

TITLE 8 SOCIAL SERVICES
CHAPTER 370 OVERSIGHT OF LICENSED HEALTHCARE FACILITIES AND COMMUNITY BASED WAIVER PROGRAMS
PART 20 REQUIREMENTS FOR ADULT DAY CARE FACILITIES

8.370.20.1 ISSUING AGENCY: New Mexico Health Care Authority.
[8.370.20.1 NMAC - N, 7/01/2024]

8.370.20.2 SCOPE: These regulations apply to public or private facilities that provide care, services, and supervision for three or more non-resident adults for less than 24 hours of any day, and come within the statutory definition of "health facilities" set out in Subsection D of Section 24-1-2 of the Public Health Act, Section 24-1-1 to 24-1-22 NMSA 1978 as amended, and are required to be licensed by the licensing authority.
[8.370.20.2 NMAC - N, 7/01/2024]

8.370.20.3 STATUTORY AUTHORITY: The regulations set forth herein which govern the licensing of adult day care facilities have been promulgated pursuant to the general authority granted under Subsection E of Section 9-8-6 NMSA 1978; and the authority granted under Subsection D of Section 24-1-2, Subsection I of Section 24-1-3, and Section 24-1-5 of the Public Health Act, NMSA 1978, as amended. Section 9-8-1 et seq. NMSA 1978 establishes the health care authority (authority) as a single, unified department to administer laws and exercise functions relating to health care purchasing and regulation.
[8.370.20.3 NMAC - N, 7/01/2024]

8.370.20.4 DURATION: Permanent.
[8.370.20.4 NMAC - N, 7/01/2024]

8.370.20.5 EFFECTIVE DATE: July 1, 2024, unless a different date is cited at the end of a section.
[8.370.20.5 NMAC - N, 7/01/2024]

8.370.20.6 OBJECTIVE: The purpose of these regulations is to:

- A.** establish minimum standards for licensing facilities providing day care to adults, in order to ensure that participants receive safe and adequate services and that the health, safety and welfare of participants and employees are protected;
- B.** direct such facilities to provide and organize program of services in the community group setting for the purpose of supporting adult's personal independence, and promoting their social, physical, and emotional well-being;
- C.** establish standards for the construction, maintenance and operation of such facilities;
- D.** monitor facility compliance with these regulations through surveys to identify any areas which could be dangerous or harmful to the health, safety, and welfare of the participants and staff.

[8.370.20.6 NMAC - N, 7/01/2024]

8.370.20.7 DEFINITIONS: For purposes of these regulations the following shall apply.

- A.** "**Abuse**" means any single or repeated act of force, violence, harassment, deprivation, neglect or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.
- B.** "**Adult**" means an individual eighteen years of age or older, and or who otherwise qualifies as an adult under New Mexico law, and who is elderly, disabled or handicapped person having impairments which prevents the person from living independently without supportive services.
- C.** "**Adult day care center**" means a commercial building licensed pursuant to these regulations, where care, services, and supervision are provided to adults.
- D.** "**Adult day care home**" means a private residence licensed pursuant to these regulations where care, services and supervision are provided to adults.
- E.** "**Ambulatory**" means a person who is fully mobile and does not need the continuing help of a person or object for support (except a walking cane).
- F.** "**Applicant**" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.

