

**TITLE 8            SOCIAL SERVICES**  
**CHAPTER 10      CHILD PROTECTIVE SERVICES**  
**PART 8            PERMANENCY PLANNING**

**8.10.8.1            ISSUING AGENCY: Children, Youth and Families Department, Protective Services Division.**

[8.10.8.1 NMAC - Rp, 8.10.8.1 NMAC, 9/29/2015]

**8.10.8.2            SCOPE: Protective services employees and the general public.**

[8.10.8.2 NMAC - Rp, 8.10.8.2 NMAC, 9/29/2015]

**8.10.8.3            STATUTORY AUTHORITY: New Mexico Children’s Code, Section 32A-1-1, NMSA 1978 (Repl. 2004).**

[8.10.8.3 NMAC - Rp, 8.10.8.3 NMAC, 9/29/2015]

**8.10.8.4            DURATION: Permanent.**

[8.10.8.4 NMAC - Rp, 8.10.8.4 NMAC, 9/29/2015]

**8.10.8.5            EFFECTIVE DATE: September 29, 2015, unless a later date is cited at the end of a section.**

[8.10.8.5 NMAC - Rp, 8.10.8.5 NMAC, 9/29/2015]

**8.10.8.6            OBJECTIVE: To establish parameters for the provision of permanency planning services to children in the custody of CYFD.**

[8.10.8.6 NMAC - Rp, 8.10.8.6 NMAC, 9/29/2015]

**8.10.8.7            DEFINITIONS:**

**A.            “Caregiver”** is an adult, parent, guardian or custodian in the household who provides care and supervision for the child.

**B.            “Case plan”** means a plan created jointly with clients for a child, youth, parent, guardian, custodian or respondent that identifies the appropriate services based on the needs identified to achieve the child’s or youth’s permanency plan and to promote the safety and well-being of each child or youth.

**C.            “Close proximity”** means a location physically close enough to facilitate family visiting, consistent with the best interest and identified needs of the child.

**D.            “Community home”** means a home which operates 24 hours a day and provides full time care, supervision and support to no more than 16 children in a single residential building, and which meets the definition of “group home” as outlined in the Human Services Department Act, Section 9-8-13 NMSA 1978.

**E.            “Complicating factors”** are conditions that make it difficult for a caregiver to create safety for their child, but do not by themselves constitute imminent danger. Refer to the structure decision making manual to review the list of complicating factors protective services workers use in the New Mexico child safety and risk assessment tool.

**F.            “CYFD”** refers to the New Mexico children, youth and families department.

**G.            “Danger indicators”** are conditions resulting in a child being exposed to harm or injury and was placed at risk of harm or injury that could occur immediately. Refer to the structured decision making manual to review the list of ten identified factors protective services workers use in the New Mexico child safety and risk assessment tool.

**H.            “Early and periodic screening, diagnosis and treatment (EPSDT),”** is a medicaid program designed to provide comprehensive and preventive health care services to medicaid-eligible children under age 21.

**I.            “Family”** are caregivers, adults fulfilling the caregiver role, guardians, and others related by ancestry, adoption, or marriage, or as defined by the family or child.

**J.            “Fictive kin”** means a person not related by birth, adoption or marriage with whom the child has an emotionally significant relationship.

**K.            “Foster child” or “child in foster care”** as referred to as “child” herein, means a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other

than the children, youth and families department protective services division, the child is not a foster child of protective services division.

**L. “Household”** are all persons who have significant in-home contact with the child, including those who have a familial or intimate relationship with any person in the home. This may include persons who have an intimate relationship with a caregiver in the household (partner/significant other) but may not physically live in the home, or a relative whom the caregiver allows authority in parenting and caregiving decisions.

**M. “Indian child”** means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

**N. “Maintenance payments”** are payments designed to reimburse resource families for the cost of food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, and reasonable travel required to address the child’s needs. Maintenance payments are not considered income.

**O. “New Mexico Children’s Code”** refers to Section 32A-1-1 NMSA 1978.

**P. “Needs”** may refer to services and supports to address safety and the physical and emotional well-being of the child, parent, guardian, or resource parent. Needs may also include activities that promote the normalcy of the child.

**Q. “Parent”** as defined in the Children’s Code, Subsection (Q) of Section 32A-1-4 NMSA 1978, includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child.

**R. “Permanency planning”** is the systematic process of carrying out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or legal guardians and the opportunity to establish healthy and positive lifetime relationships that are in the best interest of the child or youth.

**S. “Protective services division (PSD)”** refers to the division within the children, youth and families department, and is the state’s designated child welfare agency.

**T. “Provider”** refers to a person or agency providing services to a PSD client.

**U. “PSD custody”** means custody of children as a result of an action filed pursuant to the New Mexico Children’s Code, 32A-4-1 NMSA 1978 or 32A-3B-1 NMSA 1978.

**V. “Relative”** means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity or affinity.

**W. “Resource family”** refers to a person or entity licensed by CYFD, licensed by another state’s child welfare agency, or a licensed child placement agency to provide foster care services including respite, non-relative, relative, or treatment foster care. Resource family includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA.

