

## NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Children, Youth and Families Department (CYFD) and the Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to adopt amendments to the following rules regarding SOCIAL SERVICES CHILD CARE ASSISTANCE REQUIREMENTS FOR CHILD CARE ASSISTANCE PROGRAMS FOR CLIENTS AND CHILD CARE PROVIDERS as authorized by Section 9-2A-7 NMSA 1978:

- 8.15.2.7 NMAC - DEFINITIONS**
- 8.15.2.8 NMAC - TYPES OF CHILD CARE**
- 8.15.2.9 NMAC - PRIORITIES FOR ASSISTANCE**
- 8.15.2.10 NMAC - APPLICATION PROCESS**
- 8.15.2.11 NMAC - ELIGIBILITY REQUIREMENTS**
- 8.15.2.12 NMAC - RECERTIFICATION**
- 8.15.2.13 NMAC - CLIENT RESPONSIBILITIES**
- 8.15.2.14 NMAC - CASE SUSPENSIONS AND CLOSURES**
- 8.15.2.15 NMAC - PROVIDER REQUIREMENTS**
- 8.15.2.16 NMAC - DEPARTMENT RESPONSIBILITIES**
- 8.15.2.17 NMAC - PAYMENT FOR SERVICES**
- 8.15.2.18 NMAC - UNDER PAYMENTS**
- 8.15.2.19 NMAC - OVER PAYMENT AND RECOUPMENT**
- 8.15.2.20 NMAC - FRAUD**
- 8.15.2.21 NMAC - SANCTIONS**

No technical scientific information was consulted in drafting these proposed rules.

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

Copies of the proposed amended rules may be found at end of this notice and at ECECD's website at <https://www.newmexicokids.org/> 30 days prior to the Public Hearing.

**Notice of public rule hearing:** The public rule hearing will be held on January 6, 2021, at 1:00 p.m. The hearing will be held via internet, email, and telephonic means due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of Public Health Emergency and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. The public hearing will be conducted in a fair and equitable manner by a CYFD/ECECD agency representative or hearing officer and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, either orally or in writing, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ECECD at [ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us) or call (505) 231-5820. ECECD will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least ten calendar days before the scheduled hearing.

**Notice of acceptance of written public comment:** Written public comment, including presentation of data, views, or arguments about the proposed rules, from any interested member of the public, may be submitted via email to [ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us) with the subject line "8.15.2 NMAC Public Comment" or via first class mail to P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Written comments may be delivered to the Old PERA building at 1120 Paseo De Peralta on January 6, 2021 from 1:00 pm to 3:00 pm. The comment period ends at the conclusion of the public hearing on January 6, 2021.

Any interested member of the public may attend the hearing via the internet or telephone and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: place call 1-346-248-7799, access code 974 3902 4249. You will be able to hear the full hearing and your telephone comments will be recorded. To access the hearing via the internet: please go to <https://zoom.us/j/97439024249>, and follow the instructions indicated on the screen – Meeting ID (access code): 974 3902 4249#. This will be a live stream of the hearing. You may also provide comment via Chat during the live streaming.

## **AVISO DE PROMULGACION DE LEYES ADMINISTRATIVAS Y AUDIENCIA PÚBLICA**

El Departamento de Niños, Jóvenes y Familias de Nuevo México (CYFD) y el Departamento de Educación y Cuidado de la Primera Infancia (ECECD) por este medio da aviso como se requiere bajo la Sección 14-4-5.2 de los Estatutos Anotados de Nuevo México (NMSA) 1978 y 1.24.25.11 del Código Administrativo de Nuevo México (NMAC), que propone adoptar enmiendas a las siguientes leyes administrativas con respecto a los REQUISITOS DE ASISTENCIA DE CUIDADO INFANTIL DE LOS SERVICIOS SOCIALES PARA PROGRAMAS DE ASISTENCIA DE CUIDADO INFANTIL PARA CLIENTES Y PROVEEDORES DE CUIDADO INFANTIL según lo autorizado por la sección 9-2A-7 del NMSA 1978:

**8.15.2.7 NMAC - DEFINICIONES**

**8.15.2.8 NMAC - TIPOS DE CUIDADO INFANTIL**

**8.15.2.9 NMAC - PRIORIDADES DE ASISTENCIA**

**8.15.2.10 NMAC - PROCESO DE SOLICITUD**

**8.15.2.11 NMAC - REQUISITOS DE ELEGIBILIDAD**

**8.15.2.12 NMAC - RECERTIFICACIÓN**

**8.15.2.13 NMAC - RESPONSABILIDADES DEL CLIENTE**

**8.15.2.14 NMAC - SUSPENSIÓN Y CIERRES DE CASOS**

**8.15.2.15 NMAC - REQUISITOS DE LOS PROVEEDORES**

**8.15.2.16 NMAC - RESPONSABILIDADES DEL DEPARTAMENTO**

**8.15.2.17 NMAC - PAGO DE LOS SERVICIOS**

**8.15.2.18 NMAC - PAGOS INSUFICIENTES**

**8.15.2.19 NMAC - PAGOS EXCESIVOS Y REEMBOLSOS**

**8.15.2.20 NMAC - FRAUDES**

**8.15.2.21 NMAC - MULTAS**

No se consultó información científica o técnica cuando se redactaron estas leyes administrativas propuestas.