- G.** "**Capacity**" means the maximum number of participants allowed to be cared for at any one time in the facility.
- H.** "**Deficiencies**" means violations of, or failure to comply with, these regulations.
- I.** "**Director**" means the person who is in charge of the day to day operation and program of an adult day care center.
- J.** "**Dropin**" means an adult who attends the facility on an occasional or unscheduled basis.
- K.** "**Facility**" means an private residence or a commercial building licensed pursuant to these regulations where care, services, and supervision are provided to adults.
- L.** "**Governing body**" means the individual, agency, group or corporation appointed, elected or otherwise designated in which the ultimate responsibility and authority for the conduct of the facility is vested.
- M.** "**Guardian**" means one who has the legal responsibility for the care of a person.
- N.** "**Imminent danger**" means a danger which could reasonably be expected to cause death or serious physical harm or illness to participants or staff.
- O.** "**License**" means the document issued by the authority which constitutes the authority to provide services included within the scope of this rule.
- P.** "**Licensee**" means the person(s) who, or organization which, has an ownership leasehold, or similar interest in the adult day care facility and in whose name a license for a home health agency has been issued and who is legally responsible for compliance with these regulations.
- Q.** "**Maintenance**" means the care of building(s) by keeping them in a repaired and safe condition and the grounds in a safe, sanitary and presentable condition.
- R.** "**Mobile non-ambulatory**" means unable to walk without assistance, but able to move from place to place with the use of devices such as walkers, crutches, wheelchairs, wheeled platforms, etc.
- S.** "**NMSA**" means the New Mexico Statutes Annotated, 1978 compilation and all the revisions and compilations thereof.
- T.** "**Participant**" means a person enrolled in an adult day care facility.
- U.** "**Plan of correction**" means the plan submitted by the licensee, applicant, or operator addressing how and when deficiencies identified at time of a survey will be corrected.
- V.** "**Policy**" means a statement of principle that guides and determines present and future decisions and actions.
- W.** "**Premises**" means all parts of the buildings, grounds, equipment and vehicles of a facility licensed pursuant to these regulations.
- X.** "**Private residence**" means the dwelling, where the operator resides on a 24 hour basis, to include provisions for sleeping, eating, bathing, cooking, etc.
- Y.** "**Relative**" means husband, wife, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, mother-in-law, grandfather, grandmother, half-brothers, includes adoptive, natural and foster parents, grandparents or adult children.
- Z.** "**Respite care**" accommodates the family or guardian by providing an alternate place for the participant to stay when the family or guardian needs a rest from the everyday physical and emotional strain of caring for the participant.
- AA.** "**Staff member**" means any person who provides direct care, services and supervision to the participants in a facility licensed pursuant to these regulations.
- BB.** "**Supervision**" means the direct observation and guidance of adults at all times and requires being physically present with them.
- CC.** "**Survey**" means an entry into, and examination of, the facility's premises, records and staff interviews.
- DD.** "**U/L approved**" means approved for safety by the national underwriters laboratory.
- EE.** "**Unattended**" means a caregiver is not physically present with an adult under care.
- FF.** "**Variance**" means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time for facilities which were in existence at the time these regulations were promulgated, new facilities in existing construction, or for a new or innovative service where the granting of a variance will not create a danger to the health, safety and welfare of adults or staff of a facility, and is at the sole discretion of the licensing authority.
- GG.** "**Waive/waiver**" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety or welfare of the adults and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.
- [8.370.20.7 NMAC - N, 7/01/2024]

8.370.20.8 TYPES OF FACILITIES AND SCOPE OF SERVICES:

A. Adult day care center is a facility required to be licensed pursuant to these regulations which provides care, services and supervision to three or more adults, who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day. An adult day care center may be located in any building which meets the applicable state and local building and safety codes.

B. Adult day care home is private residence required to be licensed pursuant to these regulations which provides care, services and supervision to at least three adults but not more than five adults who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day.

C. New or innovative programs for providing adult day care: Professional organizations which have demonstrated a need for new or innovative services for day care for three or more adults with special needs which do not fit into one of the types of facilities outlined in Subsections A and B of 8.370.20.8 NMAC above may be licensed at the sole discretion of the licensing authority, if all requirements outlined in section nine are met.

D. These facilities must be able to provide oversight to the participants such as reminding them of medications and appointments, providing meals and monitoring their activities while on the premises of the facility. Hours of operation are limited from 6 a.m. to 9 p.m.

E. Participants must be able to ambulate on their own or in a wheelchair with minimal assistance. They must be ambulatory or mobile non-ambulatory.

F. In the event federal regulations are promulgated to govern health-related adult day care ("the medical model"), these regulations shall continue to apply except to the extent a provision of these regulations is in conflict with the federal, in which case the federal regulation shall control.

