

Smith, Ashleigh, ECECD

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**From:** [REDACTED]  
**Sent:** Wednesday, January 6, 2021 10:08 AM  
**To:** ECECD-ECS-PublicComment  
**Subject:** [EXT] 8.15.2 NMAC Public Comment  
**Attachments:** KW Consutling LLC Letter Proposed Amendments to 8.15.2 NMAC.pdf

Please see the attached document with my public comment regarding the proposed amendments to 8.1.5.2 NMAC.

Please confirm receipt of this email.

Best,

[REDACTED]

[REDACTED]  
KW Consulting LLC  
[REDACTED]



January 5, 2021

New Mexico Early Childhood Education and Care Department  
P.O. Drawer 5619  
Santa Fe, New Mexico 87502-5619

Delivered Via Email to: [ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us)

**RE: 8.15.2 NMAC Public Comment**

Dear Secretary Gronginsky,

As a New Mexico small business owner, I appreciate the opportunity to comment on the proposed amendments to 8.1.15 NMAC, which were initially published as emergency amendments effective September 18, 2020 and revise the requirements for child care assistance programs for clients and child care providers.

My public comment is in relation to the proposed changes in 8.1.15.2.7 NMAC to the definition of "Earned income." The proposed changes are outlined below:

*[+.] J. "Earned income" means income received as gross wages from employment or ~~as profit from~~ self-employment.*

The current administrative correctly makes a distinction between *wages* from employment and *profit* from self-employment. This is an important distinction because according to the New Mexico Economic Development Department there are 122,042 nonemployer businesses in New Mexico, which make up about 73.6% of all businesses in the state. Additionally, the National Federation of Independent Business states that eighty-five (85) percent of small businesses are structured as pass-through entities (limited liability companies, sole proprietorships, etc.) that pay taxes on their business at the individual rate.

This means that a significant number of self-employed individuals are not receiving wages through a traditional w-2, but rather receiving pass-through income from their small business.

In this instance, would a self-employed individual report zero income received as gross wages, since no w-2 wages were received? Or since self-employment pass-thru income is not captured in "earned income," would it be captured under "other income," which was added to the definition of "unearned income?"

Additionally, since the word "profit" is being actively deleted in the proposed amendments it could be construed that a self-employed individual is required to count the total amount of income generated by the sales of good or services (otherwise known as business revenue). The business revenue could be significantly higher than a business profit, because a profit is the amount of income that remains after accounting for all expenses, debts, and operating costs.

For example, is an independent jewelry maker in rural New Mexico, may have been able to sale \$25,000 worth of jewelry in the last year, however, it cost the jewelry maker \$10,000 to make the jewelry. The profit from self-employment would be \$15,000, however, the income generated (revenue) would be \$25,000.

My fear is that the lack of clarity in this specific proposed amendment to 8.15.2.7, could inadvertently result, in self-employed individuals losing eligibility to child care assistance programs.

I appreciate the opportunity to offer comments on the proposed changes to 8.15.2.7 NMAC. If you have any questions, please do not hesitate to reach out.

Respectfully,

[REDACTED]  
[REDACTED]  
[REDACTED]  
KW Consulting LLC  
[REDACTED]  
[REDACTED]

**Smith, Ashleigh, ECECD**

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**From:** [REDACTED]  
**Sent:** Wednesday, January 6, 2021 12:46 PM  
**To:** ECECD-ECS-PublicComment  
**Subject:** [EXT] 8.15.2 NMAC Public Comment

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This is to strongly support the proposed rules which will expand child care assistance. My family was unnecessarily destroyed by the old rules and my child left in poverty. The present system is outmoded, ineffective and unjust. The proposed changes are long past-due.

Thank you for your consideration.

[REDACTED]  
Albuquerque, NM  
[REDACTED]

**Smith, Ashleigh, ECECD**

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**From:** [REDACTED]  
**Sent:** Wednesday, January 6, 2021 1:08 PM  
**To:** ECECD-ECS-PublicComment  
**Cc:** [REDACTED]  
**Subject:** [EXT] 8.15.2 NMAC Public Comment  
**Attachments:** Rep. [REDACTED] Comments for CYFD and ECECD Proposed Regulations Regarding Child Care Assistance.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

To Whom It May Concern:

Per instructions from [REDACTED], I am emailing her comments to your office regarding proposed rules involving Social Services Child Care Assistance Requirements for Child Care Assistance Programs for Clients and Child Care Providers. If possible, please verify that [REDACTED] comments have been successfully received.

If there are any questions, please do not hesitate to contact me at this email address or at [REDACTED]

Thank you for your attention in this important matter.



State of New Mexico  
House of Representatives  
Santa Fe

January 6, 2021

COMMITTEES:  
Enrolling & Engrossing  
Health & Human Services  
Labor & Economics Development

The Honorable Elizabeth Groginsky  
Cabinet Secretary  
NM Early Childhood Education and Care Dept.  
Post Office Drawer 5619  
Santa Fe, New Mexico 87502-1321

The Honorable Brian Blalock  
Cabinet Secretary  
NM Children, Youth, and Families Dept.  
Post Office Drawer 5160  
Santa Fe, New Mexico 87502

Dear Sec. Groginsky and Sec. Blalock:

Thank you for the opportunity to provide written feedback regarding the New Mexico Children, Youth and Families Department's (CYFD) and the Early Childhood Education and Care Department's (ECECD) proposed amendments to the rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS as authorized by Section 9-2A-7 NMSA 1978.

On January 5, 2021, team members from ECECD met with me via Zoom clarifying intent behind these proposed regulations and those discussions have shaped the following feedback.

Thank you for allowing me to understand and engage in this public comment process.

**RECOMMENDATIONS:**

**D.** "Child with a disability or special needs" means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

Should this include Individualized Family Service Plan (IFSP)? If not, why not?

**H.** "Demonstration of incapacity" means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician's/medical professional's/treatment provider's letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

This is welcome language. New Mexico has many grandparents raising their grand children. In some

cases, they have physical or other limitation in being able to meet the developmental needs of their grandchildren, especially if their grandchildren have special needs. In these cases, high quality child care can provide a supportive community, respite care, and targeted interventions.

~~[H.]~~ L. "Department" means the New Mexico children, youth and families department (CYFD).  
By definition, how is the Early Childhood Education and Care Department (ECECD) referred to.

~~[I.]~~ J. "Earned income" means income received as gross wages from employment or ~~[as profit from]~~ self-employment.

It is unclear why this language change is needed. I understand from the meeting that the intent is to expand eligibility, yet without clarity, I understand it to read that self-employed will be eligible based on gross income (not profit or taxable income). This language needs to be clarified. Without clarity, the language will be subjective. As a result, small business and self-employed families could lose eligibility.

(7) "Friend, family, or neighbor (FFN)" means care to be provided temporarily in a home to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months. In the case of a public health emergency, the department may extend the temporary status.

I am very concerned about this language. If not corrected, it would be interpreted to imply Family, Friend and Neighbor is a tool to be used outside of a public health emergency. Why would "the department" use FFN when we have registered care. The new language should read:

Based on the meeting with ECECD, it seems the intent is to make FFN a new category. As such it should be included in and referenced throughout Chapter 17, Non-licensed care.

CHAPTER 17	<b>NON-LICENSED CHILD CARE</b>
Reg# 8.17.2 NMAC	<b>REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES</b>

Further, unless the distinction between "the department" being CYFD or ECECD, CYFD will be in charge of FFN care.

**8.15.2.8 TYPES OF CHILD CARE:** These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents or legal guardians have a variety of child care services from which to choose:

- A. licensed child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;
- B. licensed child care programs administered by tribal entities;
- C. licensed child care programs administered by church or religious organizations;
- D. in-home care;
- E. licensed child care centers;
- F. registered family childcare homes;
- G. licensed family and group childcare homes;
- H. licensed out of school time programs; ~~[and]~~
- I. licensed programs operated by employers for their employees~~[.];~~ and
- J. FFN.

If the rules and regulations for FFN care are addressed in Chapter 17, this section provided an additional category of designed to help folks enter the regulatory environment over a six-month period. Without capturing FFN care in Chapter 17, it appears that the department is creating a new type of child care, to be approved, extended, etc. at the discretion of "the department". I am opposed to a new category of unlicensed care whose standards of application, implementation and regulation are not defined by rules.

~~[G. Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.]~~

~~[H.] G. [At-risk child care] Priority five: In addition to these priorities, the department pays for at-risk protective services child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority.~~

How does this change current eligibility and services?

#### 8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility ~~[in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation]:~~

This is a wonderful change. COVID has demonstrated the state's capacity to determine eligibility without a face to face meeting. Parents will miss less work and their wait time for enrollment will decrease.

(3) ~~the [eligible] provider is eligible to be paid [was providing care from the first day of the month forward].~~

Thank you for this change. It aligns with industry standards.

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

#### B.

(1) ~~The household: The household includes biological parents, stepparents, [and] legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit [, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and are applying for child care benefits on behalf of the children.] Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations.~~

This is such a welcomed change. With this change, multi-family households are being valued.

~~(8) (7) Verification of household countable earned and unearned income: Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current [proof] documentation of income for [all members of the household] biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. [Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.] A self-employed individual who does not show a profit that is equal to federal minimum~~



wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

What is the purpose of this language change?

E. Citizenship: Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified ~~[alien]~~ immigrant as ~~[determined by applicable federal laws]~~ defined by the United States Department of Health and Human Services, Administration for Children & Families, Office of Child Care. ~~[If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship or alien status of the child's parent or parents.]~~

Did the federal guidelines for eligibility change or are we using state general funds to pay for children who do not qualify according to federal laws?

#### **RATE INCREASES – the missing piece**

**Increase cost to deliver services on behalf of the state.** The state legislature of New Mexico passed legislation requiring annual increases of minimum wage until we reach a minimum wage of \$12.50 an hour. There is no rate increase, yet minimum wage has gone up over three dollars per hour since last the rate increase, over four years ago. Without an equitable increase in payment rates, the minimum wage is an unfunded mandate. Each year, PED advocates for "cost of living" increases for staff wages. All child care providers are experiencing the same increased cost of doing business. It is possible that mandated sick leave, paid maturity leave, etc. will become law and will further impact centers. ECECD must adjust reimbursement rates. There is a balance that needs to be made when increasing eligibility and raising rates. We simply can't do one without the other. I understand there is a current "cost study" underway. Let's be honest, there is always a cost study underway. Every two years, it is required by the federal government and in the off year an advocacy group usually preforms one. In addition, there are countless secondary studies we can use for guidance. We all know the rates are too low. At the very least we should be adjusting for the increased minimum wage.

**Lower ratios for special needs children.** The number of special needs children enrolled in child care centers continues to grow, especially children on the spectrum. The federal guidance allows the state to pay differential rates for children with special needs (IEP and IFSP). For years, centers and special need advocates have been asking for differential rates, allowing centers to have a lower teacher child ratio. We know that early interventions allow over 80% of young children to enter kindergarten without an IEP. This can only be accomplished with differential rates. To continue ignoring this desperate need is not a service to our most vulnerable children.

We have all seen the reports criticizing child care providers for incidents and accidents that happen at their centers, and for disenrolling children with special needs. While the department has yet to cover the cost of care, as allowed (and I believe expected) by federal law to cover the cost of accommodating children with special needs, providers are fined, placed on conditions and criticized for incidents and accidents that happen at their centers, and for disenrolling children with special needs. It time to address this urgent need.

Page 5

**Relative caregivers-** Unless I am reading the proposed regulations wrong, relative caregivers still qualify based on their household income. When the state has a choice between CPS or safe and healthy relative care, it seems in the state and child's best interest that we place the child with the safe and healthy relative. An aunt may be able to care for the child, but not be able to pay private child care. A grandparent may be willing to care for the child, but need assistance during the day, due to their physical abilities to keep up with a young child 24 hours a day.

Thank you again for your hard work and efforts to expand access. I look forward to rule changes with an equal acknowledgement and emphasis on the need to fund high quality, to assure appropriate care and accessibility to all, and that are funded in a way to assure the services are viable and sustainable.

Respectfully yours,

A large black rectangular redaction box covers the signature area of the letter.

**Smith, Ashleigh, ECECD**

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**From:** [REDACTED]  
**Sent:** Wednesday, January 6, 2021 1:11 PM  
**To:** ECECD-ECS-PublicComment  
**Subject:** [EXT] 8.15.2 NMAC Public Comment.  
**Attachments:** 8.15.2 NMAC Public Comment. .docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please see the attached public comment from New Mexico Voices for Children

Thank you!

**Public (and written) comment to The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) re: proposed child care assistance regulations (8.15.2 NMAC)**

New Mexico Voices for Children strongly supports the proposed rule changes, because they will expand access to child care assistance and increase affordability of the program.

Over the past two decades, no other program in New Mexico has seen the rollercoaster ride of changes in eligibility that the child care assistance program has. As a result, three thousand fewer children were enrolled in the program just prior to the COVID-10 pandemic than in 2010, despite the fact that New Mexico still ranks near the worst in the nation for poverty among full-time workers and parents who work. The pandemic has worsened the economic challenges for many New Mexico families, including many frontline and essential workers who are not able to take leave with pay. Making affordable child care a priority is essential for our working parents to have the support they need and confidence that the program will be there next year and the year after that. Employers who depend on those working parents also need that confidence, and New Mexico's families and business community need the state to be a dependable partner, especially during childrens' critical early years.

With one of the highest rates of poverty in the nation, New Mexico needs to provide its parents with more financial help and fewer barriers to child care. The proposed changes to the child care regulations are a commendable step in making the program more affordable and accessible.

- New Mexico Voices for Children supports the removal of child support requirements, which are burdensome to administer, have few benefits for families and put domestic violence survivors in danger. Other states have also eliminated these requirements.
- The extension of notification and application requirements to 14 days is also a way to ensure more access for families and uninterrupted care during times of transition. It will be easier to find a job if childcare is available when families are looking for work. Eliminating the requirement to submit applications in-person will also lower burdens on applicants and increase child care accessibility.
- Child care is unaffordable for low income families, because the program has high copays. The federal government recommends that families pay no more than 7% of their income on child care so that it is affordable. New Mexico should eliminate co-pays for families below 100% of the federal poverty level and make them affordable for other families.

The recent KIDS COUNT report says that New Mexico is 50<sup>th</sup> in child well-being, and this was before the public health and economic strain of the pandemic and recession. The proposed changes are a step in the right direction, especially as New Mexico is at a moment of great

challenge and our children and families need more support than ever in an era of employment and income instability and educational disruption.

In order for our communities, our economy, and our state to recover and succeed, it is necessary to ensure that all New Mexico children have the best possible opportunities to thrive and reach their full potential.

**Smith, Ashleigh, ECECD**

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**From:** [REDACTED]  
**Sent:** Wednesday, January 6, 2021 1:50 PM  
**To:** [REDACTED]  
**Subject:** [EXT] Fwd: 8.15.2 NMAC Public Comment  
**Attachments:** Final Comments for Nov. 2020 NPRM-2021-01-06.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

All,

I'm forwarding the public comments I sent to [ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us) earlier today. Please let me know if these are received and submitted to the record, or if you need any further action on my part.

[REDACTED]

[REDACTED]  
NMCLP

[REDACTED]

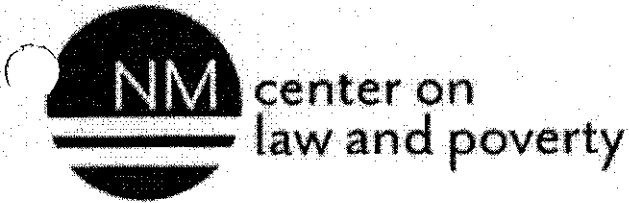
----- Forwarded message -----

**From:** [REDACTED]  
**Date:** Wed, Jan 6, 2021 at 12:45 PM  
**Subject:** 8.15.2 NMAC Public Comment  
**To:** <[ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us)>  
**Cc:** [REDACTED]

Please see the attached written public comments regarding the Early Childhood Education and Care Department's proposed child care assistance regulations.

Sincerely,

[REDACTED]



January 6, 2021

Alejandra Rebolledo Rea  
Early Childhood Education and Care Department  
P.O. Drawer 5619  
Santa Fe, NM 87502-5169

Via Email: [ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us)

Re: 8.15.2 NMAC Public Comment

Ms. Rebolledo Rea:

Please accept the following comments on the proposed revisions to 8.15.2 NMAC regarding the Early Childhood Education and Care Department's (the Department) child care assistance program.

The undersigned organizations have extensive experience working with families in New Mexico to ensure they have access to opportunities that improve the lives of children, particularly low-income families that face the largest barriers. We also have first-hand experience assisting families in accessing child care assistance in New Mexico. We have seen the benefits to families who are able to access affordable child care and are aware of administrative barriers that prevent eligible families from receiving assistance.

We applaud the Department's regulatory response to the COVID -19 pandemic. The April 7, 2020 emergency rule changes that allowed the secretary to waive co-payments and the work or education requirement during a public health emergency were meaningful steps to provide child care access during a difficult time and reach the Governor's goal of universal child care. We thank the Department for promulgating these emergency rules and for making these emergency provisions a permanent part of the child care regulations.

Additionally, we support the Department's proposed rules which will increase access to this dramatically underutilized, but effective program. While we support the proposed rules, we urge the Department to take the additional steps outlined below and promulgate a final rule which incorporates our specific suggestions.

**Section 8.15.2.13(H) NMAC – We support eliminating child support enforcement requirements**

We applaud the Department's decision to eliminate the assignment of child support enforcement rights as a condition of receipting child support enforcement. Tying child care assistance with child support enforcement prevents many families from enrolling and remaining enrolled in the program, and assigning rights is often not be in the best interests of the custodial parent and child. Federal law permits states to set their own policy regarding child support enforcement in the child care assistance program, and 27 states do not require child support enforcement to participate in the child care

program.<sup>1</sup> We thank the Department for its proposal to eliminate this burdensome administrative process that blocks access to benefits.

