



NEW MEXICO

Early Childhood

Education & Care Department

Dear Child Care Home Applicant:

Thank you for your interest in applying for a license to operate a licensed child care home. Upon receiving this packet, please contact your local licensing office for assistance (phone numbers are listed at the end of this document). In this packet you will find:

- This welcome letter and procedures for licensure
- Family/Group Child Care Home License Application
- Background Check instructions
- Useful phone numbers
- Self-Study Child Care Home Checklist (this can help you assess what is involved in operating a child care program.)
- Regulations governing licensed child care facilities (8.9.4 NMAC)

When reviewing the Child Care Licensing Regulations (8.9.4 NMAC), please note the following:

- You must obtain approval from the following state, city or county authorities before a license can be issued (Please see Section 8.9.4.31 A(4) of the Child Care Licensing Regulations):
 - 1) Zoning;
 - 2) Fire authority; and
 - 3) New Mexico Environment Department or other environmental health authority for the following:
 - Private water supply, if applicable.
 - Private waste or sewage disposal, if applicable.
 - Swimming pool, if applicable.
- You must have 35 square feet of indoor activity space measured wall to wall on the inside for each child in the home (Section 8.9.4.31 (B) (5)).
- Ensure that your home meets the requirements outlined in Section 8.9.4.38.
- You must reside in the home that is licensed (Section 8.9.4.30 A & B).
- Background check (See Background Check Regulations (8.9.6 NMAC) for more information)
 - All caregivers and anyone over the age of 18 in the home must be cleared before a license is issued.
- A home must have all educators certified in first aid and cardio-pulmonary resuscitation (CPR) (8.9.4.33 B (7)).

Licensing Requirements

- Refer to the enclosed Home Checklist and the Licensing Regulations (8.9.4 NMAC) and ensure that you meet all applicable requirements.

Submission of Licensing Application

To begin the licensing process, you must complete and submit the following:

- Licensing Application
- Supporting Documentation:
 - Zoning approval
 - Fire inspection
 - Environment Department approval, if applicable
 - Background check clearance for all caregivers and anyone over the age of 18 in the home
- Application fee of \$15.00
 - Attach in the form of a check or money order to the application and make payable to the State of New Mexico.
 - Fees are non-refundable.
 -

Processing of Licensing Application and Initial Visit

- After we receive your application, a licensing surveyor will call you to either:
 - Schedule an initial visit; or
 - Let you know that your packet is not complete.
- We will schedule an initial visit within two weeks of receiving a complete application and assurance that you are meeting applicable licensing requirements.
- You must demonstrate that you are in full compliance at the initial visit. At this point, a license will be issued.
- After a license is issued, the licensing authority will conduct annual reviews, follow-up visits, unannounced visits and complaint investigations

Starting a home child care program may seem complicated at first, but there is help available to assist you in starting and maintaining a quality child care program that meets the needs of the children in your community. Please use the resources included in this licensing packet.

If you have questions, comments, or concerns, please contact the licensing office in your area:

Central Region

Compliance Supervisor
505-841-4825
4801 Indian School Rd NE
Albuquerque, NM 87110
(Bernalillo, Sandoval, Valencia, Socorro)

Southeast Region

Compliance Supervisor
575-625-1078
#4 Grande Avenue Plaza Suite B
Roswell, NM 88201
(Chaves, Eddy, Lea, Roosevelt, Curry, Quay,
Guadalupe, De Baca)

Southwest Region

Compliance Supervisor
575-640-8291
2805 Roadrunner Parkway
Las Cruces, NM 88011
(Dona Ana, Otero, Sierra, Luna, Grant, Hidalgo,
Catron, Lincoln)

Northern Region

Compliance Supervisor
505-827-3814
1920 5th Street
Santa Fe, NM 87505
(Santa Fe, Taos, Torrance, Los Alamos, Rio
Arriba, San Juan, McKinley, Cibola, San Miguel,
Mora, Colfax, Harding, Union)

**Child Care Services Bureau
1-800-832-1321**

**State of New Mexico
Early Childhood Education & Care Department**



FAMILY/GROUP CHILD CARE HOME LICENSE APPLICATION

<p align="center">APPLICATION FEE - \$15.00 (\$25.00 Late Fee)</p> <p><input type="checkbox"/> INITIAL APPLICATION</p> <p style="margin-left: 20px;"><input type="checkbox"/> ZONING APPROVAL <input type="checkbox"/> FIRE INSPECTION <input type="checkbox"/> ENVIRONMENT DEPARTMENT APPROVAL (if applicable) <input type="checkbox"/> CPR/FIRST AID CERTIFICATION <input type="checkbox"/> ACTIVITY SCHEDULE <input type="checkbox"/> BACKGROUND CHECK CLEARANCE</p> <p><input type="checkbox"/> RENEWAL APPLICATION (Check Current Status)</p> <p style="margin-left: 20px;"><input type="checkbox"/> STAR LEVEL _____ <input type="checkbox"/> NAFCC ACCREDITED Expiration/Renewal Date: _____ (Please attach copy of current certificate)</p>	<p align="center">AMENDMENT FEE - \$5.00</p> <p><input type="checkbox"/> CHANGE OF CAPACITY</p> <p style="margin-left: 40px;"><input type="checkbox"/> ZONING APPROVAL</p> <p><input type="checkbox"/> STAR STATUS REQUESTING</p> <p style="margin-left: 20px;">APPROVED EXEMPT <input type="checkbox"/> STAR 1 LICENSED <input type="checkbox"/> STAR 2 LICENSED <input type="checkbox"/> STAR 3 LICENSED <input type="checkbox"/> STAR 4 ACCREDITED <input type="checkbox"/> STAR 5</p>
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LICENSE NUMBER: _____ LICENSE EXPIRATION DATE: _____

NAME: _____ TELEPHONE NUMBER: _____

ADDRESS: _____ NM _____

(STREET) (CITY) (COUNTY) (ZIP)

MAILING ADDRESS: _____ E-MAIL ADDRESS: _____

AFTER HOURS EMERGENCY NUMBER: _____ FAX NUMBER: _____

DAYS/HOURS OF OPERATION: Monday Tuesday Wednesday Thursday Friday Saturday Sunday

From: _____ am/pm – To: _____ am/pm

CACFP PARTICIPANT: No Yes, Food Program Sponsor: _____

LICENSED FOSTER / TREATMENT FOSTER CARE PROVIDER: Yes No

TRANSPORTATION PROVIDED: Yes No

CAPACITY REQUESTED: 5-6 CHILDREN (2 CHILDREN MAY BE UNDER AGE 2)

5-6 CHILDREN (4 CHILDREN MAY BE UNDER AGE 2) *2ND CAREGIVER REQUIRED

7-12 CHILDREN (4 CHILDREN MAY BE UNDER AGE 2) *2ND CAREGIVER REQUIRED

WHEN CAPACITY REQUESTED EXCEEDS 6 CHILDREN OR 4 CHILDREN UNDER AGE 2, COMPLETE THE FOLLOWING:

SECOND CAREGIVER: _____ TELEPHONE NUMBER: _____

(NAME)

ADDRESS: _____

(STREET) (CITY) (STATE) (ZIP)

NUMBER OF PERSONS AGE 18 YEARS AND OLDER LIVING IN THE HOME: _____

HAVE YOU EVER BEEN CONVICTED OF A FELONY OR MISDEMEANOR? YES NO
IF YES, STATE THE TYPE OF CONVICTION(S), DATE, JUDGE, COURT OF JURISDICTION, AND ADDRESS:

I, _____ HEREBY CERTIFY THAT I HAVE NEVER HAD AN ARREST
(NAME)
OR SUBSTANTIATED REFERRAL TO A CHILD PROTECTIVE SERVICES AGENCY.

I HEREBY CERTIFY THAT I HAVE READ AND UNDERSTAND THE REGULATIONS FOR FAMILY/GROUP CHILD CARE HOMES. I ASSUME RESPONSIBILITY FOR THE CONDUCT, AFFAIRS AND DEALINGS OF THE FAMILY/GROUP CHILD CARE HOME FOR WHICH THE LICENSE IS REQUESTED. I UNDERSTAND THAT I WILL BE RESPONSIBLE FOR ENSURING THAT THE FAMILY/GROUP CHILD CARE HOME COMPLIES WITH CURRENT LICENSING REGULATIONS.

I UNDERSTAND THAT THE FAMILY/GROUP CHILD CARE HOME IS SUBJECT TO INSPECTION BY THE LICENSING AUTHORITY DURING ALL HOURS OF OPERATION.

I UNDERSTAND THAT FAILURE TO COMPLY WITH THE CURRENT LICENSING REGULATIONS MAY RESULT IN DENIAL OR REVOCATION OF THE LICENSE TO OPERATE A FAMILY/GROUP CHILD CARE HOME. I AM OVER EIGHTEEN YEARS OF AGE AND DO HEREBY FILE THIS APPLICATION FOR A LICENSE TO OPERATE A FAMILY/GROUP CHILD CARE HOME FOR A PERIOD NOT TO EXCEED ONE CALENDAR YEAR.

AFFIDAVIT

STATE OF NEW MEXICO, COUNTY OF: _____

_____ BEING DULY SWORN ACCORDING TO LAW
(Applicants Name)

DEPOSES AND SAYS THAT THE FACTS SET FORTH IN THE FORGOING APPLICATION ARE TRUE TO THE BEST OF HIS/HER KNOWLEDGE, INFORMATION AND BELIEF.

(APPLICANT'S SIGNATURE)

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____ 20_____.

(NOTARY PUBLIC)

MY COMMISSION EXPIRES: _____.

PLEASE NOTE:

ALL APPLICATIONS MUST BE ACCOMPANIED BY THE APPROPRIATE FEE IN THE FORM OF A CHECK OR MONEY ORDER PAYABLE TO THE STATE OF NEW MEXICO.

**ALL APPLICATIONS MUST BE NOTARIZED
FEES ARE NON-REFUNDABLE**

**RETURN TO:
EARLY CHILDHOOD EDUCATION & CARE DEPARTMENT
CHILD CARE SERVICES BUREAU – LICENSING UNIT
PO DRAWER 5619, SANTA FE, NM 87502-5619**



NEW MEXICO

Early Childhood

Education & Care Department

Child Care Homes

Background Check and Fingerprint Instructions

IF YOU HAVE QUESTIONS ABOUT YOUR BACKGROUND CHECK, CONTACT:

Background Check Unit

Phone: (505) 827-9910

Email: ececd.bcu@ececd.nm.gov

Address: P.O. Drawer 5619

Santa Fe, NM 87502-5619

NONCRIMINAL JUSTICE APPLICANT'S PRIVACY RIGHTS

As an applicant who is the subject of a national fingerprint-based criminal history record check for a noncriminal justice purpose (such as an application for a job or license, an immigration or naturalization matter, security clearance, or adoption), you have certain rights which are discussed below.

- You must be provided written notification¹ that your fingerprints will be used to check the criminal history records of the FBI.
- If you have a criminal history record, the officials making a determination of your suitability for the job, license, or other benefit must provide you the opportunity to complete or challenge the accuracy of the information in the record.
- The officials must advise you that the procedures for obtaining a change, correction, or updating of your criminal history record are set forth at Title 28, Code of Federal Regulations (CFR), Section 16.34.
- If you have a criminal history record, you should be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the officials deny you the job, license, or other benefit based on information in the criminal history record.²

You have the right to expect that officials receiving the results of the criminal history record check will use it only for authorized purposes and will not retain or disseminate it in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the National Crime Prevention and Privacy Compact Council.³

If agency policy permits, the officials may provide you with a copy of your FBI criminal history record for review and possible challenge. If agency policy does not permit it to provide you a copy of the record, you may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at <http://www.fbi.gov/about-us/cjis/background-checks>.

If you decide to challenge the accuracy or completeness of your FBI criminal history record, you should send your challenge to the agency that contributed the questioned information to the FBI. Alternatively, you may send your challenge directly to the FBI. The FBI will then forward your challenge to the agency that contributed the questioned information and request the agency to verify or correct the challenged entry. Upon receipt of an official communication from that agency, the FBI will make any necessary changes/corrections to your record in accordance with the information supplied by that agency. (See 28 CFR 16.30 through 16.34.)

¹ Written notification includes electronic notification, but excludes oral notification.

² See 28 CFR 50.12(b).

³ See 5 U.S.C. 552a(b); 28 U.S.C. 534(b); 42 U.S.C. 14616, Article IV(c); 28 CFR 20.21(c), 20.33(d) and 906.2(d).

CHECKLIST

Please refer to the box below that indicates correct setting.

FACILITY AND CENTER

Submit the following:

- Application for Background Check AND Cogent Fingerprint Submission Receipt for each employee
- Dispositions (if applicable)
- Employer Statement for each employee

LICENSED HOME

Submit the following:

- Application for Background check AND Cogent Fingerprint Submission Receipt for the following:
 - Primary caregiver
 - Employee or other caregiver
 - Household members over 18 years of age
- Dispositions (if applicable)

REGISTERED HOME - SUBSIDY & FOOD

Submit the following:

- Application for Background Check AND Cogent Fingerprint Submission Receipt for the following:
 - Primary caregiver
 - Substitute caregiver
- Adult Written Statement AND Cogent Fingerprint Submission Receipt for the following:
 - Household members over 18 years of age
 - Adults over the age of 18 that spend a significant amount of time in the home
- Dispositions (if applicable)

***Please note:** The primary caregiver must name a food sponsor in Section 1.

REGISTERED HOME - FOOD ONLY

Submit the following:

- Application for Background Check AND Cogent Fingerprint Submission Receipt for the following:
 - Primary caregiver
 - Substitute caregiver
- Adult Written Statement (**No Fingerprint Submission Receipt required**) for the following:
 - Household members over the age of 18
 - Adults over the age of 18 that spend a significant amount of time in the home
- Dispositions (if applicable)

*** Please note:** The primary caregiver must name a food sponsor in Section 1.

Please see reverse side for background check & fingerprinting procedures.

BACKGROUND CHECK & FINGERPRINTING PROCEDURE

REGISTRATION & FINGERPRINTING:

To begin the application process, every applicant is required to register for fingerprinting at: <https://nm.state.identogo.com>

To register select "Schedule a new appointment".

