

This is an emergency amendment to 8.15.2 NMAC, Sections 6, 7, 11, 13, 14, 15 and 17, effective 7/1/2021.

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

8.15.2.6 OBJECTIVE:

A. To establish standards and procedures for the provision of child care assistance benefits to eligible clients and to establish the rights and responsibilities of child care providers who receive payment for providing child care services to clients receiving benefits. To establish minimum requirements for eligibility for program participation and for the provision of child care services to children whose families are receiving benefits and to allow children receiving these benefits access to quality child care settings that promote their physical, mental, emotional, and social development in a safe environment.

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

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

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

8.15.2.7 DEFINITIONS:

A. **“Attending a job training or educational program”** means actively participating in an in-person or online job training or educational program.

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

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

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

E. **“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.

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

J. “Earned income” means income received as gross wages from employment or as profit from self-employment.

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

~~[K.]~~ **L. “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.

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

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

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

~~[P.]~~ **Q. “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.

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

~~[R.]~~ **S. “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:

- school programs;
- (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.

~~[S.]~~ **T.** “**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 HH below.

~~[T.]~~ **U.** “**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.

~~[U.]~~ **V.** “**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.

~~[V.]~~ **W.** “**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.

~~[W.]~~ **X.** “**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)"]~~ **Family, friend, 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:]~~ and only [in] in the case of a public health emergency ~~[, the department may extend the temporary status].~~

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

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

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

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

~~[CC.]~~ **DD.** “**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.

~~[DD.]~~ **EE.** “**Suspension**” means the voluntary cessation of child care benefits at the client’s request,

during which the client remains eligible.

~~[EE.]~~ **FF.** “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.

~~[FF.]~~ **GG.** “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.

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

~~[HH.]~~ **II.** “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 three months.

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

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

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

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC 10/1/2016, A, 2/1/2017; A, 10/1/2019, A/E, 9/18/2020; A, 3/1/2021, A/E, 7/1/2021]

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

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

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

(1) Eligibility may be granted for less than 12 months at the parent or legal guardian’s request. The parent or legal guardian will, however, remain eligible for the approved 12-month eligibility period.

(2) At-risk child care may be granted for less than 12 months as determined by the department.

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

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

(5) If a client experiences a non-temporary change in activity, the 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, legal guardians of the child(ren) for whom child care assistance is sought, and any legal dependents of the aforementioned, living in the household, thereby constituting an economic unit. Grandparents who are not legal guardians living in the household are counted as members of the household, but their earned and unearned income is excluded from the eligibility calculations. Periods of absences: A household member may be absent from the home and will be considered as living in the home and be counted in the household composition as long as the absent household member plans to return to the home. Any parent or legal guardian who remains in the home must be working, attending school, or participating in a job training or educational program. Temporary absence may include, but are

not limited to, attending school, working, training, medical or other treatment, or military service.

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

(3) Household income: The household's gross monthly or annual average countable earned and unearned income, taking into account any fluctuation(s) of earnings, and will always be calculated in favor of eligibility. Household income does not include any earned and unearned income received by grandparents who are not legal guardians, and any legal dependents of the biological parents, stepparents, or legal guardians of the child(ren) for whom child care assistance is sought, living in the household.

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

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

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

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

(8) Calculating income:

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

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

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

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

(iii) Income received on a semimonthly basis is averaged and multiplied by two. Semimonthly income is defined as income received twice per month every month of the year. Income is

received on specific dates of the month, therefore receiving 24 payments per year.

(iv) Income received on a monthly basis is averaged and multiplied by one.

Monthly income is defined as income received once per month.

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

E. Citizenship and eligible immigration status: Any child receiving child care assistance must be a citizen or legal resident of the United States; or a qualified immigrant as defined by the United States department of health and human services, administration for children and families, office of child care.

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

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

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

I. Work/education requirement: Child care benefits are paid only for families who are working, attending school or participating in a job training or educational program and who demonstrate a need for care during one or more of these activities. Clients who are receiving TANF are required to participate in a TANF-approved activity unless they are exempt by TANF. Clients and caseworkers shall negotiate a reasonable amount of study and travel time during the application or recertification process. The department may, in its discretion, exempt a client or applicant from the work/education requirement upon submission of a demonstration of incapacity.