**Section 8.15.2.11(C)(3), (5), and (6) NMAC – We support the elimination of certain income for eligibility and co-payment calculation.**

The Department’s proposal regarding which sources of income are counted for eligibility and copayment calculations are positive changes. The elimination of various sources of income that is not derived from employment will increase access and lower co-payments. One purpose of the Child Care Development Block Grant Act (“CDBG Act”) is to “increase the number and percentage of low-income children in high-quality child care settings.”<sup>2</sup> The elimination of some sources of income from the co-payment calculations is consistent with this purpose and is a step in the right direction toward the HHS recommendation to cap co-pays at 7 percent of family income.<sup>3</sup>

**Section 8.15.2.10(A) NMAC – We Support Eliminating the In-person Application Requirement**

We commend the Department’s decision to eliminate the in-person application requirement. Even before the pandemic made in-person interactions a public health problem, the in-person application requirement presented a barrier to families in accessing child care assistance. Many child care offices are not located conveniently to public transportation routes. This made it difficult for many families to travel to child care field offices and apply in-person. Additionally, the in-person application requirement forced parents to take off from work just to apply for care. The elimination of this requirement will increase program access.

**Section 8.15.2.11(E) NMAC – Rename this section “Citizenship and Eligible Immigration Status”**

A child’s citizenship *or eligible immigration status* determines eligibility to receive child care.<sup>4</sup> This is because noncitizen children in eligible immigration statuses can receive child care.<sup>5</sup> Therefore, we support the Department’s proposed amendments to 8.15.2.11(E) NMAC which incorporate the HHS definition of qualified immigrants.

However, the title of this section, “Citizenship,” implies that United States citizenship is required for receipt of child care assistance. In adopting its final rule, we urge the Department to retitle this section to read “Citizenship and Eligible Immigration Status.”

**Section 8.15.2.16(A) NMAC – We Support eliminating the mid-certification checks.**

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<sup>1</sup> The states that do not require child support enforcement in their child care assistance programs are Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Missouri, New Hampshire, New Jersey, Nevada, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Washington, and Wyoming.

<sup>2</sup> Sec. 658A Child Care Development Block Grant Act

<sup>3</sup> Child Care and Development Fund (CCDF) Program, Preamble, 81 Fed. Reg. 67,438 (Nov. 29, 2016)

<https://www.federalregister.gov/documents/2016/09/30/2016-22986/child-care-and-development-fund-ccdf-program>

<sup>4</sup> 45 C.F.R. § 98.20(c)

<sup>5</sup> 8 U.S.C. §1641 (Defining who is a “qualified alien” eligible to receive public benefits and listing eligible immigration statuses)



Federal regulations require that child care assistance contracts have a duration of at least 12 months and that agencies "shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination."<sup>6</sup> Therefore, we applaud the Department's decision to eliminate the mid-certification communication in Section 8.15.2.16(A) NMAC. Since the Department contracts with clients for 12 months, the mid-certification communication is unnecessary and uses valuable department resources. Additionally, we thank the Department for amending Section 8.15.2.12 NMAC state that if a family meets the recertification requirements, the certification period will be for 12 months.

**Section 8.15.2.11(C) NMAC – Add provisions that ensure grandparents are exempt from the work or education requirement and can receive child care assistance without having to apply for TANF.**

The Department should make additional changes to ensure that children being raised by grandparents have access to care. The proposed regulations specify that only grandparents who are legal guardians must qualify under the program's income limits and when they qualify, can have their co-payments waived. This is a positive change that we support. However, grandparents who are retired should not be subject to the work or educational requirements for child care. Current New Mexico law for the TANF cash assistance recognizes this and does not impose a work requirement on participants who are 60 or older.<sup>7</sup> In its final regulation, we ask the Department to amend its rules to allow for waiving the work or educational requirement for grandparents raising grandchildren.

Additionally, when grandparents do work, their income should not be counted towards the eligibility limit. Again, the TANF cash assistance program also provides that grandparents can participate in that program regardless of income level.<sup>8</sup> Current child care assistance regulations provide that TANF families are eligible for child care regardless of income level.<sup>9</sup> However, we should not ask grandparents to apply for and participate in TANF to qualify for child care assistance. Instead, the Department should mirror the child care regulations to reflect the TANF program, and qualify children being raised by grandparents without regard to income.

**Section 8.15.2.10(A) – Include all Verifications**

We support the Department's proposal to include documentation of TANF participation or eligibility and proof of incapacity in the verification list at Section 8.15.2.10 (A) NMAC. However, the regulations still do not contain a full list. The Department requires custody documents and documentation of identification, and relationship in some instances. These requirements must be detailed in regulation.

**Section 8.15.2.11(I) NMAC - We support Graduate Student Eligibility**

The Department's proposal to open eligibility to families in graduate school aligns with the purposes of the CDBG Act to provide access to children to quality child care and recognizes the

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<sup>6</sup> 45 C.F.R. § 98.21(a)

<sup>7</sup> NMSA 1978 §27-2B-5(I)(2); 8.102.420.11(A)(1) NMAC

<sup>8</sup> 8.102.400.11 NMAC

<sup>9</sup> 8.15.2.9(A) NMAC

economic realities of parents who are furthering their educations. We support this proposal and thank the Department for addressing this issue.

### **Policies Impacting Family Eligibility and the State Rules Act**

State law requires ECECD to comply with the administrative procedures in the State Rules Act, because it is an "agency" under the Act.<sup>10</sup> The State Rules Act defines a "rule" as "any rule, regulation, or standard" that affects "one or more agencies besides the agency issuing the rule," "persons not members or employees of the issuing agency," or "persons served by the agency."<sup>11</sup> Any policy that meets this definition of a rule must be promulgated into regulation.

### **Include the Income Calculation Formula in Regulations**

Currently, the Department's monthly income calculations are in the worker manual, but they are not promulgated into regulation. The calculations in the manual include a formula that considers how frequently a family receives their paychecks. Since this is not in regulation, a family has no way of knowing how their income is calculated or if the determination as to their income is correct. Without this information, families cannot accurately determine which income bracket they fall into when using the co-pay formula. Therefore, the Department must include the formula for calculating income based on different payday frequencies in its final regulations. This change is also required by the Court's Order in the *Torres v. Jacobson* case, which states that the Department must include in regulations "how the Department calculates monthly family income to determine child care assistance eligibility."<sup>12</sup>

### **All new material proposed above is within the scope of the proposed regulation**

Provisions included in a final regulation must be "within the scope" of the proposed rule to be valid.<sup>13</sup> In its final rulemaking, the Department can make all the changes suggested in these comments since the scope of the proposed regulations encompass our suggested amendments, and the proposed rules provided notice to the public of the scope of the rule changes made by the final rule.<sup>14</sup>

For example, the proposed rules include changes in how income is counted for eligibility and copayments. Including the income calculation formula in the final regulations falls within the scope of the proposed rules, since it shares subject matter with the proposed rules. The changes between the proposed and final rules would not change how the Department calculates the income of program participants. This change to the final rule also would not change the effect of the proposed rules since the Department is already using this formula to determine income. Additionally, since this calculation

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<sup>10</sup> NMSA 1978 §14-4-2(A)

<sup>11</sup> NMSA 1978 §14-4-2(F)

<sup>12</sup> Order ¶ 3(a)

<sup>13</sup> 1.24.25.14(C) NMAC ("amendments to a proposed rule may fall outside the scope of the rulemaking based on the following factors: (1) any person affected by the adoption of the rule, if amended, could not have reasonably expected that the changes from the published proposed rule would affect that person's interest; (2) subject matter of the amended rule or the issues determined by that rule are different from those in the published rule; or (3) effect of the adopted rule differs from the effect of the published proposed rule.")

<sup>14</sup> The purpose of the State Rules Act is to provide notice. *State v. Joyce* 1980-NMCA-086 ¶ 8.

affects people served by the Department, the State Rules Act mandates its inclusion within the child care regulations, and the Department must make the suggested change to comply with state law.<sup>15</sup>

### **Other Important Changes**

We commend the Department for the following additional proposed changes to regulations that comply with the State Rules Act:

- Defining “demonstration of incapacity” and the provision for exempting eligibility requirements upon submission of a demonstration of incapacity.
- Adding an explanation of how it will calculate and consider fluctuations in earnings.
- Putting into regulation policy that overpayments will not be issued to a client except in cases of substantiated fraud.
- Clarifying that the Department issues 12-month contracts in most instances and eliminating the mid-certification communication requirement that wasted valuable Department resources and created confusion for clients about the length of their contracts.
- Amending Section 8.15.2.13(G) NMAC to allow for multiple ways to report the changes will provide convenience and transparency for participating families since the Department’s prior policy of requiring reporting of changes in writing was not promulgated into regulation and violated the State Rules Act.
- Including TANF diversionary payment clients in the priorities list in Section 8.15.2.9 NMAC. This makes the eligibility standard for TANF diversionary participants part of the regulations and brings the Department’s eligibility policy regarding this group into compliance with the State Rules Act.

### **Conclusion**

We thank the Department for its commitment to making childcare more accessible and affordable for New Mexico’s families. While we support all the changes, we ask the Department to include our suggested amendments in the final rule including the income calculation formula, the changes to regulations affecting grandparents raising grandchildren, and the regulations listing verifications. All of these are discussed above.

Sincerely,

NM Center on Law and Poverty  
Strong Families New Mexico  
Save the Children Action Network (SCAN)  
Youth Development, Inc. (YDI)  
New Mexico Asian Family Center  
Center for Civic Policy (CCP)  
Ngage New Mexico  
Lutheran Advocacy Ministry – New Mexico  
New Mexico Conference of Churches  
New Mexico Comunidades en Acción y de Fé (CAFé)  
New Mexico Working Families Party

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<sup>15</sup> NMSA 1978 §14-4-2(F)

Smith, Ashleigh, ECECD

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**From:** [REDACTED]  
**Sent:** Wednesday, January 6, 2021 3:07 PM  
**To:** ECECD-ECS-PublicComment  
**Subject:** [EXT] I strongly support new childcare assistance program

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear

I'm [REDACTED], I'm a [REDACTED] with Manzano Mesa Elementary School

I support the change childcare assistance because it really help our community has more chance to apply.

Thank you

Sent from Yahoo Mail for iPhone

Verbal Public Comment:

██████████, Independent Researcher, Sage Early Childhood Education Research

Good morning good afternoon, I am a early childhood researcher. I have about 20 years' experience in the field. From 1999 until 2019, I worked in New Mexico. So, first of all, let me say, I am so excited about the involvement, the enthusiasm. I attended a hearing about the child care subsidy modifications, in I think it was 2010, and there were 3 of us there. So, this is a fabulous fabulous, very heartening turnout. And I am so excited. I just have a couple of comments. One is an ongoing concern that I have had for a long, long time and that is with the child care subsidy copayments, they go to an income of \$2700 and then once you make \$2701, you are not eligible for subsidy anymore and if you have an infant in a 5 star program, that means that you go from paying \$148 a month for your childcare to paying \$1270 a month, which is the reimbursement rate. That is a big concern. And so, I really want to encourage the department to look at a wider bridge between qualifying and not qualifying. So, that is one thing. The second topic is the fact that the demographic of the families who participate in these childcare subsidy care programs are participating because they experience economic hardship which is one of the major factors in cases. And so, this population within our families in New Mexico are in need of a lot of extra attention and support and care. And so, I would recommend that the families who receive the child care subsidy also receive opportunities through the program to improve their ability to parent well. I think everyone actually, whether they're experiencing economic hardship or not, could use some really high-quality parenting tips but we do have a population that is identified as experiencing an economic hardship. So, there are those programs, the Harvard School of early child hood education has a lot of wonderful resources. I'm sure UNM has great resources that can be provided as video clips. The Tune In, Talk More, Take Turns Program that is funded by a bank east of the Mississippi, I just really feel that the parents who or the families who are participating in the child care subsidy deserve some extra help and that those goes to my final comment which is the aligning the SNAP, Medicare and child care subsidy application process in New Mexico would be great because families experience economic hardship have to go through the child care subsidy application process, SNAP, Medicare. Its all separate, it would be great if is one stop shopping talking for the families. Other than that, I just want to say thank you for your time. I miss New Mexico and hope to see you guys again. Thank you very much for the opportunity to speak.

██████████ New Mexico Center on Law and Poverty

My name is ██████████. I'm with New Mexico Center on Law and Poverty. And first, I would just like to start by thanking the department for its response to the current pandemic, the emergency regulations that promulgated and for making those permanent during a public health emergency. So, thank you for that. I'd also like to say that child care is a great investment for New Mexico. We all know that the earliest years in children's lives are the most important in their development. They lay the foundation for all that is to come. And working families need access to affordable child care that they can trust to ensure that their children have a safe space to learn while the parents are working to further their education and provide food for the table. And child care is effective because it addresses the family's needs at a two-generation level. It allows parents to work toward obtain economic security for their family and it provides a safe learning environment for the youngest New Mexicans. New Mexico's high quality child care increases school readiness for children and it improves child well being by helping to

prevent child abuse and neglect. And with all that in mind, the New Mexico Center on Law and Poverty would like to thank the department for all of the positive changes in these proposed rules, including but not limited to eliminating the child support enforcement requirements that were a barrier to accessing child care; revising which sources of income count for eligibility and copayment calculations. This will make child care more affordable. Eliminating the in-person application requirement and allowing applications through electronic submission; and also expanding eligibility to graduate students. Along with these steps in the right direction, we do ask that you take other steps in rulemaking to make child care more accessible and affordable for our families. In our written comments, outline these recommendations and they include putting a full list of required verifications into the regs; promulgating final regulations that make child care assistance available to all grandparents who are raising grandchildren; and putting the calculation for income into the regulations. And as we outline in our comments that we submitted today, all these recommendations are within the scope of the proposed rulemaking and can be promulgated in the final rule. So we encourage the department to take these steps and make these changes in the final rule and we appreciate all the positive steps that the department is taking in the notice of the proposed rulemaking and thank you for the opportunity to comment.

██████████, 3D Enterprises Incorporated, Gold Star Academy and Smiling Faces Child Care Center

Good afternoon, Thank you very much. First, I would like to thank Cabinet Secretary Groginsky, Deputy Secretary [Duran-]Sallee, legal counsel Kate Girard and the other employees of ECECD for their time and work put into the review and the recommendations for the changes to the New Mexico child care regulations. What I would like to bring up is regulation 8.15.2.15 H. (1) And if I can read that for you, Required applications with New Mexico human services department child support enforcement division CSED (1) When one or both of the child's parents are absent from the home, the client shall apply for child care support through CSED within 12 months of initial application with the child care assistance program. And to my understanding now looking at the proposal that is looking to be stricken from the regulation. So, while I agree with the concept, I can see the thought behind the need to strike and remove this regulation, I do not agree with this proposal. The reason being that over 8 years ago, providers came to the table where there was the link that this was not needed, and fraud was being committed by parents and getting child care applications while not reporting a two-household income. So a true and accurate income that came from the providers, various providers, saying that there was actually a two household, a mother and father, sorry, however, not married and one applying and stating that they were receiving no help from the other parent. And so, when providers came to the table, after lots of back and forth, and communication, from the director at the time, Diana Martinez Gonzalez and Cabinet Secretary Deines, the proposed changed, after going through the process of public comment, was put into regulation. So a concern for women that were experiencing domestic violence and now having to file for child support with the fear that an offender would now find out where they were living was taken care of by having those clients file an affidavit stating their concern and that under oath, this was the reason they did not want to file for child support. That was still deemed and is deemed an acceptable exemption for filing child support. The concern with taking care of 8 years ago, when this was put into regulation, to my understanding and ██████████ ██████████ that has had to apply and utilize the exemption for fear of leaving a domestic partner and having to move to a homeless shelter. The exemption works. The affidavit works. It was put into a place

at the time, that was deemed there was lots of fraud happening. Within the first year of changing this regulation, the department director told the legislative finance committee that millions of dollars had been saved, that could now be utilized for families that had been placed on waitlists and or are now actually eligible for those services. My concern with taking out this regulation is that you are now making it child care directors, owners and workers the policing of those families and responsible for now helping and reporting fraud. So, I hope that the committee can see the thoughtfulness and hard work that was put into making this change and instilling it into childcare regulations. The concern for victims of domestic violence was acknowledged and an alternative of affidavit was added to protect them. Of families trust in the system is vital and the cabinet secretary and director agree the affidavit is working. Removing it totally removes accountability from people seeking child care assistance and being honest and truthful. This regulation does not totally fix the fraud and abuse of the system, however, it definitely deterred people and alleviating program directors from having them police their families. Thank you.

At this time, I am doing public comment presenting myself, [REDACTED] 3D enterprises incorporated, doing business as Gold Star Academy and Smiling Faces Child Care Center.

[REDACTED], New Mexico Asian Family Center,

Hi. Thank you for this opportunity to share some of our experience and thoughts by working with the families and community in child care assistance programs. First of all, I am supporting the proposed changes by the department. I think that those are the rights, that in the right action to make child care assistance program more affordable and accessible to our families and we believe that this will create opportunity to improve the lives of the children's and families in our state, especially those lower income families in our state. Second, I am also supporting all comments submitted by the New Mexico Center on Law and Poverty and we signed on that letter. And especially, we think the proposal to include income calculation formula in regulation is important because again, the more we make the rule or regulation easy to understand, the better for the families. That is our experience. And also, we would like to, for the rule to be changed, to rename this section on citizenship and eligible immigration status because without changing the name, it is confusing to the community. If we just say citizenship, because again it is confusing that only children with citizenship can apply for that program. Also, the removal of the work or education requirement for grandparents are very important because you know, are family that take care of children does not only equals parents but also grandparents. And grandparents, its very hard for them to fulfill those requirements. Last, I believe that the child care assistance program should be, should provide language access for the family, because it, with the Asian families, Asian/Pacific family, we do face a lot of language access in understanding with what the program about through also accessing those programs. So, translation of the application and eligibility into languages, including Spanish, Vietnamese and Chinese would be very important for our families to access those programs. Thank you.

