

NMAC

Transmittal Form

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 2022 APR 29 PM 2:11

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) 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:

Findings required for rulemaking adoption:

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.

FILED WITH
NEW JERSEY STATE
TREASURER

2022 APR 28 PM 2:41

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 OR Digital Signature)



Date signed:

4/28/2022

8.15.2 NMAC Concise Explanatory Statement For Rulemaking Adoption: 2: 41

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 because the Early Childhood Education and Care Department (ECECD) finds that the time required to complete the normal rulemaking procedures would (1) cause an imminent peril to the public health, safety and welfare of families receiving child care assistance subsidies from ECECD; and, (2) to ensure that the child care assistance subsidy system remains economically viable for all intended recipients in New Mexico.

For these reasons, these emergency rule amendments are filed, effective on the dates set forth below, to amend 8.15.2 NMAC, Sections **8.15.2.9(G)** and **8.15.2.14(C)(2)**.

Summary:

1). 8.15.2.9(G) NMAC amends the Copayment Requirements as follows:

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

Effective date: May 1, 2022

ECECD is removing the co-payment requirements for families receiving child care assistance in this category of income (200% of federal poverty level (FPL) to 400% FPL) in order to encourage the economic recovery of the state by ensuring that a sufficient workforce exists for the New Mexico economy to recover from the COVID-19 public health emergency, rising national inflation, and other economic stressors affecting New Mexico's working class. The current formula for setting co-payments is outdated and needs substantial overhaul, including the research and development of economic indicators that accurately reflect a family's ability to pay a co-payment for child care assistance. In the meantime, ECECD is making this emergency change to remove the copayment requirement for families receiving child care assistance earning 200-400% FPL in order to relieve the economic stressors on New Mexico's families and encourage more capable adults to return to the workforce.

Funds to pay for this benefit expansion will come from the federal American Rescue Plan Act of 2021, also called the COVID-19 Stimulus Package or American Rescue Plan, which 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. Further, it is generally understood and accepted that an otherwise capable

2022 APR 23 PM 2:42

adult is unable to enter the workforce if they do not have quality child care to cover for hours of employment and/or educational/vocational classes.

2). 8.15.2.14(C)(2) NMAC amends the Case Suspensions and Closure requirements as follows:

C. (2) *income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred [~~and fifty~~] percent of the federal poverty level;*

ECECD is amending this section to correct a clerical oversight from the most recent rule making process completed January 1, 2022. ECECD never intended to raise the suspension and closure requirement to 450% of the FPL. The intention was to raise it to 400% FPL. This emergency amendment also makes this requirement consistent with similar requirements in this chapter, wherein closure or exit from the child care assistance programs must occur at 400% FPL, and not 450% FPL. *See* 8.15.2.9(G) & 8.15.2.12 NMAC. In addition to the inconsistency, ECECD would not possess sufficient state and federal funds to pay for its child care assistance obligations without this emergency change to lower the FPL suspension and closure requirement to 400%. For purposes of reference, the U.S. Health and Human Services (HHS) Department's 2022 federal poverty guidelines for the 48 Contiguous States set 400% of the FPL for a family of four at \$111,000 annually. 450% FPL is not listed on HHS's website for 2022. *See* <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

Effective date: May 1, 2022

This is an Emergency Amendment to 8.15.2 NMAC, Sections 8 and 14, effective 5/1/2022: 42

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

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; A, 1/1/2022; A/E, 5/1/2022]

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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 child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

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

- (1) any non-temporary change in activity;
- (2) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred [and fifty] percent of the federal poverty level;
- (3) failing to recertify at the end of approved eligibility period; or
- (4) being disqualified from participation in the program.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022; A/E, 5/1/2022]

This is an Emergency Amendment to 8.15.2 NMAC, Sections 8 and 14, effective 5/1/2022.

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:

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(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.

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

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; A, 1/1/2022; A/E, 5/1/2022]

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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 child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

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

- (1) any non-temporary change in activity;
- (2) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred [~~and fifty~~] percent of the federal poverty level;
- (3) failing to recertify at the end of approved eligibility period; or
- (4) being disqualified from participation in the program.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022; A/E, 5/1/2022]

Proof of Posting on Website and Sunshine Portal



(f)

Rule Hearing Search

Hearing Date: Comments

Deadline Date:

[Search](#)

[Return to Search Results](#)

Proposed Rule Name:

8.15.2 NMAC EMERGENCY RULE AMENDMENT - Effective May 1, 2022

Agency:

Early Childhood Education and Care Department (ECECD)

Purpose:

The purpose of the rules is to amend the child care assistance requirements under 8.15.2 NMAC. Specifically, the following sections have been amended: 2 and 14 and are effective May 1, 2022.

Summary:

Emergency rule amendments under 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 eighty days from the effective date of these emergency amendments.

Administratives Codes:

8.15.2 NMAC

Rule Complete Copy :

Copies of the rule may be found at the New Mexico Kids and ECECD websites.

Corrections:

Not available

Rule Explanatory Statement:

Not available

Related New Mexico Register Publications:

Not available

For any additional information or questions concerning this rule making or posting please contact:

Devi Gajapathi
devi.gajapathi2@state.nm.us
5052315820

Last Updated Date

4/28/2022 3:59 PM

How to submit Comments:

NA

When are comments due:

Hearing Date:

Public Hearing Location:

NA (-)

How to participate:

Copies of the rule may be found at the New Mexico Kids and ECECD websites.

ⓘ If the document is not visible on the previewer, please download the file.

