

TITLE 8 SOCIAL SERVICES
CHAPTER 26 FOSTER CARE AND ADOPTION
PART 5 CHILD PLACEMENT AGENCY LICENSING STANDARDS

8.26.5.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD) Protective Services Division (PSD)
[8.26.5.1 NMAC - Rp, 8.27.6.1 NMAC, 5/29/09]

8.26.5.2 SCOPE: Any individual, partnership, association or corporation, doing business in New Mexico, undertaking to place a child in a home in this or any other state for the purpose of foster care or adoption of the child, including treatment foster homes also governed by 7.20.11 NMAC, Certification Requirements for Child and Adolescent Mental Health Services.
[8.26.5.2 NMAC - Rp, 8.27.6.2 NMAC, 5/29/09]

8.26.5.3 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; Child Placement Licensing Act, 40-7A-4 D, NMSA 1978.
[8.26.5.3 NMAC - Rp, 8.27.6.3 NMAC, 5/29/09]

8.26.5.4 DURATION: Permanent
[8.26.5.4 NMAC - Rp, 8.27.6.4 NMAC, 5/29/09]

8.26.5.5 EFFECTIVE DATE: May 29, 2009, unless a later date is cited at the end of a section.
[8.26.5.5 NMAC - Rp, 8.27.6.5 NMAC, 5/29/09]

8.26.5.6 OBJECTIVE: These standards supplement and are used in conjunction with the Child Placement Licensing Act. The standards:

- A.** authorize CYFD protective services division to license and monitor agencies that place children in adoptive homes or in foster care so that the safety, permanency, and well being interests of the child are served; and
- B.** authorize CYFD protective services division to require the agency to protect the rights of children in foster or adoptive placement and to monitor agency compliance with the New Mexico Children’s Code, the New Mexico Adoption Act and regulations, the Indian Child Welfare Act, the Adoption and Safe Families Act, the Interstate Compact on Placement of Children, the Interstate Compact on Adoption and Medical Assistance, the Multi-Ethnic Placement Act, as amended by the Inter-Ethnic Adoption Provisions of 1996, the Uniform Child Custody Jurisdiction and Safety Act, the Safe and Timely Interstate Placement of Foster Children Act, the Adam Walsh Act, ~~and~~ the Fostering Connections for Success and Increasing Adoptions Act, and the Child Abuse Prevention and Treatment Act Reauthorization of 2010.
[8.26.5.6 NMAC - Rp, 8.27.6.6 NMAC, 5/29/09; A, 8/15/11]

8.26.5.7 DEFINITIONS:

- A.** “Act” means the Child Placement Agency Licensing Act, pursuant to 40-7A-1 et. seq. NMSA 1978.
- B.** “Acknowledged father” means a father who:
 - (1) acknowledges paternity of the adoptee pursuant to the putative father registry, pursuant to the Adoption Act, 32A-5-20, NMSA 1978;
 - (2) is named, with his consent, as the adoptee’s father on the adoptee’s birth certificate; is obligated to support the adoptee under a written voluntary promise or pursuant to a court order; or
 - (3) has openly held out the adoptee as his own child by establishing a custodial, personal or financial relationship with the adoptee as pursuant to the Adoption Act, 32A-5-3F (4)(a) and (b) NMSA 1978.
- C.** “Agency” or “child placement agency” means any PSD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services. An agency may be licensed as an adoption agency, a foster care agency or both.
 - (1) “Adoption agency” means an agency licensed by PSD to facilitate the adoption of a child or perform a function within the adoption process.
 - (2) “Foster care agency” means an agency licensed by PSD for the purpose of supervising foster

care homes, treatment foster care homes, or other levels of foster care as developed by protective services division.

D. “Alleged father” means an individual whom the biological mother has identified as the biological father, but the individual has not acknowledged paternity or registered with the putative father registry as pursuant to the Adoption Act, 32A-5-20 NMSA 1978.

E. “Applicant” means an individual, partnership, unincorporated association or corporation who makes written application to become a licensed child placement agency in the state of New Mexico.

F. “Audit” means the review of an agency, as prescribed in these standards, for the purpose of determining if the standards outlined in these regulations are met.

G. “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.

H. “Child abuse and neglect check” is a review of the PSD information management system (also known as FACTS), or another state’s central abuse or neglect registry to determine if there have been any previous referrals on the family to this state’s or another state’s protective services division.

I. “Child placement agency” (see “agency”).

J. “Client” means a foster care or adoptive parent applicant, foster care or adoptive family, a foster or adoptive child, or the child’s biological family who receives services from an agency.

K. “Corrective action” means action taken by the agency in order to correct deficiencies or non-compliance with these standards or the Child Placement Agency Licensing Act.

L. “Corrective action plan” means the written plan developed by the agency identifying the actions that will be taken to correct deficiencies or non-compliance with these standards or the Child Placement Agency Licensing Act; the plan shall be approved PSD licensing staff.

M. “Criminal records check (CRC)” means federal, state or local checks for criminal offenses conducted on employees of an agency who are direct service staff as defined herein at Subsection P of 8.26.5.7 NMAC, potential and current foster and adoptive parents, and adult members of a foster or adoptive parent household.

N. “CYFD” means the children, youth and families department of the state of New Mexico.

O. “Deficiency” means non-compliance with these standards, and other laws, compacts and regulations referenced herein.

(1) **“Minor deficiencies”** means those deficiencies that do not impair the safety, permanency or well being of a child in the agency’s care.

(2) **“Substantial deficiencies”** means those deficiencies that impair the safety, permanency or well being of a child in the agency’s care.

P. “Direct service staff” means supervisors, physicians, nurses, therapists, client care workers, coordinators or other agency personnel who work in immediate direct unsupervised contact with children.

Q. “Direct unsupervised contact” means physical proximity to clients, such that physical contact or abuse could occur, without being observed or noticed by another staff member who has been cleared by PSD.

R. “Emergency suspension” means that prohibition of operation of an agency for a stated period of time by the temporary withdrawal of the license, prior to a hearing on the matter, when immediate action is required to protect human health and safety.

S. “Full disclosure” means prior to placement, the agency shall provide full disclosure about the child to the foster or adoptive family and the child’s PSD worker, and continue to provide full disclosure throughout the case and after finalization of the adoption, provided the information does not disclose information regarding the biological family in pursuant to the Adoption Act, 32A-5-3 (N) NMSA 1978. (See 8.26.5.17 NMAC herein)

T. “Governing board” means the organizational entity of an agency that has the ultimate responsibility for all planning, direction, control, and management of the activities and functions of a program licensed pursuant to these standards.

U. “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.

V. “Interstate compact on adoption and medical assistance (ICAMA)” is an agreement between member states that governs the interstate delivery of medical services for adopted special needs children.

W. “Legal risk” means an adoptive placement where birth parents or other individuals may have legal rights that have not been fully terminated at the time of placement. The prospective adoptive parents are fully informed of the legal risks prior to the placement.

X. “Permanency plan” means a plan of intervention for the permanent placement of a child, as defined under the Adoption and Safe Families Act.

Y. “Placement” means the point in time when the child is placed in the foster or adoptive home by a

legal custodian or guardian.

Z. “Post placement” means the period of time between the placement of a child in an adoptive home and the issuance of a decree signed by a judge ordering the adoption.

AA. “Post-adoption” means any time following the entry of an adoption decree by the court.

BB. “Presumed father” means, pursuant to the Adoption Act, 32A-5-3 (V) NMSA 1978, the husband of the biological mother at the time the adoptee was born; and individual who was married to the mother and either the adoptee was born during the term of the marriage or the adoptee was born within 300 days after the marriage was terminated by death, annulment, declaration of invalidity or divorce; or before the adoptee’s birth, an individual who attempted to marry the adoptee’s biological mother by a marriage solemnized in apparent compliance with the law, although the attempted marriage is or could be declared invalid and if the attempted marriage:

(1) could be declared invalid only by a court, the adoptee was born during the attempted marriage or within 300 days after its termination by death, annulment, declaration or invalidity or divorce; or

(2) is invalid without a court order, the adoptee was born within 300 days after the termination of cohabitation.

CC. “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.

DD. “Service provider” means anyone, agency or individual, providing a service to an individual or client.

EE. “Substantial compliance” means all licensing standards have been complied with and that only minor deficiencies exist which do not impair the safety, permanency or well being of a child in the agency’s care and that the agency is in compliance with New Mexico Children’s Code, the New Mexico Adoption Act and regulations, the Indian Child Welfare Act, the Adoption and Safe Families Act, the Interstate Compact on Placement of Children, the Interstate Compact on Adoption and Medical Assistance, the Multi-Ethnic Placement Act, the Interstate Ethnic Placement Act, the Uniform Child Custody Act, the Health Information Portability and Accountability Act, the Adam Walsh Child Protection and Safety Act, the Safe and Timely Interstate Placement of Foster Children Act, and the Fostering Connections for Success and Increased Adoptions Act.