[REDACTED], OLÉ Educational Fund

Good afternoon. I just want to thank Secretary Groginsky and everyone in the Department for these proposed rule changes. We stand in favor of these rule changes, we speak with parents across the state

every day that are affected directly by many of the issues that these issues are going to address especially the issue with child support enforcement. We speak with parents who may have a court order that are, that requires another parent to pay child support and that is counted towards their income. However, they never see that money, that income. And we speak with parents whose husband have been deported and they are being required to sue that parent for child support. And they are unable to do that. But they are denied a contract because that parent has, is not paying child support. We speak with parents who are survivors of domestic violence and are afraid to sue their partner or previous partner for child support despite the fact the it has been addressed in the past. This is still an issue that we speak with parents about. And so, again, we just want to thank the Department for these rule changes and thank you for allowing.

[REDACTED]

Hi. This is [REDACTED]. That is sufficient. I've got four kids with me. I doubt that they are going to be quiet for much longer. I do support the child support being removed as a qualification requirement. I talked with some families, adoptive families, and they may have older children, as was said before, some have court orders and don't receive any of the funds or the child support is for the child that is not receiving care and they have adopted children that do need care and they are either having to pay such a high amount or are disqualified because of income that is coming into the home for another child but they are limited or have to have these exorbitant amounts of, you know, to cover child care because of the child support requirement. So that's all I wanted to say. I know that was said before and I agree with it. Thank you.

[REDACTED], Child and Families Services Inc. and Lea County Early Childhood Coalition

Yes. I would. I would again like to just echo all the sentiments of thanking Secretary Groginsky and all of the amazing staff at ECECD for the amazing work that they have done in such a short while. My comment is specifically regarding the payment for services. I really appreciate the new language that allows parents the flexibility and the option to enter into a new child care agreement with a new provider especially if they had their child withdrawn from a provider because of health, safety or welfare of the child was at risk. I know in the past, we've been challenged with parents who wanted to make a change but because they already had an existing contract, were not about to access services with the new provider as swiftly. And I noticed there're several notations regarding that and different cases that make it easier for parents and then of course the new child care providers. So, definitely in support of that and all of the proposed rulemaking.

[REDACTED]

I didn't get to catch in on the first part of the meeting. I was with the children. But I wanted a little clarification there on the last page where it talked about the provider. If the person that was getting assistance was behind in their copay, I think it needs to be on there documented somehow, because we do have the right to charge state tax, you know pass it on them, that whenever they give us money, that we can deem in our business whether we're going to apply it first to pay our state taxes or not since



they do have a contract with us. I know in the past, what it's been is, they show a receipt to the, their caseworker, like if they owe 30 bucks or whatever and then they are good to go to someone else and they pretty much leave us high and dry.

[break to spell last name]

I think there should be a provision for the providers, and they are not to be treated like that. Yes, it's true that we can go take them on to court but that's a real long process for the provider to do. And if can get some help this other way, that would be very much appreciated. Because it seems like it would be up to the business owner to see where they would want to apply that \$30 first. And I did have a question, also on the, I noticed in here it was listed monthly reimbursement rates, I was wondering about that because I thought there had been a cost study done and those rates weren't set in stone just yet because of the cost study. I was wondering about that.

Is there any clarification on that?

And you did get it noted that I was hoping there was going to be some clarification as it's up to the business owner where they apply that \$30 on their end first, correct?

It was the one about the uh, I noticed that there was uh, there's amount of money, it's like, for infants the toddlers, the preschool that's listed out on these proposed regulations. I knew that there had been like a cost study done. I was thinking is this is the result of the cost study right here or are we to await further - to see what that pans out to be.?

Public comments received during the 01/06/2021 Public Hearing

From [REDACTED] to Everyone:

01:31 PM

Regulation 8.15.2.17 I (1) (a) expired 12/31/17. Does it need to be deleted?

From [REDACTED] OLE to Everyone:

01:41 PM

I meant to include in my statement: I am happy that New Mexico joins other states like Arizona who also do not require Child Support

From [REDACTED] to Everyone:

01:42 PM

[REDACTED] - Little Forest Playschool - [REDACTED]  
I support the changes to the child support reg

From [REDACTED] to Everyone:

01:53 PM

A comment from OLE: Estoy de acuerdo con los cambios de reglamentación, esto ayuda considerablemente a madres solteras que para ellas algunas veces es imposible declarar tanto requisito que piden. Atas situaciones muchas veces están dieran de sus manos, mientras tanto se les niega el contrato de cuidado infantil y es un limitante para ellas seguir adelante.

From Interpreter [REDACTED] to Everyone:

01:59 PM

[REDACTED] I am agree with the reg changes., This helps single mothers considerably some of them ...  
it is imposible for some its it imposible to get sevice due to the amount of requirements. So their hands are tied , Meanwhile they are denied contract for child care ... and this in turn limits their ability to get ahead.

From Count Your Blessings to Everyone:

01:56 PM

My name is [REDACTED] and I just wanted to say that [REDACTED] contracts at our center, we are really in support of the new changes that will be helping so many of our families!

From [REDACTED] to Everyone:

02:05 PM

My name is [REDACTED] Little FootPrints, i would like to state that we are in support of the new changes to have the families in our rural community.

From [REDACTED] to Everyone:

02:25 PM

I support the increase, when I was an early educator my husband decided to go back to school for a career change. We were dependent on my income, and have 2 children. I was considered over the limit to qualify for assistance, even though my income barely covered our monthly bills! Qualifications need to be raised so that we are able to provide quality care for our own children and not worry if we are unable to pay for childcare expenses.

[REDACTED]  
Yes it is

From [REDACTED] to Everyone:

02:41 PM

I appreciate the work that you have done to ensure families can access high quality child care. The qualification process seems to be simplified for families.

[REDACTED]  
Gallup McKinley County Schools

**January 6, 2021 ECECD Hearing**

List of Attendees:

Ashleigh Smith	Karri
Alejandra Rebolledo Rea	Kimberly Brown
Andrew Baranowski	Kiddie Kamp
Anna Marie	Lacey Daniell-Miller
Antoinette Taft	Lara Scharf
Austin	Laurel Wyckoff
ANW	Lissa Knudsen, Daily Lobo
Aracely	LG Stylo 5
Amanda	LLamas Phone
Barbara Tedrow	Leah Davidson
Brendan Egan	M Montano
BP	Maggie
Carol Johnson	Mayra Guerrero
Charlene G	Aracely Pinela
Charles Rudolph	MBoberg
Carol	MD Gonzales
Clarissa Franco	Meena
Claire Dudley Chavez	Melissa McKinley
Cindy Ritch	Miles Tokunow
Count Your Blessings	Monica Terrazas
DJ	N Trujillo
Denis Romero	Paloma Mexika
Dana Bell, UNM, CCPI	Patricia Grovey
Debra Martinez	Patricia Steward
Elizabeth Groginsky	Patricia Cardona Zapata (Interpreter)
Erica, OLE	Racheal Vazquez
Eva Ortega Montano	Raymond Vigil
Ernestina Padilla	Samuel Castillo
Felicia	Shannon's Iphone
Fressa Morena	Susan Dunlap
Hailey Heinz	Shelene Harrelson
Huong Nguyen, NM Asian Family Center	Sandra Chee
Isabel Diaz	Shannon McFarland
IAdame	Tim Davis
Iphone	Trais Kliphuis
Jacob Vigil	Verenice Peregrino Pompa, NMCLP
Jacquelyn Chasteen	Victoria Gomez
Janice Beck	Zenobia
Jaqueline Gonzales	1-505-360-7349
Karen Canaday Whitlock	1-505-372-8588
Kate Girard	1-505-372-8635
Kelly Chau	1-575-420-1764
Kim Nichols	1-575-762-7170
Karina Pizarro, OLE	End User

**Public Hearing - Exhibits Received**

January 6, 2021

8.5.2 NMAC – Social Services - Child Care Assistance - Requirements for Child Care Assistance Programs  
for Clients and Child Care Providers

Exhibit No.	Document
<b>Pre-Filed Exhibits</b>	
1	NM Register – Notice of Rulemaking and Public Hearing w/proposed amendment
2	Notice of Rulemaking and Public Hearing - NewMexicoKids
3	Rule Hearing Search
4	Field Office Posting – Notice of Rulemaking and Public Hearing
5	Request to post Notice of Rulemaking and Public Hearing on NewMexicoKids.org
6	Verification of Notice of Rulemaking and Public Hearing – NMECECD.org
7	Notice Rulemaking and Public Hearing to NM Legislative Council
8	Email from Debra Gonzales regarding Rulemaking Process, dated 11/20/2020 with Notice of Rulemaking and Public Rule hearing as an attachment
9	Selena Holguin – email dated 11/30/2020
10	Amy Arellano, Choice for Children Daycare – email dated 12/8/2020
11	Judy Kowalski – email dated 12/10/2020
12	Anthony N. Fleg – UNM Dept of Family/Community Medicine and College of Population Health - email dated 12/15/2020
13	James Gannon, Catholic Charities – email dated 12/16/2020
14	Matthew Henderson, OLÉ Education Fund – email dated 12/16/2020
15	Juanita L. Mitchell, One Albuquerque Family & Community Services – email dated 12/17/2020
16	Charles N. Brown, Nathan’s Home Childcare – email dated 12/17/2020
17	Tennise Lucas, Mission Achievement and Success Charter School - email dated 12/17/2020
18	Imogen Klossner, Science Instructional Coach, MAS Charter School - email dated 12/17/2020
19	Stacy Quinn – email dated 12/17/2020
20	Madeline Carlisle – email dated 12/17/2020
21	Beth Enson – email dated 12/21/2020
22	Ellyn A. Derman (undated letter)
23	Avengers Learning Center – email dated 12/24/2020 (Spanish)
24	Affidavit of Publication – Santa Fe New Mexico
25	Affidavit of Publication – Las Cruces Sun News
26	Affidavit of Publication – unidentified publication
<b>The following written comments were received prior to the public hearing and not included in the administrative record’s pre-filed exhibits</b>	
27	Rebecca Dow – email dated 12/31/2020
28	Kimberly Legant – email dated 01/04/2021
29	Philip Davis – email dated 01/04/2021
30	Nicole Finch – email dated 01/04/2021
31	Melissa Moore - email dated 01/04/2021

32	Ruth Porta – email 01/05/2021
33	Nancy Stephens, LCSW - email dated 01/05/2021
34	Judith Hopkins - email dated 01/05/2021
35	Jeri Key - email dated 01/06/2021
36	Thu Chau - email dated 01/06/2021
37	Ashley Lewin - email dated 01/06/2021
38	Irene Aragon – email 01/06/2021
39	Jason Espinoza, KW Consulting, email dated 01/06/2021
40	Charles F. Rudolph - email dated 01/06/2021
41	Jacob Vigil – email dated 01/06/2021
42	Tim Davis, Center on Law and Poverty – email dated 01/05/2021
<b>The following oral comments were received during the public hearing</b>	
43	Maggie Zenn, independent researcher, Sage Early Childhood Education Research
44	Tim Davis, Center on Law and Poverty
45	Barbara Tedrow, Gold Star Academy, Smiling Faces Child Care Center
46	Huong Nguyen, NM Asian Family Center
47	Erica Gallegos, OLÉ Educational Fund
48	Antoinette Taft
49	Patricia Grovey, Child & Family Services Inc. & Lea County Early Childhood Coalition
50	Millie Weed, provider
<b>The following written comments were received at the public hearing via Zoom chat</b>	
51	Maggie Zenn, independent researcher, Sage Early Childhood Education Research
52	Erica Gallegos, OLÉ Educational Fund
53	April Wade, Little Forest Playschool
54	Rebecca Glenn, OLÉ Educational Fund
55	Maria (no last name), Count Your Blessings
56	Mayra Guerra, Little Footprints
57	Zenobia Trimnell
58	Shannon McFarland, Gallup McKinley Schools
<b>The following comments were received after the public hearing adjourned</b>	
	Thao Nguyen – email dated 01/06/2021
	Beth Enson – email dated 01/08/2021

Jacqueline Gonzales, Hearing Officer  
January 15, 2020

# NMAC Transmittal Form



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Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only) Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action:  New  Amendment  Repeal  Emergency  Renumber  (ALD Use Only) Most recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference?  
Yes  No

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

## Specific statutory or other authority authorizing rulemaking:

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

# Concise Explanatory Statement For Rulemaking Adoption:

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## Findings required for rulemaking adoption:

2021 FEB 11 PM 5:21

### Findings MUST include:

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

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of the rulemaking is to promulgate amendments to 8.15.2 NMAC, which were initially published as emergency amendments effective September 18, 2020, along with additional necessary changes. Due to the COVID-19 health crisis and the resulting executive orders and declarations, there was an emergency need for amendments to 8.15.2 NMAC in order to protect the public from an imminent peril to public health, safety and welfare of children and families in New Mexico.

Reasons for any change between the published proposed rule and the final rule:

8.15.11.E "and Eligible Immigration Status" is added to the title so that it reads: "Citizenship and Eligible Immigration Status."

Reason: This change helps provide clarification in the title of this section insofar as children eligible for services need not be citizens and may also be eligible depending on their immigration status.

8.15.2.7(D) is changed to read: "Child with a disability or special needs" means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring."

Reason: Including children with an individualized family service plan (IFSP) in the definition of "child with a disability or special needs" reflects the Department's intent to expand access for children and families with special needs.

8.15.2.7(J) is changed to read: "Earned income" means income received as gross wages from employment or as profit from self-employment."

Reason: ECECD proposes to revert to the original language in the regulation after receiving a public comment concerning how such a proposed change would negatively affect small business owners in need of early childhood education and care services.

8.15.2.11.C. (2) is changed to read: The household includes biological parents, stepparents, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit.

Reason: This change helps provide clarification

8.15.2.11.I. is changed to read: The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

Reason: This change helps provide clarification.

8.15.2.11.C.(8) is added and reads:

(8) CALCULATING INCOME:

a. Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.15.2.11 NMAC.

b. Conversion factors: When income is received on a weekly, biweekly, or semimonthly basis, the income shall be converted to monthly amount as follows:

(1) Income received on a weekly basis is averaged and multiplied by four and three-tenths. Weekly income is defined as income received once per week.

(2) Income received on a biweekly basis is averaged and multiplied by two and fifteen one-hundredths. Biweekly income is defined as income received once every two weeks. Income is received on the same day of the week each pay period, therefore receiving 26 payments per year.

(3) Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

(4) Income received on a monthly basis is averaged and multiplied by one. Monthly income is defined as income received once per month.

Reasons for not accepting substantive arguments made through public comment:

Please see attached document for reasons for not accepting substantive arguments made through public comments.

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

Name:

Elizabeth Groginsky

Check if authority has been delegated

Title:

Secretary

Signature: (BLACK ink only)

Date signed:

Elizabeth Groginsky Digitally signed by Elizabeth Groginsky  
Date: 2021.02.08 19:52:37 -07'00'

2/08/2021



This is an Amendment to 8.15.2 NMAC, Sections 7 through 21, effective 3/1/2021.

2021 FEB 11 PM 5:21

**8.15.2.7 DEFINITIONS:**

**A. "Attending a job training or educational program"** means actively participating in [a-job] an in-person or online job training or educational program.

**B. "At-risk child care"** means a program for families at-risk [of child protective services involvement] as determined by the department.

**C. "CACFP"** means the child and adult care food program, administered by the children, youth and families department.

**D. "Child with a disability or special needs"** means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP) or an individualized family service plan (IFSP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.

~~**E. "Child support enforcement division"** means the child support enforcement program administered by New Mexico's human services department, which collects child support from non-custodial parents.]~~

**E. "Client"** means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

**F. "Closure"** means the client's child care case is closed with the department.

**G. "Co-payment"** means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department's payment to the provider is reduced by the co-payment amount.

**H. "Demonstration of incapacity"** means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician's/medical professional's/treatment provider's letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

~~**[H.] I. "Department"** means the New Mexico children, youth and families department (CYFD).~~

~~**[I.] J. "Earned income"** means income received as gross wages from employment or as profit from self-employment.~~

**K. "Fluctuation of earnings"** means a family with inconsistent or variable income throughout the year. To calculate fluctuation of earning the department may:

(1) average family earnings over a period of time (e.g., 12 months); or

(2) choose to discount temporary increases in income provided that a family

demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

~~**[J.] L. "Homeless children and youth"** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:~~

~~(1) Children and youth who are temporarily sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks (excludes mobile homes), or camping ground due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;~~

~~(2) children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;~~

~~(3) children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and~~

~~(4) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Paragraphs (1) through (3) of this subsection.~~

~~**M. "Household"** means the household as defined below in Paragraph (1) of Subsection C. of 8.15.2.11 NMAC.~~

~~**N. "Household income"** means household income as defined below in Paragraph (3) of Subsection C. of 8.15.2.11 NMAC.~~

~~**[K.] O. "Incidental money"** means earnings of a minor child for occasional work performed such as~~

baby-sitting, cutting lawns, and other similar activities.

[L.] **P.** "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

- (1) infant: zero - 23 months;
- (2) toddler: 24 -35 months;
- (3) preschool: three to five year olds; and
- (4) school age: six year olds and older.

[M.] **Q.** "Job training and educational program" means participation in a short or long term educational or training program, including online programs [which provides] that provide specific job skills which allow the participant to enter the workforce and directly relates to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post-secondary institutions.

[N.] **R.** "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. CYFD determines the program criteria and standards to evaluate and approve accrediting bodies.

- (1) The following are the only national accrediting bodies that are approved by CYFD:
  - (a) the association of Christian schools international (ACSD);
  - (b) the council on accreditation (COA) for early childhood education and after school programs;
  - (c) the international Christian accrediting association (ICAA);
  - (d) the national accreditation commission for early care and education programs (NAC);
  - (e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
  - (f) the national association of family child care (NAFCC); or
  - (g) the national early childhood program accreditation (NECPA).
- (2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

[O.] **S.** "Non-temporary change in activity" means the family has experienced a change in activity that does not meet the definition of a "temporary change in activity" as defined in Section [EE] HH below.

