

NMAC

Transmittal Form



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 Renummer (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:

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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.

Please see attached document.

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

Name:

Elizabeth Groginsky

Check if authority has been delegated

Title:

Cabinet Secretary, ECECD

Signature: (BLACK ink only)

Date signed:

Elizabeth
Groginsky

Digitally signed by Elizabeth
Groginsky
Date: 2021.06.30 11:12:23 -06'00'

6/30/2021

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8.15.2 NMAC Concise Explanatory Statement For Rulemaking Adoption:

These amendments are emergency rule amendments made pursuant to NMSA 1978, § 14-4-5.6. These are temporary rule amendments. Pursuant to NMSA 1978, § 14-4-5.6(E), these emergency amendments are not permanent and will expire if no permanent rule is adopted within one hundred and eighty (180) days from the effective date of these emergency amendments. These emergency amendments are necessary based on one of the two general categories set forth below:

1. Health and Safety of Children in Child Care Settings: Due to the COVID-19 pandemic and the resulting public health orders, there is an emergency need for these amendments. The time required to complete the full rule making procedures would cause an imminent peril to the public health, safety, and welfare of children and families in New Mexico due to the need for continued, safe care for children in child care settings and to help with New Mexico's economic recovery from the effects of COVID-19.

2. Anticipated Loss of Federal Funding: There is an emergency need for these amendments as ECECD stands to lose its main source of federal funding should it not make the necessary rule amendments set forth below. ECECD serves as the lead state agency for the Child Care and Development Block Grant (CCDBG). The Child Care Development Fund (CCDF) is the primary federal funding source of child care assistance to enable parents to work or pursue education and training so that they may better support their families while at the same time promoting the learning and development of their children. CCDF is also designed to improve the quality of child care for all children. The CCDBG requires every state, including New Mexico, to submit an updated CCDF Plan every three years. New Mexico's CCDF three year plan is due June 30, 2021 and will be in effect until Sept. 30, 2024. ECECD received a notice of non-compliance on April 23, 2021, following the Office of Child Care (OCC) CCDF virtual monitoring visit. The emergency amendments, as identified below, must be in effect for New Mexico to receive the full amount of anticipated CCDF funding.

For these reasons, these emergency rule amendments are filed, effective on the dates set forth below, to amend 8.15.2 NMAC, Sections 9 and 12.

Summary:

8.15.2.9(G) adds the "Priority four plus" category in order to expand eligibility during this economic recovery, maximize the available federal relief funds, and assist New Mexicans with child care so that they may return to work and further the economic recovery. The American Rescue Plan Act of 2021, also called the COVID-19 Stimulus Package or American Rescue Plan, is a \$1.9 trillion economic stimulus bill passed by the United States Congress and signed into law by President Joe Biden on March 11, 2021, to speed up the United States' recovery from the economic and health effects of the COVID-19 pandemic and the ongoing recession. The American Rescue Plan includes federal relief funds for child care assistance in order to help parents return to work and jumpstart the economy. It is generally understood and accepted that the lack of high quality, affordable child care is the primary impediment to a parent or guardian's stable employment. The addition of the "Priority four plus" category provides subsidized child care for essential workers whose income is above two hundred percent of the federal poverty level but at or below three hundred fifty percent of the federal poverty level. These families will be certified for a 12 month block of time and will remain eligible at or below four hundred percent of the federal poverty level. This additional category of child care expands eligibility for New Mexicans with the incomes identified above and is necessary for the economic recovery of our nation and state.

Effective Date: August 1, 2021

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8.15.2.12 amends the requirements for Recertification and raises the recertification income level from 250% of the federal poverty level to 400% of the federal poverty level. This amendment is necessary in order to expand eligibility during this economic recovery, maximize the available federal relief funds, and assist New Mexicans with child care so that they may return to work and further the economic recovery. The American Rescue Plan Act of 2021, also called the COVID-19 Stimulus Package or American Rescue Plan, is a \$1.9 trillion economic stimulus bill passed by the United States Congress and signed into law by President Joe Biden on March 11, 2021, to speed up the United States' recovery from the economic and health effects of the COVID-19 pandemic and the ongoing recession. The American Rescue Plan includes federal relief funds for child care assistance in order to help parents return to work and jumpstart the economy. It is generally understood and accepted that the lack of high quality, affordable child care is the primary impediment to a parent or guardian's stable employment. This amendment to the Recertification requirements is necessary due to the addition of the "Priority four plus" category above in 8.15.2.9(G). This additional category of child care expands eligibility for New Mexicans with the incomes identified above and is necessary for the economic recovery of our nation and state. **Effective date: August 1, 2021**

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This is an emergency amendment to 8.15.2 NMAC, Sections 9 and 12, effective 8/1/2021.

Explanatory statement: ECECD will be issuing emergency rule amendments made pursuant to NMSA 1978, § 14-4-5.6 and effective on July 1, 2021. ECECD is amending this rule in order to protect the health, safety, and welfare of children in child care settings and the general public. ECECD is also making these emergency amendments in order to prevent the anticipated loss of federal funding. This temporary emergency process does not permanently amend or repeal the existing rule. The emergency rule will only remain in effect until a permanent rule takes effect under normal rule making process.

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 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. Priority four plus: During this period of economic recovery and subject to budgetary considerations, child care assistance for essential workers whose income is above two hundred percent of the federal poverty level but at or below three hundred fifty 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 four hundred 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 plus for children with special needs, disabilities, homeless families, and for teen parents. Co-payments for families in priority

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four plus are not waived. Co-payments for families will be capped at three hundred percent of the federal poverty level.

[~~G.~~] **H.** Priority five: In addition to these priorities, the department pays for at-risk 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.

[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; A/E, 8/1/2021]

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 and fifty percent of the federal poverty level. Clients above two hundred and fifty percent of the federal poverty level must qualify as an essential worker as defined in Subsection G. of 8.15.2.9 NMAC. Clients designated as essential workers who recertify must be at or below [two] four 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 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; A/E, 8/1/2021]