[8.370.20.8 NMAC - N, 7/01/2024]

8.370.20.9 INITIAL LICENSURE PROCEDURES: To obtain an initial license for an adult day care facility pursuant to these regulations, the following procedures must be followed by the applicant:

A. These regulations must be thoroughly understood by the applicant and used as reference prior to applying for licensure.

B. Application form: Will be provided by the licensing authority.

- (1) All information requested on the application must be provided and complete.
- (2) Must be printed or typed.
- (3) Must be dated and signed.
- (4) Must be notarized.

C. Fees: All applications for license must be accompanied by the required fee.

- (1) Current fee schedules will be provided by the licensing authority.
- (2) Fees must be in the form of a check or money order made payable to the state of New Mexico.
- (3) Fees are not refundable.

D. Floor plans: All applications for initial licensure must be accompanied by a set of floor plans for the facility.

(1) Floor plans must be of professional quality, be on substantial paper of at least 18 inches by 24 inches, and be drawn to an accurate scale of one-quarter of an inch to one inch.

(2) Floor plans must include at least the following information:

- (a) proposed use of each room i.e., staff office, toilets, activity room(s), kitchen, etc.;
- (b) interior dimensions of all rooms must be included on floor plans;
- (c) floor plans must include one building or wall section showing exterior and interior wall construction; section must include floor, wall, ceiling and the finishes, i.e., carpet, tile, gyp board with paint, wood paneling, etc.;
- (d) door types, swing, and sized of all doors, i.e., solid core, hollow core, three feet by six feet eight inches;
- (e) if building is air conditioned;
- (f) all sinks, tubs, showers, and toilets;
- (g) size, type, sill height, and openable area of windows indicated;
- (h) any level changes within the building i.e., sunken activity room, ramps, steps, etc.;

(i) the location of the building on a site/plot plan to determine surrounding conditions, including all steps, ramps, parking, walks, and any permanent structures;

(j) if building is new construction, renovated, or an addition, indicate both the existing and new construction on the floor plans.

(3) Floor plans will be reviewed by the licensing authority for compliance with current building and fire codes, and comments will be sent to the applicant specifying any needed changes or requesting any additional information. Exception: Adult day care homes are not required to submit floor plans.

E. Zoning and building approvals:

(1) All initial applications must be accompanied with original written zoning approval from the appropriate authority, city, county, or municipality.

(2) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority, city, county, or municipality. Exception: Adult day care homes are not required to submit building approval.

F. Fire authority approval: All initial applications must be accompanied by original written approval of the appropriate fire prevention authority having jurisdiction: i.e., city, county, or state fire marshal's office. Exception: Adult day care homes are not required to submit fire authority approval.

G. New Mexico environment department approval: All initial applications must be accompanied by original written approval of the New Mexico environment department for the following:

(1) kitchen approval if meals are prepared or served in the facility;

(2) private water supply, if applicable;

(3) private waste or sewage disposal, if applicable;

(4) exception: adult day care homes are not required to submit New Mexico environment department approval.

H. Health certificates: Copies of health certificates of the licensee, caregivers, and staff must accompany all initial application.

I. Custodial drug permit: Any facility licensed pursuant to these regulations which supervises self-administration of medication for the participants or safeguards medication for participants, must have an appropriate custodial drug permit as determined by the state board of pharmacy.

J. A list of equipment for adult activities that the facility will provide on the first day of operation must accompany all initial applications.

K. A description of the facility's proposed activities and daily schedule must accompany all initial applications.

L. Initial survey: An initial survey of the proposed facility will be scheduled by the licensing authority upon receipt of a properly completed application with all supporting documentation, as outlined in these regulations.

M. Issuance of license: A license will be issued by the licensing authority if the initial survey determines that the facility is in compliance with these regulations.