**X. “Resource family license”** is the document which bears the name or names and address or addresses of those who are resource parents for the protective services division or licensed child placement agency. The license displays the ages and number of children in foster care the licensees are authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

**Y. “Resource parent”** is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for children in foster care. Resource parent includes foster parents as defined by Subsection I of Section 32A-1-4 NMSA and pre-adoptive parents as defined by Subsection U of Section 32A-1-4 NMSA.

**Z. “Safe”** is a New Mexico child safety tool decision when no danger indicators have been identified.

**AA. “Safe with a plan”** is a New Mexico child safety assessment tool decision when one or more danger indicators are present, however, the child can safely remain in the home with a safety plan.

**BB. “Safety decision”** is based on the presence of danger indicators and safety planning capacities a family possesses that may that offset, mitigate or control the identified danger indicators. Using the New Mexico child safety assessment tool, a child may be assessed to be safe, safe with a plan or unsafe.

**CC. “Safety plan”** is a detailed strategy that outlines immediate action steps the family and their network will take to help keep the child safe from the identified danger indicators.

**DD. “Safety planning capacities”** are those assets possessed by the caregiver that reduce or control the identified danger indicators. Refer to the structured decision making manual to review the list of four identified safety planning capacities protective services workers use in the New Mexico child safety and risk assessment tool.

**EE.** “Sex or human trafficking” consists of a child or youth who may have experienced being recruited, solicited, enticed, harbored, exploited or transported by another person whose intent is to exploit or use force, fraud, manipulation or coercion to subject the child or youth into labor, services or sexual activity.

**FF.** “Sibling” one of two or more children or offspring having one or both parents in common by birth or adoption.

**GG.** “Treatment foster care home” is a resource parent licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

**HH.** “Trial home visit” is the period of time, not to exceed six months, in which a child with a plan of reunification resides with their parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

**II.** “Tribally licensed home” means a resource family home licensed or approved by an Indian tribe or pueblo.

**JJ.** “Unsafe” is a New Mexico child safety assessment tool decision when one or more danger indicators are present and a safety plan cannot be created.

[8.10.8.7 NMAC - Rp, 8.10.8.7 NMAC, 9/29/2015; A, 5/4/2021]

#### **8.10.8.8 PURPOSE OF PERMANENCY PLANNING SERVICES:**

**A.** The purpose of permanency planning services is to systematically carry out, within a time-limited period, a set of goal-directed activities designed to help children live in families that offer the continuity of relationships with nurturing parents or guardians and the opportunity to establish healthy and positive lifetime relationships.

**B.** PSD provides permanency planning services to children or youth who come into PSD custody:

- (1) through an abuse or neglect petition, voluntary placement outside of the home, or a family in need of court ordered services (FINCOS) case;
- (2) as an undocumented immigrant child or youth through an abuse or neglect petition;
- (3) as an unaccompanied alien child or youth as provided for and defined by the department of health and human services, administration for children and families, office of refugee resettlement, or division of unaccompanied children services;

(4) as an infant left at a hospital as outlined in the Safe Haven for Infants Act, 24-22-1 NMSA 1978; and

(5) as children returned to the custody of the parent, guardian or custodian subject to any condition or limitations as the court may prescribe including protective supervision of the child by PSD.

[8.10.8.8 NMAC - Rp, 8.10.8.8 NMAC, 9/29/2015; A, 5/4/2021]

#### **8.10.8.9 SAFETY ASSESSMENT IN PERMANENCY PLANNING:**

**A.** The overriding concern throughout the life of a permanency planning case shall be the safety of the child. PSD shall be responsible for the continued assessment of the child’s safety until case closure and shall determine:

(1) whether or not the responsibilities for care and protection of the child have been met by the parent, guardian or custodian; and

(2) if the child can safely return home to the parent, guardian or custodian.

**B.** PSD shall be responsible for assessing the child’s safety during visitation with the parent, guardian, custodian or other family members, including the child’s current living situation.

[8.10.8.9 NMAC - N, 9/29/2015]

**8.10.8.10 OUT OF HOME PLACEMENT:** When a child cannot safely remain in their home, PSD shall pursue legal custody of the child. When the court has determined it is contrary to the welfare of the child to remain in their home, PSD is awarded legal custody and the child shall be placed with a licensed resource family to ensure the child’s safety and well-being. The placement of a child into foster care shall not be delayed or denied on the basis of the race; ethnicity; creed; color; age; religion; sex or gender; gender identity; gender expression; sexual orientation; marital status or partnership; familial or parental status; pregnancy and breastfeeding or nursing; disability; genetic information; intersex traits; medical condition, including HIV/AIDS; citizenship or immigration status; national origin; tribal affiliation; ancestry; language; political affiliation; military or veteran status; status as a survivor of domestic violence; sexual assault, or stalking; or any other factor unrelated to suitability to parent.

**A. Entry into foster care:** The child is considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(2) the date that is 60 days after the date on which the child is removed from the home.

