

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 26 FOSTER CARE AND ADOPTION**  
**PART 2 PLACEMENT SERVICES**

**8.26.2.1 ISSUING AGENCY:** Children, Youth and Families Department (CYFD), Protective Services Division (PSD).  
[8.26.2.1 NMAC - Rp, 8.26.2.1 NMAC, 5/29/09]

**8.26.2.2 SCOPE:** Protective services division employees, CYFD licensed foster and adoptive families, and the general public.  
[8.26.2.2 NMAC - Rp, 8.26.2.2 NMAC, 5/29/09]

**8.26.2.3 STATUTORY AUTHORITY:** Children, Youth and Families Department Act, 9-2A-7 D, NMSA 1978; New Mexico Children's Code Adoption Act, 32A-5-6-A, NMSA 1978.  
[8.26.2.3 NMAC - Rp, 8.26.2.3 NMAC, 5/29/09]

**8.26.2.4 DURATION:** Permanent.  
[8.26.2.4 NMAC - Rp, 8.26.2.4 NMAC, 5/29/09]

**8.26.2.5 EFFECTIVE DATE:** ~~May 29, 2009~~ May 15, 2018, unless a later date is cited at the end of a section.  
[8.26.2.5 NMAC - Rp, 8.26.2.5 NMAC, 5/29/09]

**8.26.2.6 OBJECTIVE:** To establish standards for the provision of foster care adoption services for children in PSD custody and for families who are seeking to foster and adopt, or current foster parents who want to adopt those children.  
[8.26.2.6 NMAC - Rp, 8.26.2.6 NMAC, 5/29/09]

**8.26.2.7 DEFINITIONS:**

**A. "Administrative appeal"** is a formal hearing for families whose license has been revoked, suspended, or not renewed. The family has the opportunity to present evidence to an impartial hearing officer in accordance with CYFD's Administrative Appeals regulations 8.8.4 NMAC.

**B. "Administrative review"** is an informal process that may include an informal conference or record review, and does not create any substantive rights for the family.

**C. "Adoptee"** refers to any person who is the subject of an adoption petition.

**D. "Adoption"** is the establishment of a court sanctioned legal parental relationship between an adult and a child.

**E. "Adoption subsidy"** is a third party payment program that may include reimbursement for adoption related expenses, monthly maintenance payments, medical provisions, or payments for pre-approved expenses for pre-existing conditions.

**F. "Adoption tax credit"** is a federal or state tax credit program that may be available to families who adopt children from foster care.

**G. "Adoptive home"** refers to:

(1) a foster home licensed by PSD or a licensed child placement agency who chooses to adopt a foster child; or

(2) a family approved by a private agency or a licensed individual to adopt a child.

**H. "Age appropriate activities and items"** means an activity or item that is generally accepted as suitable for a child of the same age or level of maturity based on the child's cognitive, emotional, physical, social and behavioral capacities.

**I. "Assessment"** is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine the suitability of an applicant for a foster parent license.

**J. "Best interest adoptive placement"** is the adoption placement considered by PSD staff to be the most appropriate placement to meet the child's needs and best interest.

**K. "Case management team"** means the group of individuals with responsibility for implementing the case plan which may include PSD staff, parents or relatives, and the child if age appropriate.

