which [reasonably] leads the department to reasonably determine that the caregiver cannot reliably safeguard the health and safety of children.

C. Commencement of an ECECD, CYFD, or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

D. A suspension, revocation, or conditions of operations imposed pursuant to part A of this section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

E. The early childhood education and care department notifies the primary caregiver in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The primary caregiver may obtain an administrative appeal of the department's action.

F. The child care services bureau notifies the family nutrition bureau of any revocation or suspension of registration for a primary caregiver participating in the child care assistance programs.

G. Primary caregivers whose registration has previously been suspended or revoked may re-apply for registration through the regular registration process. The child care services bureau may consider the reasons for the previous action, as well as changed and current circumstances, in determining whether to allow the new application. The early childhood education and care department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

H. The early childhood education and care department may require the registered caregiver to implement specific actions, or to agree to specific conditions, in order to maintain registered status. Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the primary caregiver's home. Examples:

(1) The department may require the caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

(2) The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to the health or safety, or otherwise create a risk of harm to children.

I. Caregivers who are required to implement actions or to agree to conditions pursuant to Subsections G or H, are notified in writing, and shall have the opportunity for administrative appeal.

J. There shall be no right to an appeal or administrative review when the registered authority issues a cease and desist letter, provided [~~however,~~] that the registered care giver shall have the right to an appeal or administrative review of any subsequent action taken

by the registered authority as set forth herein.
[8.9.5.17 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.19 ADMINISTRATIVE APPEAL RIGHTS:

A. Any primary caregivers who receives notice that registration is denied, revoked, suspended or that renewal is denied, has a right to an administrative appeal of the decision. Any primary caregiver who is required by the department to implement specific actions, or to agree to specific conditions, in order to maintain registered status, has a right to administrative appeal.

B. Administrative appeals shall be conducted by a hearing officer appointed by the department's secretary pursuant to ECECD's identified administrative hearing regulations.

C. If the suspension or revocation is to take effect immediately, or if required conditions of continued operation are to take effect immediately, the department affords the primary caregiver the opportunity for an administrative appeal within five working days. If registration is suspended pending the results of an investigation, the primary caregiver may elect to postpone the hearing until the investigation has been completed.

D. If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect, or when an appeal of the following action is concluded and the action is either upheld or overturned.

E. If the contemplated action does not take immediate effect, and the primary caregiver is given advance notice of the contemplated action, the primary caregiver [is] will be allowed 10 working days from date of notice to request an administrative appeal in writing.

F. For any action taken by the department pursuant to 8.9.5.20 NMAC of this regulation, the applicable hearing procedure shall be that contained in 8.9.5.20 NMAC.
[8.9.5.19 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.20 PROBABLE CAUSE OF IMMINENT DANGER:

A. In circumstances in which Public Health Act, Subsection (N) of Section 24-1-5 (2005) NMSA 1978 may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a provider, the provisions of Subsection (N) of Section 24-1-5 NMSA 1978 shall apply as follows:

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary of ECECD shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period ~~[not in excess]~~ of no more than fifteen days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the care of the registered home of the notice and opportunity for hearing given to the caregiver.

(5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.

B. Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.
[8.9.5.20 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.21 GROUP COMPOSITION REQUIREMENTS:

A. A caregiver ~~[will]~~ shall care for no more than four non-resident children at any one time.

B. A caregiver ~~[will]~~ shall care for no more than two children under two years ~~[old]~~ of age at any one time, including the caregiver's own children.

C. A caregiver ~~[will]~~ shall care for no more than six children under six years ~~[old]~~ of age at any one time, including the caregiver's own children.

D. Drop-in children ~~[will]~~ shall be counted in the group composition requirements listed above.

E. Shifts are allowed provided there are never more than four non-resident children present at any one time, including during change of shifts.

F. All caregivers ~~[will]~~ shall be physically present and actively involved in the care of all children during the designated hours of child care as noted in the child enrollment forms, except for short absences when another approved caregiver is present, or during emergencies. Outside employment is not considered a short absence.
[8.9.5.21 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.22 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver ~~[will]~~ shall maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other ~~[potentially dangerous]~~ potential hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children ~~[will]~~ shall have safety outlets or have protective covers.

C. A caregiver [with] shall not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver [with] shall keep the temperature of [inside] indoor 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 [with] shall not use [~~un-vented~~] heaters without vents or open flame heaters. Portable heaters [with] shall be used in accordance with manufacture instructions. A home [with] shall install barriers or take other steps to ensure heating units are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

G. All homes [with] shall have hot and cold running water. Water coming from a faucet [with] shall 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. A caregiver's [inside] indoor and [~~outside~~] outdoor play areas must be safe, clean and free of any debris.

I. A caregiver's [~~outside~~] outdoor play area must be on the premises and approved by the registered authority. The caregiver [with] shall fence the [~~outside~~] outdoor play area when determined to be necessary for safety by the registered authority. The fence must be at least four feet high and [with] shall have one latched gate for emergency exits. For apartment buildings or residences with no outdoor play areas, a common park/playground can be used for outdoor play but [with] shall not be inspected or approved by the

registered authority. The provider [with] shall ensure the play area is safe from hazards prior to allowing children [~~to play~~] into the area.

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 [with] shall keep all poisons, toxic materials, cleaning substances, alcohol, alcoholic beverages, prescriptions and over the counter medications, intoxicating substances, 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 ECECD at all times. Emergency numbers [with] shall be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only phone in the home. The cellular telephone [with] shall remain in the same room, charged and accessible to the provider a caregiver at all times.

M. A caregiver [with] shall post emergency numbers for the police, fire department, ambulance, and poison control center in a visible location.

N. A caregiver [with] shall install at least one working smoke detector and a carbon monoxide detector in an appropriate area in the home.

O. A caregiver [with] shall unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. For purposes of this regulation, a weapon is (including but not limited to): firearms, tasers and stun guns, pepper spray, knives, swords and other items designed or used for inflicting bodily harm or physical damage.

P. [~~A~~] When children are present a caregiver, [with] shall prohibit smoking, the use of e-cigarettes [~~], nicotine and cannabis~~ vaporizers, and any other vaporizing device not prescribed by a licensed

medical professional in all areas, including vehicles. [~~and~~] A caregiver shall prohibit the drinking of alcoholic beverages or use of cannabis in all areas, including vehicles, when children are present. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

Q. A home [with] shall have a fully - charged [~~2A-10B:C~~] 210ABC fire extinguisher in an easily accessible place. A fire extinguisher must be certified once a year and [with] shall have official tags noting the date of inspection.

R. A caregiver [with] shall store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, heaters, fireplaces or laundry rooms.

S. 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 by the caregiver , 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 plans shall be approved annually by the registered authority and the department will provide guidance on developing these plans.

T. Caregiver's [with] shall conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A caregiver [with] shall hold the drills at different times of the day and [with] shall keep a record of the drills with the date, time, number of adults and children participating, and any problems.

U. A home [with] shall have two major exits readily accessible to children with no obstructions in the pathways of these exits.

V. Toys and objects (including high chairs, playpens and cribs) are safe, durable, easy to clean and nontoxic. Toys [with] shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

W. Cribs [with] shall meet federal standards (CPSC 16 CFR1219,1220), be kept in good repair, and not be used for storage. A home [with] shall not use plastic bags or lightweight plastic sheeting to cover a mattress and [with] shall not use pillows in cribs. Animals and pets [with] shall not be allowed in cribs or on sleeping materials.

X. Children [with] shall not use a common towel or wash cloth. All toilet rooms used by children [with] shall have toilet paper, soap and disposable towels.

Y. The home [with] shall have a first aid kit stored in a convenient place inaccessible to children, but easily accessible [by] to the caregiver. The kit [with] shall contain at [least] minimum band-aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

Z. A caregiver with pets [with] shall comply with the following requirements:

(1) A home [with] shall inform parents or guardians in writing before pets are allowed [at] in the residence.

(2) A home [with] shall inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the residence.

(3) A home [with] shall not allow on the premises pets or other animals that are undomesticated, dangerous, contagious, or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily.

(5) A caregiver must be physically present during the handling of all pets or other animals

AA. A caregiver [with] shall change wet and soiled diapers and clothing promptly. A caregiver [with] shall not change a diaper in a food preparation area. Caregivers [with] shall wash their hands and the child's hands after every diaper change. A caregiver [with] shall change a child's diaper on a clean, safe, waterproof surface and discard any disposable covers and disinfect the surface after each diaper change.

BB. 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. Persons who have been convicted in the last seven years of a misdemeanor or felony driving while intoxicated/ driving under the influence cannot transport children under the auspices of a registered home certification.

CC. Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle [if] on condition that the passenger-side air bag is deactivated if the vehicle is equipped with a deactivation switch for the passenger-side air bag.

DD. Children one year of age through four years of age, regardless of weight, or children who weigh 40 pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

EE. Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

FF. Children seven years of age through 12 years of age

shall be secured in a child passenger restraint device or by a seat belt.

GG. Vehicles used for transporting children [with] shall be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

HH. Vehicles operated by the home to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit, the center [with] shall ensure the vehicle is heated

II. A home [with] shall load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home [with] shall ensure children do not cross a street unsupervised after leaving the vehicle.

JJ. No one [with] shall smoke, use e-cigarettes, nicotine and cannabis [or] vaporizers, or any other vaporizing device not prescribed by a licensed medical professional in a vehicle used for transporting children.

KK. Persons transporting children [with] shall also take the safe transportation practices training. [8.9.5.22 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.23 MEAL REQUIREMENTS:

A. Children [with] shall not use shared eating or drinking utensils.

B. Children [with] shall not use common eating or drinking utensils.

C. A caregiver [with] shall provide readily accessible drinking water in sanitary cups or glasses.

D. Meals must meet age-appropriate USDA requirements.

E. A caregiver must keep a daily menu.

F. Caregivers [with] shall serve meals family style and allow children to assist in the preparation and serving of food and snacks.

G. Caregivers [with] shall feed children a meal or snack every three hours.

H. Caregivers and children [with] shall wash their hands regularly and before each meal time.

I. Caregivers [with] shall keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below.

J. Refrigerators and freezers shall have working thermometers.
[8.9.5.23 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.24 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 [with] shall be granted for children in foster care or homeless children and youth, or at-risk children and youth as determined by the department;

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] departs from the home and dates

of attendance initiated by a parent, guardian, or person authorized to pick up the child. The attendance log must be kept on file for 12 months.

[8.9.5.24 NMAC - N, 11/01/2022; A, 11/04/2025]

8.9.5.25 CAREGIVER'S RESPONSIBILITIES:

A. A caregiver [with] shall directly supervise and actively care for children at all times during hours of operation including naptime and outdoor playtime [~~and naptime~~]. Caregivers [with] shall interact with children and provide a safe and positive learning environment.

B. Children [with] shall never be left unattended. A caregiver [with] shall be with the children at all times whether activities are inside or outside of the home. Caregivers [with] shall be onsite, available and responsive to children during all hours of operation.

C. A caregiver [with] shall use guidance that is positive, consistent and age-appropriate. The caregiver [with] shall not use:

(1) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(2) withdrawal of food, rest, bathroom access, or outdoor activities;

(3) abusive or profane language, including yelling;

(4) any form of public or private humiliation, including threats of physical punishment; or

(5) unsupervised separation; or

(6) children [with] shall not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

D. Each home must develop policies and procedures for expulsion of children. Policies and procedures shall include how the home [with] shall maintain a positive environment and [with] shall focus on preventing the expulsion of children age birth to five. The home must develop policies that

include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and shall ensure fairness, equity, and continuous improvement.

E. Each home must develop an anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 and older).

F. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well-being. Caregivers [with] shall schedule activities in these areas. A caregiver [with] shall schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver [with] shall also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment [with] shall encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, video [~~tapes~~] viewing and video games should be limited to two hours a day and should be age-appropriate.

G. Caregivers of infants [with] shall allow them to crawl or toddle. Infants shall not be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

H. Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

Caregivers [with] shall allow infants to eat and sleep on their own schedules. Children [with] shall not be allowed to walk/run with pacifiers. Pacifiers [with] shall not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers [with] shall be labeled and not shared. Pacifiers [with] shall not be tied to the child. Dropped pacifiers shall be cleaned using warm water and soap.

I. Caregivers [with] shall ensure age appropriate naps or rest periods as follows:

(1) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(2) Caregivers shall ensure that nothing covers the face or head of a child age 12 months or younger when the child is laid down to sleep and while the child is sleeping.

(3) Caregivers shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep ~~[and]~~ or while the child is sleeping.

(4) No child(ren) shall be allowed to sleep behind closed doors.

J. Swimming, wading and water:

(1) A caregiver must obtain written permission from a parent or guardian before a child enters a pool;

(2) If a home has a portable wading pool:

(a) a home [with] shall drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home [with] shall empty a wading pool when it is not in use and remove it from areas accessible to children; and

(c) a home [with] shall not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fish pond or other water hazard:

(a) the fixture [with] shall be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture [with] shall be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children [with] shall be constantly supervised and ensure adequate safety for the ages, abilities and type of water hazard in use.

[8.9.5.25 NMAC - N, 11/01/2022; A, 11/04/2025]

HISTORY OF 8.9.5 NMAC: [RESERVED]

ETHICS COMMISSION

This is an amendment to 1.8.1 NMAC, Sections 9 through 12, adding new Section 21, effective 11/4/2025.

1.8.1.7 DEFINITIONS:

A. “Administrative complaint” means an allegation of an actual or potential violation of ethics laws in a sworn complaint, as fully described in Subsection D of Section 10-16G-2 NMSA 1978.

B. “Advisory opinions” are opinions written by the commission responding to questions presented by persons authorized under Paragraph (1) of Subsection A of Section 10-16G-8 NMSA 1978 about how laws within the commission’s jurisdiction apply to specific fact situations.

C. “Commission” means the State Ethics Commission.

D. “Ethics laws” means ~~[Article IX, Section 14 of the New Mexico Constitution and the statutes set out in Subsection A of Section 10-16G-9 NMSA 1978]~~ those laws for which the commission has jurisdiction or authority to act.

E. “Government agency” means an instrumentality of the United States or an agency of a state, county, or municipal government.

F. “Informal complaint” means an allegation of an actual or potential violation of ethics laws from a person, which is not an administrative complaint.

G. “Interagency agreement” means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

H. “Joint powers agreement” as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

I. “Person” means any natural person or organization that is not a government agency.

J. “Referral” means any allegation of an actual or potential violation of ethics laws received by the Commission or its staff from a government agency that is not an administrative complaint.

K. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC or the State Ethics Commission Act, Sections 10-16G-1 to -16 NMSA 1978.

[1.8.1.7 NMAC-N, 1/1/2020; A, 10/27/2020; A, 7/1/2023; A, 11/4/2025]

1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS

A. Advisory opinions.
The commission may issue advisory opinions on matters related to ethics upon request.

(1) A request for an advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) Upon receiving a request for an advisory opinion, the director or the director’s designee:

(a) must provide the requester with a written confirmation of receipt; and

(b) may ask the requester if the requester would prefer to receive an informal advisory opinion.

(3) Within sixty days of receiving a request for an advisory opinion, the commission must either:

(a) issue an advisory opinion;

(b) inform the requester that the commission will not be issuing an advisory opinion and provide an explanation for the commission's decision; or

(c) inform the requester that the commission requires more than sixty days to issue an advisory opinion, and notifies the requester about the status of the request every thirty days thereafter.

(4) Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

(5) At the request of any commissioner, the director or the director's designee shall draft an advisory opinion based on any legal determination issued by the director, the general counsel, or a hearing officer for the commission to consider for issuance as an advisory opinion.

B. Informal advisory opinions. A person may submit the request for an informal advisory opinion to the director ~~or general counsel~~, who may assign an attorney to answer the request.

(1) A request for an informal advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act or the Governmental Conduct Act, government contractor, lobbyist or lobbyist's employer. The request is

confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) An informal advisory opinion is specific to the person who requests the advice, and the facts presented in the request.

(3) An informal advisory opinion is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.

(4) If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

[1.8.1.9 NMAC-N, 10/27/2020; A, 10/26/2021; A, 11/4/2025]

1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS:

A. Upon receipt of an informal complaint or a referral, the director shall assess whether the informal complaint alleges a violation of the ethics laws and is supported by sufficient evidence for a reasonable person to conclude that a violation has occurred.

B. To complete the assessment provided in Subsection A of this Section, the director may seek information, proactively or in response to investigative leads, relating to activities that constitute violations of the ethics laws. In making an assessment, the director may seek and review information that is available to the public. For example, the director may review public social media accounts, make written requests for records under the Inspection of Public Records Act, and interview witnesses. Assessments may result in:

(1) An investigation pursuant to 1.8.1.11 NMAC;

(2) A request for the Commission's approval to commence a civil action pursuant to 1.8.1.12 NMAC; ~~or~~

(3) A determination of no further action pursuant to 1.8.1.13 NMAC; or

(4) A request seeking compliance under applicable law.

C. Before initiating an assessment, the director must determine whether the proposed assessment is based on factors other than activities protected by the First Amendment of the United States Constitution or the race, ethnicity, national origin, religion, political affiliation, or other protected status of the assessment's subject.

[1.8.1.10 NMAC-N, 7/1/2023; A, 11/4/2025]

1.8.1.11 INVESTIGATIONS; SUBPOENAS:

A. The director may initiate an investigation if there is an articulable factual basis that reasonably indicates that the subject of the investigation has violated or in the immediate future will violate the ethics laws and the investigation is a reasonable use of Commission resources and personnel. Investigations may result in:

(1) a request for the Commission's approval to commence a civil action pursuant to 1.8.1.12 NMAC; ~~or~~

(2) a determination of no further action pursuant to 1.8.1.13 NMAC; or

(3) a request seeking compliance under applicable law.

B. In performing an investigation, the director may take any action available to the director when making an assessment, interview witnesses, and petition a district court for leave to issue and serve subpoenas for evidence pursuant to Paragraph 2 of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection D of this Section.

C. Upon approval of the Commission, the director may file an action in district court for the

issuance, service, and enforcement of subpoenas requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to the investigation. The civil action provided for in this paragraph shall be filed under seal in the district court in the county where a witness resides. If a witness neglects or refuses to comply with a subpoena, the director may apply to the district court for an order enforcing the subpoena and compelling compliance. The district court may impose sanctions or other relief permitted by law, including contempt, if a person neglects or refuses to comply with an order enforcing the subpoena and compelling compliance. [1.8.1.11 NMAC-N, 7/1/2023; A, 11/4/2025]

1.8.1.12 CIVIL ACTIONS:

A. If, after an assessment pursuant to 1.8.1.10 NMAC or an investigation pursuant to 1.8.1.11 NMAC, the director concludes that the subject of the investigation has violated or will violate the ethics laws, the director ~~[shall]~~ may ask the Commission to approve the initiation of a civil action under Subsection F of Section 10-16G-9 NMSA 1978 and any other applicable statutory authority or a referral to the house of representatives for impeachment proceedings under Subsection C of Section 10-16-14 NMSA 1978.

B. The approval of the Commission is required to initiate a civil action or to refer a matter to the house of representatives for impeachment proceedings.

