Comments Received Prior to the Hearing
Related to the proposed language in the definitions at 8.16.2.7.RR:

"Notice of provisional employment" means a written notice issued to a child care center or home applicant indicating the BCU 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.

In light of this new two-step process, how quickly will the BCU complete their initial review and make a determination the applicant may begin employment under direct physical supervision? It is typically not the case we have the luxury of time when hiring new staff. It is most always to fill a vacancy. This 'review' and 'determination' must occur within a short period time, say an hour or two at the most. Otherwise, the applicant will move on to another job position.

Mark Schinnerer
CEO
CARC, INC.
P.O. Drawer 1808
Carlsbad, NM 88221
8.16.2.22 E(1)(c) The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;

This proposed revision does not give any direction as to what to do with this information other than retain it in the child’s file. If the person on the registry is the child's parent, does this mean the parent will not be able to pick the child up or drop the child off? Participate in parent teacher conferences?

We understand the intention - to keep all our children safe. However, we feel that this proposed revision could have serious unintended consequences. Children who's parents or other close family are on the registries would potentially be ostracized from our facilities. This would be putting children in harm's way - not protecting them.

Also, this would put an undue administrative burden on facilities. No visitor is ever allowed unsupervised access to children - whether they are a child’s authorized pickup or not. Is this not sufficient to reasonably ensure the safety of the children in our facilities?
Building Bridges Child Development Center, Inc.
Eastern Child Development Center, Inc.
Parkside Child Development Center, Inc.

http://www.ticdevelopmentcenters.org/
The staff of Community Partnership for Children would like to input our concerns for the proposed changes in the attached letter sent by CYFD.

In reference to **background check eligibility** per regulations included in 8.16.2NMAC

Currently the requirement states that an individual without approved background clearance cannot be left alone unsupervised with children.

Aligning the new procedures MUST guarantee that programs will receive an immediate (2-3 days) turn around process on eligibility results. Otherwise, this will greatly impact the operation of the programs in maintaining adult to child ratios.

Perhaps an email notice could be sent out to notify the center that the background check has been approved and is on its way via mail, allowing the employee to report to the classroom to fill the vacancy.

Regards,
Staff of Community Partnership for Children

Terry Anderson  
Executive Director/Project Coordinator

Anita Rios  
Mentor/Facilitator

Kelli Mcghiey  
Financial Administrator

Romeo Cruz  
Content Manager

Community Partnership for Children  
cpc.grantcounty.nm@gmail.com
State of New Mexico
CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR

BRIAN BLALOCK
CABINET SECRETARY

TERRY L. LOCKE
DEPUTY CABINET SECRETARY

WNM U Preschool/Child Development Center
PO Box 680
Silver City, NM 88062

Dear Child Care Provider:

July 29, 2019

This letter serves as notice that Children, Youth and Families Department (CYFD) will hold two formal public hearings to propose regulation changes.

The first public hearing will be held on Thursday, August 29, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.8.3 NMAC – Social Services - Children, Youth and Families General Provisions, Governing Background Checks and Employment History Verification
- 8.16.2 NMAC – Child Care Licensing, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs
- 8.17.2 NMAC – Social Services – Non-Licensed Child Care, Requirements Governing Registration of Non-Licensed Family Child Care Homes

The significant proposed changes to the rules are to amend the background check requirements to add language to incorporate a two-step clearance process for staff members. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are required for CYFD to comply with federal requirements. In addition, language will be included in 8.16.2 NMAC and 8.17.2 NMAC, requiring policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present and requiring household members reaching the age of 18 to submit their background check within 30 days after their eighteenth birthday.

The second public hearing will be held on Friday, August 30, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.15.2 NMAC – Requirements for Child Care Assistance Programs for Clients and Child Care Providers

The significant proposed changes to the rule are to amend the eligibility levels for child care assistance, to eliminate the waiting list for child care assistance, to provide an explanation of the co-payment calculation and where to find the co-payment schedule, to comply with federal regulations to pay for registration/educational fees for children receiving child care assistance benefits on behalf of client, and to address the overlap of care hours and fee payment for services. Pursuant to the continuation of this rule change, amendments were made to the following sections: 8.15.2.9 NMAC; 8.15.2.12 NMAC; and 8.15.3.13 NMAC.

The public hearings will be held in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502.

The purpose of these public hearings is to receive public comment regarding proposed changes to the above regulations. Any interested member of the public may attend the hearings and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views or arguments on the proposed rules during the hearing. Copies of the proposed rules may be found at CYFD’s website at https://www.newmexicokids.org/ or may be obtained from 1120 Paseo de Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Written public comment, including presentation of data, views or arguments on the proposed rules, from any interested member of the public, may also be submitted via email to CYFD-ECS-PublicComment@state.nm.us with the subject line “Public Comment,” or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160. The comment period ends at the conclusion of the public hearing.

PLEASE BE ADVISED THAT THESE PROPOSED REGULATION CHANGES DO NOT AFFECT CURRENT ELIGIBILITY TO FAMILIES. If you have any questions, please call Kimberly Brown at 505-841-4821 or 1-800-832-1321.

Sincerely,

Alejandra Rebolledo-Ras, Acting Division Director
Early Childhood Services, Children, Youth and Families Department
Jodi King
Count Your Blessings Preschool

I am concerned about the unforeseen results of reviewing all aspects of backgrounds of parents who may or may not on the sex offender registry for all programs licensed through CYFD. Although we absolutely want to ensure our children are safe, our concerns are the following for parents and guardians of children:

- Many sex offenders have their own children or are guardians of children.
- Violating the rights of parents and guardians who have children who by law have the right to parent and have the right to access their own child;
- Potential liability of small businesses and CYFD for violation of providing access to their own children and education;
- Ostracize individuals creating community backlash;
- Children not having the access to safe, quality childcare, because a parent or a guardian is not able to transport their child to and from childcare, pre-k. This may result in children being with unsafe and unlicensed child care situations.
- There is also no guidance from CYFD on what to do or how to handle the situation AFTER the check.

We also are concerned that there is no delineation between child sex offenders and predators from those that might have and adult offense. Again, we want to protect our children, but also need to consider circumstances surrounding individual parents and guardians and their rights as a parent.
August 29, 2019

Kimberly Brown
Child Care Services Bureau
Children, Youth and Families Department
P.O. Box 5160
Santa Fe, NM 87502-5160

Thank you for the opportunity to provide public comment with regard to the proposed child care regulatory changes published in the New Mexico Register by the New Mexico Children, Youth and Families Department (CYFD).

We appreciate the opportunity to provide written comments and we will also testify at the public hearing on August 29 and August 30, 2019.

Our comments are based on supporting family economic stability and the healthy development of children. As child care providers, operating small businesses throughout the state, our lens gives us an "on the ground" view of the costs of operating a child care program, as well as the challenges families face every day.

We have reviewed the proposed regulations and offer comments and suggestions aligned with the Child Care and Development Block Grant Act of 2014 to increase the number and percentage of children whose care is paid for with a child care subsidy in high-quality child care.

We look forward to working with you so that together we can support the well-being of New Mexico children.

Sincerely,

Sondra Carpenter
New Mexico Child Care and Education Association (NMCCEA) Public Comments related to the notice of rulemaking impacting the child care subsidy assistance program as published in the New Mexico Register

On June 17, 2019, the Annie E. Casey Foundation 2019 KIDS COUNT Data Book\(^1\) was released, which marked the 30\(^{th}\) year that the annual 50 state report ranking states on child well-being was published. New Mexico ranked 50\(^{th}\) against all states, below Louisiana ranked 49\(^{th}\) and Mississippi ranked 48\(^{th}\). We can and should do better for our children.\(^2\)

There are many factors related to child well-being (e.g., parents employed earning wages to support their children, young children with access to high-quality child care – not just pre-k, but high-quality child care during the infant and toddler years as brain development is fastest forming the foundation for all future development – social, emotional, physical, and cognitive development, mothers with access to prenatal care to reduce the likelihood of low birthweight babies, which research shows puts them at higher risk for developmental delays, etc.). We know that improving child well-being can’t be achieved with a magic wand, but it can be improved through state regulations that guide program implementation and state investments that support both children and family economic stability.

It is through the lens of supporting children and family economic stability that we offer our comments below. We are also glad to meet with you and discuss these concepts further so that one day, the KIDS COUNT Data Book will list New Mexico at the top of all states instead of the bottom.

8.15.2.7 DEFINITIONS and 8.15.2.9 PRIORITIES FOR ASSISTANCE

The proposed regulation eliminates the definition of the “waiting list” for child care services and also reduces eligibility for child care assistance from 200% of the federal poverty level to 160%.

Comment: The dual implication of these changes is concerning. Reducing the income eligibility for assistance affects not just the ability of parents to work, but also the types of child care settings in which the children of low wage parents will spend their time. Either the assumption is that parents who can’t afford the cost of child care on their own will reduce their hours or not work, or that their children will be in unlicensed care because without child care assistance, working parents can’t access the licensed market.

As of April 2019, there were 20,092 children in New Mexico receiving CYFD child care subsidies.\(^3\) This pales in comparison to the 84,002 children under age 6 and 177,043 children between age 6 and 11 below 200% of the federal poverty level.\(^4\) Since children age 13 and younger are eligible, the universe of potentially eligible children below 200% of the federal poverty level exceeds 261,000 children in New Mexico.