- L.** “**Community service providers**” refers to organizations or individuals that provide support services to families, and may include CYFD contractors or any public or private agency or individual.
- M.** “**Concurrent plan**” means a second permanency plan of adoption or guardianship in addition to the primary permanency plan of reunification.
- N.** “**Consent to adoption**” is a document signed by the adoptee if the child is 14 of age or older consenting to the adoption.
- O.** “**Conversion adoption**” refers to an adoption in which the child’s foster parents have adopted the child.
- P.** “**CYFD**” means the New Mexico children, youth and families department.
- Q.** “**Disruption**” means the removal of a child by CYFD from a pre-adoptive home after an adoptive agreement has been signed, but prior to the finalization of the adoption.
- R.** “**Dissolution**” means the legal termination of an adoption.
- S.** “**Fictive kin**” is a person not related by birth or marriage who has a significant relationship with the child.
- T.** “**Foster care provider**” 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.
- U.** “**Foster child**” 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.
- V.** “**Foster child and youth bill of rights**” is a document which has a list of rights that all children and youth in PSD custody are entitled to.
- ~~[V-]~~**W.** “**Foster home license**” is the document which bears the name or names and address or addresses of those who are foster parents for the protective services division or licensed child placement agency. The license displays the ages and number of foster children 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.
- ~~[W-]~~**X.** “**Foster 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 foster children. Throughout this policy, the term foster parent also refers to an adoptive parent whose adoption has not yet finalized.
- ~~[X-]~~**Y.** “**Foster parent bill of rights**” is a statement of PSD’s responsibilities to foster parents.
- ~~[Y-]~~**Z.** “**Freed for adoption**” means all parental rights are terminated and all time for appeal is exhausted.
- ~~[Z-]~~**AA.** “**Home study**” is the final written document that results from the assessment process to determine the suitability of an applicant for a foster parent license.
- ~~[AA-]~~**BB.** “**Individualized adoption plan (IAP)**” is an individualized and specific recruitment plan developed by PSD staff for children who have a plan of adoption.
- ~~[BB-]~~**CC.** “**Initial relative or fictive kin assessment**” is an in-home assessment of relative or fictive kin completed by the child’s caseworker to determine suitability for provisional licensure.
- ~~[CC-]~~**DD.** “**Life book**” is a combination of documents that remains with the child that may include photos, letters, correspondence, development milestones, memorabilia and other items related to the child’s life.
- ~~[DD-]~~**EE.** “**Maintenance payments**” are payments designed to reimburse foster care providers 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.
- FF.** “**New Mexico foster youth document of responsibilities**” is a document which outlines the responsibilities of all children and youth in PSD custody.
- ~~[EE-]~~**GG.** “**Non-conversion adoption**” refers to an adoption in which a child is placed in a pre-adoptive home, for the purpose of adoption, which did not serve as a foster home for the child.
- ~~[FF-]~~**HH.** “**Non-recurring adoption expenses (NRAE)**” are reasonable and necessary adoption fees that may include transportation, food and lodging for the child and adoptive parent, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which have not been reimbursed from other sources or funds.
- ~~[GG-]~~**II.** “**Post adoption contact agreement (PACA)**” is an agreement between the birth and adoptive families regarding contact between them after the adoption has been finalized.

~~[HH,]~~[JJ]. “**Post placement support services**” are services intended to strengthen families and support adoptive placement provided by PSD staff, or community service providers to children in custody and their pre-adoptive families to enhance the family’s capacity to care for the child, assure the stability of the placement, and help the family meet the requirements to finalize the adoption.

~~[H,]~~[KK]. “**Post decree support services**” are services provided by PSD staff or community service providers to children and families who have finalized an adoption to enhance the family’s capacity to care for the child and support family functioning.

~~[J,]~~[LL]. “**Pre-adoptive home**” refers to a family who has signed the adoption agreement to adopt a foster child, but the adoption has yet to finalize.

~~[KK,]~~[MM]. “**Protective services division (PSD)**” refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

~~[LL,]~~[NN]. “**PSD custody**” means custody of children as a result of an action filed under the New Mexico Children’s Code, Sections 32A-4-1 NMSA 1978 or 32A-3B-1 NMSA 1978.

~~[MM,]~~[OO]. “**Reasonable and prudent parent standard**” means the standard of care characterized by careful, nurturing and thoughtful decision-making by the foster parent or out of home provider that is intended to maintain a child’s health, safety, culture or cultural identity and best interests while encouraging the child’s emotional, social and developmental growth.

~~[NN,]~~[PP]. “**Relative**” means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity.

~~[OO,]~~[QQ]. “**Transition calendar**” refers to the calendar which is developed once the family has accepted the child for an adoptive placement.

~~[PP,]~~[RR]. “**Traveling file**” includes copies of the medical and educational records related to the foster child. The traveling file shall remain with the child.

[8.26.2.7 NMAC - Rp, 8.26.2.7 NMAC, 5/29/09; A, 5/15/18]

**8.26.2.8 PURPOSE OF PLACEMENT SERVICES:** The purpose of placement services is to recruit, support and retain safe and stable families willing to make life long commitments to foster children and their families, to create permanent families for children requiring adoption, and to ensure a child’s safety, permanency, and well-being.

[8.26.2.8 NMAC - Rp, 8.26.2.8 NMAC, 5/29/09]

**8.26.2.9 CHILD ELIGIBILITY CRITERIA AND WAITING LIST:**

**A.** A child is eligible for foster care and adoption services when in PSD custody under a court’s jurisdiction or through a voluntary placement agreement.

**B.** There are no waiting lists for eligible children.

[8.26.2.9 NMAC - Rp, 8.26.2.10 & 13 NMAC, 5/29/09]

**8.26.2.10 RECRUITMENT AND INQUIRIES FOR PSD FAMILIES:**

**A.** PSD recruits foster and adoptive families and responds to inquiries from individuals interested in becoming foster or adoptive parents. PSD provides general information regarding the special needs of children requiring foster care and adoption, and makes attempt to identify and locate relatives for consideration of placement.

**B.** PSD completes an annual recruitment plan to recruit foster and adoptive families. The recruitment plan, at a minimum, addresses the following:

- (1) information about the characteristics and needs of available children;
- (2) information about the nature of the foster care and adoption process; and
- (3) information about the cultural, racial, and ethnic identity of children in the population.