C. In seeking approval from the Commission to initiate a civil action or refer a matter for impeachment proceedings, the director shall provide a written explanation of the factual basis for the proposed civil action and the list of remedies sought. In seeking approval from the Commission to refer a matter to the house of representatives for impeachment proceedings, the director shall provide a written explanation of the factual basis for the

proposed referral and explain why a referral under Subsection C of Section 10-16-14 NMSA 1978 is appropriate. [1.8.1.12 NMAC-N, 7/1/2023; A, 11/4/2025]

1.8.1.21 OPEN RECORDS AND CONFIDENTIALITY:

A. Thirty days after the director provides notice pursuant to Paragraph (1) of Subsection B of 1.8.3.13 NMAC to the respondent of the allegations of a complaint, the hearing officer's finding of probable cause, and the setting of the public hearing:

(1) the director shall make public the specific allegations of the complaint, the notification to the respondent, any response filed by the respondent, and any related records, provided that:

(2) prior to the publication of any commission records pursuant to the preceding subparagraph, any proceedings in district court initiated by the commission to obtain subpoenas shall be sealed and shall remain so until such time as the commission notifies the court that the commission has made the complaint public or the parties enter into an approved settlement agreement.

B. If a complaint is dismissed because the general counsel has found it to be frivolous or unsubstantiated, as provided in Subsection E of Section 10-16G-10 NMSA 1978, the commission shall not release to the public the complaint, the reason for its dismissal, or any related records. Nothing in this subsection shall prevent the making public of any document by a complainant or respondent to the proceeding.

C. Notwithstanding any other requirement in these rules or the law requiring notification to the complainant or respondent of commission actions on a complaint, the director may delay notifying parties or releasing to the public the complaint and related information if the director deems it necessary to protect the integrity of a criminal investigation.

(1) The director shall, within 10 days of making the decision to delay release of a complaint pursuant to this subsection, present to the commission the records and information to be withheld and the reasons for delaying their release.

(2) The commission may, by a majority vote pursuant to Subsection H of Section 10-16G-10 NMSA 1978, confirm the director's decision in a meeting closed pursuant to the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978, and the commission's open meetings resolution.

D. A complainant or respondent to a formal administrative complaint or a complaint alleging violations of the Revised Uniform Law on Notarial Acts may request, and the Commission's records custodian may provide to that complainant or respondent, records comprising the administrative record, including any pleadings, motions, filed exhibits, or orders. This Subsection does not prevent the records custodian from withholding records otherwise made confidential or privileged under law, including records related to an administrative complaint subject to Subsection H of Section 10-16G-10 NMSA 1978. [1.8.1.21 NMAC-N, 11/4/2025]

ETHICS COMMISSION

This is an amendment to 1.8.3 NMAC, Sections 9, 10, 11, 13, 14, & 15, and repealing Section 16, effective 11/4/2025.

1.8.3.9 COMPLAINTS: FILING REQUIREMENTS AND LIMITATIONS; AMENDMENTS; NOTICE; TIME LIMITATIONS; CONSOLIDATION; COMMISSION-INITIATED COMPLAINTS:

A. The commission shall investigate allegations of violations of any statutes or constitutional provisions over which the legislature gives it jurisdiction. Complaints concerning such

violations may be filed against any public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer, or a restricted donor subject to the Gift Act.

(1) The commission may initiate a proceeding before the commission concerning an alleged violation:

(a) through the filing of a complaint with the commission by any person which alleges that the complainant has actual knowledge of the alleged violation of such statutes or constitutional provisions;

(b) by initiating its own complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a person subject to the jurisdiction of the commission, pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978; or

(c) by accepting a complaint filed with another public agency or legislative body and forwarded by that agency or legislative body to the commission pursuant to Subsection B or E of Section 10-16G-9 NMSA 1978.

(2) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, shall:

(a) be filed electronically on the commission's case management system, or on a form prescribed by the commission and provided at no cost to the complainant or in a substantially equivalent form, which the director or the director's designee shall record electronically on the commission's case management system;

(b) state the name and, to the extent known to the complainant, the respondent's mailing address, email address, telephone number, and public office or other position;

(c) set forth in detail the specific claims against the respondent

and the supporting factual allegations, including, if known to the complainant, any law that the respondent has allegedly violated;

(d) include any evidence that the complainant has that supports the complaint, which may include documents, records and names of witnesses; and

(e) be signed and sworn to by the complainant, under penalty of false statement.

(3) The director shall reject any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC ~~[fails to state either the respondent's mailing address or email address, or is not signed and sworn to by the complainant, under penalty of false statement and the complainant will have the opportunity to refile the complaint.]~~ that:

(a) is not signed and sworn to by the complainant, under penalty of false statement;

(b) fails to provide contact information for the complainant or any respondent;

(c) does not identify the complainant or a respondent; or

(d) is filed on behalf of a corporation or other non-natural person but is not filed by the entity's attorney in accordance with Paragraph (7) of Subsection A of 1.8.3.9 NMAC.

(4) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC may be amended once as a matter of course at any time before a responsive pleading is served. Otherwise, the complainant may amend the complaint by leave of the director. An amended complaint must be filed within seven days of the director's determination under Paragraph (3) of Subsection C of 1.8.3.10 NMAC that the commission has jurisdiction over the complaint.

(5) Unless the director grants the complainant leave, the commission shall not accept a complaint filed by a complainant who, within the previous ~~[calendar year]~~ 365 days, filed two complaints that were subsequently dismissed. In applying for leave to file a third or subsequent complaint within the same calendar year, the complainant shall explain how, as compared to the dismissed complaints, the proposed complaint concerns different facts, asserts different claims, or asserts claims against different respondents.

(6) By registering and filing a complaint through the commission's case management system, a party agrees to accept electronic service of subpoenas, notices, and other filings as a condition of submitting filings with the commission.

(7) Any party may represent themselves or may be represented by a licensed attorney. Corporations and other non-natural persons must be represented by counsel.

(a) Any attorney representing party shall enter an appearance with the commission and register on the commission's case management system. Upon receipt of the appearance, the commission shall direct all official notices and correspondence to the attorney named in the written appearance, at the address or location stated therein. Any official notice received by any named attorney shall be deemed to have been received by the represented party. An attorney may withdraw from representing a party before the commission ~~[only with leave of the director and]~~ for a reason provided for by Section B of Rule 16-116 NMRA.

(b) If the respondent is a public official or state public employee subject to a complaint alleging a violation made in the performance of the respondent's duties, the respondent is entitled to representation by the risk management division of the general services department. "Respondent's duties," within the meaning of

Subsection K of Section 10-16G-10 NMSA 1978 and this rule, excludes:

(i) conduct undertaken by an elected public official in furtherance of his or her campaign for election or reelection; and

(ii) any duty or obligation that by law is personal, rather than official, in nature.

(8) The commission may proceed with any complaint that is forwarded to the commission by another public agency, or by the legislature or a legislative committee pursuant to Subparagraph (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, according to the terms of any agreement for shared jurisdiction between the commission and the referring agency or the legislative body, pursuant to Subsection E of Section 10-16G-9 NMSA 1978.

(9) No complaint may be accepted or considered by the commission unless the date on which the complaint is received by the commission, or the date on which the commission votes to initiate a complaint, falls within the later of two years from the date:

(a) on which the alleged conduct occurred; or

(b) the alleged conduct could reasonably have been discovered.

(10) For the purpose of applying the two-year statute of limitations established in Subsection A of Section 10-16G-15 NMSA 1978, the date on which a complaint is filed with a public agency that refers the complaint to the commission under the law, or under an agreement for shared jurisdiction, shall be deemed the date of filing with the commission.

B. The commission shall not adjudicate a complaint filed against a candidate, except under the Campaign Reporting Act or Voter Action Act, fewer than 60 days before a primary or general election.

(1) This paragraph does not preclude during the blackout period:

(a) the dismissal of frivolous or unsubstantiated complaints, or dismissal or referral of complaints outside the jurisdiction of the commission, as provided by these rules;

(b) assigning to a hearing officer and making public a complaint that is found to be supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC before the blackout period begins; or

(c) an investigation related to the commission's discretion to file a court action to enforce the civil compliance provisions of any statute or constitutional provision over which the commission has jurisdiction.

(2) For complaints filed during and subject to the blackout period, the director, or the director's designee, shall notify the complainant:

(a) of the provisions of this section regarding the blackout period;

(b) that the complainant may refer allegations of criminal conduct to the attorney general or appropriate district attorney at any time; and

(c) of the deferral of commission action on the complaint for the duration of the blackout period.

(3) The director, or the director's designee, shall within five days notify a candidate named as a respondent in a complaint filed during the 60-day pre-election blackout period of:

(a) the filing of the complaint;

(b) the specific allegations and violations charged in the complaint; and

(c) the deferral of commission action on the complaint for the duration of the blackout period.

C. The commission shall not adjudicate a complaint that alleges conduct occurring only before July 1, 2019. Any complaint filed with the commission or referred to

the commission that alleges conduct occurring only before July 1, 2019 shall be dismissed and, if applicable, returned to the referring entity.

D. The director may consolidate a complaint with any other pending complaint involving related questions of fact or laws; provided that the consolidation will not unduly delay resolution of an earlier-filed complaint, unduly prejudice any complainant, or compromise the right of any complainant or respondent to confidentiality under these rules.

E. The Commission may initiate a complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer, or a restricted donor subject to the Gift Act, if:

(1) any commissioner or the director presents to the commission information or documents showing a violation of any statute or constitutional provision over which the commission has jurisdiction;

(2) the director determines that the complaint would be within the commission's jurisdiction; and

(3) five commissioners vote to initiate the complaint.

(4) A commissioner's vote to initiate a complaint pursuant to this Subsection E is not grounds for recusal pursuant to Subsection A of 1.8.2.8 NMAC.

F. If the commission initiates any complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the director shall:

(1) provide the respondent with notice of the complaint in accordance with Subsection A of 1.8.3.10 NMAC; and

(2) forward the complaint to the general counsel to initiate an investigation in accordance with 1.8.3.11 NMAC.

G. If the director determines that the complaint, either in whole or in part, is subject to referral to another state or federal agency in accordance with Subsection D of Section 10-16G-9 NMSA 1978, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, within ten days of the referral, provide notice to the respondent of the referral.

H. When the commission initiates its own administrative complaint, the commission may serve in an appellate role after a hearing officer decision, and the commission will be limited to reviewing the record developed at the hearing. As such, except as provided in Subsection E of 1.8.3.9 NMAC, Subsections I & J of Section 10-16G-10 NMSA 1978, Subsection A of Section 10-16G-11 NMSA 1978, Subsection A of 1.8.3.12 NMAC, or Subsection J of 1.8.3.14 NMAC, the commission shall not receive any information related to a complaint filed pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC until an appeal is made pursuant to 1.8.3.15 NMAC. [1.8.3.9 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023; A, 11/4/2025]

1.8.3.10 DIRECTOR'S RESPONSIBILITIES UPON RECEIVING A COMPLAINT; RESPONDENT'S OPPORTUNITY TO RESPOND; JURISDICTIONAL REVIEW; REFERRALS; NOTIFICATION TO PARTIES:

A. Within seven days of receiving a complaint, the director shall notify the respondent of the filing of the complaint; provided that, for any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9

NMAC, the director shall ensure that the complaint satisfies the filing requirements set forth in Paragraph (1) of Subsection A of 1.8.3.9 NMAC before notifying the respondent of the filing of the complaint.

B. Upon receiving a complaint pursuant to Subparagraph (a) or (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall, within 10 days, review the complaint to determine whether it is within the commission's jurisdiction.

C. If the director determines that a complaint is within the jurisdiction of the commission, unless otherwise provided in Subsection D of this Section, the director shall:

(1) provide the complainant with notice that the commission has jurisdiction for the complaint;

(2) provide the respondent with notice of the complaint and inform the respondent that the respondent may file with the commission a responsive pleading answering the complaint's assertion of facts and presenting arguments that the complaint is frivolous, unsubstantiated or not supported by probable cause within 15 days from the date of receiving the director's notification and serve the same upon the complainant; and

(3) forward the complaint to the general counsel to initiate an investigation. Upon receiving the respondent's responsive pleading, the general counsel may request the complainant to file a reply by a date set out in the request.

D. If the director determines that the complaint is subject to referral to another state or federal agency, pursuant to Subsection D of Section 10-16G-9, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the

appropriate agency and, unless a determination is made under Subsection H of Section 10-16G-10 NMSA 1978 to delay notification, within ten days of the referral, shall provide notices to the complainant and the respondent of the referral.

E. If the director determines that the complaint is within the jurisdiction of the commission and recommends that the commission should not act on some or all aspects of the complaint, then the commission shall decide whether to dismiss some or all aspects of the complaint under Subsection C of Section 10-16G-9 NMSA 1978.

F. If the director determines that the complaint is neither within the jurisdiction of the commission nor subject to referral to another agency, the commission or a hearing officer shall dismiss the complaint.

G. Subject to Subsection E of Section 1.8.3.15 NMAC, the director shall notify the complainant and respondent in writing of any action taken under Subsections C through F of 1.8.3.10 NMAC, unless notification has been delayed by the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978 and Subsection E of 1.8.3.15 NMAC. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

H. With respect to any complaint filed with or under investigation by the commission, the director shall consult with the attorney general, an appropriate district attorney or the United States attorney if:

(1) when reviewing a complaint for jurisdiction, the director determines that the complaint alleges conduct on the part of the respondent or another that appears reasonably likely to amount to a criminal violation; or

(2) the commission, any commission staff member, or any commission hearing officer finds at any time that a respondent's conduct appears reasonably likely to amount to a criminal violation.

(3) Nothing in Section 10-16G-14 NMSA 1978 or in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

[1.8.3.10 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023; A, 11/4/2025]

1.8.3.11 GENERAL COUNSEL'S INVESTIGATION:

A. Upon receiving notice of the director's determination that the commission has jurisdiction over the complaint, the general counsel shall determine whether the complaint is frivolous or unsubstantiated [~~or supported by probable cause~~].

B. To perform the investigation into whether [~~probable cause supports the~~] a complaint is frivolous or unsubstantiated, the general counsel, or the general counsel's designee, may administer oaths, interview witnesses under oath, and examine books, records, documents and other evidence reasonably related to the complaint. The general counsel, or the general counsel's designee, may:

(1) Request to inspect books, records, documents and other evidence reasonably related to a complaint; request the complainant or respondent to admit certain facts; and serve written interrogatories, to be responded to under oath at a time therein specified;

(2) Interview a witness under oath and outside the presence of the parties; and

(3) Notice and take the deposition of any person, including any party, subject to the following provisions:

(a)

The general counsel, or the general counsel's designee, may put the

witness on oath or affirmation and shall personally, or by someone acting at the general counsel's direction, record the testimony of the witness.

(b)

Any objection during a deposition shall be stated concisely in a non-argumentative and non-suggestive manner. Objections to form or foundation may only be made by stating "objection—form" or "objection—foundation". When a question is pending, or a document has been presented to the witness, no one may interrupt the deposition until the answer is given, except when necessary to preserve a privilege.

(c)

All objections shall be noted by the general counsel or the general counsel's designee upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections, except where the objection is based on an assertion of privilege made in good faith.

(d)

The general counsel, or the general counsel's designee, shall certify on the deposition that the witness was duly sworn by the general counsel or the general counsel's designee and that the deposition is a true record of the testimony given by the witness.

(e)

A witness who appears at a deposition may receive one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The Commission is not required to tender expenses and mileage before the witness appears at a deposition, and may require the witness to provide information needed to facilitate payment of expenses and mileage (such as IRS form W9) as a condition of payment.

C. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. If a

party refuses to respond to the general counsel's request for information or discovery requests, to attend a deposition, or to answer questions at a deposition noticed under this subsection, unless the party's refusal is based on an assertion of privilege made in good faith, the general counsel, when deciding whether a complaint is supported by probable cause, may draw an adverse inference against the party refusing to testify. If a party fails to provide information or identify a witness in response to a request by the general counsel, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or on appeal, unless either a hearing officer or the commission determines the failure was substantially justified or is harmless.

[1.8.3.11 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023; A, 11/4/2025]

1.8.3.13 PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES; INVESTIGATION REPORTS AND RECOMMENDATIONS TO COMMISSION; DISPOSITION BY AGREEMENT; NOTICE TO PARTIES:

A. At the conclusion of the investigation provided by 1.8.3.11 NMAC, the general counsel shall determine whether the complaint is frivolous or unsubstantiated.

(1) If

the general counsel determines that a complaint is frivolous or unsubstantiated, a hearing officer must dismiss the complaint. In that event, the complainant and the respondent shall be notified in writing of the decision and the reasons for the dismissal. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

(2) If the

general counsel determines that a complaint is not frivolous or

unsubstantiated, the general counsel shall prepare a summary of the investigation and a specification setting forth all violations reasonably related to the allegations in the complaint. The general counsel shall provide the summary, the specification, and all supporting evidence to the executive director. The executive director shall designate a hearing officer meeting the qualifications set out in Subsection A of 1.8.3.14 NMAC to determine whether the complaint is supported by probable cause.

B. Within 30 days of being appointed pursuant to Paragraph 2 of Subsection A of this Section, the hearing officer shall enter a written decision as to whether the complaint is supported by probable cause. To determine whether the complaint is supported by probable cause, the hearing officer must find that the evidence supports a finding that a violation has occurred. The degree of proof necessary to establish probable cause is more than a suspicion or possibility but less than a certainty of proof.

(1) If the hearing officer decides that the complaint is supported by probable cause, the hearing officer shall prepare a written order to that effect and provide it to the executive director. The executive director shall then promptly notify both the complainant and the respondent of the hearing officer's determination and that a public hearing will be set, *provided* that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978.

(2) If the hearing officer decides that the complaint is not supported by probable cause, the executive director shall promptly notify both the complainant and the respondent of the hearing officer's decision and inform the complainant of their right to appeal the hearing officer's decision to the commission pursuant to 1.8.3.15 NMAC.

C. The general counsel may at any time enter into

a proposed settlement agreement of the complaint with the respondent. The proposed settlement agreement shall be presented to the commission for approval. If the complaint alleges, or the general counsel has found probable cause to support, a discriminatory practice or action by the respondent against the complainant, no settlement agreement may be reached without prior consultation with the complainant. If approved by the commission, the settlement agreement shall be subject to public disclosure.

D. At any time, the complainant may voluntarily dismiss the complaint, either in whole or in part, by filing a notice of voluntary dismissal with the commission; however, any notice of voluntary dismissal does not diminish the power of the commission to initiate a complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978. If ~~[the general counsel]~~ a hearing officer has determined the complaint is supported by probable cause, the complainant may dismiss the complaint only on motion and on such terms and conditions as the hearing officer assigned to conduct the hearing deems proper.

E. If a hearing has not been scheduled concerning the disposition of a complaint within 90 days after the complaint has been received from the complainant or after referral from another agency, whichever is later, the director shall report to the commission at a duly convened meeting on the status of the investigation. The commission and the director shall thereafter proceed in accordance with Section 10-16G-11 NMSA 1978.

F. At any time before or during a hearing, the hearing officer may, at a duly convened public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, provided that:

(1) the complainant shall be consulted on the proposed agreement prior to its execution, and

(2) the agreement shall be effective upon approval by the commission at a public meeting.
[1.8.3.12 NMAC-N, 01/01/2020; Rn 1.8.3.13 NMAC & A, 09/14/2021; A, 7/1/2023; A, 11/4/2025]

1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:

A. The commission shall authorize the director to contract, for reasonable hourly compensation, with qualified persons to act as hearing officers. Hearing officers shall be assigned to act on or preside over hearings on complaints. Hearing officers must be currently licensed attorneys, or retired judges of the appellate, district, or metropolitan courts of New Mexico or any federal court, who are familiar with the ethics and election laws enforced by the commission. A hearing officer shall conduct a hearing fairly and impartially. A hearing officer who determines whether a complaint is supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC shall not preside over a hearing on the merits of the same complaint.