ORI #: NM931220Z

Fingerprint Reason (please see options below):

- 5 year background check renewal, select: NMSA 9-29-8-1 ECECD EMPL-facilities, home programs, depart-cont prov
- Volunteer, select: NMSA 9-29-8-1 ECECD VOLS-facilities, home programs, depart-cont prov
- New Applicant, select: NMSA 9-29-8-1 ECECD applicant facility / home program Schedule Location along with date and time to be fingerprinted

PLEASE NOTE: Applicant must be fingerprinted at location selected on the date and time chosen.

FOLLOW UP:

It is very important to remember to submit the proper ECECD background check forms along with your fingerprint registration receipt immediately to the background check unit. Please note: fingerprint results are only valid for 29 days after the applicant has been fingerprinted. Therefore, please submit packet immediately after the applicant has been fingerprinted to avoid any delays. These forms may be mailed, emailed or faxed to:

**ECECD Background Check Unit PO
Drawer 5619
Santa Fe, NM 87502
Email: ECECD.BCU@ECECD.NM.GOV**

If a background clearance has not been received within 4-6 weeks or if you have any questions regarding the background check process, please call for assistance.

Phone: (505) 827-9910

***The information submitted will be used to conduct an FBI supported background check.**

NEW REQUIREMENT

New Background Regulations went into effect on October 1, 2016, requiring abuse and neglect screens in all states where an applicant has lived during the previous five years.

****Please contact the Background Check Unit at (505) 827-9910 if you have lived outside New Mexico in the previous five years for the appropriate state's form and instructions to prevent delay in processing your application.**

Type of Applicant: (please check one)

- Primary Caregiver
- Employee for _____
(Name of Primary Caregiver)
- Household Member of _____
(Name of Primary Caregiver)

**TCN Number(Provided
After Fingerprint
Submission):**

1. INFORMATION ABOUT THE APPLICANT:

First Name:	Middle Name:	Last Name:	Please include any aliases/AKA
<input type="checkbox"/> No Middle Name <input type="checkbox"/> Initial Only			
Physical Address:	Mailing Address: <input type="checkbox"/> Same as Physical		
City, State and ZIP:	City, State and ZIP:		
Primary Phone Number:	Social Security Number:		
Secondary Phone Number:	Date of Birth:		
Primary Language	Place of Birth:	Sex: (circle one) Male Female	Marital Status: (circle one) Single Married Separated Divorced Widowed

2. INFORMATION ON CURRENT ADULT HOUSEHOLD MEMBERS

If you need more space, use a separate sheet of paper.

First Name:	Middle Name:	Last Name:	Social Security Number:	Date of Birth:	Relationship:	Sex (M/F)
1.						
2.						
3.						
4.						

3. Employment History (past ten years, include dates of employment / explain gaps in employment)

**4. Educational History (list most recent first)
University, College, Vocational Training, and High School)**

Name of Employer	Dates Employed	Name of Institution	Dates Attended
a.		a.	
b.		b.	
c.		c.	
d.		d.	
Include additional sheets if necessary		Include additional sheets if necessary	

5. COLLATERAL INFORMATION TO BE USED FOR ABUSE / NEGLECT SCREEN:

Previous Addresses for the last five years. If you need more space, use a separate sheet of paper.

Street Address:	City:	State:	Zip:
a.			
b.			
c.			
d.			

Official Use Only - Must be signed by ECECD Representative

APPROVAL OF LICENSED CARE:

This application has been reviewed under the applicable regulations found at 8.9.6 NMAC General Provisions, Governing Background Checks and Employment History Verification, and a determination has been made that this applicant is granted Background Check Eligibility. Any changes to this application must be immediately reported to ECECD for a determination that the applicant continues to meet the criteria set forth in 8.9.6 NMAC.

ECECD Representative

Date

NAME: _____ SOCIAL SECURITY NUMBER _____

6. ALL HOUSEHOLD MEMBERS THAT HAVE LIVED WITH YOU WITHIN THE LAST FIVE YEARS (list all adults and children)

First Name: Middle Name: Last Name: Social Security Number: Date of Birth: Relationship: Sex (M/F)

a. _____

b. _____

c. _____

d. _____

Include additional sheets if necessary

7. INTERACTION WITH ECECD

a. Have you ever been denied a background check from ECECD or another state or federal licensing agency of any kind?

_____ Yes _____ No

If yes, you must provide a detailed explanation of the circumstances.

b. Have you ever been the subject of a ECECD or other state social service agency investigation of abuse/neglect of children or adults as the alleged perpetrator or household member? Note: If you do not understand this question, seek clarification. Failure to answer this question truthfully may lead to a denial of your application.

_____ Yes _____ No

If yes, you must provide a detailed explanation of the circumstances of each investigation, date and outcome.

8. INTERACTION WITH LAW ENFORCEMENT

Have you ever been charged with, arrested for, or convicted of a crime?

_____ Yes _____ No

If Yes:

When? _____

Where? _____

List the name of the crime(s) you were charged with:

What was the disposition (outcome)? Please attach a copy of the court disposition.

Explain the circumstances surrounding each criminal charge, arrest or conviction:

9. APPLICANT SIGNATURE

I understand that information submitted will be used to conduct an FBI supported background check and I, _____, hereby affirm under penalty of perjury that all the answers given on this statement are true and accurate to the best of my knowledge. By signing this affirmation, I am acknowledging that any falsehoods, omissions, or intentionally misleading answers will be grounds for denial of my application. If I do not understand any of the questions, I will seek help and ask for more information.

Signature of Applicant

Date

Disposition Request Information Sheet

ECECD is requesting disposition because some types of convictions can result in denial of a background check clearance. Disposition means outcome. ECECD wants to know the final outcome of the arrest.

Where to find disposition

Disposition can often be found at the courts in the county where you were arrested. You can also contact the agency that arrested you, or contact the attorney who represented you, if you had one.

Phone numbers for the Courts, Police Departments, and Attorneys can generally be found in the phone book, in the Government and/or Yellow pages. Out of state information might be found on the internet.

Acceptable forms of disposition

Dispositional information can be found in documents called:

- ✓ Judgment and Sentence
- ✓ Plea and Disposition Agreement
- ✓ Nolle Prosequi
- ✓ Certificate of Conviction

If you are unsure which of the forms contains your disposition, ask the Court clerk for help.

We will not accept

- Clerk's Certificates marked "No Felony Convictions"
- Documentation from the arresting agency marked "No Record Found"
- An explanation of the arrest from your attorney.

Please call our office at (505) 827-9910 if you have any questions.

Disposition must be received no later than 15 days after the date of the request. It is your responsibility to provide this information to ECECD. This sheet is for informational purposes only. Your search for disposition should not be limited to the ideas presented here.

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 6 GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY
VERIFICATION

8.9.6.1 ISSUING AGENCY: Early Childhood Education and Care Department (“ECECD”)
[8.9.6.1 NMAC - N, 11/01/2022]

8.9.6.2 SCOPE: This rule has general applicability to operators, volunteers, including student interns, employees, and prospective operators, staff and employees, of child-care facilities, including every facility, ECECD contractor, program receiving ECECD funding or reimbursement, or other program that has or could have primary custody of children for twenty hours or more per week, and direct providers of care for children including, but not limited to the following settings: licensed and registered child care, home visiting programs, and Family Infant Toddler (FIT) programs.
[8.9.6.2 NMAC - N, 11/01/2022]

8.9.6.3 STATUTORY AUTHORITY: The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Section 28-2-1 to 28-2-6 NMSA and in the New Mexico Children’s and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to 32A-15-4 NMSA 1978 Amended. ECECD’s rule making authority for this rule arises from Subsection E of Section 9-29-6 NMSA 1978; Subsection H of Section 9-29-8 NMSA 1978; and Section 9-29-8.1 NMSA 1978.
[8.9.6.3 NMAC - N, 11/01/2022]

8.9.6.4 DURATION: Permanent
[8.9.6.4 NMAC - N, 11/01/2022]

8.9.6.5 EFFECTIVE DATE: November 1, 2022, unless a later date is cited at the end of a section.
[8.9.6.5 NMAC - N, 11/01/2022]

8.9.6.6 OBJECTIVE:

- A.** The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required in settings to which these regulations apply.
- B.** Background checks are conducted in order to identify information in applicants’ backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.
- C.** Abuse and neglect screens of databases in New Mexico are conducted by BCU staff in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.9.4 NMAC and 8.9.5 NMAC will also undergo a screen of abuse and neglect information and an inter-state criminal history check in each State where the applicant resided during the preceding five years.

[8.9.6.6 NMAC - N, 11/01/2022]

8.9.6.7 DEFINITIONS:

- A.** “**Administrative review**” means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.
- B.** “**Administrator**” means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.
- C.** “**Adult**” means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection K below.
- D.** “**Appeal**” means a review of a determination made by the BCU, which may include an administrative review or a hearing.
- E.** “**Applicant**” means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3.
- F.** “**Arrest**” means notice from a law enforcement agency about an alleged violation of law.
- G.** “**BCU**” means the ECECD background check unit.
- H.** “**Background check**” means a screen of ECECD’s information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

- I. **“Care recipient”** means any person under the care of a licensee.
- J. **“Child”** means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.
- K. **“Conditional employment”** means a period of employment status for a new applicant prior to the BCU’s final disposition of the applicant’s background check.
- L. **“Criminal history”** means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.
- M. **“Direct physical supervision”** means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients.
- N. **“Direct provider of care”** means any individual who, as a result of employment or, contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.
- O. **“Eligibility”** means the determination that an applicant does not pose an unreasonable risk to care recipients after a background check is conducted.
- P. **“Employment history”** means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.
- Q. **“Licensed”** means authorized to operate by the licensing authority by issuance of an operator’s license or certification certificate.
- R. **“Licensee”** means the holder of, or applicant for, a license, certification, or registration pursuant to, 8.9.4 NMAC, 8.9.5 NMAC or other program or entity within the scope of these regulations. ECECD LICENSEE means program or entity within the scope of these regulations.
- S. **“Licensing authority”** means the ECECD division having authority over the licensee.
- T. **“Moral turpitude”** means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.
- U. **“Notice of provisional employment”** means a written notice issued to a child care center or home applicant indicating the BCU reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.
- V. **“Relevant conviction”** means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term RELEVANT CONVICTION also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under Section 31-20-13 (1994) NMSA 1978, or Section 30-31-28 (1972) NMSA 1978, or a comparable provision of another state’s law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term RELEVANT CONVICTION does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective executive pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.
- W. **“Unreasonable risk”** means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.
[8.9.6.7 NMAC - N, 11/01/2022]

8.9.6.8 APPLICABILITY: These regulations apply to all licensees and direct providers of care in the following settings:

- A. licensed child care homes;

- B. licensed child care centers;
 - C. registered child care homes;
 - D. home visiting programs;
 - E. licensed before and after school care;
 - F. non-licensed or exempt after school programs participating in the at risk component of the child and adult care food program;
 - G. Family Infant Toddler (FIT) programs;
 - H. ECECD contractors, and any other programs receiving ECECD funding or reimbursement, that:
 - (1) has or could have primary custody of children for twenty hours or more per week; or
 - (2) will have direct contact with children in the provision of ECECD sponsored services.
- [8.9.6.8 NMAC - N, 11/01/2022]

8.9.6.9 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except to the extent that such a program receives funding or reimbursement from ECECD:

- (1) hospitals or infirmaries;
- (2) intermediate care facilities;
- (3) children’s psychiatric centers;
- (4) home health agencies;
- (5) diagnostic and treatment centers; and
- (6) unlicensed or unregistered child care homes.
- (7) behavior management skills development;
- (8) case management services;
- (9) day treatment services;
- (10) residential treatment services;
- (11) treatment foster care services agency staff;
- (12) licensed shelter care;
- (13) comprehensive community support services;
- (14) AOC (administrative office of the courts) supervised visitation and safe exchange

program providers.

B. These regulations do not apply to the following adults:

- (1) treatment foster care parents;
- (2) relative care providers who are not otherwise required to be licensed or registered;
- (3) foster grandparent volunteers; and
- (4) all other volunteers for any program or entity within the scope of these regulations if the

volunteer spends less than six hours per week at the program, is under direct physical supervision, and is not counted in the facility ratio.

[8.9.6.9 NMAC - N, 11/01/2022]

8.9.6.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification or renewal, or continuation of same or participation in any other program or contract within the scope of these regulations.

B. The licensee is required to:

(1) submit an electronic fingerprint submission receipt and the required forms for all direct providers of care, household members in licensed and registered child care homes, or any staff member, employee, or volunteer present while care recipients are present, or other adult as required by the applicable regulations prior to the commencement of service, whether employment or, contractual, or volunteer. In the case of a licensed child care home and a registered home, the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members or for any adult who is required to obtain a background check pursuant to 8.9.4 NMAC or 8.9.5 NMAC as applicable. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

(2) Applicants required to obtain background checks pursuant to 8.9.4 NMAC and 8.9.5 NMAC must indicate states where they resided during the preceding five years and obtain the following:

(a) a screen of abuse and neglect information in each state where the applicant resided during the preceding five years; and

(b) an inter-state criminal history check in each state where a new applicant resided during the preceding five years. An inter-state criminal history check is not required if a new applicant has resided in a state that participates in the federal bureau of investigation's national fingerprint file. All existing staff hired after October 1, 2016, must undergo an inter-state criminal history check in each state where the applicant resided during the preceding five years at the time of application. An inter-state criminal history check is not required if an applicant has resided in a state that participates in the federal bureau of investigation's national fingerprint file.

(3) Verify the employment history of any prospective direct provider of care by contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: verification of employment history is not required for registered home providers or child care homes licensed for six or fewer children.

(4) submit an adult household member written statement form for each adult household member in a registered family child care food-only home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home; the licensee must submit the required forms for new adult household members pursuant to 8.9.5 NMAC.