Limiting child care assistance to children in families below 160% of the federal poverty level means at least 36,293 children (16,468 under age 6 and 19,825 between ages 6 and 11) will be in families who are no longer eligible for child care assistance. Maybe their parents will choose not to work or reduce their hours given the cost of child care. Or, maybe their parents will continue to work and choose unlicensed care where the quality and safety are unknown. The only thing we know for sure is that reducing child care assistance for more than 36,000 children is not likely to improve either family economic stability or child well-being.
Household lens. Research shows that a lack of reliable and dependable child care care leads to a reduction in parent income, hours worked, work performance and advancement opportunities. Children live in families. Undermining parent employment means that a child lives in a household that may struggle to pay rent, purchase food, and cover other basic necessities. This in turn undermines child development and well-being, the very policies that child care assistance is designed to promote.

Child lens. Research shows that children with access to high-quality child care are more likely to develop nurturing, responsive, and continuous relationships with their caregivers which is important for social and emotional development and such children are more likely to experience developmental gains across domains (e.g., social, emotional, physical, and cognitive development). The first three years of life are crucial for social-emotional and cognitive development and overall mental health.

Employer lens. Research shows a relationship between child care instability and employers’ dependability on a stable workforce as well as a cost to employers in absenteeism due to child care instability resulting in an estimated loss of $3 billion annually. A study of low income families in Maryland found that the odds of experiencing a child care related work disruption were 75% lower for parents receiving a subsidy than parents not receiving a subsidy.

Whether the lens is related to parents, children, or employers, reducing eligibility from 200% of the federal poverty level to 160% doesn’t promote child well-being. In fact, it is very likely to reduce the well-being of children.

Waiting List elimination. Eliminating the waiting list for child care assistance does not mean that families won’t need child care assistance or qualify for it. Instead it means that the public will lose the ability to access data that shows the interest in child care assistance. Waiting lists aren’t perfect. They are a snapshot in time and some families may choose not to join the waiting list upon being informed of its length. Regardless, having a waiting list is better than not, so in the event that funding were to be made available, a go-to list would be readily available. In addition, having a waiting list is one type of indicator as to whether current funding is meeting the demand. Eliminating the waiting list is a policy promoting guess work, again, undermining the well-being of families with children.

8.15.2.12 RECERTIFICATION

The regulation proposed that “clients who recertify will qualify at or below 200% of the federal poverty level.”

Comment: We are unclear what this means and how it would be implemented. Under the Child Care and Development Block Grant (CCDBG) Act of 2014, states are required to have a graduated phase-out of assistance to ensure that families don’t incur a cliff as income rises.

There’s a unique problem related to income in New Mexico and the eligibility requirement under CCDBG set at 85% of state median income (SMI). Compared to the US median family income of $73,891, New Mexico median family income is $58,308, $15,583 lower. This is a challenge for the graduated phase-out tied to 85% of SMI, but nonetheless, important to understand in concept as state policy is set.

The purpose of the graduated phase-out provision is to promote continuity of care and ensure that families are well-positioned to access child care for their children. The CCDF regulations tell states to “show that their exit threshold takes into account typical family expenses such as housing, food, health
care, diapers, transportation, etc., and is set at an income level that promotes and supports family economic stability and reasonably allows a family to continue accessing child care services without unnecessary disruption. In addition, the final rule uses seven percent of family income as a benchmark for affordable child care.

Can a family at 200% of the federal poverty level access high-quality child care at a cost that doesn’t exceed 7 percent of income? Data from the 2018 New Mexico market rate survey shows that the average monthly infant rate for center-based care is $672 per month. That’s $8,064 per year. A family of 3 earning 200% of the federal poverty level would earn $42,660, which means the average cost of center-based infant care would be 18.9% of income — far exceeding the U.S. Department of Health and Human Services recommendation for child care costs at 7% or below of income.

We urge CYFD to rethink the graduated phase-out concept. How could the policy be crafted so that there is a gradual phase-out for New Mexico families so that the cliff effect is avoided, families can still access market-based child care, and costs to families do not exceed 7% of income? This is the concept behind the graduated phase-out provision under CCDBG reauthorization. It’s not meant as a check-box strategy, but instead, it’s meant to support the economic stability of families and access to high-quality child care for children. We can do this, but not under the current proposed policy.

8.15.2.13 CLIENT RESPONSIBILITIES

A series of co-payments are established based on number of children, hours of care, and family income.

Comment: The U.S. Department of Health and Human Services has established 7% of income or below for affordability for families who need child care. The proposed co-payment schedule is complicated, and copayments exceed 7% of family income in many cases. Also, it appears to be tied to hours of care although HHS regulations clarify “that Lead Agencies are not required to limit authorized child care services strictly based on work, training, or educational schedule or the number of hours that a parent spends in work, training, or educational activities.” Furthermore, the preamble to the regulations state, “In some cases, such “matching” works against the interests of the parent or child. Lead agencies are encouraged to authorize adequate hours to allow children to participate in a high quality program, which may be more hours than the parent is working or in education or training.”

The reality is that child care is a business. When state regulations set co-payments at a certain level, it is up to child care providers to collect it. At best, it is often what child care providers call “bad debt” — it is simply not collectible, not collectible on time, not collectible in full, or at it’s worst — it is a financial hardship on families. We urge you to review the copayment policy and limit it to at or below 7% of family income.

8.15.2.15 PROVIDER REQUIREMENTS

(D)(1) Registration Fees. The proposed regulations prohibit child care providers from charging families a registration fee for any child receiving child care assistance, and propose that the department pay a $5 monthly fee for registration not to exceed $60 per year.

Comment: The U.S. Department of Health and Human Services final CCDF regulations closely follow the reauthorization law related to generally-accepted payment policies mirroring the private market.

"Consistent with section 658E(c)(2)(s) of the Act, § 98.45(l)(3) of the final rule requires CCDF payment"
practices to reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF funded assistance.” This includes paying “for reasonable, mandatory registration fees that the provider charges to private-paying parents.” The final rule is clear that such payment policies and practices should follow customary practices for private paying parents. With regard to annual registration fees, parents pay them upfront – registration fees are not paid $5 per month over a period of time.

It is understandable under concepts in place prior to CCDBG reauthorization that states may want to pay a smaller share of registration fees over time rather than pay registration fees for families receiving a subsidy upfront. The rationale would have been, at that time, that families churn on and off child care subsidy assistance, and therefore, registration fees that are paid upfront might represent an overpayment in cases where the family has “churned off of assistance.” However, under CCDBG reauthorization, states were required to implement 12 month eligibility for families. Congress enacted 12 month eligibility because in reviewing state practices, it appeared that many states with a shorter recertification period were churning families – meaning that families left assistance but their income wasn’t necessarily higher. They merely failed to comply with document requirements, in-person meetings to recertify or other administrative reasons unrelated to their actual income. Therefore, to make access to child care assistance easier and promote continuity of care for children (e.g., policies that promote healthy child development), Congress required a new minimum eligibility period of 12 months. New Mexico was among the states that had a far shorter eligibility period. It is anticipated that the longer eligibility period will reduce “the churn” which means that paying the annual registration fee upfront, as required for private paying families, is no longer risky since children are generally granted 12 months of assistance.

We urge CYFD to pay annual registration fees upfront for children whose care is paid for with a subsidy, the same policy that applies to private pay parents.

8.15.2.17 PAYMENT FOR SERVICES

(C) $5 Registration Fees Paid Monthly. (see above)
(D), (E), (F), (G) Payment Rates. The regulations propose a rate schedule where 100% of the full time rate is paid for 30 or more hours per week of care, 75% of the rate is paid for 8-29 hours per week of care, 50% of the rate is paid for 8-19 hours of care and 25% of the rate is paid for 7 or fewer hours of care.

Comments: The U.S. Department of Health and Human Services CCDF regulations are clear. The reauthorization law changed the framework for child care subsidy.

1) Payments are supposed to be based on the most recent market rate survey or an alternative based on the cost of high-quality care – and, at least at a level to cover health, safety, quality and staffing requirements in the CCDF rule. Lead agencies are also supposed to take into consideration the cost of providing higher-quality care.

2) Policies are supposed to delink provider payments from a child’s occasional absences and pay providers based on a child’s enrollment, providing full payment if a child attends at least 85% of the time or providing full payment if a child is absent for 5 or fewer days in a month, and

3) States are to adopt generally accepted payment practices of child care providers who do not receive CCDF subsidies, including paying on a part-time or full-time basis (rather than paying for
hours of service or smaller increments of time) and paying for reasonable mandatory registration fees that the provider charges to private paying parents.²⁶

Under § 98.21(g) “lead agencies are encouraged to authorize adequate hours to allow children to participate in a high-quality program, which may be more hours than the parent is working or in education or training. For example, if most local high-quality early learning programs offer only full-time slots, a child whose parent is working part-time may need authorization for full-time care.”²⁵ Under 658E(c)(2)(S)(ii) of the Act, “states are required to support the fixed costs of providing child care services and follow generally accepted payment practices that typically require parents who pay privately for child care to pay their provider a set fee based on their child’s enrollment.”²⁶

What this means is that it is time in New Mexico to review the state’s payment policies in comparison to the typical practices of the child care community who serve private paying parents. Do private paying parents pay 75% of the weekly rate if their children attend 28-29 hours per week? No. That would not be a sustainable business model. Staffing and space are based on full time slots. Providers may offer part-time care, but the hourly bands with proportionate payments that CYFD proposes are based on practices that states engaged in prior to CCDBG reauthorization. Under the new law, states are supposed to conform their policies to better support market-based practices. The law and the regulations are clear on this aspect.