B. All hearings before the hearing officer will occur in Santa Fe or Albuquerque, or at such other location within the state, including a virtual location, as may be determined by the hearing officer. In selecting the location of a hearing other than in Santa Fe or Albuquerque, the hearing officer shall consider and give weight to the location and reasonable concerns of the respective parties, witnesses, and representatives in the proceeding. Upon a showing by any party of an undue burden, the hearing officer may move the hearing to a more appropriate venue.

C. If a hearing officer has not already notified the parties of a hearing through the issuance of a scheduling order, the director will notify the parties to the hearing by e-mail if the parties have agreed to receive e-mail correspondence, or by mail, directed to the address provided

by the parties, of the date, time, and place scheduled for the hearing, at least 15 days before the scheduled hearing.

D. The hearing shall be conducted pursuant to the rules of evidence governing proceedings in the state courts, Rule 11-101 NMRA, and these procedural rules. In the event of a conflict between these procedural rules and the rules of evidence governing proceedings in the state courts, these procedural rules control. All hearings shall be open to the public in accordance with the Open Meetings Act, Section 10-15-1 NMSA 1978, except for hearings or portions thereof exempted from the requirements of that Act.

E. Audio recordings shall be made of all hearings conducted pursuant to this section.

F. The parties may be represented by counsel, who shall enter an appearance at the earliest opportunity, pursuant to Paragraph (7) of Subsection A of 1.8.3.9 NMAC.

G. The hearing officer shall permit the general counsel to intervene upon request. If the complaint was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the executive director shall represent the commission at the hearing.

H. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in the proceeding;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a complete audio record of hearings to be made;

(12) to make and issue decisions and orders; and

(13) to reprimand, or with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of disruptive or other improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

I. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter, but may communicate with parties separately solely on scheduling issues if all parties are notified of such communications and do not object to them. An improper *ex parte* communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing despite having received timely notice thereof.

J. Parties who appear at the hearing may:

(1) request the director to request the commission's

authority to petition a district court to compel the presence of witnesses. Subpoenas may be requested by the commission from a district court in the same manner as provided for in Subsection J of Section 10-16G-10 NMSA 1978 and Subsections C and D of 1.8.3.11 NMAC;

(2) present evidence and testimony;

(3) examine and cross-examine witnesses; and

(4) introduce evidentiary material developed by the general counsel. Before the hearing, the general counsel shall timely disclose to the parties all evidence in the possession or within the control of the general counsel, other than privileged information.

K. Evidence shall be presented by the parties at the hearing consistent with the terms agreed to in a prehearing conference or as set forth in a scheduling order entered under Subsection H of 1.8.3.14 NMAC. The hearing officer may allow a deviation from the agreed-upon process for good cause.

(1) The general counsel shall present any evidence collected in the investigation relating to the complaint that is relevant to the matters at issue as set forth in the general counsel's post-investigation findings [~~under Subsection A of 1.8.3.12 NMAC~~]; evidence that is agreed to be relevant by the parties; or evidence that is allowed by the hearing officer. If the general counsel has intervened as a party pursuant to Section G of 1.8.3.14 NMAC, the general counsel must be afforded a reasonable opportunity to seek prehearing discovery necessary to meet any anticipated defense raised by the respondent to the claims [~~identified in the specification of violations prepared by the general counsel pursuant to Subsection B of 1.8.3.13 NMAC~~] that a hearing officer determines are supported by probable cause.

(2) The respondent may present evidence that is relevant to the matters at issue as set forth in the ~~general counsel's~~

findings under Subsection A of 1.8.3.12 NMAC] hearing officer's determination of probable cause; evidence that is agreed to be relevant by the parties; or evidence that is otherwise allowed by the hearing officer.

(3) The general counsel or the general counsel's designee may authenticate evidence produced during an investigation if the source of the evidence declines a request to appear and testify about the evidence and the hearing officer determines that there are no other reasonable means for authenticating the evidence.

L. Any person may timely file an amicus brief, not to exceed ten pages, with the director, for consideration by the hearing officer.

M. Upon reasonable notice by the party to the director, a party needing language interpreter services for translation of one language into another, and any interpreter required to be provided under the American with Disabilities Act, shall be provided for by the commission. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a hearing before the commission must affirm the interpreter's oath applicable in courts across this state.

N. After the termination of the hearing, or in lieu of a hearing if, upon a motion by a party or the general counsel, the hearing officer concludes there is no genuine dispute as to any material facts, the hearing officer shall issue written findings and conclusions on whether the evidence establishes that the respondent's conduct as alleged in the complaint constitutes a violation of any law within the jurisdiction of the commission. The hearing officer's written decision:

(1) may
(a) impose any fines provided for by law; and
(b) recommend to the appropriate

authority commensurate disciplinary action against the respondent;

(2) and must
(a) state the reasons for the hearing officer's decision; and

(b) provide the parties with notice of the right of appeal to the commission.

O. Clear and convincing evidence is required to support a finding by a hearing officer that a respondent's conduct was fraudulent or willful.

P. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint constituted a violation of the Governmental Conduct Act and was either unintentional or for good cause, then the hearing officer shall give the respondent 10 days to correct the violation, pursuant to Subsection B of Section 10-16-13.1 NMSA 1978, before taking any action under Subsection N of 1.8.3.14 NMAC.

Q. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint does not constitute a violation of any law within the jurisdiction of the commission, the hearing officer, in a written decision, shall dismiss the complaint and inform the complainant of their right to appeal to the commission.

R. A party may request copies of evidence considered by the hearing officer or a copy of the audio recording of the hearing by submitting a written request to the director. The director may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The director may also require the requesting party to submit a new, sealed computer storage device, such as a compact disc, dvd disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record. Every party is responsible for paying the cost of any transcription of the audio recording. [1.8.3.13 NMAC-N, 01/01/2020; Rn 1.8.3.14 NMAC & A, 09/14/2021; A, 7/1/2023; A, 11/4/2025]

1.8.3.15 APPEALS; ENFORCEMENT:

A. The complainant or respondent may appeal the final decision of the hearing officer within 30 days of the issuance of the decision to the full commission by filing a notice stating:

(1) each party taking the appeal and each party against whom the appeal is taken;

(2) the name, address, telephone number and email address of counsel for the appellant;

(3) the decision or part of a decision from which the party appeals; and

(4) the specific grounds for the appeal, including specific references to any evidence or law interpreted by the hearing officer.

(5) If the hearing officer issued a final decision on a complaint that was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, or where the general counsel has intervened under Section G of 1.8.3.14 NMAC, then the general counsel may appeal the hearing officer's decision within 30 days of the issuance by filing a notice stating the information required in Paragraphs (1) through (4) above.

B. For the purpose of this rule, briefing time shall commence from the date the appellant files a notice of appeal to the full commission. Unless otherwise provided for by the commission,

(1) The appellant shall file and serve a brief in chief within 15 days;

(2) The appellee shall file and serve an answer brief within 15 days after service of the brief of the appellant; and

(3) Neither the brief in chief nor the answer brief shall exceed 10 pages.

C. The commission shall schedule oral arguments, if requested by either party or ordered by the commission within sixty days of the notice of appeal.

D. Any person may timely file an amicus brief, not to exceed 10 pages, with the director for consideration by the commission.

E. The commission shall review the whole record of the proceeding and shall, within 180 days of receiving the notice of appeal, issue its decision upholding or reversing the decision of the hearing officer. The commission may reverse all or part of the hearing officer's decision and remand the matter to the hearing officer for further proceedings.

(1)

If a hearing officer dismisses a complaint, pursuant to Paragraph (1) of [Subsection B] Subsection A of 1.8.3.13 NMAC, following the general counsel's determination that the complaint is frivolous or unsubstantiated, then the complainant has no right to an appeal of that dismissal to the commission. If the general counsel does not determine that the complaint is frivolous or unsubstantiated but the hearing officer dismisses the complaint for lack of probable cause, the complainant may appeal that decision to the commission.

(2)

If the hearing officer decides that a complaint is supported by probable cause pursuant to Subsection G of Section 10-16G-10 NMSA 1978, the respondent has no right to appeal that decision to the commission.

F. An aggrieved party may seek review of the commission's final decision by filing a petition of writ of certiorari pursuant to Rule 1-075 NMRA. In any action to review a final decision by writ of certiorari, or, if no petition for writ of certiorari has been timely filed, in a court action in the judicial district where the defendant resides, the commission may move for an order enforcing the commission's final decision pursuant to Subsection F of Section 10-16G-9 NMSA 1978.

[1.8.3.14 NMAC-N, 01/01/2020; Rn 1.8.3.15 NMAC & A, 09/14/2021; A, 7/1/2023; A, 11/4/2025]

1.8.3.16 **[OPEN RECORDS AND CONFIDENTIALITY:]**

A. Thirty days after the director provides notice pursuant to Subsection A of 1.8.3.13 NMAC to the respondent of the allegations of a complaint, the general counsel's finding of probable cause, and the setting of the public hearing:

(1)

the director shall make public the specific allegations of the complaint, the notification to the respondent, any response filed by the respondent, and any related records, *provided that:*

(2)

prior to the publication of any commission records pursuant to the preceding subparagraph, any proceedings in district court initiated by the commission to obtain subpoenas shall be sealed, and shall remain so until such time as the commission notifies the court that the commission has made the complaint public or the parties enter into an approved settlement agreement.

B. If a complaint is dismissed because the general counsel has found it to be frivolous or unsubstantiated, as provided in Subsection E of Section 10-16G-10 NMSA 1978, the commission shall not release to the public the complaint, the reason for its dismissal, or any related records. Nothing in this subsection shall prevent the making public of any document by a complainant or respondent to the proceeding.

C. Notwithstanding any other requirement in these rules or the law requiring notification to the complainant or respondent of commission actions on a complaint, the director may delay notifying parties or releasing to the public the complaint and related information if the director deems it necessary to protect the integrity of a criminal investigation.

(1)

The director shall, within 10 days of making the decision to delay release of a complaint pursuant to this subsection, present to the commission the records and information to be withheld and the reasons for delaying their release.

(2)

The

commission may, by a majority vote pursuant to Subsection H of Section 10-16G-10 NMSA 1978, confirm the director's decision in a meeting closed pursuant to the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978, and the commission's open meetings resolution.]

[RESERVED]

[1.8.3.15 NMAC-N, 01/01/2020; Rn 1.8.3.16 NMAC & A, 09/14/2021; Repealed, 11/4/2025]

ETHICS COMMISSION

This is an amendment to 1.8.5 NMAC, Sections 8 and 10, effective 11/4/2025.

1.8.5.8 COMPLAINTS:

A. Any person may submit a complaint against a notarial officer alleging an act or omission that, if proven, would justify denial, revocation, suspension, or the imposition of a condition on the notarial officer's authority to perform notarial acts. The complaint shall:

(1)

provide the name and the address of the respondent who is the subject of the complaint;

(2)

attach any supporting documentation related to the complaint's allegations;

(3)

be submitted on a form provided by the commission or on a substantially equivalent form; and

(4)

be submitted by electronic mail to ethics.commission@sec.nm.gov or by U.S. mail to the Commission's mailing address.

B. Upon receiving a properly submitted complaint, the director may share the complaint with the office of the secretary of state and request the SOS to provide records related to the respondent; provided that, if the complaint names a respondent who is a judicial officer, the director shall refer the complaint to the judicial standards commission and take no further action on the complaint.

C. After receiving the respondent's file from the secretary of state, the director shall determine whether the complaint is within the commission's jurisdiction.

D. If the director determines the commission does not have jurisdiction over a complaint, the director shall inform the complainant of the reasons and close the matter without further action.

E. If the director determines the complaint is within the commission's jurisdiction, the director shall:

(1) send the complainant a notification of receipt of the complaint;

(2) send the complaint to the respondent at every address and electronic mail address that either the complainant provided to the commission or the respondent provided to the secretary of state; and

(3) request that the respondent submit a response in writing within 30 days of the director's sending a copy of the complaint pursuant to Paragraph (2) of this subsection.

[D] F. If the respondent fails to provide a response to the complaint, then the respondent's failure to provide a response will be construed as the respondent's failure to maintain address information with the secretary of state, as required by Subsection E of 12.9.3.8 NMAC, and the commission may take adverse action, up to and including revocation of the respondent's authority to perform notarial acts, on that basis.

[E] G. After receiving the respondent's response, the director shall conduct an investigation and review the complaint, the response, and any other relevant documents or material that the director may obtain pursuant to an investigation. As part of an investigation, the director may interview witnesses, request documents, and obtain and review any other evidence reasonably related to the complaint.

[F] H. Failure by a complainant or a respondent to participate in the investigation in good faith is a basis for the commission to

draw an adverse inference.

[1.8.5.8 NMAC-N, 7/1/2023; A, 11/4/2025]

1.8.5.10 APPEALS OF COMMISSION DECISIONS: A final decision by the commission on a complaint may be appealed by an aggrieved party pursuant to Rule 1-075 NMRA.

[1.8.5.10 NMAC-N, 7/1/2023; A, 11/4/2025]

LIVESTOCK BOARD

The New Mexico Livestock Board, approved the repeal of 21.32.10 NMAC, livestock board fees filed (6/26/2024) and replaced it with 21.32.10 NMAC, livestock board fees adopted on 10/23/2025 and effective 11/07/2025.

The New Mexico Livestock Board, approved the repeal of 21.33.2 NMAC, food safety, meat and poultry inspection filed (6/21/2022) and replaced it with 21.33.2 NMAC, food safety, meat and poultry inspection adopted on 10/23/2025 and effective 11/07/2025.

LIVESTOCK BOARD

TITLE 21 AGRICULTURE AND RANCHING

CHAPTER 32 BRANDS, OWNERSHIP, AND TRANSPORTATION OF ANIMALS

PART 10 LIVESTOCK BOARD FEES

21.32.10.1 ISSUING AGENCY: New Mexico Livestock Board.
[21.32.10.1 NMAC - Rp, 21.32.10.1 NMAC 11/07/2025]

21.32.10.2 SCOPE: All owners, transporters, or handlers of livestock in the state of New Mexico and those that apply to bring livestock into the state for any reason that receive inspection and other services

of the New Mexico livestock board.
[21.32.10.2 NMAC - Rp, 21.32.10.2 NMAC 11/07/2025]

21.32.10.3 STATUTORY AUTHORITY: Section 77-2-7, 77-2-29, 77-8-3, 77-8-7, 77-9-10, 77-9-16, 77-9-29, 77-9-38, 77-9-42, 77-10-4, NMSA 1978.
[21.32.10.3 NMAC - Rp, 21.32.10.3 NMAC 11/07/2025]

21.32.10.4 DURATION: Permanent.
[21.32.10.4 NMAC - Rp, 21.32.10.4 NMAC 11/07/2025]

21.32.10.5 EFFECTIVE DATE: November 7, 2025 unless a later date is cited at the end of the section.
[21.32.10.5 NMAC - Rp, 21.32.10.5 NMAC 11/07/2025]

21.32.10.6 OBJECTIVE: To establish fees for the services provided by the New Mexico livestock board.
[21.32.10.6 NMAC - Rp, 21.32.10.6 NMAC 11/07/2025]

21.32.10.7 DEFINITIONS:
A. "Board" means the New Mexico livestock board.

B. "Estray" means livestock of unknown ownership pursuant to Section 77-13-1 through 77-13-10, NMSA 1978.

C. "Holding brand" means a brand issued pursuant to Section 77-9-16, NMSA 1978, usually for transient livestock in the state of New Mexico.

D. "Inspector" means any duly authorized or commissioned officer of the livestock board.

E. "Livestock or animal" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.
[21.32.10.7 NMAC - Rp, 21.32.10.7 NMAC 11/07/2025]

21.32.10.8 LIVESTOCK INSPECTION FEES: Effective November 7, 2025, the following are the inspection charges for services

of the New Mexico livestock board, pursuant to Sections 77-2-29 and 77-2-7, NMSA 1978:

- A.** Cattle and bison inspection fee \$ 0.60 per head.
- B.** Horse inspection fee \$ 0.60 per head.
- C.** Hide inspection fee \$ 0.60 per hide.
- D.** Sheep and goat inspection fee \$ 0.20 per head.
- E.** Pelt inspection fee \$.016 per pelt.
- F.** Swine inspection fee \$ 1.10 per head.
- G.** Service charge for field inspection \$ 15.00 per inspection.
- H.** Youth exhibition animals congregated at a pre-arraigned site \$5.00 per inspection.
- I.** Service charge at livestock market \$ 0.
- J.** The payment, in lieu of fees, on the receipt of livestock at an auction market, pursuant to Sections 77-10-4 and 77-2-29, NMSA 1978, shall be the same as the amounts listed in this section.

K. Impoundment fee \$20.00 per head per day, pursuant to Section 7-14-36 and Subsection J of Section 77-2-29 NMSA 1978.

L. Transportation fee not to exceed \$1.75 per loaded mile for the hauling of impounded trespass livestock to a livestock auction market facility or receiving station pursuant to Section 77-14-36 NMSA 1978. In the event a semi-tractor-trailer must be hired to haul livestock, a reasonable fee charged by the company shall be paid. Payment for the transportation fee shall have prior approval of the inspector from the originating district of the impounded livestock.
[21.32.10.8 NMAC - Rp, 21.32.10.8 NMAC 11/07/2025]

21.32.10.9

TRANSPORTATION PERMITS FOR HORSES: The charge for issuance of a transportation permit (form 1-H), pursuant to Section 77-9-42, NMSA 1978, is fifty dollars (\$50.00). The charge for issuance of an annual transportation permit

(form 1-HA) will be twenty-five dollars (\$25.00), provided however, that no fee is charged for issuance of a transfer number to a subsequent owner, which is valid for the unexpired portion of the year for which an annual fee has been paid when a transfer of ownership occurs during the year for which an annual fee has already been paid. There will be a service charge in the amount set by Subsection A of 21.32.10.8 NMAC, for a field inspection, for each form 1-H or form 1-HA issued, regardless of where the inspection occurs. The fee for 1-H reproduction is ten dollars (\$10.00). The 1-HA cannot be reproduced.
[21.32.10.9 NMAC - Rp, 21.32.10.9 NMAC 11/07/2025]

21.32.10.10 ESTRAY CHARGES:

A. There will be an administrative charge of twenty-five dollars (\$25.00) for office handling of each estray report.

B. Charges for advertising estrays pursuant to Section 77-13-4, NMSA 1978 will be computed by dividing the total cost of the advertisement by the individual reports within that advertisement and that resulting amount shall be charged to the proceeds being held for a particular estray.
[21.32.10.10 NMAC - Rp, 21.32.10.10 NMAC 11/07/2025]

21.32.10.11 BRAND RECORDING FEES:

A. The fee for recording, a New Mexico livestock brand, pursuant to Sections 77-2-7.4 and 77-2-29, NMSA 1978, is one hundred and twenty-five dollars (\$125.00).

B. The fee for re-recording a New Mexico livestock brand, pursuant to Sections 77-2-7.12 and 77-2-29, NMSA 1978, is one hundred and twenty-five dollars (\$125.00).

C. The fee for transferring ownership of a recorded brand, pursuant to Sections 77-2-7.1 and 77-2-29, NMSA 1978, is one hundred and twenty-five dollars (\$125.00).