FF. “Variance” upon written application form a child placement agency, PSD may in the exercise of its sole discretion issue a variance that allows non-compliance with these Child Placement Agency Licensing Standards, 8.26.5 NMAC. Variances are issued in writing at PSD’s sole discretion.

GG. “Wide scale emergency” means a natural disaster (*e.g.*, floods, wild fires, pandemic diseases) or human-caused disaster, whether intentional or accidental (*e.g.*, acts of terrorism, transportation accidents, explosions). A wide scale emergency affects the entire community, with consequences that surpass the community’s resources to respond, and typically, although not necessarily, results in a local, state, or national declaration of emergency.

[8.26.5.7 NMAC - Rp, 8.27.6.7 NMAC, 5/29/09; A, 3/31/10; A, 8/15/11]

8.26.5.8 RULES OF CONSTRUCTION: The Adoption Act Regulations, 8.26.3 NMAC and the Licensing Requirements for Foster and Adoptive Homes, 8.26.4 NMAC are applicable and are cross referenced, unless otherwise noted. The Child Placement Agency Licensing Standards control should a conflict occur between these regulations.

[8.26.5.8 NMAC - Rp, 8.27.6.8 NMAC, 5/29/09]

8.26.5.9 ELIGIBLE AGENCY:

A. The agency must be licensed to do business in the state of New Mexico.

B. PSD does not issue a license unless the applicant or agency maintains an office and sufficient staff in the state of New Mexico, as described herein at Subsection A of 8.26.5.21 NMAC. Both the state program director and supervisor must work in the New Mexico office. An agency must operate from a street address in New Mexico and have sufficient office space to protect and maintain client case records, client identifying information and agency operation. The agency must have established and posted hours of operation.

[8.26.5.9 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.10 APPLICATION: Any individual, group or organization requesting consideration for a license as a child placement agency shall submit a packet of information, as described in Subsections A-H below, to PSD. An applicant may be licensed as an adoption agency, a foster care agency, or both. As a condition of receiving a license, the applicant’s proposed policies and procedures and proposed manner of operation shall be in writing and shall comply with the laws, regulations, and standards referenced herein. The application packet shall include:

- A. Agency description and organization:**
- (1) the name or proposed name and location of the agency;
 - (2) profit or non-profit status;
 - (3) names and addresses of the members of the governing board;
 - (4) rules of the governing board and all sub-committees; and
 - (5) a signed statement from the governing board acknowledging responsibility for placement and monitoring of children in homes approved by the agency for such placement and acknowledging responsibility for:
 - (a) monitoring risks that may expose the organization to liability; and
 - (b) monitoring risks that may reveal unsatisfactory service;
 - (6) the geographic area of operation.
- B. Statement of purpose, including:**
- (1) a brief history of the existing organization;
 - (2) philosophy of the agency;
 - (3) the type of child placements the applicant agency proposed to provide;
 - (4) the type of services to be provided pertinent to the placement process;
 - (5) the type of services to be offered outside of the placement process;
 - (6) any applicable and current accreditations or affiliations.
- C. Personnel:**
- (1) The application shall include a list of staff positions, which must include the following minimum personnel requirements:
 - (a) state program director, meeting the requirements as described herein at Paragraph (1) of Subsection A of 8.26.5.21 NMAC; the program director may also fulfill the role of placement supervisor and placement worker;
 - (b) supervisor, meeting the requirements as described herein at Paragraph (2) of Subsection A of 8.26.5.21 NMAC; and
 - (c) treatment coordinator, meeting the requirement as described herein at Paragraph (3) of Subsection A of 8.26.5.21 NMAC.
 - (2) The applicant agency shall include a copy of its personnel policy and procedures manual with its application, which shall include, but not be limited to, conflicts of interest, conflict resolution between staff and families, and gifts to staff. (See personnel policies and procedures requirements as described herein at 8.26.5.20 NMAC).
 - (3) The applicant agency shall in its application the following information regarding staff and contract providers:
 - (a) names, addresses, and telephone numbers of all staff and contract providers;
 - (b) resumes;
 - (c) documentation of the results of criminal records checks, and abuse and neglect checks, if required (see personnel policies and procedures requirements as described herein at Paragraph (6) of Subsection C of 8.26.5.20 NMAC; and
 - (d) documentation of employee and contractor reference checks.
- D. Policies and procedures:** A copy of adopted and proposed policies and procedures addressing agency operations, client rights, client safety, and others as described herein at 8.26.5.18 NMAC.
- E. Financial operations:** The application shall include documentation of financial operations, including:
- (1) a statement of financial responsibility from a certified or registered public accountant which demonstrates that the applicant has access to sufficient funds to provide services for a minimum of six months;
 - (2) a letter from a certified or registered public accountant stating that a bookkeeping system is in place and a process of financial review or audit is completed at the end of each fiscal year;
 - (3) a complete list of fees for services;
 - (4) a projected six month operating budget; and
 - (5) proof of professional liability insurance, acceptable to PSD.
- F. Disclosures:** Applicants shall disclose affiliations and parent holding companies, to include financial, religious, professional and political affiliations.
- G. Other documents and information:** The application shall include copies of any legal documents, such as constitution, by laws and articles of incorporation and any other relevant information requested by PSD.
- H. Changes, additions or revisions:** Contemplated changes, additions or revisions to the information contained in the original application shall be submitted to PSD for approval before implementation. PSD may

request, in writing and by certified mail, additional information to support the application. The requested information shall be submitted within 30 calendar days of PSD's request. An agency's failure to respond to PSD's request for information within 30 calendar days shall be construed as voluntary withdrawal of an application. [8.26.5.10 NMAC - Rp, 8.27.6.10 NMAC, 5/29/09; A, 8/15/11]

8.26.5.11 TYPES OF LICENSES:

A. Initial license: An initial license is granted to any agency when PSD verifies that the applicant is in substantial compliance with the licensing requirements. If the applicant is in substantial compliance but there are minor deficiencies, the applicant is directed to correct the minor deficiencies. An applicant's initial license shall be issued for a maximum of one year.

B. Standard license: If the agency continues to meet all licensing requirements, PSD may elect to license the agency for a standard license. A standard license may be issued for one year or two years. If all regulations have been met during the current audit, a license may be issued for up to two years.

C. Six month license: A six month license may be issued when PSD determines the agency has documented substantial deficiencies or chronic minor deficiencies, and:

(1) the agency submits a written corrective action plan as approved by PSD to correct the deficiencies; and

(2) the applicant can meet the licensing requirements within six months from the date of issuance of the six month license; PSD makes at least one site visit at least two months prior to the expirations of the six month license, or more frequent visits, to determine that the agency has taken sufficient steps to correct the deficiencies.

D. License extension: If an agency requests to be re-licensed, and holds a current standard license, and an audit is not conducted prior to the or on the date of expiration of the present license, the most recent license may remain in effect for a period of up to 90 calendar days beyond the current expiration date. The extension allows for completion of the audit and determination if a new license is issued, or, in the case of an agency closure, to allow for the timely transfer of families or children. Upon written request of the agency, PSD issues a letter extending the license for the determined amount of time, not to exceed 90 days.

[8.26.5.11 NMAC - N., 5/29/09; A, 8/15/11]

8.26.5.12 APPROVAL OR DENIAL OF A LICENSE: A license is granted or denied based upon the application and upon PSD review, assessment and determination that the applicant is, or is not, in compliance with these standards and the standards outlined in the act.

A. Approval: PSD notifies the applicant, in writing, of approval of the application for a license. Notice is by registered mail sent to the address shown on the application within 90 calendar days after receipt of the completed application.

B. Denial: PSD notifies the applicant, in writing, of denial of the license. The applicant may be denied a license when the requirements for licensing are not met or the applicant has a history of license revocation, suspension, denial, penalties or other corrective action based upon complaints substantiated by any state agency responsible for regulation and licensing of child placement agencies or by a court of competent jurisdiction in any state where the agency has operated. Notice of denial is sent by registered mail to the address shown on the application within 90 calendar days after the receipt of the completed application packet. A notice denying the license states the reason for the denial and informs the applicant of the appeal process. (See 8.26.5.14 NMAC, appeal rights, as described below).

[8.26.5.12 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.13 LICENSE RENEWAL:

A. The agency shall request a renewal of its license, on a renewal form provided by PSD, by certified mail, no later than 90 calendar days before the expiration of the current license.

B. A license is renewed or terminated based on the agency's written request for renewal and PSD's review and assessment of agency operations. Failure to submit a renewal form at least 90 days prior to expiration of a license with the required documents attached, shall be interpreted as voluntary closure.

C. Upon request for license renewal, the agency shall submit to PSD its proof of professional liability, acceptable to PSD, financial review or audit, agency governing board minutes, and agency statistics for the current licensing period. If changes have occurred with respect to personnel or other operations, the agency shall submit documentation reflecting such changes with the renewal request. All required attachments, as indicated on the checklist on the PSD renewal form, shall be included with the request or the request is not considered valid and PSD shall advise the agency of such.