Child care is a business. We want to provide high-quality care. Many of us do provide high-quality care. However, the reality for any child care program is that it costs more to offer high-quality care. And, the operating budget of a child care program is related to the fees that private parents pay and subsidies that the state pays. Therefore, the costs of operating a program such as hiring staff, paying staff competitive wages, rent, utilities, maintenance costs, supplies, and materials must all be covered by that operating budget.

For perspective, the 2018 child care market rate survey²⁷ shows that in metro 2+ programs, the percentage of children served through child care subsidies is 50%, for 3 star programs, the percentage of children served through child care subsidies is 57%, in 4 star programs, it’s about 45% and in 5 star programs, it’s about 41%. What this means is that state subsidy policies have an enormous impact on the operating budget of a child care program and in turn, the quality of that program – largely, the type of staff who can be hired and the wages that will support them.

High-quality programs depend on high-quality staff – classroom staff with the education and competencies to support and promote healthy child development, which is why wages are typically the highest cost of operating a child care program. With the minimum wage scheduled to increase to $9 per hour in January 2020,²⁸ child care wages will increase, which also has an impact on child care program operating budgets. But, there is no recognition of the minimum wage increase in the proposed child care subsidy regulations with regard to payment rates.

An increase in the minimum wage is good news. It will help support economic stability for families. But, there are two collateral impacts of an increase in the minimum wage that the regulations do not address. First, families who are able to earn higher wages may no longer qualify for child care assistance, particularly if the proposed regulations are adopted which would cap initial eligibility at 160% of poverty. Second, child care programs will be required to pay higher wages, but subsidy rates are not increased to absorb the impact on program operating budgets. Both of these policy issues need to be reviewed and adjusted as part of the regulatory review process. Otherwise, the public policy goal of increasing the minimum wage is undermined by collateral impact, which could wind up leaving families in a worse economic position rather than better as the law intended.
Another issue that is not addressed in the child care regulations, which should be because of the impact on child care operating budgets is some type of requirement at the local community level to coordinate with community-based child care programs in the provision of public pre-k, not merely plow forward with school-based pre-k expansion because the Department of Public Education (PED) has provided funding. The subsidy regulations are an opportunity to call for coordination and community planning since the economic model for child care programs simply doesn’t work to support infant and toddler care when 4 year-old children (and 3 year-old children) are pulled away from the economic model. We all want to provide high-quality care, but that is simply not possible when the economic model for child care is undermined through implementation of a different agency’s funding policy for preschool-age children.

We urge that CYFD use the opportunity to adjust child care regulations as an opportunity to rethink child care policy. We don’t have to be ranked 50th year after year in child well-being. But, to rise above that ranking, we need policies that promote child well-being. Family economic stability, achieved when parents work, and healthy child development, achieved as young children – particularly infants and toddlers, have access to high-quality child care, can improve child well-being. Such policies will cost more than New Mexico has currently allocated, but research shows a return on investment of 13%.25

It’s time to match our policy with the federal law and provide sufficient funding to support access for families who need child care assistance. The federal government recognizes child care as a two generation strategy – it helps parents work and it supports the healthy development of children. It’s time that New Mexico shares this vision as well.

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

(3) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present; (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[.]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file;

D. CHILDREN’S RECORDS. (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[.]. The licensee must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file;

(2) POLICIES AND PROCEDURES:
Page 48

(m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;
D. CHILDREN'S RECORDS:

(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[.]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file.

Your child deserves to be safe and well cared for at all times. One of your child care provider’s most important responsibilities is keeping your child safe from harm. Not only should all adults employed with a licensed childcare provider have had a comprehensive background check, but all those entering and exiting the facility have been screened through both the state and national sex offenders database. We don’t disagree. But, keeping a piece of paper in a child’s file doesn’t protect our children. Also, according to our research there is no other state with this requirement.

The proposed rule lacks clarity on how a licensed childcare provider should implement this new rule, how it will be enforced by CYFD Licensing Department and what the consequences will be if the proposed rule is not implemented properly. Additionally, there will be a cost to providers in the implementation of this new system.

What are public and private elementary schools required to do? Shouldn’t the rule for CYFD licensed providers be consistent with that of the Public Education Department? And finally, the rule needs to be consistent throughout. Is it the “licensee” who must check or is it the “director”? The proposed rule is not consistent.

We don’t disagree that children should be protected, but a piece of paper in a file isn’t going to protect them. Instead of rushing this through, why don’t we work together over the next six months and develop something in the best interest of our children.

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2. Ibid.
15 Ibid.
19 Ibid.
20 Ibid.
21 Ibid.
22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.
26 Ibid.
8.16.2 NMAC Public Comment Summary -
Substantive Comments in the Category of
Background Checks

[Some comments are summarized and paraphrased]

Written Comment 1: In light of this new two-step process, how quickly will the BCU complete their initial review and make a determination the applicant may begin employment under direct physical supervision? It is typically not the case we have the luxury of time when hiring new staff. It is most always to fill a vacancy. This 'review' and 'determination' must occur within a short period time, say an hour or two at the most. Otherwise, the applicant will move on to another job position.

Written Comment 2: This proposed revision does not give any direction as to what to do with this information other than retain it in the child's file. If the person on the registry is the child's parent, does this mean the parent will not be able to pick the child up or drop the child off? Participate in parent teacher conferences?

We understand the intention - to keep all our children safe. However, we feel that this proposed revision could have serious unintended consequences. Children whose parents or other close family are on the registries would potentially be ostracized from our facilities. This would be putting children in harm's way - not protecting them.

Also, this would put an undue administrative burden on facilities. No visitor is ever allowed unsupervised access to children - whether they are a child's authorized pickup or not. Is this not sufficient to reasonably ensure the safety of the children in our facilities?

Written Comment 3: Currently the requirement states that an individual without approved background clearance cannot be left alone unsupervised with children.

Aligning the new procedures MUST guarantee that programs will receive an immediate (2-3 days) turn around process on eligibility results. Otherwise, this will greatly impact the operation of the programs in maintaining adult to child ratios.

Perhaps an email notice could be sent out to notify the center that the background check has been approved and is on its way via mail, allowing the employee to report to the classroom to fill the vacancy.

Written Comment 4: Many sex offenders have their own children or are guardians of children. Violating the rights of parents and guardians who have children who by law have rights to parent and have the right to access their own child. Potential liability of small businesses and CYFD for violation of not providing access to their own children. This will ostracize individuals creating community backlash. Children not having access to care because a parent or guardian is not able to access the facility. There is no guidance form CYFD on what to do or how to handle the situation AFTER the check.
Written Comment 5:

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:
(3) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present; (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of a person authorized by the parent or guardian to pick out the child shall be verified at pick up[;]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file;
D. CHILDREN’S RECORDS. (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 parent or guardian to pick up the child shall be verified at pick up[;]. The licensee must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file;
(2) POLICIES AND PROCEDURES: Page 48
(m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;
D. CHILDREN’S RECORDS (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 parent or guardian to pick up the child shall be verified at pick up[;]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file;
Your child deserves to be safe and well cared for at all times. One of your child care provider’s most important responsibilities is keeping your child safe from harm. Not only should all adults employed with a licensed childcare provider have had a comprehensive background check, but those entering and exiting the facility have been screened through both the state and national sex offender’s database. We don’t disagree. But, keeping a piece of paper in a child’s files doesn’t protect our children. Also, according to our research there is no other state with this requirement.

The proposed rule lacks clarity on how a provider should implement this new rule, how it will be enforced and what the consequences will be if not implanted properly. There will be a cost to providers for the implementation.

What are public and private elementary schools required to do? Shouldn’t the rule for CYFD licensed providers be consistent with that of the Public Education Department? And finally, the rule needs to be consistent throughout. Is it the “licensee” who must check or is it the “director”? The proposed rule is not consistent.

We don’t disagree that children should be protected, but a piece of paper in a file isn’t going to protect them. Instead of rushing this through, why don’t we work together over the next six months and develop something in the best interest of our children.

Oral Comment 1: There are questions about what to do with information. Once tracked people on list what to do with information? Don’t understand scope and there is a gray area.
Oral Comment 2: Regulation doesn’t say what is to be done with the information and if parents are prohibited from picking up their child, they may not enroll in the program. There is fear of unintended consequences. Staff would have to be informed of violators. Facility had an experience with a child with MRSA and staff quit and families stopped attending. There is concern that this may cause undue hysteria and ostracization.

Oral Comment 3: Concerned about time frame for background check. How long will it take to get results?
The staff of Community Partnership for Children would like to input our concerns for the proposed changes in the attached letter sent by CYFD.

In reference to **background check eligibility** per regulations included in 8.16.2NMAC

Currently the requirement states that an individual without approved background clearance cannot be left alone unsupervised with children.

Aligning the new procedures MUST guarantee that programs will receive an immediate (2-3 days) turn around process on eligibility results. Otherwise, this will greatly impact the operation of the programs in maintaining adult to child ratios.

Perhaps an email notice could be sent out to notify the center that the background check has been approved and is on its way via mail, allowing the employee to report to the classroom to fill the vacancy.