[8.370.20.9 NMAC - N, 7/01/2024]

8.370.20.10 SPECIAL REQUIREMENTS FOR NEW OR INNOVATIVE ADULT DAY CARE SERVICES:

A. Applicants for new or innovative adult day care services which do not fit into any one of the types of facilities as outlined in Subsections A and B of 8.370.20.8 NMAC must submit a proposal to the licensing authority for review and approval. The proposal must include the following:

(1) statistical data supporting the need for a special type of adult day care service;

(2) explanation of the special problems and needs of the adults who will be receiving these services;

(3) identify portions of these regulations which would be in conflict with the proposed facility;

(4) how the proposed facility would resolve these conflicts with alternative measures which would meet the intent of these regulations, i.e., increased staffing or fire and safety precautions.

B. If, at its sole discretion, the licensing authority approves the proposal a license may be granted with variances for those portions of the regulations where the program would be in conflict.

[8.370.20.10 NMAC - N, 7/01/2024]

8.370.20.11 LICENSES:

A. Annual license: An annual license is issued for a one year period to a facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey, or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5, NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, when there is a change of name of the facility, or if a change of capacity is sought.

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for an amended license.

(3) Application must be submitted within 10 working days of the change.

(4) Application for increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine if the facility meets all applicable codes and regulations. A facility must not accept additional participants or change the layout of the facility until the licensing authority has approved and issued the amended license.

[8.370.20.11 NMAC - N, 7/01/2024]

8.370.20.12 LICENSE RENEWAL:

A. Licensee must submit a notarized renewal application on forms provided by the licensing authority, along with the required fee, at least 30 days prior to expiration of the current license.

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

C. If a licensee fails to submit a notarized renewal application, with the required fee, before the current license expires, the licensee must submit an initial license application, and the facility shall cease operations until initial licensure procedures are completed.

[8.370.20.12 NMAC - N, 7/01/2024]

8.370.20.13 POSTING OF LICENSE: The facility license shall be posted in a conspicuous place on the licensed premises, in an area visible to staff and visitors.

[8.370.20.13 NMAC - N, 7/01/2024]

8.370.20.14 NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A license shall not be transferred by assignment or otherwise to other persons or location. The license shall be void and must be returned to the Licensing Authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. the facility discontinues operations;

E. a facility wishing to continue operation as a licensed facility under circumstances Subsections A through D of 8.370.20.14 NMAC above shall submit an application for initial licensure in accordance with Section 8 of these regulations at least 30 days prior to the anticipated change.

[8.370.20.14 NMAC - N, 7/01/2024]

8.370.20.15 AUTOMATIC EXPIRATION OF LICENSE: A license shall automatically expire at midnight on the day indicated on the license as the expiration date, unless sooner renewed, suspended or revoked, or:

A. on the day a facility discontinues operation.

B. on the day a facility is sold, leased, or otherwise changes ownership or licensee.

C. on the day a facility changes location.

[8.370.20.15 NMAC - N, 7/01/2024]

8.370.20.16 SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with 24-1-5 NMSA 1978, if immediate action is required to protect human health and safety, the licensing authority may

suspend a license pending a hearing, provided such hearing is held within five working days of the suspension, unless waived by the licensee.

[8.370.20.16 NMAC - N, 7/01/2024]

8.370.20.17 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES: A license may be revoked or suspended, an initial or renewal application may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:

- A. failure to comply with any provision of these regulations.
- B. failure to allow survey by authorized representatives of the licensing authority.
- C. any person active in the operation of a facility licensed pursuant to these regulations, to include all adults and teenaged children living in an adult day care home shall not be under the influence of alcohol or narcotics or convicted of a felony.
- D. misrepresentation or falsification of any information on application forms or other documents provided by the licensing authority.
- E. discovery of repeat violations of these regulations during surveys.
- F. hiring of or continuing to employ any person whose health or conduct impairs their ability to properly protect the health, safety, and welfare of the participants.
- G. exceeding licensed capacity.

[8.370.20.17 NMAC - N, 7/01/2024]

8.370.20.18 HEARING PROCEDURES:

A. Hearing procedures for adverse action initiated by the licensing authority against a facility license as outlined in Sections 16 and 17 above will be held in accordance with adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.