**C.** PSD may coordinate adoption events in order to create permanent families for children in PSD custody with a plan of adoption. Only licensed adoptive families may attend these events. Children who are freed for adoption or who have a plan of legal risk adoption may attend these events.

[8.26.2.10 NMAC - Rp, 8.26.2.14 NMAC, 5/29/09]

**8.26.2.11 RIGHTS OF FOSTER PARENTS:**

**A.** PSD shall share records or information about the social, medical, psychological or educational needs of a child in PSD custody to a foster parent who is considering a child for placement to make an informed decision regarding the placement.

**B.** PSD staff shall provide updated information regarding the status of a child’s case to the foster

parent, upon request of any confidential records or information concerning the child's social, medical, psychological or educational needs pursuant to the New Mexico Children's Code 32A-4-33 NMSA 1978.

**C.** Foster parents shall maintain confidentiality of all information regarding the foster child and the child's family as described herein at 8.26.2.12 N, NMAC.

**D.** PSD shall inform foster parents of their right to receive notice of and be heard at any court proceeding held with respect to the child placed in the home.

**E.** PSD shall provide each foster parent with a copy of the foster parent bill of rights.  
[8.26.2.11 NMAC - Rp, 8 NMAC 27.3.24, 5/29/09]

#### **8.26.2.12 ROLES AND RESPONSIBILITIES OF FOSTER PARENTS:**

**A.** Foster parents are considered integral members of a professional team dedicated to the critical responsibility of providing safety, permanency and well-being for children who have been abused or neglected. As such, foster parents shall be active participants in case planning for foster children. The foster parent shall work closely with PSD staff to implement the service plan for each foster child including visitation for each foster child.

**B.** Foster families support the preservation of connections for foster children in their care. Preserving connections may include the development of a long-term supportive relationship with foster children and their foster families even after the child has been discharged from care.

**C.** Foster care providers shall adhere to applicable PSD policy and procedure, including the reasonable and prudent parent standard.

**D.** Foster parents shall not use words, language, gestures, either directed at the foster child or made within a foster child's sight or hearing, which disparage the foster children's parents, relatives or the child's cultural heritage. Foster parents shall encourage the child to recognize and accept such strengths and achievements of their family as honestly identified.

**E.** Prohibited forms of discipline shall include, but are not limited to the following: corporal punishment such as shaking, spanking, hitting, whipping, or hair or ear pulling; isolation; forced to exercised; denial of food, sleep or approved visits or contact with parent; verbal assaults which subject the child to ridicule or which belittle the child or the child's family, gender, race, religious preference, sexual orientation or cultural identity. The child shall not be excluded from the foster family and shall not be threatened with exclusion from the foster home as punishment. The child shall not be locked in a room or closet.

**F.** The foster parent may serve as a the child's educational decision maker to protect the foster child's educational rights and act as the student's advocate in the educational decision making process if appointed by the court.

**G.** When appointed by the New Mexico department of health family, infant and toddler program director, the foster parent may serve as a the child's decision maker to represent the special needs of a child in all matters related to the early intervention and evaluation assessment and treatment for the child in the event the parent is unable or unwilling to act in that capacity.

**H.** Foster parents shall return all of a child's belongings when he or she moves to another placement, including the return home.

**I.** Foster parents shall not release a foster child to anyone without the authorization of PSD, except when pursuant to the reasonable and prudent parent standard defined at 8.26.2.7 MM NMAC. Foster children may also be surrendered to the custody of a law enforcement officer.

**J.** Foster parents shall adhere to all statutes and regulations applicable to the provision of foster care, including but not limited to child labor laws, public health laws, mandatory school attendance, and motor vehicle laws.

**K.** Foster parents shall provide PSD with any documents they obtain with respect to the foster child's legal status, health needs or care, service planning, school progress or other relevant documents.

**L.** Foster parents shall maintain copies of all educational and medical documents related to the foster child in a traveling medical and educational file that shall remain with the child if the child is moved.

**M.** Foster parents, in cooperation with PSD staff, shall create or maintain a life book for each child in their care that shall remain with the child if the child is moved.

**N.** The foster parent shall maintain the confidentiality of all information regarding the foster child and the child's family pursuant to the New Mexico Children's Code 32A-4-33 NMSA 1978. The unlawful public disclosure of such confidential information is a misdemeanor under New Mexico criminal law.

**O.** Foster parents shall immediately report any signs, symptoms indications or risk of abuse or neglect to any child to PSD statewide central intake (SCI) or law enforcement.

**P.** Pursuant to the reasonable and prudent parent standard, foster parents may consent to the use of

their own personal vehicle by a foster child, and shall assume all civil and financial liabilities applicable to the foster child's operation of a motor vehicle. Foster parents shall provide to PSD written documentation that all requirements have been met, including insurance coverage for any vehicle driven by the foster child.