 Regards,
Staff of Community Partnership for Children

Terry Anderson
Executive Director/Project Coordinator

Anita Rios
Mentor/Facilitator

Kelli Mcghley
Financial Administrator

Romeo Cruz
Content Manager

Community Partnership for Children
pcp.grantcounty.nm@gmail.com
(575)590-2499
State of New Mexico
CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

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HOWIE MORALES
LIEUTENANT GOVERNOR

TERRY L. LOCKE
DEPUTY CABINET SECRETARY

WNMU Preschool/Child Development Center
PO Box 680
Silver City, NM 88062

Dear Child Care Provider:

This letter serves as notice that Children, Youth and Families Department (CYFD) will hold two formal public hearings to propose regulation changes.

The first public hearing will be held on Thursday, August 29, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.8.3 NMAC – Social Services - Children, Youth and Families General Provisions, Governing Background Checks and Employment History Verification
- 8.16.2 NMAC – Child Care Licensing, Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs
- 8.17.2 NMAC – Social Services – Non-Licensed Child Care, Requirements Governing Registration of Non-Licensed Family Child Care Homes

The significant proposed changes to the rules are to amend the background check requirements to add language to incorporate a two-step clearance process for staff members. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are required for CYFD to comply with federal requirements. In addition, language will be included in 8.16.2 NMAC and 8.17.2 NMAC, requiring policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present and requiring household members reaching the age of 18 to submit their background check within 30 days after their eighteenth birthday.

The second public hearing will be held on Friday, August 30, 2019, at 10:00 am. CYFD is proposing changes to the following regulations:

- 8.15.2 NMAC - Requirements for Child Care Assistance Programs for Clients and Child Care Providers

The significant proposed changes to the rule are to amend the eligibility levels for child care assistance, to eliminate the waiting list for child care assistance, to provide an explanation of the co-payment calculation and where to find the co-payment schedule, to comply with federal regulation to pay for registration/educational fees for children receiving child care assistance benefits on behalf of client, and to address the overlap of care hours and payment for services. Pursuant to the continuation of this rule change, amendments were made to the following sections: 8.15.2.9 NMAC; 8.15.2.12 NMAC; and 8.15.2.13 NMAC.

The public hearings will be held in Apodaca Hall of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The purpose of these public hearings is to receive public comment regarding proposed changes to the above regulations. Any interested member of the public may attend the hearings and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views or arguments on the proposed rules during the hearing. Copies of the proposed rules may be found at CYFD’s website at https://www.newmexicokids.org/ or may be obtained from 1120 Paseo de Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Written public comment, including presentation of data, views or arguments on the proposed rules, from any interested member of the public, may also be submitted via email to CYFD-ECS-PublicComment@state.nm.us with the subject line “Public Comment,” or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160. The comment period ends at the conclusion of the public hearing.

PLEASE BE ADVISED THAT THESE PROPOSED REGULATION CHANGES DO NOT AFFECT CURRENT ELIGIBILITY TO FAMILIES. If you have any questions, please call Kimberly Brown at 505-841-4821 or 1-800-832-1321.

Sincerely,

Alexandra Rebolledo Rea, Acting Division Director
Children’s Legacy Services, Children, Youth and Families Department
Written Comments Introduced During the Hearing (Exhibit 1)
August 29, 2019

Kimberly Brown
Child Care Services Bureau
Children, Youth and Families Department
P.O. Box 5160
Santa Fe, NM 87502-5160

Thank you for the opportunity to provide public comment with regard to the proposed child care regulatory changes published in the New Mexico Register by the New Mexico Children, Youth and Families Department (CYFD).

We appreciate the opportunity to provide written comments and we will also testify at the public hearing on August 29 and August 30, 2019.

Our comments are based on supporting family economic stability and the healthy development of children. As child care providers, operating small businesses throughout the state, our lens gives us an “on the ground” view of the costs of operating a child care program, as well as the challenges families face every day.

We have reviewed the proposed regulations and offer comments and suggestions aligned with the Child Care and Development Block Grant Act of 2014 to increase the number and percentage of children whose care is paid for with a child care subsidy in high-quality child care.

We look forward to working with you so that together we can support the well-being of New Mexico children.

Sincerely,

Sondra Carpenter
New Mexico Child Care and Education Association (NMCCEA) Public Comments related to the notice of rulemaking impacting the child care subsidy assistance program as published in the New Mexico Register

On June 17, 2019, the Annie E. Casey Foundation 2019 KIDS COUNT Data Book¹ was released, which marked the 30th year that the annual 50 state report ranking states on child well-being was published. New Mexico ranked 50th against all states, below Louisiana ranked 49th and Mississippi ranked 48th. We can and should do better for our children.²

There are many factors related to child well-being (e.g., parents employed earning wages to support their children, young children with access to high-quality child care – not just pre-k, but high-quality child care during the infant and toddler years as brain development is fastest forming the foundation for all future development – social, emotional, physical, and cognitive development, mothers with access to prenatal care to reduce the likelihood of low birthweight babies, which research shows puts them at higher risk for developmental delays, etc.). We know that improving child well-being can’t be achieved with a magic wand, but it can be improved through state regulations that guide program implementation and state investments that support both children and family economic stability.

It is through the lens of supporting children and family economic stability that we offer our comments below. We are also glad to meet with you and discuss these concepts further so that one day, the KIDS COUNT Data Book will list New Mexico at the top of all states instead of the bottom.

8.15.2.7 DEFINITIONS and 8.15.2.9 PRIORITIES FOR ASSISTANCE

The proposed regulation eliminates the definition of the “waiting list” for child care services and also reduces eligibility for child care assistance from 200% of the federal poverty level to 160%.

Comment: The dual implication of these changes is concerning. Reducing the income eligibility for assistance affects not just the ability of parents to work, but also the types of child care settings in which the children of low wage parents will spend their time. Either the assumption is that parents who can’t afford the cost of child care on their own will reduce their hours or not work, or that their children will be in unlicensed care because without child care assistance, working parents can’t access the licensed market.

As of April 2019, there were 20,092 children in New Mexico receiving CYFD child care subsidies.³ This pales in comparison to the 84,002 children under age 6 and 177,043 children between age 6 and 11 below 200% of the federal poverty level.⁴ Since children age 13 and younger are eligible, the universe of potentially eligible children below 200% of the federal poverty level exceeds 261,000 children in New Mexico.

Limiting child care assistance to children in families below 160% of the federal poverty level means at least 36,293 children (16,468 under age 6 and 19,825 between ages 6 and 11) will be in families who are no longer eligible for child care assistance. Maybe their parents will choose not to work or reduce their hours given the cost of child care. Or, maybe their parents will continue to work and choose unlicensed care where the quality and safety are unknown. The only thing we know for sure is that reducing child care assistance for more than 36,000 children is not likely to improve either family economic stability or child well-being.
**Household lens.** Research shows that a lack of reliable and dependable child care leads to a reduction in parent income, hours worked, work performance and advancement opportunities. Children live in families. Undermining parent employment means that a child lives in a household that may struggle to pay rent, purchase food, and cover other basic necessities. This in turn undermines child development and well-being, the very policies that child care assistance is designed to promote.

**Child lens.** Research shows that children with access to high-quality child care are more likely to develop nurturing, responsive, and continuous relationships with their caregivers which is important for social and emotional development and such children are more likely to experience developmental gains across domains (e.g., social, emotional, physical, and cognitive development). The first three years of life are crucial for social-emotional and cognitive development and overall mental health.

**Employer lens.** Research shows a relationship between child care instability and employers' dependability on a stable workforce as well as a cost to employers in absenteism due to child care instability resulting in an estimated loss of $3 billion annually. A study of low income families in Maryland found that the odds of experiencing a child care related work disruption were 75% lower for parents receiving a subsidy than parents not receiving a subsidy.

Whether the lens is related to parents, children, or employers, reducing eligibility from 200% of the federal poverty level to 160% doesn't promote child well-being. In fact, it is very likely to reduce the well-being of children.

**Waiting List elimination.** Eliminating the waiting list for child care assistance does not mean that families won't need child care assistance or qualify for it. Instead it means that the public will lose the ability to access data that shows the interest in child care assistance. Waiting lists aren't perfect. They are a snapshot in time and some families may choose not to join the waiting list upon being informed of its length. Regardless, having a waiting list is better than not, so in the event that funding were to be made available, a go-to list would be readily available. In addition, having a waiting list is one type of indicator as to whether current funding is meeting the demand. Eliminating the waiting list is a policy promoting guess work, again, undermining the well-being of families with children.

### 8.15.2.12 RECERTIFICATION

The regulation proposed that “clients who recertify will qualify at or below 200% of the federal poverty level.”

**Comment:** We are unclear what this means and how it would be implemented. Under the Child Care and Development Block Grant (CCDBG) Act of 2014, states are required to have a graduated phase-out of assistance to ensure that families don’t incur a cliff as income rises.

There's a unique problem related to income in New Mexico and the eligibility requirement under CCDBG set at 85% of state median income (SMI). Compared to the US median family income of $73,891, New Mexico median family income is $58,308, $15,583 lower. This is a challenge for the graduated phase-out tied to 85% of SMI, but nonetheless, important to understand in concept as state policy is set.

The purpose of the graduated phase-out provision is to promote continuity of care and ensure that families are well-positioned to access child care for their children. The CCDF regulations tell states to "show that their exit threshold takes into account typical family expenses such as housing, food, health
care, diapers, transportation, etc., and is set at an income level that promotes and supports family economic stability and reasonably allows a family to continue accessing child care services without unnecessary disruption. In addition, the final rule uses seven percent of family income as a benchmark for affordable child care.