**B. Relative and relative notification:**

(1) PSD shall give preference to relatives when making placement decisions. PSD considers fictive kin for placement if appropriate for best interest placement consideration.

(2) Within 30 days of the child's removal, PSD shall exercise due diligence to identify and notify the following relatives: all adult grandparents, all parents with legal custody of a sibling of the child, and other adult relatives of a child.

(3) When the court adopts a permanency plan other than reunification, and the child is not placed with a relative, PSD shall continue to make reasonable efforts to identify and locate appropriate and willing relatives to become licensed resource parents.

**C. Placement types:** When the court places a child in the legal custody of PSD, PSD shall be responsible for placing that child with a licensed resource family, which may include, but is not limited to:

(1) relative and non-relative foster care;

(2) treatment foster care;

(3) a licensed facility such as residential treatment center, group home, or emergency shelter;

or;

(4) a licensed community home.

**D. Indian child placement:** PSD shall make active efforts to place an Indian child in accordance with the placement preferences of the Indian Child Welfare Act (ICWA.), which may include placement in tribally licensed homes.

**E. Least restrictive environment and proximity of placement:**

(1) Children are placed in the least restrictive setting consistent with the assessment of their individual needs.

(2) PSD shall make efforts to place children in close proximity to their home of origin; PSD shall document any reason as to why a child cannot be safely placed in close proximity to their home of origin.

**F. Educational continuity:** At the initial placement and any placement change thereafter, PSD shall develop plan for transportation for the child to remain in the same education setting in which the child was enrolled at the time of placement, if reasonable in the child's best interest.

**G. Level of care assessment:** PSD shall determine level of care within 30 days of entry into custody and every six months thereafter at a minimum. In addition, a determination will be made regarding the appropriateness of applying for social security insurance (SSI) or the developmentally disabled (DD) waiver.

**H. Change of placement:**

(1) When a child's placement is changed, including a return to the child's home, PSD shall provide written notice to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's resource parents and the court. This notice is required 10 days prior to the placement change, unless an emergency situation requires moving the child prior to the notice. When prior notice is not possible, written notice must be provided to the GAL or attorney, all parties, the CASA, the resource parents, and the court within three days after the placement change has occurred.

(2) Written notice is not required for removal of a child from respite. In respite situations, PSD shall provide verbal notification of the removal to the child's guardian ad litem or attorney.

(3) When a child, through their GAL or attorney, files a motion and requests a court hearing to contest the placement change, PSD shall not change the child's placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

**I. Sibling continuity:**

(1) PSD shall make reasonable efforts to place siblings together when possible.

(2) PSD shall document reasons for not placing siblings together, such as when there are safety concerns or placement together is not a viable option.

(3) PSD shall facilitate visitation, as appropriate, between siblings not placed together or siblings who are not placed in PSD custody, including any adult siblings.

[8.10.8.10 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.11 VOLUNTARY PLACEMENTS:**

**A.** No parent may relinquish parental rights to PSD without PSD's consent.

**B.** When it has been determined to be in the best interest of the child parent, guardian or custodian, PSD may accept legal custody of a child placed voluntarily through a written agreement.

**C.** No child shall remain in voluntary placement for longer than 180 consecutive days or for more than 180 days in any calendar year; provided that a child may remain in voluntary placement up to an additional 180 consecutive days upon order of the court after the filing of a petition by PSD for extension of voluntary placement, a hearing and a finding that additional voluntary placement is in the best interests of the child.

**D.** In no event shall a child remain in voluntary placement for a period in excess of 365 days in any two-year period.

**E.** The PSD director or designee approves all voluntary placement agreements before accepting a voluntary placement.

**F.** If the parent, guardian, or custodian requests PSD to return the child prior to the termination of the voluntary placement agreement, the child is returned within 72 hours of the request unless an abuse or neglect petition is filed concerning that child, and the court enters an order finding abuse or neglect, prior to the expiration of the 72 hours.

**G.** PSD develops a case plan with all families entering into a voluntary placement agreement.  
[8.10.8.11 NMAC - N, 9/29/2015]

**8.10.8.12 THE PERMANENCY PLAN:** The permanency plan reflects the permanency goal within the child's case plan to be achieved by PSD's intervention with the family. Permanency goals include:

**A.** Reunification: The goal of reunification is to safely reunify the child to the home of the parent or legal guardian. Reunification is the preferred goal in all cases unless the court finds that aggravated circumstances exist.

**B.** Adoption: The goal of adoption is to judicially terminate the rights, privileges and duties as between the child and the biological parent, and to judicially establish in another family such rights, privileges and duties as between a child and heir, and the adoptive parent.

**C.** Permanent guardianship: The goal of permanent guardianship is to establish a court-sanctioned arrangement which vests in a guardian all rights and responsibilities of a parent without terminating the rights of the parent as set forth in the Children's Code, Section 32A-4-32 NMSA 1978.