D. The fee for recording, or re-recording, a holding brand, pursuant to Sections 77-2-7.9 and 77-9-29, NMSA 1978, is one hundred and twenty-five dollars (\$125.00).

E. For the purpose of affording convenience and ease to brand owners and to lessen the administrative burden and expense to the board, and recognizing that the board causes brand re-recordings to occur every three years as permitted by Section 77-2-7.12, NMSA 1978, an option is offered to brand owners to re-record in optional periods of three years, six years, nine years or 12 years, according to the following fee schedule:

(1) The fee to re-record for a three-year period is one hundred and twenty-five dollars (\$125.00), payable at the commencement of that re-recording period.

(2) If re-record is desired for a six-year period, the fee is two hundred and fifty dollars (\$250.00) payable at the commencement of that re-recording period.

(3) If re-record is desired for a nine-year period, the fee is three hundred and seventy-five dollars (\$375.00), payable at the commencement of that re-recording period.

(4) If re-record is desired for a 12-year period, the fee is five hundred dollars (\$500.00), payable at the commencement of that re-recording period.

F. Brand owners are responsible for updating their current address with the board in order to receive timely communication regarding their re-recording opportunities and obligations.

G. In accordance with Sections 77-2-7.9 and 77-2-29 NMSA 1978, owners of holding brands who desire to extend the duration of a holding brand beyond one year must re-apply annually and must pay the annual renewal fee of one hundred and twenty-five dollars (\$125.00).

H. When owners of dairy cattle and owners of feedlots

re-record their brand or register the alternative to branding as permitted by 21.32.2.9 and 21.32.2.10 NMAC they must utilize the same re-recording period chosen for brand re-recording. As provided by those rules, the fee for registering the alternative is the same as, and is in addition to, the fee for brand re-recording.

I. A fee for moving a head of livestock to or from a place for seasonal grazing in an amount equal to fifty percent of the fee for the inspection of livestock per head, rounded up to the nearest cent. For the purposes of this subsection, "seasonal grazing" means the movement of livestock from one grazing location to another grazing location; provided, however, that both grazing locations are under the control of the same producer and the ownership of the livestock does not transfer upon the movement of the livestock."

[21.32.10.11 NMAC - Rp,
21.32.10.11 NMAC 11/07/2025]

21.32.10.12 COPY SERVICES:

A. The fee for making copies of any documents using the agency's copiers, shall be fifty (\$0.50) cents per page, either 8 ½ by 11 or 8 ½ by 14 plus postage.

B. No documents of the livestock board will be surrendered to anyone, other than employees of the board, for the purpose of removing the documents from the office of the board in order to have copies made.

C. The fee for making certified copies shall be three dollars (\$3.00) for certification and fifty cents (\$0.50) per page plus postage.

D. The fee for re-producing 3x5 inch or 4x6 inch photographs shall be ten dollars (\$10.00) for each copy, and larger sizes will be the cost of re-producing plus a ten dollars (\$10.00) office fee per request plus postage.

E. The fee for providing an electronic copy on compact disk of brand owners names and address shall be one hundred

dollars (\$100.00) per copy plus postage.

[21.32.10.12 NMAC - Rp,
21.32.10.12 NMAC 11/07/2025]

21.32.10.13 ABATTOIRS, MEAT DEALERS AND STORAGE PLANTS:

A. Annual license fee for meat dealers, abattoirs and storage plants - one hundred dollars (\$100.00).

B. Annual licenses are valid from January 1st through December 31st.

C. License fees renewals are due 30 days before the expiration date of the current license.

D. Operating without a current license is prohibited.

[21.32.10.13 NMAC - Rp,
21.32.10.13 NMAC 11/07/2025]

21.32.10.14 DEPOSITS:

A. New Mexico livestock board inspectors shall deposit all fees to designated banks no later than 10 days from the date of collection.

B. Designated banks may be proposed by the executive director and confirmed by majority vote of the board.

C. In the event of force majeure, the executive director may direct the use of alternative financial institutions until the next meeting of the board.

[21.32.10.14 NMAC - Rp,
21.32.10.14 NMAC 11/07/2025]

21.32.10.15 MEAT AND POULTRY INSPECTION DIVISION ESTABLISHMENT REGISTRATION AND LICENSE FEES:

A. A registration fee for meat and poultry establishments- twenty-five dollars (\$25.00).

B. Annual license fee renewals for meat and poultry establishments- twenty-five dollars (\$25.00).

C. License fees renewals are due thirty days before the expiration date of the current license.

D. Operating without a current license is prohibited.

[21.32.10.11 NMAC - N, 11/07/2025]

History of 21.32.10 NMAC:

Pre-NMAC History: The material filed in this Part was derived from that previously filed with the State Records Center and Archives under: NMLB 67-1, Cattle Sanitary Board of New Mexico Instructions to Inspectors, filed 5/3/1967; NMLB 70-1, Rules and Regulations of the New Mexico Livestock Board, filed 3/11/1970; NMLB 76-1, New Mexico Livestock Board Rules and Regulations, filed 5/6/1976; NMLB 69-2, Notice-All NM Sheepmen re: branding, filed 12/10/1969; NMLB 72-2, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972; NMLB 72-3, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972; NMLB 72-4, Resolution re: Cattle Scabies Outbreak, filed 1/31/1972; NMLB -1, New Mexico Livestock Board Rules and Regulations, filed 10/17/1979; NMLB -2, New Mexico Livestock Board Rules and Regulations, filed 11/04/1981; NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations, filed 1/30/1985; NMLB Rule No. 4, Livestock Inspection Fees, filed 8/5/1993.

History of Repealed Material:

21 NMAC 32.10 - Livestock Board Fees filed (03/01/1999) repealed effective 7/31/2000.

21.32.10 NMAC - Livestock Board Fees filed (1/28/1999) Repealed, effective 7/16/2024.

21.32.10 NMAC - Livestock Board Fees filed (6/26/2024) Repealed, effective 11/07/2025.

Other History: Only that applicable portion of NMLB Rule No. 3, New Mexico Livestock Board Rules and Regulations (filed 1/30/1985) and NMLB Rule No. 4, Livestock Inspection Fees (filed 8/5/1993) renumbered, reformatted, and amended to 21 NMAC 32.10,

Livestock Board Fees, effective 3/1/1999.
21 NMAC 32.10, Livestock Board Fees (filed 1/28/1999) renumbered, reformatted, and amended to 21.32.10 NMAC, Livestock Board Fees, effective 7/31/2000.
21.32.10 NMAC - Livestock Board Fees filed (1/28/1999) Replaced by 21.32.10 NMAC - Livestock Board Fees effective 7/16/2024.
21.32.10 NMAC - Livestock Board Fees filed (6/26/2024) Replaced by 21.32.10 NMAC - Livestock Board Fees effective 11/07/2025.

LIVESTOCK BOARD

**TITLE 21 AGRICULTURE
AND RANCHING
CHAPTER 33 ABATTOIRS,
MEAT DEALERS AND STORAGE
PLANTS
PART 2 FOOD SAFETY,
MEAT AND POULTRY
INSPECTION**

21.33.2.1 ISSUING
AGENCY: New Mexico Livestock Board.
[21.33.2.1 NMAC - Rp, 21.33.2.1 NMAC 11/07/2025]

21.33.2.2 SCOPE:
Regulating the states meat and poultry inspection program.
[21.33.2.2 NMAC - Rp, 21.33.2.2 NMAC 11/07/2025]

21.33.2.3 STATUTORY
AUTHORITY: Section 77-2-7 through 77-2-29; NMSA 1978, Section 77-3-9; NMSA 1978, Section 77-3-1 through Section 77-3-17; NMSA 1978, Section 77-9-1 through 77-9-63; NMSA 1978, Section 77-17-15; NMSA 1978, Section 30-18-1 through Section 30-18-14 NMSA 1978, Section 25-2-22 NMSA.
[21.33.2.3 NMAC - Rp, 21.33.2.3 NMAC 11/07/2025]

21.33.2.4 DURATION:
Permanent.
[21.33.2.4 NMAC - Rp, 21.33.2.4 NMAC 11/07/2025]

21.33.2.5 EFFECTIVE
DATE: November 7, 2025 unless a later date is cited at the end of a section.
[21.33.2.5 NMAC - Rp, 21.33.2.5 NMAC 11/07/2025]

21.33.2.6 OBJECTIVE:
The New Mexico livestock board (NMLB), through its meat and poultry inspection division (MPID), seeks to regulate the production of meat and poultry products under a state meat and poultry inspection (MPI) program with the purpose to protect consumers while encouraging the economic development of New Mexico agricultural businesses and communities.
[21.33.2.6 NMAC - Rp, 21.33.2.6 NMAC 11/07/2025]

21.33.2.7 DEFINITIONS:
All words or terms defined or used in the federal regulations incorporated by reference shall mean the state equivalent or counterpart to those word or terms. The following words or terms, when used in this part, shall have the following meaning, unless the context clearly indicates otherwise.

A. Definitions
beginning with “A”:

(1) “Act”
means the New Mexico Meat Inspection Act, Sections 25-2-22 NMSA 1978.

(2)
“**Adulterated**” means any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(a)
if it bears or contains any such poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b)
if it bears or contains (by reason of administration of any substance to the live animal or otherwise) any

added poisonous or added deleterious substance other than one which is:

(i)
a pesticide chemical in or on a raw agricultural commodity;

(ii)
a food additive; or

(iii)
a color additive which may, in the judgment of the MPI Director, make such article unfit for human food;
(c)

if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

(d)
if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(e) if
it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(f)
if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(g)
if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(h)
if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

(i)
if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or

make it appear better or of greater value than it is; or, if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise adulterated.

(3) **Horse**
meat that is slaughtered for human consumption.

B. Definitions
beginning with "B": "Board"
means the New Mexico livestock board.

C. Definitions
beginning with "C":
(1) **"Capable of use as human food"** means any carcass, or part or product of a carcass, of any livestock, unless it is denatured or otherwise identified as required by the applicable provisions of 9 C.F.R Sections 314.3, 314.10, 325.11, and 325.13 to deter its use as a human food, or it is naturally inedible by humans; e.g., hoofs or horns in their natural state.

(2) **"Carcass"**
means all parts, including viscera, of any slaughtered livestock.

(3) **"CFR"**
means the codification of the general and permanent rules published in the Federal register by the executive departments and agencies of the Federal government.

(4) **"Cleaning agents"** means cleaning compounds, sanitizing agents, processing aids and other chemicals used by an establishment, shall be used, handled and stored in a manner that will not adulterate product or create unsanitary conditions. Documentation substantiating the safety of the chemical's use in food processing environment shall be available to New Mexico livestock board inspection program employees for review. In most cases documentation will be "safety data sheets".

(5) **"Condemned"** means that the livestock so identified has been inspected and found to be in a dying condition, or to be affected with any other condition or disease that would require condemnation of its carcass.

(6) **"Consciousness"** means responsiveness of the brain to the impressions made by the senses.

(7) **"Curing"**
means the addition of salt, sodium or potassium nitrate (or saltpeter), nitrites, and sometimes sugar, seasonings, phosphates and cure accelerators to meat.

D. Definitions
beginning with "D":

(1) **"Dead livestock"** means the body (cadaver) of livestock which has died otherwise than by slaughter.

(2) **"Director"**
means the executive director of the New Mexico livestock board. For the purposes of this rule, the term "secretary," when used in 9 Code of Federal Regulations (CFR), means director.

(3) **"Division"**
means that part of the New Mexico livestock board devoted to food safety, meat and poultry inspection. For the purposes of this rule, when using the federal regulations adopted by reference in 21.33.2 NMAC (relating to Federal regulations on meat and poultry inspection), the terms "United States department of agriculture" or "department" mean the MPI division under the New Mexico livestock board.

(4) **"Dying, diseased, or disabled livestock"**
means livestock which has or displays symptoms of having any of the following:

- (a) central nervous system disorder;
- (b) abnormal temperature (high or low);
- (c) difficult breathing;
- (d) abnormal swellings;
- (e) lack of muscular coordination;
- (f) inability to walk normally or stand;
- (g)

any of the conditions for which livestock is required to be condemned on ante-mortem inspection in accordance with the regulations in part 309 of this subchapter.

E. Definitions
beginning with "E":

(1) **"Edible"**
means intended for use as human food.

(2) **"Establishment"** means any business ownership type that engages in any slaughtering, cutting, boning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under the regulations in this rule.

F. Definitions
beginning with "F":

(1) **"Farm slaughter"** means the slaughtering of an animal or animals for the owner of that animal or animals on the owner's farm or premises and further processed at a custom exempt plant for personal use.

(2) **"Firm"**
means any type of business, partnership, association, or other unincorporated business organization or establishment.

(3) **"Further processing"** means smoking, cooking, curing, refining, or rendering in an official establishment of product previously prepared in official establishments.

G. Definitions
beginning with "G": [RESERVED]

H. Definitions
beginning with "H": [RESERVED]

I. Definitions
beginning with "I":

(1) **"Immediate container"** means the receptacle or other covering in which any product is directly contained or wholly or partially enclosed.

(2) **"Inedible"**
means adulterated, uninspected, or not intended for use as human food.

(3) **"Inspected and condemned"** means that the carcass, viscera, other part of carcass, or other product so identified has been inspected, found to be adulterated, and condemned under the regulations in this rule.

(4) **"Inhumane slaughter or handling in connection with slaughter"** means slaughter or handling in connection

with slaughter not in accordance with the Act of August 27, 1958 (72 Stat. 862; 7 U.S.C. 1901 through 1906, as amended by the Humane Methods of Slaughter Act of 1978, 92 Stat. 1069) and part 313 of this subchapter.

(5)

“Inspector” means any duly authorized agent of the livestock board.

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”:

(1) “Label”

means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(2)

“Labeling” means all labels and other written, printed, or graphic matter:

(a)

upon any article or any of its containers or wrappers, or

(b)

accompanying such article.

(3)

“Livestock” means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids and farmed cervidae.

(4) “Livestock

market” means any facility in the state of New Mexico, which is used for the purpose of holding consignment sales of livestock.

M. Definitions

beginning with “M”:

(1) “Meat”

means the part of the muscle of any cattle, sheep, swine, or goats which is skeletal or which is found in the tongue, diaphragm, heart, or esophagus, with or without the accompanying and overlying fat, and the portions of bone (in bone-in product such as T-bone or porterhouse steak), skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and that are not separated from it in the process of dressing. As applied to products of equines, this term has a comparable meaning:

(a)

Meat does not include the muscle found in the lips, snout, or ears.

(b)

Meat may not include significant portions of bone, including hard bone and related components, such as bone marrow, or any amount of brain, trigeminal ganglia, spinal cord, or dorsal root ganglia (DRG).

(2) “Meat by-

product” means any part capable of use as human food, other than meat that has been derived from one or more cattle, bison, sheep, swine, or goats.

(3) “Meat

food product” means any article capable of use as human food that is made wholly or in part from any meat or other portion of the carcass from any cattle, bison, sheep, swine, or goats. However, “meat food product” shall not include those exempted from definition as a meat food product by the director in specific cases or by the rules, in Title 9 of the Code of Federal Regulations (CFR), Part 317 due to a determination that they contain meat or other portions of carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry. Those exempted shall comply with any requirements that are imposed as conditions of the exemptions to assure that the meat or other portions of carcasses contained in the articles are not adulterated and are not represented as meat food products.

(4)

“Misbranded” means any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(a)

if its labeling is false or misleading in any particular;

(b) if

it is offered for sale under the name of another food;

(c)

if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and immediately thereafter, the name of the food imitated;

(d)

if its container is so made, formed, or filled as to be misleading;

(e) if

in a package or other container unless it bears a label showing:

(i)

the name and place of business of the manufacturer, packer, or distributor; and

(ii)

an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; except as otherwise provided in 9 C.F.R part 317 with respect to the quantity of contents;

(f)

if any word, statement, or other information required by or under authority of the Act to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(5) “MPID”

is a division within the NMLB tasked with carrying out the provisions of laws relating to a state meat and poultry inspection (MPI) program. For the purposes of this rule, the term “food safety and inspection service (FSIS),” when used in federal regulations adopted by reference by the department in 21.33.2 NMAC, means the MPID.

(a)

the MPID director may adopt additional policies and procedures as necessary to define, clarify and maintain agency functions for consistency with 9 CFR and related federal acts (*e.g.*, Meat Inspection Act (21 USCS Section 601 *et seq*; Poultry Products Inspection Act (21 USCS Section 451 *et seq*); Humane Methods of Slaughter Act (7 USC 1901 *et seq*);

(b)

the MPID director, with board approval, may enter into agreements with other state, federal, local, tribal and other organizations as needed to further the purpose and provisions

of these regulations, and the MPI program at large, to achieve “at least equal to” status.

(6) **“MPI director”** means the director of the New Mexico meat and poultry inspection program. For the purposes of this subchapter, the term “administrator,” when used in federal regulations adopted by reference by the department in 21.33.2 NMAC, means MPI director.

N. Definitions

beginning with “N”:

(1) **“New Mexico livestock”** means any livestock raised or pastured or fed within the state of New Mexico.

(2) **“NMLB”** is a political subdivision of the state of New Mexico tasked with protecting the livestock industry from theft and disease and protecting consumers from unwholesome meat products.

O. Definitions

beginning with “O”: **“Official identification”** means an electronic or visual ear tag with a 15-digit number beginning with “840”, a USDA silver metal identification tag, a USDA orange metal calfhood brucellosis vaccination tag, a breed registry tattoo with proof of registration, or other identification as approved by the New Mexico state veterinarian.

P. Definitions

beginning with “P”:

(1) **“Packaging material”** means any cloth, paper, plastic, metal, or other material used to form a container, wrapper, label, or cover for meat products.

(2) **“Pesticide chemical, food additive, color additive, raw agricultural commodity”** these terms shall have the same meanings for purposes of the Act and the regulations in this subchapter as under the Federal Food, Drug, and Cosmetic Act.

(3) **“Person”** means an individual, partnership, association or operation.

(4) **“Poultry”** means any domesticated bird, whether live or dead, including chickens, turkeys, ducks, geese, guineas, ratites,

or squabs (also known as young pigeons from one to about 30 days of age).

(5) **“Poultry product”** means any poultry carcass, part, or product made wholly or in part from any poultry carcass or part which can be used as human food, except those exempted from definition as a poultry product in Title 9 of the Code of Federal Regulations (CFR), Part 381.15. This term shall not include detached ova.

(6) **“Poultry by-product”** means skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

(7) **“Prepared”** means slaughtered, salted, rendered, boned, cut up, or otherwise manufactured or processed.

(8) **“Processing”** means processing as any activity that alters a product from its raw state, including steps like curing, smoking, cooking, refining, rendering, grinding, comminuting, injecting solutions, or mechanical tenderization.

(9) **“Product”** means any carcass, meat, meat byproduct, or meat food product, capable of use as human food.

(10) **“Proper separation”** means adequate space between applicable products as approved by the MPI director or an authorized agent.

Q. Definitions

beginning with “Q”: [RESERVED]

R. Definitions

beginning with “R”:

(1) **“Rendering”** means bodies or parts of bodies of dead animals or poultry and used cooking grease and oils.

(2) **“Retained”** means that the carcass, viscera, other part of carcass, or other product, or article so identified is held for further examination by an inspector to determine its disposition.