File	File Name	File Type	Description
View Document (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M000001syrz/P2kSx3OaSU_S9Zieaa1fRp6qpHf_5KAPVmBk5RZMOLo)	8.15.2	PDF	NMAC Emergency amendment 5-1-2022
View Document (https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/2M000001tEWs/ul0_lhDVusvlvTFghxSiaO_YX1wZ3XVW2sFV6Xmg8)	8.15.2emerg	PDF	amend 5 6 2022

Gajapathi, Devi, ECECD

Subject: Sunshine Portal posting


The screenshot shows the Sunshine Portal website interface. At the top, there is a search bar and filters for 'Hearing Date', 'Comments', and 'Agency'. The 'Agency' filter is set to 'Early Childhood Education and Care Department (ECECD)'. Below the search filters, there is a 'Return to Search Results' link and a large text area containing the details of a proposed rule amendment.

Proposed Rule Name: 8 15 2 NMAC EMERGENCY RULE AMENDMENT - Effective May 1, 2022
Agency: Early Childhood Education and Care Department (ECECD)
Purpose: The purpose of the rules is to amend the child care assistance requirements under 8 15 2 NMAC. Specifically, the following sections have been amended: 2 and 14 and are effective May 1, 2022.
Summary: Emergency rule amendments under 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 eighty days from the effective date of these emergency amendments.
Administrative Codes: 8 15 2 NMAC
Rule Complete Copy: Copies of the rule may be found at the New Mexico Kids and ECECD websites.
Corrections: Not available
Rule Explanatory Statement: Not available
Related New Mexico Register Publications: Not available
For any additional information or questions concerning this rule making or posting please contact:
Devi Gajapathi
devi.gajapathi@state.nm.us
5052315820
Last Updated Date: 4/28/2022 3:59 PM

How to submit Comments: NA
When are comments due: NA
Hearing Date: NA
Public Hearing Location: NA
How to participate: Copies of the rule may be found at the New Mexico Kids and ECECD websites.

File	File Name	File Type	Description
View Document	8 15 2 NMAC Emergency amendment 5-1-2022	PDF	

https://staterm.secure.force.com/submitc559/Rulemakingguardrail?id=



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RAA Hearing Search

Hearing Date

All

Comments

Deadline Date

All

Agency

Early Childhood Education and Care Department (ECECD)

Search

Return to Search Results

<p>Proposed Rule Name: 8.15.2 NMAC EMERGENCY RULE AMENDMENT - Effective May 1, 2022</p> <p>Agency: Early Childhood Education and Care Department (ECECD)</p> <p>Purpose: The purpose of the rules is to amend the child care assistance requirements under 8.15.2 NMAC. Specifically, the following sections have been amended: 2 and 14 and are effective May 1, 2022.</p> <p>Summary: Emergency rule amendments under NMSA 1978, § 14-4-5-B. These are temporary rule amendments. Pursuant to NMSA 1978, § 14-4-5.5 (E), these emergency amendments are not permanent and will expire if no permanent rule is adopted within one hundred eighty days from the effective date of these emergency amendments.</p> <p>Administrative Codes: 8.15.2 NMAC Rule Complete Copy Copies of the rule may be found at the New Mexico KIDS and ECECD website.</p> <p>Comments: Not available</p> <p>Rule Explanatory Statement: Not available</p> <p>Related New Mexico Register Publications: Not available</p> <p>For any additional information or questions concerning this rule making or posting please contact: Dora Cisneros dora.cisneros@state.nm.us 505.231.5820 Last Updated Date 6/26/2022 3:59 PM</p>	<p>How to submit Comments: NA When are comments due: Hearing Date</p> <p>Public Hearing Location: NA (-)</p> <p>How to participate: Copies of the rule may be found at the New Mexico KIDS and ECECD website.</p>
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File	File Name	File Type	Description
View Document	8.15.2 NMAC Emergency amendments 5-1-2022	PDF	
View Document	8.15.2 NMAC amend 5-6-2022	PDF	

Gajapathi, Devi, ECECD

From: Martinez, Sonya, ECECD
Sent: Thursday, April 28, 2022 3:15 PM
To: Gajapathi, Devi, ECECD; Rodriguez, Patrick, ECECD
Cc: Egan, Brendan, ECECD; Wynn, Tiffany, ECECD; Cowan, James, ECECD
Subject: RE: [EXTERNAL] Re: Emergency Regulation Changes

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Devi,

[Regulation Changes](#) page updated per your instructions.

Have a great day,



Sonya Martinez
Social and Web Coordinator
Email: sonya.martinez@state.nm.us
Mobile: 505-670-8338
1120 Paseo De Peralta
Santa Fe, NM 87501
<http://nmececd.org>

Stay Connected with ECECD: Sign up to the New Mexico Early Childhood Education and Care Department's **Community Newsletter** at <https://bit.ly/36kZEQC>. Text **JOIN** to **833-683-0607** to receive ECECD special announcements directly to your mobile phone!

From: Gajapathi, Devi, ECECD <Devi.Gajapathi2@state.nm.us>
Sent: Thursday, April 28, 2022 12:20 PM
To: Martinez, Sonya, ECECD <Sonya.Martinez@state.nm.us>; Rodriguez, Patrick, ECECD <Patrick.Rodriguez1@state.nm.us>
Cc: Egan, Brendan, ECECD <Brendan.Egan2@state.nm.us>; Wynn, Tiffany, ECECD <Tiffany.Wynn1@state.nm.us>; Cowan, James, ECECD <James.Cowan1@state.nm.us>
Subject: RE: [EXTERNAL] Re: Emergency Regulation Changes

Hi Sonya and Patrick,

Please use the attached documents vs the one that I sent you earlier. I am sorry for the inconvenience. Thanks for your help!