**Q.** Foster parents shall complete the foster parent report form provided by PSD regarding the child's well-being and progress and submit it to their PSD worker monthly.

[8.26.2.12 NMAC - Rp, 8 NMAC 27.3.25 & 8.27.2.29 NMAC, 5/29/09; A, 9/29/15]

### **8.26.2.13 APPLICATION OF THE REASONABLE AND PRUDENT PARENT STANDARD**

**A.** PSD shall make efforts to normalize the lives of children in PSD's custody and to empower caregivers to approve a child's participation in activities, based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of PSD.

**B.** Foster care providers shall not require advance permission from PSD to apply the reasonable and prudent parent standard to decisions about the care of a child.

**C.** In applying the reasonable and prudent parent standard, the foster parent shall consider the following:

- (1) the desires of the child including, but not limited to, cultural identity, spiritual identity, gender identity, and sexual orientation;
- (2) the child's age, maturity and developmental level;
- (3) potential risk factors and the appropriateness of the activity;
- (4) the best interests of the child based on the foster care provider's knowledge of the child;
- (5) the importance of encouraging the child's emotional and developmental growth;
- (6) the terms of any court orders and any case plan applying to the child;
- (7) the values and preferences of the child's biological parent or parents, if appropriate;
- (8) whether the decision would bring about a permanent (e.g. tattoo) rather than a transient change to the child.

(9) the importance of providing the child with the most safe and affirming family-like and culturally relevant living experience possible;

(10) the legal rights and responsibilities of the child, including the youth bill of rights and responsibilities;

(11) Americans with Disabilities Act

**D.** Age and developmentally appropriate activities that may be the subject of decisions under the reasonable and prudent parent standard include, but are not limited to, the following:

(1) a cultural, social, or enrichment activity or support that fosters positive identity development;

(2) a sleepover of one or more nights;

(3) participation in sports or social activities, including related travel;

(4) obtaining a driver's license and conditions for driving of a vehicle;

(5) allowing the child to travel in other person's vehicle;

(6) possession and use of a cell phone;

(7) obtaining a job or working for pay (e.g. babysitting, yard work, etc.)

(8) recreational activities (including, but not limited to, such activities as boating, swimming, camping, hunting, cycling, hiking, horseback riding).

**E.** Foster parents may consult with the PSD worker when uncertain or uncomfortable with a decision under their consideration.

**F.** In situations in which a child age 14 or older disagrees with a decision made under the prudent parent standard, the child shall request a review of the decision ~~in writing~~. The decision shall be reviewed by a neutral three-person panel. This process does not preclude any party from seeking a court order regarding the decision.]

**G.]E** PSD shall seek appropriate statutory change to ensure that foster parents and other substitute care providers are shielded from liability when they act in accordance with the reasonable and prudent parent standard. In the meantime, CYFD will hold harmless and defend its licensed foster care providers in situations where they have acted and made decisions in accordance with the reasonable and prudent parent standard.

[8.26.2.13 NMAC - A, 5/15/15]

### **8.26.2.14 FOSTER CHILD AND YOUTH BILL OF RIGHTS AND NEW MEXICO FOSTER YOUTH DOCUMENT OF RESPONSIBILITIES:**

A. PSD shall provide the New Mexico Foster Child and Youth Bill of Rights and the New Mexico Foster Youth Document of Responsibilities to all children entering PSD custody. PSD shall explain the documents to the child or youth in a manner the child or youth can understand.

B. The child or youth shall sign an acknowledgement that the child has received a copy of these documents. For children under age five or for children and youth who are incapacitated or severely developmentally disabled, the foster parent shall sign the acknowledgement on child's behalf.

C. The New Mexico Foster Child and Youth Bill of Rights and the New Mexico Foster Youth Document of Responsibilities shall be reviewed upon entry into PSD custody and then reviewed with the child or youth upon every change of placement. The documents will also be reviewed with the child or youth every six months thereafter until dismissal from PSD custody.

D. In situations in which a child or youth believes their rights have been violated, the child or youth shall request a review of the alleged violation in writing. The alleged violations shall be reviewed by a neutral three-person panel. This process does not preclude any party from seeking a court order regarding the decision.

[8.26.2.14 NMAC - N, 5/15/15]

**[8.26.2.14] 8.26.2.15 HEALTH SERVICES FOR FOSTER CHILDREN:**

A. The foster parent shall observe daily the foster child's behavior and signs of emotional or physical health problems. Any concerns shall be reported to PSD immediately.

B. There shall be a designated license physician and dentist for each child so that a coordinated plan of care is assured. Foster parents shall obtain medical attention for any sick or injured child. Foster parents, in their role as an adjunct representative of state government, shall not rely solely on spiritual or religious healing for foster children.