S. Definitions

beginning with “S”:

(1) **“Sanitize”** means the treatment of physically clean surfaces of equipment, utensils,

refrigeration units, and structures by a process, approved by the department that effectively destroys microorganisms including pathogens.

(2) **“Secretary”** the term secretary, when used in 9 CFR, shall mean the MPID director.

(3) **“Shipping container”** means the outside container (box, bag, barrel, crate, or other receptacle or covering) containing or wholly or partly enclosing any product packed in one or more immediate containers.

(4) **“Suspect”** means that the livestock so identified is suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by an inspector to determine its disposition.

T. Definitions

beginning with “T”: **“Tagging”** means the regulatory process or action of placing a New Mexico retained or New Mexico rejected tag on the establishment’s product, carcass, building compartment, or equipment. For the purposes of this rule, the term “U.S. retained,” when used in 9 Code of Federal Regulations (CFR), means New Mexico retained. For the purposes of this rule, the term “U.S. rejected,” when used in 9 Code of Federal Regulations (CFR), means New Mexico rejected.

U. Definitions

beginning with “U”: **“Unwholesome”** refers to anything that is or could reasonably contribute to a meat or poultry product being injurious to human health.

V. Definitions

beginning with “V”: [RESERVED]

W. Definitions

beginning with “W”: [RESERVED]

X. Definitions

beginning with “X”: [RESERVED]

Y. Definitions

beginning with “Y”: [RESERVED]

Z. Definitions

beginning with “Z”: [RESERVED]
[21.33.2.7 NMAC - Rp, 21.33.2.7 NMAC 11/07/2025]

**21.33.2.8 INCORPORATION
BY REFERENCE OF FEDERAL
MEAT INSPECTION AND
POULTRY PRODUCTS**

INSPECTION REGULATIONS: The Federal Meat Inspection Act, Poultry Products Inspection Act and Regulations 9 CFR, Chapter III, 300 through 590.970, are incorporated by reference as presently in effect and as they may later be modified.
[21.33.2.8 NMAC - N, 11/07/2025]

**21.33.2.9 REGULATION
OF MEAT AND POULTRY
INSPECTION PRODUCTS:** The NMLB, through the MPID, adopts by reference the following federal regulations in the Code of Federal Regulations (CFR), as amended:

A. 9 CFR, Part 301, terminology; adulteration and misbranding standards;
B. 9 CFR, Part 303, exemptions;
C. 9 CFR, Part 304, application for inspection; grant of inspection;
D. 9 CFR, Part 305, official numbers; inauguration of inspection; withdrawal of inspection; reports of violation;
E. 9 CFR, Part 306, assignment and authorities of program employees;
F. 9 CFR, Part 307, facilities for inspection;
G. 9 CFR, Part 309, ante-mortem inspection;
H. 9 CFR, Part 310, post-mortem inspection;
I. 9 CFR, Part 311, disposal of diseased or otherwise adulterated carcasses and parts;
J. 9 CFR, Part 312, official marks, devices and certificates;
K. 9 CFR, Part 313, humane slaughter of livestock;
L. 9 CFR, Part 314, handling and disposal of condemned or other inedible products at official establishments;
M. 9 CFR, Part 315, rendering or other disposal of carcasses and parts passed for cooking;
N. 9 CFR, Part 316, marking products and their containers;

O. 9 CFR, Part 317, labeling, marking devices, and containers;
P. 9 CFR, Part 318, entry into official establishments; reinspection and preparation of products;
Q. 9 CFR, Part 319, definitions and standards of identity or composition. The following requirements shall apply except in the case of restaurant menus and signs.
R. 9 CFR, Part 320, records, registration, and reports;
S. 9 CFR, Part 321, cooperation with states and territories;
T. 9 CFR, Part 322, exports;
U. 9 CFR, Part 325, transportation;
V. 9 CFR, Part 327, imported products;
W. 9 CFR, Part 329, detention; seizure and condemnation; criminal offenses;
X. 9 CFR, Part 331, special provisions for designated states and territories; and for designation of establishments which endanger public health and for such designated establishments;
Y. 9 CFR, Part 335, rules of practice governing proceedings under the federal meat inspection act;
Z. 9 CFR, Part 350, special services relating to meat and other products;
AA. 9 CFR, Part 352, exotic animals and horses; voluntary inspection;
BB. 9 CFR, Part 354, voluntary inspection of rabbits and edible products thereof;
CC. 9 CFR, Part 355, certified products for dogs, cats, and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition;
DD. 9 CFR, Part 362, voluntary poultry inspection regulations;
EE. 9 CFR, Part 381, poultry products inspection regulations;
FF. 9 CFR, Part 416, sanitation;

GG. 9 CFR, Part 417, hazard analysis and critical control point (HACCP) systems;
HH. 9 CFR, Part 418, recalls;
II. 9 CFR, Part 424, preparation and processing operations;
JJ. 9 CFR, Part 430, requirements for specific classes of product;
KK. 9 CFR, Part 441, consumer protection standards: raw products;
LL. 9 CFR, Part 442, quantity of contents labeling and procedures and requirements for accurate weights;
MM. 9 CFR, Part 500, rules of practice.
[21.33.2.9 NMAC - Rp, 21.33.2.8 NMAC 11/07/2025]

**21.33.2.10 APPLICATION
FOR LICENSE FOR STATE
INSPECTION AND CUSTOM
EXEMPTION:**

A. Each person or firm conducting operations at an establishment subject to the Act, including tenants, subsidiaries, and landlords, shall apply for a grant of state inspection or custom exempt.
B. The application for inspection shall be on official forms provided by the meat and poultry inspection division (MPID) of the New Mexico livestock board.
(1) The application shall contain all requested information.
(2) All applicant trade names used for labeling shall be provided in the application.
(3) Each applicant for inspection shall be responsible for compliance with the Act and the rules if inspection is granted.
C. Only the person listed as the applicant is authorized to conduct operations at the establishment for which inspection is granted.
D. A new license application shall be made for changes of ownership or location. Any currently issued license for custom exemption is non-transferable.

E. The application for license for custom exemption and state inspection is subject to licensing fees and annual renewal fees as established in 21.32.10 NMAC so long as the firm is in operation. Failure to register could result in enforcement actions pursuant to 21.33.2.35 NMAC.

[21.33.2.10 NMAC - N, 11/07/2025]

21.33.2.11 REGISTRATION AND APPLICATION REQUIREMENTS FOR CUSTOM EXEMPT ESTABLISHMENTS:

A. Every establishment where livestock and poultry are custom slaughtered without ante-mortem and post-mortem inspection or in which custom processing of carcasses or parts of carcasses derived from livestock and poultry slaughtered without ante-mortem and post-mortem inspection is required to submit an application and have all facilities approved by the director or designee prior to receiving a custom exempt license and conducting operations.

B. Any person or establishment, not licensed as a retail exempt business, engaged in custom processing of inspected and passed carcasses for individuals, is required to submit an application and meet all facility requirements prior to conducting operations.

[21.33.2.11 NMAC - N, 11/07/2025]

21.33.2.12 STATE INSPECTION AND CUSTOM EXEMPT ESTABLISHMENT LICENSE AND LICENSEE:

A. Any person desiring to operate a livestock slaughter or meat processing establishment in New Mexico shall file an application for a license with the director on such form or forms as the director shall prescribe, which application shall be signed by the applicant.

B. Every license issued by the director to a qualified establishment shall expire one year from the date of issuance. Renewal of such license shall be made on renewal forms as prescribed by the board.

C. The director may extend licenses for a portion of a calendar year, in order to synchronize the periods of all licenses, so that the one year period of issue coincides with the calendar year.

D. The board will cooperate with the FSIS, to ensure that the establishment owner has met the requirements for approval under the federal and state codes, prior to issuing the license.

E. The establishment owner shall display the license in a prominent place visible to the public.

F. Violation of any rule or statute on establishment property by owner, agent, operator or employee may result in suspension or revocation of license.

[21.33.2.12 NMAC - N, 11/07/2025]

21.33.2.13 DRAWINGS, INFORMATION TO BE FURNISHED FOR CUSTOM EXEMPT LICENSURE:

A. Each applicant for inspection shall submit two copies of the following:

(1) complete drawings with specifications of the floor plans of the establishment for which inspection is requested, floor drains, principal drainage lines, hand washing basins, and hose connections for cleanup purposes;

(2) a plot plan showing the limits of the establishment's premises, locations in outline of buildings on the premises, cardinal points of the compass, and roadways and railways serving the establishment;

(3) a room description showing the finish of walls, floors, and ceilings of all rooms in the establishment;

B. Standard sanitation operating procedures established by the meat inspection division to include describing the water supply, plumbing, drainage, refrigeration, equipment, lighting, and operations of the establishment related to sanitation and proper performance of inspection.

C. Written notice shall be given to each applicant granted a custom exempt license, specifying

the establishment to which the license applies.

D. The director or designee may issue a custom exempt license upon a determination that the applicant and the establishment are eligible.

E. The director or designee may refuse to issue a license at any establishment if the director or designee determines the establishment does not meet all requirements of applicable laws or regulations.

[21.33.2.13 NMAC - N, 11/07/2025]

21.33.2.14 REGISTRATION AND APPLICATION REQUIREMENTS FOR LOW-VOLUME, EXEMPT POULTRY AND RABBIT OPERATIONS:

A. Operators of exempt poultry and rabbit slaughter and processing are required to submit an application and register their business with the MPID. The registration is subject to licensing fees and annual renewal fees as established in 21.32.10 NMAC so long as the firm is in operation. Failure to register could result in enforcement actions pursuant to 21.33.2.35 NMAC.

B. Adulterated poultry or rabbits, as defined in this subchapter, may not be slaughtered for the purpose of selling the carcass or parts for food. Only healthy poultry and rabbits, exhibiting no abnormalities, may be slaughtered for sale as food.

C. Unhealthy or unsound poultry and rabbits are those that exhibit any condition not normally expected to be exhibited in a healthy and sound member of that species. Examples of abnormal or unsound animals include animals that are not able to get up, or animals that have a missing or abnormal eye, swellings, rectal or vaginal prolapse, ocular or nasal discharge, a cough, or a limp.

D. Operators of facilities conducting slaughter under a poultry or rabbit exemption shall keep records such as bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any poultry or rabbit or poultry

or rabbit carcass, meat, or meat food product is purchased, sold, shipped, received, transported, or otherwise handled for a period of one year. These records shall be available to department representatives on request.

E. Low-volume poultry or rabbit slaughter operations shall be maintained in sanitary condition during slaughter and processing operations.

F. Carcasses and parts there from that are prepared under the poultry or rabbit exemption shall be packaged and the container shall be marked with each of the following in letters at least 1/4 inch in height, unless otherwise stated:

(1) the slaughterer's name and address of the business and the term "Exempted P.L. 90-492" and the statement "not produced under inspection";

(2) the common or usual name of the product, or a truthful descriptive designation of the product;

(3) a special handling label such as, "keep refrigerated," "keep frozen," "keep refrigerated or frozen," "perishable - keep under refrigeration," or any other similar statement that entails the product is perishable and needs to be stored properly before cooking.
[21.33.2.14 NMAC - N, 11/07/2025]

21.33.2.15 ESTABLISHMENTS REQUIRING INSPECTION:

Inspection under the rules is required at:

A. every establishment, except as provided in 9 CFR, Part 303.1, 381.10, 381.11, 381.12, 381.13, 381.14, and 381.15, within the state, at which any livestock or poultry are slaughtered or any meat or poultry products are processed, for use as human food solely for distribution within such jurisdiction;

B. every establishment, operating under exemptions, as provided in 9 CFR, Part 303.1, 381.10, 381.11, 381.12, 381.13, 381.14, and 381.15, which becomes designated by the director pursuant to the act as one producing adulterated meat or poultry products which would

clearly endanger the public health.
[21.33.2.15 NMAC - N, 11/07/2025]

21.33.2.16 INSPECTION AND TESTS AT MEAT ESTABLISHMENTS:

A. All livestock and poultry received at an establishment may be inspected for health by the board, or its authorized agent.

B. In conducting such inspections of any meat in the possession of the operator, such board or its agent, is authorized to test and to require the administration of such preventative or curative treatment, as the state veterinarian shall deem necessary to prevent the spread of livestock disease.

C. The tests and treatments which are required as part of this section shall be accomplished at the owner's expense.
[21.33.2.16 NMAC - N, 11/07/2025]

21.33.2.17 INSPECTION OF CATTLE AND TAGGING AT ESTABLISHMENTS: All livestock entering an establishment shall be inspected by a livestock inspector or authorized agent of the board, for brands and ownership and that inspection shall be documented upon the certificate prescribed by the board.
[21.33.2.17 NMAC - N, 11/07/2025]

21.33.2.18 CUSTOM EXEMPT SLAUGHTER AND PROCESSING; OPERATING REQUIREMENTS AND PROCEDURES:

A. The requirements of this section apply to the custom slaughter and processing by any person of uninspected livestock carcasses or parts, delivered by or for the owner thereof for such processing. These products are not for sale to the public and are for the exclusive use of the owner, a member of the owner's household, or a nonpaying guest or employee of the owner. The requirements of this section do not apply to hunter-killed game animals, hunter-killed exotic animals, or hunter-killed feral swine.

B. No adulterated carcasses or parts as defined in this

rule may be accepted for custom processing.

C. Exempt records and recordkeeping system:

(1) Operators of facilities conducting custom exempt operations shall keep records for a period of one year from the date of slaughter or processing.

(2) Custom slaughter records shall contain the name, address, and telephone number of the owner of each animal presented, and the date the animal was slaughtered, the species and brief description of the livestock.

(3) All such records shall be maintained at the licensed establishment for 48 hours following completion, after which they may be stored off-site provided such records can be made available within 24 hours of request.

(4) Records described above shall be available to department officials on request.

D. Animals for slaughter:

(1) Only healthy animals exhibiting no abnormalities, may be accepted for custom slaughter at custom slaughter establishments.

(2) Unhealthy or unsound animals are those that exhibit any condition that is not normally expected in a healthy and sound member of that species.

(3) Examples of abnormal or unsound animals include: animals that are not able to get up, or animals that have a missing or abnormal eye(s), swellings, rectal or vaginal prolapse, excessive ocular or nasal discharge, open abscesses, or a limp from an obviously healed break in the leg(s).

(4) Animals that have an obviously recent break of the lower leg (below the stifle or elbow) and are able to walk and stand are not considered to be unsound if no other abnormal conditions are observed.

(5) A program official that determines an animal or carcass is adulterated, unfit for human food, is from an unhealthy or

unsound animal, or may be a health hazard, may attach a "New Mexico retained" tag to the carcass and parts thereof and document the reason for attaching a tag on form specified by the department and deliver the form to the operator or manager of the establishment. The owner of the carcass shall be notified by the plant operator or manager and advised of the potential health risk. The custom processor shall ensure that the owner of the carcass or parts either authorizes the voluntary destruction and denaturing of the carcass and all parts or agrees to remove the carcass from the custom processing establishment.

(6)

Under no circumstances may the carcass be further processed at any establishment.

(7) Carcasses,

or parts thereof, derived from animals that have died through circumstances other than slaughter is considered adulterated as defined herein. This includes animals such as roadkill or animals that have died by disease, trauma, or other accident. Such animals may not enter or be processed by a licensed or granted establishment.

E. Procedures

regarding receiving farm slaughtered livestock: If a custom processor accepts farm slaughtered animals for custom processing, records shall contain a signed statement from the animal owner that the animal was healthy and exhibited no abnormalities, other than an obviously recent break to the lower leg (below the stifle or elbow) and was able to walk and stand at the time of slaughter.

F. Additional records to be kept by establishment:

(1) Additional

records to be kept include bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat, or meat food products are purchased, sold, shipped, received, transported, or otherwise handled by the custom slaughter establishment.

(2) Additional

records to be kept include bills of sale, invoices, bills of lading, and receiving and shipping papers for transactions in which any livestock or carcass, meat, or meat food products are purchased, sold, shipped, received, transported, or otherwise handled by the custom processor.

G. Retail operations in a custom exempt establishment:

(1) If the

custom slaughter or processing establishment also maintains a retail meat outlet, separate records as listed above in this section shall be maintained for each type of business conducted at the establishment.

(2) Retail

products shall be clearly labeled and identified during receiving, storing, processing, and packaging.

(3) Retail

products and custom exempt meat products shall maintain proper separation by time and or space during receiving, storing, processing, and packaging.

H. Sanitary operations and sanitation standard operating procedures (SSOP): The NMLB, through the MPID, adopts by reference, 9 CFR 416 of the Code of Federal Regulations (CFR), as amended for custom sanitary operations and sanitation standard operating procedures (SSOP). Custom exempt slaughter and processing establishments shall be maintained in a manner sufficient to prevent the creation of insanitary conditions and to ensure product is not adulterated. Each custom exempt slaughter and processing establishment shall comply with the requirements of 9 CFR 416.

I. Specified risk materials (SRM) removal and Handling:

(1) The

NMLB, through the MPID, adopts by reference, 9 CFR 310.22 of the Code of Federal Regulations (CFR), as amended for the handling and disposing of specified risk materials from cattle.

(2) Each custom slaughter establishment shall

comply with the requirements of 9 CFR 310.22 regarding the handling and disposing of specified risk materials from cattle.

(3) Each

custom processing establishment that receives farm slaughtered livestock shall comply with the requirements of 9 CFR 310.22 regarding the handling and disposing of specified risk materials from cattle.

J. Humane handling

and slaughter of livestock: The NMLB, through the MPID, adopts by reference, 9 CFR 313 and 9 CFR 310.18(b) of the Code of Federal Regulations (CFR), as amended for the humane handling and slaughter of livestock. Custom exempt slaughter operators shall comply with the requirements of 9 CFR 313 and 9 CFR 310.18(b).

K. Inedible materials and denaturing requirements:

(1)

Receptacles used for storing inedible material shall be of such material and construction that their use will not result in the adulteration of any edible product or in the creation of insanitary conditions. Such receptacles shall not be used for storing any edible product and shall bear conspicuous and distinctive marking to identify permitted use.

(2) Carcasses,

parts thereof, meat and meat food products that are adulterated and not returned to the owner shall be adequately denatured or de-characterized to preclude their use as human food. Before the denaturing agents are applied, carcasses and parts thereof shall be freely slashed or sectioned. The denaturing agent shall be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

L. Building and

facilities: The NMLB, through the MPID, adopts by reference, 9 CFR 416 of the Code of Federal

Regulations (CFR), as amended for building and facilities. Custom exempt slaughter and processing establishments shall be maintained to prevent conditions that could lead to insanitary conditions, adulteration of product, or interfere with inspection by department representatives. Establishments shall have in place a pest management program to prevent the harborage and breeding of pests on the grounds and within establishment facilities. Pest control substances used shall be safe and effective under the conditions of use and not be applied or stored in a manner that will result in the adulteration of product or the creation of insanitary conditions. Each custom exempt slaughter and processing establishment shall comply with the requirements of 9 CFR 416.

M. Equipment and utensils: The NMLB, through the MPID, adopts by reference, 9 CFR 416 of the Code of Federal Regulations (CFR), as amended for equipment and utensils used for processing or otherwise handling edible products or ingredients shall be of such material and construction to facilitate thorough cleaning and to ensure that their use will not cause the adulteration of product during processing, handling, or storage. Equipment and utensils shall be maintained in a sanitary condition so as not to adulterate product. Each custom exempt slaughter and processing establishment shall comply with the requirements of 9 CFR 416.