Can a family at 200% of the federal poverty level access high-quality child care at a cost that doesn't exceed 7 percent of income? Data from the 2018 New Mexico market rate survey shows that the average monthly infant rate for center-based care is $672 per month. That's $8,064 per year. A family of 3 earning 200% of the federal poverty level would earn $42,660, which means the average cost of center-based infant care would be 18.9% of income — far exceeding the U.S. Department of Health and Human Services recommendation for child care costs at 7% or below of income.

We urge CYFD to rethink the graduated phase-out concept. How could the policy be crafted so that there is a gradual phase-out for New Mexico families so that the cliff effect is avoided, families can still access market-based child care, and costs to families do not exceed 7% of income? This is the concept behind the graduated phase-out provision under CCDBG reauthorization. It's not meant as a check-box strategy, but instead, it's meant to support the economic stability of families and access to high-quality child care for children. We can do this, but not under the current proposed policy.

8.15.2.13 CLIENT RESPONSIBILITIES

A series of co-payments are established based on number of children, hours of care, and family income.

Comment: The U.S. Department of Health and Human Services has established 7% of income or below for affordability for families who need child care. The proposed co-payment schedule is complicated, and copayments exceed 7% of family income in many cases. Also, it appears to be tied to hours of care although HHS regulations clarify "that Lead Agencies are not required to limit authorized child care services strictly based on work, training, or educational schedule or the number of hours that a parent spends in work, training, or educational activities." Furthermore, the preamble to the regulations state, "In some cases, such “matching” works against the interests of the parent or child. Lead agencies are encouraged to authorize adequate hours to allow children to participate in a high quality program, which may be more hours than the parent is working or in education or training."

The reality is that child care is a business. When state regulations set co-payments at a certain level, it is up to child care providers to collect it. At best, it is often what child care providers call "bad debt" — it is simply not collectible, not collectible on time, not collectible in full, or at it's worst — it is a financial hardship on families. We urge you to review the copayment policy and limit it to at or below 7% of family income.

8.15.2.15 PROVIDER REQUIREMENTS

(D)(1) Registration Fees. The proposed regulations prohibit child care providers from charging families a registration fee for any child receiving child care assistance, and propose that the department pay a $5 monthly fee for registration not to exceed $60 per year.

Comment: The U.S. Department of Health and Human Services final CCDF regulations closely follow the reauthorization law related to generally-accepted payment policies mirroring the private market. "Consistent with section 658E(c)(2)(s) of the Act, § 98.45(0)(3) of the final rule requires CCDF payment
practices to reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF funded assistance. This includes paying "for reasonable, mandatory registration fees that the provider charges to private-paying parents." The final rule is clear that such payment policies and practices should follow customary practices for private paying parents. With regard to annual registration fees, parents pay them upfront – registration fees are not paid $5 per month over a period of time.

It is understandable under concepts in place prior to CCDBG reauthorization that states may want to pay a smaller share of registration fees over time rather than pay registration fees for families receiving a subsidy upfront. The rationale would have been, at that time, that families churn on and off child care subsidy assistance, and therefore, registration fees that are paid upfront might represent an overpayment in cases where the family has "churned off of assistance." However, under CCDBG reauthorization, states were required to implement 12 month eligibility for families. Congress enacted 12 month eligibility because in reviewing state practices, it appeared that many states with a shorter recertification period were churning families – meaning that families left assistance but their income wasn't necessarily higher. They merely failed to comply with document requirements, in-person meetings to recertify or other administrative reasons unrelated to their actual income. Therefore, to make access to child care assistance easier and promote continuity of care for children (e.g., policies that promote healthy child development), Congress required a new minimum eligibility period of 12 months. New Mexico was among the states that had a far shorter eligibility period. It is anticipated that the longer eligibility period will reduce "the churn" which means that paying the annual registration fee upfront, as required for private paying families, is no longer risky since children are generally granted 12 months of assistance.

We urge CYFD to pay annual registration fees upfront for children whose care is paid for with a subsidy, the same policy that applies to private pay parents.

8.15.2.17 PAYMENT FOR SERVICES

(C) $5 Registration Fees Paid Monthly. (see above)
(D), (E), (F), (G) Payment Rates. The regulations propose a rate schedule where 100% of the full time rate is paid for 30 or more hours per week of care, 75% of the rate is paid for 8-29 hours per week of care, 50% of the rate is paid for 8-19 hours of care and 25% of the rate is paid for 7 or fewer hours of care.

Comments: The U.S. Department of Health and Human Services CCDF regulations are clear. The reauthorization law changed the framework for child care subsidy.

1) Payments are supposed to be based on the most recent market rate survey or an alternative based on the cost of high-quality care – and, at least at a level to cover health, safety, quality and staffing requirements in the CCDF rule. Lead agencies are also supposed to take into consideration the cost of providing higher-quality care.

2) Policies are supposed to delink provider payments from a child's occasional absences and pay providers based on a child's enrollment, providing full payment if a child attends at least 85% of the time or providing full payment if a child is absent for 5 or fewer days in a month, and

3) States are to adopt generally accepted payment practices of child care providers who do not receive CCDF subsidies, including paying on a part-time or full-time basis (rather than paying for
hours of service or smaller increments of time) and paying for reasonable mandatory registration fees that the provider charges to private paying parents.26

Under § 98.21(g) "lead agencies are encouraged to authorize adequate hours to allow children to participate in a high-quality program, which may be more hours than the parent is working or in education or training. For example, if most local high-quality early learning programs offer only full-time slots, a child whose parent is working part-time may need authorization for full-time care."25 Under 658E(c)(2)(S)(ii) of the Act, "states are required to support the fixed costs of providing child care services and follow generally accepted payment practices that typically require parents who pay privately for child care to pay their provider a set fee based on their child's enrollment."26

What this means is that it is time in New Mexico to review the state's payment policies in comparison to the typical practices of the child care community who serve private paying parents. Do private paying parents pay 75% of the weekly rate if their children attend 28-29 hours per week? No. That would not be a sustainable business model. Staffing and space are based on full time slots. Providers may offer part-time care, but the hourly bands with proportionate payments that CYFD proposes are based on practices that states engaged in prior to CCDBG reauthorization. Under the new law, states are supposed to conform their policies to better support market-based practices. The law and the regulations are clear on this aspect.

Child care is a business. We want to provide high-quality care. Many of us do provide high-quality care. However, the reality for any child care program is that it costs more to offer high-quality care. And, the operating budget of a child care program is related to the fees that private parents pay and subsidies that the state pays. Therefore, the costs of operating a program such as hiring staff, paying staff competitive wages, rent, utilities, maintenance costs, supplies, and materials must all be covered by that operating budget.

For perspective, the 2018 child care market rate survey27 shows that in metro 2+ programs, the percentage of children served through child care subsidies is 50%, for 3 star programs, the percentage of children served through child care subsidies is 57%, in 4 star programs, it's about 45% and in 5 star programs, it's about 41%. What this means is that state subsidy policies have an enormous impact on the operating budget of a child care program and in turn, the quality of that program – largely, the type of staff who can be hired and the wages that will support them.

High-quality programs depend on high-quality staff – classroom staff with the education and competencies to support and promote healthy child development, which is why wages are typically the highest cost of operating a child care program. With the minimum wage scheduled to increase to $9 per hour in January 2020,28 child care wages will increase, which also has an impact on child care program operating budgets. But, there is no recognition of the minimum wage increase in the proposed child care subsidy regulations with regard to payment rates.

An increase in the minimum wage is good news. It will help support economic stability for families. But, there are two collateral impacts of an increase in the minimum wage that the regulations do not address. First, families who are able to earn higher wages may no longer qualify for child care assistance, particularly if the proposed regulations are adopted which would cap initial eligibility at 160% of poverty. Second, child care programs will be required to pay higher wages, but subsidy rates are not increased to absorb the impact on program operating budgets. Both of these policy issues need to be reviewed and adjusted as part of the regulatory review process. Otherwise, the public policy good of increasing the minimum wage is undermined by collateral impact, which could wind up leaving families in a worse economic position rather than better as the law intended.
Another issue that is not addressed in the child care regulations, which should be because of the impact on child care operating budgets is some type of requirement at the local community level to coordinate with community-based child care programs in the provision of public pre-k, not merely plow forward with school-based pre-k expansion because the Department of Public Education (PED) has provided funding. The subsidy regulations are an opportunity to call for coordination and community planning since the economic model for child care programs simply doesn’t work to support infant and toddler care when 4 year-old children (and 3 year-old children) are pulled away from the economic model. We all want to provide high-quality care, but that is simply not possible when the economic model for child care is undermined through implementation of a different agency’s funding policy for preschool-age children.

We urge that CYFD use the opportunity to adjust child care regulations as an opportunity to rethink child care policy. We don’t have to be ranked 50th year after year in child well-being. But, to rise above that ranking, we need policies that promote child well-being. Family economic stability, achieved when parents work, and healthy child development, achieved as young children – particularly infants and toddlers, have access to high-quality child care, can improve child well-being. Such policies will cost more than New Mexico has currently allocated, but research shows a return on investment of 13%.\textsuperscript{29}

It’s time to match our policy with the federal law and provide sufficient funding to support access for families who need child care assistance. The federal government recognizes child care as a two generation strategy – it helps parents work and it supports the healthy development of children. It’s time that New Mexico shares this vision as well.