**D.** Placement with a fit and willing relative: The goal of placement with a fit and willing relative is to establish a court sanctioned relationship between the child and the child's relative or fictive kin in order to maintain family or family-like relationships to the extent possible, consistent with the best interests of the child.

**E.** Planned permanent living arrangement: The goal of a planned permanent living arrangement is to establish a court sanctioned arrangement to provide physical and emotional permanency for the child when the court determines this is the most appropriate permanency plan for the child after considering all other permanency plans. Planned permanent living arrangement may only be used for youth over the age of 16.

[8.10.8.12 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.13 CASE PLANNING:**

**A.** As part of the initial case planning process, PSD shall hold an initial assessment planning conference prior to the 10 day custody hearing. An initial assessment plan shall be developed at the assessment planning conference. The initial assessment plan is ordered at the custody hearing and remains in effect until a case plan is ordered at the dispositional hearing.

**B.** PSD shall develop a case plan to address the identified danger indicators and include plan-directed activities for both the child and parent, guardian or custodian to achieve permanency without the need for the PSD intervention.

**C.** At a minimum, the case plan shall be re-assessed prior to any court hearing.

**D.** For youth ages 14 and older, the case plan shall be developed in consultation with the youth and, at the option of the youth, with up to two members of the case planning team who are chosen by the youth and who are not a [resource parent of or a caseworker for, the youth. PSD may reject an individual selected by the youth to be a member of the case planning team at any time if PSD has good cause to believe the individual would not act in the best interest of the youth. An individual shall be selected by the youth to be a member of the youth's case planning team, and may be designated to be the youth's advisor and, as necessary, advocate with respect to the application of the reasonable and prudent parent standard to the youth.

**E.** As part of the youth's case plan, PSD shall provide to the youth the New Mexico foster child and youth bill of rights and the New Mexico foster youth document of responsibilities.

(1) PSD shall provide a document that describes the rights of the child with respect to education, health, visitation, and court participation, the right to be provided with the documents and the right to stay safe and avoid exploitation.

(2) PSD shall obtain a signed acknowledgement that the child has received a copy of those documents and understands those rights and responsibilities; and

(3) PSD shall also provide and adhere to youth the youth grievance process.

**G. Other plans within the case plan:** As part of the case planning process the following plans shall be incorporated into the case plan as appropriate:

(1) **Permanency plan:** The permanency plan reflects the permanency goals to be achieved. Every child's case plan shall have a permanency plan, which may change throughout the life of the case.

(2) **Transition home plan:** A transition home plan shall be submitted to the court prior to or at the initial permanency hearing when the child's plan remains reunification. The plan shall be completed within 90 days of the initial permanency hearing. The plan results in the child being placed with their parent, guardian or custodian on a trial home visit.

(a) As part of the transition home plan, PSD shall set up a trial home visit in which the child resides with their parent, guardian or custodian until it has been determined no safety threats exist to the child and the case can be dismissed. If the trial home visit is unsuccessful, then the child shall be removed from the home of the parent, guardian or custodian and placed in the same or another out of home placement.

(b) A trial home visit normally does not exceed six months in duration.

(c) If a trial home visit exceeds six months in duration, or exceeds a longer time period deemed appropriate by the court, and the child is subsequently returned to foster care, the placement is considered a new placement and procedures must be followed to newly establish title IV-E eligibility.

(4) **Life skills plan:** PSD shall develop a life skills plan, using the life skills assessment, with youth age 14 or older who are in PSD custody. The life skills plan shall identify the activities, tasks, and services needed for the youth to develop the life skills necessary to safely transition into independent living as an adult, regardless of the youth's permanency plan.

(5) **Transition plan:** PSD shall begin developing a transition plan with the youth prior to their seventeenth birthday to identify needs, strengths and goals in the areas of safety, housing, education, employment or income, physical health and mental health, local opportunities for mentors and continuing support services. The plan shall identify activities, responsibilities and timeframes to address specified goals. PSD shall present the transition plan to the court at the first hearing scheduled after the youth's seventeenth birthday. The court shall order the transition plan for the youth. The transition plan approved by the court shall be reviewed at every subsequent review and permanency hearing.

[8.10.8.13 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.14 ADJUDICATION AND DISPOSITION:**

**A.** PSD shall schedule a mandatory pre-adjudicatory meeting prior to the adjudicatory hearing.

**B.** The adjudicatory hearing shall be held within 60 days after the date of service on the respondent.

**C.** Prior to the dispositional hearing, PSD shall prepare a pre-dispositional study and report.

**D.** The dispositional hearing may occur simultaneously with the adjudicatory hearing, but no later than 30 days after the conclusion of the adjudicatory hearing.

**E.** Resource parents, pre-adoptive parents, relatives or fictive kin providing care to the child shall be given notice and an opportunity to be heard at the dispositional hearing.

[8.10.8.14 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.15 INITIAL JUDICIAL REVIEW, FIRST PERMANENCY HEARING AND SUBSEQUENT HEARINGS:**

**A.** The initial judicial review shall be held within 60 days of the dispositional hearing. PSD shall inform the court of the progress made toward the permanency plan.