D. If an agency fails to file a renew request within 90 calendar days of expiration of the license, the license may, at PSD's sole discretion, automatically be terminated 30 days from the expiration date shown on the face of the existing license. The agency shall assist in the smooth transfer of the children and families to other agencies, so that there is no disruption in the care of the children.

E. Before renewing an agency's license, PSD shall determine that the agency is in compliance with all applicable requirements by conducting an on site visit which shall include interviews, case record reviews and visits to the facilities maintained by the agency. PSD is not responsible for locating documents when files are not kept organized and up to date.

F. PSD shall notify the agency in writing of its licensing decision before the expiration date of the current license. If CYFD does not renew the license prior to its expiration date, a license extension, at PSD's sole discretion, may be issued to the agency for a maximum of 90 calendar days. If PSD decides to not renew and agency's license, notice of denial is sent by registered mail to the address shown on the application prior to the expiration date of the current license. The notice states the reasons for the denial and informs the applicant of the appeal process. (See 8.26.5.14 NMAC, appeal rights, as described below)

[8.26.5.13 NMAC - Rp, 8.27.6.19 NMAC, 5/29/09; A, 8/15/11]

8.26.5.14 APPEAL RIGHTS:

A. In accordance with the act, PSD may deny, revoke, suspend, place on probation or refuse to renew the license of any child placement agency when the requirements for licensing are not met or the applicant has a history of license revocation, suspension, denial, penalties or other corrective action based upon complaints substantiated by a state agency responsible for regulation and licensing or by a court of competent jurisdiction in any state where the agency has operated.

B. The holder of the child placement agency license that is denied, revoked, suspended, placed on probation or that is not renewed shall be given written notice by return receipt mail of the proposed action and the reason therefore and shall, at a date and place to be specified in the notice, be given a hearing before a hearing officer appointed by the CYFD secretary with an opportunity to produce testimony in the holder's behalf and to be assisted by counsel. The hearing shall be held no earlier than 20 days after receipt of notice thereof unless the time limitations are waived, or a child safety or health issue is present. An agency whose license has been denied, revoked, suspended, placed on probation or not renewed may petition PSD to have the license issued, reinstated or reissued upon proof that the noncompliance with the rules have ceased.

C. An agency adversely affected by a PSD decision denying, revoking, suspending, placing on probation or refusing to renew a license may obtain a judicial review by appealing to the district court pursuant to the provisions of 39-3-1.1 NMSA 1978.

[8.26.5.14 NMAC - Rp, 8.27.6.20 NMAC, 5/29/09; A, 3/31/10; A, 8/15/11]

8.26.5.15 AGENCY OPERATIONS:

A. Agency protocol: It is the responsibility of each agency to be aware of and conform to the following:

- (1) New Mexico Children's Code, Chapter 32A, NMSA 1978;
- (2) New Mexico Adoption Act, 32A-5-1, NMSA 1978;
- (3) Governing Background Checks and Employment History Verification, 8.8.3 NMAC;
- (4) Adoption Act Regulations, 8.26.3 NMAC;
- (5) Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11 NMAC (for treatment foster care agencies);

- (6) Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C 1901 et seq.);
- (7) Adoption and Safe Families Act of 1997 (ASFA), P.L. 105-89;
- (8) Interstate Compact on the Placement of Children (ICPC);
- (9) Interstate Compact on Adoption and Medical Assistance (ICAMA);
- (10) Multi-Ethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Adoption Provisions of 1996;

- (11) Adam Walsh Child Protection and Safety Act of 2006;
- (12) Safe and Timely Interstate Placement of Foster Children Act of 2006;
- (13) Fostering Connection for Success and Increasing Adoptions Act of 2008; and
- (14) Child Abuse Prevention and Treatment Act Reauthorization of 2010.

B. Ethical operations: The agency operates in an ethical manner and according to any standards a relevant licensing board promulgates, including, but not limited to the following:

(1) Favoritism: The licensed child placement agency determines if the governing board, staff and consultants are favored when applying for or receiving the services of the agency. If placement is made with a staff member or board member or consultant, the pre-placement study is conducted by an unrelated licensed placement agency or private person meeting the qualifications set forth in the Adoption Act Regulations, Subsection D and E of 8.26.3.17 NMAC.

(2) Compensation: An agency shall not provide compensation or solicit a provider of services for the purpose of the agency's benefit, nor shall an agency receive compensation for referring providers to other agencies.

(3) Conflict of interest: An agency prohibits its staff, consultants and governing board members to provide private practice services to its applicants, clients or their families. PSD may review restrictions and suspend the applicability of this restriction if the services were in place 60 days prior to the date of application or intake and the record reflects a finding that it is in the best interest of the individual and why it is in their best interest to maintain the professional relationship. No one may provide foster care services or adopt a child for whom he or she has any case management responsibility.

(4) Gifts: Gifts may not be given or received between or among clients, staff and agencies.

(5) Discrimination: Agencies who receive state or federal monies, shall not discriminate against applicants, clients, or employees based on race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity.

[8.26.5.15 NMAC - Rp, 8.27.6.12 NMAC, 5/29/09; A, 3/31/10; A, 8/15/11]

8.26.5.16 GOVERNING BOARD: The agency's governing board is responsible for adopting bylaws and policies and defining the scope of the agency's services.

[8.26.5.16 NMAC - N, 5/29/09]

8.26.5.17 FULL DISCLOSURE:

A. Prior to placement, the agency shall provide full disclosure about the child to the foster family, adoptive family and the child's PSD worker, 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 Adoption Act, 32A-5-3 (N) NMSA 1978, full disclosure includes:

- (1) health history;
- (2) psychological history;
- (3) mental history;
- (4) hospital history;
- (5) medication history;
- (6) genetic history;
- (7) physical descriptions;
- (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 of professional services in connection with an adoption are confidential pursuant to the Adoption Act, 32A-5-8 NMSA 1978. A person who intentionally and unlawfully releases any information or records closed to the public pursuant to the Adoption Act or releases or makes other unlawful use of records in violation 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.

[8.26.5.17 NMAC - N, 5/29/09]

8.26.5.18 AGENCY POLICIES AND PROCEDURES: The agency shall develop and maintain written policies and procedures concerning the licensing of foster and adoptive families and shall provide PSD with a copy of these policies and procedures and with any changes to these policies and procedures within 10 days of the change. Agency policies and procedures shall not conflict with any part of these licensing standards. Violations of this subsection may result in the suspension or revocation of the agency's license. Policies and procedures shall address,

but are not limited to:

A. Protection of children: Agency policies and procedures shall acknowledge the agency's responsibility to protect the safety of children. Specifically, policies and procedures shall:

(1) require that agency staff (pursuant to the New Mexico Children's Code, 32A-4-1 et. seq. NMSA 1978) and all licensed families report all suspected incidents of abuse and neglect involving children in the agency's care and advise the child's legal guardian when such a report is made;

(2) address the safety of children who may be harmed while in the care and control of the agency or its providers and include a plan stating the course of action followed in the event a child is harmed, without regard to how the incident occurred, and identifying the line of authority and the decision-making process to assist in the reporting and investigation of these matters;

(3) educate prospective and current foster or adoptive families on how to create a safe and supportive home environment for youth in foster care regardless of their sexual orientation, gender identity or gender expression.

B. Confidentiality: Agency policies and procedures shall acknowledge the agency's responsibility to maintain the confidentiality of client case records and client identifying information including all foster and adoptive families, and applicant files.

C. Certification and licensing of families: Agency policies and procedures shall include criteria for initial certification and licensing and re-certification and re-licensing of families.

(1) Agencies are required to provide procedures for administrative reviews for families who are not licensed initially. This is an informal process completed by the agency director or designee, which may include an informal conference or a record review. The administrative review does not create any substantive rights for the family. (See Licensing Requirements for Foster and Adoptive Homes, Subsection A of 8.26.4.19 NMAC)

(2) Agencies are required to have policies and procedures for providing administrative appeals for families whose license has been revoked, suspended, placed on probation or not renewed. (See Licensing Requirements for Foster and Adoptive Homes, Subsection B, C and D of 8.26.4.19 NMAC)

D. Acknowledgement of rights and notification forms:

(1) Agency policies and procedures shall require that foster or adoptive parents sign an acknowledgement of rights form that explains the foster or adoptive parent's rights. The agency maintains the original signed acknowledgement of rights in the foster or adoptive parent file.

(2) Agency policies and procedures shall also require that the foster or adoptive parents or applicants disclose their history of application to and licensing by any other agency in this or any other state. The foster or adoptive family or applicant shall sign a PSD approved notification form that will serve the purpose of notifying any previous agency of the foster or adoptive parent or applicant application to a new agency. (See Licensing Requirements for Foster and Adoptive Homes, Paragraph (9) of Subsection B of 8.26.4.9 NMAC) The previous agency may release assessment information and the home study to the new agency regarding the foster or adoptive family or applicant upon receipt of signed notification that the foster or adoptive parent or applicant is being considered for licensure or approval by the new agency.