[P.] **T.** "Non-traditional hours of care" means care provided between the afterhours of 7:00 p.m. and 7:00 a.m. Monday through Friday or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

[Q.] **U.** "Open case" means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

[R.] **V.** "Overpayment" means a payment of child care assistance benefits received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

[S.] ~~"Child Protective services (CPS) child care" means child care services for children placed in the custody of the child protective services of the department.~~

[T.] **W.** "Provider types" means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

- (1) "In-home" care means care provided in the child's own home.
- (2) "Registered home" means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.
- (3) "Licensed family child care home" means child care provided in the home of a provider who is licensed by the department to care for up to six children.
- (4) "Licensed group child care home" means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.
- (5) "Licensed center" means child care provided in a non-residential setting, which is licensed by the department to provide such care.
- (6) "Out-of-school time care" means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school

2021 FEB 11 PM 5:21

is not in session.

**(7) "Friend, family, or neighbor (FFN)"** means care to be provided temporarily in a home to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months. In the case of a public health emergency, the department may extend the temporary status.

**[U.] X. "Recertification"** means the process by which a client's eligibility to continue to receive child care assistance benefits are determined.

**[V.] Y. "Registration/educational fee"** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

**Z. "Sanctions"** means a measure imposed by the department for a violation or violations of applicable regulations.

**[W.] AA. "SNAP"** means the supplemental nutrition assistance program administered by the U.S. department of agriculture, which helps low-income families purchase healthy food. SNAP was previously referred to as food stamps employment and training program.

**BB. "Special supervision"** means the special supervision for child(ren) as defined below in Subsection G of 8.15.2.11 NMAC.

**[X.] CC. "Star level"** means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

**[Y.] DD. "Suspension"** means [that the child care case remains eligible, but benefits are not paid to the provider] the voluntary cessation of child care benefits at the client's request, during which the client remains eligible.

**[Z.] EE. "TANF"** means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

**[AA.] FF. "Teen parent"** means a biological parent under the age of 20 who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities.

**[BB.] GG. "Termination"** means the client's child care case will be closed due to cause.

**[CC.] HH. "Temporary change of activity"** means one of the following events that does not exceed three months:

- (1) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;
- (2) interruption in work for a seasonal worker who is not working between regular industry work seasons;
- (3) student holiday or break for a parent or legal guardian participating in training or education;
- (4) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and
- (5) cessation of work or attendance at a training or education program less than [90 days]

three months.

**[DD.] II. "Underpayment"** means a payment made by the department for services provided which did not fully reimburse the client or provider.

**[EE.] JJ. "Unearned income"** means income in the form of benefits such as TANF, workmen's compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, [and] grants and other income which does not meet the definition of earned income.

**[FF.] KK. "Working"** means employment of any type, including self-employment and teleworking. For TANF recipients, this includes work experience or community service or any other activity that meets the TANF work activity requirements.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020; A, 3/1/2021]

**8.15.2.8 TYPES OF CHILD CARE:** These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents or legal guardians have a variety of child care services from which to choose:

- A. licensed child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;
- B. licensed child care programs administered by tribal entities;
- C. licensed child care programs administered by church or religious organizations;

2021 FEB 11 PM 5:21

- D. in-home care;
- E. licensed child care centers;
- F. registered family childcare homes;
- G. licensed family and group childcare homes;
- H. licensed out of school time programs; [and]
- I. licensed programs operated by employers for their employees[-]; and
- J. FFN.

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 10/1/2016; A, 3/1/2021]

**8.15.2.9 PRIORITIES FOR ASSISTANCE:** Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority one: Clients receiving temporary assistance to needy families (TANF) benefits to include TANF diversionary payment, are considered priority one clients.

(1) Participation exemption: The human services department (HSD) grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant's inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

- (a) the unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
- (b) the unavailability or unsuitability of informal child care by a relative or under other arrangements; or
- (c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any or all of the above reasons is referred to the children, youth [&] and families department child care resource and referral. The child care resource and referral assists the client with location of child care. The final validation/verification of a client's inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with [~~the human services department (HSD)] HSD. HSD is responsible for providing notice of the approval or denial of a participation exemption.~~

B. Priority one A: [RESERVED]

C. Priority one B: Child care assistance for income eligible families whose income is at or below one hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. The department prioritizes child care services within priority one B for children with special needs, disabilities, homeless families, and for teen parents.

D. Priority two: Families transitioning off TANF and clients who have received a TANF diversionary payment. Clients must have received TANF for at least one month, or a diversionary payment, in the past 12 months in order to qualify for priority two. Only clients transitioning off TANF whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their 12 consecutive month period of eligibility for priority two child care.

E. Priority three: [RESERVED]

F. Priority four: Child care assistance for families whose income is above one hundred percent of the federal poverty level but at or below two hundred percent of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a 12 month block of time and will remain eligible at or below two hundred fifty percent of the federal poverty level. Exceptions to the 12 month certification period are included in 8.15.2.11 NMAC. The department prioritizes child care services within priority four for children with special needs, disabilities, homeless families, and for teen parents.

~~[G. Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.]~~

~~[H.]~~ G. [At-risk child care] Priority five: In addition to these priorities, the department pays for at-risk [~~protective services~~] child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority.

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2021 FEB 11 PM 5:21

[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 10/1/2016; A; 10/1/2019; A/E, 9/18/2020; A, 3/1/2021]

**8.15.2.10 APPLICATION PROCESS:**

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility [in person at the local child care office. Upon a need or request by the client, the department may approve a client to submit their initial application by fax, email, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Under documented extenuating circumstances and with approval from the early childhood services director, clients may be given longer than 14 days but no more than 30 days to submit required documentation]:

- (1) a completed signed application form;
- (2) [current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support] documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.15.2.11 NMAC;
- (3) documentation of the applicant's TANF eligibility or participation, if applicable, and can include applicant's social security number or assigned TANF identification number;
- ~~(3)~~ (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- ~~(4)~~ (6) verification of birth for all applicant's household children;
- (7) documentation of qualifying immigration status, as defined by the United States department of health and human services, administration for children and families, office of child care, for all children requesting child care assistance;
- ~~(5)~~ proof of unearned income;
- ~~(6)~~ (8) [proof] documentation of New Mexico [home address] residency; and
- ~~(7)~~ (9) [CYFD] department approved provider.

B. The department may approve a client to submit their initial application by fax, email, electronic submission, or mail. Clients shall have 14 calendar days after initial submission of an application to submit all other required forms. Upon approval from the child care regional manager, clients may be given longer than 14 calendar days, but no more than 30 calendar days, to submit required documentation.

[B.] C. Assistance is provided effective the first day of the month of application if all of the following apply:

- (1) the client is utilizing child care services;
- (2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and
- (3) the [eligible] provider is eligible to be paid [was providing care from the first day of the month forward].

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 10/1/2016; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021]

**8.15.2.11 ELIGIBILITY REQUIREMENTS:** Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

A. Child care staff will initiate communication at the initial [eligibility] determination of their eligibility period to provide outreach and consumer education with a case management approach and coordination of services to support families.

B. Eligibility period: Based upon the client meeting all eligibility requirements, a 12-month certification period will be granted.

- (1) Eligibility may be granted for less than 12 months at the parent or legal guardian's request.
- (2) ~~[Eligibility for CPS and a at]~~ At-risk child care may be granted for less than 12 months as determined by the department.
- (3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.
- ~~(3)~~ (4) The client will remain eligible if a temporary change of activity occurs.
- ~~(4)~~ (5) If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

C. Income eligibility determination:

(1) The household: The household includes biological parents, stepparents, ~~and legal~~ guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit, ~~and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and are applying for child care benefits on behalf of the children.~~ Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, medical or other treatment, or military service.

(2) ~~[Allowed exclusions from the household for co-payment calculation only: Excluded from the household for co-payment calculation purposes only are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as but not limited to death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents or legal~~ Legal guardians who are not the parents of the child(ren) for whom child care assistance is sought, in this situation are required to qualify for child care assistance as per Paragraph [(4)] (3) below and, upon qualification, have the required co-payment waived.

(3) ~~Adult dependent children: 18 year old dependent children must be attending school to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.]~~

(4) (3) Household income: ~~[Income eligibility for benefits is determined by the number of members in the household and the total countable gross earned and unearned income. Eligibility determinations will take into account irregular fluctuations of earnings to income based on the client's individual circumstances.]~~ The household's gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility. Household income does not include any earned and unearned income received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

(5) (4) Family assets: A family's assets may not exceed one million dollars.

(6) (5) Countable earned and unearned income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable): income from employment by working for others or from self-employment; ~~child support payments;~~ alimony payments; veterans administration (VA) payments except VA payments ~~[for educational purposes and disability] that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC;~~ ~~union payments; unemployment or~~ workman's compensation; railroad retirement benefits; pensions; ~~[TANF benefits, including diversion payments;]~~ royalties; income from rental property; social security benefits except social security payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; ~~work study income;~~ overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

(7) (6) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of [a] household ~~[dependent] dependents [child who is under 18 and in school];~~ earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military food and housing allowances; an increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001"; third party payments; energy assistance benefits; foster care payments; adoption subsidies; ~~[VA payments for educational purposes and disability;]~~ loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or ~~[AmeriCorp] AmeriCorps;~~ Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; cash gifts; employer reimbursements; overtime, unless CYFD determines that the applicant is paid overtime on a regular basis; payments from special funds such as the agent orange settlement fund or radiation exposure compensation

settlement fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, individual retirement accounts (IRAs), vehicles, certificates of deposits (CDs) or checking accounts. In the case of an emergency, or under extenuating circumstances, the department secretary may disregard certain temporary income, such as federal stimulus payments or hazard pay.

~~[(8)]~~ (7) Verification of household countable earned and unearned income: Clients applying for child care assistance benefits are required to verify household countable earned and unearned income by providing current ~~[proof]~~ documentation of income for ~~[all members of the household]~~ biological parents, stepparents, and legal guardians of the child(ren) for whom child care assistance is sought, living in the household, who receive such income. ~~[Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.]~~ A self-employed individual who does not show a profit that is equal to federal minimum wage times the amount of hours needed per week within 24 months from the start date of receiving child care assistance will be evaluated by the child care assistance supervisor, at which point services may be reduced or discontinued.

**(8) Calculating income:**

(a) Current income provided to determine eligibility shall be used as an indicator of the income that is and shall be available to the household during the certification period. Fluctuation(s) of earnings may be taken into account as specified in Paragraph (3) of Subsection C of 8.15.2.11 NMAC

(b) Conversion factors: When income is received on a weekly, biweekly, or semimonthly basis, the income shall be converted to monthly amount as follows:

(i) Income received on a weekly basis is averaged and multiplied by four and three-tenths. Weekly income is defined as income received once per week.

(ii) Income received on a biweekly basis is averaged and multiplied by two and fifteen one-hundredths. Biweekly income is defined as income received once every two weeks. Income is received on the same day of the week each pay period, therefore receiving 26 payments per year.

(iii) Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is received on specific dates of the month, therefore receiving 24 payments per year.

(iv) Income received on a monthly basis is averaged and multiplied by one. Monthly income is defined as income received once per month.

D. Residency requirement: An applicant of child care assistance and a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

E. Citizenship and eligible immigration status: Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified ~~[alien]~~ immigrant as ~~[determined by applicable federal laws]~~ defined by the United States department of health and human services, administration for children and families, office of child care. ~~[If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship or alien status of the child's parent or parents.]~~

F. Age requirement: Child care benefits are paid for children between the ages of six weeks up to the day in which the child turns 13 years old. Eligibility determinations made prior to a child turning 13 years old may be granted a 12-month eligibility period or a lesser period of time as determined by the department for ~~[CPS or]~~ at-risk child care.

~~G. Failure to use authorized child care: If authorized child care has not been used for five consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, payment may discontinue to the provider and the client will remain eligible for the remainder of their eligibility period. The provider or the client shall notify the department within three business days after the fifth day of non-attendance. Upon receiving notice from the provider or the client within the prescribed timeframe, the department shall issue a notice to the client stating when the client's placement will be closed and shall simultaneously issue a notice to the provider stating when the last date of payment will be made. Providers shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed above. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.~~

~~H. Change in Provider: If the parent or guardian changes providers, the provider shall be paid through the 14th day following the first day of nonattendance provided that the department was notified within the timeframe prescribed. If the department is not notified within the prescribed timeframe, the provider shall be paid through the last date of attendance.]~~

G. Special supervision: Children between the ages of 13 and 18 who are under the supervision of a

FEB 11 PM 5:22

court of law, or who are determined by a medical or treatment professional to require supervision.  
**H.** Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.

**I.** Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. [Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses. Child care benefits for clients who are preparing for the acquisition of a GED shall be limited to one year.] The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

**J.** Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are not limited to, attending school, working, training, or military service.

**K.** Special supervision: Child care benefits may be provided to children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, under an IEP or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to budget availability.

**L.** Children enrolled in head start, kindergarten, school or other programs: Child care benefits are not paid during the hours that children are attending head start, kindergarten, New Mexico pre-K, school or other programs.]

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

**8.15.2.12 RECERTIFICATION:** Clients must recertify for services at the end of their eligibility period by complying with all requirements of initial certification. Clients who recertify will qualify at or below two hundred fifty percent of the federal poverty level. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous child care placement agreement. At time of recertification, clients must provide [proof] documentation of income, or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification. A 12-month certification period will be granted in accordance with eligibility requirements outlined in Subsection B. of 8.15.2.11 NMAC.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 10/1/2016; A, 10/1/2019; A/E, 9/18/2020; A, 3/1/2021]

**8.15.2.13 CLIENT RESPONSIBILITIES:** Clients must abide by the regulations set forth by the department and utilize child care assistance benefits only while they are working, attending school or participating in a training or educational program.

**A.** Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for [CPS child care,] at-risk child care[,] and qualified grandparents or legal guardians [as defined in Paragraph (2) of Subsection C of 8.15.2.11 NMAC]. [In the case of a public health emergency, the department secretary may waive co-payments for families receiving child care. The department will pay providers the client's approved rate, to include required co-payments, during the time of the public health emergency.] Co-payments are determined by income and household size. The co-payment schedule is published yearly at [<https://cyfd.org/child-care-services>] <https://www.nmcecd.org/child-care-assistance/>. In the case of an emergency, or under extenuating circumstances, the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required co-payments.

**B.** Co-payments described in Subsection A of 8.15.2.13 NMAC, are used for determining the base co-payment for the first eligible child. The formula for [calculating] determining the co-payment amount based on the co-payment schedule for the first full time child is (low end of the monthly income bracket on the co-payment schedule ÷ 200 percent of annual federal poverty level for household size) X (low end of the monthly income bracket on the co-payment schedule) X 1.1 = monthly copayment for first full time child. Base co-payments for each additional child are determined at one half of the co-payment for the previous child.

**(1)** The first child is identified as the child requiring the most hours of child care.



2021 FEB 11 PM 5:22

(2) Each additional child will be ranked based on the most number of hours needed for child care to the least number of hours needed for child care.

C. Each child's co-payment will be adjusted based on the units of services described in Subsection E of 8.15.2.17 NMAC, as follows:

- (1) full time care will be based on one hundred percent of the base co-payment;
- (2) part time 1 care will be based on seventy-five percent of the base co-payment;
- (3) part time 2 care will be based on fifty percent of the base co-payment; and
- (4) part time 3 care will be based on twenty-five percent of the base co-payment.

D. Clients pay co-payments directly to their child care provider and must remain current in their payments. A client who does not pay co-payments may be subject to sanctions.

E. The co-payment for a child shall not exceed the monthly provider reimbursement rate. If this situation arises, the co-payment may be reduced in the amount by which it exceeds the monthly provider reimbursement rate.

F. In-home providers: Parents or legal guardians who choose to use an in-home provider become the employer of the child care provider and must comply with all federal and state requirements related to employers, such as the payment of all federal and state employment taxes and the provision of wage information. Any parent or legal guardian who chooses to employ an in-home provider releases and holds the department harmless from any and all actions resulting from their status as an employer. Payments for in-home provider care are made directly to the parent or legal guardian.

G. Notification of changes: ~~[Clients must notify the department of changes that affect the need for care, which include but are not limited to any non-temporary change in activity, or household members moving in or out, within five business days of the change. Clients who do not comply with this requirement may be sanctioned.]~~ Clients must provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

(1) A client must notify the department of any non-temporary change in activity or changes to household composition. Notifications must be provided within 14 calendar days of the change.

(2) A client who changes a provider must notify the department and the current provider 14 calendar days prior to the expected last day of enrollment. If this requirement for notification is met by the client, the current provider will be paid through the 14th calendar day. If this notification requirement is not met, the current provider will be paid 14 calendar days from the last date of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases. The client will be responsible for payment to the new provider beginning on the start date at the new provider and until the final date of payment to the former provider.

(3) If the client has not used the authorized provider for 14 consecutive calendar days, the child will be disenrolled from that provider and the client will remain eligible for the remainder of their eligibility period.

(4) Clients who do not comply with this requirement may be sanctioned.

~~[H. Required application with New Mexico human services department's child support enforcement division (CSED):~~

~~(1) When one or both of the child's parents are absent from the home, the client shall apply for child support through CSED within 12 months of initial application with the child care assistance program.~~

~~(2) The following exceptions include but are not limited to: the client is receiving TANF; the client is already receiving child support; the client is receiving financial support, including but not limited to housing, clothing, food, transportation and funds, from the non-resident parent; there is a joint custody agreement and neither parent is ordered to pay support; parental rights have been terminated; the parent is a foster parent to the child; the parent is an adoptive parent and provides proof of a single parent adoption; at risk child care; a parent is temporarily out of the home and is still considered part of the household; the client is a teen parent; the client is a grandparent; guardian; parent is deceased or when good cause exists.~~

~~(3) Good cause for refusal to apply may be granted when such application is not in the best interest of the child or parent, including but not limited to the following circumstances:~~

- ~~(a) there is possible physical or emotional harm to the child, parent or guardian;~~
- ~~(b) the child was conceived as a result of incest or rape;~~
- ~~(c) legal proceedings for adoption of the child are pending before a court; or~~
- ~~(d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.~~

~~(4) The applicant or recipient who makes a claim for good cause shall supply written~~

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documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.

~~(5)~~ If the client is not exempted from applying with CSED and has not applied within the required timeframe, the client's case will be closed.]