**B.** The initial permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within 12 months of a child entering foster care, whichever occurs first.

**C.** Prior to the initial permanency hearing, PSD shall attend a mandatory meeting with all other parties to mediate issues attendant to the permanency hearing and to develop a case plan that services in the child's best interest.

**D.** At the initial permanency hearing and subsequent hearings thereafter, PSD shall document the following:

- (1) the efforts made to return the child home;
- (2) the steps PSD has taken to ensure the child's resource family is following the reasonable and prudent parent standard;
- (3) the steps PSD has taken to ensure the child has regular, ongoing opportunities to engage in age and developmentally appropriate activities.

**E.** PSD evaluates the status of each child within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion, and re-evaluates the status every six months thereafter so long as the child remains in custody. The evaluation includes a determination of the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care. The evaluation also projects a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

[8.10.8.15 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.16 TERMINATION OF CUSTODY: PSD's custody of a child shall terminate under the following circumstances:**

- A.** the court dismisses or terminates PSD's custody of a child;
- B.** a voluntary placement agreement expires;
- C.** court ordered custody of the child expires;
- D.** the child reaches the age of 18; or
- E.** a child in PSD's custody marries or joins the armed forces.

[8.10.8.16 NMAC - Rp, 8.10.8.26 NMAC, 9/29/2015]

**8.10.8.17 MEDICAL AND BEHAVIORAL HEALTH:**

**A.** Within the first 30 days of PSD custody, the child shall have a complete physical examination or, if medicaid eligible, an early and periodic screening, diagnostic and treatment services (EPSDT). The child shall receive an annual well-child check and dental and eye exam thereafter.

**B.** In order to support the child through the experience of foster care, in addition to supporting their history of possible trauma, PSD conducts both the crisis assessment tool (CAT) and child and adolescent needs and strengths-trauma (CANS) assessments to better understand the needs of the child and to make appropriate referrals to community providers. Once an abuse and neglect petition has been filed, all children in the case will have a CAT completed by the investigator and filed with the court 24 hours prior to the 10-day hearing. CANS assessments shall be completed by PSD, within 45 days of removal from the home. Children in care shall be reassessed prior to every subsequent court hearing to assess progress in treatment (or within six months, whichever comes first) or to adjust services and supports as results may indicate. CANS shall also be completed whenever any change in behavior is identified, and also after any significant emotional event. CANS shall also be updated upon discharge from CYFD custody.

**C.** While a child is in the custody of PSD and until parental rights have been terminated, the child's parent, guardian or custodian shall continue to be responsible for the child's medical needs. If support by the parent, guardian or custodian is not available, PSD shall seek to obtain other medical coverage or, if all other possibilities are exhausted, to qualify the child for medicaid through supplemental security income (SSI).

**D.** If available, PSD shall obtain and keep current the child's immunization records. In any case, where the parent, guardian, or custodian objects to immunizing the child, PSD shall inform the parent, guardian, or legal custodian that they may obtain a waiver from the department of health objecting to the immunizations.

**E.** PSD shall arrange for behavioral health services for children, parents, guardians or custodians to address identified needs and to move the case planning process along in order for the child to achieve permanency.

**F.** The use of psychotropic medication is one of several interventions used to address the emotional and behavioral needs of children in PSD custody and is used in concert with other interventions in accordance with the treatment plan. Children are to be free from unnecessary or excessive medication as expressed in the Children's Code 32A-6A-12A (12). PSD shall adhere to internal procedures regarding psychotropic medication (permanency planning procedure 17—mental and behavioral health).

(1) PSD shall ensure each child in PSD custody is not inappropriately medicated while ensuring timely access to medically necessary medication and treatment. Psychotropic medication shall only be prescribed by a person licensed by the state of New Mexico to prescribe psychotropic medications.

(2) PSD must first approve any medication, including medication changes, by consulting

with the prescribing provider, parent, guardian or custodian, and their supervisor within seven calendar days of the medication recommendation. Psychotropic medication shall not be prescribed for a child in care unless the prescribed use of the psychotropic medication is for a medically accepted indication that is age-appropriate and its proposed beneficial properties outweigh any risks identified in peer-reviewed medical literature relating to the children's use of the psychotropic medication. Psychosocial interventions shall be the first intervention utilized prior to exploring psychotropic medication. PSD shall inquire about the most appropriate use of medication, dosage and ongoing monitoring. PSD must monitor medication success and impacts on the child. PSD may seek a second opinion from a licensed prescriber if there are concerns regarding the recommended medication.

(3) Depending on the age of the child, type of medication and the number of medications prescribed, PSD shall request a higher level of monitoring and consultation with a PSD staff person or contracted provider licensed by the state of New Mexico to prescribe psychotropic medications to review the child's medications. This secondary review is to ensure medication is not misused as a primary response to trauma-related behaviors and to evaluate the effectiveness of the medication on the child's wellbeing and quality of life. The review in consultation with the PSD contracted provider licensed by the state of New Mexico will include a review of the polypharmacy, dosage and frequency for all prescribed medication, adverse side-effects and the use of any atypical antipsychotics.