E. Foster parent rights: Agency policies and procedures shall describe the rights of foster parents and shall require that foster and adoptive parents sign an acknowledgement of rights form as described herein at Paragraph (1) of Subsection D of 8.26.5.18 NMAC.

F. Foster parent roles and responsibilities: Agency policies and procedures shall describe foster parent roles and responsibilities which may include, but is not limited to:

(1) preserving family connections;

(2) refraining from disparaging the foster child's parents, relative or the child's cultural heritage or religious beliefs;

(3) refraining from corporal punishment; and

(4) respecting religious or cultural beliefs of the child's biological family.

G. Training: Agency policies and procedures shall include a statement of training requirements for staff and foster and adoptive parents, and agency procedures shall outline the method of tracking that the training is complete. PSD may, at its own discretion, require the agency to provide specific training for their licensed families, and will notify agencies when that training is available.

H. Detailed services: Agency policies and procedures shall include a description of agency services.

I. Fee schedule: Agency policies and procedures shall set forth fees charged for adoption or treatment foster care related services, including, but not limited to the purchase of approved home studies.

J. Grievances: Agency policies and procedures shall include that process by which agencies review and make decisions on foster or adoptive parent grievances.

K. Incident reports: Agency policies and procedures shall include the process which the agency reviews and acts upon incidents reported in foster or adoptive family homes. Incidents and subsequent incident reports may include, but are not limited to:

- (1) policy and procedure violations;
- (2) abuse or neglect referrals;
- (3) death or serious injury to a foster child;
- (4) safety issues concerning a foster child;
- (5) foster children who have run away; or
- (6) any of the incidents currently codified at Subsections BU and DT of 7.20.11.7 NMAC,

Certification Requirements for Child and Adolescent Mental Health Services.

[8.26.5.18 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.19 FISCAL ACCOUNTABILITY:

A. Financial statement availability: An agency shall maintain complete financial records. A copy of an agency's financial statements, which demonstrates the financial condition of the agency, shall be submitted to PSD with the agency's license renewal request.

B. Donations and charitable contributions: An agency shall maintain complete records of any donations of money or property received by the agency. The records shall include representations made by the agency or donor regarding how donations will be used and document how the funds will be spent according to the stated purposes. The agency also shall document unsolicited donations and how the donations are utilized or spent.

C. Independent accountability: The agency shall have an annual financial audit conducted by an independent certified public accountant. Such records are submitted to PSD with the agency's license renewal request.

D. Audit: PSD may conduct an unannounced audit of any agency, as deemed necessary. Such an audit may be conducted or contracted by PSD. The agency fully cooperates with PSD.

E. Liability insurance: The agency shall provide proof of professional liability insurance acceptable to PSD.

[8.26.5.19 NMAC - N, 5/29/09]

8.26.5.20 PERSONNEL POLICIES AND PROCEDURES:

A. The agency shall develop and maintain written personnel policy and procedures governing employees and volunteer contractors.

B. A copy of the agency's personnel policy shall be provided to each employee at the time of employment.

C. The personnel policy and procedure, at a minimum, shall contain the following information:

- (1) job descriptions which outline the duties and responsibilities of all staff;
- (2) job qualifications for all positions;
- (3) job benefits, work hours, and leave policies for each position;
- (4) policy regarding conflicts of interest;
- (5) policy regarding the confidentiality of case records and client identifying information, including the requirement for a signed acknowledgement of confidentiality by each employee, contractor, or volunteer, as described herein at Paragraph (10) of Subsection A and Paragraph (9) of Subsection B of 8.26.5.22 NMAC;
- (6) requirements for FACTS abuse and neglect checks and criminal records checks for all direct service staff (i.e., agency personnel who work in direct, unsupervised contact with clients or have physical proximity to clients such that physical contact could occur, see definitions herein at Subsections H and M of 8.26.5.7 NMAC); when a criminal records check is not required for a specific employee, policy shall require that the reason for not requiring the criminal records check be documented in writing;
- (7) the organizational structure, demonstrating sufficient ratios of personnel, consultants, providers or contracted personnel, with the appropriate qualifications and availability, to enable it to provide all elements of the required service, including clerical services necessary to maintain correspondence, records, bookkeeping, and files current and in an organized order; and
- (8) the ratio of full time supervisors to treatment coordinators supervised shall be a maximum of 1:7.

[8.26.5.20 NMAC - N, 5/29/09]

8.26.5.21 PERSONNEL QUALIFICATIONS AND REQUIREMENTS: Treatment foster care agencies shall comply with Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental

Health Services, 7.20.11.29 NMAC. In addition, child placement agencies must ensure compliance with the following requirements.

A. Minimum staff: The staff of an agency shall include, at a minimum, a program director and a supervisor, and may include treatment coordinators. The program director may also fulfill the role of supervisor and treatment coordinator, provided the person meets the minimum qualifications for the higher position.

(1) State program director: The program director and agency shall work in its New Mexico office and shall be able to demonstrate through documentation, knowledge of child welfare services and the circumstances which children and families experience in the substitute care or adoptive process. The minimum acceptable requirements of the program director of an agency are:

(a) a graduate degree from an accredited college or university program in one of the following fields: social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling or another human services related field; and

(b) a minimum of two years experience providing social services in a licensed child placement agency or a state child placement agency with at least one year of supervisory experience.

(2) Supervisor: The supervisor is required to possess a graduate degree from an accredited college or university program in the following fields: social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling or another human-services related field. A placement supervisor has at least one year of experience providing social services in a licensed child placement agency or a state child welfare agency. The supervisor works in New Mexico.

(3) Treatment coordinator: The treatment coordinator is required to possess a bachelor's degree from an accredited college or university program in the following fields: social work, clinical psychology, family studies, marriage and family therapy, guidance and counseling or another human services related field. The placement worker works in New Mexico.

B. Employment history: An agency shall obtain a relevant employment history on each potential employee prior to employment and verify requisite experience or document attempts to accomplish such in the personnel file.

C. Not retroactive: The educational and experience requirements contained herein do not apply to individuals continuously employed by an agency on or before the effective date of these regulations.

D. References: At least three professional and character references shall be obtained by an agency for each potential professional employee prior to his or her employment. One of these references shall be from the previous employer or a professional colleague who has direct knowledge of the qualifications of the potential employee. Each letter of reference shall be followed up by a phone call by the agency. Documentation of references, with date and type of contact, including all telephone or in person contacts, shall be included in the employee's personnel file.

E. Background checks: Abuse and neglect checks and criminal records checks are required for direct service staff as a condition of employment. This includes agency personnel who work in direct, unsupervised contact with clients or have physical proximity to clients such that physical contact could occur, as defined herein at Subsections H and M of 8.26.5.7 NMAC.

(1) If a criminal records check is not required for any staff member, the reason it is not required must be documented in the employee's record.

(2) Direct service staff shall report all arrests or abuse and neglect referrals to the agency within 24 hours of the alleged offense or referral to PSD. Failure to report could result in termination or suspension. The agency shall investigate any reported or discovered arrests and referrals and take appropriate action to protect the safety of its clients.

(3) Any corrective actions in response to a referral or arrest will depend on the outcome of such referral or arrest and may include a written reprimand, a corrective action plan, and restriction of unsupervised contact with clients, suspension or termination, depending on the nature of the offense and whether or not children were involved. The agency shall document any corrective action in the employee's employment file.

F. Personnel policy: A copy of the agency's personnel policy shall be given to each employee at the time of employment. Documentation of receipt of the policy shall be maintained in the personnel file.

G. Staff training: An agency shall document a minimum of 15 hours of training relevant to the position, per year, for each agency's full-time professional employees, and 10 hours of training relevant to the position, per year, for each of the agency's part-time (20 hours or less) professional employees. All applicable licensing requirements apply which may lead to more hours than the requirements of PSD, but shall not be less. PSD may at its discretion, require the agency to provide topic specific training for agency personnel.

[8.26.5.21 NMAC - Rp, 8.27.6.17 NMAC, 5/29/09; A, 8/15/11]

8.26.5.22 PERSONNEL, CONTRACTOR AND VOLUNTEER FILES:

A. Employee personnel file: The agency shall maintain a personnel file for all employees of the agency which shall be available to PSD for inspection. Each file shall include, at a minimum:

- (1) application: the employee's employment application showing qualifications and experience;
- (2) reference: the agency shall obtain at least three professional and character references for each potential employee prior to his or her employment;
- (3) academic transcripts: the official academic transcripts;
- (4) disciplinary actions: documentation of any disciplinary action taken with respect to any employee;
- (5) evaluations: any evaluations of work performance;
- (6) background check results: the results of the abuse and neglect and criminal records check, if required; if a background check is not required, the file shall include written documentation as to why it is not required;
- (7) training: documentation of training received, content and hours;
- (8) license: a copy of an employee's professional license when applicable;
- (9) abuse and neglect reporting: a signed statement of understanding by the employee of the requirements to report suspected abuse and neglect to PSD;
- (10) child placement agency licensing standards: a signed statement by the employee acknowledging the receipt these regulations; and
- (11) confidentiality statement: any individual who is employed by an agency shall sign a statement acknowledging the confidentiality rights of the children and families that are or may become clients of the agency, specifically that case records and client identifying information shall not be publically released.