B. A copy of the above regulations will be furnished to a facility at the time an adverse action is initiated against its license by the licensing authority, or a copy may be requested at any time by contacting the licensing authority.

[8.370.20.18 NMAC - N, 7/01/2024]

8.370.20.19 NEW FACILITY: A new facility may be located in an existing building or a newly constructed building:

A. If opened in an existing building, a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in these regulations, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

B. A new facility opened in a newly constructed building shall meet all of the requirements of these regulations.

[8.370.20.19 NMAC - N, 7/01/2024]

8.370.20.20 FACILITY SURVEYS:

A. Surveys are meant to be constructive and informative to the licensee and staff of a facility, to insure that the facility meets the requirements of these regulations, and to identify any area which could be dangerous or harmful to the health, safety, and welfare of the participants and staff.

B. A survey will be conducted at least once annually in each facility licensed pursuant to these regulations by personnel of the licensing authority using these regulations as criteria. Additional surveys or visits may be made to assist the facility with technical advice, to check on progress in correction of violations found on previous survey, or to investigate complaints.

C. At the completion of a survey, the findings shall be discussed with the licensee or representative and a plan of correction will be requested. If a plan of correction is not given at the time of survey the licensee, director or operator must submit within 10 working days after receiving the official written report of survey, a plan of correction to the licensing authority for violations found during the survey. The plan of correction must give specifics as to how the violation will be corrected and the expected date of completion.

D. The licensing authority may, at its sole discretion, accept the plan of correction as written or require modifications of the plan by the licensee.

E. Application for licensure, whether initial or renewal, shall constitute permission for entry into and survey of a facility by authorized licensing authority representative during the pendency of the application and, if licensed, during the licensure period.

F. Surveyors have the right to enter upon and into the premises of any facility which is licensed or required to be licensed, whether or not an application for licensure has been made, at any reasonable time for the purpose of determining the state of compliance with these regulations.

G. The licensing authority shall perform, as it deems necessary, unannounced on-site surveys to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility.

H. At all times, there must be a person present in the facility who can represent the licensee or director for survey purposes. This person must be able to provide access to all records and keys to any locked area. [8.370.20.20 NMAC - N, 7/01/2024]

8.370.20.21 COMPLAINT PROCEDURES:

A. Submission of complaints: Complaints regarding any facility licensed or required to be licensed pursuant to these regulations should be submitted to the licensing authority.

(1) Complaints should be submitted in writing and signed by the complainant.

(2) Complainants telephoning the licensing authority should identify themselves and be able to provide necessary information needed by the licensing authority in order to document the complaint.

B. Written acknowledgement: The licensing authority shall, whenever possible acknowledge in writing, within 10 working days, receipt of all complaints.

C. Initiation of investigation: If it is probable that the health, safety, and welfare of an adult or adults is in jeopardy, the complaint will be investigated promptly. Otherwise the licensing authority shall initiate an investigation within 20 working days from receipt of a complaint.

D. Results of investigation: Both the licensee of the facility against whom a complaint is lodged, and the complainant, shall be notified in writing of the results of the investigation.

E. Anonymity may be requested by the complainant but cannot be assured.

F. Action by the licensing authority:

(1) Complaint unsubstantiated: A complaint which is unsubstantiated by the licensing authority is not made part of the facility file and the licensing authority takes no further action.

(2) Substantiated complaint: The licensing authority may take the following actions if a complaint is substantiated:

(a) Require the facility to submit a written plan of correction to the licensing authority if violations of these regulations are found.

(b) Other administrative sanctions such as the suspension or revocation of a license, or the filing of criminal charges, or a civil action may be instituted by the licensing authority if deemed appropriate. [8.370.20.21 NMAC - N, 7/01/2024]

8.370.20.22 CAPACITY OF A FACILITY: The capacity of a facility licensed pursuant to these regulations is determined by the following:

A. By the type of facility:

(1) An adult day care center may be licensed for at least three adults but is not limited as to maximum number of participants. Adult relatives of staff and volunteers receiving care in the facility must be counted in the licensed capacity.