(4) PSD shall document medication prescribed to the child in the case management system and in every court report. PSD must report any medications or changes in medications, impact and side effects to the court.

(5) PSD shall monitor any trends in psychotropic medications in relation to children in PSD care and appropriate PSD staff will provide training, consultation or other response depending on the trends identified.

(6) PSD shall be responsible for regularly assessing the impact the medication has on the child. PSD shall participate in medication management meetings with the child's treatment team. The meetings may occur with the prescribing physician at least monthly if the child is in treatment foster care or a residential treatment center or as recommended by the prescriber.

(7) CYFD shall consult with other state agencies to provide CYFD with information, training, data and support to monitor psychotropic medication trends and outliers.  
[8.10.8.17 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.18 EDUCATION:**

A. PSD shall develop a plan for transportation with the resource family and child, if age appropriate, in order for the child to remain in the same education setting in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

B. PSD shall work with the child's school to identify the child's educational needs and the need for an individualized education plan (IEP) and if appropriate, assist in the development of the IEP. For children with an IEP, the PSD worker shall assist the child and the child's school in implementing the IEP.

C. For children in eighth grade and older, PSD shall request and review the child's next step plan and actively participate in updating the plan each year with the child to prepare post-secondary educational goals.

D. An educational decision maker shall be appointed for every child in PSD custody. The educational decision maker shall be named prior to the custody hearing and shall be re-evaluated at every hearing thereafter.

[8.10.8.18 NMAC - N, 9/29/2015; A, 5/4/2021]

#### **8.10.8.19 VISITATION:**

A. Family visits: PSD shall arrange for visitation between the child and their family or fictive kin as appropriate.

B. Sibling visits: PSD shall arrange for and facilitate visitation, as appropriate, between children in PSD custody and their siblings who are either in PSD custody, but not in same out of home placement, or siblings who are not in PSD custody including adult siblings.

C. Worker-child visits: PSD shall visit each child at least monthly in the child's placement to assess the placement for appropriateness in meeting the child's safety, emotional and well-being needs.

D. Worker-parent visits: PSD shall arrange for visits at least monthly with the parent, guardian or custodian to share information about the child and discuss case plan progress.

[8.10.8.19 NMAC - Rp, 8.10.8.22 NMAC, 9/29/2015; 5/4/2021]



**8.10.8.20 OUT-OF-STATE PLACEMENTS OF FOSTER CHILDREN:** PSD shall visit each child in an out-of-state placement in that placement at least every six months. PSD, in accordance with the Interstate Compact for the Placement of Children (ICPC), shall request other receiving state child welfare agencies to visit the child in their placement monthly and provide PSD with reports on those visits.  
[8.10.8.20 NMAC - Rp, 8.10.8.14 NMAC, 9/29/2015; A, 5/4/2021]

**8.10.8.21 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN (ICPC):**  
**A.** PSD may place children in custody in licensed out-of-state placements, and may accept children in the custody of another state for placement in New Mexico in accordance with the Interstate Compact for the Placement of Children (ICPC).  
**B.** CYFD has no authority to license resource families in other states.  
[8.10.8.21 NMAC - Rp, 8.10.8.27 NMAC, 9/29/2015; 5/4/2021]

**8.10.8.22 SPECIAL IMMIGRANT JUVENILE STATUS (SIJS):** If a child is a foreign national child without legal permanent residency in the United States, PSD shall apply to the department of homeland security's (DHS) citizen and immigration services (USCIS) to obtain "special immigrant juvenile status" for the child.  
**A.** In those cases in which a child is a foreign national child without legal permanent residency in the United States, and if the permanency plan does not include reunification with at least one parent and PSD does not recommend that the child be returned to the country of origin, PSD shall determine whether the child may be eligible for SIJS under federal law. Under federal law, in addition to legal requirements of being under court jurisdiction and the court making the necessary judicial determination, a child must be in the United States, unmarried and under the age of 21.  
**B.** If the child is eligible for SIJS, PSD shall move the court for a SIJS order containing a judicial determination that the child is deemed unable to reunify with one or both parents due to abuse, neglect or abandonment, and that it is not in the child's best interest to return to the country of nationality or last habitual residence. PSD's motion shall include a statement of the express wishes of the child, as expressed by the child or the child's guardian ad litem or attorney.  
**C.** If it has been determined that it is in the child's best interest to file a petition for SIJS and an application for adjustment of status, then within 60 days after an entry of the SIJS order, PSD shall file a petition for SIJS and an application for adjustment of status on behalf of the child.  
**D.** The court order for SIJS must be filed and accepted by the court prior to the child turning age 18.  
**E.** The children's court attorney shall request court jurisdiction and set review hearings pending the granting of SIJS. The children's court attorney shall provide judicial review reports for a child for whom the court has granted the SIJS order, and shall advise the court of the status of the petition and application process concerning the child.  
**F.** The court's jurisdiction terminates upon the final decision of the federal authorities, however the court may not retain jurisdiction of the case after the child's twenty-first birthday.  
[8.10.8.22 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.23 CONSULAR NOTIFICATION:**  
**A.** Foreign national children: When PSD is given custody of a foreign national child, that is, a child who is not a citizen of the United States, PSD shall notify that child's foreign national consulate in writing without delay after obtaining custody. When PSD is given custody of a child who has at least one parent who is a foreign national of any country other than Mexico, PSD shall notify the appropriate foreign consulate except in cases in which notification may create a risk to the child's safety or may impede the goal of reunification of the child with their family.  
**B.** Mexican national children: When PSD is given custody of a Mexican national child, that is, a child who is a national of Mexico or has at least one parent who is a national of Mexico, PSD shall notify the Mexican consulate without delay.  
[8.10.8.23 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.24 PREVENTING, IDENTIFYING AND REPORTING SEX AND HUMAN TRAFFICKING AND REPORTING RUNAWAYS:**  
**A.** PSD shall identify, document, and determine appropriate services for children or youth who have disclosed or who may be at risk of being the victim of human trafficking.