N. Marking and labeling, storage of custom prepared products:

(1) Carcasses and parts therefrom that are prepared on a custom basis shall be marked immediately at the time of preparation with the term “not for sale” in letters at least three-eighths inch in height and shall also be identified with the owner’s name or a code that allows the identification of the carcass or carcass part back to its owner.

(2) Only ink approved for the purpose shall be used to apply ink brands bearing marks to carcasses of cattle, sheep, swine,

or goats and fresh meat cuts derived therefrom. Any ink containing F.D. & C. Violet No. 1 shall not be used.

(3) Green ink shall not be used to apply marks to carcasses of cattle, sheep, swine, or goats or fresh meat cuts derived therefrom.

(4) Custom prepared products shall be packaged immediately after preparation and shall be labeled with the term “not for sale” in lettering not less than three-eighths inch in height. Such custom prepared products or their containers shall also bear the owner’s name and any additional labeling such as product cut or description, and the establishment’s information.

(5) Boxes and any containers used as tote boxes shall be clean and stored off the floor in a manner sufficient to prevent the creation of insanitary conditions and to ensure product is not adulterated.

(6) Containers and trucks or other means of conveyance in which any carcass or part is transported to the owner shall be kept in a clean and sanitary condition.

(7) Paper or other materials used for covering or lining containers and the cargo space of trucks or other means of conveyance shall be of a kind that does not tear during use but remains intact and does not disintegrate when moistened by the product.

O. Ingredients:

(1) All ingredients and other articles used in the preparation of any product shall be clean, sound, healthful, wholesome, and not result in the adulteration of product. A letter of guaranty from the manufacturer stating the ingredient or article is safe when used as an ingredient or in contact with food shall be obtained by the custom processor and made available upon request to the department representative.

(2) No substance may be used in the preparation of any product unless it is an FDA approved additive.

(3) Nitrates shall not be used in curing bacon.

(4) With respect to bacon made with dry curing materials, the product shall be cured by applying a premeasured amount of cure mixture to the bacon belly surfaces, completely covering the surfaces. Sodium nitrite shall not exceed 200 ppm ingoing or an equivalent amount of potassium nitrite (246 ppm ingoing) in dry cured bacon based on the actual or estimated skin-free green weight of the bacon belly.

(5) When curing products other than bacon, nitrites, nitrates, or combination shall not result in more than 200 ppm of nitrite in the finished product. [21.33.2.18 NMAC - N, 11/07/2025]

21.33.2.19 LIVESTOCK SUBJECT TO ADMINISTRATIVE DETENTION: The NMLB, through the MPID, adopts by reference, 9 CFR 329.1 of the Code of Federal Regulations (CFR), as amended for livestock subject to administrative detention. Each custom exempt slaughter and processing establishment shall comply with the requirements of 9 CFR 329.1. [21.33.2.19 NMAC - N, 11/07/2025]

21.33.2.20 METHOD OF DETENTION; NOTIFICATION OF DETENTION OF ARTICLE OR LIVESTOCK DETAINED: The NMLB, through the MPID, adopts by reference, 9 CFR 329.2 and 9 CFR 329.3 of the Code of Federal Regulations (CFR), as amended for method of detention and notification of detention of article or livestock detained. [21.33.2.20 NMAC - N, 11/07/2025]

21.33.2.21 NOTIFICATION OF GOVERNMENTAL AUTHORITIES HAVING JURISDICTION OVER ARTICLE OR LIVESTOCK DETAINED; FORM OF WRITTEN NOTIFICATION: The NMLB, through the MPID, adopts by reference, 9 CFR 329.4 the Code of Federal Regulations

(CFR), as amended for notification of governmental authorities having jurisdiction over article or livestock detained and the form of written notification.

[21.33.2.21 NMAC - N, 11/07/2025]

21.33.2.22 MOVEMENT OF ARTICLE OR LIVESTOCK DETAINED MARKS: The NMLB, through the MPID, adopts by reference, 9 CFR 329.5 subsection a and 9 CFR 329.5 subsection b the Code of Federal Regulations (CFR), as amended for movement of article or livestock detained. Each custom exempt slaughter and processing establishment shall comply with the requirements of 9 CFR 329.5 subsections a and b.

[21.33.2.22 NMAC - N, 11/07/2025]

21.33.2.23 TRANSPORTING LIVESTOCK EXPOSED OR AFFECTED BY CONTAGIOUS AND INFECTIOUS DISEASE:

A. Any livestock exposed or affected by a contagious and infectious disease and so certified by the veterinarian of the board, or its authorized agent, shall be immediately retained and or quarantined.

B. It shall be unlawful for anyone to move or transport any livestock from the establishment or quarantined area.

C. The director, MPI director, or an authorized agent, shall notify the operator of the establishment in writing that no movement or transporting of the quarantined livestock is permitted.

[21.33.2.23 NMAC - N, 11/07/2025]

21.33.2.24 ARTICLES OR LIVESTOCK SUBJECT TO JUDICIAL SEIZURE AND CONDEMNATION: Any carcass, part of a carcass, meat or meat food product, or any dead, dying, disabled, or diseased livestock, that is being transported in commerce or is otherwise subject to the act, or is held for sale in the state after such transportation, is subject to seizure and condemnation, in a judicial proceeding pursuant to 21.33.2.22

NMAC of this part if such article or livestock is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of the act, or:

A. is capable of use as human food and is adulterated or misbranded, or

B. in any other way is in violation of the Federal Meat Inspection Act, Poultry Products Inspection Act and state laws or regulations; this does not preclude utilization of 25-2-22 NMSA or other lawful procedures.

[21.33.2.24 NMAC - N, 11/07/2025]

21.33.2.25 PROCEDURE FOR SEIZURE, CONDEMNATION, AND DISPOSITION: Any article or livestock subject to seizure and condemnation under this part shall be liable to be proceeded against and seized and condemned, and disposed of, at any time, on an appropriate pleading in any district court, or other proper court specified in the act, within the jurisdiction of which the article or livestock is found.

[21.33.2.25 NMAC - N, 11/07/2025]

21.33.2.26 AUTHORITY FOR CONDEMNATION OR SEIZURE UNDER OTHER PROVISIONS OF LAWS: The provisions of this part relating to seizure, condemnation and disposition of articles or livestock do not derogate from authority for condemnation or seizure conferred by other provisions of the act, or other laws.

[21.33.2.26 NMAC - N, 11/07/2025]

21.33.2.27 CARCASSES AND PARTS IN CERTAIN INSTANCES TO BE RETAINED: Each carcass, including all detached organs and other parts, in which any lesion or other condition is found that might render the meat or any part unfit for food purposes, or otherwise adulterated, and which for that reason would require a subsequent inspection, shall be retained by the program employee at the time of inspection. The identity of every such retained carcass, detached organ, or other part shall be maintained until

released by an authorized inspector.
[21.33.2.27 NMAC - N, 11/07/2025]

21.33.2.28 OFFICIAL MARKS AND DEVICES IN CONNECTION WITH IDENTIFICATION OF ADULTERATED PRODUCTS AND INSANITARY EQUIPMENT AND FACILITIES:

A. The official tags for inspection and identification of adulterated products and insanitary equipment and facilities are:

(1) the New Mexico retained tag which is applied to products and articles by means of a paper tag bearing the legend New Mexico retained;

(2) the New Mexico rejected tag which is used to identify insanitary buildings, rooms, or equipment and is applied by means of a paper tag bearing the legend New Mexico rejected;

B. The New Mexico retained and New Mexico rejected tags, and all other brands, stamps, labels, and other devices approved by the director and bearing any official mark, shall be official devices for purposes of the Act.

[21.33.2.28 NMAC - N, 11/07/2025]

21.33.2.29 HEARINGS: Absent other statutorily specified hearing procedures, the board shall follow the Uniform Licensing Act, to the extent not inconsistent with applicable law, with the respect to required hearings before the board.

[21.33.2.29 NMAC - N, 11/07/2025]

21.33.2.30 ENFORCEMENT: A person violating a rule adopted by the New Mexico livestock board pursuant to this section is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term not to exceed one year and payment of a fine not to exceed one thousand dollars (\$1,000), unless that person acted in good faith.

[21.33.2.30 NMAC - N, 11/07/2025]

HISTORY OF 21.33.2 NMAC:
21.33.2 NMAC, Food Safety,

Meat and Poultry Inspection, filed 6/15/2006.

History of Repealed Material:
21.33.2 NMAC, Food Safety, Meat and Poultry Inspection, filed 06/15/2006 - Repealed effective 7/15/2013.
21.33.2 NMAC, Food Safety, Meat and Poultry Inspection, Repealed 7/15/2013 has been replaced by 21.33.2 NMAC, Food Safety Meat and Poultry Inspection effective 7/12/2022.
21.33.2 NMAC - Food Safety, Meat And Poultry Inspection filed 6/21/2022 Repealed effective 11/7/2025.

Other: 21.33.2 NMAC - Food Safety, Meat And Poultry Inspection filed 6/21/2022 Replaced by 21.33.2 NMAC - Food Safety, Meat And Poultry Inspection effective 11/7/2025.

**WORKERS
COMPENSATION
ADMINISTRATION**

The Workers' Compensation Administration repeals its rule 11.4.2 NMAC, Data Reporting and Safety Requirements, effective 11/7/2025, and replaces it with 11.4.2 NMAC, Data Reporting and Safety Requirements, adopted on 10/16/2025 and effective 11/7/2025.

**WORKERS
COMPENSATION
ADMINISTRATION**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 4 WORKERS'
COMPENSATION
PART 2 DATA
REPORTING AND SAFETY
REQUIREMENTS**

11.4.2.1 ISSUING
AGENCY: Workers' Compensation Administration.

[11.4.2.1 NMAC - Rp, 11.4.2.1 NMAC, Rp, 11/7/2025]

11.4.2.2 SCOPE: These provisions govern all employers subject to the act.
[11.4.2.2 NMAC - Rp, 11.4.2.2 NMAC; Rp, 11/7/2025]

11.4.2.3 STATUTORY AUTHORITY: The director is authorized by Section 52-5-4, NMSA 1978, to promulgate rules to implement the act. The rules implementing the safety program requirements are adopted pursuant to Section 52-1-6.2, NMSA 1978. The rules on gathering and reporting of statistical data are adopted pursuant to Sections 52-1-58, 52-1-59, 52-1-60, 52-3-51, 52-3-52, 52-5-3, NMSA 1978.
[11.4.2.3 NMAC - Rp, 11.4.2.3 NMAC; Rp, 11/7/2025]

11.4.2.4 DURATION: Permanent.
[11.4.2.4 NMAC - Rp, 11.4.2.4 NMAC; Rp, 11/7/2025]

11.4.2.5 EFFECTIVE DATE: November 7, 2025, unless a later date is cited at the end of a section.
[11.4.2.5 NMAC - Rp, 11.4.2.5 NMAC; Rp, 11/7/2025]

11.4.2.6 OBJECTIVE: The objective of 11.4.2 NMAC is to establish reporting and safety requirements for employers. This rule creates a standardized method for reporting data on work accidents, notifying workers about legal requirements for making a claim, and complying with mandatory safety provisions of the act.
[11.4.2.6 NMAC - Rp, 11.4.2.6 NMAC; Rp, 11/7/2025]

11.4.2.7 DEFINITIONS:
A. "EDI claim administrator" means a claims administrator that provides claim processing services for a workers' compensation claim that involves an EDI data reporting responsibility. An EDI claim administrator may

be a self-administered statutory reporting party or a separate entity designated by a statutory reporting party. A separate entity designated as an EDI claim administrator may serve as the trading partner for EDI data submission or may submit EDI data using the statutory reporting party's trading partner profile when the statutory reporting party is a registered trading partner.

B. "Contracted EDI vendor" means a third-party entity contracted by the WCA to facilitate and manage the EDI reporting process. This vendor is responsible for processing, validating, and transmitting EDI claims data submitted by trading partners in compliance with the WCA's reporting standards.

C. "Corrective action plan" means a written directive issued by the director identifying specific deficiencies or patterns of noncompliance and requiring a trading partner to implement corrective measures within a specified timeframe to bring the trading partner into compliance with EDI reporting requirements.

D. "Date of filing" means the date that EDI data is sent to the WCA or contracted EDI vendor, provided that the transaction is subsequently acknowledged as accepted. The date of filing is used to determine compliance with EDI and statutory reporting requirements.

E. "EDI" means electronic data interchange, a computer-to-computer exchange of business data in a standardized electronic format between trading partners for the transmission of structured information related to workers' compensation claims.

F. "EDI claims standards order" means an official directive issued by the director that establishes and specifies the technical standards, data elements, submission formats, and procedural requirements for electronic reporting of workers' compensation claims information. The EDI claims standards order serves as the authoritative reference for determining the current requirements for EDI data submissions.

G. “EDI data” means any workers’ compensation claim information submitted electronically to the WCA using a standardized EDI format, including legacy or current EDI formats adopted or recognized by the WCA. EDI data includes first report of injury and subsequent report of injury transactions, and any other required electronic submissions as specified in 11.4.2 NMAC or an EDI claims standards order.

H. “Experience modifier” is a calculation that compares the losses of an individual employer’s risk to average losses for all other risks in that industry classification and state. The experience modifier is used to adjust the insurance premiums of an individual risk according to the risk’s loss experience.

I. “Filing method” means the technical approach or channel used by a trading partner to submit EDI data to the WCA. Filing methods include SFTP direct connection, the WCA web entry system, or submission through a third-party EDI service vendor.

J. “First report of injury” means a transaction that provides initial notification to the WCA of a workplace injury or illness. A first report of injury contains information about the injured worker, employer, insurance coverage, and details of the injury or illness.

K. “Industry” means a business, or all businesses, as the context requires, that have identical two digit NAICS codes as determined by the WCA.

L. “Legacy claim” means any workers’ compensation claim that was previously reported to the WCA where the date that the claim administrator had knowledge of the injury is prior to November 7, 2025. Legacy claims require special handling including the submission of update report transactions to establish proper claim history and data continuity.

M. “NAICS code” means a designator of the principal business of an employer assigned by the WCA pursuant to the current

version of the North American Industry Classification System, a publication of the Executive Office of the President, Office of Management and Budget, United States.

N. “SFTP direct connection” means a secure file transfer protocol method used by trading partners to transmit EDI data directly to the contracted EDI vendor. An SFTP direct connection provides an encrypted channel for sending EDI transmissions securely over the internet and requires completion of a testing process to ensure compatibility with the WCA’s EDI system.

O. “Subsequent report of injury” means a transaction that provides the WCA with ongoing information about a claim after an initial first report of injury has been filed. A subsequent report of injury reports benefit payments, claim status changes, denials, settlements, and other significant events occurring during the life of a claim.

P. “Statutory reporting party” means an employer subject to the act, the employer’s workers’ compensation insurance carrier, or the uninsured employers’ fund, with a legal obligation to report workers’ compensation claims information to the WCA under the Workers’ Compensation Act, the New Mexico Occupational Disease Disablement Law, 11.4.2 NMAC, or an EDI claims standards order.

Q. “Third-party EDI service vendor” means an external entity selected by a trading partner as its filing method to assist with the preparation, formatting, and transmission of EDI data. While listed as a filing method in the trading partner profile, a third-party EDI service vendor is not a trading partner and does not assume any reporting responsibility under this rule.

R. “Trading partner” means an EDI claim administrator that submits EDI data to the WCA pursuant to an accepted trading partner profile. An employer may act as a trading partner only if it is both self-insured and self-administered.

S. “Trading partner profile” means the registration

information submitted by a trading partner to the WCA through the trading partner registration system. The trading partner profile contains information about the trading partner including legal name, Federal Employer Identification Number, contact information, transmission method, security credentials, and the EDI claim administrators for whom the trading partner will submit EDI data. An approved trading partner profile is required before any trading partner may submit EDI data to the WCA.

T. “Trading partner registration system” means the online portal provided by the WCA or its contracted EDI vendor where trading partners register and maintain their trading partner profile. The trading partner registration system is used to collect and verify information about trading partners before they are approved to submit EDI data.

U. “Triggering event” means a claim-related event, action, or decision that requires the submission of EDI data to the WCA. Triggering events include initial filing of a claim, initial and subsequent payments, changes in benefit type or amount, suspensions, reinstatements, denials, corrections, and other claim-related actions that initiate a requirement for electronic reporting pursuant to 11.4.2 or an EDI Claims Standards Order.

V. “WCA web entry system” means the designated web-based portal provided by the WCA or its contracted EDI vendor for the manual entry and submission of EDI data through an online interface. This system is primarily intended for entities with a low volume of claims that do not utilize a third-party EDI service vendor.

[11.4.2.7 NMAC - Rp, 11.4.2.7 NMAC, 11/7/25]

11.4.2.8 ELECTRONIC CLAIMS DATA COLLECTION:

A. General reporting obligations:

(1) It is a statutory reporting party’s responsibility to ensure timely

submission of accurate EDI data when a triggering event occurs as defined in Subsections F and G of 11.4.2.8 NMAC. This responsibility may be fulfilled through a designated EDI claim administrator. A statutory reporting party who subcontracts or otherwise delegates EDI data reporting obligations to an EDI claim administrator retains ultimate responsibility for compliance with all EDI data reporting obligations.

(2) Where a report is required under 11.4.2 NMAC or an EDI claims standards order and no statutory obligation to file exists, the employer subject to the act or its workers' compensation insurance carrier shall be treated as the statutory reporting party for the purpose of assigning responsibility under this rule.

(3) When a triggering event occurs, the resulting EDI data submission shall meet the following requirements to be considered timely filed:

(a) The submission is acknowledged as accepted by the WCA or the contracted EDI vendor;

(b) The date of filing complies with the EDI reporting timelines as defined in Subsections F and G of 11.4.2.8 NMAC;

(c) The date of filing is the date the EDI Data Transmission is sent to the WCA or its contracted EDI vendor, provided that the transaction is subsequently acknowledged as accepted; and

(d) EDI data is not timely filed if it contains incorrect information, if it does not accurately reflect the actions taken by the EDI claim administrator, or if it is missing required data that should have been included based on events in the claim, regardless of whether the WCA or contracted EDI vendor has issued an acknowledgement of acceptance.

(4) EDI data shall only be submitted through the prescribed EDI submission process as defined in 11.4.2 NMAC. Reports or filings submitted through any other

method, channel, or system do not satisfy the EDI reporting requirements of 11.4.2 NMAC.

(5) When an EDI claim administrator receives information about a workplace injury or illness that may constitute a workers' compensation claim, that EDI claim administrator has a duty to file appropriate EDI data with the WCA in accordance with this section, even if the EDI claim administrator is uncertain whether they represent the named statutory reporting party or intends to deny the claim. This duty exists regardless of whether the statutory reporting party has been conclusively identified, and regardless of whether the claim is ultimately accepted or denied. An EDI claim administrator that has received a claim shall be deemed to represent a statutory reporting party for purposes of EDI data reporting requirements until EDI data has been submitted by the EDI claim administrator denying such representation.

(6) The uninsured employers' fund shall be deemed a statutory reporting party upon receipt of a complaint naming the fund unless the fund has reason to believe that a self-insured employer or an insurance carrier is responsible for the claim. If it is later determined that a self-insured employer or insurance carrier is responsible for the claim, the uninsured employers' fund may cease reporting activity and the identified party shall assume all applicable reporting obligations.

(7) It is the responsibility of the EDI claim administrator to provide a loss run to the WCA upon request.