**Propósito de las leyes administrativas propuestas:** El propósito de las leyes administrativas es promulgar enmiendas a la sección 8.15.2 del NMAC, que se publicaron inicialmente como enmiendas de emergencia a partir del 18 de septiembre de 2020, junto con los cambios adicionales necesarios. Debido a la crisis de salud del COVID-19 y las órdenes ejecutivas y declaraciones resultantes, hubo una necesidad de emergencia de realizar enmiendas a la 8.15.2 del NMAC para proteger al público de un peligro inminente para la salud pública, la seguridad y el bienestar de los niños y las familias de Nuevo México.

Puede encontrar copias de las propuestas leyes administrativas al final de este aviso y en el sitio web del ECECD en <https://www.newmexicokids.org/> 30 días antes de la Audiencia Pública.

**Aviso de Audiencia Pública de leyes administrativas:** La audiencia pública de leyes administrativas tendrá lugar el 6 de enero de 2021 a la 1:00 p.m. La audiencia se llevará a cabo a través de Internet, correo electrónico y medios telefónicos debido a las preocupaciones en torno al COVID-19 y de acuerdo con la Orden Ejecutiva 2020-004 de la Gobernadora Michelle Lujan Grisham, la Declaración de Emergencia de Salud Pública y la Orden de Emergencia de Salud Pública del 12 de marzo de 2020 para limitar las reuniones masivas debido al COVID-19. La audiencia pública se llevará a cabo de manera justa y equitativa por un representante de la agencia del CYFD o el ECECD o el funcionario de audiencias y será grabada. Cualquier miembro del público interesado puede asistir a la audiencia y se le brindará una oportunidad razonable para ofrecer comentarios al público, oralmente o por escrito, incluso una presentación de datos, puntos de vista s o argumentos, sobre las propuestas. Las personas con discapacidades que necesiten cualquier forma de ayuda auxiliar para asistir o participar en la audiencia pública deben comunicarse con

el ECECD en [ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us) o llamar al (505) 231-5820. El ECECD hará todos los esfuerzos posibles para acomodar todas solicitudes razonables, pero no puede garantizar acomodar solicitudes que no sean recibas por lo menos diez días antes de la fecha programada para la audiencia.

**Aviso de aceptación de comentarios públicos por escrito:** Los comentarios públicos por escrito, incluso las presentaciones de datos, puntos de vista o argumentos de cualquier miembro del público interesado, sobre las propuestas leyes administrativas, pueden ser enviados s a través de correo electrónico a [ECECD-ECS-PublicComment@state.nm.us](mailto:ECECD-ECS-PublicComment@state.nm.us), especificando en la línea de Asunto: “8.15.2 NMAC Public Comment,” o por correo de primera clase a P.O. Drawer 5619, Santa Fe, New Mexico 87502 – 5619. Los comentarios escritos se pueden entregar en el edificio Old PERA en 1120 Paseo De Peralta el 6 de enero de 2021 de 1:00 p.m. a 3:00 p.m. El período de comentarios termina a la conclusión de la audiencia pública el 6 de enero de 2021.

Cualquier miembro del público interesado puede asistir a la audiencia a través de Internet o por teléfono y ofrecer comentarios públicos sobre las leyes administrativas propuestas durante la audiencia. Para acceder a la audiencia por teléfono llame al 1-346-248-7799, código de acceso 974 3902 4249. Podrá escuchar la audiencia completa y se grabarán sus comentarios telefónicos. Para acceder a la audiencia a través de Internet vaya a <https://zoom.us/j/97439024249> y siga las instrucciones que se indican en la pantalla (ID de la reunión - código de acceso: 974 3902 4249 #). Esta será una transmisión en directo de la audiencia. También puede proporcionar comentarios a través del chat durante la transmisión en directo.