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021]

#### 8.15.2.14 CASE SUSPENSIONS AND CLOSURES:

A. A case may be suspended by the client if child care benefits are not being utilized for a period not to exceed three months with payment being discontinued to the provider. The client will remain eligible for child care assistance through the remainder of their eligibility period.

B. If the client experiences a non-temporary change of activity including the loss of employment, no longer attending school, or no longer participating in a job training or education program, the client will be granted a three-month grace period in which the client will remain eligible. This three-month grace period is for the purpose of giving the client an opportunity to secure new employment or another approved activity. The three-month grace period will start on the date of required notification for the non-temporary change of activity pursuant to section 8.15.2.13 G NMAC.

C. A case will be closed if the following conditions apply:

- (1) any non-temporary change in activity and failure to obtain an activity after the three-month grace period;
- (2) income in excess of two hundred and fifty percent federal poverty level [~~or eighty-five percent state median income, whichever is greater~~];
- (3) moving out of state;
- (4) failing to recertify at the end of approved eligibility period;
- (5) at the option of the client;
- (6) being disqualified from participation in the program; or
- (7) failure to use authorized child care.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021]

**8.15.2.15 PROVIDER REQUIREMENTS:** Child care providers must abide by all department regulations. Child care provided for recreational or other purposes, or at times other than those outlined in the child care placement agreement, are paid for by the client.

A. All child care providers who receive child care assistance reimbursements are required to be licensed or registered by the department and meet and maintain compliance with the appropriate licensing and registration regulations in order to receive payment for child care services. Beginning July 1, 2012, child care programs holding a 1-star license are not eligible for child care assistance subsidies. The department honors properly issued military child care licenses to providers located on military bases and tribal child care licenses properly issued to providers located on tribal lands.

B. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within 30 calendar days of issuance. Failure to comply may affect payment for services and the child care placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

~~[B.]~~ C. Child care providers collect required co-payments from clients and provide child care according to the terms outlined in the child care placement agreement.

~~[C.]~~ D. ~~[Child care providers must notify the department within three business days after the fifth day of non-attendance if the child is disenrolled or is absent for five consecutive scheduled days. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided by Subsection G of 8.15.2.11 NMAC]~~ Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

(1) If the above notification was met, the provider will be paid through the 14th calendar day following the first date of nonattendance.

(2) If a provider does not notify the department of disenrollment or of non-use for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(3) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided. 22

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.15.2.21 NMAC.

~~[D.]~~ E. Child care providers accept the rate the department pays for child care and are not allowed to charge families receiving child care assistance above the department rate for the hours listed on the child care placement agreement. Failure to comply with this requirement may result in sanctions ~~[or suspension of the child care assistance agreement]~~.

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care.

(2) In situations where an incidental cost may occur such as field trips, special lunches or other similar situations, the child care provider is allowed to charge the child care assistance family the additional cost, provided the cost does not exceed that charged to private pay families.

(3) Child care providers are allowed to charge child care assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.

~~[E.]~~ F. Under emergency circumstances, when CYFD has reason to believe that the health, safety or welfare of a child is at risk, the department may immediately suspend or terminate assistance payments to a licensed or registered provider. The child care resource and referral will assist clients with choosing another CYFD approved provider.

~~[F.]~~ G. Providers who are found to have engaged in fraud relating to any state or federal programs, or who have pending charges for or convictions of any criminal charge related to financial practices will not be eligible to participate in the subsidy program.

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019; A, 3/1/2021]

#### 8.15.2.16 DEPARTMENT RESPONSIBILITIES:

~~[A.]~~ The department will initiate mid-certification communication with the client to provide outreach and consumer education with a case management approach and coordination of services to support families.

~~[B.]~~ A. The department pays child care providers who provide child care services to department clients in a timely manner.

~~[C.]~~ B. Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

~~[D.]~~ C. Child care assistance workers will perform all eligibility and recertification determinations within 10 working days upon receipt of all required documentation from the client.

~~[E.]~~ D. Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

~~[F.]~~ E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF. Eligibility for TANF is determined by the New Mexico human services department.

~~[G.]~~ F. Child care assistance workers must inform parents or legal guardians of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

~~[H.]~~ G. The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents or legal guardians and providers.

~~[I.]~~ H. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent or legal guardian and provider responsibilities, licensing and registration requirements, payment issuance and background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents or legal guardians and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

8.15.2.17 **PAYMENT FOR SERVICES:** The department pays child care providers on a monthly basis,

2007 FEB 11 PM 5:22

according to standard practice for the child care industry. Payment is based upon the child's enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. A signed child care placement agreement must be returned to the department for payment to be issued to the provider. The following [describes] circumstances under which the department may close placements or discontinue payment [when placements may be closed and payment discontinued] at a time other than the end of the month:

A. When the child care placement agreement expires during the month, or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. ~~Upon a change of provider the client and former provider have three days after the fifth day of nonattendance to notify the department. If this requirement for notification was met, the provider will be paid through the 14th day following the first date of nonattendance. If notification requirement is not met, the provider will be paid through the last date of attendance. The agreement with the new provider shall become effective when payment to the previous provider ceases. If the client notifies the department of the change in providers fewer than 14 days before the change will take place or after the change has taken place, the client is responsible for payment to the new provider beginning on the start date at the new provider and continuing up until the final date of payment to the former provider, as described above. Payment to the former provider will be made through the last day that care is provided if the child is withdrawn from the provider because the health, safety or welfare of the child is at risk, as determined by a substantiated complaint against the child care facility.]~~ Payment for notification of changes:

(1) If a client fails to notify the department within 14 calendar days of their expected last day of enrollment, the department will pay the provider 14 calendar days from the last day of nonattendance. The child care placement agreement with the new provider shall become effective when payment to the previous provider ceases.

(2) If the provider notifies the department of a child who is disenrolled or child care has not been used for 14 consecutive calendar days, the provider will be paid through the 14th calendar day following the last day of attendance.

(3) If a provider does not notify the department of disenrollment or of nonattendance for 14 consecutive calendar days, the provider will be paid through the last date of attendance.

(4) If a child was withdrawn from a provider because the health, safety, or welfare of the child was at risk, as determined by a substantiated complaint against the child care provider, payment to the former provider will be made through the last day that care was provided.

C. The department shall pay a five dollar monthly, not to exceed sixty dollars per year, registration/educational fee per child in full time care, on behalf of department clients under 8.15.2 NMAC. Adjustments to the five dollar registration/educational fee will be made based on units of care. The registration/educational fee will discontinue when a placement closes as a result of a client changing providers, a provider discontinuing services, a child care placement agreement expiring, or a provider's license being suspended or expiring.

D. The amount of the payment is based upon the age of the child and average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent or legal guardian at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care placement agreement covering the certification period.

E. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2 (only for split custody or in cases where a child may have two providers)	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 8-29 hours per week per month	Care provided for an average of 8-19 hours per week per month	Care provided for an average of 7 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

2021 FEB 11 PM 5:5

- F. Hours of care shall be rounded to the nearest whole number.  
G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
\$720.64	\$589.55	\$490.61	\$436.27
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$586.07	\$487.11	\$427.13	\$422.74
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$566.98	\$463.50	\$411.62	\$406.83
Registered homes, [and] in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$289.89	\$274.56	\$251.68	\$251.68

H. The department pays a differential rate according to the license or registration status of the provider, national accreditation status of the provider if applicable, and star level status of the provider if applicable. In the case of a public health emergency, the department secretary may approve a differential rate be paid to licensed providers.

I. Providers holding and maintaining CYFD approved national accreditation status will receive the differential rate listed in Subsection I below, per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child. All providers who maintain CYFD approved national accreditation status will be paid at the accredited rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement.

(1) Providers who receive national accreditation on or before December 31, 2014 from an accrediting body that is no longer approved by CYFD will no longer have national accreditation status, but will remain eligible to receive an additional \$150 per child per month for full time care above the base rate for type of child care (licensed center, group home or family home) and age of child until December 31, 2017.

(a) In order to continue at this reimbursement rate until December 31, 2017 a provider holding accreditation from accrediting bodies no longer approved by CYFD must maintain licensing standards and maintain accreditation without a lapse.

(b) If the provider fails to maintain their accreditation, the provider reimbursement will revert to the base reimbursement rate unless they have achieved a FOCUS star level or regain national accreditation status approved by CYFD.

(2) The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

J. The department will pay a differential rate per child per month for full time care above the base reimbursement rate to providers achieving higher Star levels by meeting FOCUS essential elements of quality as follows:

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00

3 Star FOCUS Child Care Centers, Licensed Family and Group Homes				2021 FEB 11 PM 5:22
Infant	Toddler	Pre-school	School-age	
\$100.00	\$100.00	\$100.00	\$100.00	
4 Star FOCUS Licensed Family and Group Homes				
Infant	Toddler	Pre-school	School-age	
\$180.00	\$180.00	\$180.00	\$180.00	
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes				
Infant	Toddler	Pre-school	School-age	
\$250.00	\$250.00	\$250.00	\$250.00	
4 Star FOCUS Child Care Centers				
Infant	Toddler	Pre-school	School-age	
\$280.00	\$280.00	\$250.00	\$180.00	
5 Star FOCUS or CYFD approved national accreditation Child Care Centers				
Infant	Toddler	Pre-school	School-age	
\$550.00	\$550.00	\$350.00	\$250.00	

**K.** In order to continue at the FOCUS reimbursement rates, a provider must meet and maintain the most recent FOCUS eligibility requirements and star level criteria. If the provider fails to meet the FOCUS eligibility requirements and star level criteria the provider reimbursement will revert to the FOCUS criteria level demonstrated.

**L.** Differential rates determined by achieving higher star levels determined by AIM HIGH essential elements of quality will be discontinued effective December 31, 2017. The department will pay a differential rate to providers achieving higher star levels determined by the AIM HIGH essential elements of quality until December 31, 2017 as follows: 3-Star at \$88.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$122.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$150.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent AIM HIGH star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the base reimbursement rate.

**M.** The department pays a differential rate equivalent to five percent, ten percent or fifteen percent of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

**N.** If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13 NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

**O.** The department may conduct provider [or] parent, or legal guardian, audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

**P.** Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020; A, 3/1/2021]

**8.15.2.18 UNDER PAYMENTS:** If a client or provider is underpaid for child care services, the department

may issue a one-time payment within 15 calendar days of the department's knowledge or receipt of notification. Notification of the department by the client or provider must occur within ~~[90 calendar days]~~ three months of the occurrence of alleged underpayment.

FILE 5: 22

[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 10/1/2016; A, 3/1/2021]

**8.15.2.19 OVER PAYMENT AND RECOUPMENT:** If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the early childhood services director deems otherwise in exceptional circumstances. Recoupments will only be sought from providers. The department will not seek a recoupment from a client unless substantiated fraud by that client has been determined. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, negotiated between the client and the department, usually not to exceed four months. Failure to pay the overpayment within 30 days of the notice or failure to make regular payments under an agreed upon payment schedule may result in sanctions including termination of benefits or referral of the account to a collection agency or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021]

**8.15.2.20 FRAUD:** The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility is fraud and appropriate sanctions, including recoupment, termination of benefits, and referral to law enforcement, are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined. In cases where substantiated fraud has been determined, the department may disqualify a client or provider until their debt has been paid in full.

[8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 10/1/2016; A, 3/1/2021]

**8.15.2.21 SANCTIONS:** ~~[If a client or provider fails to meet programmatic requirements that affect benefits and result in an overpayment, sanctions]~~ Sanctions may be imposed according to the severity of the infraction as determined by the department ~~[and]~~ as detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments may be referred to a collection agency.

B. ~~[Providers]~~ The department may initiate the recoupment process against any provider who fail to report in a timely manner that a child [is not] has not been in attendance for [five] 14 consecutive calendar days [; scheduled days will have the payment recoupment process initiated].

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

D. Clients who fail to notify the department of any non-temporary change of activity may be placed on conditional eligibility status up to one year on the following eligibility period. Any further violations within the conditional eligibility period may result in termination.

E. Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current. ~~[The department assists the provider in collecting the co-payment only if the co-payment has been in arrears 30 calendar days or less.]~~

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016; A, 3/1/2021]

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**Written Comments in Support of Proposed Rule Making, submitted prior to the January 6, 2021 public hearing.**

"As a recipient and a community member I think these changes are needed. I think child support should not be a requirement because sometimes parents have their own agreement and even if child support is filed the mom may never see that money or is inconsistent. As a parent may feel for many reason the other parent should be included in any shape or form for many different reasons. I do think that the income household does need to be changed. Sometimes as parents are income makes our copay very high and sometimes still unaffordable. Just because a parent or parents make a lot of money for the income bracket does not mean parents can afford a \$500 copay per mo the. There are still those bills parents need to pay. I also think that public educators who make more money do not qualify for childcare assistance. There should be something to help out other early childhood workers who cannot afford to pay childcare full cost at \$1000 a month for two children. There needs to be something to support over income parents and other early childhood educators. I speak as an early childhood educator because I do pay a high copay due to my field in early childhood education it is very stressful for me to still pay that copay. I have been very thankful for the pandemic relief for copay because my elementary child is having to attend daycare full time when he typically would not attend only on school closures that I am still required to work.

22

Please keep us hardworking and 'over income' parents in mind when creating the income eligibility. We need childcare for our cute n as well as income appropriate because childcare for 2 kids at \$1000 is very unrealistic for even us over income Parents."

"I would like to express my support for the proposed amendments to 8.15.2 NMAC, particularly those dealing with deletion of the requirement for child support and household income caps. Anything we can do to assist families who are struggling during this difficult time is of great importance to ensure that the current economic situation resulting from COVID 19 does not permanently damage our children and their caregivers."

"I am writing as a family physician and father in Albuquerque, wanting to voice my support for the proposed rules which will expand access to child care assistance and increase affordability of the program. Many of the families I care for struggle in access and affordability when it comes to child care, taking a toll on the health of their family. For instance, a child may be left in an unsafe childcare situation with a relative because it is the only affordable option for that family. I am excited to see NM become a leader nationwide in the realm of supporting child care assistance across the board, standing for this as a necessity for working families, for all families."

**Catholic Charities submission in support of proposed rule changes:**

"Catholic Charities a multi-human services provider including early childhood development & educational services through its Children's Learning Center expresses support for the proposed changes that will make it easier for parents and caregivers to enroll and maintain enrollment of New Mexican children in childcare and other associate early childhood development and education services. We applaud the State of New Mexico for extending the ease in which children can be determined eligible, and families fiscally assisted with maintaining state financial tuition assistance. Catholic Charities further urges the Administration of the State and Early Childhood Education and Care Department (ECECD) to make such regulatory and fiscal investments in improving and elevating childcare and early childhood educational services.

These changes in regulations and requirements for assistance via the ECECD is a first step in creating greater access to appropriate care for children while their parents/caregivers are engaged in employment, education and career improvements that lead to stable homes for our children. While the focus must be on the children and the development and educational services they need. The support of families striving to be participants in their communities and gain the resources that promote stability in home life must also be supported. When families thrive our children thrive as well.

Catholic Charities urges the Early Childhood Education and Care Department to continue upgrading not only access to services, but the level of professionalism and effectiveness in Early Childhood Development and Educational assistance provided to our youngest residents of the state and their families. As a state, we need to create pathways that assist the direct care staff to be more professional and prepared as instructors, care givers and family coaches to improve the lives of our children. Existing staff need support in their professional development so that they are increasingly more effective in their duties and elevating the level of Early Childhood intervention, development and education in New Mexico.

The direct care/service staff need also the support of the state in terms of raised compensation. Childcare and early childhood direct staff need to be compensated at levels that promote dignity and create career opportunities in caring for our children. Currently these direct staff as a collective group are among our lowest wage earners in our state. They receive insufficient level of time off, health care coverage for themselves and their families, retirement and incentives to participate in advancing their skills and education in the field. They are among the recently discovered essential workers of our communities



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formerly taken for granted. They have been part of the front line fight against COVID. Like our hospitals and healthcare facilities we tried to build a wall against the virus coming in, but still outbreaks occur and co-workers get the virus. Facilities and classrooms are shut, thoroughly cleansed, and they get back up to continue the mission.

We urge the State of New Mexico and its Administration to not only go forward with these regulatory improvements, but clearly state this is a first step. That like the landing on the moon decades ago was declared to the world it was to be accomplished even before the means of achievement were fully known. New Mexico, all of New Mexicans must declare now we are committed and obligated to create an Early Childhood Education and Development network that is first in its education and care of children, first in its level of professionalism, first in its just compensation of the women & men who provide the care, first in its attention to the nutritional needs of our children, in protecting our children from physical and psychological harm and is inclusive and available to every child in our state."

**OLE submission in support of proposed rule changes:**

"I am writing on behalf of the thousands of parents and early educators who are members of OLE, whose children are enrolled in child care programs or who work for early learning programs. On their behalf, we are writing in support of the proposed rule changes that you are seeking public comment on in your upcoming January 6 public hearing.

For many years, OLE members have fought New Mexico's regulation that requires a parent to sue a non-custodial parent for child support in order to qualify for public assistance. This regulation has endangered countless survivors of domestic violence who have had to choose between antagonizing a former abuser or foregoing child care assistance. Mothers who had informal payment arrangements with their children's father have had to endure legal processes that have upended agreements that already served their family's financial and emotional needs. Furthermore, many parents who were awarded child support payments by the courts were then determined by the State to be over-income for child care assistance, even in cases where non-custodial parents failed to make their court-ordered payments. These injustices led OLE members to protest this regulation, even going so far as to take over the CYFD office in Albuquerque in recent years. Your proposal to remove this regulation will finally bring closure to this fight, making our families safer and more likely to qualify for child care assistance.

Your proposal to limit the kinds of income that caseworkers will consider in making a determination of eligibility for child care assistance is also an important reform. This change will insure that more families qualify for assistance, and it will also make the application process simpler and more transparent, enabling more parents to apply for assistance with greater certainty that they qualify.