[8.26.2.15 NMAC - Rp, 8.26.2.14 NMAC – A, 5/15/18]

**[8.26.2.15] 8.26.2.16 EDUCATIONAL SERVICES FOR FOSTER CHILDREN:**

A. Foster parents shall assist PSD in meeting the child's educational requirements, and in transporting the child to school he or she attended at the time of placement when necessary and reasonable. Foster parents shall ensure that the foster child attend school. Foster children may not be home schooled.

B. Foster parents shall actively advocate for the foster child's interest in the school setting, including seeking evaluations of the child's abilities and placement in any special education programs appropriate to the child's needs. Foster parents shall attend school conferences and activities when appropriate. Foster parents shall report significant educational information to PSD.

[8.26.2.16 NMAC – Rp, 8.26.2.15 NMAC, A, 5/15/18]

**[8.26.2.16] 8.26.2.17 FOSTER CARE MAINTENANCE PAYMENTS:**

A. Reimbursement: Foster care providers shall receive reimbursement for the care and support of a child in PSD custody placed in their home. Rates are established through legislative appropriation based on the age and needs of the child.

B. Foster parents receiving CYFD foster care and support maintenance payments shall use these funds for the care and support of the identified child in their care, and shall not be considered a source of income and is not recognized as income when filing taxes.

C. PSD shall advise foster parents that they should consult a tax advisor to determine if foster children in their home may be considered eligible for a federal tax credit under the Internal Revenue Code.

[8.26.2.16 NMAC – Rp, 8.26.2.15 NMAC, 9/29/15]

**[8.26.2.17] 8.26.2.18 MONITORING AND SUPPORT:**

A. PSD monitors foster and adoptive homes licensed by PSD.

B. At a minimum, when a child is placed in the home, PSD placement staff shall:

(1) visit the foster or adoptive parent in the home within five of each new placement;

(2) conduct a home visit to the foster or adoptive parent once a month for the first three

months following placement;

(3) conduct a home visit to the foster or adoptive parent at least every three months, and

make phone contact at least every 30 days thereafter.

C. At a minimum, when a child is not placed in the home, PSD placement staff shall conduct a home visit to the foster parent every three months and have monthly phone contact.

D. PSD receives documents and investigates all reported licensing violations and reports of

maltreatment in foster care.

**E.** PSD placement staff may continue to have contact with a foster family if license that is under investigation for allegations of child abuse or neglect, but is prohibited from acting in such a manner that may interfere with any ongoing civil or criminal investigation.

**F.** PSD may develop and implement a professional development plan to include training and professional development opportunities to address parenting needs, or licensing and policy infractions. At no time is the safety of a foster child compromised to allow for a foster parent to participate in a professional development plan.

**G.** Relative foster homes receive the same monitoring and support afforded to non-relative foster homes.

**H.** Additional support services may be available from community service providers or PSD staff. [8.26.2.17 NMAC - Rp, 8.26.2.16 NMAC, 9/29/15]

**~~[8.26.2.18]~~ 8.26.2.19 INVESTIGATIONS OF ABUSE AND NEGLECT REFERRALS AND POLICY VIOLATIONS:**

**A.** Any CYFD employee suspecting child abuse or neglect in a foster parent home makes a report as set forth in Protective Services Intake policy, 8.10.2 NMAC. PSD staff who suspects, has knowledge of, or receives an allegation about a foster parent violating CYFD policy or licensing regulations shall immediately notify the placement supervisor.

**B.** Investigations of abuse and neglect referrals in foster homes:

**(1)** PSD shall investigate all screened-in reports of allegations of abuse or neglect regarding children in accordance with protective services investigation policy and procedure.

**(2)** If a screened-out report involves a child in PSD custody, the child's worker shall conduct a safety assessment of the placement.

**(3)** No new placement may be made in the home during a pending investigation. Existing placements in the home shall be evaluated for safety. The decision as to whether to maintain placement shall depend on the continued safety of any child.

**(4)** Based upon the results of the investigation of the abuse or neglect referral, PSD may take one or more of the following actions:

**(a)** continue the placement, implementing a professional development and safety plan, if appropriate;

**(b)** terminate the placement; or

**(c)** determine if the family shall continue to be licensed as a PSD foster family.

**C.** Investigations of CYFD policy violations:

**(1)** The placement worker shall assess any allegations that the family has violated CYFD policy or licensing regulations.

**(2)** Based upon the results of the investigation of the alleged policy violation, PSD may take one or more of the following actions:

**(a)** continue the placement, implementing a professional development and safety plan, if appropriate;

**(b)** terminate the placement; or

**(c)** determine if the family shall continue to be licensed as a PSD foster family.

**D.** PSD shall notify the foster parent in writing, by return of receipt mail, of the results and PSD actions of any substantiated abuse and neglect investigation or policy violations.