### **Proposed Rules/Leyes administrativas propuestas**

Explanatory sentence for purposes of this Notice:  
Frase explicativa para los propósitos de este Aviso:

#### **8.15.2.7 DEFINITIONS:**

- A.** “**Attending a job training or educational program**” means actively participating in [~~a job~~] an in-person or online job training or educational program.
- B.** “**At-risk child care**” means a program for families at-risk [~~of child protective services involvement~~] as determined by the department.
- C.** “**CACFP**” means the child and adult care food program, administered by the children, youth and families department.
- D.** “**Child with a disability or special needs**” means a child with an identified disability, health, or mental health conditions requiring early intervention, special education services, under an individualized education plan (IEP), or other specialized services and supports; or children without identified conditions, but requiring specialized services, supports, or monitoring.
- ~~[E. “**Child support enforcement division**” means the child support enforcement program administered by New Mexico’s human services department, which collects child support from non-custodial parents.]~~
- E.** “**Client**” means the parent or legal guardian of the child that the department has determined is eligible for child care assistance benefits.
- F.** “**Closure**” means the client’s child care case is closed with the department.
- G.** “**Co-payment**” means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department’s payment to the provider is reduced by the co-payment amount.
- H.** “**Demonstration of incapacity**” means written documentation that an individual is unable to fulfill an eligibility requirement, such as work, school, or the ability to provide child care, and should otherwise be excluded, in whole or in part, from the determination of eligibility. Written documentation of incapacity includes, but is not limited to, the following: statements or letters on a physician’s/medical professional’s/treatment provider’s letterhead stationary; statements, records or letters from a federal government agency that issues or provides disability benefits; statements, records or letters from a state vocational rehabilitation agency counselor; records or letters from a treatment facility/counselor; certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.
- ~~[H.]~~ **I.** “**Department**” means the New Mexico children, youth and families department (CYFD).
- ~~[I.]~~ **J.** “**Earned income**” means income received as gross wages from employment or [~~as profit from~~] self-employment.

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

**(1)** average family earnings over a period of time (e.g., 12 months); or  
**(2)** choose to discount temporary increases in income provided that a family demonstrates an isolated increase in pay (e.g., short-term overtime pay, temporary increase to pay, etc.) and is not indicative of a permanent increase in income.

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

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

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

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

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

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

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

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

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

**(1)** infant: zero - 23 months;

**(2)** toddler: 24 -35 months;

**(3)** preschool: three to five year olds; and

**(4)** school age: six year olds and older.

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

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

**(1)** The following are the only national accrediting bodies that are approved by CYFD:  
**(a)** the association of Christian schools international (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)** Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

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

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

12:00 a.m. Monday morning.

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

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

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

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

(1) **“In-home”** care means care provided in the child’s own home.

(2) **“Registered home”** means child care provided in the home of a provider who is registered with the department to care for up to four children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are exempt.

(3) **“Licensed family child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to six children.

(4) **“Licensed group child care home”** means child care provided in the home of a provider who is licensed by the department to care for up to 12 children.

(5) **“Licensed center”** means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) **“Out-of-school time care”** means child care provided to a kindergartner or school age child up to age 13 immediately before or immediately after a regularly scheduled school day or when regular school is not in session.

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

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

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

~~[Z.]~~ **“Sanctions”** means a measure imposed by the department for a violation or violations of applicable regulations.

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

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

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

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

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

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

~~[BB.]~~ **GG.** **“Termination”** means the client’s child care case will be closed due to cause.

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

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

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

- (3) student holiday or break for a parent or legal guardian participating in training or education;
- (4) reduction in work, training or education hours, as long as the parent or legal guardian is still working or attending training or education; and
- (5) cessation of work or attendance at a training or education program less than ~~[90 days]~~ three months.

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

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

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

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

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

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

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 10/1/2016]

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

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

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

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

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

B. Priority one A: [RESERVED]

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

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

E. Priority three: [RESERVED]

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

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

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

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

#### **8.15.2.10 APPLICATION PROCESS:**

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

(1) a completed signed application form;

(2) [~~current proof of earned income or participation in the temporary assistance to needy families (TANF) program; social security numbers or assigned TANF identification numbers may be used to verify TANF participation or receipt of child care support~~] documentation of current countable earned and unearned income as listed below and defined in Paragraph (5) of Subsection C of 8.15.2.11 NMAC;

(3) documentation of the applicant's TANF eligibility or participation, if applicable, and can include applicant's social security number or assigned TANF identification number;

[~~(3)~~] (4) school schedule or verification of educational activity, if applicable;

(5) demonstration of incapacity for parent or legal guardian, if applicable;

[~~(4)~~] (6) verification of birth for all applicant's household children;

(7) documentation of qualifying immigration status, as defined by the United States

Department of Health and Human Services, Administration for Children & Families, Office of Child Care, for all children requesting child care assistance;

[~~(5)~~] proof of unearned income;

[~~(6)~~] (8) [~~proof~~] documentation of New Mexico [home address] residency; and

[~~(7)~~] (9) [~~CYFD~~] department approved provider.