We support the Department's new regulations to make co-pay calculations more transparent, to clarify that child care assistance applications can be made electronically, to make graduate students eligible for assistance, and to protect applicants' privacy. All of these are valuable reforms that will make New Mexico's child care programs more accessible and family-friendly. Parents not having to take days off from work in order to apply for assistance in-person at a State office will protect families' financial security and not erode paid time off that they may have at their place of employment. Expanding eligibility to graduate students ensures that the State is supporting parents who pursue careers that require or benefit from post-graduate education."

"I want to voice my opinion as a Child Development Teacher. I support the proposed rules, because they will expand access to child care assistance and increase affordability of the program. Without expanding access to child care assistance the need for my position may be decreased or even eliminated. Families need opportunity to access quality child care and not have to settle for low quality care due to not being able to afford those centers who carry a 5 star rating with accreditation programs."

"I support the proposed [sic] rules because they will help expand access to more families, it will finally allow the partners scared to get childcare because of the custody requirement. I hope that the income part will maybe include parents who are married but have children from other relationships because this has been a big issue with my prospected clients they marry but have four kids with someone else and the state requires them to use their new husbands income but also expects them to report the child support now that the child supports gone the state needs to look at those extra kids on the mothers income only especially if the child gets child support and supports them primarily on her own. It's important because many parents can't afford to pay their bills plus quality care for their children so they have to leave them with unreliable care."

"We have too many high school students babysitting their siblings while they should be attending online classes. The new regulations would assist families beyond measure! It will give the small children a place to go to learn how to act socially before they start school. This will free up our older students to be students as they should be and not baby-sitters. It will also free up parents to get jobs or a second job as needed in this pandemic."

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13 individuals submitted the following as a full comment or as part of a larger comment: "I support the proposed rules, because they will expand access to child care assistance and increase affordability of the program."

"If there is anything this COVID-19 pandemic has done is underscored the barriers to high-quality childcare and the resulting damage to our economy. I will always support removing these barriers and making it a societal norm that all children receive high quality child care so their families can safely go to work or pursue higher education. Without high quality early childhood care and education our economy will continue to suffer, and many people will be removed from the workforce. This is not just a safety net issue, it is a workforce development and expansion issue, as well as health, public safety and economic growth issues. New Mexico must protect and prepare our youngest citizens so that our economy and culture will grow. We are behind in many markers of poverty and child welfare because we start behind, stay behind and can never catch up, let alone succeed. We need to remove the barriers that are preventing us from succeeding."

"I fully support the proposed changes to recipients of daycare assistance and they all seem very in touch with the realities families encounter. I am a Registered Home provider in Albuquerque and I know from experience, many families desperately need the financial help to pay for daycare services at this time with fewer obstacles to acquire it and/or continue the assistance, especially single parent homes.

It is rather hard and intimidating to ask for assistance from the State and I do believe lessening the criteria will help parents to feel more comfortable about applying and maybe also lessen the stigma associated with government assistance. Local families, especially new families, are struggling just to maintain a roof over their heads and to put food on the table for their kids, therefore, daycare is something they can not even fathom affording. For instance, how can a single mother making minimum wage possibly afford upwards of \$600 per month, which is the low market rate for daycare services in Albuquerque, possibly see any real value in going back to work while her child is young, would you?

Many thanks for hearing me out and I would like to do what I can to advocate for New Mexico children - they are our future and deserve the best."

"I'm writing in support of the proposed rule changes to the childcare assistance program that will make this vital resource available to more families. I am a Home Visitor and the families I serve desperately need expanded access to childcare to support their capacity for employment. Please approve the proposed changes."

"I am an educator and community member and agree with the proposed amendments/changes. Child care assistance should not be tied to child support. There are too many children needing child care coming from families where the non-custodial parent is non-compliant, abusive, absent, and/or dangerous. Child care is expensive from more than a monetary point of view and, relieving the stress of trying to pay without child support or with the custodial parent trying to get it, is important."

"Hola, somos proveedores de cuidado infantil y es muy difícil para algunos padres conseguir el contrato para cuidado de sus hijos porque algunos se les dificulta ponerles manutención de sus hijos ya que en algunos casos uno de los padres no se encuentra en este país y debido a eso no califican para la ayuda, convirtiéndose en un gran problema, por favor ayudenos a que nuestras familias obtengan apoyo en estos momentos duros y faciliten los subsidios para mejoras de nuestra comunidad."

**Translation:**

Hello, we are child care providers and it is very difficult for some parents to get the contract to care for their children because some of them find it difficult to get child support since in some cases one of the parents is not in this country and due to that they do not qualify for aid, becoming a big problem, please help us to get support for our families in these tough times and facilitate grants for improvements in our community.

Two individuals submitted the following comment:

- "Working families need access to affordable childcare they can trust to ensure their children have a safe space to learn while the parents are working to further their education or participate in the workforce.
- Every working parent should be able to access quality child care without worrying about sacrificing basic needs like food and rent.
- We know that the earliest years in children's lives are the most important in their development and lay the foundation for all that is to come. That is why it's so important that all working families be able to access affordable childcare that they can trust.

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- Child support requirements are burdensome to administer, have few benefits for families and put domestic violence survivors in danger. Other states have eliminated these requirements.
- Child care is unaffordable for low income families, because the program has high copays. The federal government recommends that families pay no more than 7% of their income on child care so that is affordable. New Mexico should eliminate co-pays for families below 100% of the federal poverty level and make them affordable for other families.
- It will be easier to find a job if childcare is available when families are looking for work.

Eliminating the requirement to submit applications in-person will lower burdens on applicants and increases child care accessibility.”

“Working families need access to affordable childcare they can trust to ensure their children have a safe space to learn while the parents are working to further their education or participate in the workforce. Every working parent should be able to access quality child care without worrying about sacrificing basic needs like food and rent.

We know that the earliest years in children’s lives are the most important in their development and lay the foundation for all that is to come. That is why it’s so important that all working families be able to access affordable childcare that they can trust.

Child support requirements are burdensome to administer, have few benefits for families and put domestic violence survivors in danger. Other states have eliminated these requirements. Child care is unaffordable for low income families, because the program has high copays. The federal government recommends that families pay no more than 7% of their income on child care so that is affordable. New Mexico should eliminate co-pays for families below 100% of the federal poverty level and make them affordable for other families.

It will be easier to find a job if childcare is available when families are looking for work. Eliminating the requirement to submit applications in-person will lower burdens on applicants and increases child care accessibility.”

“I am in favor of expanding access to childcare assistance in New Mexico. Childcare is one of the primary expenses for working families, and can cost as much as post secondary education. Many parents are priced out of the workforce because of these costs, keeping them trapped in a cycle of financial insecurity.”

“Child care is not currently affordable to so many and having the chance to gain some assistance is vital to parents and children in the state of NM. Many children are in the custody of grandparents, Aunts and Uncles, or other family member right now and because they don't have full legal rights [sic] they are not being allowed a contract to give their ‘child’ an education. These people are the ones who need the help most, the one who are trying to make a positive change for the child in need. I am a single mother of 3 who lives paycheck to paycheck and have been denied when I NEED child care, especially right now during the school closures and me still working. This bill passing could help me get my 9y.o. into a center that can help her with school so all my children can succeed in this crazy school year we have going.”

“My name is [...] and I [...] in Roswell, we are the [...] in New Mexico and I have been in Early Education for 37 years. I am writing to show my support for most of the new proposed regulations that will make child care more accessible.

Not counting some income would be a great help to single parents especially. I’m just not sure which income that would be.

I believe granting three months of benefits to families that are searching for work is an excellent idea.

I believe extending eligibility to families pursuing higher education. Just today I had a parent who is losing her older child's placement because her college is dropping her school time because of covid. Her other two will be dropping to part-time even though her study time will be the same as will her lab times. It is only the face-to-face class time.

I believe that extending access to families with special needs or a disability is a great idea.

New Mexico would benefit greatly from these regulations but also by extending the poverty level to 200%. I realize that in this time of pandemic everyone is hurting and many are looking for jobs that are just now there, but we need to do everything we can to ensure that the most at risk have the opportunity to exceptional, safe Early Education.”

“I am [...] from the Vietnamese community, It's very important to our community because working parents need safe, reliable and affordable child care. Many of them depend on friends and family to watch their children while they work, this may be a good option for some parents, others may not have such support. In addition, children in home care may not receive educational and social opportunities that state-regulated child-care centers offer. The high-quality child-care assistance will also help

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children healthy, safe and develop skills they need for school and communication skills. The proposed regulations will impact me and my community is: It should be easier to qualify so that all our children can use the services which they deserve."

"All families deserve access to safe, reliable child care. I support expand access by ending costly, burdensome & ineffective application & eligibility requirements."

"This is [...] and we [...] and parents support your bill. Thank you.

I have a story to share with one of the items on your bill.

I have a parent that needed to recertify in November. Contracted ended 10-31. She attempted to call her caseworker many times, emailed her, received an email that she had 7-10 days to respond. So she waited. When she was asked to send her documentation she did, an other 10 days and she need more information. She was told she would get to her when she could other contracts came before her and she could wait till she got to it. She did get to it and need a document signed by her x husband in another state on Kidney dialysis and in very poor health. This needed to be notarized which was an issue. Later she was contacted she needed a CPA to give her a Profit and Loss Statement. She tried to start a new business due to Covid and not being essential. No CPA would see her for 2 months. She called quite a few. In the meantime her contract expired and she felt so bad and felt like she had hit a block wall. I offered her my Accountant who finally helped her since she waited to long for another that never came through. In the meantime she stopped bringing the kids in. She worked from her car and took the kids with her. All this time she let me know what she was doing to get the contract information in to her caseworker. We had a Positive case in our home so we were in Quarantine also. Week before Christmas she is still waiting and has no information. We finally got the documentation to them on 12/31. We sent the information to caseworker and her boss. The response made me cry. We were emailed that in the future to let her boss know and that the caseworker should of asked upper management for help and they could of helped after I shared her story. I have no current contract but asked her to bring in her kids and shared groceries, Jackets, clothes and Christmas gifts for the kids. (She cried and said, "Oh my God, you have no idea how this helps". I had asked her to bring them in earlier but she felt she would just owe more that she was and could not afford it, and felt maybe starting a small business was the worst decision ever. (Estate sales) With Covid and the Holidays add a Quarantine to this and here we are just waiting. We are extended families and our job is to help our community.

We are asking for your help. Thank you. These are our struggles still trying to help our families."

**New Mexico Voices for Children submission in support of proposed rule changes:**

"New Mexico Voices for Children strongly supports the proposed rule changes, because they will expand access to child care assistance and increase affordability of the program.

Over the past two decades, no other program in New Mexico has seen the rollercoaster ride of changes in eligibility that the child care assistance program has. As a result, three thousand fewer children were enrolled in the program just prior to the COVID-10 pandemic than in 2010, despite the fact that New Mexico still ranks near the worst in the nation for poverty among full-time workers and parents who work. The pandemic has worsened the economic challenges for many New Mexico families, including many frontline and essential workers who are not able to take leave with pay. Making affordable child care a priority is essential for our working parents to have the support they need and confidence that the program will be there next year and the year after that. Employers who depend on those working parents also need that confidence, and New Mexico's families and business community need the state to be a dependable partner, especially during childrens' critical early years.

With one of the highest rates of poverty in the nation, New Mexico needs to provide its parents with more financial help and fewer barriers to child care. The proposed changes to the child care regulations are a commendable step in making the program more affordable and accessible.

- New Mexico Voices for Children supports the removal of child support requirements, which are burdensome to administer, have few benefits for families and put domestic violence survivors in danger. Other states have also eliminated these requirements.
- The extension of notification and application requirements to 14 days is also a way to ensure more access for families and uninterrupted care during times of transition. It will be easier to find a job if childcare is available when families are looking for work. Eliminating the requirement to submit applications in-person will also lower burdens on applicants and increase child care accessibility.
- Child care is unaffordable for low income families, because the program has high copays. The federal government recommends that families pay no more than 7% of their income on child care so that it is affordable. New Mexico

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should eliminate co-pays for families below 100% of the federal poverty level and make them affordable for other families.

The recent KIDS COUNT report says that New Mexico is 50<sup>th</sup> in child well-being, and this was before the economic strain of the pandemic and recession. The proposed changes are a step in the right direction, especially as New Mexico is at a moment of great challenge and our children and families need more support than ever in an era of employment and income instability and educational disruption.

In order for our communities, our economy, and our state to recover and succeed, it is necessary to ensure that all New Mexico children have the best possible opportunities to thrive and reach their full potential."

"More people will finally apply and get approved. People will be able to go look for work and get daycare which will help build more daycares up especially after the pandemic ends. I really wish the dept would change the rates and make all centers and family group home rates the same we do the same focus yet get only a 250 increase and a center gets 550 who ever made these rates was extremely bias"

"This is to strongly support the proposed rules which will expand child care assistance. My family was unnecessarily destroyed by the old rules and my child left in poverty. The present system is outmoded, ineffective and unjust. The proposed changes are long past-due."

**Center for Law and Poverty Submission in favor of proposed rules:**

"Please accept the following comments on the proposed revisions to 8.15.2 NMAC regarding the Early Childhood Education and Care Department's (the Department) child care assistance program.

The undersigned organizations have extensive experience working with families in New Mexico to ensure they have access to opportunities that improve the lives of children, particularly low-income families that face the largest barriers. We also have first-hand experience assisting families in accessing child care assistance in New Mexico. We have seen the benefits to families who are able to access affordable child care and are aware of administrative barriers that prevent eligible families from receiving assistance.

We applaud the Department's regulatory response to the COVID -19 pandemic. The April 7, 2020 emergency rule changes that allowed the secretary to waive co-payments and the work or education requirement during a public health emergency were meaningful steps to provide child care access during a difficult time and reach the Governor's goal of universal child care. We thank the Department for promulgating these emergency rules and for making these emergency provisions a permanent part of the child care regulations.

Additionally, we support the Department's proposed rules which will increase access to this dramatically underutilized, but effective program. While we support the proposed rules, we urge the Department to take the additional steps outlined below and promulgate a final rule which incorporates our specific suggestions.

Section 8.15.2.13(H) NMAC – We support eliminating child support enforcement requirements. We applaud the Department's decision to eliminate the assignment of child support enforcement rights as a condition of receipting child support enforcement. Tying child care assistance with child support enforcement prevents many families from enrolling and remaining enrolled in the program, and assigning rights is often not be in the best interests of the custodial parent and child. Federal law permits states to set their own policy regarding child support enforcement in the child care assistance program, and 27 states do not require child support enforcement to participate in the child care program<sup>1</sup>. We thank the Department for its proposal to eliminate this burdensome administrative process that blocks access to benefits.

Section 8.15.2.11(C)(3), (5), and (6) NMAC – We support the elimination of certain income for eligibility and co-payment calculation. The Department's proposal regarding which sources of income are counted for eligibility and copayment calculations are positive changes. The elimination of various sources of income that is not derived from employment will increase access and lower co-payments. One purpose of the Child Care Development Block Grant Act ("CDBG Act") is to "increase the number and percentage of low income children in high-quality child care settings."<sup>2</sup> The elimination of some sources of income from the co-payment calculations is consistent with this purpose and is a step in the right direction toward the HHS recommendation to cap co-pays at 7 percent of family income.<sup>3</sup>

Section 8.15.2.10(A) NMAC – We Support Eliminating the In-person Application Requirement We commend the Department's decision to eliminate the in-person application requirement. Even before the pandemic made in-person interactions a public health problem, the in-person application requirement presented a barrier to families in accessing child care assistance. Many

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child care offices are not located conveniently to public transportation routes. This made it difficult for many families to travel to child care field offices and apply in-person. Additionally, the in-person application requirement forced parents to take off from work just to apply for care. The elimination of this requirement will increase program access.

Section 8.15.2.16(A) NMAC – We Support eliminating the mid-certification checks. Federal regulations require that child care assistance contracts have a duration of at least 12 months and that agencies ‘shall re-determine a child’s eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination.’<sup>16</sup> Therefore, we applaud the Department’s decision to eliminate the mid-certification communication in Section 8.15.2.16(A) NMAC. Since the Department contracts with clients for 12 months, the mid-certification communication is unnecessary and uses valuable department resources. Additionally, we thank the Department for amending Section 8.15.2.12 NMAC state that if a family meets the recertification requirements, the certification period will be for 12 months.

Section 8.15.2.10(A) – Include all Verifications. We support the Department’s proposal to include documentation of TANF participation or eligibility and proof of incapacity in the verification list at Section 8.15.2.10 (A) NMAC. However, the regulations still do not contain a full list. The Department requires custody documents and documentation of identification, and relationship in some instances. These requirements must be detailed in regulation.

Section 8.15.2.11(I) NMAC - We support Graduate Student Eligibility. The Department’s proposal to open eligibility to families in graduate school aligns with the purposes of the CDBG Act to provide access to children to quality child care and recognizes the economic realities of parents who are furthering their educations. We support this proposal and thank the Department for addressing this issue.

#### Policies Impacting Family Eligibility and the State Rules Act

State law requires ECECD to comply with the administrative procedures in the State Rules Act, because it is an “agency” under the Act.<sup>10</sup> The State Rules Act defines a ‘rule’ as ‘any rule, regulation, or standard’ that affects “one or more agencies besides the agency issuing the rule,’ ‘persons not members or employees of the issuing agency,’ or ‘persons served by the agency.’<sup>11</sup> Any policy that meets this definition of a rule must be promulgated into regulation.