B. Volunteer and contractor file: The agency shall maintain a separate file on each individual or entity not employed by the agency, conducting business on the agency's behalf, which shall include, but is not limited to:

- (1) contract: the contract, which outlines the specific requirements, qualifications and experience, and limitations of the contract;
- (2) reference: the agency shall obtain at least three professional and character references for each potential contractor prior to the commencement of the contract;
- (3) academic transcripts: the official academic transcripts of individuals working under the contract;
- (4) disciplinary actions: documentation of any disciplinary action taken with respect to the volunteer or contracted agency or individual;
- (5) evaluations: any evaluation of work performance;
- (6) background check results: the results of the abuse and neglect and criminal records check, if required; if a background check is not required, the files shall include a statement as to why it is not required;
- (7) license: a copy of the current professional license;
- (8) abuse and neglect reporting: a signed statement of understanding by the contractor or volunteer of the requirements to report suspected abuse and neglect to PSD;
- (9) child placement agency licensing standards: a signed statement by the contractor or volunteer acknowledging the receipt these regulations; and
- (10) confidentiality statement: any individual who volunteers for or is contracted by an agency shall sign a statement acknowledging the confidentiality rights of the children and families that are or may become clients of the agency, specifically that case records and client identifying information shall not be publicly released.

[8.26.5.22 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.23 AGENCY SERVICES:

A. Adoption services: The agency shall maintain a detailed description of the agency's adoption services and procedures applicable to those services. The description shall include, but is not limited to, adoptive home assessments, relinquishment procedures, procedure to assure best interest adoption placement, provision for medical services for the birth mother and the child, post-relinquishment medical services for the child until adoptive placement occurs, services for adoption applicants and biological parents, placement and post-placement services, management of adoption disruptions and dissolutions, finalization procedures and post decree adoption support services. All agencies shall follow the requirements for the assessment process for foster or adoptive homes licenses set forth in the Adoption Act Regulations, 8.26.3.18 NMAC, and Licensing Requirements for Foster and Adoptive Homes, 8.26.4.12 NMAC.

B. Foster care services: The agency shall maintain a detailed description of the services provided to

the children and families who are served by the agency, as well as the agency's foster care services. The description shall include, but is not limited to, recruitment, foster home assessments, training of foster parents, the placement process, documentation of contacts between child and biological family, the interaction of the agency with the child's family of origin and with the foster home, documentation of efforts made to reunite the child with the family, when appropriate, and the permanent plan. All agencies shall follow the requirements for home studies, including background checks, or pre-placement studies set forth in the Adoption Act Regulations, 8.26.3.18 NMAC and the Licensing Requirements for Foster and Adoptive Homes, 8.26.4.14 NMAC. Therapeutic foster homes must meet the requirements listed in Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC, in order to receive medicaid reimbursement.

(1) All services to be rendered shall comply with the court order, if the child is not in the custody of the parent.

(2) For children in department custody, agency case planning shall be reflective of the case plan developed by PSD and shall never be in conflict with the PSD case plan or current court orders. The treatment foster care coordinator shall be invited to staffing meetings with department staff to determine that the case plans are consistent.

C. Relinquishment of parental rights:

(1) If an individual contacts an agency to relinquish his or her parental rights, pursuant to the Adoption Act, 32A-5-17(4) and (5) and 32A-5-19 (E) NMSA 1978, the agency shall make diligent efforts to locate, obtain and document consent from the acknowledged or presumed father defined herein at Subsections B and D of 8.26.5.7 NMAC. Consent from the alleged father, defined herein at Subsection AA of 8.26.5.7 NMAC, shall not be required. Diligent efforts shall include attempts to locate any court records pertaining to a divorce, separation, paternity or custody action, a search of the putative father registry and a search of PSD's record and all other efforts that may be reasonable under the circumstances. The agency shall also obtain and maintain documentation establishing the parental rights of the presenting parent. A signed release of information allowing the agency to conduct searches shall be obtained to allow the agency to determine that an outstanding custody order which prohibits the parent from acting independently is not in effect. Such a search shall be diligent and encompassing of all jurisdictions in which the child has resided since birth. The agency shall not take any action to place the child for adoption until such time as the agency has determined that parental rights have been relinquished, terminated, or that legal proceedings relating to custody of the a child are not pending. This does not preclude the agency from placing the child in a legal risk adoption home. Should there be concern for the welfare of the child due to the parents' inability to care for and protect the child, the agency shall notify CYFD's statewide central intake (SCI).

(2) An agency shall not use coercion or deception to obtain a relinquishment of parental rights from a parent. A relinquishment is freely and voluntarily given by the biological parent.

(3) A relinquishment of parental rights shall be taken before a court of competent jurisdiction pursuant to the Adoption Act, 32A-5-17 through 32A-5-24 NMSA 1978.

(4) An agency's payment to, or on behalf of, a relinquishing parent shall be limited to the actual costs associated with the adoption and conforms to all provisions of New Mexico law. If any agency becomes aware of an illegal payment by any agency or individual, the agency shall notify the court presiding over the adoption proceedings or PSD.

D. Placement: Placement does not occur until after a comprehensive assessment of how the prospective foster family can meet the child's needs and preferences, and a documented determination by the agency that the prospective placement is in the best interest of the child.

E. Change in placement: When a change in a child's placement is contemplated, the agency shall work with the legal guardian or parents to determine if the placement change is in the best interests of the child.

(1) Except in cases of an emergency, an agency shall not make a change in placement of the child without the concurrence of the legal guardian, and the guardian ad litem or youth attorney, if applicable. When a placement change is agreed upon, including a return to the child's home for a trial home visit, the agency shall arrange for:

(a) the transfer of all of the child's belongings, including clothing, personal belongings, the child's medical and educational records, and the child's life book;

(b) notifying the PSD case worker, the child's CASA, the guardian ad litem or youth attorney, if applicable, of the placement change at least 10 days prior to the change of placement if the child in question is in state custody; and

(c) documentation of the change in placement in the child's agency record.

(2) The agency shall notify the child of the placement change. The legal guardian may choose to be a part of the disclosure to the child. The placement worker shall be responsible to provide medical, education, and

psychological information to any subsequent placement provider.

(3) An emergency change in placement may occur only when the caretaker requests the immediate removal of the child or for the safety of the child. If the emergency change is due to a mental health hold, it must be in compliance with the provisions of the Mental Health Placement Act. The agency shall notify the legal guardian of the change in placement, unless circumstances preclude such and are documented in the child's record. For children in state custody, if the removal occurs after regular working hours, the agency notifies statewide central intake (SCI).

F. PSD registration: In accordance with national child abuse and neglect data system (NCANDS) requirements for the reporting and tracking of abuse and neglect in foster homes, all foster homes shall be registered with PSD.

(1) The agency shall register a family with PSD upon the licensing of the home and prior to the agency placing a child in the home.

(2) The agency shall notify PSD within five working days if a family's license is revoked or not renewed.

[8.26.5.23 NMAC - Rp, 8.27.6.13 NMAC, 5/29/09; A, 8/15/11]

8.26.5.24 CONTINUITY OF SERVICE: An agency shall provide continuity of services for children in their care in the event that a family transfers from one agency to another.

A. Transfers:

(1) **Foster family:** The transfer of a foster family from one agency to another when a child is placed in the home is discouraged, unless all members of the child's treatment team and the agencies involved agree that the transfer is in the best interest of the child. If the transfer is in the best interest of the child, the sending agency and receiving agency shall ensure that services being received by the child follow that child to the new agency in order to ensure consistency in the course of that child's treatment. If the home is a therapeutic foster home, both agencies must comply with the Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC. Both agencies shall provide written documentation, to PSD in the case of children in custody of PSD, or to the legal guardian when the child is not in custody of PSD that the transfer is in the best interest of the children currently in the home. A reasonable fee may be charged by the sending agency to the receiving agency for:

- (a) document copying;
- (b) time and effort spent conducting the home study; and
- (c) training hours provided to parents.

(2) **Adoptive family:** Transfer of an adoptive family from one agency to another shall not occur after the agency had identified the family and agreed to the placement. In permissible transfers, the family's request to transfer from one agency to another shall be made in writing to the agency that initially certified the family. When the adoptive parents have paid the applicable fees and after written notice of the transfer has been filed with the previous agency, the previous agency shall send documentation leading to certification to the current agency. A reasonable fee may be charged by the sending agency to the receiving agency for:

- (a) document copying;
- (b) time and effort spent conducting the home study; and
- (c) training hours provided to parents.