B. Electronic filing requirement:

(1) EDI data shall be filed electronically in one of the following ways:

(a) Using an SFTP direct connection to the contracted EDI vendor;

(b) Using the WCA web entry system; or

(c) Using a third-party EDI service vendor.

(2) EDI data shall be submitted according to the standards and requirements set forth in the current EDI claims standards order adopted in Subsection C of 11.4.2.8 NMAC.

C. Filing standards:

(1) The director shall issue EDI claims standards orders as needed to maintain the integrity of the EDI reporting system.

(2) Upon the issuance of a new EDI claims standards order, the order shall be controlling for all EDI data submissions on and after the date of the order.

D. Trading partner approval process

(1) All entities submitting EDI data shall register as a trading partner by completing and submitting a trading partner profile through the trading partner registration system.

(2) The WCA shall review and approve all trading partner profiles before the trading partner may submit EDI data.

(3) Trading partners shall update their trading partner profile when there is any change to the following:

(a) The trading partner's legal name or mailing address;

(b) The filing method used for EDI reporting;

(c) An EDI claim administrator's or statutory reporting party's office contact name, phone, or email; or

(d) When a statutory reporting party not currently listed in the trading partner's profile designates the trading partner to submit EDI data on its behalf. An update shall not be submitted unless the statutory reporting party has written at least one policy in New Mexico.

(e) When a new EDI claim administrator not currently listed in the trading partner's profile is designated to submit or manage EDI data under the trading partner.

(4) Trading partners shall complete and submit a new trading partner profile when there is any change to the trading partner's Federal Employer Identification Number or postal code.

E. Enforcement of EDI reporting requirements:

(1) Any failure to submit required EDI data pursuant to the reporting requirements established in the act and in 11.4.2 shall be considered a violation of NMAC 11.4.2 and may subject the statutory reporting party or the EDI claim administrator to penalties or enforcement as prescribed by the act or this rule.

(2) An investigation of a pattern of noncompliance with 11.4.2 NMAC or an EDI claims standards order may be initiated by referring the matter to the WCA enforcement bureau pursuant to 11.4.5 NMAC.

(3) A pattern of noncompliance may result in referral to the WCA enforcement bureau when recurring instances of any of the following occur:

(a) Submission of incomplete, inaccurate, or untimely EDI data;

(b) Failure to submit required EDI data for triggering events;

(c) Refusal or failure to make reasonable amendments to previously submitted EDI data as requested;

(d) Non-compliance with the EDI claims standards order or other requirements related to EDI data submission; and

(e) As otherwise determined by the director that a referral is necessary to maintain the integrity of the EDI reporting system.

(4) Offer of corrective measures:

(a) Prior to the commencement of action pursuant to 11.4.5 NMAC, the director may offer an opportunity to take corrective measures through the issuance of a corrective action plan, in lieu of formal enforcement; and

(b) If the opportunity is accepted and the requirements of the corrective action plan are subsequently met, the matter shall be considered resolved and no further enforcement action will be taken.

(5) Corrective action plan requirements:

(a) A corrective action plan issued by the director shall include a description of specific deficiencies or patterns of noncompliance and set forth the corrective measures required to address them;

(b) The plan shall include specific deadlines for completing each required corrective measure and may include interim progress reporting as required by the director; and

(c) The director may amend the corrective action plan as needed to address ongoing or unresolved noncompliance.

(6) If a party declines an offer of corrective measures or fails to comply with the requirements of a corrective action plan, the matter may proceed to commencement of action pursuant to 11.4.5 NMAC.

(7) Following hearing, any party found to have engaged in a pattern or practice of non-compliance may be required by the director to submit a corrective action plan, participate in additional training, pay fines, have their submission privileges suspended or revoked, or take any other remedial measures to ensure future compliance.

F. First report of injury data shall be submitted when any of the following triggering events occur:

(1) Within 10 days of notification, for all injuries or occupational diseases that result in more than seven cumulative days of lost time or death.

(2) Within 10 days of notification, for all claims for disablement subject to the New Mexico Occupational Disease Disablement Law, regardless of the amount of lost time.

(3) Within 10 days of the decision to deny, for any denied claim for which no payments have been made, regardless of any determination of compensability.

(4) Within 30 days of acquisition, for all open or reopened claims newly acquired by an EDI claim administrator.

(5) Immediately upon the rescission of a prior denial, for any denied claim for which no payments have been made and no first report of injury data other than a report of denial was previously submitted.

(6) When first report of injury data has been filed and the claim is subsequently cancelled in error, first report of injury data shall be refiled within 10 days to re-establish the claim.

(7) First report of injury data shall be timely submitted even if the claim is disputed.

(8) The EDI claim administrator shall furnish a copy of all first report of injury data to the worker and the employer at the time of electronic submission to the WCA. If the employer is uninsured, the employer shall furnish a copy of all first report of injury data to the worker.

(9) Within 10 days upon the employer's receipt of a complaint or an initial pleading involving an injury or illness that is not otherwise already supported by first report of injury data.

(10) The uninsured employers' fund shall submit first report of injury data within 10 days of determining that the employer is uninsured and the injury or illness is eligible for payment of benefits in accordance with applicable law. The uninsured employers' fund shall provide a copy of all first report of injury data to the worker.

(11) In addition to the specific triggering events listed in Subsection F of 11.4.2.8 NMAC, first report of injury data shall be submitted for any other event or circumstance that requires initial claim reporting under the EDI claims

standards order adopted in Subsection C of 11.4.2.8 NMAC.

G. Subsequent report of injury data shall be submitted when any of the following triggering events occur:

(1) Within 10 days of the date of initial payment of the indemnity portion of any claim.

(2) Within 10 days of the first payment by an employer of salary paid in lieu of compensation for all injuries or occupational diseases that result in more than seven cumulative days of lost time or death.

(3) Within 10 days of the decision to deny, for any claim denied in full and for which a payment has been previously reported.

(4) Within 10 days of the date of the first indemnity payment made after an EDI claim administrator has acquired an open or reopened claim.

(5) Within 10 days of the first changed indemnity payment made for ongoing indemnity benefits at a new weekly net benefit amount or benefit type compared to previous ongoing benefits.

(6) Within 10 days of the last day of the covered benefits period prior to a full suspension of indemnity benefits, or the date of the first payment reinstating those benefits.

(7) Within 10 days of the date of the initial payment of a medical-only claim with cumulative payments over \$300, provided, however, that a subsequent report of injury closing report shall be submitted with respect to all claims for which expenses have been previously reported. The initial and closing subsequent report of injury may be submitted on one form provided that no subsequent additional benefits are paid.

(8) Within 10 days of the date of any payment of any attorney fees or funeral expenses.

(9) Within 10 days of the date of any lump sum payment for or settlement of indemnity benefits.

(10) Within 10 days of the date of death for all claims for which a death has not otherwise been reported to the WCA, regardless of any determination of compensability.

(11) Within 30 days of the date of the claim administrator's decision to close any open claim for which payments have been previously reported.

(12) For all open or reopened claims, an annual report shall be filed each year until a closing report is filed. The first such report shall be filed no earlier than 30 days before the first anniversary of the date of injury and no later than 30 days after that anniversary. Each subsequent annual report shall be filed later than 30 days after the corresponding anniversary of the date of injury.

(13) In addition to the specific triggering events listed in Subsection G of 11.4.2 NMAC, subsequent report of injury data shall be submitted for any other event or circumstance that requires subsequent claim reporting under the EDI claims standards order adopted in Subsection C of 11.4.2.8 NMAC.

[11.4.2.8 NMAC - Rp, 11.4.2.8 NMAC, 11/7/25]

11.4.2.9 SAFETY:

A. Annual inspections:

(1) All employers, as identified in Section 52-1-6.2 NMSA 1978, are required to have an annual safety inspection. All other employers are encouraged to do so.

(2) Any employer who purchases or renews a policy of workers' compensation insurance with a premium liability of \$15,000 or more shall, within 60 days of the policy issuance or renewal, submit proof of an annual safety inspection to the WCA. Self-insured employers shall submit proof of an annual safety inspection to the WCA within 60 days of completing an inspection.

(3) Standards for annual inspections: The minimum

standards for the annual safety inspection are contained in the WCA publication, annual safety inspections. This publication may be obtained from the WCA's website.

(4) Who may conduct the inspection:

(a) A safety consultant from the WCA.

(b) A senior manager or dedicated safety professional employed by the business. The WCA may be contacted to provide training on how to conduct a proper safety inspection.

(c) A third party safety organization or safety professional.

(d) A safety professional from the insurance company.

(5) Employers shall submit an affidavit listing the address of all facilities that were included in the inspection to the WCA safety program on a form approved by the director. Though the responsibility for reporting is with the employer, the insurance carrier may report completed inspections, provided the insurance carrier or a safety organization or safety professional retained by the carrier conducted the inspection.

(6) Failure to comply with the annual safety inspection requirement may subject an employer to penalties under Section 52-1-6.2 NMSA 1978.

B. Risk reduction program:

(1) The extra-hazardous employer program is hereinafter referred to as the risk reduction program ("RRP").

(2) An employer may be classified for the RRP if its experience modifier (e-mod) is higher than the state average for that industry or if a safety audit reveals a need for assistance based on the employer's accident frequency or severity of injury caused by the accident(s).

(3) The WCA shall notify the employer and its insurance carrier if that the employer meets the criteria, under the above

guidelines, to be enrolled in the RRP and is selected for enrollment in the RRP.

(a)

Notice shall be given to the employer, and the insurer or self-insurance entity, if any, by personal service upon any person of suitable age and discretion at the business location or by certified mail addressed to the owner, proprietor, managing partner, president, majority stockholder, chief operational officer or manager of the business.

(b)

Employers who have received a notice of classification shall have five days to file a written request for reconsideration with the director. The director may hold hearings upon a request for reconsideration and make a determination as appropriate. Appeal of a ruling by the director shall be by writ of certiorari to the district court, pursuant to S.C.R.A. Rule 1-075.

(4) Within

30 days of service of a notice of classification or within 30 days of the director's decision if a request for reconsideration is filed, an employer who is classified and enrolled in the RRP shall obtain a safety consultation. The consultation must be performed by a WCA safety consultant, the employer's insurer or a professional independent safety consultant approved by the director. A WCA safety consultant may assist employers in interpreting the requirement for a safety consultation and in conducting the consultation.

(5) The

safety consultant performing the safety consultation shall submit within 10 days a written report to WCA and the employer detailing any identified hazardous conditions or practices identified through the safety consultation. The written report must be in a form acceptable to the director.

(6) Within

30 days of the submission of the written report concerning the safety consultation, the employer participating in the RRP shall submit a specific accident prevention plan to resolve the hazards and practices identified in the written report.

(7) The WCA

may investigate accidents occurring at the work site(s) of an employer for whom a plan has been formulated under Paragraph (6) of Subsection B of this section and the WCA may otherwise monitor the implementation of the accident prevention plan as it finds necessary.

(8) Six

months after the formulation of an accident prevention plan prescribed by Paragraph (6) of Subsection B of this section, the WCA shall conduct a follow-up inspection of the employer's premises. The WCA may require the participation of the safety consultant who performed the initial consultation and formulated the safety plan.

(a)

If the WCA determines that the employer has complied with the terms of the accident prevention plan or has implemented other acceptable corrective measures, the WCA shall so certify.

(b) If,

at the time of the inspection required under Paragraph (8) of Subsection B of this section, the employer continues to exceed the injury frequencies that may reasonably be expected in that employer's business or industry, the WCA shall continue to monitor the safety conditions at the work site(s) and may formulate additional safety plans reasonably calculated to abate hazards. The employer shall comply with the plans and may be subject to additional penalties for failure to implement the plan or plans.

(9) For good

cause shown, the director may extend any time limit required by this part for up to 30 additional days.

(a)

All applications for extension shall be submitted in writing and shall state with specificity the reasons for requested additional time.

(b)

The director may hold hearings to determine the appropriateness of extensions of time for submission of specific accident prevention plans.

(c)

The director's determination on a request for an extension is final.

(d)

In the case of an RRP employer whose employees are assigned to furnish services to other employers, the responsibility for the development and submission of an accident prevention plan as required by these rules shall be with the employer who controls and provides direct on-site supervision of the workers who are exposed to the hazards and practices identified in the written report of the safety consultant.

(10) Any

employer who fails to develop, submit, cause to be submitted, implement or comply with a specific accident prevention plan as provided for in these rules shall be subject to imposition of a penalty of up to \$5,000. Each incident of failure to formulate, submit, cause to be submitted, implement or comply with a specific accident prevention plan persisting for a period of 15 days shall constitute a separate violation and subject the employer to additional penalties. The enforcement procedures established in 11.4.5 NMAC shall be utilized in all proceedings under this subsection.

(11)

An employer shall no longer be designated to participate in the RRP when the provisions of Paragraphs (4) through (8) of Subsection B of 11.4.2.9 NMAC, inclusive, have been satisfied.

C. The employer,

its insurer and all agents of the employer or insurer have the duty of compliance with reasonable requests for information from workers' compensation administration personnel. WCA personnel shall collect data regarding all work-place fatalities in New Mexico.

[11.4.2.9 NMAC - Rp, 11.4.2.9 NMAC, 9/30/16; A, 11/7/2025]

11.4.2.10 ACCIDENT NOTICE POSTERS AND ACCIDENT NOTICES:

A. Every employer

shall post and keep posted in conspicuous places on its business premises, in areas where notices to employees and applications for

employment are customarily posted, an accident notice poster stating the requirement that workers notify employers of accidents. The accident notice poster is available at the WCA at no charge to the employer on a form approved by the director.

B. Every employer must keep attached to the accident notice poster an adequate supply of notice of accident forms approved by the director.

C. Any employer may submit to the director a proposal for approval of a notice of accident form or accident notice poster. No form shall be approved except in writing, signed by the director.

[11.4.2.10 NMAC - Rp, 11.4.2.10 NMAC, 9/30/16; A, 11/7/2025]

HISTORY OF 11.4.2 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the State Records Center:

WCA 86-5, Final Notice of Final Payment of Compensation, filed 5/26/87.

WCD 89-5, Final Reports, filed 6/20/89.

WCA 86-6, Completed Supplement Report to Accident, filed 5/26/87.
WCD 89-6, Annual Reports, filed 6/20/89.

History of Repealed Material:

11.4.2 NMAC - Repealed effective 9/30/16.

11.4.2 NMAC – Repealed effective 11/7/25

WORKERS COMPENSATION ADMINISTRATION

This is an amendment to 11.4.1 NMAC, Section 7, effective 11/7/2025

11.4.1.7 DEFINITIONS:

The definitions adopted below shall apply to all WCA rules unless expressly indicated otherwise in a specific part of these rules.

A. “Act” means collectively: the Workers’ Compensation Act, the Workers’ Compensation Administration Act, and the Occupational Disease Disablement Law, Sections 52-4-1 to 52-4-5 NMSA 1978. This definition includes prior law applicable to the particular facts of the claim.

B. “Administration” means the workers’ compensation administration (WCA).

C. “Bad faith” means conduct in the handling of a claim by any person that amounts to fraud, malice, oppression or willful, wanton or reckless disregard of the rights of any party.

D. “Cause” means any and all proceedings before the WCA pertaining to the same disease or accidental injury and assigned the same file number by the clerk of the administrative court.

E. “Claim” means any allegation of entitlement to benefits or relief under the act, which has been communicated to the employer by the giving of notice as required by the act.

F. “Claims administrator” means the insurance carrier, third party administrator, self-insured association, self-insured employer, or any claims coordinator, if any, designated by the employer or another claims payer to provide claims processing services on workers’ compensation claims.

G. “Clerk” (also referred to as clerk of the administrative court or clerk of the WCA) means any individual assigned by the director to oversee the filing of claims and records with the WCA.

[G] H. “Complaint” means a written request for workers’ compensation benefits or any relief under the Act, filed on a mandatory form with the clerk of the WCA by a worker, employer, insurance carrier or the uninsured employers’ fund.

[H] I. “Director” means the director of the WCA.

[I] J. “Employer” means, collectively, unless otherwise stated: an employer subject to the act; a self-insured entity, group or pool; a workers’ compensation insurance

carrier or its representative; or any authorized agent of an employer or insurance carrier, including any individual owner, chief executive officer or proprietor of any entity employing workers.

[J] K. “Health care provider” (also referred to in the rules as “HCP”) means any person, entity or facility authorized to furnish health care to an injured worker pursuant to Section 52-4-1 NMSA 1978, including any provider designated pursuant to Sections 52-1-49 or -51 NMSA 1978 and may include a provider licensed in another state if approved by the director, as required by the act.

[K] L. “IME”, or independent medical examination, means a medical examination of a worker, by a provider other than a previously designated health care provider, upon whom the parties have agreed or the judge has appointed according to the act.

[L] M. “Judge” means a workers’ compensation judge appointed by the director pursuant to Section 52-5-2 NMSA 1978.

[M] N. “Mediation conference” means a mandatory conference at which all parties named in the complaint shall appear and present their positions to the mediator.

[N] O. “Mediator” means a director’s designee, who will evaluate and attempt to resolve a complaint by holding a mediation conference and issuing a recommendation for resolution of the complaint.

[O] P. “Medical records” means:

(1) all records, reports, letters, and bills produced or prepared by a HCP relating to the care and treatment rendered the worker;

(2) all other documents generally kept by the HCP in the normal course of business relating to the worker, including, but not limited to, clinical, nurses’ and intake notes, notes evidencing the patient’s history of injury, subjective and objective complaints, diagnosis, prognosis and/or restrictions, reports of diagnostic testing, hospital

records, logs and bills, physical therapy records and bills for services rendered.

[P] Q. “Party” may include any of the following:

- (1) an employer against whom a claim has been asserted by an injured or disabled worker;
- (2) an injured or disabled worker asserting a claim against an employer;
- (3) the uninsured employers’ fund, if a claim has been asserted against it;
- (4) a health care provider named in a billing dispute or seeking qualification as an out-of-state provider; or
- (5) any other person or entity named in an administrative enforcement proceeding.

[Q] R. “Pending cause” means any cause in which a party has filed a document with the clerk of the WCA within the previous six months, and which has not yet been administratively closed by the clerk.

[R] S. “Person” means any individual, association, organization, reciprocal or Lloyd’s plan insurer, partnership, firm, syndicate, trust, corporation and every legal entity as defined in Section 59A-1-10 NMSA 1978.

[S] T. “Pleading” means any document filed and endorsed by the clerk.

[T] U. “Rules of civil procedure” means the Rules of Civil Procedure for the district courts, as adopted by the supreme court of New Mexico.

[U] V. “Rules of evidence” means the Rules of Evidence as adopted by the supreme court of New Mexico.

[V] W. “Rules of the WCA” means rules enacted by the WCA and cited as 11.4 NMAC.

- (1) These rules are organized by title, chapter, part, section, paragraph and subparagraph.
- (2) For ease of use, these rules may be referred to in writing and speech by part, section, paragraph and subparagraph.