(2) An adult day care home may be licensed for at least three adults but not more than five (5) participants. The licensee's own adult relatives under the care of the facility must be counted in the licensed capacity when present in the facility.

B. By useable space for activities:

(1) Adult day care centers and adult day care homes are required to have 40 square feet of activity area for each adult included in the licensed capacity.

(2) The capacity as reflected on the license issued to a facility licensed pursuant to these regulations must not be exceeded at any time.

[8.370.20.22 NMAC - N, 7/01/2024]

8.370.20.23 REPORTING OF INCIDENTS: All facilities licensed pursuant to these regulations shall report to the licensing authority any incident or unusual occurrence which has, or could threaten the health, safety, and welfare of the participants or staff, such as, but not limited to:

- A. lost or missing participant;
- B. sexual or physical abuse of a participant;
- C. accidents or injuries requiring medical care;
- D. fire, flood or other natural disaster which creates structural damages to the facility or poses health hazards.
- E. notifiable diseases.

[8.370.20.23 NMAC - N, 7/01/2024]

8.370.20.24 GENERAL RECORDS: The following records must be kept on file in the facility and available for inspection by the licensing authority during survey:

- A. a copy of the report of the latest survey conducted by the licensing authority and a copy of any variances granted by it.
- B. record of fire drills held.
- C. a copy of the latest fire prevention inspection by the authority having jurisdiction. Exception: Adult day care homes are not required to have fire authority inspections.
- D. a copy of the latest environmental improvement division inspection of the kitchen if meals are served in the facility. Exception: Adult day care homes are not required to have environmental improvement division approvals of kitchen.
- E. initial and periodic inspection reports from environmental improvement division for those facilities which have private water, sewage, or waste disposal systems, when applicable.
- F. documentation of staff training as required by Section 58 of these regulations.
- G. documentation of current first aid certificates as required by these regulations.

[8.370.20.24 NMAC - N, 7/01/2024]

8.370.20.25 PARTICIPANT RECORDS: There must be maintained a complete record on file for each adult receiving care within a facility licensed pursuant to these regulations, which must contain at least the following:

- A. Personal information:
 - (1) name of participant;
 - (2) date of birth;
 - (3) sex;
 - (4) home address (mailing address and location of residence) and telephone number;
 - (5) name of responsible party;
 - (6) current place of employment, address and work telephone number of responsible party.
- B. Emergency information.
 - (1) record of any allergies or medical conditions the participant may have;
 - (2) name and telephone number of two persons to be called in case of emergency when the responsible party cannot be reached;
 - (3) name and telephone number of physician or emergency medical facility authorized by guardian to be called in case of illness or emergency;
 - (4) permission for emergency medical transportation and guardian's consent for treatment.
- C. Date of enrollment.
- D. Date of disenrollment.
- E. The following must be recorded in each participant's file when applicable:
 - (1) accidents and illnesses which require first aid or medical attention;
 - (2) observation of recent bruises, injuries or signs of abuse or neglect;
 - (3) use of physical restraints.
- F. Medications prescribed for the resident, including time and dosage.
- G. Written authorization from the participant, responsible party or guardian, must be in the participants record for the removal of the participant's from the grounds of the facility to participate in field trips, nature walks, or other activities whether or not the activity includes transportation by vehicle.
- H. Daily attendance of the participant.
- I. Enrollment agreement signed by the participant, responsible party or guardian which clearly outlines the following:

- (1) services to be provided by the facility and costs for the same;
- (2) acknowledgement by the participant, responsible party or guardian that they clearly understand the policies of the facility and agree to them.

J. General:

- (1) each participant's record must be kept on file in the facility at least six months after disenrollment.
- (2) participant's records must be made available to those persons authorized by law or regulation to review or inspect such records, such as guardians, staff, or representatives of the licensing authority.
- (3) participant's records must be complete with all documentation at the time of admission, to include drop ins.