Respectfully,
Devi

From: Gajapathi, Devi, ECECD
Sent: Thursday, April 28, 2022 10:22 AM
To: Martinez, Sonya, ECECD <Sonya.Martinez@state.nm.us>; Rodriguez, Patrick, ECECD <Patrick.Rodriguez1@state.nm.us>
Cc: Egan, Brendan, ECECD <Brendan.Egan2@state.nm.us>; Wynn, Tiffany, ECECD <Tiffany.Wynn1@state.nm.us>; Cowan, James, ECECD <James.Cowan1@state.nm.us>




NEW MEXICO

Early Childhood

Education & Care Department



Select Language 



Regulation Changes

Upcoming

8.15.2 NMAC emergency rule changes effective May 1, 2022 

Posted May 6, 2022

- [8.15.2 NMAC Emergency Regulations \(PDF\)](#)
- [8.15.2 Transmittal Form \(PDF\)](#)

8.15.2 NMAC emergency rule changes effective May 1, 2022



Posted April 28, 2022

- [8.15.2 NMAC Emergency Regulations \(PDF\)](#)
- [8.15.2 Transmittal Form \(PDF\)](#)

Past

Notice of Rulemaking and Public Rule Hearing 8.15.2 NMAC



The public rule hearing was held, **October 28, 2021 at 1:00 p.m.**

Notice of Rulemaking and Public Rule Hearing 8.17.2 NMAC



The public rule hearing was held, **October 21, 2021 at 1:00 p.m.**

Notice of Rulemaking and Public Rule Hearing 8.16.2 NMAC



The public rule hearing was held **Thursday, October 14, 2021, at 1:00 p.m.**

Notice to the Public - New Mexico Child Care and Development Fund (CCDF) State Plan

A public hearing was held **Friday, June 4, 2021, at 1 p.m.**

Notice of Rulemaking and Public Rule Hearing 8.9.8 NMAC

The public rule hearing was held **Tuesday, May 25, 2021, at 1 p.m.**

Public Hearing for 8.15.2 NMAC, January 6, 2021

8.15.2 NMAC emergency rule changes effective September 18, 2020

8.15.2 NMAC rule change effective August 11, 2020



NEW MEXICO EARLY CHILDHOOD EDUCATION & CARE DEPARTMENT

PO Drawer 5619 Santa Fe, NM 87502-5619 | Toll free: (800) 832-1321

CONTACT US

EMPLOYEE RESOURCES

Gajapathi, Devi, ECECD

From: Early Childhood Service Center Helpdesk <ECSC@unm.edu>
Sent: Thursday, April 28, 2022 11:00 AM
To: Gajapathi, Devi, ECECD
Subject: [EXTERNAL] Support Ticket Opened [#374347]

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Devi,

A request for support has been created and assigned #374347. A representative will follow-up with you as soon as possible. You can [view this ticket's progress online](#).

Your Early Childhood Services Center Team,
NewMexicoKids Web Support Team

If you wish to provide additional comments or information regarding the issue, please reply to this email or [login to your account](#) for a complete archive of your support requests.

Gajapathi, Devi, ECECD

From: Gajapathi, Devi, ECECD
Sent: Thursday, April 28, 2022 10:14 AM
To: Rachel Nowak; Garrett Massey
Cc: support@newmexicokids.org; Egan, Brendan, ECECD; Wynn, Tiffany, ECECD; Cowan, James, ECECD
Subject: RE: [EXTERNAL] Re: Emergency Regulation Changes
Attachments: 8.15.2 Master Copy.docx; 8.15.2 amendment 4.20.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning,

Please post the attachment on the NMKids Webpage. The emergency regulations for the 8.15.2 NMAC will be effective May 1, 2022. This emergency amendment has been filed with New Mexico State Records and Archives as of today.

Please let me know if you have any questions.

Thank you for your help!

Respectfully,
Devi

From: Rachel Nowak <rachelmitchell@unm.edu>
Sent: Tuesday, April 19, 2022 2:42 PM
To: Gajapathi, Devi, ECECD <Devi.Gajapathi2@state.nm.us>
Cc: Martinez, Sonya, ECECD <Sonya.Martinez@state.nm.us>; Garrett Massey <garrettmassey@unm.edu>; Malisa Kasparian <mkaspari@unm.edu>; Wynn, Tiffany, ECECD <Tiffany.Wynn1@state.nm.us>; Egan, Brendan, ECECD <Brendan.Egan2@state.nm.us>; Cowan, James, ECECD <James.Cowan1@state.nm.us>
Subject: [EXTERNAL] Re: Emergency Regulation Changes

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Thank you, Devi. We will be ready to post when you send them over. Please also cc support@newmexicokids.org on the request so that we can track the ticket.

Best regards,

Rachel Eryn Nowak (she/her/hers)
Program Manager
NewMexicoKids Resource and Referral
Resource and Support Hub
Early Childhood Services Center
University of New Mexico
800-691-9067
www.NewMexicoKids.org
www.NewMexicoPreK.org
www.NMELS.org

On Apr 19, 2022, at 2:39 PM, Gajapathi, Devi, ECECD <Devi.Gajapathi2@state.nm.us> wrote:

[EXTERNAL]

Good afternoon,

I wanted to let you know that ECECD will be issuing emergency regulation changes soon and they will need to be posted on the webpage next week. I will send another email with the attachment/s as soon as the Secretary approves them. Thank you for your help!