(5) provide such other information BCU staff determines to be necessary; and

(6) maintain documentation of all applications, correspondence and eligibility relating to the background checks required; in the event that the licensee does not have a copy of an applicant's eligibility documentation and upon receipt of a written request for a copy, the BCU may issue duplicate eligibility documentation to the original licensee provided that the request for duplicate eligibility documentation is made within one year of the applicant's eligibility date.

C. If there is a need for any further information from an applicant at any stage of the process, the BCU shall request the information in writing from the applicant. If the BCU does not receive the requested information within fifteen calendar days of the date of the request, the BCU shall deny the application and send a notice of background check denial.

D. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility.

[8.9.6.10 NMAC - N, 11/01/2022]

8.9.6.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

(1) the ECECD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;

(2) the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt prior to employment;

(3) until receiving background eligibility, the applicant shall at all times be under direct physical supervision. See next paragraph for standards regarding applicants required to obtain a background check pursuant to 8.9.4 NMAC or 8.9.5 NMAC;

(4) a licensee or applicant required to obtain a background check pursuant to 8.9.4 NMAC or 8.9.5 NMAC must receive either a notice of provisional employment or background check eligibility prior to beginning employment. Applicants working after receipt of a notice of provisional employment shall at all times be under direct physical supervision until receiving background check eligibility. Upon completion of Paragraph 2 of this subsection, a notice of provisional employment decision will be provided to the child care center or home within five days unless the BCU determines there is good cause shown for an extension; and

(5) no more than 45 days shall have passed since the date of the initial application unless the BCU documents good cause shown for an extension.

B. With the exception of the provision under 8.9.4.19 NMAC and 8.9.5.11 NMAC, if a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the BCU, the direct provider of care must re-comply with 8.9.6.10 NMAC. A direct provider of care may transfer employment, as permitted by 8.9.4.19 NMAC and 8.9.5.11 NMAC, or for a period of 180 days after the date of an eligibility letter from the BCU without complying with 8.9.6.10 NMAC only if the direct provider of care submits a preliminary application that meets the following conditions:

(1) the direct provider of care submits a statement swearing under penalty of perjury that he or she has not been arrested or charged with any crimes, has not been an alleged perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct provider of care submits an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the BCU to determine if further background checks or a new application is necessary; and

(3) the BCU determines within 15 days that the direct provider of care's prior background check is sufficient for the employment or position the direct provider of care is going to take.
[8.9.6.11 NMAC - N, 11/01/2022]

8.9.6.12 PROHIBITIONS:

A. Any ECECD licensee who violates these regulations is subject to revocation, suspension, sanctions, denial of licensure, certification, or registration or termination of participation in any other program within the scope of these regulations.

B. Licensure, certification, registration or participation in any other program within the scope of these regulations is subject to receipt by the licensing authority of a satisfactory background check for the licensee or the licensee's administrator.

C. Except as provided in 8.9.6.13 NMAC below, licensure, certification, registration or participation in any other program within the scope of these regulations may not be granted by the licensing authority if a background check of the licensee or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service or contract with any direct provider of care for whom a background check reveals an unreasonable risk. The BCU shall deliver one copy of the notice of unreasonable risk to the facility or program by U.S. mail, facsimile transmission, secure (or encrypted) e-mail or hand delivery, and to the licensing authority by facsimile transmission, secure (or encrypted) e-mail or hand delivery.

E. A licensee shall be in violation of these regulations if it retains a direct provider of care for more than ten working days following the issuing of a notice of background check denial for failure to respond by the BCU.

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.9.6.11 NMAC.

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk to care recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate sanctions up to and including immediate emergency revocation of license or registration pursuant to the regulations applicable to that entity or termination of participation in any other program within the scope of these regulations.

[8.9.6.12 NMAC - N, 11/01/2022]

8.9.6.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

(1) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony, or a misdemeanor involving moral turpitude, and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;

(4) a substantiated referral, regardless of the date, for sexual abuse or for a substantiation of abuse or neglect relating to a failure to protect against sexual abuse;

(5) the applicant's child is in New Mexico's Children, Youth, and Families Department (CYFD) or another state's custody; or

(6) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006.

B. A disqualifying conviction may be proven by:

- (1) a copy of the judgment of conviction from the court;
- (2) a copy of a plea agreement filed in court in which a defendant admits guilt;
- (3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;
- (4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;
- (5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed or is pending completion of a conditional discharge for the disqualifying conviction.

C. If a background check shows pending charges for a felony offense, any misdemeanor offense involving domestic violence, child abuse, any other misdemeanor offense of moral turpitude, or an arrest but no disposition for any such crime, there shall be a determination of unreasonable risk if a conviction as charged would result in a determination of unreasonable risk.

D. If a background check shows a pending CYFD child protective services referral or any other investigation of abuse or neglect by ECECD, CYFD, or any other state or federal agency with authority to investigate, there shall be a determination of unreasonable risk.

E. If a background check shows that an applicant has an outstanding warrant, there shall be a determination of unreasonable risk.

[8.9.6.13 NMAC - N, 11/01/2022]

8.9.6.14 UNREASONABLE RISK:

A. The BCU may, in its discretion, use all reasonably reliable information about an applicant and weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to care recipients. The BCU may also consult with legal staff, treatment, assessment or other professionals in the process of determining whether the cumulative weight of credible evidence establishes unreasonable risk.

B. In determining whether an applicant poses an unreasonable risk, the BCU need not limit its reliance on formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

- (1) reliable disclosures by the applicant or a victim of abuse or neglect;
- (2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;
- (3) circumstances indicating the applicant is or has been a victim of domestic violence;
- (4) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or
- (5) any other evidence with similar indicia of reliability.

[8.9.6.14 NMAC - N, 11/01/2022]

8.9.6.15 REHABILITATION PETITION: Any applicant whom the BCU concludes is an unreasonable risk on any basis other than those described at Paragraphs (1), (3), (4), (5), or (6) of Subsection A of 8.9.6.13 NMAC, may submit to the BCU a rehabilitation petition describing with specificity all information that tends to demonstrate that the applicant is not an unreasonable risk. The petition may include, but need not be limited to, a description of what actions the applicant has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur.

[8.9.6.15 NMAC - N, 11/01/2022]

8.9.6.16 ELIGIBILITY SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

A. An applicant's background check eligibility may be suspended for the following:

- (1) an arrest or criminal charge for any felony offense, any misdemeanor offense involving domestic violence, child abuse or any other misdemeanor offense of moral turpitude if a conviction as charged would result in a determination of unreasonable risk;

(2) a pending CYFD child protective services referral or any other investigation of abuse or neglect by ECECD, CYFD, or any other state or federal agency with authority to investigate allegations of abuse or neglect;

(3) an outstanding warrant; or

(4) any other reason that creates an unreasonable risk determination pursuant to these regulations.

B. It is the duty of the administrator of a facility or the licensee and the background check eligibility holder, upon learning of any of the above, to notify the licensing authority immediately. Failure to immediately notify the licensing authority may result in the revocation of background check eligibility.

C. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the matter is resolved and eligibility is affirmatively reinstated by the BCU.

D. Background check eligibility may be reinstated or revoked as follows:

(1) If the applicant can provide information relating to the disqualifying criminal charge that would show that a criminal conviction as charged would not lead to an unreasonable risk;

(2) If the matter causing the suspension is resolved within six months of the suspension, the applicant may provide documentation to the BCU showing how the matter was resolved and requesting reinstatement of background check eligibility. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If, the applicant's eligibility is revoked, the applicant may appeal the revocation.

(3) If the matter causing the suspension is resolved after six months of the suspension, the applicant may reapply for clearance for the same licensee by submitting an electronic fingerprint submission receipt and the required forms. After review, the BCU may reinstate background check eligibility or may revoke eligibility. If the applicant's eligibility is revoked, the applicant may appeal the revocation.

[8.9.6.16 NMAC - N, 11/01/2022]

8.9.6.17 APPEAL RIGHTS:

A. Denials: Any applicant who is found ineligible after completion of background check may request an administrative review from ECECD. The request for an administrative review shall be in writing and the applicant shall cause the BCU to receive it within 15 days of the date of the BCU's written notice of a determination of unreasonable risk. If the request is mailed, three days are added after the period would otherwise expire. The administrative review shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to:

(1) whether the BCU's conclusion of unreasonable risk is supported by any section of these regulations; and

(2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer and includes the applicant's written request for an administrative review and other relevant evidence provided by the applicant. The hearing officer conducts the administrative review and submits a recommendation to the cabinet secretary no later than 60 days after the date the request for administrative review is received unless ECECD and the applicant agree otherwise.

B. Suspensions and revocations: A previously cleared applicant whose eligibility has been suspended or revoked may appeal that decision to ECECD and shall be entitled to a hearing pursuant to ECECD's identified administrative hearing regulations. The request for appeal shall be in writing and the applicant shall cause the BCU to receive it within 15 days of the date of the BCU's written notice of suspension. If the request is mailed, three days are added after the period would otherwise expire.

[8.9.6.17 NMAC - N, 11/01/2022]

HISTORY OF 8.9.6 NMAC: [RESERVED]

Home Annual & Semi-Annual Checklist

Name of Home:	Date:	Date:
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ADMINISTRATION RECORDS: Posted in area readily visible to parents & visitors	Annual	Semi-Annual
State License Posted 8.9.4.32 A	<input type="checkbox"/>	
Emergency Numbers next to Phone Posted 8.9.4.38 G(5)	<input type="checkbox"/>	
Daily Activity Schedule Posted 8.9.4.34 I(6)	<input type="checkbox"/>	
Dated Weekly Menus Posted 8.9.4.35 C	<input type="checkbox"/>	<input type="checkbox"/>
ON FILE FOR REVIEW:		
Current Child Care Home State Regulations 8.16.2.32 A(2)	<input type="checkbox"/>	
Mission Statement 8.16.2.32 B(1)	<input type="checkbox"/>	
Philosophy Statement 8.9.4.32 B(2)	<input type="checkbox"/>	
Curriculum Statement 8.9.4.32 B(3)	<input type="checkbox"/>	
Parent Handbook 8.9.4.32 C	<input type="checkbox"/>	
Expulsion Policy 8.9.4.32 C (2)(c)	<input type="checkbox"/>	
Personnel Handbook 8.9.4.32 F	<input type="checkbox"/>	
Last Licensing Survey 8.9.4.32A(1)	<input type="checkbox"/>	
Current Notifiable/Communicable Diseases 8.9.4.32A(4)	<input type="checkbox"/>	
Guidance Policy 8.9.4.32A(3)	<input type="checkbox"/>	
Fire drill & Emergency Preparedness Practice log 8.9.4.38 G(4)	<input type="checkbox"/>	<input type="checkbox"/>
Pet vaccinations 8.9.4.38 I(2)	<input type="checkbox"/>	<input type="checkbox"/>
Disaster Preparedness to include COVID-19 Safety Plan 8.9.4.32A(5)	<input type="checkbox"/>	
PERSONNEL RECORDS:		
Employment history verified, CRC Letter or Submission Receipt (Every 5 years), annual child abuse statement. New Caregivers/adults in home 8.9.4.32 E(1), 32E(2)	<input type="checkbox"/>	<input type="checkbox"/>
First-Aid and CPR (All Staff) 8.9.4. 33 B(j)	<input type="checkbox"/>	
Training log and certificates /All Staff 8.9.4.33 B (2)	<input type="checkbox"/>	<input type="checkbox"/>
45-hour or 3-credit hrs. in Early Care (<i>Primary only</i>) 8.9.4.33 B(6)	<input type="checkbox"/>	
Home capacity/ratio (Provider/child ratio)	<input type="checkbox"/>	<input type="checkbox"/>

8.16.2.31 B		
Attendance record of 2 nd caregiver 8.9.4.32E(3)	<input type="checkbox"/>	
HOUSEKEEPING:		
Keep the premises, including furniture, fixtures, toys & equipment clean, safe, disinfected & free of debris & potential hazards 8.9.4.38 A(1)	<input type="checkbox"/>	<input type="checkbox"/>
Dangerous material inaccessible to children 8.9.4.38 A(2)	<input type="checkbox"/>	<input type="checkbox"/>
Electrical outlets covered 8.9.4.38 D(2)	<input type="checkbox"/>	<input type="checkbox"/>
GUIDANCE:		
Guidance acknowledgement 8.9.4.34A(1)	<input type="checkbox"/>	<input type="checkbox"/>
Guidance is consistent and age appropriate. 8.9.4.34A(2)	<input type="checkbox"/>	<input type="checkbox"/>
Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. 8.9.4.34A(3)	<input type="checkbox"/>	<input type="checkbox"/>
A home will not use the following disciplinary practices: <ul style="list-style-type: none"> • physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth; • withdrawal of food, rest, bathroom access, or outdoor activities; • abusive or profane language, including yelling; • any form of public or private humiliation, including threats of physical punishment; • and unsupervised separation 8.9.4.34A(4)(a-e)	<input type="checkbox"/>	<input type="checkbox"/>
SOCIAL EMOTIONAL:		
Educators remain calm in stressful situations 8.9.4.34 H(1)	<input type="checkbox"/>	<input type="checkbox"/>
Educators are actively engaged with children, talk and actively listen to children and respond appropriately. Responding to children's questions and acknowledge their comments, concerns, emotions and feelings. 8.9.4.34 H(2)	<input type="checkbox"/>	<input type="checkbox"/>
Provide language to express feelings 8.9.4.34 H(3)	<input type="checkbox"/>	<input type="checkbox"/>
Educators model appropriate social behaviors, interactions and empathy and make appropriate physical contact to comfort and support children in daily routines and interactions. 8.9.4.34 H(4)	<input type="checkbox"/>	<input type="checkbox"/>
ENVIRONMENT:		
Environment shall be organized in functional identifiable learning areas 8.9.4.34 G(1)	<input type="checkbox"/>	<input type="checkbox"/>
Centers are clearly defined using shelving and furniture 8.9.4.34 G(2)	<input type="checkbox"/>	<input type="checkbox"/>
Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made. Unused materials are stored in inaccessible storage. 8.9.4.34 G(5) * (Labeling only not needed for 1 star providers)	<input type="checkbox"/>	<input type="checkbox"/>
Have adequate space; no continually interruptions 8.9.4.34 G(4)	<input type="checkbox"/>	<input type="checkbox"/>