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

<u>Verification Type</u>	<u>Acceptable documentation or Information (examples)</u>
<u>Verification of Birth</u>	- <u>Birth certificate</u> - <u>Hospital records</u> - <u>Birth center records</u>
<u>Countable Earned Income</u>	- <u>Paystubs</u> - <u>Employer statement/verification of work form</u> - <u>Client statement, if earning wages from various odd jobs /day labor contract/work agreement</u> - <u>Payroll history</u> - <u>Income tax return with transcripts</u> - <u>Profit and loss (must be verified by a bookkeeper or accountant)</u>
<u>Countable Unearned Income</u>	- <u>Benefit award letter (i.e. – social security, veteran administration (VA))</u> - <u>Letter or document from agency making payment</u> - <u>Court records or other legal documents</u> - <u>Statement from tribal agency</u> - <u>Bank or other financial statement</u> - <u>Divorce or separation decree</u> - <u>Trust documents</u> - <u>Workers' compensation documents</u> - <u>Rental income information</u>

<u>Qualifying Activity</u>	<ul style="list-style-type: none"> -<u>Proof of TANF participation</u> (Example: <u>work participation agreement (WPA)</u>) -<u>School schedule</u> -<u>Statement from educational institution</u> -<u>Work schedule</u> -<u>Paystubs</u> -<u>Employer statement</u> -<u>Client statement</u> -<u>Contract/work agreement</u> -<u>Proof of new business registration with State</u>
<u>Documentation of Incapacity</u>	<ul style="list-style-type: none"> -<u>Statement or letter from medical professional on letterhead/stationary</u> -<u>Statement/record/letter from a federal government agency that issues or provides disability benefits</u> -<u>Statement/records/letters from a state vocational rehabilitation agency counselor</u> -<u>Records/ letters from a treatment facility/counselor</u> -<u>Certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.</u>
<u>Custody</u>	<ul style="list-style-type: none"> -<u>Court order</u> -<u>Sworn statement</u> -<u>Attorney records</u>
<u>Dependency</u>	<ul style="list-style-type: none"> -<u>Court order</u> -<u>Notarized statement</u> -<u>Divorce papers</u> -<u>Durable power attorney</u> -<u>Guardianship documentation</u> -<u>Federal tax documents verifying person is claimed as a dependent</u> -<u>Written statement with supervisor's approval</u>
<u>NM Residency</u>	<ul style="list-style-type: none"> -<u>Lease/rental agreement</u> -<u>Utility bill</u> -<u>Mortgage receipt</u> -<u>Written statement from person you are residing with</u> -<u>Current NM driver's license</u> -<u>Statement from landlord</u> -<u>Other records that provide a name and address</u>
<u>ECECD approved provider</u>	<p>Tell ECECD the provider you choose. Select provider from www.newmexicokids.org , or call New Mexico kids resource & referral at 1-800-691-9067.</p>
<u>Identification for Parent / Guardian</u>	<ul style="list-style-type: none"> -<u>Current or expired government issued photo I.D. / passport</u> -<u>School photo I.D.</u> -<u>Government issued immigration document with photo</u> -<u>Employer I.D. with photo</u>
<u>Age of Child</u>	<ul style="list-style-type: none"> -<u>Government issued photo I.D.</u> -<u>Birth certificate / hospital certificate of birth</u> -<u>Religious records</u> -<u>School records</u> -<u>Certificate of Indian blood</u> -<u>Paternity papers</u> -<u>Numident (social security application)</u>

<u>Relationship of Child to Parent/Guardian</u>	<u>-Birth certificate</u> <u>-Court order, or other legal records</u> <u>-Family Bible or baptismal record</u> <u>-Adoption records</u> <u>-Marriage license/certificate</u> <u>-Hospital or public health record</u> <u>-Certificate of Indian blood</u> <u>-Department of vital statistics record</u>
<u>Citizenship/ Immigration Verification</u>	<u>-US Birth Certificate</u> <u>-Military ID</u> <u>-Passport</u> <u>-Naturalization certificate</u> <u>-Permanent resident card</u> <u>-ASPEN/HSD verification (client must be listed as “eligible child”)</u> <u>(EX. Refugees/other qualified aliens may receive services through HSD but also may have US department of state form)</u> <u>-Numident (from social security office)</u> <u>-Refugee/asylee letter from US secretary of state or from homeland security</u> <u>-Any document from the INS, DHS, or other authoritative document showing a child’s immigration status that qualifies the child for assistance.</u>