Respectfully,

<image005.png>

<image003.png>

<image004.png>

Gajapathi, Devi, ECECD

Subject:

NM CLP

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT
PO Drawer 5619
Santa Fe, New Mexico 87502-5619

To,

NEW MEXICO CENTER ON LAW
AND POVERTY
301 EDITH BLVD NE
ALBUQUERQUE, NM - 87102

10:59 AM
4/28/2012

Gajapathi, Devi, ECECD

From: Vandestreek, Joanne <Joanne.Vandestreek@nmlegis.gov>
To: Gajapathi, Devi, ECECD
Sent: Thursday, April 28, 2022 11:04 AM
Subject: Read: [EXT] Notice of Emergency Rule Amendments

Your message

To: Vandestreek, Joanne
Subject: [EXT] Notice of Emergency Rule Amendments
Sent: Thursday, April 28, 2022 11:02:41 AM (UTC-07:00) Mountain Time (US & Canada)

was read on Thursday, April 28, 2022 11:04:26 AM (UTC-07:00) Mountain Time (US & Canada).

Gajapathi, Devi, ECECD

From: Gajapathi, Devi, ECECD
Sent: Thursday, April 28, 2022 11:03 AM
To: lcs@nmlegis.gov
Cc: Wynn, Tiffany, ECECD; Egan, Brendan, ECECD; Cowan, James, ECECD
Subject: Notice of Emergency Rule Amendments
Attachments: 8.15.2 Master Copy.docx; 8.15.2 amendment 4.20.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Tracking:	Recipient	Read
	lcs@nmlegis.gov	
	Wynn, Tiffany, ECECD	Read: 4/28/2022 6:00 PM
	Egan, Brendan, ECECD	Read: 4/28/2022 11:05 AM
	Cowan, James, ECECD	

Good morning,

As part of the New Mexico State Rules Act requirement of providing notice to a New Mexico Legislative Council for distribution to appropriate interim and standing legislative committees, attached is the filing for State Records and Archives which includes the amended regulation.

- 8.15.2 NMAC – SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS

Beginning May 1, 2022, the Early Childhood Education and Care Department (ECECD) is expanding its current commitment to pay all families' child care assistance co-payments on behalf of all eligible families that make at or below 400% of the Federal Poverty Level (FPL) guidelines. Currently, 400% FPL for a family of four is \$111,000 annually. Additionally, ECECD is extending this commitment for all eligible families from June 30, 2022, to June 30, 2023. As a practical matter, beginning May 1, 2022, and until June 30, 2023, ECECD will pay all co-payments for families that receive child care assistance. Funds to pay for this benefit expansion will come from the federal American Rescue Plan Act of 2021.

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.

Please confirm this receipt and let us know if you have any questions or comments.

Thanks!

Respectfully,



Devi Gajapathi
Policy Development Manager
Email: Devi.Gajapathi2@state.nm.us

Gajapathi, Devi, ECECD

From: Gajapathi, Devi, ECECD
Sent: Friday, May 6, 2022 8:39 AM
To: Brown, Kimberly, ECECD; Steward, Patricia, ECECD; Anderson, Allen, ECECD; Williams, Margaret, ECECD; Terrazas, Monica, ECECD; Trujillo, Tierra, ECECD; Boberg, Maryellen, ECECD; Chee, Sandra, ECECD; McKinley, Melissa, ECECD; Trujillo, Nicole, ECECD; Lopez, Linda, ECECD; Vasquez, Racheal, ECECD
Cc: Wynn, Tiffany, ECECD; TrujilloMedina, Sandy, ECECD; Egan, Brendan, ECECD; Cowan, James, ECECD
Subject: Posting a copy of Emergency 8.15.2 NMAC Regulation
Attachments: 8.15.2 NMAC Master copy.pdf; 8.15.2 amendment 5.4.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Good morning all,

Would you please ask all Child Care field offices to post and make available the attached documents? We need this done by May 9, 2022, at the latest. Please confirm and let me know if you have questions.

Thank you for your help!

Respectfully,
Devi

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



ELIZABETH GROGINSKY
CABINET SECRETARY

JOVANNA ARCHULETA
ASSISTANT SECRETARY for Native American
Early Childhood Education and Care

DR. KATHLEEN GIBBONS
DEPUTY SECRETARY

April 27, 2022

Dear Parent, Guardian, and Child Care Provider:

Beginning May 1, 2022, the Early Childhood Education and Care Department (ECECD) is expanding its current commitment to pay eligible families' child care assistance co-payments to all families that qualify for child care assistance. Currently, families that make at or below 350% of the Federal Poverty Level (FPL) (\$97,125 a year for a family of four) qualify for child care assistance. Qualified families remain eligible up to 400% FPL (\$111,000 a year for a family of four). Additionally, ECECD is extending this commitment to pay families' copayments until June 30, 2023. **As a practical matter, beginning May 1, 2022, and until June 30, 2023, ECECD will pay co-payments for all families that are eligible to receive child care assistance.**

You do not need to take any action.

Parents and Guardians

- **Account Refund:** If you have already made a monthly copayment to your provider for May 2022 and any subsequent months, we are asking that your child care provider issue you a refund.

Child Care Providers

- **No Lost Revenue:** ECECD will cover your co-payment revenue for all eligible families through your monthly reimbursement checks.

ECECD is promulgating emergency regulations to allow for this co-payment waiver and to provide for consistent case suspension and closure at 400% FPL. Funds to pay for this benefit expansion will come from the federal American Rescue Plan Act - Supplemental 2021.

During this period of economic recovery from the impact of COVID-19 on our communities, ECECD is committed to supporting families and child care providers across the state.

For any additional information or updates, please visit www.nmececd.org/child-care-assistance/.