(3) **Fees:** Foster and adoptive parents are not responsible for these fees. Agencies may file a complaint with PSD if they believe charges to be unreasonable.

B. New license: No foster care home or adoptive home may be licensed for placement by more than one agency or PSD.

(1) If a foster home license has been revoked by an agency due to a substantiated abuse or neglect investigation they may not be licensed by another agency unless the applicant can demonstrate that the dynamics that resulted in the abuse or neglect have been resolved and that no safety issues exist. In all such cases, the agency reviewing the application shall consult with PSD prior to approving the license.

(2) If a foster home license has been revoked by an agency due to any of the federally mandated automatic disqualifiers listed in Licensing Requirement for Foster and Adoptive Homes, Subsection D of 8.26.4.10 NMAC, then that family may not be licensed by another agency. Applicants who have a conviction for crimes other than those included in Subsection D of 8.26.4.10 NMAC are not disqualified from licensure; however this information shall be used to determine suitability for licensure. In all such cases, the agency reviewing the application shall consult with PSD prior to approving the license.

(3) When a family transfers from one agency to another agency, the new agency shall request the

family to sign a PSD approved notification form that will serve the purpose of notifying any previous agencies of the family's application to a new agency. Previous agencies may release assessment information and home studies to the new agency regarding the family. Licenses issued by the new agency shall be considered new licenses and shall conform to these standards. It is the responsibility of the new agency to review the information provided by the previous agencies. This review shall be documented by the new agency. (See herein at Paragraph (2) of Subsection D of 8.26.5.18 NMAC and in Licensing Requirements for Foster and Adoptive Homes, Paragraph (9) of Subsection B of 8.26.4.9 NMAC)

(4) All foster care and adoption agencies shall follow the requirements for background checks, home studies or pre-placement studies as set forth in the Adoption Act Regulations, 8.26.3.18 NMAC, and the requirements for background checks and assessments as set forth in Licensing Requirements for Foster and Adoptive Homes, Sections 10, 11, and 12 of 8.26.4 NMAC.

C. Respite care: Any agency seeking to use a family licensed by another agency for respite care must receive advance approval from the child's legal guardian and the agency licensing the respite family. [8.26.5.24 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.25 RECORDS:

A. Types of records: Separate records shall be kept for foster parents, adoptive parents, and the child. The agency shall also keep separate its administrative records as described herein at Subsection E of 8.26.5.25 NMAC. The child's record includes information regarding the family of origin. Case records shall be continuously updated and easily accessible to the agency staff and PSD.

B. Foster parent records: The agency shall maintain records concerning the evaluation of a foster home which may include, but are not limited to:

(1) the application documents as set forth in Licensing Requirements for Foster and Adoptive Homes, 8.26.4.9 NMAC;

(2) the original home study and all subsequent updates or addenda and are filed in sequence; in addition, the foster parent record shall contain a separate documentation section which lists each placement in the home including but not limited to the name of the child, dates of placement, and the reason for a child's removal from the biological home; if a disruption occurs, the reason for the disruption of placement shall be documented;

(3) criminal records checks results of the foster parents and any adults living in the home, as well as abuse and neglect checks; the agency shall arrange for abuse and neglect checks, criminal records checks, and renewals of these checks as set forth in Licensing Requirements for Foster and Adoptive Homes, Sections 10 and 11 of 8.26.4 NMAC.

(4) medical exam records and signed releases of information;

(5) the home safety checklist as set forth in Licensing Requirements for Foster and Adoptive Home 8.26.4.13, NMAC; the home safety checklist shall be updated annually at recertification; CYFD will provide the form to all applicants; the agency shall provide information regarding each listed category;

(6) the annual clean well water certification if the home uses well water as a water source;

(7) a copy of the foster home license; and

(8) any and all correspondence between the agency and the foster parents.

C. Adoptive parent record: The agency shall maintain records concerning the evaluation of an adoptive home which may include, but are not limited to:

(1) the application documents as set forth in Licensing Requirements for Foster and Adoptive Homes, 8.26.4.9 NMAC;

(2) the original home study or pre-placement study and all subsequent updates or addenda and are filed in sequence; in addition, the adoptive parent record shall contain a separate documentation section which lists each placement in the home including but not limited to the name of the child, dates of placement, and the reason for a child's removal from the biological home; if a disruption occurs, the reason for the disruption of placement shall be documented; this will be used during the best interest placement process; the agency shall maintain in each file the annual clean well water certification if the home uses well water as a water source;

(3) criminal records checks results of the adoptive parents and any adults living in the home, as well as abuse and neglect checks; the agency shall arrange for abuse and neglect checks, criminal records checks, and renewals of these checks as set forth in Licensing Requirements for Foster and Adoptive Homes, Sections 10 and 11 of 8.26.4.10 NMAC;

(4) medical exam records and signed releases of information; the agency shall maintain in each file the home safety checklist; the home safety checklist shall be updated annually at recertification; this form may be requested from CYFD, and shall, at a minimum, address each safety category as developed by CYFD;

(5) the home safety checklist as set forth in Licensing Requirements for Foster and Adoptive Home 8.26.4.13, NMAC. The home safety checklist shall be updated annually at recertification; PSD will provide the form to all applicants; the agency shall provide information regarding each listed category;

(6) the annual clean well water certification if the home uses well water as a water source;

(7) a copy of the foster home license, if applicable;

(8) any and all correspondence between the agency and the adoptive parents; and

(9) the adoption decree and all adoption assistance agreements.

D. Child's record: These requirements apply to all children in the care of a licensed child placement agency and are not restricted to children in the custody of PSD. The record of the adoptive or foster child shall contain:

(1) placement history section: the placement history section shall contain a chronological summary of the child's placements, including the name, and address of the foster home of all the child's placements, the dates of each placement and the child's adjustment to each placement, including progress, problems and their resolution, and reasons for removal, disruption, or replacement; the placement history shall record all formal and informal placements since birth;

(a) for children placed in foster homes, this section shall record in detail the reason a child is moved from one home to another, i.e., enumerating the child's behavior or family problems;

(b) for children placed in adoptive homes, this section shall contain the name and address of the adoptive parents and a description of the child's adjustment in the home up to the time of filing the post-placement report;

(c) for foster and adoptive children, this section shall include all documented efforts to secure the placement information, such as letters and telephone calls to the worker or parents;

(2) progress notes for foster children: progress notes for foster children shall reflect the child's activities, behaviors, school issues, medical issues and emotional state, and the foster parent's observations of the child; progress notes shall be developed, at a minimum, on a weekly basis;

(3) education records: the agency shall maintain documentation of the child's education status, needs, and history; the documentation shall include information provided by the school to the agency and is updated, at a minimum, each semester;

(4) medical records: the agency shall maintain documentation of the child's medical needs, medications, and history;

(5) best interest placement: the agency shall document in the child's file the process used to determine that the child was placed appropriately, including the care givers' abilities to address the child's needs;

(6) full disclosure documentation: the agency shall document in the child's file all information that the agency has disclosed to the foster or adoptive parent and the child's PSD worker as described herein at Subsection A of 8.26.5.17 NMAC;

(7) permanency plan: the child's permanency plan shall be clearly documented as set forth in Permanency Planning, 8.10.8.8 NMAC; the permanency plan for children in the custody of PSD is designated by the court; it is the agency's responsibility to know the plan and document accordingly; for children not in PSD custody, the agency shall staff and designate the plan;

(8) monthly treatment plan report: the child's record shall contain a monthly treatment plan report of services provided by the agency;

(a) the report shall summarize the services provided, such as home and office visits, treatment needs, issues, prognosis, relationship with foster parents, current medical and educational information, and the child's progress toward discharge; if the child is dually diagnosed, the plan to address both diagnoses and the permanency plan shall be included; the reports shall be subdivided into the identified sections by service;

(b) for children in PSD custody, the report shall be provided to the PSD worker and shall include dates and locations of all professional staff visits with the child;

(c) for children not in PSD custody, the report shall be provided to the child's legal guardian.

E. Administrative records: Administrative records include but are not limited to:

(1) personnel records or files as described herein at 8.26.5.21 NMAC;

(2) agency policy and procedure as described herein at 8.26.5.18 NMAC;

(3) personnel policy and procedure as described herein at 8.26.5.20 NMAC;

(4) fiscal records as described herein at 8.26.5.19 NMAC; and

(5) a copy of the agency's license.