**B.** PSD shall immediately, but no later than 24 hours, notify law enforcement of children or youth who PSD has identified as victims of sex or human trafficking.

**C.** PSD shall make reasonable efforts to locate children or youth missing from foster care, including determining the factors that led to the child or youth being absent from foster care. PSD shall also assess the child or youth's experience while absent from foster care, including whether the child or youth is a victim of sex or human trafficking.

**D.** PSD shall report immediately, but no later than 24 hours, after receiving information on missing or abducted children or youth to law enforcement authorities for entry into national crime information center (NCIC) database of the federal bureau of investigation.

**E.** PSD shall report immediately, but no later than 24 hours, after receiving information on missing or abducted children or youth to the national center for missing and exploited children.  
[8.10.8.24 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.25 INCIDENTS INVOLVING CHILDREN IN CUSTODY:**

**A.** Incidents in foster care may refer to a broad spectrum of events which may include, but are not limited to, reports of:

(1) alleged policy or procedures violations by resource parents, including resource parents failure to comply with case plans or safety plan requirements;

(2) alleged violations of the New Mexico foster child and youth bill of rights or the New Mexico foster youth document of responsibilities;

(3) serious illness or accidental injury of a child in foster care;

(4) resource parent reporting concerns related to parent-child or sibling visitation; or

(5) child in care running away.

**B.** Incidents in foster care shall not include reports of alleged abuse or neglect. Reports of alleged abuse or neglect are called in to statewide central intake (SCI) and if warranted, assigned for PSD investigation.  
[8.10.8.25 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.26 TITLE IV-E AND MEDICAID ELIGIBILITY:** PSD shall determine funding eligibility for each child in PSD custody.

[8.10.8.26 NMAC - N, 9/29/2015]

**8.10.8.27 MAINTENANCE PAYMENTS AND INCIDENTALS**

**A.** Resource families are reimbursed for the care provided to children at rates established by the state legislature.

**B.** Requests from resource families for reimbursements for pre-approved purchases must be submitted within 45 days of the expenditure.

**C.** PSD is not liable and shall not reimburse any person for any loss or property damage, real or personal, in excess of \$25,000, that is shown to be caused by a child in PSD custody.

[8.10.8.27 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.28 FINANCIAL RESPONSIBILITY:** Until parental rights have been terminated, the child's parents continue to be financially responsible for the child. PSD establishes a children's maintenance account for children in PSD custody who receive monetary benefits. Resources received on behalf of the child are used to reimburse PSD for the child's care and to meet the needs of the child.

[8.10.8.28 NMAC - Rp, 8.10.8.15 NMAC, 9/29/2015]

**8.10.8.29 COURT APPOINTED SPECIAL ADVOCATE (CASA) AND SUBSTITUTE CARE ADVISORY COUNCIL (SCAC):**

**A.** If the court has appointed a CASA, PSD shall involve and inform the CASA as required by the Children's Code.

**B.** PSD refers each child in custody to the SCAC as required by the New Mexico Children's Code. The SCAC provides the resource parent or relative providing care for the child with timely notice of and an opportunity to be heard before the SCAC. The notice and opportunity to be heard do not include the right to standing as a party in the case.

[8.10.8.29 NMAC - Rp, 8.10.8.25 NMAC, 9/29/2015; A, 5/4/2021]

**8.10.8.30 CHILD PROTECTIVE SERVICES CHILD CARE**

- A.** PSD provides child protective services childcare as one part of a case for children and families receiving services to address child maltreatment safety and risk factors.
- B.** The purpose of protective services childcare is:
  - (1) to enable parents, guardians or custodians to participate in activities which are part of the comprehensive treatment plan;
  - (2) to enable resource parents to maintain employment, obtain job training and attend educational programs while children are in placement in the home; and
  - (3) to provide childcare as crisis intervention for those families who lack other resources, are at risk of child maltreatment, and unable to provide adequate care for their child.
- C.** PSD provides childcare:
  - (1) without regard to income eligibility;
  - (2) depending on the assessment of need for the child and family or resource family; and
  - (3) as appropriate and to maintain stability of a placement.
- D.** PSD arranges for childcare by providers who meet the requirements established by and who are licensed or certified by the New Mexico early childhood education and care department.
- E.** The child’s worker determines an appropriate childcare provider in cooperation with the child’s family or resource family.
- F.** PSD follows the service standards and payment rates for childcare that are established by the New Mexico early childhood education and care department.
- G.** PSD arranges child protective services childcare from any of the following approved provider types:
  - (1) licensed family child care;
  - (2) certified family child care; and
  - (3) licensed childcare center.

