

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 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by Section 9-2A-7 NMSA 1978:

8.8.3.6 NMAC - OBJECTIVE
8.8.3.10 NMAC - COMPLIANCE

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 under 8.8.3 NMAC to comply with federal regulations for applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC. All prospective and existing staff (hired after October 1, 2016) will be required to obtain an inter-state criminal repository check in states where they resided during the preceding five years. In addition, language is added in 8.8.3.10 NMAC Compliance to clarify the requirement of both a screen of abuse and neglect (currently listed under 8.8.3.6 NMAC Objective) and an inter-state criminal repository check in each state where the applicant resided during the preceding five years.

Copies of the proposed rules may be found at end of this notice and at CYFD's website at <https://www.newmexicokids.org/> or may be obtained from the Early Childhood Education Care Department's Office, 1120 Paseo De Peralta Room 205, Santa Fe, New Mexico, 30 days prior to the Public Hearing.

Notice of public rule hearing: The public rule hearing will be held on Tuesday, March 17, 2020 at 1:00 p.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 ten 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 "8.8.3 NMAC Public Comment," via first class mail to P.O. Drawer 5160, Santa Fe, New Mexico 87502 – 5160 or by hand delivery to Kimberly Brown, Child Care Services Bureau, Children, Youth and Families Department. The comment period ends at the conclusion of the public hearing on March 17, 2020.

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 bajo la Sección 14-4-5.2 NMSA 1978 y 1.24.25.11 NMAC, que propone adoptar enmiendas a las siguientes reglas con respecto a PROVISIONES GENERALES DEL DEPARTAMENTO DE NIÑOS, JÓVENES Y FAMILIAS, GOVERNANDO LA REVISIÓN DE ANTECEDENTES Y HUELLAS Y VERIFICACION DE HISTORIAL DE EMPLEO según lo autorizado por la sección 9-2A-7 NMSA 1978:

8.8.3.6 NMAC – OBJETIVO
8.8.3.10 NMAC – CONFORMIDAD

No se consultó información científica o técnica cuando se redactaron las propuestas leyes administrativas.

Propósito de las propuestas leyes administrativas: El propósito de las leyes administrativas es enmendar los requisitos bajo 8.8.3 NMAC para cumplir con las regulaciones federales para solicitantes requeridos obtener la revisión de antecedentes y huellas conforme a 8.16.2 NMAC y 8.17.2 NMAC. Todos empleados prospectivos y existentes (contratados a partir del 1 de octubre 2016) serán requeridos obtener una comprobación de datos del repositorio penal interestatal en cada estado donde el solicitante ha vivido durante los últimos cinco años. Adicionalmente, lenguaje añadido en 8.8.3.10 NMAC para clarificar el requisito de ambos la detección de negligencia y abuso (ahora bajo 8.8.3.6 NMAC) y la comprobación de datos del repositorio penal interestatal en cada estado donde el solicitante ha vivido durante los últimos cinco años.

Copias de las propuestas leyes administrativas pueden ser localizadas al final de este aviso y en el sitio de la red de CYFD @<https://www.newmexicokids.org/> o se pueden obtener en la Oficina del Departamento de Primera Infancia y Cuidados Educativos: 1120 Paseo De Peralta cuarto 205, 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 martes 17 de marzo del 2020 a la 1:00 p.m. en, 1120 Paseo de Peralta, Santa Fe, Nuevo México 87502, en la sala Apodaca Hall, 1120 Paseo De Peralta, Santa Fe, New México 87502. 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 una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista s 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 s a través de correo electrónico a: CYFD-ECS-PublicComment@state.nm.us, especificando en la línea de Asunto: “8.8.3 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 17 de marzo del 2020.

Proposed Rules/Reglas Propuestas

Explanatory sentence for purposes of this Notice: In 8.8.3.6 NMAC, Subsections A and B were not published as there are no changes. In 8.8.3.10 NMAC, Subsections A, C and D were not published as there are no changes.

8.8.3.6 OBJECTIVE:

C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information and an inter-state criminal history check in each State where the applicant resided during the preceding five years.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 10/1/2016, A, 10/1/2019, xx/xx/2020]

8.8.3.10 COMPLIANCE:

B. The licensee is required to:

(1) submit an electronic fingerprint submission receipt and the required forms for all direct providers of care, household members in licensed and registered child care homes, or any staff member, employee, or volunteer present while care recipients are present, or other adult as required by the applicable regulations prior to the commencement of service, whether employment or, contractual, or volunteer. In the case of a licensed child care home and a registered home, the licensee must submit an electronic fingerprint submission receipt and the

required forms for new household members or for any adult who is required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC as applicable. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

(2) Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC must indicate states where they resided during the preceding five years and obtain the following:

(a) a screen of abuse and neglect information in each state where the applicant resided during the preceding five years; and

(b) an inter-state criminal history check in each state where the applicant resided during the preceding five years. An inter-state criminal history check is not required if the applicant has resided in a state that participates in the federal bureau of investigation's national fingerprint file. All existing staff hired after October 1, 2016, must undergo an inter-state criminal history check in each state where the applicant resided during the preceding five years at the time of application. An inter-state criminal history check is not required if the applicant has resided in a state that participates in the federal bureau of investigation's national fingerprint file.

[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 10/1/2016, A, 10/1/2019, xx/xx/2020]