Sincerely,

Sandy Trujillo-Medina

Digitally signed by Sandy Trujillo-Medina
Date: 2022.04.26 09:44:24 -06'00'

Sandy Trujillo-Medina
Division Director
Early Care, Education and Nutrition

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



ELIZABETH GROGINSKY
CABINET SECRETARY

JOVANNA ARCHULETA
ASSISTANT SECRETARY for Native American
Early Childhood Education and Care

DR. KATHLEEN GIBBONS
DEPUTY SECRETARY

27 de Abril del 2022

Estimados padres de familia, tutores y proveedores del cuidado infantil:

Comenzando el primero de Mayo del 2022, El Departamento de Educación y Cuidado de la Temprana Infancia (ECECD) extenderá su compromiso actual con las familias elegibles que participan en el programa de asistencia para el cuidado infantil. Actualmente las familias que tengan un ingreso de o menor de 350% del nivel de pobreza federal (FPL) (lo que representa un ingreso anual de \$97,125 para una familia de 4 miembros de familia) califican para recibir asistencia para el cuidado infantil. Las familias que hayan calificado podrán mantenerse elegibles hasta un 400% del nivel de pobreza federal FPL (lo que representa un ingreso anual de \$111,000 para una familia de 4 miembros de familia). Adicionalmente, ECECD extenderá su compromiso con las familias de cubrir los copagos hasta al 30 de Junio del 2023. **De una manera práctica, empezando el primero de Mayo del 2022 y hasta el 30 de Junio del 2023, ECECD pagara el copago de todas las familias elegibles que reciban asistencia para el cuidado infantil.**

Usted no necesita tomar ninguna acción

Padres de familia y tutores:

- **Cuenta de Rembolsos:** Si usted ya hizo su pago mensual de copago por el mes de Mayo del 2022 o algún otro mes siguiente; estamos pidiendo a su proveedor que le otorgue un reembolso por su pago.

Proveedores del cuidado Infantil

- **Ninguna pérdida de ingresos:** ECECD cubrirá los ingresos de copago por todas las familias elegibles; el copago será incluido en su cheque mensual.

ECECD está promulgando las regulaciones de emergencia para permitir que esta suspensión de copagos sea consistente en caso de suspensiones y cierre en el nivel de pobreza del 400%. Los fondos utilizados para cubrir este beneficio son a través de la ley suplemental del Plan Americano Federal de Rescate del 2021.

Durante este periodo de recuperación económico por el impacto que experimentaron nuestras comunidades por causa del COVID-19, ECECD está comprometido a ofrecer apoyo a las familias y a los proveedores del cuidado infantil a todo lo largo del estado de Nuevo México.

Para más información o alguna otra actualización, por favor visite el siguiente sitio de internet:
www.nmececd.org/child-care-assistance/.

Atentamente,

Sandy Trujillo-Medina Digitally signed by Sandy Trujillo-Medina
Date: 2022.04.26 09:42:47 -06'00'

Sandy Trujillo- Medina
Directora de la División del departamento de Educación, del Cuidado y Nutrición para la Edad Temprana

PO Drawer 5619
Santa Fe, New Mexico 87502-5619

TITLE 8 SOCIAL SERVICES
CHAPTER 15 CHILD CARE ASSISTANCE
PART 2 REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND
CHILD CARE PROVIDERS

8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 10/1/2016]

8.15.2.2 SCOPE: This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility for child care assistance benefits. (See 8.15.2.8 NMAC for detailed list.)
[8.15.2.2 NMAC - Rp, 8.15.2.2 NMAC, 10/1/2016]

8.15.2.3 STATUTORY AUTHORITY: NMSA section 9-2A-7 (1991).
[8.15.2.3 NMAC - Rp, 8.15.2.3 NMAC, 10/1/2016]

8.15.2.4 DURATION: Permanent
[8.15.2.4 NMAC - Rp, 8.15.2.4 NMAC, 10/1/2016]

8.15.2.5 EFFECTIVE DATE: October 1, 2016, unless a later date is cited at the end of section.
[8.15.2.5 NMAC - Rp, 8.15.2.5 NMAC, 10/1/2016]

8.15.2.6 OBJECTIVE:

A. To establish standards and procedures for the provision of child care assistance benefits to eligible clients and to establish the rights and responsibilities of child care providers who receive payment for providing child care services to clients receiving benefits. To establish minimum requirements for eligibility for program participation and for the provision of child care services to children whose families are receiving benefits and to allow children receiving these benefits access to quality child care settings that promote their physical, mental, emotional, and social development in a safe environment. To establish standards and procedures that promote equal access to services and prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).

B. To establish child care assistance rates in accordance with the requirements of the Child Care and Development Block Grant (CCDBG) and the Child Care Development Fund (CCDF), which 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. The CCDBG requires every state to submit an updated CCDF plan every three years. A key requirement of the CCDBG Act is that lead agencies establish subsidy payment rates that ensure equal access to child care for children receiving child care assistance. States have two options to establish subsidy payment rates that ensure equal access: lead agencies must collect and analyze data through either a statistically valid and reliable market rate survey, or through an ACF pre-approved alternative methodology, such as a cost estimation model. New Mexico's rates, as set forth herein, and effective July 1, 2021 were informed by a cost estimation model and with extensive statewide stakeholder engagement. This new cost estimation model was developed in collaboration with fiscal experts and local stakeholders to set subsidy rates at a level that supports the true cost of delivering high quality early childhood education to New Mexico's children and families. The child care subsidy rates set forth herein are designed to ensure equal access to child care for children on child care assistance and ensure parental choice by offering a full range of child care services.