#### Include the Income Calculation Formula in Regulations

Currently, the Department’s monthly income calculations are in the worker manual, but they are not promulgated into regulation. The calculations in the manual include a formula that considers how frequently a family receives their paychecks. Since this is not in regulation, a family has no way of knowing how their income is calculated or if the determination as to their income is correct. Without this information, families cannot accurately determine which income bracket they fall into when using the co-pay formula. Therefore, the Department must include the formula for calculating income based on different payday frequencies in its final regulations. This change is also required by the Court’s Order in the *Torres v. Jacobson* case, which states that the Department must include in regulations ‘how the Department calculates monthly family income to determine child care assistance eligibility.’<sup>12</sup>

All new material proposed above is within the scope of the proposed regulation. Provisions included in a final regulation must be ‘within the scope’ of the proposed rule to be valid.<sup>13</sup> In its final rulemaking, the Department can make all the changes suggested in these comments since the scope of the proposed regulations encompass our suggested amendments, and the proposed rules provided notice to the public of the scope of the rule changes made by the final rule.<sup>14</sup> For example, the proposed rules include changes in how income is counted for eligibility and copayments. Including the income calculation formula in the final regulations falls within the scope of the proposed rules, since it shares subject matter with the proposed rules. The changes between the proposed and final rules would not change how the Department calculates the income of program participants. This change to the final rule also would not change the effect of the proposed rules since the Department is already using this formula to determine income. Additionally, since this calculation affects people served by the Department, the State Rules Act mandates its inclusion within the child care regulations, and the Department must make the suggested change to comply with state law.<sup>15</sup>

#### Other Important Changes

We commend the Department for the following additional proposed changes to regulations that comply with the State Rules Act:

- Defining ‘demonstration of incapacity’ and the provision for exempting eligibility requirements upon submission of a demonstration of incapacity.

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- Adding an explanation of how it will calculate and consider fluctuations in earnings.
- Putting into regulation policy that overpayments will not be issued to a client except in cases of substantiated fraud.
- Clarifying that the Department issues 12-month contracts in most instances and eliminating the mid-certification communication requirement that wasted valuable Department resources and created confusion for clients about the length of their contracts.
- Amending Section 8.15.2.13(G) NMAC to allow for multiple ways to report the changes will provide convenience and transparency for participating families since the Department's prior policy of requiring reporting of changes in writing was not promulgated into regulation and violated the State Rules Act.
- Including TANF diversionary payment clients in the priorities list in Section 8.15.2.9 NMAC. This makes the eligibility standard for TANF diversionary participants part of the regulations and brings the Department's eligibility policy regarding this group into compliance with the State Rules Act.

Conclusion

We thank the Department for its commitment to making childcare more accessible and affordable for New Mexico's families. While we support all the changes, we ask the Department to include our suggested amendments in the final rule including the income calculation formula, the changes to regulations affecting grandparents raising grandchildren, and the regulations listing verifications. All of these are discussed above.

<sup>1</sup> The states that do not require child support enforcement in their child care assistance programs are Alabama, Alaska, Arizona, California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Missouri, New Hampshire, New Jersey, Nevada, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Washington, and Wyoming.

<sup>2</sup> Sec. 658A Child Care Development Block Grant Act

<sup>3</sup> Child Care and Development Fund (CCDF) Program, Preamble, 81 Fed. Reg. 67,438 (Nov. 29, 2016)

<https://www.federalregister.gov/documents/2016/09/30/2016-22986/child-care-and-development-fund-ccdf-program>

<sup>4</sup> 45 C.F.R. § 98.20(c)

<sup>5</sup> 8 U.S.C. §1641 (Defining who is a 'qualified alien' eligible to receive public benefits and listing eligible immigration statuses)

<sup>6</sup> 45 C.F.R. § 98.21(a)

<sup>7</sup> NMSA 1978 §27-2B-5(l)(2); 8.102.420.11(A)(1) NMAC

<sup>8</sup> 8.102.400.11 NMAC

<sup>9</sup> 8.15.2.9(A) NMAC

<sup>10</sup> NMSA 1978 §14-4-2(A)

<sup>11</sup> NMSA 1978 §14-4-2(F)

<sup>12</sup> Order ¶ 3(a)

<sup>13</sup> 1.24.25.14(C) NMAC ('amendments to a proposed rule may fall outside the scope of the rulemaking based on the following factors: (1) any person affected by the adoption of the rule, if amended, could not have reasonably expected that the changes from the published proposed rule would affect that person's interest; (2) subject matter of the amended rule or the issues determined by that rule are different from those in the published rule; or (3) effect of the adopted rule differs from the effect of the published proposed rule.')

<sup>14</sup> The purpose of the State Rules Act is to provide notice. *State v. Joyce* 1980-NMCA-086 ¶ 8.

<sup>15</sup> NMSA § 1978 14-4-2(F)"

**Oral Comments Submitted during the January 6, 2021 Public Hearing**

- 1) "I'm [...], I'm a [...] with Manzano Mesa Elementary School I support the change childcare assistance because it really help our community has more chance to apply."
- 2) "Good afternoon. I just want to thank Secretary Groginsky and everyone in the department for these proposed rule changes. We stand in favor of these rule changes, we speak with parents across the state every day that are affected directly by many of the issues that these issues are going to address especially the issue with child support enforcement. We speak with parents who may have a court order that are, that requires another parent to pay child support and that is counted towards there income however they never see that money, that income. And we speak

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with parents whose husband has been deported and they are being required to sue that parent for child support. And they are unable to do that. But they are denied a contract because that parent has, is not paying child support. We speak with parents who are survivors of domestic violence and are afraid to sue their partner or previous partner for child support despite the fact the it has been addressed in the past. This is still an issue that we speak with parents about. And so, again, we just want to thank the department for these rule changes and thank you for allowing."

- 3) "Hi. This is [...]. That is sufficient. I've got four kids with me. I doubt that they are going to be quiet for much longer. I do support the child support being removed as a qualification requirement. I talked with some families, adoptive families and they may have older children, as was said before, some have court orders and don't receive any of the funds or the child support is for the child that is not receiving care and they have adopted children that do need care and they are either having to pay such a high amount or are disqualified because of income that is coming into the home for another child but they are limited or have to have these exorbitant amounts of, you know, to cover child care because of the child support requirement. So that's all I wanted to say. I know that was said before and I agree with it. Thank you."
- 4) "Hi. Thank you for this opportunity to share some of our experience and thoughts by working with the families and community in child care assistance programs. First of all, I am supporting the proposed changes by the department. I think that those are the rights, that in the right action to make child care assistance program more affordable and accessible to our families and we believe that this will create opportunity to improve the lives of the children's and families in our state, especially those lower income families in our state. Second, I am also supporting all comments submitted by the New Mexico Center on Law and Poverty and we signed on that letter."
- 5) "I didn't get to catch in on the first part of the meeting. I was with the children. But I wanted a little clarification there on the last page where it talked about the provider. If the person who was getting assistance was behind in their copay, I think it needs to be on there documented somehow, because we do have the right to charge state tax, you know pass it on them, that whenever they give us money, that we can deem in our business whether we're going to apply it first to pay our state taxes or not since they do have a contract with us. I know in the past, what it's been is, they show a receipt to the, their caseworker, like if they owe \$30 bucks or whatever and then they are good to go to someone else and they pretty much leave us high and dry. I think there should be a prevision for the providers, and they are not to be treated like that. Yes, its true that we can go take them on to court but that's a real long process for the provider to do. And if can get some help this other way, that would be very much appreciated. Because it seems like it would be up to the business owner to see where they would want to apply that \$30 first. And I did have a question, also on the, I noticed in here it was listed monthly reimbursement rates, I was wondering about that because I thought there had been a cost study done and those rates weren't set in stone just yet because of the cost study. I was wondering about that. Is there any clarification on that? And you did get it noted that I was hoping there was going to be some clarification as it's up to business owner where they apply that \$30 on their end first, correct? It was the one about the a, I noticed that there was a, there's amount of money, it's like, for infants, the toddlers, the preschool that's listed out on these proposed regulations. I knew that there had been like a cost study done. I was thinking if this is the result of the cost study right here or are we to await further to see what that pans out to be?"
- 6) "My name is [...]. I'm with New Mexico Center on Law and Poverty. And first, I would just like to start by thanking the department for its response to the current pandemic, the emergency regulations that promulgated and for making those permanent during a public health emergency. So, thank you for that. I'd also like to say that child care is a great investment for New Mexico. We all know that the earliest years in children's lives are the most important in their development. They lay the foundation for all that is to come. And working families need access to affordable child care that they can trust to ensure that their children have a safe space to learn while the parents are working to further their education and provide food for the table. And child care is effective because it addresses the family's needs at a two-generation level. It allows parents to work toward obtain economic security for their family and it provides a safe learning environment for the youngest New Mexicans. New Mexico's high quality child care increases school readiness for children and it improves child well being by helping to prevent child abuse and neglect. And with all that in mind, the New Mexico Center on Law and Poverty would like to thank the department for all of the positive changes in these propose rules, including but not limited to eliminating the child support enforcement requirements that were a barrier to accessing child care; revising which sources of income count for eligibility and copayment calculations. This will make child care more affordable. Eliminating the in-person application requirement and allowing applications through electronic submission; and also expanding eligibility to graduate students. Along with these steps in the right direction, we do ask that you take other steps in rulemaking to make child care more accessible and affordable for our families. In



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our written comments, outline these recommendations and they include putting a full list of required verifications into the regs; promulgating final regulations that make child care assistance available to all grandparents who are raising grandchildren; and putting the calculation for income into the regulations. And as we outline in our comments that we submitted today, all these recommendations are within the scope of the proposed rulemaking and can be promulgated in the final rule. So we encourage the department to take these steps and make these changes in the final rule and we appreciate all the positive steps that the department is taking in the notice of the proposed rulemaking and thank you for the opportunity to comment."

**Department Response:** ECECD appreciates this comment and will take all suggestions into consideration when proposing additional regulations changes. Concerning the suggestion that ECECD put the calculation for income into the regulations, ECECD seeks to implement this change and is including such calculations in its final proposed regulations. See 8.15.2.11(C)(8) NMAC, below.

**Written Comments Submitted during the January 6, 2021 Public Hearing**

- 1) "I support the changes."
- 2) "I meant to include in my statement: I am happy that New Mexico joins other states like Arizona who also do not require Child Support."
- 3) "My name is [...] and I just wanted to say that as the [...] contracts at our center, we are really in support of the new changes that will be helping so many of our families."
- 4) "My name is [...] Little FootPrints. I would like to state that we are in support of the new changes to have the families in our rural community."
- 5) "I support the increase, when I was an early educator my husband decided to go back to school for a career change. We were dependent on my income, and have 2 children. I was considered over the limit to qualify for assistance, even though my income barely covered our monthly bills! Qualifications need to be raised so that we are able to provide quality care for our own children and not worry if we are unable to pay for childcare expenses."
- 6) "I appreciate the work that you have done to ensure families can access high quality child care. The qualification process seems to be simplified for families."
- 7) "Yes. I would. I would again like to echo all the sentiments of thanking Secretary Groginsky and all of the amazing staff at ECECD for the amazing work that they have done in such a short while. My comment is specifically regarding the payment for services. I really appreciate the new language that allows parents the flexibility and the option to enter into a new child care agreement with a new provider especially if they had their child withdrawn from a provider because of health, safety or welfare of the child was at risk. I know in the past, we've been challenged with parents who wanted to make a change but because they already had an existing contract, were not about to access services with the new provider as swiftly. And I noticed they're several notations regarding that and different cases that make it easier for parents and then of course the new child care providers. So, definitely in support of that and all of the proposed rulemaking."
- 8) "Good morning good afternoon, I am an early childhood researcher. I have about 20 years' experience in the field. From 1999 until 2019, I worked in New Mexico. So, first of all, let me say, I am so excited about the involvement, the enthusiasm. I attended a hearing about the child care subsidy modifications, in I think it was in 2010, and there were 3 of us there. So, this is a fabulous fabulous, very heartening turnout. And I am so excited. I just have a couple of comments. One is an ongoing concern that I have had for a long long time and that is with the child care subsidy copayments, they go to an income of \$2700 and then once you make \$2701, you are not eligible for subsidy anymore and if you have an infant in a 5 star program, that means that you go from paying \$148 a month for your childcare to paying \$1270 a month, which is the reimbursement rate. That is a big concern. And so, I really want to encourage the department to look at a wider bridge between qualifying and not qualifying. So, that is one thing. The second topic is the fact that the demographic of the families who participate in these healthcare subsidy care programs are participating because they experience economic hardship which is one of the major factors in cases. And so, this population within our families in New Mexico are in need of a lot of extra attention and support and care. And so, I would recommend that the families who receive the child care subsidy also receive opportunities through the program to improve their ability to parent well. I think everyone actually, whether they're experiencing economic hardship or not, could use some really high-quality parenting tips but we do have a population that is identified as experiencing an

NEW MEXICO STATE  
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economic hardship. So, there are those programs, the Harvard School of early child hood education has a lot of wonderful resources. I'm sure UNM has great resources that can be provided as video clips. The Tune in, Talk More, Take Turns Program is funded by a bank east of the Mississippi. I just really feel that the parents who or the families who are participating in the child care subsidy deserve some extra help and that those goes to my final comment which is the aligning the SNAP, Medicare and child care subsidy application process in New Mexico would be great because families experience economic hardship have to go through the child care subsidy application process, SNAP, Medicare. It's all separate, it would be great if is one stop shopping talking for the families. Other than that, I just want to say thank you for your time. I miss New Mexico and hope to see you guys again. Thank you very much for the opportunity to speak."

- 9) "A comment from OLE: Estoy de acuerdo con los cambios de reglamentacion, esto ayuda considerablemente a madres solteras que para ellas algunas veces es imposible declarar tanto requisito que piden. Atas situaciones muchas veces estan dieran de sus manos, mientras tanto se les neiga el contrato de cuidado infantil y es un limitante para ellas seguir adelante."

Translation:

I agree with the regulation changes. This helps single mothers considerably some of them it is impossible for some, it is impossible to get services due to the amount of requirements. So their hands are tied. Meanwhile they are denied a contract for child care and this in turn limits their ability to get ahead.

**Department Responses to Additional Comments Submitted in Opposition or Requesting Additional Regulation Changes:**

Application Process: We need to be included in the application process. The childcare center needs to be included in this process. We have two options as a provider: 1. Allow the child to start and risk the chance of not being paid for the complete time the child is in attendance 2. Not allow the child to start attending until we get a contract from the caseworker. As a provider we need to be informed if a individual has submitted an application, if all items have been completed and received, if they are missing items.

Co-Payments: We need to be informed of their co-payment immediately. We are not informed of the individuals co-payments until one to two months after the child has started (this is because we do not receive the contract right away) The process is long and we are not included in the communication between the caseworker and individual. The family is then told of a co-payment for several months that they cannot pay.

Change of Provider: We need to be informed of this request/process when an individual starts or ends their enrollment with us we at time have no clue.

Provider Requirements: Signed placement must be returned within 30 days - We NEED a reply from the caseworker stating this was received (when sent by email). I currently have 3+ contracts that we did not get paid for. The signed contract was sent but it was not processed. I then have to supply a years worth of attendance records to prove that the child attended. I was not at fault for the contract not being completed. Doing this is time consuming for us and for the case worker. A better system needs to be put in place for the sake of your caseworkers.

Department Responsibilities: Fluent communication with the Childcare center is important. We understand that the caseworkers have large case loads and are doing their best. If we had fluent communication we can help the process. It state "a timely manner" however this is impossible with all the each caseworker is expected to do. The caseworkers need to be set up to succeed instead of fail.

Caseworker Change/Leave: Emails need to be forwarded and notification need to be sent out, preferably by email.

When a caseworker leaves no one takes over their email or their email is not forwarded to another. We have to call the main office and ask or contact a supervisor. This takes time away from those individuals and creates confusion."

Department Response: ECECD appreciates this comment and will take all suggestions into consideration when proposing additional regulations changes. In addition, while some of these comments relate to the proposed amendments to the regulations, many of these comments relate to ECECD's daily operations, modes of communication, and timeliness. ECECD will take these comments and suggestions into consideration as it continuously tries to improve operations and better serve its constituents.

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23

"Thank you for the opportunity to provide written feedback on the New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) proposed amendments to the rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS as authorized by Section 9-2A-7 NMSA 1978: I look forward to hearing from you and having the opportunity for discuss the proposed changes before the reach their final form."

**COMMENTS, RECOMMENDATIONS & QUESTIONS:**

Regarding proposed definition of "Child with a disability or special needs:"

Recommendation: the definition should include children with an Individualized Family Service Plan (IFSP).

Department Response: ECECD agrees with and accepts this recommended clarification.

Regarding addition of "Demonstration of incapacity" definition:

Comment: "This is welcome language. New Mexico has many grandparents raising their grand children. In some cases, they have physical or other limitation in being able to meet the developmental needs of their grandchildren, especially if their grandchildren have special needs. In these cases, high quality child care can provided a supportive community, respite care, and targeted interventions"

Regarding definition of "Department" means the New Mexico children, youth and families department (CYFD).

Question: "By definition, how is the Early Childhood Education and Care Department (ECECD) referred to."

Department Response: ECECD's enabling statute clearly states that beginning on July 1, 2020, (1) all contractual obligations of CYFD's Early Childhood Services division and of the programs it assumed from DOH and PED are automatically binding on ECECD, and (2) all references in law, rules, orders and other official acts, to the above shall be deemed references to ECECD (annotations to NMSA 1978, § 9-29-3, Sections A and C (2019)).

Regarding definition "Earned income" means income received as gross wages from employment or ~~as profit from~~ self-employment.

Comment & Recommendation: "It has always been net wages in the past and this change could hurt the families that we are trying to serve. Earned income should be defined as net income."

Department Response: ECECD agrees with and accepts this recommended clarification.

Regarding "Friend, family, or neighbor (FFN)" licensed care definition – "care to be provided temporarily in a home to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months. In the case of a public health emergency, the department may extend the temporary status."

Comment & Recommendation: "I am very concerned about this language. If not corrected, it would be interpreted to imply Family, Friend and Neighbor is a tool to be used outside of a public health emergency. Why would "the department" use FFN when we have registered care. The new language should read: "Friend, family, or neighbor (FFN) means care to be provided temporarily in a home to be self-certified by the parent or legal guardian and registered by the department, not to exceed six months in the case of a public health emergency. During a continued public health emergency, the department may extend the temporary status. Further, unless the distinction between "the department" being CYFD or ECECD, CYFD will be in charge of FFN care."

Department Response: Please see Department's response to Concerns re FFN, below.

Regarding adding FFN to 8.15.2.8 NMAC (TYPES OF CHILD CARE):

Comment: "It appears these rule changes create a new type of child care, to be approved, extended, etc. at the discretion of 'the department.' I am opposed to a new category of unlicensed care. This is the existing purpose of registered family child care homes."