[8.370.20.25 NMAC - N, 7/01/2024]

8.370.20.26 STAFF RECORDS:

A. There must be maintained a complete record on file for each staff member or volunteer working more than eight hours of any week and having direct contact with the participants which must contain at least the following:

- (1) name.
- (2) address and telephone number.
- (3) position for which employed.
- (4) date of employment and termination, when applicable.
- (5) certificate signed by a physician or recognized health facility stating that the staff member, or volunteer is free from tuberculosis in a transmissible form as required by the New Mexico health care authority regulations, Control of Communicable Disease in Health Facility Personnel, 7.4.4 NMAC.

B. A daily attendance record of all employed staff must be kept by the facility.

C. The facility must maintain weekly work schedules of all employed staff and caregivers. These schedules must be kept on file for at least six months.

D. Staff records must be available for review by representatives of the licensing authority at all times.

[8.370.20.26 NMAC - N, 7/01/2024]

8.370.20.27 FACILITY RULES: Each facility must have written rules pertaining to the following:

A. admission and disenrollment of participants.

B. duties and responsibilities of all employed staff and volunteers regarding the care, services, and supervision of the participants, which must be updated when staff duties change.

[8.370.20.27 NMAC - N, 7/01/2024]

8.370.20.28 POLICIES AND PROCEDURES: All facilities licensed pursuant to these regulations must have written policies and procedures covering the following areas:

A. actions to be taken in case of accidents or emergencies involving a participant;

B. policies and procedures on reporting suspected adult abuse or neglect;

C. policies and procedures for admission and disenrollment of participants;

D. policies and procedures for action to be taken in the event a participant is found missing from the facility;

E. policies and procedures for handling of medications;

F. policies and procedures for handling of complaints received from guardians or any other person;

G. the facility must have policies and procedures prohibiting the following:

(1) abusing or neglecting a participant (e.g., slapping, hitting, striking, withholding food as a punishment, verbally threatening, or failing to provide a participant with the level of services and degree of supervision;

(2) retaliation against a participant because of complaints or suggestions regarding the management of the facility;

(3) social isolation;

(4) the use of chemical restraint.

H. If at any time a participant's rights are restricted in order to protect the health, safety, and welfare of the participant the reasons for the restriction of the rights must be clearly documented in the participant's record.

I. Policies and procedures for the use of restraints.

J. These policies and procedures may be adopted from other sources.

[8.370.20.28 NMAC - N, 7/01/2024]

8.370.20.29 GENERAL BUILDING(S), GROUNDS, AND SAFETY REQUIREMENTS:

A. New construction, additions and alternation: When construction of building, additions, or alterations to existing building are contemplated, plans and specifications covering all portions of the work must be submitted to the licensing authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire facility must be submitted.

B. Number of stories: All building requirements contained in these regulations are based on building of one (1) story in which care for adults is not being provided above or below ground level. Facilities housed in multi-storied buildings and wishing to provide services to adults above or below ground level will have additional requirements due to the complexities of the building and fire codes. These additional requirements will be outlined by the appropriate building and fire authorities and by the licensing authority through plan review and on site surveys during the licensing process.

C. Energy conservation: New buildings for a facility must be constructed to provide energy conservation as required by applicable building codes.

D. Access to the handicapped: All facilities must provide access to the handicapped as required in current building codes and other state and federal regulations. Exception: Adult day care homes are not required to comply with Subsections A through D of 8.370.20.29 NMAC above.

E. Prohibition on mobile homes: Trailers and mobile homes shall not be used for adult day care.

F. Extent of a facility: All buildings on the premises used for the care of adults will be considered part of the facility and must meet all requirements of these regulations. Adults being cared for in any building on the premises will be counted in the capacity of the facility.

[8.370.20.29 NMAC - N, 7/01/2024]

8.370.20.30 SPACE REQUIREMENTS: Facilities licensed pursuant to these regulations must meet the following space requirements for capacity and service:

A. Adult day care centers and adult day care homes are required to have 40 square feet of activity area for each adult for which the facility is licensed to provide care.