**E.** The results of any substantiated abuse and neglect investigation or policy violation, which is not the subject of court action, may be reviewed through CYFD's administrative review process. The foster family may request an administrative review within ten days of receiving the written notice.

[8.26.2.18 NMAC - Rp, 8.26.2.17 NMAC, 9/29/15]

**~~[8.26.2.19]~~ 8.26.2.20 CRISIS INTERVENTION:**

**A.** PSD staff may develop and implement a crisis intervention plan to prevent the disruption of a foster or adoptive placement and strengthen the family's capacity to care for the child.

**B.** If disruption is unavoidable, PSD staff focuses on minimizing the trauma to the child. After a disruption, PSD staff re-assesses the permanency plan for the child and child's placement and service needs.

[8.26.2.19 NMAC - Rp, 8.26.2.18 NMAC, 9/29/15]

**[8.26.2.20] 8.26.2.21 POST ADOPTION CONTACT AGREEMENT (PACA):** PSD facilitates the negotiation of post adoption contact agreements.  
[8.26.2.20 NMAC - Rp, 8.26.2.19 NMAC, 9/29/15]

**[8.26.2.21] 8.26.2.22 BEST INTEREST ADOPTION PLACEMENT:**

**A.** When a child's permanency plan becomes adoption, the child is referred to a PSD adoption consultant for the purposes of identifying a potential adoptive family. If an adoptive family is not identified, an individualized adoption plan is developed for the child.

**B.** The best interest of a child is paramount in identifying an adoptive family for a child. PSD makes reasonable efforts to place siblings together in the same adoptive home, unless PSD documents that such a joint placement would be contrary to the safety and well-being of any of the children in the sibling group. PSD will not separate siblings solely because an adoptive placement is available for one or more children, but not the entire group.

**C.** When a family is identified, placement staff will schedule a best interest placement staffing.

**D.** Children aged 14 years or older must consent to the adoption.

**E.** The placement of a child shall not be delayed or denied based on the race, color, sex, gender identity, sexual orientation, mental or physical handicap, ancestry, or national origin of the adoptive parent or child involved.

**F.** For Native American children, the Indian Child Welfare Act (ICWA) adoption preferences shall be followed pursuant to the Adoption Act, 32A-5-5 NMSA 1978.

[8.26.2.21 NMAC - Rp, 8.26.2.20 NMAC, 9/29/15]

**[8.26.2.22] 8.26.2.23 FULL DISCLOSURE:**

**A.** Prior to placement, PSD staff shall provide full disclosure about the child to the foster or adoptive family, and continue to provide full disclosure throughout the case and after finalization of the adoption, provided the information does not reveal information that would identify the biological family. Pursuant to the New Mexico Children's Code, Section 32A-5-3 NMSA 1978, full disclosure information includes:

- (1) health history;
- (2) psychological history;
- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical description;
- (8) social history;
- (9) placement history; and
- (10) education.

**B.** All records, whether on file with the court, an agency, PSD, an attorney or other provider or professional services in connection with an adoption are confidential pursuant to the New Mexico Children's Code, Section 32A-5-8 NMSA 1978. A person who intentionally and unlawfully release any information or records closed to the public pursuant to the Adoption Act or releases or make other unlawful use of records in violation of that act is guilty of a petty misdemeanor.

**C.** Documentation provided for the purpose of full disclosure shall remain the property of the person making the full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing the full disclosure. A prospective adoptive parent shall not make public any confidential information received during the full disclosure process, but may disclose such information only as necessary to make an informed placement decision, or to the child's guardian ad litem or youth attorney.

[8.26.2.22 NMAC - Rp, 8.26.2.21 NMAC, 9/29/15]

**[8.26.2.23] 8.26.2.24 PRE-PLACEMENT ACTIVITIES FOR NON-CONVERSION ADOPTIONS:**

**A.** PSD placement staff in coordination with the child's worker shall develop a calendar for the transition of the child to the adoptive home, except in the event a foster parent decide to adopt the child.

**B.** PSD staff and the adoptive family shall review and sign a placement agreement when the child is placed in the home.

**C.** Placement staff becomes responsible for the case form placement in the adoptive home until

finalization of the adoption.

[8.26.2.23 NMAC - Rp, 8.26.2.22 NMAC, 9/29/15]

**[8.26.2.24] 8.26.2.25 FOSTER HOME ADOPTIONS:**

**A.** PSD shall attempt to place foster children with concurrent plans of adoption in foster homes which have been identified as concurrent families.

**B.** PSD completes the pre-placement home study for foster parents and treatment foster parents who have been selected as adoptive parent for children in PSD custody.