Department Response: Please see Department's response to Concerns re FFN, below.

Regarding the following proposed change to 8.15.2.11 (B) (2): ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the department and federal regulation.

~~[Eligibility for CPS and a]~~ At-risk child care may be granted for less than 12 months as determined by the department.

Comment: "Again, this seems to be a shifting CPS clients from accessing all types of care to FFN."

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**Department Response:** Please see Department's response to Concerns regarding FFN, below.

2021 FEB 11 PM 5:23

Regarding the following proposed change to the definition of CPS and at risk childcare:

~~G. Child protective services (CPS) child care: The department pays for CPS child care as determined by the protective services of the department. Income requirements and copayments are waived for clients in this priority.~~

~~[H.] G. [At-risk-child-care] Priority five: In addition to these priorities, the department pays for at-risk [protective services] child care as approved by the department. Child care benefits are provided for a minimum of six months to support the family. Income, work and education requirements and copayments are waived for clients in this priority.~~

Comment: "Why are these proposed changes needed? How do they change current eligibility and services? Again, it seems to be tied to the new category of FFN care. Why wouldn't children in CPS continue to access the other categories of child care? Without oversight, could families, friends, and neighbors be providing care without the proper health and safety standards, background checks, etc?"

**Department Response to Concerns Regarding FFN:** The Department is cognizant of this concern; however, a new category of child care is not being created. At the onset of the public health emergency, ECECD established FFN care to address the limited options for parents/guardians seeking access to child care, to include care for their medically fragile child(ren) and other children. The FFN certification is temporary and intended to be a pathway for a family child care home provider to become registered or licensed if they chose to continue beyond the approved timeframe allotted. Including in 8.15.2, allows the Department to pay for such care. The Department can only extend the six-month time period in the case of a public emergency. A FFN caregiver must adhere to guidelines identified in the FFN certification and parent agreement form. If a FFN provider wishes to continue child care services, after the state of emergency is lifted, they will be required to adhere to childcare non-license regulations per 8.17.2 NMAC and receive on-site home visits.

Regarding proposed changes to 8.15.2.10 (A)APPLICATION PROCESS), which will allow clients to submit applications by fax, email or mail.

Comment: "This is a wonderful change. COVID has demonstrated the state's capacity to determine eligibility without a face to face meeting. Parents will miss less work and their wait time for enrollment will decrease."

Regarding the following proposed change to 8.15.2.10 (A)(3): the [eligible] provider is eligible to be paid [was providing care from the first day of the month forward].

Comment: "Thank you for this change. It aligns with industry standards."

Regarding the following proposed definition of "the household:" "The household includes biological parents, stepparents, ~~and~~ legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit, ~~and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and are applying for child care benefits on behalf of the children.]~~

Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations.

Comment: "This is such a welcomed change. With this change, multi-family households are being valued."

Comment Regarding proposed amendment to definition of "Citizenship": Did the federal guidelines for eligibility change or are we using state general funds to pay for children who do not qualify according to federal laws? How much do we estimate the annual cost to be for this expansion?

**Department Response:** The federal guidelines did not change. Eligibility is determined based on the status of the child, not the parent.

Comment regarding need for RATE INCREASES:

"Increase cost to deliver services on behalf of the state. The state of New Mexico passed legislation requiring annual increases of minimum wage until we reach a minimum wage of \$12.50 an hour. There is no rate increase, yet minimum wage has gone up over three dollars per hour since last rate increase, over four years ago. Without an equitable increase in rate increases, the minimum wage is an unfunded mandate. Each year, PED advocates for "cost of living" increases for staff wages. All child care

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providers are experiencing the same increased cost of doing business. It is possible that mandated sick leave, paid maturity leave, etc. will become law and will further impact centers. ECECD must adjust reimbursement rates.

**Department Response:** Please see Department Response to Comments related to need to increase rates and examine the Department's current co-pay structure, below.

2021 SEP 14 PM 5:23

**Comment regarding need to address specific needs associated with children with special needs:** Lower ratios for special needs children. The number of special needs children enrolled in child care centers continues to grow, especially children on the spectrum. The federal guidance allows the state to pay differential rates for children with special needs (IEP and IFSP). For years, centers and special need advocates have been asking for differential rates, allowing centers to have a lower teacher child ratio. We know that early interventions allow over 80% of young children to enter kindergarten without an IEP. This can only be accomplished with differential rates. To continue ignoring this desperate need is not a service to our most vulnerable children."

**Department Response:** ECECD is committed to supporting children with special needs, their families and those who provide care for them. The Department is examining the requirements for settings that provide care for children with special needs, including ratios, reimbursement rates and differentials. The Department is currently conducting a cost model on child care. This cost model will examine all of the components of child care including ways to understand revenue and expenses in different settings as well as what is the true cost of providing quality care. The cost model will (1) estimate the cost of providing care at varying level of quality and the resources needed for a provider to remain financially solvent; (2) Examine the impact of program size, ages of children served, enrollment, bad debt, etc; (3) Demonstrate the impact of funding from multiple sources; (4) Identify the gap between the costs and the revenue sources; (4) Provide information to policymakers and other interested parties understand the costs associated with delivering care in different settings, to different age groups at different levels of quality. Information gathered as part of the project will influence ECECD policy decisions on ratios and reimbursement rates.

**Comment regarding Relative caregivers:** "Unless I am reading the proposed regulations wrong, relative caregivers still qualify based on their household income. When the state has a choice between CPS or safe and healthy relative care, it seems in the state and child's best interest that we place the child with the safe and healthy relative. An aunt may be able to care for the child, but not be able to pay private child care. A grandparent may be willing to care for the child, but need assistance during the day, due to their physical abilities to keep up with a young child 24 hours a day."

**Department Response:** Relative caregivers may still qualify based on their household income and qualifying activity. Grandparents and other relative may be eligible under a variety of circumstances. The Department is understanding of this request and has committed resources to expand eligibility. ECECD recognizes the important role of grandparents and other relatives and have made eligibility to child care assistance for children raised and cared for by Grandparents and other relatives under a variety of circumstances. The Department is understanding of this request and has committed resources to expand eligibility.

**Department Response to Written Comment regarding proposed amendment to Section 8.15.2.7:**

**Comment:** "As a New Mexico small business owner, I appreciate the opportunity to comment on the proposed amendments to 8.1.15 NMAC, which were initially published as emergency amendments effective September 18, 2020 and revise the requirements for child care assistance programs for clients and child care providers.

My public comment is in relation to the proposed changes in 8.1.15.2.7 NMAC to the definition of "Earned income." The proposed changes are outlined below:

[1.] "Earned income" means income received as gross wages from employment or [as profit from] self-employment.

The current administrative correctly makes a distinction between *wages* from employment and *profit* from self-employment. This is an important distinction because according to the New Mexico Economic Development Department there are 122,042 non-employer businesses in New Mexico, which make up about 73.6% of all businesses in the state. Additionally, the National Federation of Independent Business states that eighty-five (85) percent of small businesses are structured as pass-through entities (limited liability companies, sole proprietorships, etc.) that pay taxes on their business at the individual rate. This means that a significant number of self-employed individuals are not receiving wages through a traditional w-2, but rather receiving pass-through income from their small business.

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In this instance, would a self-employed individual report zero income received as gross wages, since no w-2 wages were received? Or since self-employment pass-thru income is not captured in "earned income," would it be captured under "other income," which was added to the definition of "unearned income?"

Additionally, since the word "profit" is being actively deleted in the proposed amendments it could be construed that a self-employed individual is required to count the total amount of income generated by the sales of good or services (otherwise known as business revenue). The business revenue could be significantly higher than a business profit, because a profit is the amount of income that remains after accounting for all expenses, debts, and operating costs.

For example, is an independent jewelry maker in rural New Mexico, may have been able to sale \$25,000 worth of jewelry in the last year, however, it cost the jewelry maker \$10,000 to make the jewelry. The profit from self-employment would be \$15,000, however, the income generated (revenue) would be \$25,000. My fear is that the lack of clarity in this specific proposed amendment to 8.15.2.7, could inadvertently result, in self-employed individuals losing eligibility to child care assistance programs. I appreciate the opportunity to offer comments on the proposed changes to 8.15.2.7 NMAC. If you have any questions, please do not hesitate to reach out."

**Department Response:** ECECD appreciates the public comment received and agrees to reinsert the original language in the regulation, as that language was mistakenly removed.

**Department Response to request to rename Section 8.15.2.11(E) NMAC to "Citizenship and Eligible Immigration:** The Department agrees and this change has been implemented.

**Department Response to add provisions to Section 8.15.2.11(C) NMAC to ensure grandparents are exempt from the work or education requirement, can receive child care assistance without having to apply for TANF, and for additional changes to ensure that children being raised by grandparents have access to care:** Grandparents are eligible under a variety of circumstances. The Department is understanding of this request and has committed resources to expand eligibility. ECECD recognizes the important role of grandparents and has made eligibility to child care assistance for children raised and cared for by Grandparents under a variety of circumstances. The Department is understanding of this request and has committed resources to expand eligibility. ECECD will monitor the budgetary impacts before considering other enhancements to the child care assistance program. The Department is addressing the income calculations in the proposed changes. See 8.15.2.11(C)(8) NMAC.

**Department Response to Question re eliminating the in-person application requirement:** The Department did not eliminate the option to apply in-person. If the offices are open, individuals are welcome to apply in person. Additionally, individuals may apply through Aim I Eligible website, by telephone or by faxing an application. The Department has made accommodations for people to apply for services in various manners given the public health emergency. Providing options for people to apply increases access for all New Mexicans.

**Department Response to Comments related to need to increase rates and examine the Department's current co-pay structure:** The Department is currently conducting a cost model on child care. This cost model will examine all of the components of child care including ways to understand revenue and expenses in different settings as well as what is the true cost of providing quality care. The cost model will (1) estimate the cost of providing care at varying level of quality and the resources needed for a provider to remain financially solvent; (2) Examine the impact of program size, ages of children served, enrollment, bad debt, etc; (3) Demonstrate the impact of funding from multiple sources; (4) Identify the gap between the costs and the revenue sources; (5) Provide information to policymakers and other interested parties understand the costs associated with delivering care in different settings, to different age groups at different levels of quality. Information gathered as part of the project will influence ECECD policy decisions on ratios and reimbursement rates.

**Department Response to Request to add to regulation a list of verifications:** ECECD appreciates the comments and will continue to improve our communications and transparency as it relates to verifications. Currently, all verifications are available to the public on our public website nmeccd.org however they are not promulgated in regulations to ensure the department can exercise its discretion in accepting various forms of verification. The department reviews verification documents in favor of the applicant and limiting documents in regulation would impede the department's ability to do so.

**Department Response to Comment to include income calculation formula in regulation:**  
The Department agrees and has made these changes.

**Department Response to Following Comments Submitted Against Proposed Rule to Eliminate Child Support from Income Calculation**

- 1) **Pre-Hearing Written Submission:** "The first requirement that a custodial parent file for child support is not a bad requirement. However, you may have a parent that was in abusive situation and has a restraining order. This could lead to a tragic situation, but if most parents could receive additional monetary assistance this is not a terrible outcome. I think that each situation needs to be looked at separately to keep everyone safe."
- 2) **Pre-Hearing Written Submission:** "I have the following concerns about exempting "child support payment" out of the income for eligibility:
  - a) We have seen an increase in fathers out of the life of children, which is the number one cause of incarceration in youth and young adults. At least child support keeps fathers in the lives of the children. Now not forcing the fathers to pay for child support, they will disappear from the lives of the children causing more mental health in our children.
  - b) Of course, the intent is to increased childcare assistance, however with an NM government hostile to the gas and oil industry where most of the childcare income comes. My question is where the money will come from. NM budget is already in the red. I am afraid that we will bankrupt the childcare assistant system, and families that really need this program won't be able to qualify for it.
  - c) Did you plan or estimate the percentage of increase in the child care assistant eligibility expansion?
  - d) I see this exemption as an open the door to fraud: parents living together but not married. This gives the opportunity to the parent seeking for childcare assistant to not claim the income of the other parent.
  - e) The base of society is the nuclear family. Giving more access to government assistant to single parents empowers the rupture of marriage right away, instead of giving the opportunity for the couple to work their problems in order to keep their marriage. There should be a way to counsel the parents to fix their marriages instead of giving them the tools to break it.
  - f) Right now, new or renewal child care assistant contracts are taking longer than usual for lack of staff. This means ECECD will grow more because ECECD will need to hire more staff, which increases the income necessary to sustain the department.
  - g) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of [a] household dependents [child who is under 18 and in school]; earnings of household grandparents who are not the legal guardians of the child(ren) for whom child care assistance is sought; SNAP; TANF benefits, including diversion payments; supplemental security income (SSI); social security disability insurance (SSDI); social security benefits received by household children; any VA payments made on behalf of the child(ren); VA benefits for educational purposes or for disability; unemployment benefits; work study income; child support payments; military"
- 3) **Oral comments given at hearing on January 6, 2021:** "Good afternoon, Thank you very much. First, I would like to thank Cabinet Secretary Groginsky, Deputy Secretary [Duran-]Sallee, Legal counsel Kate Girard and the other employees of ECECD for their time and work put into the review and the recommendations for the changes to the New Mexico child care regulations. What I would like to bring up is regulation 8.15.2.15 H. (1) And if I can read that for you, Required applications with New Mexico human services department child support enforcement division CSED (1) When one or both of the child's parents are absent from the home, the client shall apply for child care support through CSED within 12 months of initial application with the child care assistance program. And to my understanding now looking at the proposal that is looking to be stricken from the regulation. So, while I agree with the concept, I can see the thought behind the need to strike and remove this regulation, I do not agree with this proposal. The reason being that over 8 years ago, providers came to the table where this was the link that was not needed, and fraud was being committed by parents and getting child care applications while not reporting a two-household income. So a true and accurate income that come from the providers, various providers, saying that there was actually a two household, a mother and father, sorry, however, not married and one applying and stating that they were receiving no help from the other parent. And so, when providers came to the table, after lots of back and forth, and communication, from the director at the time, Diana Martinez Gonzalez and Cabinet Secretary Deines, the proposed changed, after going through the process of public comment, was put into regulation. So a concern for women that were experiencing domestic violence and now having to file for child support with the fear that the offender would find out where they were living was taken care of by having those clients file an affidavit stating their concern and that under oath, this was the reason they did not want to file for child support. That was still deemed and is deemed an acceptable exemption for child support. The concern

with taking care of 8 years ago, when this was put into regulation, to my understanding and [...] that has had to apply and utilize the exemption for fear of leaving a domestic partner and having to move to a homeless shelter. The exemption works. The affidavit works. It was put into a place at the time, that was deemed there was lots of fraud happening. Within the first year of changing this regulation, the department director told the legislative finance committee that millions of dollars had been saved, that could now be utilized for families that had been placed on waitlists and who are now actually eligible for those services. My concern with taking out this regulation is that you are now making it child care directors, owners and workers the policing of those families and responsible for now helping and reporting fraud. So, I hope that the committee can see the thoughtfulness and hard work that was put into making this change and instilling it into childcare regulation. The concern for victims of domestic violence was acknowledge and an alternative of affidavit was added to protect them. Of families trust in the system is vital and the cabinet secretary and director agree the affidavit is working. Removing it totally removes accountability from people seeking child care assistance and being honest and truthful. This regulation does not totally fixe the fraud and abuse of the system, however, it definitely deterred people and alleviating program directors to having them police their families Thank you. At this time, I am doing public comment presenting myself, [...] 3D enterprises incorporated, doing business as gold star academy and Smiling Faces child care center."

**Department Response:** ECECD seeks to remove the requirement that custodial parents file for child support with the New Mexico Human Services Department in order to receive the child care subsidy because it acts as a barrier to families that would otherwise qualify and need child care assistance.

In ECECD's experience, many families will forgo seeking the child care subsidy rather than open a child support case with CSED and upset what is often a delicate familial situation with the non-custodial parent. Public comments in support of this change tend to provide evidence of this dynamic. Moreover, often times custodial parents who follow through with the judicially required child support process obtain a monthly child support award yet are unable to collect on that child support, even though it now counts toward the custodial parent's monthly income and thereby raises the co-pay or makes the parent ineligible. These practical effects of such a requirement are unintended and unacceptable for an agency charged with helping families. Individuals may of course decide to apply or not apply for child support on their own. Filing for child support is an individual choice.

Some public comments in opposition to the proposed changes to 8.15.2.13(H) NMAC opined that the child support enforcement requirement prevents fraud among parents/guardians seeking child care assistance. While ECECD is cognizant that some individuals may seek to defraud ECECD by not being completely honest about their living situations, ECECD has other mechanism in place to prevent fraud that do not place such a heavy burden on parents/ guardians seeking child care assistance. While ECECD has no evidence of actual fraud taking place in the recent past that the child support enforcement obligation would prevent, it has received plenty of public comments in favor of removing the requirement. These public comments overwhelmingly support removing the child support enforcement requirement given the burden it places on families. In short, requiring custodial parents to open an application with CSED creates more barriers to eligibility while providing little benefit to the applying family, the eligible children, and New Mexico as a whole.

**Department Response to written comment posted during the hearing, which asked about the need to delete 8.15.2.17 I (1)(a), which expired 12/31/2017:**

This section discusses rates and reimbursements. It does not need to be deleted because it has a sunset provision which means it is not in effect. The Department will promulgate regulation changes upon completion of a rate study at which time this language will be removed. The Department is partnering with an external evaluator to conduct a cost model on child care. The cost model will (1) estimate the cost of providing care at varying level of quality and the resources needed for a provider to remain financially solvent; (2) Examine the impact of program size, ages of children served, enrollment, bad debt, etc; (3) Demonstrate the impact of funding from multiple sources; (4) Identify the gap between the costs and the revenue sources; (5) Provide information to policymakers and other interested parties understand the costs associated with delivering care in different settings, to different age groups at different levels of quality. Data gathered as part of the project will inform ECECD child care policies and subsidy rate setting.