Individually expressed artwork are displayed 8.9.4.34 G(6) *(not needed for 1 star providers)	<input type="checkbox"/>	<input type="checkbox"/>
Floor surface is suitable for activities that will occur in each learning area. 8.9.4.34 G(7) *(not needed for 1 star providers)	<input type="checkbox"/>	<input type="checkbox"/>
File and storage space is available for teacher/caregiver materials. 8.9.4.34 G(8)	<input type="checkbox"/>	<input type="checkbox"/>
NAPS/REST:		
Cribs, cots & mats 30"apart; Mats will be at least 3/4" thick 8.9.4.34 B(4)	<input type="checkbox"/>	<input type="checkbox"/>
Infants placed on back to sleep 8.9.4.34 C(4)	<input type="checkbox"/>	<input type="checkbox"/>
No Child sleeping in playpen, car seat, stroller or swing 8.9.4.34 C(3)	<input type="checkbox"/>	<input type="checkbox"/>
No child sleeping behind closed doors 8.9.4.34 B(9)	<input type="checkbox"/>	<input type="checkbox"/>
Unattended Children 8.9.4.33 A(8)	<input type="checkbox"/>	<input type="checkbox"/>
Dark room 8.9.4.34 B(7)	<input type="checkbox"/>	<input type="checkbox"/>
No propping bottles & no child sleeping w/bottle 8.16.2.34 C(10)	<input type="checkbox"/>	<input type="checkbox"/>
No pillows in cribs 8.9.4.34 C(2)	<input type="checkbox"/>	<input type="checkbox"/>
TELEVISION:		
Children do not watch more than 6 hour per month of TV, DVD, videotapes, or play video games, but not to exceed one full length film in one day. Children under two will not be permitted to view media. 8.9.4.34 I(7)	<input type="checkbox"/>	
KITCHEN:		
Thermometers in Refrigerator/Freezer 8.9.4.35 D(7)	<input type="checkbox"/>	<input type="checkbox"/>
Food and drink stored in airtight container or by wrapping them. Label and date leftover food 8.9.4.35 D(4)	<input type="checkbox"/>	<input type="checkbox"/>
Label children's personal food items and bottles 8.9.4.35 D(5)	<input type="checkbox"/>	<input type="checkbox"/>
Cleaning products separate from food items 8.9.4.35 D(11)	<input type="checkbox"/>	<input type="checkbox"/>
FIRST-AID REQUIREMENTS:		
Check First-Aid Kit 8.9.4.36 B(1)	<input type="checkbox"/>	
• Band Aids	<input type="checkbox"/>	
• Gauze pads	<input type="checkbox"/>	
• Adhesive tape	<input type="checkbox"/>	
• Scissors	<input type="checkbox"/>	
• Soap	<input type="checkbox"/>	
• Non-porous Gloves	<input type="checkbox"/>	
• Thermometer	<input type="checkbox"/>	
• First-Aid Manual	<input type="checkbox"/>	
Medication Locked Box 8.9.4.36 C(1)	<input type="checkbox"/>	
Medication Form w/Parents Initials 8.9.4.36 C(4)	<input type="checkbox"/>	
FIRE PROTECTION:		
Smoke Detectors 8.9.4.38 G(1)	<input type="checkbox"/>	<input type="checkbox"/>

Fire Extinguisher (fully charged) 8.9.2.38 G(3)	<input type="checkbox"/>	<input type="checkbox"/>
Fire Extinguisher mounted in the kitchen 8.9.4.38 G(3)	<input type="checkbox"/>	<input type="checkbox"/>
Carbon Monoxide Detector 8.9.4.38 G(2)	<input type="checkbox"/>	<input type="checkbox"/>
RESTROOM:		
Must have toilet paper, soap & disposable towels, height accessible to children; Must not use a common towel or wash cloth 8.9.4.38 F(1)	<input type="checkbox"/>	<input type="checkbox"/>
Must have hot/cold running water 8.9.4.38 C(6)	<input type="checkbox"/>	<input type="checkbox"/>
Hygiene 8.9.4.6 A(1)(a)-(f)	<input type="checkbox"/>	<input type="checkbox"/>
Diapers change on waterproof surface; Soiled diapers stored in a secure container/tight-fitting lid 8.9.4.34 D(4)	<input type="checkbox"/>	<input type="checkbox"/>
Gloves worn during diaper changing 8.9.4.34 D(2)	<input type="checkbox"/>	<input type="checkbox"/>
Water Temp below 110 degrees 8.9.4.38 C(5)	<input type="checkbox"/>	<input type="checkbox"/>
PLAYGROUND:		
Play equipment safe & securely anchored 8.9.4.34 J(1)(b)	<input type="checkbox"/>	<input type="checkbox"/>
Playground enclosed w/fence at least 4' high with 1 latched gate available for an emergency exit 8.9.4.34 J(2)	<input type="checkbox"/>	<input type="checkbox"/>
Energy absorbing surfaces beneath climbing structures, swings & slides 8.9.4.34 J(3)	<input type="checkbox"/>	<input type="checkbox"/>
Trampoline is prohibited 8.9.4.34 J(4)	<input type="checkbox"/>	<input type="checkbox"/>
TRANSPORTATION:		
All vehicles used for transporting children will have: 8.9.4.37 A	<input type="checkbox"/>	
• Fire Extinguisher (fully charged)	<input type="checkbox"/>	
• First-Aid Kit	<input type="checkbox"/>	
• First-Aid Manual	<input type="checkbox"/>	
• Water	<input type="checkbox"/>	
• Blanket	<input type="checkbox"/>	
Valid driver's license, registration and insurance 8.9.4.37 F	<input type="checkbox"/>	
Head Counts 8.9.4.37 I	<input type="checkbox"/>	
SURVEY NOTES:		
Conduct fire drill - During ANNUAL or SEMI-ANNUAL		
Renewal Application mailed 8.9.4.11 B (1)	<input type="checkbox"/>	<input type="checkbox"/>
• Date mailed / New staff and children's records	/ /	<input type="checkbox"/>
• Inform the provider of application late fee	<input type="checkbox"/>	<input type="checkbox"/>
• Provider website for a copy of current regulations	<input type="checkbox"/>	<input type="checkbox"/>
• An emergency preparedness practice drill at least quarterly beginning January of each calendar year. 8.9.4.38G(4)		
Go back and verify any deficiencies from annual, follow-up as needed	<input type="checkbox"/>	<input type="checkbox"/>

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 4 CHILD CARE LICENSING; CHILD CARE CENTERS, OUT OF SCHOOL TIME PROGRAMS, FAMILY CHILD CARE HOMES, AND OTHER EARLY CARE AND EDUCATION PROGRAMS

8.9.4.1 ISSUING AGENCY: Early Childhood Education and Care Department (“ECECD”).
[8.9.4.1 NMAC - N, 11/01/2022]

8.9.4.2 SCOPE: All child care centers, out of school time programs, family child care homes, and other early care and education programs within the state of New Mexico.
[8.9.4.2 NMAC - N, 11/01/2022]

8.9.4.3 STATUTORY AUTHORITY: The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico Early Childhood Education and Care Department, by authority of the Early Childhood Education and Care Department Act, Section 9-29-1 to 9-29-12 NMSA 1978, and Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and Section 24-1-5 NMSA 1978 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.
[8.9.4.3 NMAC - N, 11/01/2022]

8.9.4.4 DURATION: Permanent.
[8.9.4.4 NMAC - N, 11/01/2022]

8.9.4.5 EFFECTIVE DATE: November 1, 2022, unless a later date is cited at the end of a section.
[8.9.4.5 NMAC - N, 11/01/2022]

8.9.4.6 OBJECTIVE: The objective of 8.9.4 NMAC is to establish standards and procedures for the licensing of facilities and educators who provide child care to children within New Mexico. These standards and procedures are intended to: establish minimum requirements for licensing facilities providing non-residential care to children in order to protect the health, safety, and development of the children; monitor facility compliance with these regulations through surveys to identify any areas that could be dangerous or harmful to the children or staff members; monitor and survey out of school time programs; and encourage the establishment and maintenance of child care centers, homes and facilities for children that provide a humane, safe, and developmentally appropriate environment. These regulations apply during all hours of operation for child care centers, homes and out of school time programs. The objective of 8.9.4 NMAC is also 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).
[8.9.4.6 NMAC - N, 11/01/2022]

8.9.4.7 DEFINITIONS:

A. Terms beginning with the letter “A”:

(1) **“Abuse”** means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(a) physical contact that harms or is likely to harm a child;

(b) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(c) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

(2) **“Activity area”** means space for children’s activities where related equipment and materials are accessible to the children.

(3) **“Adult”** means a person who has a chronological age of 18 years or older.

(4) **“Assessment of children’s progress”** means children’s progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child’s behavior or skills in given situations). Children’s progress also can be assessed formally at least twice a year using a developmental checklist

(checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

(5) **“Attended”** means the physical presence of a staff member or educator supervising and actively engaging children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See definition of “Supervision”, Paragraph (12) of Subsection S of 8.9.4.7 NMAC).

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

C. Terms beginning with the letter “C”:

(1) **“Capacity”** means the maximum number of children a licensed child care facility can care for at any one time.

(2) **“Cease and desist letter”** means a formal letter from the licensing authority outlining any ongoing violation of applicable regulations and providing 24 to 72 hours, depending on the circumstances, to rectify the violation(s) before additional action, including suspension or revocation, is taken by the licensing authority. A cease and desist letter is usually issued when a provider violates applicable regulations, but there is not an immediate threat to the health and safety of children in care, and seeks to compel compliance before more serious action is taken. A cease and desist letter must provide the specific deadline to rectify the violation(s), 24 to 72 hours, and specify the subsequent action the licensing authority will take if the violation(s) is not corrected by that deadline.

(3) **“Child”** means a person who is under the chronological age of 18 years.

(4) **“Child care center”** means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

(5) **“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, or other specialized services and support; or children without identified conditions, but requiring specialized services, supports, or monitoring.

(6) **“Class A deficiency”** means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

(7) **“Class B deficiency”** means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

(8) **“Class C deficiency”** means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

(9) **“Clean”** means to physically remove all dirt and contamination.

(10) **“Conditions of operation”** means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

(11) **“Core hours”** means the daily hours of operation of the child care facility.

(12) **“Corrective action plan”** means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

(13) **“Curriculum”** is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program’s mission statement, philosophy (which, in turn, is based on assumptions about young children’s development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

D. Terms beginning with the letter “D”:

(1) **“Deficiency”** means a violation of these regulations.

(2) **“Direct provider of care”** means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

(3) **“Director”** means the person in charge of the day-to-day operation and program of a child care center.

(4) **“Disinfect”** means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

(5) **“Drop-in”** means a child who attends a child care facility on an occasional or unscheduled basis.

E. Terms beginning with the letter “E”:

(1) **“Educator”** means an adult who directly cares for, serves, and supervises children in a licensed child care facility. Educators are considered staff members.

(2) **“Environment”** means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

(3) **“Exploitation”** of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child’s property for another person’s profit, advantage or benefit without legal entitlement to do so.

(4) **“Expulsion”** means the involuntary termination of the enrollment of a child or family.

F. Terms beginning with the letter “F”:

(1) **“Facility”** means any premises licensed under these regulations where children receive care, services, and supervision. A facility can be a center, home, program, or other site where children receive childcare.

(2) **“Family child care home”** means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day for no more than six children. The licensee will reside in the home and be the primary educator.

(3) **“FOCUS”** is a voluntary tiered quality rating and improvement program that is open to all registered and licensed child care programs.

G. Terms beginning with the letter “G”:

(1) **“Group child care home”** means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary educator.

(2) **“Group size”** is the number of children assigned to an educator or team of educators occupying an individual classroom or well-defined space within a larger room.

(3) **“Guidance”** means fostering a child’s ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

H. Terms beginning with the letter “H”:

(1) **“Home”** means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator. A home will be considered a building or fixed dwelling that can be occupied for living purposes if it provides complete independent living facilities, including permanent provisions for plumbing and electricity. Special consideration will be made for homes on tribal lands.

(2) **“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.

I. Terms beginning with the letter “I”: **“Infant”** means a child age six weeks to 12 months.

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

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

L. Terms beginning with the letter “L”:

(1) **“License”** means a document issued by ECECD to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

(2) **“Licensee”** means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

(3) **“Licensing authority”** means the child care services bureau – regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Early Childhood Education and Care Department Act, Sections 9-29-1 to 9-29-12 NMSA 1978, as amended.

M. Terms beginning with the letter “M”:

(1) **“Media”** means the use of televisions, video games, and non-educational online streaming such as video and social media.

(2) **“Mission statement”** describes what the program aspires to do and whom the program aspires to serve.

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 ECECD. ECECD determines the program criteria and standards to evaluate and approve accrediting bodies. The following are the only national accrediting bodies that are approved by ECECD:

(a) the association of Christian schools international (ACSI);
(b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);
(d) the national accreditation commission for early care and education programs (NAC);

(e) the national association for the education of young children (NAEYC) academy for early childhood program accreditation;

(f) the national association of family child care (NAFCC); or

(g) the national early childhood program accreditation (NECPA).

(2) **“Night care”** means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

(3) **“Neglect”** means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

(4) **“Notice of provisional employment”** means a written notice issued to a child care center or home applicant indicating the Background Check Unit reviewed the applicant’s fingerprint based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct physical supervision until receiving background eligibility. A notice may also indicate the applicant must receive a complete background eligibility prior to beginning employment.

(5) **“Notifiable diseases”** means confirmed or suspected diseases/conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

O. Terms beginning with the letter “O”:

(1) **“Orientation”** means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

(2) **“Out of school time program”** means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

P. Terms beginning with the letter “P”:

(1) **“Pacifier”** means a rubber or plastic device, often shaped into a nipple, for an infant to suck or bite.

(2) **“Parent handbook”** is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

(3) **“Pest”** means any living organism declared a pest pursuant to the Pesticide Control Act.