[W] X. “Unfair claims processing” means any practice, whether intentional or not, which unreasonably delays or prolongs the payment of benefits at a rate not consistent with the act. “Unfair claims processing” is a less severe violation than “bad faith” and includes, but is not limited to, any and all of the following practices with respect to claims, by an employer, insurer, third party administrator, worker or other person:

- (1) knowingly misrepresenting pertinent facts relating to workers’ compensation benefits or failing to disclose facts material to a workers’ compensation claim;
- (2) failing to acknowledge and act promptly upon communications with respect to claims;
- (3) failing to adopt and implement reasonable standards for the prompt investigation and processing of claims;
- (4) failing to affirm or deny coverage of claims within a reasonable time after a request for payment of benefits has been submitted to an employer;
- (5) not attempting in good faith to develop prompt, fair and equitable settlements of claims in which liability has become clear;
- (6) compelling litigation to recover amounts due by offering substantially less than the amounts ultimately recovered in actions brought by similarly situated workers;
- (7) initiating litigation when benefits are currently being paid at the maximum rate of entitlement under the act;
- (8) soliciting, accepting or obtaining a complete release of liability in exchange for an acceleration of benefits, or discounting an acceleration of benefits, where such an acceleration is not made pursuant to a lump sum payment approved by a judge; and
- (9) failing to timely pay authorized and undisputed medical bills.

[X] Y. “Wage records” means all records evidencing all wages, commissions, overtime pay, gratuities, meals, board, rent, housing or lodging received from any employer during all time periods relevant to the act.

[Y] Z. “Worker” means an injured or disabled employee. [11.4.1.7 NMAC - Rp, 11 NMAC 4.1.7, 10/1/2014; A, 1/1/2023; A, 11/7/2025]

WORKERS COMPENSATION ADMINISTRATION

This is an amendment to 11.4.7 NMAC, Sections 8, and 13 effective 11/7/2025

11.4.7.8 GROUND RULES FOR BILLING AND PAYMENT:

- A. Basic ground rules.
 - (1) These rules apply to all charges and payments for medical, other health care treatment, and related non-clinical services covered by the New Mexico Workers’ Compensation Act and the New Mexico Occupational Disease Disablement Law.
 - (2) These rules shall be interpreted to the greatest extent possible in a manner consistent with all other rules promulgated by the WCA. In the event of an irreconcilable conflict between these rules and any other rules, the more specific set of rules shall control.
 - (3) Nothing in these rules shall preclude the separate negotiation of fees between a provider and a payer within the HCP fee schedule for any health care service as set forth in these rules.
 - (4) These rules and the director’s HCP fee schedule order adopting the HCP fee schedule utilize the edition of the current procedural terminology referenced in the director’s HCP fee schedule order, issued pursuant to Subsection A of 11.4.7.9 NMAC. All references to specific CPT® code provisions, in

these rules shall be modified to the extent required for consistency with the director's HCP fee schedule order.

(5) Employers are required to inform a worker of the identity and source of their coverage for the injury or disablement.

B. Authorization for treatment and services.

(1) A provider or inpatient facility may seek pre-authorization from payer for all services or treatment plans. If authorization is sought, all requests for authorization of referrals and all other procedures shall be approved or denied by the payer within five business days of receipt of all supporting documentation and no later than five business days before the procedure.

(2) Once a worker has been admitted to an inpatient facility, all requests for authorization of referrals and procedures during the inpatient stay shall be approved or denied by the payer by the close of the next business day after receipt of all supporting documentation.

(3) A payer shall not be required to respond to a provider's request for authorization within the deadlines set forth in this rule if the payer has previously denied a claim in writing.

(4) Pre-authorization is required prior to scheduling or performing any of the following services:

- (a) independent medical examinations;
- (b) physical impairment ratings;
- (c) functional capacities evaluations;
- (d) physical therapy;
- (e) caregiver services; and
- (f) durable medical equipment (DME).

(5) Pre-authorization, as outlined in (a) through (f) above, must be obtained by the HCP before services or equipment are provided or the payer will not be held liable for payment of the service or equipment provided.

(6) If an authorization, a pre-authorization or a denial is not received by the provider by the deadlines set forth in this rule, the requested service or treatment will be deemed authorized. The provider and the payer shall document all attempts to obtain authorization from the date of the initial request.

C. Billing provision ground rules.

(1) Billing shall be made in accordance with HCP fee schedule issued by the director in conjunction with the director's HCP fee schedule order.

(2) Submitting a bill to any party for the difference between the usual and customary charges and the maximum amount of reimbursement allowed for compensable health care services or items, also known as balance billing, is prohibited.

(3) Coding and billing separately for procedures that do not warrant separate identification because they are an integral part of a service for which a corresponding CPT® code exists, also known as unbundling, is prohibited.

(4) The appropriate CPT® code must be used for billing by providers.

(5) Initial billing of outpatient services by providers, hospitals and FASC's, shall be submitted no later than 60 days from the date on which services were rendered. Initial billing of inpatient services shall be issued no later than 60 days from the date of discharge.

(6) A HCP's documented, good faith effort to bill within the time-limits provided by these rules shall not constitute untimely filing.

(7) Failure of the provider to submit billing, or to demonstrate a good faith effort to submit billing, within the time limits provided by these rules shall constitute a violation of these rules and shall absolve the employer of financial responsibility for the bill.

(8) Unlisted services or procedures are billable and

payable on a by-report (BR) basis as follows:

(a) The fee for the performance of any BR service shall be negotiated between the provider and the payer prior to delivery of the service. Payers should ensure that a CPT® code with an established HCP fee schedule amount is not available.

(b) Performance of any BR service requires that the provider submit a written report, for which no separate charge is allowed, with the billing to the payer. The report shall substantiate the rationale for not using an established CPT® code and shall include pertinent information regarding the nature, extent, and special circumstances requiring the performance of that service and an explanation of the time, effort, personnel, and equipment necessary to provide the service.

(c) Information provided in the medical record(s) may be submitted in lieu of a separate report if that information satisfies the requirements of Paragraph (12) of Subsection C of 11.4.7.8 NMAC.

(d) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the provider shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the payer to show why the proposed fee is not reasonable.

(9) If payer and provider agree to enter into a global fee agreement at any time, a global fee can be used. All services not covered by the global fee agreement shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(10) If a service that is ordinarily a component of a larger service is performed alone for a specific purpose it may be considered a separate procedure for coding, billing, and payment purposes.

Documentation in the medical records must justify the reasonableness and necessity for providing such services alone.

(11) Initial bills for every visit shall be accompanied by appropriate office notes (medical records) which clearly substantiate the service(s) being billed and are legible.

(12) Records provided by hospitals and FASCs shall have a copy of the admission history and physical examination report and discharge summary, hospital emergency department medical records, imaging, ambulatory surgical center medical records or outpatient surgery records.

(13) No charge shall be made to any party to the claim for the initial copy of required information.

(14) The worker shall not be billed for health care services provided by an authorized HCP as treatment for a valid workers' compensation claim unless payer denies compensability of a claim or payer does not respond to a bill within the time limit set forth in Paragraph (2) of Subsection D of 11.4.7.8 NMAC.

(15) Diagnostic coding shall be consistent with the most current version of the international classification of diseases, clinical modification or diagnostic and statistical manual of mental disorders guidelines required by CMS as appropriate.

(16) For any reimbursement under the HCP fee schedule or these rules that is based upon provider's cost, the provider shall submit a copy of the invoice showing that cost at the time of billing.

(17) The health care facility is required to submit all requested data to the payer. Failure to do so could result in fines and penalties imposed by the WCA. All payers are required to notify the economic research bureau of unreported data fields within 10 days of payment of any inpatient bill.

D. Payment provision ground rules.

(1) The provision of services gives rise to an obligation of the employer to pay for those services. Accordingly, all services are controlled by the rules in effect on the date the services were provided.

(2) For all reasonable and necessary services provided to a worker with a valid workers' compensation claim, payer is responsible for timely good faith payment within 30 days of receipt of a bill for services unless payment is pending in accordance with the criteria for contesting bills and an appropriate explanation of benefits has been issued by the payer. Payment for non-contested portions of any bill shall be timely.

(3) All medical services rendered pursuant to recommended treatment contained in the most recent edition of the official disability guidelines™ (ODG) is presumed reasonable and necessary pursuant to Subsection A of Section 52-1-49 NMSA 1978; there is no presumption regarding any other treatment.

(4) If a service has been pre-authorized or is provided pursuant to a treatment plan that has been pre-authorized by an agent of the payer, it shall be presumed that the service provided was reasonable and necessary. The presumption may be overcome by competent evidence that the payer, in the exercise of due diligence, did not know that the compensability of the claim was in doubt at the time that the authorization was given.

(5) An employer/insurer who subcontracts bill review services remains fully responsible for timely payment of reasonable and necessary services along with compliance with these rules.

(6) Fees and payments for all physician professional services, regardless of where those services are provided, are reimbursed within the HCP fee schedule.

(7) Bills may be paid individually or batched

for a combined payment; however, each service, date of service and the amount of payment applicable to each procedure must be appropriately identified.

(8) All bills shall be paid in full unless one or more of the following criteria are met. These criteria are the only permissible reasons for contesting workers' compensation bills submitted by authorized providers:

(a) compensability is denied;

(b) services are deemed not to be reasonable and necessary;

(c) incomplete billing information or support documentation;

(d) inaccurate billing or billing errors; or
(e) reduction specifically authorized by this rule[-];

(f) any other authorized EOB referenced in the HCP fee schedule.

(9) Whenever a payer contests a bill or the payment for services is denied, delayed, reduced or otherwise differs from the amount billed, the payer shall issue to the provider a written EOB which shall clearly relate to each payment disposition by procedure and date of service. [~~Only the EOBs listed in the HCP fee schedule may be used.~~]

(10) Failure of the payer to indicate the appropriate EOB(s) constitutes an independent violation of these rules.

(11) The prorating of the provider's fees for time spent providing a service, as documented in the provider's treatment notes, is not prohibited by these rules provided an appropriate EOB is sent to the provider. Evaluation and management CPT® codes shall not be prorated. The provider's fees should not be prorated to exclude time spent in pre- and post-treatment activity, such as equipment setup, cleaning, disassembly, etc., if it is directly incidental to the treatment provided and is adequately documented.

(12) A request for reconsideration, including corrected claims, shall be submitted to the payer within 30 days of receipt of the payer's written disposition. Failure to comply with the deadline for a request for reconsideration or for seeking a director's determination as provided below shall result in acceptance of the payer's position.

(13) Payment or disposition of a request for reconsideration shall be issued within 30 days of payer's receipt of the request for reconsideration. Failure to comply with the established deadline shall result in the payer accepting the provider's position asserted in the request for reconsideration. [11.4.7.8 NMAC - Rp, 11.4.7.8 NMAC, 1/1/2023; A, 11/7/2025] [CPT® only copyright American Medical Association. All rights reserved.]

11.4.7.13 NON-CLINICAL SERVICES

A. For medical records and report copies requested for the purpose of investigating or administering a workers' compensation claim, a practitioner may charge for paper and electronic copies as set forth in the HCP fee schedule, except as provided in Paragraphs (12), (13), (14) and (15) of Subsection C of 11.4.7.8 NMAC. This fee is inclusive of any and all fees, including, but not limited to, administrative, processing, and handling fee of any kind.

B. A practitioner may charge for the completion of the WCA Form Letter to Health Care Provider the amount set forth in the HCP fee schedule.

C. A practitioner may charge for the completion of the WCA Provider's Report of Physical Ability according to the criteria and amount set forth in the HCP fee schedule.

D. Depositions

(1) An HCP may not charge more than [~~\$400 for the first~~] \$800 per hour [~~or any portion thereof; and not more than \$360 per hour for the second and subsequent hours~~], prorated in [five] 15-minute

increments. An HCP may not charge more than [~~\$200 for the first~~] \$400 per hour of deposition preparation time actually spent, [~~and not more than \$120 per hour for the second or third hours;~~] prorated in [five] 15-minute increments, up to a maximum of three hours.

(2) No compensation shall be paid for travel time to or from the deposition, waiting time prior to the scheduled beginning of the deposition, or time spent reading or correcting depositions. For good cause shown, a judge may enter a written order providing recompense to an HCP for reading and correcting a deposition.

(3) An HCP may require that they be paid for the first hour of the deposition testimony either before or at the time of the deposition.

(4) A non-refundable fee of up to [~~\$400~~] \$800 may be charged by an HCP for deposition appointments at which the attorney making the appointment is a no-show or fails to cancel at least 48 hours in advance.

(5) Any notice of deposition to a [~~practitioner~~] HCP shall contain the following language: "The rules of the WCA provide a schedule of maximum permissible fees for deposition testimony. No more than [~~\$400 for the first~~] \$800 per hour [~~and \$360 for each subsequent hour~~] is permitted, prorated in 15-minute increments. [~~Fees for the second and subsequent hours shall be prorated in five minute increments.~~] An HCP may not charge more than [~~\$200~~] \$400 for the first hour of deposition preparation time actually spent, [~~and not more than \$120 for the second or third hours;~~] prorated in [five] 15-minute increments, up to a maximum of three hours."

E. Live testimony by a health care provider: Such testimony is allowed only pursuant to an order by a judge. Fees for live testimony, travel, lodging, and preparation time shall be set by the judge.

F. Disputes concerning the HCP fee schedule shall be raised

with the assigned judge, if any, or pursuant to the medical billing dispute process set forth in 11.4.7.11 NMAC. [11.4.7.13 NMAC - Rp, 11.4.7.13 NMAC, 1/1/2023; A, 11/7/2025]

WORKERS COMPENSATION ADMINISTRATION

This is an amendment to 11.4.12 NMAC, Section 9, effective 11/7/2025

11.4.12.9 CLAIMS ADMINISTRATION:

A. The WCA may contract with a an independent adjusting company for the adjusting of those claims that are determined to be eligible for payment by the fund, purchase a loss portfolio transfer covering some or all of the liabilities of the fund, or may purchase a policy of commercial insurance to cover the liabilities of the fund upon a finding by the director that such purchases are in the best interests of the workers eligible to receive benefits from the fund and the entities paying assessment to support the fund.

(1) The fund, in conjunction with the independent adjusting company, if any, shall pay, or oppose, claims on their merits, and shall be treated for purposes of mediation and adjudication of disputes as a party with all rights and responsibilities applicable under law.

(2) With approval of the director, the independent adjusting company may engage outside counsel for representation when necessary.

(3) The fund or the independent adjusting company may solicit information concerning the average weekly wage of the worker from the employer. Provision of such information to the fund or the independent adjusting company shall not constitute an admission that the worker was an employee. In the event that the employer does not respond to the request for wage information, the employer will be

informed, in writing, at the last known address of the employer, or by any means authorized by the director or his designee, that wages are in dispute and that the worker's evidence concerning wages shall be used to calculate average weekly wage. In the event that the employer does not respond within a reasonable time from the date the letter described in this paragraph, an affidavit from the worker concerning the wages earned while employed by the uninsured employer shall be deemed sufficient evidence upon which to pay benefits. Any suspected fraudulent reporting of wages by any party shall be reported to the enforcement bureau for investigation.

(4) In the event of a dispute concerning the wage basis for benefits, or in the event of other disputed benefits, the fund and the independent adjusting company may pay indemnity or other benefits, under reservation of rights, to the worker based upon available wage or other claim information.

B. With respect to any complaint filed with the WCA arising from a dispute about the provision of any benefit due on any claim eligible for payment by the fund, the fund and the employer at the time of injury or last injurious exposure shall be named as parties.

C. The independent adjusting company shall regularly report to the WCA on expenditures made to and on behalf of workers from the fund.

~~[(1)]—The independent adjusting company shall file the first report of injury or illness (E1.2) with the WCA within 10 days of the eligibility determination and provide a copy of the E1.2 to the worker.]~~

~~[(2)]~~ (1) The independent adjusting company shall file all payment reports required by law.

~~[(3)]~~ (2) The independent adjusting company shall maintain records sufficient to allow the WCA director or his designee to audit the administration of claims and shall provide those records upon

request to the WCA. The independent adjusting company shall be subject to audit by the WCA or its contractor with respect to the administration of claims against the fund.

~~[(4)]~~ (3) The independent adjusting company shall actively support the WCA in its efforts to provide information to the public concerning the fund and to prosecute penalty collection proceedings against an uninsured employer pursuant to this rule.

D. The fund shall have the right to subrogation as provided by Section 52-1-9.1 NMSA 1978.

(1) The independent adjusting company may pursue subrogation rights on behalf of, and at the direction of, the fund.

(2) The independent adjusting company shall be entitled to retain reimbursement for reasonable legal fees and expenses plus ten percent of the sum recovered in subrogation net of legal fees and expenses. The remainder of the subrogation recovery shall be paid to the fund.

E. The fund shall be liable only for those benefits that are due under the Workers' Compensation Act or Occupational Disease Disablement Law.

(1) The fund shall be entitled to the protections of the exclusive remedy provisions of the Workers' Compensation Act or Occupational Disease Disablement Law to the same extent it would if it were the insured employer of any worker who is eligible for benefits against the fund.

(2) The fund shall not be subject to claims for payments of a judgment obtained in a third party lawsuit, nor for payment of a judgment obtained in a tort action against an uninsured employer.

F. Duplicate recovery of workers' compensation benefits is strictly prohibited.

(1) The fund shall immediately cease payments to or on behalf of any worker who is receiving workers' compensation payments from another source for

the same injury and arising out of the same accident.

(2)

The fund shall have the right of first reimbursement for workers' compensation benefit payments made that duplicate any payments received by the injured worker from another source and may offset subsequent payments, institute collection proceedings, request criminal investigation or seek any other lawful remedy to recover duplicate payments of workers' compensation benefits.

G. Payments under the fund shall not constitute payments by the employer for purposes of the exclusive remedy provisions of the Act. The fund shall be entitled to assert all defenses and subrogation rights that would be available to an insured employer.

[11.4.12.9 NMAC - N, 10/15/2003; A, 11/15/2004; A, 12/31/2011; A, 1/1/2023; A, 11/7/2025]

End of Adopted Rules

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Other Material Related to Administrative Law

**EARLY CHILDHOOD
EDUCATION AND CARE
DEPARTMENT****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Early Childhood Education and Care Department gives Notice of a Minor, Non-substantive Correction to 8.9.3 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

Section 7: By amending Subsection E there is paragraph (1) without a paragraph (2). This subsection was corrected to delete the paragraph (1) numbering. In Subsection P, by re-numbering a new paragraph (1) for "Provider type", the existing paragraph (7) was deleted and corrected to a subparagraph (g).

Section 11: In Subsection E, the incorrect word "noy" was changed to "not".

Section 15: By amending Subsection E there is paragraph (1) without a paragraph (2). This subsection was corrected to delete the paragraph (1) numbering. In Subsection P, by re-numbering a new paragraph (1) for "Provider type", the existing paragraph (7) was deleted and corrected to a subparagraph (g).

Section 17: In Subsection G, the incorrect word "REGISTEERED" was changed to "REGISTERED".

A copy of this Notification will be filed with the official version of the above amendment.

**End of Other Material
Related to Administrative
Law**

2025 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXVI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 3	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 11
Issue 6	March 13	March 25
Issue 7	March 27	April 8
Issue 8	April 10	April 22
Issue 9	April 24	May 6
Issue 10	May 8	May 20
Issue 11	May 22	June 10
Issue 12	June 12	June 24
Issue 13	June 26	July 15
Issue 14	July 17	July 29
Issue 15	July 31	August 12
Issue 16	August 14	August 26
Issue 17	August 28	September 9
Issue 18	September 11	September 23
Issue 19	September 25	October 7
Issue 20	October 9	October 21
Issue 21	October 23	November 4
Issue 22	November 6	November 18
Issue 23	November 20	December 9
Issue 24	December 11	December 23

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2026 New Mexico Register

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Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
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Issue 12	June 11	June 23
Issue 13	June 25	July 14
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