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

(3) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present; (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[:]. The director must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file;

D. CHILDREN’S RECORDS. (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[:]. The licensee must check the persons authorized to pick up the child(ren), to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file;

(2) POLICIES AND PROCEDURES:

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(m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;
D. CHILDREN’S RECORDS:

(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;[.] The director must check the persons authorized to pick up the child[ren], to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file.

Your child deserves to be safe and well cared for at all times. One of your child care provider’s most important responsibilities is keeping your child safe from harm. Not only should all adults employed with a licensed childcare provider have had a comprehensive background check, but all those entering and exiting the facility have been screened through both the state and national sex offenders database.

We don’t disagree. But, keeping a piece of paper in a child’s file doesn’t protect our children. Also, according to our research there is no other state with this requirement.

The proposed rule lacks clarity on how a licensed childcare provider should implement this new rule, how it will be enforced by CYFD Licensing Department and what the consequences will be if the proposed rule is not implemented properly. Additionally, there will be a cost to providers in the implementation of this new system.

What are public and private elementary schools required to do? Shouldn’t the rule for CYFD licensed providers be consistent with that of the Public Education Department? And finally, the rule needs to be consistent throughout. Is it the “licensure” who must check or is it the “director”? The proposed rule is not consistent.

We don’t disagree that children should be protected, but a piece of paper in a file isn’t going to protect them. Instead of rushing this through, why don’t we work together over the next six months and develop something in the best interest of our children.

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2 Ibid.
8 Harvard University, Center on the Developing Brain. https://developingchild.harvard.edu/resources/infantscience-of-ucd/
15 Ibid.
19 Ibid.
20 Ibid.
21 Ibid.
22 Ibid.
23 Ibid.
24 Ibid.
25 Ibid.
26 Ibid.
Jodi King
Count Your Blessings Preschool

I am concerned about the unforeseen results of reviewing all aspects of backgrounds of parents who may or may not be on the sex offender registry for all programs licensed through CYFD. Although we absolutely want to ensure our children are safe, our concerns are the following for parents and guardians of children:

- Many sex offenders have their own children or are guardians of children.
- Violating the rights of parents and guardians who have children who by law have the right to parent and have the right to access their own child;
- Potential liability of small businesses and CYFD for violation of providing access to their own children and education;
- Ostracize individuals creating community backlash;
- Children not having the access to safe, quality childcare, because a parent or a guardian is not able to transport their child to and from childcare, pre-k. This may result in children being with unsafe and unlicensed child care situations.
- There is also no guidance from CYFD on what to do or how to handle the situation AFTER the check.

We also are concerned that there is no delineation between child sex offenders and predators from those that might have and adult offense. Again, we want to protect our children, but also need to consider circumstances surrounding individual parents and guardians and their rights as a parent.
NOTE:
List of recipients to whom letters were sent is not posted and may be requested through an IPRA.
Copy of Publications in the New Mexico Register
NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding 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 Section 9-2A-7 NMSA 1978:

8.16.2.7 NMAC - DEFINITIONS
8.16.2.19 NMAC - BACKGROUND CHECKS
8.16.2.21 NMAC - LICENSURE REQUIREMENTS FOR CENTERS
8.16.2.22 NMAC - ADMINISTRATIVE REQUIREMENTS FOR CENTERS
8.16.2.31 NMAC - LICENSURE REQUIREMENTS FOR HOMES
8.16.2.32 NMAC - ADMINISTRATIVE REQUIREMENTS FOR HOMES
8.16.2.40 NMAC - LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE
8.16.2.41 NMAC - ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE

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

Purpose of proposed rules: The purpose of the rules is to amend the background check requirements to add language to incorporate a two-step clearance process for staff members. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are to comply with federal requirements. In addition, language will be included requiring policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present and requiring household members reaching the age of 18 to submit their background check within 30 days after their eighteenth birthday.

Copies of the proposed rules may be found at CYFD’s website at https://www.newmexikokids.org/ or may be obtained from 1120 Paseo De Peralta, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on Thursday, August 29, 2019 at 10:00 a.m. in Apodaca Hall, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The public hearing will be conducted in a fair and equitable manner by a CYFD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Debra Gonzales at debra.gonzales@state.nm.us. CYFD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least 10 calendar days before the scheduled hearing.

Notice of acceptance of written public comment: Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may also be submitted via email to CYFD - ECS - PublicComment@state.nm.us with the subject line “8.16.2 NMAC Public Comment,” or via first class mail to, or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502 - 5160. The comment period ends at the conclusion of the public hearing on August 29, 2019.

AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA

El Departamento de Niños, Jóvenes y Familias de Nuevo México por este medio da aviso como se requiere en la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC que propone adoptar enmiendas a las siguentes leyes administrativas con respecto a LICENCIATURA DE CUIDADO DE NIÑOS - CENTROS DE CUIDADO DE NIÑOS, PROGRAMAS DE TIEMPO FUERA DE LA ESCUELA, CASAS FAMILIARES DE CUIDADO DE NIÑOS, Y OTROS PROGRAMAS EDUCATIVOS DE PRIMERA INFANCIA según lo autorizado por la sección 9-2A-7 NMSA 1978:

8.16.2.7 NMAC - DEFINICIONES
8.16.2.19 NMAC - COMPROBACIÓN DE ANTECEDENTES Y HUELLAS
8.16.2.21 NMAC - REQUISITOS DE LICENCIATURA PARA CENTROS DE CUIDADO DE NIÑOS
8.16.2.22 NMAC - REQUISITOS ADMINISTRATIVOS PARA CENTROS DE CUIDADO DE NIÑOS
8.16.2.31 NMAC - REQUISITOS DE LICENCIATURA PARA CASAS FAMILIARES DE CUIDADO DE NIÑOS
8.16.2.32 NMAC - REQUISITOS ADMINISTRATIVOS PARA CASAS FAMILIARES DE CUIDADO DE NIÑOS
Propósito de las propuestas leyes administrativas: El propósito de las leyes administrativas es enmendar los requisitos para comprobación de antecedentes y huellas añadiendo lenguaje para incorporar un proceso de dos pasos de autorización para proveedores. Un aviso de empleo provisional (o comprobación de antecedentes y huellas elegibles aprobadas) será requerido antes de empezar empleo e incluirá un cronograma cuando el aviso será emitido. Estas enmiendas tienen que estar conformes con los requerimientos federales. Adicionalmente, lenguaje será incluido requiriendo pólizas y procesos que aseguren que un delincuente sexual registrado no tenga acceso a una casa donde niños estén presentes y requiriendo que miembros del hogar a punto de cumplir los 18 años de edad tienen que proporcionar su comprobación de antecedentes y huellas dentro de 30 días de haber cumplido su decimosexto cumpleaños.

Copias de las propuestas leyes administrativas pueden ser localizadas en el sitio de la red de CYFD @https://www.newmexicokids.org/ o se pueden obtener en: 1120 Paseo De Peralta, Santa Fe, New México, 30 días antes de la Audiencia Pública.

Aviso de Audiencia Pública de leyes administrativas: La audiencia pública de leyes administrativas será el jueves, 29 de agosto, 2019 a las 10:00 a.m. en 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia de CYFD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado en asistir la audiencia tendrá un una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista o argumentos, sobre las propuestas. Personas con discapacidades que necesiten cualquier forma de asistencia auxiliar para asistir o participar en la audiencia pública deben comunicarse con Debra Gonzales, debra.gonzales@state.nm.us. CYFD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

Aviso de aceptación de comentario público por escrito: Comentarios públicos por escritos, incluso presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados a través de correo electrónico a: CYFD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: "8.16.2 NMAC Public Comment," o por correo de primera clase a Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, o se pueden entregar en mano a: Kimberly Brown. El período de comentarios termina a la conclusión de la audiencia pública del 29 de agosto de 2019.

Proposed Rules/Reglas Propuestas

8.16.2.7 DEFINITIONS:

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F. “Attended” means the physical presence of a staff member or educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Subsection [FFF] UUU. 8.16.2.7 NMAC).

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RR. “Notice of provisional employment” means a written notice issued to a child care center or home applicant indicating the BCU 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.

[RR] SS. “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.

[SS] TT. “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.

[FF] UU. “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.

[UU] VV. “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.

[VV] WW. “Pest” means any living organism declared a pest pursuant to the Pesticide Control Act.
Notice

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

"Philosophy statement" describes how the program's mission will be carried out. It reflects the values, beliefs, and convictions of the program about how 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.

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

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

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

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

"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.

"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.

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

"Requirements" means the criteria and regulations developed by the department in 8.16.2 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.

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

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

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

"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.

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

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

"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.

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

"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.

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

"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.

"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.

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

"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.

"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.

"Toddler" means a child age 12 months to 24 months.

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

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

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

"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.

"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.
8.16.2.19 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 children, youth, and families department pursuant to 8.8.3 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status. [A request for a background check must be submitted prior to a staff member’s employment[1], a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

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 8.8.3.11 NMAC.