[8.26.2.24 NMAC - Rp, 8.26.2.23 NMAC, 9/29/15]

**[8.26.2.25] 8.26.2.26 ADOPTION ASSISTANCE:**

**A.** The purpose of adoption assistance is to support the adoption of a foster child who meet special-needs criteria by providing financial assistance or medical coverage to support families in meeting the needs of the child. PSD verifies whether a child has special needs according to the following criteria:

(1) the child cannot or should not be returned to the home of the parents;  
(2) there is documentation of at least one of the following factors or conditions that make it reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance:

- (a) the child is age five or older, or
  - (b) the child has a diagnosed physical, developmental, or psychological or emotional condition requiring medical or mental health intervention, or
  - (c) the child is a member of a minority group, or
  - (d) the child is part of a sibling group that will be placed together; and
- (3) a reasonable, but unsuccessful, effort has been made to place the child without adoption assistance, unless such effort would be against the best interests of the child

**B.** A child may be eligible for state funded adoption assistance or Title IV-E adoption assistance. If a child is not determined to meet special needs criteria, then the child shall not be eligible for any adoption assistance.

**C.** Initial adoption agreement:

(1) PSD shall negotiate adoption assistance based on the family's circumstances and any special needs of the child. The monthly adoption maintenance payment may not exceed the maximum monthly amount that was paid for the child in foster care.

(2) Types of assistance available:

(a) Maintenance: Monthly adoption assistance maintenance payments for the eligible child shall be utilized to meet the child's existing day to day needs and is not considered income. Monthly adoption assistance maintenance payments are terminated on the child's eighteenth birthday.

(b) Medical: Medical adoption assistance may be made on behalf of a child and shall cover only those pre-approved, pre-existing conditions that are not covered by the family's private or group medical insurance or medicaid, and does not include co-payments or deductible for which the patient is responsible. Medicaid is available in accordance with the laws, regulations or procedures of the state in which the child resides. Medical assistance may be extended until the child is 21 years of age, if the child is certified medically fragile by the New Mexico department of health.

(3) Interstate placement: When the adoption of the child involves interstate placement, the state that enters into the adoption assistance agreement shall be responsible for paying the non-recurring adoption expenses of the child. In cases in which there is interstate placement, but no agreement for adoption assistance, the state in which the final adoption decree is issued shall be responsible for paying the non-recurring expenses if the child meets the requirements.

(4) With placement worker approval, the adoptive family may be reimbursed for non-recurring adoption expenses (NRAE) up to \$2000.00 per child in PSD custody. NRAE may include transportation and other reasonable expenses such as lodging and food for the child and adoptive parents that are not otherwise reimbursed. NRAE are not reimbursable in the event the adoption does not finalize. There is no income eligibility requirement for adoptive parents in determining whether payments for non-recurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(5) An adoptive family may receive a one-time only subsidy for legal services leading to the finalization of an adoption based on the adoption case regardless of number of siblings.

**D.** Prior to adoption finalization, the placement worker and the adoptive family shall sign the adoption assistance agreement that specifies adoption assistance and NRAE. Each Title IV-E subsidy agreement

shall be completed and signed prior to the adoption finalization to be valid.

**E.** By signing the adoption assistance agreement, the adoptive parent agrees to immediately notify PSD of any of the changes listed below:

- (1) the adoptive parent is no longer legally responsible for the child;
- (2) the adoptive parent is no longer financially responsible for the child;
- (3) change of address, phone numbers, or email addresses;
- (4) change in the child's name and social security number;
- (5) change in the family's needs or circumstances;
- (6) change in electronic funds deposit information;
- (7) the adoptive child no longer lives with the adoptive parents; or
- (8) the death of an adoptive child.

**F.** Annual contact: On an annual basis PSD shall provide the adoptive family a form to complete and return to PSD attesting to the following:

(1) the family continues to have financial and legal responsibility for the child; or  
(2) that the adopted child is a full time elementary or secondary student (or has completed secondary school). If the child is incapable of attending school on a full time basis due to medical condition, the adoptive parent must submit to PSD regularly updated medical information to support such incapability. The parent must certify one of the following:

(a) that the child is enrolled (or is in a timely process of enrolling) in an institution that provides elementary or secondary education and meets school attendance requirements in accordance with state law;

(b) that the child is being home schooled in an elementary or secondary school program that complies with state law; or

(c) that the child is in an independent study elementary or secondary school program that complies with state law and is administered by the local school or school district.

(3) the child is or is not covered by private medical insurance.

**G.** Adoption assistance shall be terminated based upon any of the following events:

- (1) the child reaches 18 years of age, except in the event of medically fragile certification;
- (2) PSD determines that the adoptive family is no longer legally responsible for the child; or
- (3) PSD determines that the adoptive family is no longer providing any support to the child.