[8.10.8.30 NMAC - N, 9/29/2015; A, 5/4/2021]

**8.10.8.31 DOCUMENTATION AND CONFIDENTIALITY:**

- A. Documentation:** PSD shall maintain the case record, which consists of both the electronic record and the paper case record. The case record is a working tool and shall contain all documents necessary for the provision of services.
- B. Confidentiality:** All PSD staff and CYFD contractors shall maintain confidentiality of records and information in accordance with the laws and regulations that apply to specific services.
  - (1) Abuse and neglect records: Abuse and neglect records are confidential pursuant to the New Mexico Children’s Code Subsection A of Section 32A-4-33 NMSA 1978. The name and information regarding the reporting party shall not be disclosed absent the consent of the reporting party or a court order.
  - (2) Foster care and adoption records: Under CYFD’s general rulemaking authority Section 9-2A-7 NMSA 1978, the confidentiality provisions of the Children’s Code, Sections 32A-3B-22 and 32A-4-33 NMSA 1978, the specific authority related to certification of foster homes, Subsection (D) of Section 40-7-4 and the Adoption Act, Sections 32A-5-6 and 32A-5-8 NMSA 1978, all client case records and client identifying information including resource and adoptive families, and applicant files are confidential and may not be publicly disclosed. PSD may release such files only upon a valid court order provided that confidential criminal and abuse and neglect information may not be released, unless a court order specifically orders such a release.
  - (3) Records related to an adoption proceeding: Records related to an adoption proceeding are confidential pursuant to the Children’s Code, Section 32A-5-8 NMSA 1978. Post decree adoption records: Guidance on obtaining access of post decree adoption records by an adult adoptee, biological parent of an adult adoptee, sibling of an adoptee, or adoptive parent of a minor adoptee is outlined in the Adoption Act Regulations, Subsection C of 8.26.3.41 NMAC.
  - (4) Social security administration electronic records: Any information obtained through the social security administration (SSA) data system, ISD2, either directly or from another individual with access to the ISD2, is confidential. Improper access, use or disclosure of ISD information is a violation of the Privacy Act of 1974 (5 U.S.C. Section 552a, Public Law No 93-579), and could result in civil and criminal sanctions pursuant to applicable federal statutes. When a PSD becomes aware of a loss or suspected loss of any file containing ISD information (whether a hard copy file, or on a laptop, removable drive, etc.), PSD shall notify CYFD office of the general counsel (OGC) within one hour of the discovery of the loss.

[8.10.8.31 NMAC - Rp, 8.10.8.28 NMAC, 9/29/2015; A, 5/4/2021]

### **HISTORY OF 8.10.8 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

SSD Rule #411.0000, Substitute Care, filed 11/10/1981;  
SSD 5.0.0, Substitute Care for Children - Definition and Goal Statement, filed 8/22/1986;  
SSD 5.1.0, Substitute Care for Children - General Provision, filed 8/22/1986;  
SSD 5.1.0, Substitute Care for Children - General Provision, filed 1/29/1987;  
SSD 5.1.0, Substitute Care for Children - General Provision, filed 6/18/1987;  
SSD 5.1.0, Substitute Care for Children - General Provision, filed 3/28/1989;  
SSD Rule #410.5400, Substitute Care for Children - General Guidelines, filed 9/17/1981;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 8/22/1986;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 1/29/1987;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 6/18/1987;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 11/18/1987;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 1/13/1988;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 3/30/1989;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 7/14/1989;  
SSD 5.2.0, Substitute Care for Children - General Guidelines, filed 9/18/1990;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/1986;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 1/29/1987;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 11/18/1987;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 6/14/1988;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/1988;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 9/18/1990;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 3/15/1991;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/1986;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 1/29/1987;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 6/18/1987;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 11/18/1987;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 8/22/1988;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/28/1989;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/20/1990;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 9/18/1990;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, filed 3/15/1991;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 8/22/1986;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 1/29/1987;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 6/18/1987;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 11/18/1987;  
SSD 3.3.0, Family Services - Department Responsibilities, filed 1/13/1988

### **History of Repealed Material:**

8.10.8 NMAC, Permanency Planning - Repealed, 2/14/2001  
8.10.8 NMAC, Permanency Planning - Repealed 7/15/2004  
8.10.8 NMAC, Permanency Planning - Repealed 11/15/2005  
8.10.8 NMAC, Permanency Planning - Repealed 9/29/2015