C. Permissive language such as "may or may be" when referring to actions taken by the department, address situations where it is not always prudent or practical to apply these actions. It is not meant to reduce the weight of these actions nor should the intent of the policies be circumvented due to this wording. This language is intended to be construed in a fiscally responsible and equitable manner, keeping in mind that consistency in application is the ultimate goal.

[8.15.2.6 NMAC - Rp, 8.15.2.6 NMAC, 10/1/2016, AE; 7/1/2021; A, 1/1/2022]

8.15.2.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1) "Attending a job training or educational program" means actively participating in an

in-person or online job training or educational program.

(2) **“At-risk child care”** means a program for families at-risk as determined by the department.

B. Terms beginning with the letter “B”: [RESERVED]

C. Terms beginning with the letter “C”:

(1) **“CACFP”** means the child and adult care food program, administered by the children, youth and families department.

(2) **“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.

(3) **“Client”** means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.

(4) **“Closure”** means the client’s child care case is closed with the department.

(5) **“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.

D. Terms beginning with the letter “D”:

(1) **“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.

(2) **“Department”** means the New Mexico children, youth and families department (CYFD).

E. Terms beginning with the letter “E”:

(1) **“Earned income”** means income received as gross wages from employment or as profit from self-employment.

(2) **“Essential worker”** means those who conduct a range of operations and services in industries that are essential to ensure the continuity of critical functions in the economy of our nation and state. During this period of economic recovery and subject to budgetary considerations, the presumption is that all workers are essential to the well being of the state’s economy.

F. Terms beginning with the letter “F”: **“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.

G. Terms beginning with the letter “G”: [RESERVED]

H. Terms beginning with the letter “H”:

(1) **“Homeless children and youth”** means individuals who lack a fixed, regular, and adequate nighttime residence, which includes:

(a) 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;

(b) 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;

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

(d) migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in Subparagraphs (a) through (c) of this Paragraph.

(2) **“Household”** means the household as defined below in Paragraph (1) of Subsection C of 8.15.2.11 NMAC.

(3) **“Household income”** means household income as defined below in Paragraph (3) of Subsection C of 8.15.2.11 NMAC.

I. Terms beginning with the letter “I”:

(1) **“Incidental money”** means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

(2) **“Infant, toddler, preschool, school age”** means the age categories used for assigning child care provider reimbursement rates, defined as follows:

- (a) infant: zero - 23 months;
- (b) toddler: 24 -35 months;
- (c) preschool: three to five year olds; and
- (d) school age: six year olds and older.

J. Terms beginning with the letter “J”: **“Job training and educational program”** means participation in a short or long term educational or training program, including online programs 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. Educational programs include graduate and post graduate programs or classes.

K. Terms beginning with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”: [RESERVED]

M. Terms beginning with the letter “M”: [RESERVED]

N. Terms beginning with the letter “N”:

(1) **“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.

(a) The following are the only national accrediting bodies that are approved by CYFD:

- (i) the association of Christian schools international (ACSI);
- (ii) the council on accreditation (COA) for early childhood education and after school programs;
- (iii) the international Christian accrediting association (ICAA);
- (iv) the national accreditation commission for early care and education programs (NAC);
- (v) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;
- (vi) the national association of family child care (NAFCC); or
- (vii) the national early childhood program accreditation (NECPA).

(b) 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.

(2) **“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 Paragraph (3) of Subsection T of 8.15.2.9 NMAC.

(3) **“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.

O. Terms beginning with the letter “O”:

(1) **“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.

(2) **“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.

P. Terms beginning with the letter “P”: **“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 is not in session.

(7) **“Family, friend, or neighbor (FFN)”** means care provided temporarily in a home and only in the case of a public health emergency.

Q. Terms beginning with the letter “Q”: [RESERVED]

R. Terms beginning with the letter “R”:

(1) **“Recertification”** means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

(2) **“Registration/educational fee”** means a fee charged to private pay and families receiving child care assistance for materials and supplies.

S. Terms beginning with the letter “S”:

(1) **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

(2) **“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.

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

(4) **“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.

(5) **“Suspension”** means the voluntary cessation of child care benefits at the client’s request, during which the client remains eligible.

T. Terms beginning with the letter “T”:

(1) **“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.

(2) **“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.

(3) **“Temporary change of activity”** means one of the following events:

(a) limited absence from work for employed parents or legal guardians for periods of family leave (including parental leave) or sick leave;

(b) interruption in work for a seasonal worker who is not working between regular industry work seasons;

(c) student holiday or break for a parent or legal guardian participating in training or education;

(d) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and

(e) cessation of work or attendance at a training or education program less than three months.

(4) **“Termination”** means the client’s child care case will be closed due to cause.

U. Terms beginning with the letter “U”:

(1) **“Underpayment”** means a payment made by the department for services provided which did not fully reimburse the client or provider.

(2) **“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, grants and other income which does not meet the definition of earned income.

V. Terms beginning with the letter “V”: [RESERVED]

W. Terms beginning with the letter “W”: “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.

X. Terms beginning with the letter “X”: [RESERVED]

Y. Terms beginning with the letter “Y”: [RESERVED]

Z. Terms beginning with the letter “Z”: [RESERVED]

[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, A/E, 7/1/2021; A, 1/1/2022]

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;

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

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; A, 1/1/2022; A/E, 5/1/2022]

8.15.2.10 APPLICATION PROCESS:

A. Clients apply for child care assistance benefits by presenting the following documents to establish eligibility:

- (1) a completed signed application form;
- (2) 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;
- (4) school schedule or verification of educational activity, if applicable;
- (5) demonstration of incapacity for parent or legal guardian, if applicable;
- (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;
- (8) verification of custody of children, if applicable;
- (9) verification of dependency of a child or adult household member, if applicable;
- (10) documentation of New Mexico residency;
- (11) identification for parent/guardian; and
- (12) department approved provider.