(4) **“Pesticide”** means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(5) **“Philosophy statement”** describes how the program’s mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program’s perspective on early care and education and the nature of how children learn. The program’s philosophy is implemented through the curriculum.

(6) **“Policy”** is a written directive that guides decision-making. Policies form the basis for authoritative action.

(7) **“Premises”** means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

(8) **“Procedure”** is a series of steps to be followed, usually in a specific order, to implement policies.

(9) **“Professional development”** is an on-going plan for continued professional development for each educator, including the director.

(10) **“Program administrator”** means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child’s development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

(11) **“Punishment”** means the touching of a child’s body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

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

R. Terms beginning with the letter “R”:

(1) **“Ratio”** is the maximum number of children one educator can be responsible for.

(2) **“Requirements”** means the criteria and regulations developed by Early Childhood Education and Care Department in 8.9.4 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

(3) **“Restriction”** means to control enrollment, service type, capacity, activities, or hours of operation.

(4) **“Revocation”** means the act of making a license null and void through its cancellation.

S. Terms beginning with the letter “S”:

(1) **“Sanction”** means a measure imposed by the licensing authority for a violation(s) of these standards.

(2) **“Sanitize”** means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one-half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

(3) **“Serious injury”** means the death of a child or accident, illness, or injury that requires treatment by a medical professional or hospitalization.

(4) **“School-age”** means a child in care who is age five to 18 years.

(5) **“Staff evaluation”** means that each staff member is evaluated by the director, using criteria from the individual’s job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual’s professional development plan.

(6) **“Staff member”** means any person, including educators, who are employed by the licensee and who are present at any time when children are present.

(7) **“Substitute”** means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

(8) **“Suspension”** means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

(9) **“Site director”** means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

(10) **“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.

(11) **“Substantiated complaint”** means a complaint determined to be factual, based on an investigation of events.

(12) **“Supervision”** means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

(13) **“Survey”** means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

T. Terms beginning with the letter “T”: **“Toddler”** means a child age 12 months to 24 months.

U. Terms beginning with the letter “U”:

(1) **“U/L”** means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

(2) **“Unattended”** means an educator is not physically present with a child or children under care.

(3) **“Unsubstantiated complaint”** means a complaint not determined to be factual based on an investigation of events.

V. Terms beginning with the letter “V”:

(1) **“Variance”** means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

(2) **“Volunteer”** means any person who is not employed by the child care facility, spends six hours or less per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members or educator.

W. Terms beginning with the letter “W”: **“Waiver”** means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.

[8.9.4.7 NMAC - N, 11/01/2022]

8.9.4.8 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to the current versions of the following regulations and codes:

A. New Mexico health department regulations, control of disease and conditions of public health significance, 7.4.3 NMAC.

B. New Mexico health department regulations, governing public access to information in the department records, 7.1.3 NMAC.

C. New Mexico department of health regulations, health facility licensure fees and procedures, 7.1.7 NMAC.

D. New Mexico department of health regulations, health facility sanctions and civil monetary penalties, 7.1.8 NMAC.

E. New Mexico Early Childhood Education and Care Department regulations, governing background check and employment history of licensees and staff of child care facilities, 8.9.6 NMAC.

F. New Mexico environment department, food service and food processing, 7.6.2 NMAC.

G. Latest edition adopted by the New Mexico state fire board of the national fire protection association life safety code handbook 101.

H. Latest edition adopted by the New Mexico state fire board of the international fire code.

I. Latest edition adopted by the New Mexico construction industries division of the uniform building code enacted by the international conference of building officials.

J. Latest edition of the New Mexico building, plumbing/mechanical and electrical codes adopted by the New Mexico construction industries division.

K. New Mexico department of health regulations governing immunizations required for school attendance immunization requirement, 7.5.2 NMAC.

L. Federal Americans with Disabilities Act (ADA).

M. New Mexico department of agriculture Regulations Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 and 21.17.50 NMAC.

N. Latest edition of critical heights of playground equipment for various types and depths of resilient surfaces based on information from the U.S. consumer product safety commission (CPSC Publication No.325), handbook for public playground safety.

O. Any code, ordinance, or rule of a governing body, including but not limited to cities, towns, or counties having jurisdiction over the area in which the facility is situated.

[8.9.4.8 NMAC - N, 11/01/2022]

8.9.4.9 APPLICATION: These regulations apply to public or private facilities and homes that provide care, education, services, and supervision to children less than 24 hours of any day, come within the statutory definition of "health facilities" set out in Subsection D of Section 24-1-2 of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority. These regulations do not apply to any of the following.

A. Facilities providing child care for 24 hours on a continuous basis. Such facilities are covered by other regulations promulgated by the children, youth and families department that are available upon request from the licensing authority.

B. Child care facilities operated by the federal government or a tribal government.

C. Child care facilities operated by a public school system and governed by the local school board.

D. Private schools accredited or recognized by the New Mexico department of education, operated for educational purposes only for children age five years or older.

E. Child care facilities provided exclusively for children of parents who are simultaneously present in the same premises.

F. Summer religious schools held on a church, religious building or house of worship premises.

G. Summer camps, wilderness camps, and programs operated for recreational purposes only by recognized organizations such as churches, schools, and the boy and girl scouts, provided such camps and programs are not conducted in private residences.

H. Any individual who in their own home provides care, services and supervision to four or fewer nonresident children.

I. Parent's day out programs held in a church, religious building or house of worship, or public building operating for no more than eight hours per week and no more than four hours on any given day. The program will be staffed by parents participating in the program, or by others who are members of the church or public affiliation.

[8.9.4.9 NMAC - N, 11/01/2022]

8.9.4.10 LICENSING AUTHORITY (ADMINISTRATION AND ENFORCEMENT

RESPONSIBILITY): The child care services bureau regulatory oversight unit of the early education, care and nutrition division of the New Mexico Early Childhood Education and Care Department, hereafter called the licensing authority, has been granted the responsibility for the administration and enforcement of these regulations by authority of Early Childhood Education and Care Department Act, Section 9-29-1 to 9-29-12, NMSA 1978, as amended.

[8.9.4.10 NMAC - N, 11/01/2022]

8.9.4.11 LICENSING:

A. TYPES OF LICENSES:

(1) ANNUAL LICENSE: An annual license is issued for a one-year period to a child care facility that has met all requirements of these regulations.

(a) 1-star level is designated for programs not receiving child care subsidy. 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.9.4.11 NMAC.

(i) for centers: Paragraph (17) of Subsection G of 8.9.4.22 NMAC, Paragraphs (5) through (9) of Subsection G of 8.9.4.24 NMAC, and Subsection H of 8.9.4.24 NMAC;

(ii) for licensed family and group child care homes: Paragraph (4) of Subsection E of 8.9.4.32 NMAC, Paragraph (15) of Subsection F of 8.9.4.32 NMAC, Paragraphs (4) through (8) of Subsection G of 8.9.4.34 NMAC, and Subsection H of 8.9.4.34 NMAC;

(iii) for licensed out of school time programs: Subparagraph (k) of Paragraph (1) of Subsection E of 8.9.4.41 NMAC, Paragraph (14) of Subsection F of 8.9.4.41 NMAC, Paragraphs (5) through (9) of Subsection B of 8.9.4.43 NMAC and Subsection C of 8.9.4.43 NMAC.

(b) 2-star level requires meeting and maintaining licensing requirements at all times.
(c) 2+ star level is voluntary and requires meeting and maintaining licensing requirements as well as meeting the most recent FOCUS eligibility requirements and 2+ star criteria.

(d) 3-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS level 3 quality criteria at all times.

(e) 4-star level is voluntary and requires meeting and maintaining licensing requirements and FOCUS levels 3 and 4 quality criteria at all times.

(f) 5-star level is voluntary and requires meeting and maintaining licensing requirements, FOCUS levels 3, 4 and 5 quality criteria at all times and maintaining ECECD approved national accreditation status.

(2) TEMPORARY LICENSE: The licensing authority will, at its discretion, issue a temporary license when it finds the child care facility in partial compliance with these regulations.

(a) A temporary license can, at the discretion of the licensing authority, be issued for up to 120 days, during which time the child care facility will correct all specified deficiencies.

(b) The licensing authority will not issue more than two consecutive temporary licenses.

(c) After a second temporary license has been issued, a new application and the required application fee must be submitted within 30 days in order to renew the license for the remainder of that one year period.

(3) AMENDED LICENSE: A child care facility will submit a new notarized application to the licensing authority before modifying information required to be stated on the license. Examples of such modifications include dates, capacity, director and number of stars.

(a) A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application (fee \$20) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director's appointment is valid for 90 days.

(b) A notarized application must be submitted for a change of capacity (fee \$20). Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

(c) A child care facility will apply to the licensing authority for an amended license in order to change the number of stars. An application for a different star level will not be approved nor an amended license issued until on-site visits have been made and it has been determined that the child care facility meets all applicable criteria.

(4) PROVISIONAL 2-STAR LICENSE: Newly licensed programs receiving child care subsidy will be given a provisional 2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

(5) MILITARY LICENSE:

(a) Centers on military installations are governed and inspected by the United States department of defense (DoD) and obtain national accreditations. Therefore, such centers do not require an inspection by the New Mexico licensing authority.

(b) In order to participate in the child care assistance program, providers licensed by the DoD must submit the following:

(i) Licensing application
(ii) Annual submission of a letter or memo detailing the approved DoD background clearance status for the director and all staff members in accordance with 8.9.6 NMAC, to include the individual's name, date of birth, and home address;

(iii) DoD annual certification;

(iv) DoD approved accreditation, if applicable; and

(v) W-9 form and supporting documentation, if applicable.

(6) TRIBAL GOVERNMENT LICENSE:

(a) Centers and homes operating on sovereign tribal lands are governed and inspected by the federal Tribal Child Care and Development Fund (CCDF) Lead Agency. Therefore, such centers and homes do not require an inspection by the New Mexico licensing authority.

(b) Providers licensed by the Tribal CCDF Lead Agency program must submit the following to obtain licensure from ECECD:

- (i) Licensing application;
- (ii) Proof of Tribal CCDF Lead Agency approval;
- (iii) Annual submission of a letter or memorandum attesting that the Tribal CCDF's programs' director and all staff are in compliance with state, federal or Tribal background check clearances;
- (iv) Annual submission of a list of the director and all staff employed by the Tribal CCDF program, listing each individual staff member's name, date of birth, and home address; and
- (v) W-9 form and supporting documentation, if applicable.

B. RENEWAL OF LICENSE:

(1) A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. ECECD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a \$25 late fee must be submitted with the renewal fee.

(2) All licensed facilities must maintain an original background check eligibility letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence. The teenage child's guardian shall sign the annual statement on behalf of the teenage child.

(3) Upon receipt of a notarized renewal application, the required fee and the completion of an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the child care facility is in compliance with these regulations.

(4) If a licensee fails to submit a notarized renewal application with the required fee before the current license expires, the licensing authority may require the agency to cease operations until all licensing requirements are completed.

C. POSTING OF LICENSE: A child care facility will post the license on the licensed premises in an area readily visible to parents, staff members, and visitors.

D. NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A licensee will not transfer a license by assignment or otherwise to any other person or location. The license will be void and the licensee will return it to the licensing authority when:

- (1) the owner of the child care facility changes;
- (2) the child care facility moves;
- (3) the licensee of the child care facility changes; or
- (4) the child care facility closes.

E. AUTOMATIC EXPIRATION OF LICENSE: A license will expire automatically at midnight on the expiration date noted on the license unless earlier suspended or revoked, or:

- (1) on the day a child care facility closes;
- (2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;
- (3) on the day a child care facility moves.

F. ACCREDITED PROGRAMS: Accredited programs must meet and maintain all licensing standards and their ECECD-approved national accreditation without a lapse in order to be designated as a 5-star facility. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.9.4.11 NMAC - N, 11/01/2022]

8.9.4.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

A. The licensing authority may revoke, suspend, or restrict a license, reduce star status, deny an initial or renewal license application, impose monetary sanctions pursuant to 7.1.8 NMAC, put in place conditions of operation, issue a cease and desist letter, impose other sanctions or requirements against a licensee, or reduce to a

base level of child care assistance reimbursement a licensee who is in receipt of a higher than base level of child care assistance reimbursement, for any of the following reasons:

- (1) violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the licensee cannot reasonably safeguard the health and safety of children;
- (2) failure to allow access to the licensed premises by authorized representatives of the licensing authority;
- (3) misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;
- (4) allowing any person to be active in the child care facility who is or would be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC; this will include all adults and teenaged children living in a family child care or group child care home operated in a private residence whether or not they are active in the child care operation;
- (5) failure to timely obtain required background checks;
- (6) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to employ any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;
- (7) allowing the number of children in the child care facility to exceed its licensed capacity;
- (8) substantiated abuse or neglect of children by an educator, staff member, volunteer, or household member as determined by ECECD, CYFD, or a law enforcement agency;
- (9) failure to comply with provisions of the other related regulations listed in these regulations;
- (10) discovery of repeat violations of the regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous licensure periods;
- (11) discovery of prior revocations or suspensions that may be considered when reviewing a facility's application for licensure or license renewal;
- (12) loss of accreditation, regardless of reason, will result in a reduction in star status;
- (13) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present or sold on the premises at any time, regardless of whether children are present;
- (14) making false statements or representations to the licensing authority with the intent to deceive, which the licensee knows, or should know to be false; or
- (15) background clearance suspension or denial.

B. Commencement of an ECECD, CYFD or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

C. A suspension, revocation, or conditions of operations imposed pursuant to Subsection A of this Section may take effect immediately if in the discretion of the department that the health, safety or welfare of a child is at risk, or has reason to believe that the caregiver cannot reasonably safeguard the health and safety of children.

D. The Early Childhood Education and Care Department notifies the licensee in writing of any action taken or contemplated against the license/licensee. The notification shall include the reasons for the department's action.

E. The licensee may obtain administrative review of any action taken or contemplated against the license/licensee.

F. The administrative review shall be conducted by a hearing officer appointed by the department's secretary.

G. If the action is to take effect immediately, the department affords the licensee the opportunity for an administrative appeal within five working days. If the license is suspended pending the results of an investigation, the licensee may elect to postpone the hearing until the investigation has been completed.