[8.26.5.25 NMAC - Rp, 8.27.6.16 NMAC, 5/29/09; A, 8/15/11]

8.26.5.26 MAINTENANCE OF RECORDS:

A. Foster parent records: The foster care agency shall retain foster parent records for 10 years from the date of case closure. In the event a foster care agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

B. Adoptive parent records:

(1) Finalized adoption cases: The agency shall retain adoptive parent records in finalized cases in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

(2) Disrupted or proposed adoptions not finalized: The agency shall retain adoptive parent records for disrupted or proposed adoptions not finalized for five years after the case is closed. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

C. The child's record:

(1) If the child is adopted: The agency shall retain the child's record in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall comply with 8.26.5.30 NMAC herein.

(2) If the child remains in foster care: The agency shall retain the child's record for 10 years from the date of case closure. In the event a foster care agency is closed or goes out of business, the agency shall comply with 8.26.5.30 herein.

D. Administrative records: An agency shall retain its administrative records for a minimum of seven years from the date the records were created unless an applicable law requires retention for a longer period of time. If the agency closes, including when an agency's license has expired or the agency goes out of business, or where the agency's license has been revoked, the agency shall retain its administrative records for five years after the agency has closed or goes out of business. The agency shall comply with 8.26.5.30 NMAC herein.

E. Confidentiality: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA, the confidentiality provisions of the New Mexico Children's Code, 32A-3B-22 and 32A-4-33, the specific authority related to certification of foster homes, Section 40-7-4 (D) and the Adoption Act, 32A-5-6 and 32A-5-8 NMSA, all client case records and client identifying information including foster and adoptive families, and applicant files are confidential and may not be publicly disclosed.

(1) Release in response to court order: PSD and agencies 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.

(2) Release to another agency that is considering a previously licensed family for licensure: An agency that has licensed a foster or adoptive family may release assessment information and the home study to any agency that is considering the foster or adoptive family for licensure, upon receipt of the signed notification by the foster family of its licensure history with previous agencies as set forth in Licensing Requirements for Foster and Adoptive Homes, Paragraph (9) of Subsection B of 8.26.4.9 NMAC.

[8.26.5.26 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.27 REPORTS:

A. Semi-annual reports: An agency shall submit to PSD a semi-annual statistical report of the services provided by the agency.

B. Report format: Semi-annual reports shall be prepared on forms provided by PSD and include all the information required therein, including, but not limited to:

(1) foster home statistics:

- (a) number of applications received;
- (b) number and types of foster home applicants licensed by type;
- (c) number of applicants denied;
- (d) number of licenses revoked;
- (e) number of applications pending at the end of the reporting period;
- (f) number of applications withdrawn;
- (g) names of all family members of all homes transferring to other agencies and the receiving

agency and the reason for the transfer, should foster children reside in the home, the report shall also document how continuity of care was maintained;

- (h) number of foster homes operating under the agency's supervision at the end of the reporting

period;

(i) all complaints, incidents, and abuse and neglect reports with complaint's identifying information made regarding specific homes or the agency, and information regarding resolution of such; and

(j) any other specific data requested by PSD;

(2) foster children statistics:

(a) number of children placed in foster care during the reporting period;

(b) number of foster children discharged from placement during the reporting period;

(c) number of foster children remaining in foster care placement at the end of the reporting

period;

(d) number of children removed from one foster home and placed in a different foster home licensed by the agency;

(e) number of children removed from one foster home and placed with another agency's foster home;

(f) number of children removed from one foster home and placed in a hospital, RTC, group home, or shelter during the reporting period;

(g) identity (first name and last initial) and date of placement of those children who have been in foster care for more than six months;

(h) legal custodian of those who have been in foster care for more than six months; and

(i) any other child-specific data requested by PSD;

(3) adoptive home statistics:

(a) number of applications received from prospective adoptive parents during the reporting period;

(b) number of applications denied;

(c) number of applications withdrawn;

(d) number of adoptive studies pending;

(e) number of agency adoptive studies approved and waiting;

(f) number of agency studies not approved;

(g) number of agency adoptive studies withdrawn;

(h) all complaints, with complaint's identifying information, made regarding the agency;

(i) number of pre-placement training held;

(j) number of families receiving post placement services;

(k) number of families receiving post-decree services;

(l) names of homes transferring to other agencies and the reasons given; and

(m) any other specific data requested by PSD;

(4) adoptive children statistics:

(a) number of children freed for adoption;

(b) number of children physically placed with adoptive parents;

(c) number of adoption disruptions;

(d) number of adoptions finalized; and

(e) any other child-specific data requested by PSD;

(5) a list of clients and their status and a separate list of foster parents or adoptive parents who maintain a license of certificate for adoption.

C. Confidentiality of reports: Semi-annual reports are not confidential, except that client identifying information and criminal records checks and abuse and neglect checks information, shall not be released to the public except as required by a court order

[8.26.5.27 NMAC - Rp, 8.27.6.16 NMAC, 5/29/09; A, 8/15/11]

8.26.5.28 EMERGENCY RESPONSE PLAN: As required by the federal Child and Family Services Improvement Act of 2006 and included in CYFD's federal child and family services plan, each agency shall develop and maintain a written emergency response plan. The plan shall be developed within three months of the promulgation of these regulations, or within three months of initial licensure.

A. Essential functions: The agency's plan must assure the agency, in the event of a wide-scale emergency, is capable of performing the following essential functions:

(1) locating and ensuring the safety of children placed with families licensed by the agency and of those families;

(2) locating and ensuring the safety of agency staff;

(3) cooperating with, sharing information, and assisting PSD in providing emergency response as requested; and

(4) ensuring continuity of operations, including maintaining records, continuing payments to providers, communicating with staff and foster care providers, and documenting costs of response efforts.

B. Content of plan: The details of each agency's emergency response plan shall be developed by the agency based on its specific characteristics and needs, including the size of staff, the number of families and children served, the geographic location, office facilities and resources, and other factors. Although the details of each plan may vary, the plan shall include:

(1) a safety plan for the office, including evacuation of staff and identification of an alternate location if the office is unavailable;

(2) development of a staff registry, including emergency contact numbers and the identification of and contact information for at least two locations (including one out-of-town location) where staff would go in the event a community evacuation is necessary;

(3) a call-back process to notify staff to report for work after hours;

(4) identification of a lead person (incident commander) for emergency response and a liaison to coordinate with other response agencies in the community, including the PSD county office;

(5) development of a foster and adoptive parent registry, including emergency contact numbers and the identification of and contact information for at least two locations (including one out-of-town location) where the foster or adoptive family would go in the event a community evacuation is necessary;

(6) a call-in process for foster and adoptive families to report their location and condition and request assistance if necessary;

(7) assistance to foster and adoptive families in developing their own family emergency plans;

(8) a continuity of operations plan addressing how records will be safeguarded, communication will be maintained, activities and costs will be documented, payments will be made, and other business functions continued during and immediately after the emergency;

(9) a plan to assist families and children to recover from the emergency, including reuniting families and children, providing psychosocial support, linking with resources, and other services as needed; and

(10) a recovery plan to reestablish business as usual.

C. Coordination of plans: The agency's plan shall be coordinated with the local county emergency operations plan. Assistance in the development of the plan may be available from the county government's emergency management personnel; if not it may be requested from PSD staff.

D. Training and drills: All agency staff shall be trained in the emergency response plan and shall participate in regular drills and exercises. Staff shall also participate in county-wide, inter-agency drills and exercises as requested by local emergency management personnel.

[8.26.5.28 NMAC - N, 5/29/09; A, 8/15/11]

8.26.5.29 PSD ROLE:

A. Meetings and training: PSD retains the right to call meetings or training for licensed adoption and foster care agencies. Agencies shall be responsible for obtaining all information distributed at each meeting regardless of whether or not they attend the meeting.

B. Access to agency information: Information regarding the operations of PSD licensed agencies shall be available to other state departments and divisions upon receipt of a written request to the extent permitted by New Mexico law.

C. Oversight and investigation authority: PSD may conduct inspections and interviews related to referrals of abuse and neglect, licensing violations, or complaints received by PSD related to the operation of the agency. Such inspections and interviews may be conducted at any time, with or without prior notice. In order to evaluate the safety and continuity of care for children placed with the agency, PSD may:

(1) enter and inspect the agency's or applicant's offices and physical facilities;

(2) inspect and copy all agency financial records, files, papers, and correspondence which pertain directly or indirectly to the issuance and maintenance of the license and the issuance and maintenance of foster home licenses or adoption certificates; and

(3) interview, as PSD deems appropriate, agency staff, consultants, contractors, foster parents, adoptive parents, governing body, and any other agency personnel, volunteers and clients.

D. 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 CYFD protective services investigation policy and procedure. If a screened-out report involves a

child in PSD custody, the child's worker shall conduct a safety assessment of the placement.

(2) No new placement may be made in the home during a pending investigation. Existing placements in the home shall be evaluated for safety, with a decision for maintaining the placement depending on the continued safety of a child.