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

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

(1) the client is utilizing child care services;

(2) the client is employed, attending school or a training program. In the case of a public health emergency, the department secretary may waive the requirement for employment, attending school or a training program; and

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

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

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

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

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

(1) Eligibility may be granted for less than 12 months at the parent or legal guardian's request.

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

(3) Eligibility may be granted for up to three months for seeking employment. The eligibility may be closed if the client fails to obtain a qualifying activity within three months. The department has the discretion to extend the job search period.

~~[(3)]~~ (4) The client will remain eligible if a temporary change of activity occurs.

~~[(4)]~~ (5) If a client experiences a non-temporary change in activity, the client will no longer be eligible to receive assistance if another activity is not obtained within the three-month grace period.

**C.** Income eligibility determination:

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

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

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

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

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



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

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

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

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

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

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

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

**G.** Special supervision: Children between the ages of 13 and 18 who are under the supervision of a court of law, or who are determined by a medical or treatment professional to require supervision.

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

~~[G.]~~ Failure to use authorized child care: If authorized child care has not been used for five

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

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

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

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

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

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

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

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

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

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

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

the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client's approved rate, including required co-payments.

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

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

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

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

(1) full time care will be based on one hundred percent of the base co-payment;

(2) part time 1 care will be based on seventy-five percent of the base co-payment;

(3) part time 2 care will be based on fifty percent of the base co-payment; and

(4) part time 3 care will be based on twenty-five percent of the base co-payment.

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

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

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

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

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

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

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

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

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

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

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

~~grandparent; guardian; parent is deceased or when good cause exists.~~

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

~~(a) there is possible physical or emotional harm to the child, parent or guardian;~~

~~(b) the child was conceived as a result of incest or rape;~~

~~(c) legal proceedings for adoption of the child are pending before a court; or~~

~~(d) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.~~

~~(4) The applicant or recipient who makes a claim for good cause shall supply written documentation to establish the claim. The caseworker shall not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause if the applicant or recipient has complied with the requirements to furnish information.~~

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

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

#### **8.15.2.14 CASE SUSPENSIONS AND CLOSURES:**

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

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

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

(1) any non-temporary change in activity and failure to obtain an activity after the three-month grace period;

(2) income in excess of two hundred and fifty percent federal poverty level [~~or eighty five percent state median income, whichever is greater~~];

(3) moving out of state;

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

(5) at the option of the client;

(6) being disqualified from participation in the program; or

(7) failure to use authorized child care.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 10/1/2016]

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

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

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

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

~~[C.]~~ **D.** [~~Child care providers must notify the department within three business days after the fifth day of~~

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

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

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

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

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

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

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

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

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

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

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

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

#### **8.15.2.16 DEPARTMENT RESPONSIBILITIES:**

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

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

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

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

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

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

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

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

~~[I.]~~ H. The department and other organizations approved by the department offers provider education

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

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

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

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

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

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

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

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

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

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

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

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

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

**F.** Hours of care shall be rounded to the nearest whole number.

**G.** Monthly reimbursement rates:

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

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

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

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

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

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

**(2)** The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its

national accreditation status. All providers are required to notify the department immediately when a change in accreditation status occurs.

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

2+ Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$88.00	\$88.00	\$88.00	\$88.00
3 Star FOCUS Child Care Centers, Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$100.00	\$100.00	\$100.00	\$100.00
4 Star FOCUS Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$180.00	\$180.00	\$180.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Licensed Family and Group Homes			
Infant	Toddler	Pre-school	School-age
\$250.00	\$250.00	\$250.00	\$250.00
4 Star FOCUS Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$280.00	\$280.00	\$250.00	\$180.00
5 Star FOCUS or CYFD approved national accreditation Child Care Centers			
Infant	Toddler	Pre-school	School-age
\$550.00	\$550.00	\$350.00	\$250.00

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

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

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

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

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

**N.** If a significant change occurs in the client's circumstances, (see Subsection G of 8.15.2.13



NMAC) the child care placement agreement may be modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

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

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

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

**8.15.2.18 UNDER PAYMENTS:** If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the department's knowledge or receipt of notification. Notification of the department by the client or provider must occur within ~~[90 calendar days]~~ three months of the occurrence of alleged underpayment.

[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 10/1/2016]

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

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

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

[8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 10/1/2016]

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

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

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

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

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

**E.** Clients who fail to pay co-payments may be disqualified until the co-payment is paid or until an agreement is made between the client and the provider to bring the co-payment current. ~~[The department assists the~~

~~provider in collecting the co-payment only if the co-payment has been in arrears 30 calendar days or less.]~~  
[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 10/01/2016]