H. If after the imposition of an immediate suspension the department takes additional actions including additional suspension, revocation, or conditions of operations, the immediate action will stay in effect until the following action goes into effect or an appeal of the following action is concluded and the action is either upheld or overturned.

I. If the contemplated action does not take immediate effect, and the licensee is given advance notice of the contemplated action, the licensee is allowed 10 working days from date of notice to request an administrative appeal.

J. In circumstances in which Public Health Act, Subsection N of Section 24-1-5 NMSA 1978 (2005) may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a licensee, the provisions of Subsection N of Section 24-1-5 shall apply as follows.

- (1) The department shall consult with the owner or operator of the child care facility.
- (2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.
- (3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of 15 days.
- (4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.
- (5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.
- (6) Nothing in Subsection J of 8.9.4.12 NMAC shall be construed to require licensure that is not otherwise required in this regulation.

K. The licensing authority may require a direct provider of care to undergo an additional background check if information shows any of the following:

- (1) that the direct provider of care has pending charges for any criminal offense;
- (2) that the direct provider of care has a pending or substantiated CYFD protective services or juvenile justice service referral;
- (3) that the direct provider of care has any criminal history or history of a referral to CYFD protective services or juvenile justice services discovered after the most recent background check; or
- (4) that the direct provider of care is the subject of an allegation of abuse and neglect in any licensed facility.

L. There shall be no right to administrative review for reduction in star level resulting from loss of, or failure to maintain, national accreditation status. The licensee shall be bound by the rules, regulations, policies and procedures implemented by the national accreditation body that governs its accreditation process.

M. There shall be no right to an appeal or administrative review when the licensing authority issues a cease and desist letter; provided, however, that the licensee shall have the right to an appeal or administrative review of any subsequent action taken by the licensing authority as set forth herein.

N. 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. The licensing authority shall reduce the star level of a provider granted national accreditation status by the department to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. If a provider holding accreditation from an accrediting body no longer approved by ECECD fails to maintain these requirements, this will result in the provider reimbursement reverting to the base reimbursement rate. The provider may increase their star level only by meeting FOCUS criteria or by attaining ECECD approved national accreditation status. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.

[8.9.4.12 NMAC - N, 11/01/2022]

8.9.4.13 CIVIL MONETARY PENALTIES:

A. The following factors shall be considered by the licensing authority when determining whether to impose civil monetary penalties:

- (1) death or serious injury to a child;
- (2) abuse, neglect or exploitation of a child;
- (3) regulatory violations which immediately jeopardize the health and safety of a child;
- (4) numerous violations, which combined, jeopardize the health and safety of a child;
- (5) repetitive violations of the same nature found during two or more consecutive on-site visits or surveys of a child care facility;
- (6) failure of a child care facility to correct violations found during previous surveys or visits;

- (7) intentional misrepresentation regarding condition of the facility;
- (8) effect of a civil monetary penalty on financial viability of the facility; or
- (9) extenuating circumstances, which allow the licensing authority greater discretion to

consider both mitigating and exacerbating circumstances not specifically defined.

B. An initial base penalty amount is assessed when a civil monetary penalty is imposed. The base penalty amount is calculated at the rate of the most serious deficiency. For example, the base penalty amount is assessed at the rate applicable to a class A deficiency when the survey or investigation results in citation of regulatory violations comprising class A, class B, and class C deficiencies, because the most serious regulatory violation is the class A deficiency. The base penalty is assessed once for the deficiencies cited by the licensing authority during any particular survey or investigation.

C. The licensing authority has the discretion to impose an initial base penalty at any amount within the range for each deficiency level.

- (1) Class A deficiency: not less than \$500 and not greater than \$5,000.
- (2) Class B deficiency: not less than \$300 and not greater than \$3,000.
- (3) Class C deficiency: not less than \$100 and not greater than \$500.

[8.9.4.13 NMAC - N, 11/01/2022]

8.9.4.14 WAIVERS:

A. Programs, facilities or homes licensed under these regulations may request a waiver from any of the requirements of these regulations by applying, in writing, to the licensing authority for a waiver. The request should identify the regulatory requirement for which a waiver is requested, the reason for the waiver, and any action proposed to meet the intent of the regulation.

B. Requests for waivers that involve construction of any type on a current licensed premise must be reviewed and approved by the licensing authority prior to the initiation of the construction.

C. Requests for waivers will be reviewed and approved or denied within 30 calendar days of receipt by the licensing authority.

D. Requests for waivers may include temporary operating standards following an ECECD recognized disaster.

[8.9.4.14 NMAC - N, 11/01/2022]

8.9.4.15 VARIANCES - CURRENTLY LICENSED FACILITIES:

A. If a child care facility licensed on the date these regulations are promulgated provides the services prescribed but fails to meet all building requirements, the licensing authority will grant a variance, provided that the variances granted:

- (1) will not create a hazard to the health, safety, or welfare of children and staff members;
- and
- (2) is for building requirements that cannot be corrected without an unreasonable expense to the child care facility.

B. Variances granted will continue in force as long as the child care facility continues to provide services pursuant to these regulations and will not violate the criteria of Subsection A of this section.

C. The licensing authority will grant a variance for those requirements contained in 8.9.4.8 NMAC related regulations and codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.9.4.15 NMAC - N, 11/01/2022]

8.9.4.16 VARIANCES - NEW CHILD CARE FACILITY: A new child care facility may be located in an existing building or a newly constructed building.

A. If opened in an existing building, the licensing authority may grant a variance for those building requirements the child care facility cannot meet provided any variance is not in conflict with existing building and fire codes.

B. A new child care facility opened in a newly constructed building will meet all requirements of these regulations.

C. The licensing authority will make all variances granted a permanent part of the child care facility file.

D. The licensing authority may grant a variance for those requirements contained in 8.9.4.8 NMAC related regulations and codes if the licensee provides written documentation from the relevant authority identified in these regulations that the licensee complies with those requirements or has been granted a waiver or variance from them.

[8.9.4.16 NMAC - N, 11/01/2022]

8.9.4.17 SURVEYS FOR CHILD CARE FACILITIES:

A. The licensing authority will conduct a survey at least twice a year in each child care facility using these regulations as criteria. The licensing authority will conduct additional surveys or visit the child care facility additional times to provide technical assistance, to check progress on correction of deficiencies found on previous surveys, or to investigate complaints.

B. Upon the completion of a survey, the licensing authority will discuss the findings with the licensee or their representative and will provide the child care facility with an official written report of the findings and a request for a plan or plans of correction, if appropriate.

C. The licensee, director, or operator, will submit within 10 working days after the date of the survey, a corrective action plan to the licensing authority for deficiencies found during the survey. The corrective action plan will be specific on how and when the child care facility will correct the deficiency or deficiencies.

D. The licensing authority may accept the corrective action plan as written or require modifications of the plan.

E. By applying for either a new license or a license renewal, the licensee grants the licensing authority representative the right to enter the premises and survey the child care facility, including inspection and copying of child care facility records, both while the application is being processed and, if licensed, at any time during the licensure period.

F. The licensing authority may or may not announce a survey. The licensee must grant immediate access upon the licensing authority's arrival. At all times, a person who is knowledgeable in the daily operations, has access to all records and locked areas, and can represent the licensee or director for survey purposes will be present in the child care facility.

G. If a facility has video cameras on the premises that has recording capabilities, footage must be accessible to the licensing authority upon request.

[8.9.4.17 NMAC - N, 11/01/2022]

8.9.4.18 COMPLAINTS:

A. The licensing authority will process any complaint regarding any child care facility licensed or required to be licensed under these regulations. The investigatory authority of the licensing authority is limited to matters pertaining to these regulations.

B. A licensing authority representative receiving complaints will ask complainants to identify themselves and provide all information necessary to document the complaint.

C. The licensing authority will investigate any complaint in which the health, safety, or welfare of a child could be in danger. The complaint will be reviewed and prioritized immediately according to the nature and severity of the complaint. The licensing authority follows established protocols and procedures for prioritizing, tracking, initiating and reporting of complaints and complaint investigations. Complaints will be investigated in a timely manner as follows.

(1) Priority 1 complaints: investigation will be initiated within 24 hours.

(2) Priority 2 complaints: investigation will be initiated within three working days.

(3) Priority 3 complaints: investigation will be initiated within five working days.

(4) Initiation timeframes for investigations may be shortened based on the severity and nature of the complaint, but timeframes may not be extended.

D. The licensee shall cooperate in good faith with any investigation by the licensing authority. Obstruction of an investigation may subject the licensee to sanctions, up to revocation.

E. Action by the licensing authority:

(1) The licensing authority will provide a written letter on the results of the investigation to both the licensee of the child care facility that is the subject of the complaint and the complainant.

(2) If the licensing authority finds the complaint is unsubstantiated, it will be so designated and the licensing authority will take no further action.

(3) If the licensing authority finds that a complaint is substantiated, it will make the complaint part of the licensing authority's file on the child care facility. The following additional actions will, at the discretion of the licensing authority, be taken:

(a) the licensing authority will require the child care facility to submit and comply with a written corrective action plan; or

(b) the licensing authority will sanction the child care facility administratively including, without limitation, suspension, revocation, or restriction of a license; or

(c) the licensing authority will file criminal charges or pursue civil remedies.

F. The licensing authority will report all cases of suspected child abuse and neglect to both CYFD's children's protective services and the local law enforcement agency.

[8.9.4.18 NMAC - N, 11/01/2022]

8.9.4.19 BACKGROUND CHECKS: Background checks will be conducted in accordance with the most current regulations related to background checks and employment history verification provisions as promulgated by the Early Childhood Education and Care Department pursuant to 8.9.6 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC on all required individuals at least once every five years from the original date of eligibility regardless of the date of hire or transfer of eligibility. A direct provider of care may request a transfer of background check eligibility if:

A. the staff member was found eligible as a direct provider of care in a child care center, licensed child care, home licensed group home, or registered home within the past five years and has not been separated from employment for more than 180 days; and

B. submits an application for transfer and is found eligible pursuant to 8.9.6.11 NMAC.

[8.9.4.19 NMAC - N, 11/01/2022]

8.9.4.30 FAMILY CHILD CARE HOME AND GROUP CHILD CARE HOME REGULATIONS:

APPLICABILITY: A private dwelling required to be licensed under regulations in 8.9.4.31 NMAC through

8.9.4.38 NMAC which meets one of the following criteria.

A. Family child care home - A private dwelling required to be licensed pursuant to these regulations which provides care, services, and supervision to at least five but no more than six children for a period of less than 24 hours of any day. The licensee will reside in the home and be the primary educator. A family day care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose.

B. Group child care home - A private dwelling or other building on the premises required to be licensed pursuant to these regulations which provides care, services, and supervision for at least seven but not more than 12 children for a period of less than 24 hours of any day. The licensee will reside in the home and be the primary educator. A group day care home intending to provide care for more than two but not to exceed four children under the age of two must be specifically licensed for this purpose.

[8.9.4.30 NMAC - N, 11/01/2022]

8.9.4.31 LICENSURE REQUIREMENTS FOR HOMES:

A. LICENSING REQUIREMENTS:

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A home will submit a new application to the licensing authority before changing anything required to be stated on the license such as dates, capacity, operator, or address.

(3) **BACKGROUND CHECK:** In addition to the basic requirements at 8.9.4.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. A household member reaching the age of 18 must submit their background check in accordance with the most current provisions of 8.9.6 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) **ZONING AND OTHER APPROVALS:** An applicant will have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority if applicable;

(c) current written approval from the New Mexico environment department or other environmental health authority for: (i) Private water supply, if applicable; (ii) Private waste or sewage disposal, if applicable; and (iii) A swimming pool, if applicable.

(5) **SCHEDULE:** All applications for a new license will include a description of the home's proposed activities and schedule.

(6) **INITIAL SURVEY:** The licensing authority will schedule a survey for a home when it receives a complete application with all supporting documents.

B. CAPACITY OF A HOME:

(1) The number of children in a home, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed home, including the educator's own children under the age of six, in the capacity of a home, even if the children are on a field trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of non-residential school age children.

(3) A home may be licensed for up to 12 children.

(4) A home licensed as a family day care home under these regulations providing care for a maximum capacity of six children may care for up to four children under the age of two providing a second educator is present in the home and the home is licensed to provide such care. A home licensed as a group day care home under these regulations providing care for a maximum of 12 children may care for up to four children under age two providing a second educator is present in the home and the home is licensed to provide such care.

(5) A home must have 35 square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than 12 children. A home must have at least one bathroom with a toilet and sink. For a home licensed for no more than six children, one activity room will be measured. For a home licensed for 12 children, no more than two rooms will be measured. Children shall not be cared for in unlicensed areas of the home.

(6) The home will have an outdoor play area, which must be contained by a fence. Outside play areas must be on the premises or approved by the licensing authority.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a) a lost, or missing or unattended child;
- (b) a serious injury;
- (c) the abuse or neglect of a child;
- (d) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
- (e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;
- (f) any legal action against a home, household member, or staff members;
- (g) any incident that could affect the background check eligibility of any cleared person related to this license;
- (h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or
- (i) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the home. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.31 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.
[8.9.4.31 NMAC - N, 11/01/2022]

8.9.4.32 ADMINISTRATIVE REQUIREMENTS FOR HOMES:

A. ADMINISTRATIVE RECORDS: A licensee will post the child care home license in an area readily visible to parents and visitors. The licensee will also keep on file:

- (1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;
- (2) the current child care regulations;
- (3) the guidance policy;
- (4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and
- (5) an up to date emergency evacuation and disaster preparedness plan, which shall include steps for evacuation, relocation, shelter-in-place, lock-down, communication, reunification with parents, individual plans for children with special needs and children with chronic medical conditions, accommodations of infants and toddlers, and continuity of operations. The plan shall be approved annually by the licensing authority and the department will provide guidance on developing these plans.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

- (1) mission statement;
- (2) philosophy statement; and
- (3) curriculum statement.

