NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rule regarding SOCIAL SERVICES CHILD CARE ASSISTANCE; REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENT AND CHILD CARE PROVIDERS as authorized by the Child Care Assistance Program Act and Subsection A of Section 32A-32-3 NMSA 1978; the Early Childhood Education and Care Department Act and Subsection E of Section 9-29-6 NMSA 1978; and the Public Health Act, Sections 24-1-1 to 24-1-22 NMSA 1978, Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978, and Section 24-1-5 NMSA 1978.

8.9.3 NMAC - CHILD CARE ASSISTANCE; REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS

ECECD is also proposing to adopt amendments to CHILD CARE LICENSING; CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS as authorized by the Early Childhood Education and Care Department Act and Subsection E of Section 9-29-6 NMSA 1978; Section 3-21-1 NMSA 1978; Section 59A-52-18 NMSA 1978; and the Public Health Act, Sections 24-1-1 to 24-1-22 NMSA 1978, Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978, and Section 24-1-5 NMSA 1978.

8.9.4 NMAC - CHILD CARE LICENSING; CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS.

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

Purpose of proposed rules: The purpose of the proposed rulemaking is to amend 8.9.3 NMAC and 8.9.4 NMAC to align them with applicable state and federal requirements. The proposed amendments to 8.9.3 NMAC will update the child care assistance copayment schedule to provide for a gradual progression in copayments as household income increases. The proposed amendments to 8.9.4 NMAC will align regulatory requirements with Senate Bill 96, which took effect on July 1, 2026. On that date, ECECD adopted an emergency rule amendment to 8.9.4.31 to address a conflict between the state law and existing regulations. Based on community feedback since the implementation of the emergency rule, ECECD is proposing amendments to replace the requirement for written zoning approval with a requirement that licensed home applicants submit proof of zoning designation. In addition, ECECD is proposing to remove the requirement for written approval from the state fire marshal's office or other applicable fire prevention authority and instead mandate that applicants be responsible for knowing and following applicable local rules and ordinances. The proposed amendments clarify requirements for applicants and are necessary for consistency with state law.

Summary of proposed rules: In summary, the proposed amendments to 8.9.3 NMAC will revise the child care assistance copayment schedule to provide for a more gradual progression in copayment responsibility as household income increases. The Child Care Assistance Program Act establishes a sliding scale copayment schedule under which copayments are waived for households with income at or below 600% of the federal poverty level (FPL), shall be three percent or less of annual household income for households with income above 600% but not exceeding 900% FPL, and shall be seven percent or less of annual household income for households with income above 900% FPL. The proposed copayment schedule would provide a gradual progression in copayment responsibility as household income increases, while maintaining the statutory limits on copayments. As outlined in the Child Care Assistance Program Act, the state pays the copayment for families whose income is at or below 600% FPL.

The proposed amendments to 8.9.4 NMAC will require licensed home applicants to provide ECECD with proof of zoning designation for the licensed home location, removes requirements to obtain approval from local or state fire

authorities other than ECECD, and will require that applicants be aware of and follow all applicable rules and ordinances related to the operation of their business.

Amended NMAC Sections for 8.9.3: 8.9.3.14.

Amended NMAC Sections for 8.9.4: 8.9.4.31.

Copies of the proposed amended rules may be found at ECECD's website at www.nmececd.org/regulation-changes/ 30 days prior to the public rule hearing.

Notice of public rule hearing: A public rule hearing will be held on December 3, 2026, from 9:00 a.m. to 11:00 a.m. for proposed amendments to 8.9.3 NMAC and 8.9.4 NMAC. The hearing will take place in Apodaca Hall of the PERA Building at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502, and will also be accessible via virtual web platform (Zoom) and by telephone. The hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and will be recorded. Any interested member of the public may attend in person, by Zoom, or by telephone and will be provided a reasonable opportunity to offer public comment on the proposed rules during the hearing, either orally or in writing, including presentation of data, views, or arguments. Members of the public will have two minutes to provide oral comments. To attend by telephone, dial 719-359-4580, Webinar ID: 810 1932 2296; callers will be able to hear the full hearing, and comments made by telephone will be recorded. To attend via the internet, go to https://nmececdorg.zoom.us/j/82990755483 and follow the on-screen instructions using Webinar ID: 810 1932 2296. The hearing will be livestreamed, and comments may also be submitted via the platform's chat feature.

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public may be submitted by email to ECECD-ECS-PublicComment@ECECD.NM.Gov with the subject line "8.9.3 NMAC / 8.9.4 NMAC Public Comment," or by first class mail to PO. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may also be delivered in person at the PERA Building located at 1120 Paseo De Peralta in Santa Fe, New Mexico, on December 3, 2026, between 9:00 a.m. and 11:00 a.m. Written comments will be accepted from the date this notice is published until the conclusion of the public rule hearing on December 3, 2026.

Spanish interpretation will be provided on Zoom and in person. If you are a person with a disability and would like to request accommodations, or a person with limited English proficiency and need interpretation other than Spanish or ASL, please contact the Early Childhood Education and Care Department at ECECD-ECS-PublicComment@ECECD.NM.Gov or call 505-670-8993 at least ten calendar days before the scheduled public rule hearing.