B. The following are acceptable documents to use to verify eligibility. Other documents may be considered and taken to the supervisor to be reviewed for eligibility.

Verification Type	Acceptable documentation or information (examples)
Verification of Birth	-Birth certificate -Hospital or public health records -Certificate of Indian blood -Birth center records

Countable Earned Income	<ul style="list-style-type: none"> -Paystubs -Employer statement/verification of work form (for new employment) -Client statement, if earning wages from various odd jobs/day labor -Employer contract/work agreement -Payroll/gross wage history <p>For self-employed individuals:</p> <ul style="list-style-type: none"> -Income tax return with transcripts -Profit and loss (must be verified by a bookkeeper or accountant) -Common reporting standard (CRS) statements from New Mexico taxation and revenue department
Countable Unearned Income	<ul style="list-style-type: none"> -Benefit award letter (i.e. – social security, veteran administration (VA)) -Letter or document from agency making payment -Court records or other legal documents -Statement from tribal agency -Bank or other financial statement -Divorce or separation decree -Trust documents -Workers’ compensation documents -Rental income information
Qualifying Activity	<ul style="list-style-type: none"> -Proof of TANF participation (example: work participation agreement (WPA)) -School schedule -Statement from educational institution -Work schedule -Paystubs -Employer statement -Client statement -Contract/work agreement -Proof of new business registration with state
Documentation of Incapacity	<ul style="list-style-type: none"> -Statement or letter from medical professional on letterhead/stationary -Statement/record/letter from a federal government agency that issues or provides disability benefits -Statement/records/letters from a state vocational rehabilitation agency counselor -Records/letters from a treatment facility/counselor -Certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits
Custody	<ul style="list-style-type: none"> -Court order, or other legal records -Adoption records -Statement signed under penalty of perjury -Attorney records
Dependency	<ul style="list-style-type: none"> -Court order -Notarized statement -Divorce papers -Durable power attorney -Guardianship documentation -Federal tax documents verifying person is claimed as a dependent -Written statement with supervisor’s approval

New Mexico Residency	-Lease/rental agreement -Utility bill -Mortgage receipt -Written statement from person you are residing with -Current New Mexico driver's license -Statement from landlord -Other records that provide a name and address
Identification for Parent/Guardian	-Current or expired government issued photo identification/passport -School photo identification -Government issued immigration document with photo -Employer identification with photo
Citizenship/Immigration Verification	-United States birth certificate -Military identification -Passport -Naturalization certificate -Permanent resident card -ASPEN/HSD verification (client must be listed as "eligible child") (example: refugees/other qualified aliens may receive services through HSD but also may have United States department of state form) -Numident (from social security office) -Refugee/asylee letter from United States secretary of state or from homeland security -Any document from the immigration and naturalization services (INS), department of homeland security (DHS), or other authoritative document showing a child's immigration status that qualifies the child for assistance

C. 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.

D. 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 provider is eligible to be paid.

[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; A, 1/1/2022]

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 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. The parent or legal guardian will, however, remain eligible for the approved 12-month eligibility period.

(2) 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.

(4) The client will remain eligible if a temporary change of activity occurs.

(5) If a client experiences a non-temporary change in activity, the child care placement

agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

C. Income eligibility determination:

(1) The household: 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. 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) Legal guardians who are not the parents of the child(ren) for whom child care assistance is sought, are required to qualify for child care assistance as per Paragraph (3) below and, upon qualification, have the required co-payment waived.

(3) Household income: 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.

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

(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; alimony payments; veterans administration (VA) payments except VA payments that are specifically exempted in Paragraph (6) of Subsection C of 8.15.2.11 NMAC; workman's compensation; railroad retirement benefits; pensions; 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; overtime shall be counted at CYFD's discretion if CYFD determines that the applicant is paid overtime on a regular basis.

(6) Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of household dependents; 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; loans; child or adult nutrition programs; income tax refunds; payments for educational purposes including graduate and other educational stipends; compensation under the Domestic Volunteer Services Act and the volunteers in service to America (VISTA) program or 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.

(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 documentation of income for 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. 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 immigrant as defined by the United States department of health and human services, administration for children and families, office of child care.

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 at-risk child care.

G. Special supervision: 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 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. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 10/1/2016; A/E, 9/18/2020; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

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 Paragraph (2) of Subsection E of 8.15.2.9 NMAC. Clients designated as essential workers who recertify must be at or below four hundred 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; A, 1/1/2022]

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 at-risk child care and qualified grandparents or legal guardians. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [<https://eyfd.org/child-care-services>]

<https://www.nmeccd.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 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.

(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. 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.

F. Notification of changes: 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 must notify the department when their household income exceeds eighty-five percent of the state median income, taking into account any fluctuation(s) of income.

(3) A client must notify the department of any changes to their contact information.

(4) 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.

(5) 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.

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

[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; A/E, 7/1/2021; A, 1/1/2022]

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 child care placement agreement may close; however, the client will remain eligible for the approved 12-month eligibility period.

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

(1) any non-temporary change in activity;

(2) income in excess of two hundred and fifty percent federal poverty level or a client designated as an essential worker, as defined in Paragraph (2) of Subsection E of 8.15.2.9 NMAC, with an income in excess of four hundred [and fifty] percent of the federal poverty level;

(3) failing to recertify at the end of approved eligibility period; or

(4) being disqualified from participation in the program.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022; A/E, 5/1/2022]

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.