C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook. Upon updating the parent handbook, changes must be approved and submitted to licensing and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following:

- (1) GENERAL INFORMATION:
 - (a) mission statement;
 - (b) philosophy statement;

- (c) program information (location, license information, days and hours of operation, services offered);
- (d) name of licensee and how he/she may be reached;
- (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
- (f) daily schedule;
- (g) a statement supportive of family involvement that includes an open door policy

to the family or group child care home;

- (h) appropriate dress for children, including request for extra change of clothes;
- (i) celebrating holidays, birthdays and parties; and
- (j) disclosure to parents that the licensee does not have liability or accident

insurance coverage.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) policies and procedures for expulsion of children. Policies and procedures shall include how the home will maintain a positive environment and will focus on preventing the expulsion of children age birth to five. The home must develop policies that include clear, appropriate, consistent expectations, and consequences to address disruptive student behaviors; and ensure fairness, equity, and continuous improvement;

- (d) fee payment procedures, including penalties for tardiness;
- (e) notification of absence;
- (f) fee credits, if any (e.g. for vacations, absences, etc.);
- (g) field trip policies;
- (h) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (i) emergency procedures, safety policies, and disaster preparedness plan;
- (j) snow days and school closure;
- (k) confidentiality policy;
- (l) child abuse/neglect reporting procedure;
- (m) guidance policy;
- (n) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older); and
- (o) employee cellular telephone usage policy that directs and defines safe and appropriate use.

D. CHILDREN'S RECORDS: A home will maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for 12 months after the child's last day of attendance. Records will contain at least:

(1) PERSONAL INFORMATION:

- (a) name of the child, date of birth, gender, home address, mailing address and telephone number;
- (b) names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and work telephone numbers;
- (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian; identification of person authorized by the parent or guardian to pick up the child shall be verified at pick up;
- (d) date the child first attended the home and the date of the child's last day at the home;
- (e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement. A grace period of a maximum of 30 days will be granted for children in foster care, homeless children and youth, or at-risk children and youth as determined by the department;
- (f) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or potential signs of abuse or neglect, both of which must be reported to a parent or guardian;

(g) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities; authorization must contain fieldtrip destination, date and time of fieldtrip and expected return time from fieldtrip;

(h) written authorization from the child's parent or guardian for the educator to apply sunscreen, insect repellent and, if applicable, diaper cream to the child;

(i) a record of the time the child arrived and left the home and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;

(j) an enrollment agreement must be signed by a parent or guardian with an outline of the services and the costs being provided by the home; and

(k) a signed acknowledgement that the parent or guardian has read and understands the parent handbook.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child;

(b) the name and telephone number of two people to contact in the local area in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times.

(c) the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency;

(d) a document giving a home permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian; and

(e) if applicable, legal documentation regarding the child, including but not limited to: restraining orders, guardianship, powers of attorney, court orders, and custody by children's protective services.

E. PERSONNEL RECORDS: A home will keep the following records on file and make them available to the licensing authority.

(1) Documentation of a background check and employment history verification for all staff members and all adults living in the home. If a background check is in process for a staff member, then documentation of the notice of provisional employment showing that it is in process must be placed in the file. A background check must be conducted at least once every five years on all required individuals.

(2) An annual signed statement that the staff member would or would not be disqualified as a direct provider of care under the most current version of the background checks and employment history verification provisions pursuant to 8.9.6 NMAC.

(3) A record of the time the second educators arrived at and left work, to include breaks and lunch.

(4) A written plan for ongoing professional development for each educator that is based on the seven areas of competency, consistent with the career lattice, and based on the individual's goals. Family child care homes who do not have employees are exempted from this requirement.

F. PERSONNEL HANDBOOK: The educator will give each non-resident employee a personnel handbook that covers all matters relating to employment. Upon updating the personnel handbook, changes must be approved and submitted to the licensing authority. After any changes, notices must be sent out to families, parents, or guardians and posted in a common area. The handbook will include the following critical contents:

(1) job description of second educator;

(2) benefits, if provided, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

(3) code of conduct;

(4) training requirements, professional development opportunities;

(5) procedures and criteria for performance evaluations;

(6) policies on absence from work;

(7) procedures for resignation or termination;

(8) copy of licensing regulations;

(9) policy on parent involvement;

(10) health policies related to both children and staff;

(11) policy on sexual harassment;

(12) child guidance policy;

(13) anti-discrimination policy that promotes the equal access of services for all children and families and prohibits discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older);

- (14) confidentially statement;
- (15) plan for retention of qualified staff; and
- (16) employee cellular telephone usage policy that directs and defines safe and appropriate

use.

[8.9.4.32 NMAC - N, 11/01/2022]

8.9.4.33 PERSONNEL AND STAFFING REQUIREMENTS FOR HOMES:

A. PERSONNEL AND STAFFING REQUIREMENTS:

- (1) A licensee will not allow any staff member, including the licensee, or any other adult living in the home involved in an incident which would disqualify that staff member or other adult under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children or to reside in the home.
- (2) All staff members will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.
- (3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.
- (4) The licensee shall be in the licensed child care home during at least seventy-five percent of the home's core hours of operation.
- (5) Substitutes, volunteers and part time second educators counted in the staff/child ratios shall meet the same requirements as regular staff members, except for training requirements. Substitutes and part time second educators routinely employed in the home but working 20 hours or less a week shall complete half the required training hours. Such employees working more than 20 hours per week shall complete all required training hours. The primary educator in a licensed home shall complete all required training hours, regardless of the number of hours worked.
- (6) A home licensed to provide care for six or fewer children will have at least one educator in the home at all times. A home licensed to provide care for more than two children under the age of two will have at least two educators in the home at all times.
- (7) A home licensed for seven to 12 children will have at least two educators at the home when more than six children are present or when more than two children under the age of two are present.
- (8) Children will never be left unattended. An educator will be with the children at all times whether activities are inside or outside of the home. Educators will be onsite, available and responsive to children during all hours of operation. Providers and secondary caregivers shall perform head counts at regular intervals throughout the day.

B. STAFF QUALIFICATIONS AND TRAINING:

- (1) All new educators regardless of the number of hours per week will complete the following training within three months of their date of hire. All current educators will have three months to comply with the following training from the date these regulations are promulgated:
 - (a) prevention and control of infectious diseases (including immunization);
 - (b) prevention of sudden infant death syndrome and use of safe sleeping practices;
 - (c) administration of medication, consistent with standards for parental consent;
 - (d) prevention of and response to emergencies due to food or other allergic reactions;
 - (e) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
 - (f) prevention of shaken baby syndrome and abusive head trauma;
 - (g) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
 - (h) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
 - (i) precautions in transporting children (if applicable);
 - (j) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component; and
 - (k) recognition and reporting of child abuse and neglect.
- (2) A home will keep a training log on file including the date of the training, name of educator, hours earned, subject/competency area, source of training, and training certificates.
- (3) Educators working for a home will receive at least 12 documented hours of training

during each year, including six hours in child growth and development and three hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven competency areas. The competency areas are:

- (a) child growth, development and learning;
- (b) health, safety, nutrition and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

(4) An educator cannot count more than three hours in first aid or CPR training toward the total hours required. Online first aid and CPR training will not be approved unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. For this purpose, a year begins and ends at the anniversary date of employment. Training must be provided by individuals who are registered on the New Mexico trainer registry. On-line training courses shall count for no more than eight hours each year. If the 45-hour entry level course or its equivalent is taken online, it is exempt from the online training limitation. Identical trainings shall not be repeated for the purpose of obtaining credit.

(5) Infant and toddler educators must have at least two hours of training in infant and toddler care within six months of starting work. The two hours will count toward the 12-hour requirement in Paragraph (3).

(6) The primary educator will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment.

(7) A home must have all educators certified in first aid and cardio-pulmonary resuscitation (CPR) with a pediatric component. Staff shall obtain the first aid and CPR certification within three months of being hired. All staff shall maintain current first aid and CPR certification. Prior to licensure, the primary caregiver shall have CPR certification.

[8.9.4.33 NMAC - N, 11/01/2022]

8.9.4.34 SERVICES AND CARE OF CHILDREN IN HOMES:

A. GUIDANCE:

(1) A home will have written policies and procedures clearly outlining guidance practices. Care-givers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Guidance will be consistent and age appropriate.

(3) Guidance shall be positive and include redirection and clear limits that encourage the child's ability to become self-disciplined. The use of physical or mechanical restraints is prohibited unless due to documented emergencies or medically documented necessity.

(4) A home will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

(5) Children will not be lifted by the arms, hands, wrist, legs, feet, ankles, or clothing.

B. NAPS OR REST PERIOD:

(1) A home will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(2) A home shall allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Each child will have an individual bed, cot, or mat that is sanitized after each use, regardless of the same child using the mat or cot. Linens can be used multiple times over the course of a week but must be laundered before being used by another child.

(4) Cribs, cots or mats shall be spaced at least 30 inches apart to permit easy access by adults to each child. If the room used for sleeping cannot accommodate 30 inches of spacing between children, educators

shall space children as far as possible from one another. There must be enough room to permit easy access to all children without moving cribs, cots or mats. Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths of an inch thick. Mats and cots shall be cleaned and linens must be laundered before being used by another child.

(5) Educators shall ensure that nothing covers the face or head of a child aged 12 months or younger when the child is laid down to sleep and while the child is sleeping. Educators shall not place anything over the head or face of a child over 12 months of age when the child is laid down to sleep and while the child is sleeping.

(6) Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from physician justifying the sleeping arrangement. A physician's note must contain a timeframe for the specific sleep arrangement. The facility shall adhere to the timeframe recommended by the doctor.

(7) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping. Illumination must be enough to see the entire room, clearly observe sleeping children and allow for quiet activities for non-sleeping children.

(8) Children shall be directly supervised during naptime.

(9) All children shall sleep in the licensed area of the home. No children shall be allowed to sleep behind closed doors.

C. ADDITIONAL REQUIREMENTS FOR INFANTS AND TODDLERS:

(1) The home will provide a crib for each infant and, when appropriate, for a toddler.

(2) Cribs will meet the most current federal standards and be kept in good repair. A home will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs. No child shall be allowed to sleep in a play pen, pack and play, infant swing, car seat and/or bouncer. Only a crib meeting the CPSC 16 CFR 1219 or 1220 guidelines will be allowed.

(3) No child will be allowed to sleep in a playpen, pack and play, car seat, stroller, swings, bouncers or highchairs, or other equipment not intended for sleep purposes.

(4) Children under the age of 12 months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician. Providers shall place infants in cribs for safe sleeping.

(5) A home will not admit any child under the age of six weeks except with the written approval of a licensed physician.

(6) Throughout the day, an educator will give each infant and toddler physical contact and attention. An educator will hold, talk to, sing to and take inside and outside walks with the child. An educator will respond immediately to all cries of infants and to the cries of all children within two minutes.

(7) An educator will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(8) Infants shall not be allowed to be confined to one area for prolonged periods of time unless the infant is content and responsive. Children that are awake should be moved every 30 minutes to offer new stimulation.

(9) A home will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(10) Infants shall either be held or be fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Infants and toddlers shall not be placed in a laying position while drinking bottles or sippy cups. The carrying of bottles and sippy cups by young children throughout the day or night shall not be permitted.

(11) Children will not be allowed to walk or run with pacifiers. Pacifiers will not be used outside of cribs in rooms with mobile infants or toddlers. Pacifiers will be labeled and not shared. Pacifiers will not be tied to the child. Pacifiers that contact the floor or ground will be cleaned and sanitized appropriately.

(12) Each infant shall be allowed to form and observe his or her own pattern of feeding, sleeping, and waking periods.

(13) Food served shall meet the nutritional needs of the infant or toddler. Foods shall be developmentally appropriate for each infant served.

D. DIAPERING AND TOILETING:

(1) An educator will plan toilet training with a parent so the toilet routine is consistent. A home will not attempt to toilet train a child who is not developmentally ready.

(2) A home will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single use gloves when changing a diaper and wash their hands after changing a diaper. Food service gloves are not permissible for diaper changing.

(3) A home will have a supply of dry, clean clothing and diapers sufficient to meet the needs of the child. A home will label diapers and diapering supplies for each child and store them separately. Diaper bags will be inaccessible to children.

(4) An educator will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change. Soiled diapers shall be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

E. ADDITIONAL REQUIREMENTS FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five years as well as those of school age. If family or group home educators believe that a child may have a delay or disability, possible resources for referral and assistance are provided to parents when appropriate. No referral for special needs services to an outside agency will be made without a parent's consent. Family Education Right and Privacy Act (FERPA) will be respected at all times.

(2) Child care facilities are responsible for staff awareness of the Americans with Disabilities Act (ADA) as it relates to enrolling and caring for children with disabilities.

F. NIGHT CARE: In addition to all other requirements, a home providing night care will have an educator onsite, physically available and responsive to children who need attention during the night.

G. PHYSICAL ENVIRONMENT:

(1) Environment shall be organized into functional identifiable learning areas. Family child care homes that have dedicated space shall have at least four of the following learning areas. Family child care homes that do not have dedicated space shall have at least three of the following learning areas:

- (a) a place for messy play;
- (b) a place for loud, active play;
- (c) a place for playing quietly;
- (d) a place to pretend; and
- (e) a place to read.

(2) Each learning area is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) Learning areas have adequate space and noisy and quiet areas are arranged so that children's activities can be sustained without interruption.

(5) Materials are well cared for and organized by type. Where appropriate, materials are labeled with words or pictures. Adaptations to materials are made when needed to accommodate various abilities of all children. Unused materials are stored in inaccessible storage.

(6) Examples of children's individually expressed artwork are displayed in the environment at the children's eye level.

(7) Floor surface is suitable for activities that will occur in each learning area.

(8) File and storage space is available for educators' materials.

H. SOCIAL-EMOTIONAL RESPONSIVE ENVIRONMENT:

(1) Educators remain calm in stressful situations.

(2) Educators are actively engaged with children. Educators talk, actively listen and respond to children appropriately by responding to children's questions and acknowledging their comments, concerns, emotions and feelings.

(3) Educators help children communicate their feelings by providing them with language to express themselves.

(4) Educators model appropriate social behaviors, interactions and empathy. Educators respond to children that are angry, hurt, or sad in a caring and sensitive manner. Educators make appropriate physical contact to comfort children who are distressed.