8.16.2.21 LICENSURE REQUIREMENTS FOR CENTERS:

A. LICENSING REQUIREMENTS:

***

(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 8.8.3 NMAC must be met prior to the issuance of an initial license. [A request for a background check must be submitted prior to a staff member’s employment[1], a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

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C. POLICY AND PROCEDURES: All facilities using these regulations must have written policies and procedures covering 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 ensuring that a registered sex offender does not have access to the facility where children are present;

(3+) (4) 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+) (5) policies and procedures for the handling of medications;

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

(6+) (7) policies and procedures for actions to be taken in case a child is found missing from the center;

(6+) (8) policies and procedures for the handling of children who are ill; and

(9) (9) 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 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

D. FAMILY HANDBOOK: All facilities using these regulations must have a parent handbook which includes 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;

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

164.64.110.134/nmac/frm/register/xxx/CYFDnotice2_oxo14.html
(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; [and]

(m) policies and procedures ensuring that a registered sex offender does not have access to the home where children are present; and

(n) guidance policy

E. CHILDREN'S RECORDS: A center will maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records will be kept at the center for 12 months after the child's last day of attendance. Records will 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[.]. The director must check the persons authorized to pick up the child[ren], to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child's file;

F. PERSONNEL RECORDS:

(1) A licensee will keep a complete file 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. Records will 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 background check is in process then documentation of the notice of provisional employment showing that it is in process, [such as a submission receipt, shall] must be placed in file. A background check must be conducted at least once every five years on all required individuals;

8.16.2.31 LICENSURE REQUIREMENTS FOR HOMES:

A. LICENSING REQUIREMENTS;

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(3) BACKGROUND CHECK: In addition to the basic requirements at 8.16.2.19 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 (8.8.3 NMAC), regulations, 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, 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 8.8.3 NMAC within 30 days after their sixteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. A request for a background check must be submitted 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 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

8.16.2.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

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C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following:

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(2) POLICIES AND PROCEDURES:

(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; and
(m) policies and procedures ensuring that a registered sex offender does not have access to the home where children are present; and

[(m6)(n)] guidance policy.

D. CHILDREN’S RECORDS: A home will 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 will 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 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.[s] The licensee must check the persons authorized to pick up the children, to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file.

E. PERSONNEL RECORDS: A home will 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.

8.16.2.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. LICENSING REQUIREMENTS:

***

(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 (8.8.3 NMAC), regulations, 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, 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 8.8.3 NMAC must be met prior to the issuance of an initial license. [A request for a background check must be submitted prior] 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 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

8.16.2.41 ADMINISTRATIVE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

164.64.110.134/nmac/nmregister/xxx/CYFDnotice2_2014.html

6/7
C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes 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;
(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
(f) daily schedule;
(g) a statement supportive of family involvement that includes an open door policy to the classroom;
(h) appropriate dress for children, including request for extra change of clothes;
(i) celebrating holidays, birthdays and parties; and
(j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

(2) POLICIES AND PROCEDURES:
(a) enrollment procedures;
(b) disenrollment procedures;
(c) expulsion procedures;
(d) fee payment procedures, including penalties for tardiness;
(e) notification of absence;
(f) fee credits, if any (e.g., for vacations, absences, etc.);
(g) field trip policies;
(h) health policies (program’s policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
(i) emergency procedures and safety policies;
(j) snow days and school closure;
(k) confidentiality policy;
(l) child abuse/neglect reporting procedure;
(m) policies and procedures ensuring that a registered sex offender does not have access to the facility where children are present;
(n) guidance policy; and
(o) emergency procedures, safety policies, and disaster preparedness plan.

D. CHILDREN’S RECORDS: A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will 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 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[1]. The director must check the persons authorized to pick up the child(ren) to include parents and guardians, through the New Mexico Department of Public Safety Sex Offender Registry and the United States Department of Justice Sex Offender Registry and keep this documentation in the child’s file.

E. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children. A program will keep the file for one year after the staff member’s last day of employment. Unless otherwise indicated, a licensee may keep the items listed below in a central location. Records will contain at least the following:
(a) name, address and telephone number;
(b) position;
(e) 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;
NOTICES OF RULEMAKING, ISSUE 14

JULY 30, 2019

Children, Youth and Families Department

Notice of Rulemaking and Continuing Public Rule Hearing (/nmac/nmregister
/xxx/CYFDearly_Notice_xxx14.html) pdf version (/nmac/nmregister
/xxx/CYFDearly_Notice_xxx14.pdf)

Notice of Rulemaking and Public Rule Hearing (/nmac/nmregister
/xxx/CYFDnotice1_xxx14.html) pdf version (/nmac/nmregister
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Notice of Rulemaking and Public Rule Hearing (/nmac/nmregister
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Notice of Rulemaking and Public Rule Hearing (/nmac/nmregister
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/xxx/CYFDnotice3_xxx14.pdf)

Superintendent of Insurance, Office of

pdf version (/nmac/nmregister/xxx/OSInotice_xxx14.pdf)

Water Quality Control Commission

Notice of Public Hearing to Consider Proposed Amendments to 20.6.4 NMAC - Standard for
Interstate and Intrastate Surface Waters - San Isidro Arroyo and Tributaries (/nmac/nmregister
Public hearing comments and other material received
August 29, 2019
NM CYFD Hearing for 8.8.3, 8.16.2 and 8.17.2 NMAC

Exhibit 2
Public Hearing on **August 29, 2019, at 10:00 a.m.** – in Apodaca Hall (second floor) at the Public Employees Retirement Association (PERA) Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The purpose of the formal public hearing is to receive public comments regarding changes to regulation 8.8.3 NMAC Children, Youth and Families General Provisions Governing Background Checks and Employment History Verification; 8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs; and 8.17.2 NMAC Non-Licensed Child Care Requirements Governing Registration of Non-Licensed Family Child Care Homes.

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SIGN-IN SHEET
PUBLIC HEARING
CHILDREN, YOUTH AND FAMILIES DEPARTMENT
EARLY CHILDHOOD SERVICES
CHILD CARE SERVICES BUREAU

Public Hearing on **August 29, 2019, at 10:00 a.m.** - in Apodaca Hall (second floor) at the Public Employees Retirement Association (PERA) Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87502. The purpose of the formal public hearing is to receive public comments regarding changes to regulation 8.8.3 NMAC Children, Youth and Families General Provisions Governing Background Checks and Employment History Verification; 8.16.2 NMAC Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs; and 8.17.2 NMAC Non-Licensed Child Care Requirements Governing Registration of Non-Licensed Family Child Care Homes.

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BEFORE
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Sarah Dinus -
Seperate Pg. for to speak:
Name & Organization
Full text of the final adopted rule and the concise explanatory statement filed with the state records administrator.
NMAC
Transmittal Form

Volume: XXX Issue: 18 Publication date: 9/24/2019 Number of pages: 18

Issuing agency name and address:
Children, Youth and Families Department

Contact person's name: Debra Gonzales
Phone number: (505) 231-5820
E-mail address: Debra.Gonzales@state.nm.us

Type of rule action:
New ☐ Amendment ☑ Repeal ☐ Emergency ☐ Renumber ☐

Title number: 8 Title name: SOCIAL SERVICES
Chapter number: 16 Chapter name: CHILD CARE LICENSING
Part number: 2 Part name: Child Care Centers, Out of School Time Programs, Family Child Care Homes, and other Early Care and Education Programs

Amendment description (If filing an amendment):
Amending eight sections

Amendment's NMAC citation (If filing an amendment):
Sections 7, 19, 21, 22, 31, 32, 40, and 41 of 8.16.2 NMAC

Specific statutory or other authority authorizing rulemaking:
Section 9-2A-7 NMSA 1978:

Notice date(s):
July 30, 2019

Hearing date(s):
August 29, 2019

Rule adoption date:
September 12, 2019

Rule effective date:
October 1, 2019
Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

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

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:
The purpose of the rules is to amend the background check requirements to clarify that abuse and neglect screens in each state where the applicant resided within the last five years will only be conducted for applicants applying pursuant to 8.16.2 NMAC and 8.17.2 NMAC. In addition, language is added to incorporate a two-step clearance process for applicants applying pursuant to 8.16.2 NMAC and 8.17.2 NMAC. A notice of provisional employment or background check eligibility will be required prior to commencing employment and will include a timeline for issuance of the notice. These amendments are to comply with federal requirements. Additional minor changes will be made to clarify existing language within 8.16.2 NMAC.

Reasons for any change between the published proposed rule and the final rule:
Based on public comment, the Children, Youth and Families Department has taken out of the proposed rule for 8.16.2 NMAC, requiring the providers to check persons authorized to pick up children, to include parents and guardians, through the NM Department of Public Safety Sex Offender Registry and United States Department of Justice Sex Offender Register. This includes taking out requiring policies and procedures ensuring that a registered sex offender does not have access to the facility/home where children are present. There are other provisions outlined in the regulation that adequately provide safeguards to children in care, if providers are in compliance with such regulations.

Substantive comments were accepted.

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

Name: Brian Blalock
Title: Secretary
Signature: (BLACK ink only) 

Check if authority has been delegated 

Date signed: 09/12/19

8/12/2019
This is an amendment to 8.16.2 NMAC Sections 7, 19, 21, 22, 31, 32, 40, and 41 effective October 1, 2019. Section 7 has been renumbered pursuant to style and format recommendation from SRCA, Administrative Law Division.

8.16.2.7 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) "AIM HIGH" is a voluntary quality child care improvement program that is no longer open to new registered or licensed child care programs. Recognition of AIM HIGH will terminate on December 31, 2017.

(5) "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).

(6) "Attended" means the physical presence of a staff member or educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Paragraph 12 of Subsection S of 8.16.2.7 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) "Child" means a person who is under the chronological age of 18 years.