(3) The agency shall notify PSD's foster care and adoption bureau of any abuse and neglect report regarding a foster home, therapeutic foster home, or pre-adoptive home licensed by a child placement agency, regardless of the screening decision. The agency shall also notify CYFD's licensing and certification unit of any abuse and neglect report regarding a therapeutic foster home licensed by an agency, regardless of the screening decision.

E. Investigations of complaints ~~and~~ of alleged policy violations: PSD investigates complaints of alleged violations of agency policy or procedures or CYFD licensing regulations. Allegations of abuse and neglect regarding agency staff are considered alleged policy violations. Such complaints and alleged violations shall be submitted in writing to the foster care and adoption bureau.

(1) Absent an emergency, PSD shall provide an agency notice of a complaint of an alleged agency policy or procedure, or CYFD licensing regulation violation within 10 working days from receipt of the complaint or allegation.

(2) Depending on the type and severity of the allegations, PSD may investigate the agency. The investigation may result in no action being taken, the imposition of sanctions, the suspension of an agency's license, or closure of the agency.

(3) PSD shall maintain a listing of the complaints, notification to the agency, and the findings of PSD's investigation in each agency's file. PSD and the agency shall maintain confidentiality regarding the identity of specific individuals who make complaints and any children and foster or adoptive families involved.

F. Disclosure of complaint information:

(1) Third parties considering obtaining services through a licensed agency may, upon written request, obtain from PSD the number of and calendar year of the complaints and substantiated allegations regarding the agency.

(2) The identity of the complainant shall not be publically released and shall be protected from disclosure to the extent permitted by law.

(3) Client identifying information is confidential and shall be protected as described herein at Subsection E of 8.26.5.26 NMAC.

G. Sanctions: PSD may impose sanctions, among other reasons, if it determines that an agency has failed to meet licensing requirements or has violated any of the standards included herein, or where an investigation substantiates a complaint against such agency, employees or licensed homes. At PSD's discretion, depending upon the severity of an agency's non-compliance, PSD may issue a letter of correction, put an agency on probation with restricted admissions, suspend an agency's license, revoke an agency's license, or deny an agency's license.

(1) Letter of correction: PSD may send the agency a letter of correction. The letter of correction is sent by registered mail and:

(a) notifies the agency of identified deficiencies and instructs the agency to correct the deficiencies by a specific date;

(b) requires the agency to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD; at its discretion, PSD staff may work with the agency in the development or revision of the corrective action plan; and

(c) advises the agency of potential PSD actions should the deficiencies not be corrected, including, but not limited to probation, suspension or revocation of license, or denial of license renewal.

(2) Probation with restricted admissions: PSD may place the agency on probation and restrict the agency from accepting any new clients or expanding into additional services until the identified deficiencies are corrected. PSD shall notify the agency in writing, as specified Paragraph (5) of Subsection G of 8.26.5.29 NMAC (notification) below. The notice shall:

(a) state the deficiencies and reasons for the probation and instruct the agency to correct the deficiencies by a specific date;

(b) require the agency to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD; at its discretion, PSD staff may work with the agency in the development or revision of the corrective action plan;

(c) advise the agency of potential PSD actions should the deficiencies not be corrected,

including, but not limited to suspension or revocation of license or denial of license renewal; and

(d) inform the licensee of the appeal process as described herein at 8.26.5.14 NMAC.

(3) Suspension of license: PSD may suspend the agency's license and move the children placed by the agency to new placements.

(a) When PSD suspends an agency's license, the agency shall assist PSD in arranging for transfer of care, custody and control of any children currently being served, and for the preservation and transfer of records. The agency shall assist in the transfer of its licensed homes in good standing to another agency when such would be in the best interests of the children.

(b) PSD shall notify the agency in writing of its intent to suspend the agency's license, as specified in Paragraph (5) of Subsection G of 8.26.5.29 NMAC (notification) below. The notice shall:

(i) state the deficiencies and reasons for the suspension and instruct the agency to correct the deficiencies by a specific date;

(ii) require the agency to submit a written corrective action plan, subject to approval of PSD, identifying the specific actions which will be taken to correct the deficiencies, following the time frame provided by PSD; at its discretion, PSD staff may work with the agency in the development or revision of the corrective action plan;

(iii) advise the agency of potential PSD actions should the deficiencies not be corrected, including, but not limited to revocation of license or denial of license renewal; and

(iv) inform the licensee of the appeal process as described herein at 8.26.5.14 NMAC.

(4) Revocation of agency's license or denial of license renewal: PSD may revoke an agency's license or deny renewal of the license if PSD determines such action is necessary based upon the agency's failure to meet licensing requirements and non-compliance with any of the standards included herein or the agency's failure to correct deficiencies identified in a prior letter of correction, probation, or suspension of license.

(a) When PSD revokes or denies renewal of an agency's license, the agency shall assist PSD in arranging for the transfer of care, custody and control of any children currently being served, and for the preservation and transfer of records. The agency shall assist in the transfer its licensed homes in good standing to another agency when such would be in the best interests of the children to be placed in a different home.

(b) PSD shall notify the agency in writing, as specified in Paragraph (5) of Subsection G of 8.26.5.29 NMAC (notification) below.

(5) Notification: PSD shall notify the agency in writing of its intent to put the agency on probation or to suspend, revoke, or not renew the agency's license. Notice shall be sent by return receipt mail, delivered to the address on file, or by personal delivery to the person authorized to accept service on behalf of the agency. Except as specified in Paragraph (6) of Subsection G of 8.26.5.29 NMAC (emergency suspension) below, notice shall be sent at least 30 days prior to the probation, suspension, or revocation of the license or of the expiration date of a license which shall not be renewed. The notice shall state the reasons for the action and its effective date, and inform the licensee of the appeal process as described herein at 8.26.5.14 NMAC.

(6) Emergency suspension: PSD may immediately suspend an agency's license, prior to a hearing on the matter, when such action is required to protect human health and safety. The emergency suspension is carried out by personal service of an emergency suspension notice. The agency may request, in writing, a hearing with five working days of the suspension in accordance with Subsection A of 8.8.4.10 NMAC, thereby waiving the normal 20 day time limits for hearings established in Subsection B of 8.26.5.14 NMAC.

[8.26.5.29 NMAC - Rp, 8.27.6.18 NMAC, 5/29/09; A, 3/31/10; A, 8/15/11]

8.26.5.30 VOLUNTARY AGENCY CLOSURE:

A. When an agency voluntarily closes, the agency shall notify PSD in writing at least 90 calendar days prior to the agency beginning to move staff, families or children to another agency. The licensee shall provide PSD a written plan summarizing the preparation and arrangements for the care, custody and control of any children being served and the financial plan to ensure timely payments to families.

B. Retention of records in agency closures:

(1) In all closures of treatment foster care agencies, including involuntary closures, the agency shall retain all records, including the foster parent record, the child's records and administrative records, as defined in 8.26.5.25 NMAC according to regulations governing such agencies codified at Paragraph (2) of Subsection E of 7.20.11.22 NMAC, Certification Requirements for Child and Adolescent Mental Health Services.

(2) In all closures of PSD licensed, non-treatment foster care agencies, including when an agency's license has expired or goes out of business, or where the agency's license has been revoked, the agency shall retain foster parent records, the child's record and administrative records, as defined in 8.26.5.25 NMAC, for five

years after the agency has been closed or goes out of business.

(3) In all closures of PSD licensed adoption agencies, including when an agency's license has expired or goes out of business, or where the agency's licensed has been revoked:

(a) administrative records: the agency shall retain administrative records for five years after the agency has been closed or goes out of business, unless an applicable law requires a retention period for a longer period of time;

(b) parent and child adoptive records in finalized cases: the agency shall transfer finalized parent and child adoptive records to PSD for permanent storage;

(c) parent and child adoptive records in adoption disruptions or proposed adoptions not finalized: the agency shall retain parent and child adoptive records in cases of disrupted adoptions or proposed adoptions not finalized for five years after the agency has been closed or goes out of business.

[8.26.5.30 NMAC - Rp, 8.27.6.21 NMAC, 5/29/09; A, 8/15/11]

HISTORY OF 8.26.5 NMAC:

Pre-NMAC History:

HSSD 75-7, Minimum Requirements for Licensing of Child Placement Agencies, 9/15/75.

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 7.5.0, Adoption - Child Placement Agency Regulations, 8/22/86.

SSD 7.5.0, Adoption - Child Placement Agency Regulations, 6/18/87.

SSD 7.5.0, Adoption - Child Placement Agency Regulations, 8/22/88.

SSD 5.5.0, Foster Care Child Placement Agency Licensing Regulations, 12/7/89.

History of Repealed Material:

8 NMAC 27.2, Foster Parenting, filed 6/16/97 - Repealed effective 2/14/2001.

8 NMAC 27.3, Licensing Standards for Foster Care, filed 1/13/97 - Repealed effective 5/29/2009.

8.27.6 NMAC, Child Placement Agency Licensing Standards, filed October 15, 2002 - Repealed effective 5/29/2009.

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