I. EQUIPMENT AND PROGRAM:

(1) Toys and equipment must be safe, durable, and easy to clean, non-toxic and sanitized daily. Toys shall be disinfected, at a minimum of, once per week. Frequency of disinfection of toys must be increased in the event of a communicable disease, following appropriate guidance.

(2) A home will not use accordion-style baby gates.

- (3) A home will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time, each child can be individually involved.
- (4) A home will store equipment and materials for children’s use within easy reach of the children, including those with disabilities. A home will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.
- (5) A home will provide children with toys and other materials that are safe, developmentally appropriate, and encourage the child’s creativity, social interaction, and a balance of individual and group play.
- (6) A home will post a daily activity schedule. A home will follow a consistent pattern for routine activities such as meals, snacks and rest.
- (7) Media viewing will not be permitted for children less than two years of age. Media viewing for children two years and older will be limited to six hours per month, but not to exceed one full length film in one day. Programs, movies, music and music programs shall be age appropriate and shall not contain adult content. Media viewing includes all of the above as well as computers, tablets, phones, smart devices and screen-based learning equipment. An exception is media that is used for curriculum-based purposes or led by an educator.
- (8) Children and family members shall be acknowledged upon arrival and departure.
- (9) Full-time children shall have a minimum of 60 minutes of physical activity daily, preferably outside. Part time children shall have a minimum of 30 minutes of physical activity daily, preferably outside. The provider will ensure drinking water is available and maintained at a cool temperature while playing outside.
- (10) Equipment and program requirements apply during all hours of operation of the licensed facility.

J. OUTDOOR PLAY:

- (1) Outdoor play equipment used in child care homes shall be:
 - (a) intended for public (non-residential) use and installed and maintained according to the manufacturer’s instructions; or
 - (b) if intended for residential use, shall be safe and securely anchored.
- (2) A home will enclose the outdoor play area with a fence at least four feet high and with at least one latched gate available for an emergency exit.
- (3) A home will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides. Based on the consumer product safety commission (CPSC) playground guidelines, grass, artificial turf, and rubber play mats are not energy absorbent material (as determined by Subsection N of 8.9.4.8 NMAC).

Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No. 325), Handbook for Public Playground Safety.						
When no requirement is provided for a specific height of equipment, we have used the requirement for the next higher height, so requirements are conservative, erring on the side of safety.						
Equipment Height	Wood Chips	Double Shredded Bark	Uniform Wood Chips	Fine Sand	Coarse Sand	Fine Gravel
Uncompressed Depths of Materials In Fall Zone						
Five feet or less	6 inches	6 inches	6 inches	6 inches	6 inches	6 inches
Six feet	6 inches	6 inches	6 inches	12 inches	12 inches	6 inches
Seven feet	6 inches	9 inches	9 inches	12 inches	12 inches	9 inches
Eight feet	9 inches	9 inches	12 inches	12 inches	12 inches	12 inches
Nine Feet	9 inches	9 inches	12 inches	12 inches	N/A	12 inches
Ten Feet	9 inches	9 inches	12 inches	N/A	N/A	12 inches
For poured or installed foam or rubber surfaces, the materials must meet the ASTM F1292 requirements with written verification from the manufacturer.						

- (4) The use of a trampoline is prohibited at any time during the hours of operation or by any children receiving care at the facility.
- (5) Children shall be protected from the sun during outdoor play by providing shade (as necessary), sunscreen, proper attire and limiting the time of exposure to the elements. The provider must also

consider instructions by the child’s parent or guardian. Drinking water should be available as needed and outlined in Paragraph (9) of Subsection I of 8.9.4.34 NMAC.

K. SWIMMING, WADING AND WATER:

- (1) Each child will have written permission from a parent or guardian before the child enters a pool.
- (2) If a home has a portable wading pool:
 - (a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;
 - (b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children; and
 - (c) a home will not use a portable wading pool placed on concrete or asphalt.
- (3) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:
 - (a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;
 - (b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and
 - (c) when in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.
- (4) The following ratios shall be observed for swimming pools more than two feet deep:

Ratio for swimming pools more than two feet deep		
Age of the youngest child	Number of educators, lifeguards or volunteers	Number of children
0-23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

L. FIELD TRIPS:

- (1) A home will ensure the children’s safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection D of 8.9.4.32 NMAC for information on permission slips.
 - (2) Children will not go to a private residence other than the licensed home unless accompanied by two adults.
- [8.9.4.34 NMAC - N, 11/01/2022]

8.9.4.35 FOOD SERVICE REQUIREMENTS FOR HOMES:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home will conform to the guidelines from United States department of agriculture’s (USDA’s) child and adult care food program (CACFP) for foods, meal patterns and serving sizes.

B. MEALS AND SNACKS:

- (1) A home will provide a child a meal or snack at least every three hours except when the child is sleeping at night.
- (2) A home will serve if necessary a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the educators.
- (3) A home shall make water freely available to children.
- (4) A home that provides daily meals and snacks shall plan these to meet the minimum standards in the CACFP and to be consistent with the USDA’s current dietary guidelines for Americans, to include the following. Parents of children who have special dietary needs may provide written permission to the child care program to exempt their child from the following requirements if necessary due to such special dietary needs.
 - (a) Only one hundred percent fruit or vegetable juice shall be served. The use of fruit drinks containing less than one hundred percent or artificially flavored drinks for meals or snacks is prohibited. one hundred percent fruit or vegetable juice may be diluted with water.

(b) Only whole, pasteurized fluid milk shall be served to children between 12 and 24 months of age; reduced fat, low fat, or skim milk may be served to children who are two years and older.

(c) A wide variety of fruits and vegetables shall be served, with a preference for fresh or frozen fruits and vegetables over canned.

(5) A home will vary snacks each day and will include a selection of two different food group components from the four food group components.

C. MENUS:

(1) Weekly menus must be dated and posted in an area easily visible to parents.

(2) Menus shall be posted at least one week in advance, in a conspicuous place, for review by parents, educators and children.

(3) Menus shall include a variety of foods. The same menu will not be served twice in one week.

D. KITCHENS:

(1) A home will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A home will serve food promptly and refrigerate immediately after use. Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

(4) A home will protect food and drink from insects, rodents, and other vermin by properly storing items in an airtight container or by tightly wrapping them. A home will label and date all leftover food.

(5) If food is brought from the child's home, a home will label it with the child's name and refrigerate if necessary. A home will label and refrigerate bottles of infant formula or breast milk. Labeling is not necessary if only one child is using bottles.

(6) A home will keep food requiring refrigeration, including formula, at 41 degrees Fahrenheit or below, and frozen food at zero degrees Fahrenheit or below.

(7) Refrigerators and separate freezers will have working internal thermometers.

(8) A home will discard any leftover milk or formula, rinse bottles after use and sanitize bottles before reuse.

(9) A home will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: (a) wash with soapy water; (b) rinse with clean warm water; and (c) sanitize.

(10) A home will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

(11) A home shall thoroughly sanitize food preparation surfaces before and after each use.

E. MEAL TIMES:

(1) A home will equip dining areas with tables, chairs, eating utensils and dishes appropriate to the age of the children served. Areas will be sanitized before and after each use.

(2) A home will provide sanitary cups or glasses for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home will not allow children to share drinking or eating utensils. Disposable plates, cups and plastic utensils of food-grade, medium weight may be used for single service. Styrofoam cups may not be used at any time.

(3) Time allowed for meals shall enable children to eat at a reasonable rate.

[8.9.4.35 NMAC - N, 11/01/2022]

8.9.4.36 HEALTH AND SAFETY REQUIREMENTS FOR HOMES:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Water basins shall not be used as an alternative to running water. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating or feeding a child;

- (e) after handling pets or animals or items used by animals such as water and food bowls; and
- (f) after handling trash.
- (2) A home will label with the child's name and store separately any item used for an individual child's personal hygiene.
- (3) If a home promotes tooth brushing activities, the provider will store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

B. FIRST AID REQUIREMENTS:

- (1) A home will keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous gloves, and a thermometer.
- (2) A home will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A home will clean contaminated surfaces first with hot soapy water then with a disinfecting solution, which is effective against HIV and hepatitis B.

C. MEDICATION:

- (1) A home will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.
- (2) Homes will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian. For the purpose of this requirement (Paragraph (2) of Subsection C of 8.9.4.36 NMAC) only, non-prescription medications include sunscreen, insect repellent and diaper creams or other over the counter medications. With written authorization from the child's parent or guardian, sunscreen and insect repellent may be shared. Diaper cream shall not be shared.
- (3) The licensee will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the home. A home will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.
- (4) The licensee will keep and sign a written record of the dosage, date and time a child is given medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.
- (5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The home shall not administer expired medication.

D. ILLNESS AND NOTIFIABLE DISEASES:

- (1) Children or staff members absent due to any notifiable disease will not return to the home without a signed statement from a physician.
- (2) A home will separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.
- (3) A home will send a child home when:
 - (a) the child's oral temperature is 101 degrees Fahrenheit or greater or armpit temperature is 100.4 degrees Fahrenheit or greater and the child shows signs of illness or behavior changes; or
 - (b) the educator observes signs of contagious disease or severe illness.

[8.9.4.36 NMAC - N, 11/01/2022]

8.9.4.37 TRANSPORTATION REQUIREMENTS FOR HOMES:

- A.** When a home provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable, fully-charged fire extinguisher, first-aid kit, first-aid manual, water and blanket.
- B.** A home will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows.
 - (1) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat.

If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(2) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

(4) Children seven years of age through 12 years of age shall be secured in a child passenger restraint device or by a seat belt.

C. Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out.

D. A home will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home will ensure children do not cross a street unsupervised after leaving the vehicle.

E. No one will smoke, use e-cigarettes or vaporizers in a vehicle used for transporting children.

F. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

G. At least one adult transporting children shall be currently certified in first aid and cardiopulmonary resuscitation with a pediatric component.

H. Vehicles operated by the home provider to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees Fahrenheit. If the outside air temperature falls below 50 degrees Fahrenheit the provider will ensure the vehicle is heated.

I. Providers will conduct frequent head counts on all trips and when loading and unloading the vehicle.

[8.9.4.37 NMAC - N, 11/01/2022]

8.9.4.38 BUILDING, GROUND AND SAFETY REQUIREMENTS FOR HOMES:

A. HOUSEKEEPING:

(1) An educator will keep the premises, including furniture, fixtures, toys and equipment clean, safe, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles in kitchens and in outdoor areas will have a tight fitting lid, be durable and constructed of materials that will not absorb liquids.

B. PEST CONTROL:

(1) All licensed child care homes must use a New Mexico licensed pest applicator whenever applying pesticides on the home's buildings and grounds.

(2) The pest control company may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides and insecticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides, herbicides, weed killer and other natural repellants.

C. MECHANICAL SYSTEMS:

(1) A home will maintain comfortable temperatures (68 degrees through 82 degrees Fahrenheit) in all rooms used by children. A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a home exceeds the 82 degrees Fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A home will not use unvented heaters, open flame heaters or portable heaters. A home will install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, infrared heaters, ceramic heaters, hot water baseboard heaters hotter than 110 degrees Fahrenheit, fireplaces, fireplace inserts and wood stoves.

(3) A home must maintain all heating and cooling equipment so that it is in good working order.

(4) A home will provide fresh air and control odors by either mechanical or natural ventilation. If a home uses a window for ventilation, it will have a screen. If a door is used for fresh air ventilation, it must have a screen door.

(5) Water coming from a faucet will be below 110 degrees Fahrenheit. A home will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

D. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) A home will use U/L approved equipment only and will properly maintain this equipment.

(2) All electrical outlets within reach of children will be safety outlets or will have protective covers.

(3) The use of multi-prong or gang plugs is not allowed. Surge protectors are not gang plugs under these regulations.

E. EXITS: When an activity area does not have a door directly to the outside, at least one window in each activity area must be useable for an emergency exit. All activity spaces for children under the age of two and a half years shall be on the "level of exit discharge" or ground floor.

F. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A home will not use a common towel or wash cloth.

(2) All closets and bathroom locks must have an outside release. A home will enclose all bathrooms. Bathrooms must be accessible to the children in care and fully functional.

G. SAFETY COMPLIANCE:

(1) A home will have an operating smoke detector in each child-activity room and in each room in which a child sleeps.

(2) A home must be equipped with carbon monoxide detectors to cover all licensed areas of the home if the child care program uses any sources of coal, wood, charcoal, oil, kerosene, propane, natural gas, or any other product that can produce carbon monoxide indoors. Carbon monoxide detectors should be installed and maintained according to the manufacturer's instructions.

(3) A home will have a fully-charged 210ABC extinguisher mounted in the kitchen in a visible and easily accessible place. A professional will inspect each fire extinguisher once a year and fire extinguishers will have official tags noting the date of inspection.

(4) A home will conduct at least one fire drill each month and an emergency preparedness practice drill at least quarterly beginning January of each calendar year. A home will hold the drills at different times of the day and will keep a record of the drills with the date, time, number of adults and children participating, and any problems.

(5) A home will keep a telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. Emergency numbers shall be posted on any cordless or cellular telephones. A cellular telephone is acceptable as the only telephone in the home. The cellular telephone will remain in the same room, always charged and accessible to a caregiver.

H. SMOKING, FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A home will prohibit smoking, e-cigarettes, vaporizers, and the drinking of alcoholic beverages in all areas, including vehicles, when children are present. A home will unload all guns, such as pellet or BB guns, rifles and handguns, lethal and non-lethal weapons and keep them in a locked area inaccessible to children. Possessing or knowingly permitting illegal drugs, paraphernalia, or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

I. PETS:

(1) A home will inform parents or guardians in writing before pets are in the home.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the home.

(3) A home will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious in nature.

(4) Areas of confinement, such as cages and pens, and outdoor areas are cleaned of excrement daily. Animals shall be properly housed, fed and maintained in a safe, clean sanitary and humane condition at all times.

(5) An educator must be physically present during the handling of all pets or other animals. [8.9.4.38 NMAC - N, 11/01/2022]