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

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

A. Co-payments: Co-payments are paid by all clients receiving child care assistance benefits, except for at-risk child care and qualified grandparents or legal guardians. Co-payments are determined by income and household size. The co-payment schedule is published yearly at [~~<https://eyfd.org/child-care-services>~~ <https://www.nmeccd.org/child-care-assistance/>]. In the case of an emergency, or under extenuating circumstances, the department secretary may waive co-payments for families receiving child care, during which period, the department will pay providers the client’s approved rate, including required co-payments.

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

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

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

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

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

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

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

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

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

E. 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 provide notification of changes via fax, e-mail, or telephone that affect the need for care to their local child care assistance office.

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

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

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

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

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 10/1/2016; A, 10/1/2019; A/E, 03/16/2020; A, 8/11/2020; A/E, 9/18/2020; A, 3/1/2021; A/E 7/1/2021]

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 Subsection G of Section 8.15.2.13 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 a client designated as an essential worker, as defined in Subsection G of 8.15.2.9 NMAC, with an income in excess of four hundred [and fifty] percent of the federal poverty level;

~~[(3) moving out of state;]~~

~~[(4) (3) failing to recertify at the end of approved eligibility period; or~~

~~[(5) at the option of the client;]~~

~~[(6) (4) being disqualified from participation in the program. [;or]~~

~~[(7) failure to use authorized child care.]~~

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

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

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

B. Signed child care placement agreements (including electronically signed child care placement agreements) must be returned by hand delivery, mail, email, fax, or electronic submission to the local child care office within 30 calendar days of issuance. Failure to comply may affect payment for services and the child care

placement agreement will be closed. The department will provide reasonable accommodations to allow a client or provider to meet this requirement.

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

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client.

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

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

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

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

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

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.15.2 NMAC. ~~[The 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 rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.15.2 NMAC.

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

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

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

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

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 10/1/2016; A, 10/1/2019; A, 3/1/2021; A/E, 7/1/2021]

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

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

B. Payment for notification of changes:

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

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

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

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

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

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

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

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

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

G. Monthly reimbursement rates:

Licensed child care centers			
Infant	Toddler	Pre-school	School-age
[\$720.64] <u>880.00</u>	[\$589.55] <u>635.00</u>	[\$490.61] <u>575.00</u>	[\$436.27] <u>441.00</u>
Licensed group homes (capacity: 7-12)			
Infant	Toddler	Pre-school	School-age
[\$586.07] <u>855.00</u>	[\$487.11] <u>830.00</u>	[\$427.13] <u>680.00</u>	[\$422.74] <u>428.00</u>
Licensed family homes (capacity: 6 or less)			
Infant	Toddler	Pre-school	School-age
[\$566.98] <u>875.00</u>	[\$463.50] <u>850.00</u>	[\$411.62] <u>700.00</u>	[\$406.83] <u>412.00</u>
Registered homes, in-home child care, and FFN			
Infant	Toddler	Pre-school	School-age
[\$289.89] <u>375.00</u>	[\$274.56] <u>375.00</u>	[\$251.68] <u>325.00</u>	[\$251.68] <u>300.00</u>

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]

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

<u>Licensed Family and Group Homes</u>			
<u>2+ Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$130.00</u>	<u>\$130.00</u>	<u>\$130.00</u>	<u>\$100.00</u>
<u>3 Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$130.00</u>	<u>\$130.00</u>	<u>\$130.00</u>	<u>\$100.00</u>
<u>4 Star FOCUS</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$195.00</u>	<u>\$195.00</u>	<u>\$195.00</u>	<u>\$180.00</u>
<u>5 Star FOCUS or ECECD approved national accreditation</u>			
<u>Infant</u>	<u>Toddler</u>	<u>Pre-school</u>	<u>School-age</u>
<u>\$260.00</u>	<u>\$260.00</u>	<u>\$260.00</u>	<u>\$250.00</u>

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

P. Payments are made to the provider for the period covered in the child care placement agreement or based on the availability of funds.
[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 10/1/2016; A, 10/1/2019, A/E, 03/16/2020; A, 8/11/2020; A, 3/1/2021; A/E, 7/1/2021]