(3) "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.

(4) "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.

(5) "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.

(6) "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.

(7) "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.

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

(9) "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.

(10) "Core hours" means the daily hours of operation of the child care facility.
(11) "Corrective action plan" means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.
(12) "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) "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) "Director" means the person in charge of the day-to-day operation and program of a child care center.
(4) "Disinfect" means to destroy or inactivate most germs 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) "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) "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.
(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 Paragraphs (1) through (3) of this subsection.

I. **Terms beginning with the letter “T”: “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 CYFD 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 - licensing section of the early childhood services division of the New Mexico children, youth and families department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.
M. **Terms beginning with the letter “M”: “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 CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.
      (a) The following are the only national accrediting bodies that are approved by CYFD:
      (i) the association of Christian schools international (ACSI);
      (ii) the council on accreditation (COA) for early childhood education and
      after school programs;
      (iii) the international Christian accrediting association (ICAA);
      (iv) the national accreditation commission for early care and education programs (NAC);
      (v) the national association for the education of young children (NAEYC)
      academy for early childhood program accreditation;
      (vi) the national association of family child care (NAFCC); or
      (vii) the national early childhood program accreditation (NECPA).
   2. Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.
   3. “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.
   4. “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.
   5. “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.
   6. “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”:**

8.16.2 NMAC
“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.

“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) “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.
(2) “Pesticide” means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
(3) “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.
(4) “Policy” is a written directive that guides decision-making. Policies form the basis for authoritative action.
(5) “Premises” means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.
(6) “Procedure” is a series of steps to be followed, usually in a specific order, to implement policies.
(7) “Professional development” is an on-going plan for continued professional development for each educator, including the director.
(8) “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.
(9) “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.

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 children, youth and families department in 8.16.2 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": [RESERVED]

(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.

[8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 10/1/16, A, 10/01/19]

8.16.2.19 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 children, youth and families department pursuant to 8.8.3 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status. [A request for a background check must be submitted prior to the staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.8.3 NMAC.]

[8.16.2.19 NMAC - Rp 8.16.2.19 NMAC, 10/1/16, A, 10/01/19]

8.16.2.21 LICENSURE REQUIREMENTS FOR CENTERS:

A. LICENSURE 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) 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 8.8.3 NMAC must be met prior to the issuance of an initial license. [A request for a background check must be submitted 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 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(3) ZONING, BUILDING AND OTHER APPROVALS: An applicant will have: current written finalized zoning approval from the appropriate city, county or state authority; current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority; current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; current written approval from the New Mexico environment department or other environmental health authority for:

(a) a kitchen, if meals are prepared on site and served in the center;
(b) private water supply, if applicable;
(c) private waste or sewage disposal, if applicable; and
(d) 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 will 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 will 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, will 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) 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.
The center will 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 will 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 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 will notify parents or guardians in writing of any incident, including notifiable illnesses, that have threatened the health or safety of children in the center. Incidents include, but are not limited to those listed in Paragraph (1) of Subsection C of 8.16.2.21 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.

[8.16.2.21 NMAC - Rp, 8.16.2.21 NMAC, 10/1/16, A, 10/01/19]

8.16.2.22 ADMINISTRATIVE REQUIREMENTS FOR CENTERS:

A. ADMINISTRATION RECORDS: A licensee will 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 those regulations must have written policies and procedures covering 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 missing from the center;

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

(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 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

D. FAMILY HANDBOOK: All facilities using these regulations must have a parent handbook which includes 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;

(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; and

(m) guidance policy.

E. CHILDREN’S RECORDS: A center will maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records will be kept at the center for 12 months after the child’s last day of attendance. Records will 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;
(e) 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 or homeless children and youth;

(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;

(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 destination, date and time of fieldtrip and expected return time from fieldtrip;

(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 initiated 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 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 will keep a complete file 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. Records will 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 background check is in process then documentation of the notice of provisional employment showing that it is in process, [such as a submission receipt, shall] must be placed in file. A background check must be conducted at least once every five years 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 8.8.3 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;
(m) administrative actions or reprimands;
(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 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 include the time the workers arrived at and left work and include breaks and lunch.

G. PERSONNEL HANDBOOK: The center will give each employee a personnel handbook that covers all matters relating to employment and includes 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. confidentially statement; and
16. a plan for retention of qualified staff.

[8.16.2.22 NMAC - Rp, 8.16.2.22 NMAC, 10/1/16, A, 10/01/19]

8.16.2.31 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 8.16.2.19 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 (8.8.3 NMAC), regulations, 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, 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 8.8.3 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license. [A request for a background check must be submitted prior] 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 8.8.3.
NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(4) ZONING AND OTHER APPROVALS: An applicant will 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: 1) Private water supply, if applicable; 2) Private waste or sewage disposal, if applicable; and 3) 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 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.

(6) The home will have an outdoor play area, which must be fenced in.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will 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 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. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.31 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.

8.16.2.31 NMAC - Rp, 8.16.2.31 NMAC, 10/1/16, A, 10/01/19

8.16.2.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

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

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

(2) the current child care regulations;

(3) the guidance policy;

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

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

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

(1) mission statement;

(2) philosophy statement; and

(3) curriculum statement.

C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes 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 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:

(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; and
(m) guidance policy.

D. CHILDREN'S RECORDS: A home will 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 will 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 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 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 or homeless children and youth;
   (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 destination, date and time of fieldtrip and expected return time from fieldtrip;
   (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 initiated 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 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 will 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 8.8.3 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.

F. PERSONNEL HANDBOOK: The educator will give each non-resident employee a personnel handbook that covers all matters relating to employment and includes 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) confidentially statement; and
(14) plan for retention of qualified staff.

[8.16.2.32 NMAC - Rp, 8.16.2.32 NMAC, 10/1/16, A, 10/01/19]

8.16.2.40 LICENSURE REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

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 program will 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 (8.8.3 NMAC), regulations, 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, 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 8.8.3 NMAC must be met prior to the issuance of an initial license. [A request for a background check must be submitted 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 8.8.3 NMAC. A background check must be conducted in accordance with 8.8.3 NMAC at least once every five years on all required individuals.

(4) ZONING, BUILDING AND OTHER APPROVALS: An applicant will 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 will be provided to the licensing authority before licensure. Otherwise, an applicant will 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 will 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 will 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.

(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 will be posted in an area of the room that is readily visible to parents, staff members and visitors.

C. INCIDENT REPORTING REQUIREMENTS:
(1) The licensee shall report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:
(a) a lost or missing 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 will 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 8.16.2.40 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.
[8.16.2.40 NMAC - Rp, 8.16.2.40 NMAC, 10/1/16, A, 10/01/19]

8.16.2.41 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, 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. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes 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;
      (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
      (f) daily schedule;
      (g) a statement supportive of family involvement that includes an open door policy to the classroom;
      (h) appropriate dress for children, including request for extra change of clothes;
      (i) celebrating holidays, birthdays and parties; and
      (j) disclosure to parents that the licensee does not have liability or accident insurance coverage.

   (2) POLICIES AND PROCEDURES:
      (a) enrollment procedures;
      (b) disenrollment procedures;
      (c) expulsion procedures;
      (d) fee payment procedures, including penalties for tardiness;
      (e) notification of absence;
      (f) fee credits, if any (e.g. for vacations, absences, etc.);
      (g) field trip policies;
      (h) health policies (program’s policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
      (i) emergency procedures and safety policies;
      (j) snow days and school closure;
      (k) confidentiality policy;
      (l) child abuse/neglect reporting procedure;
      (m) guidance policy; and
      (n) emergency procedures, safety policies, and disaster preparedness plan.
D. CHILDREN’S RECORDS: A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will 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 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, blues 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 destination, date and time of fieldtrip and expected return time from fieldtrip;
   (g) a record of the time the child arrived and left the program and dates of attendance initiated by a parent, guardian, or person authorized to pick up the child; and
   (h) an enrollment agreement; this form will be signed by a parent or guardian with an outline of the services and the costs; these forms may 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 keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children. A program will keep the file for one year after the staff member’s last day of employment. Unless otherwise indicated, a licensee may keep the items listed below in a central location. Records will 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;
   (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 8.8.3 NMAC;
   (g) documentation of 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 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 will 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.

F. PERSONNEL HANDBOOK: The educator will give each employee a personnel handbook that covers all matters relating to employment and includes 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) 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 8.16.2.14 NMAC). The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans; and

(16) 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. 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.

[8.16.2.41 NMAC - Rp, 8.16.2.41 NMAC, 10/1/16, A, 10/01/19]
NOTIFICATION OF MINOR, NON-SUBSTANTIVE CORRECTION

September 12, 2019

To: Brian Blalock, Secretary, Children, Youth and Families Department
c/o Debra Gonzales, Policy Compliance and Quality Assurance Manager

From: Matthew Ortiz, Administrative Law Division by designation for the State Records Administrator

Re: 8.8.3 NMAC, 8.15.2 NMAC, 8.16.2 NMAC and 8.17.2 NMAC, filed on September 12, 2019, to be published on September 24, 2019 and effective on October 1, 2019

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, 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:

For all official rules and agency copies of all above rules, the file stamp incorrectly identified time of filing as in the A.M., when in fact they were filed in the P.M. (this afternoon). There was a power outage earlier in the week, which must have affected the file stamp machine. The filing machine has been corrected.

A copy of this Notification will be filed with the official version of each of the above rules.