**H.** PSD shall notify the adoptive family in writing, by return of receipt mail, of any decision to reduce, change, suspend or terminate an adoption subsidy. The adoptive parent may request an administrative appeal within ten days of receiving notification of the decision to reduce, change, suspend or terminate adoption subsidy. [8.26.2.25 NMAC - Rp, 8.26.2.24 NMAC, 9/29/15]

~~[8.26.2.26]~~ **8.26.2.27 POST PLACEMENT ADOPTION SUPPORT SERVICES:**

**A.** PSD shall provide support services to the child and adoptive family. Support services are intended to assist the family in adjusting, enhance the family's capacity to care for the child, and strengthen the family.

**B.** PSD shall develop a case plan with all families adopting children in PSD custody.

**C.** During this period PSD shall provide information to the adoptive family regarding requirements for legal finalization of the adoption including the family's selection of an attorney, name change of the child, and required consent of the child, if the child is over 14 years of age.

**D.** PSD shall assess and document the status of placement until finalization of the adoption.

**E.** If the adoptive family and child, with PSD approval, move out of state prior to the finalization, PSD shall initiate a referral through the interstate compact on the placement of children to request appropriate post placement services and written reports from the receiving state. PSD shall retain jurisdiction and responsibility for all case activities until finalization.

[8.26.2.26 NMAC - Rp, 8.26.2.25 NMAC, 9/29/15]

~~[8.26.2.27]~~ **8.26.2.28 ADOPTION FINALIZATION:**

**A.** PSD establishes time frames for finalization based on the age and needs of the child pursuant to the New Mexico Children's Code, Section 32A-5-25 A NMSA 1978 and the time frames for court approval of finalization pursuant to 32A-5-36 F(6) NMSA 1978.

**B.** The family may file the adoption petition according to their state of residence or in New Mexico.

**C.** Placement staff compiles and submits post placement reports to the court for all PSD children and children placed for adoption in New Mexico through the interstate compact for the placement of children.

[8.26.2.27 NMAC - Rp, 8.26.2.26 NMAC, 9/29/15]

**~~8.26.2.28~~ 8.26.2.29 POST DECREE SUPPORT SERVICES:**

A. Upon finalization, PSD shall provide information regarding resources to support the family in their community. Placement staff may provide direct support services or make referrals to community service providers in order to support, strengthen, and enhance the family's capacity to care for the child to prevent disruption or dissolution.

B. PSD shall respond to adult adoptee requests for information pursuant to the New Mexico Children's Code, Section 32A-5-40 E NMSA 1978.

[8.26.2.28 NMAC - Rp, 8.26.2.27 NMAC, 9/29/15]

**HISTORY OF 8.26.2 NMAC:**

**Pre-NMAC History:**

The material in this part was derived from that previously filed with the State Records Center and Archives: HSSD 75-7, Minimum Requirements for Licensing of Child Placement Agencies, 9/15/75.

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/86;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 1/29/87;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 11/18/87;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 6/14/88;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/88;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 9/18/90;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 3/15/91;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 8/22/86.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 1/29/87.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 6/18/87.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 11/18/87.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 8/22/88.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/28/89.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/20/90.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 9/18/90.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/15/91.  
SSD 5.5.0, Foster Care Child Placement Agency Licensing Regulations, 12/7/89.  
SSD 7.0.0, Adoption - Definition and Goal Statement, filed 8/22/86;  
SSD 7.0.0, Adoption - Definition and Goal Statement, filed 6/14/88;  
SSD 7.0.0, Adoption - Purpose and Goal Statement, filed 10/18/95;  
SSD 7.1.0, Adoption - General Provisions: Adoption, filed 8/22/86;  
SSD 7.1.0, Adoption - General Provisions: Adoption, filed 6/18/87;  
SSD 7.1.0, Adoption - General Provisions: Adoption, filed 1/13/88;  
SSD 7.1.0, Adoption - General Provisions: Adoption, filed 3/28/89;  
SSD 7.2.0, Adoption - General Guidelines, filed 8/22/86;  
SSD 7.2.0, Adoption - General Guidelines, filed 6/18/87;  
SSD 7.2.0, Adoption - General Guidelines, filed 6/14/88;  
SSD 7.2.0, Adoption - General Guidelines, filed 3/15/91;  
SSD 7.3.0, Adoption - Department Responsibilities, filed 8/22/86;  
SSD 7.3.0, Adoption - Department Responsibilities, filed 6/14/88;  
SSD 7.3.0, Adoption - Department Responsibilities, filed 3/15/91;  
SSD 7.3.0, Adoption - Department Responsibilities, filed 10/18/95.

**History of Repealed Material:**

8 NMAC 26.2, Adoption Services, filed 6/16/1997 - Repealed effective 2/14/2001.  
8.26.2 NMAC, Adoption Services, filed 2/1/2001 - Repealed effective 7/30/2004.  
8.26.2 NMAC, Adoption Services, filed 7/16/2004 - Repealed effective 11/15/2005.  
8.26.2 NMAC, Adoption Services, filed 11/1/2005 - Repealed effective 5/29/2009.