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.

D. 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.

(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.

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.

(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 rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

(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.

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.

G. Owners and licensees may not receive child care subsidy payments to provide care for their own children.

H. 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.

I. Providers must promote the equal access of services for all children and families by developing

and implementing policies and procedures that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).
[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019; A, 3/1/2021; A/E, 7/1/2021; A, 1/1/2022]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

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

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

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.

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.

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.

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.

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.

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, 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 circumstances under which the department may close placements or discontinue payment 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. 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 rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

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

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
\$880.00	\$635.00	\$575.00	\$441.00
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
\$855.00	\$830.00	\$680.00	\$428.00
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
\$875.00	\$850.00	\$700.00	\$412.00
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
\$350.00	\$350.00	\$350.00	\$350.00

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:

Licensed Child Care Centers			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$335.00	\$290.00	\$250.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$640.00	\$550.00	\$350.00	\$250.00

Licensed Family and Group Homes			
2+ Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
3 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$130.00	\$130.00	\$130.00	\$100.00
4 Star FOCUS			
Infant	Toddler	Pre-school	School-age
\$195.00	\$195.00	\$195.00	\$180.00
5 Star FOCUS or ECECD approved national accreditation			
Infant	Toddler	Pre-school	School-age
\$260.00	\$260.00	\$260.00	\$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. 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%

M. If a significant change occurs in the client’s circumstances, (see Subsection F 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.

N. The department may conduct provider, 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.

O. 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; A/E, 7/1/2021; A, 1/1/2022]

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 three months of the occurrence of alleged underpayment.

[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: Sanctions may be imposed according to the severity of the infraction as determined by the department 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. The department may initiate the recoupment process against any provider who fail to report in a timely manner that a child has not been in attendance for 14 consecutive calendar days.

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 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.

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016; A, 3/1/2021; A, 1/1/2022]

8.15.2.22 FAIR HEARINGS: Clients who have been denied benefits, whose benefits have been reduced, terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing

within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

A. The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone is permitted. The claimant may request a change of date, provided that the 60 calendar day time limit is not exceeded.

B. The department appoints a hearing officer. The department is not responsible or liable for a claimant's travel costs, legal costs, or any other costs associated with the claimant's request for a fair hearing.

C. The hearing officer reviews all of the relevant information and makes a final decision within 30 calendar days of the hearing. The final decision is binding upon the department and claimant and implemented within 14 calendar days of the hearing decision. The claimant is notified in writing of the hearing officer's decision within 14 calendar days of the hearing decision.

D. At the claimant's option the case may remain open at the same benefit level until disposition. If the decision is in favor of the department, the claimant is responsible for repayment of all monies received to which the claimant was not entitled, unless the hearing decision provides otherwise or the early childhood services director authorizes otherwise in exceptional circumstances. The fair hearing process is not intended as a means to extend the time for receipt of child care assistance payments to which the recipient is not otherwise entitled, and therefore exceptional circumstances must be explicitly stated.

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. If TANF benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp, 8.15.2.22 NMAC, 10/1/2016]

8.15.2.23 COMPLAINTS: Clients or providers who are dissatisfied with the services provided by the department may express their complaints orally or in writing to the local field office, the central office, the director's office or the office of the department secretary. The department's toll free number is posted in each office and made available to clients and providers upon request. The local supervisor, bureau chief, director or secretary responds to complaints by clients or providers orally or in writing as is deemed appropriate in each case.

[8.15.2.23 NMAC - Rp, 8.15.2.23 NMAC, 10/1/2016]

8.15.2.24 CO-PAYMENT SCHEDULE: The department will develop and publish an annual co-payment schedule based on the federal poverty guidelines.

[8.15.2.24 NMAC - Rp, 8.15.2.24 NMAC, 10/1/2016]

8.15.2.25 CONFIDENTIALITY: Client files are established and maintained solely for use in the administration of the child care assistance program. Information contained in the records is confidential and is released only in the following limited circumstances:

A. to the client upon request;
B. to an individual who has written authorization from the client;
C. to department employees and agents who need it in connection with program administration, including program auditors; or

D. to other agencies or individuals including law enforcement officers who satisfy the following conditions:

(1) agency or individual is involved in the administration of a federal or a federally-assisted program, which provides assistance in cash, in kind or in services directly to individuals on the basis of need;

(2) information is to be used for the purpose of establishing eligibility, determining amount of assistance or for providing services for applicants or recipients;

(3) agency or individual is subject to standards of confidentiality comparable to those contained herein; and

(4) agency or individual has actual or implied consent of the applicant or recipient to release the information; in an emergency, information may be released without permission, but the client must be informed of its release immediately thereafter; consent may be considered as implied if the client has made application to the inquiring agency for a benefit of service;

E. as requested in a subpoena or subpoena duces tecum.

[8.15.2.25 NMAC - Rp, 8.15.2.25 NMAC, 10/1/2016]

HISTORY OF 8.15.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records B State Records Center and Archives:

ISD CCAP 200, Child Care Assistance Programs, 11/4/1991.

ISD CCAP 300, Hours Of Child Care, 11/4/1991.

ISD CCAP 700, Working Family Child Care Assistance Eligibility, 11/4/1991.

ISD CCAP 800, Income Eligible Child Care Assistance, 2/10/1992.

History of Repealed Material:

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/1999.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/2000.

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/2001.

8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 11/01/2002.

8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 2/14/2005.

8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 10/1/2016.