B. Indoor activity area is computed by measuring the activity areas used for the participants, excluding kitchens, corridors, bathrooms, storage areas and closets. Measurements are taken from wall to wall in each room, deducting offsets and built in fixtures.

C. An outside activity area must be provided.

[8.370.20.30 NMAC - N, 7/01/2024]

8.370.20.31 MAINTENANCE OF BUILDING(S) AND GROUNDS:

A. All electrical, signaling, mechanical, water supply, heating, fire protection and sewage systems must be maintained in a safe and functioning condition, including regular inspections of these systems.

B. All furniture and furnishing must be kept clean and in good repair. Furnishings or decorations of an explosive or highly flammable character shall not be used.

C. The buildings and grounds of the facility must be maintained in a safe, sanitary, and presentable condition at all times.

[8.370.20.31 NMAC - N, 7/01/2024]

8.370.20.32 HOUSEKEEPING:

A. The facility must be kept free from offensive odors and accumulations of dirt, rubbish, dust and safety hazards.

B. Activity areas for participants must be cleaned and tidied daily.

C. Floors and walls must be constructed of a finish that can be easily cleaned. Floor polishes shall provide a non-slip finish.

D. Bathrooms and lavatories shall be cleaned as often as necessary to maintain a clean and sanitary condition.

E. Deodorizers must not be used to mask odors caused by unsanitary conditions or poor housekeeping practices.

F. Storage areas must be kept free from accumulations of refuse, discarded furniture, old newspapers, and the like.

G. Combustibles, such as cleaning rags and compounds, must be kept in closed metal containers in areas providing adequate ventilation and away from participant activity and sleeping areas.

H. Poisonous or flammable substances must not be stored in participant's activity areas, or food storage areas.

[8.370.20.32 NMAC - N, 7/01/2024]

8.370.20.33 HEATING, VENTILATION, AND AIR-CONDITIONING:

A. Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes.

B. The heating method used by the facility must provide a minimum temperature of 68 degrees fahrenheit in all rooms used by the participants.

C. The use of unvented heaters, open flame heaters or portable heaters, is prohibited.

D. An ample supply of outside air must be provided in all spaces where fuel fired boilers or heaters are located to assure proper combustion.

E. All gas-fired heating equipment must be provided with a one hundred percent automatic cutoff control valve in event of pilot failure.

F. Each building where gas is used must have the outside gas shutoff valve conspicuously painted red. The facility must have a tool readily available which will operate the shut-off valve. The tool will also be painted red. All staff of the facility must be instructed as to location of the gas shut-off valve and must know how to shut off the gas supply in case of fire or gas leakage. Exception: Adult day care homes are not required to comply with Subsection F of 8.370.20.33 NMAC above.

G. All boiler, furnace or heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one hour. Doors to these rooms shall be at least one and three-quarters inches solid core. Exception: Adult day care homes are permitted to have the normal residential type heating system.

H. A facility must be adequately ventilated at all times by either mechanical or natural means to provide fresh air and the control of unpleasant odors.

I. All gas burning heating and cooking equipment must be connected to an approved venting system to take the products of combustion directly to the outside air. Exception: Adult day care homes are not required to vent cooking stoves.

J. All openings to the outer air used for ventilation must be screened with screening material of not less than sixteen (16) meshes per lineal inch.

K. The facility must be provided with a system for maintaining participant's comfort during periods of hot weather.

[8.370.20.33 NMAC - N, 7/01/2024]

8.370.20.34 WATER:

A. A facility must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use.

B. If the water supply is not obtained from an approved public system, the private water system must be inspected, tested and approved by the New Mexico environment department prior to licensure. It is the facility's responsibility to ensure that subsequent periodic testing or inspection of such private water systems be made at intervals prescribed by the New Mexico environment department.

C. Hot and cold running water, under pressure, must be distributed to all food preparation areas, lavatories, washrooms, laundries and bathrooms.

[8.370.20.34 NMAC - N, 7/01/2024]

8.370.20.35 WATER HEATERS:

A. All fuel-fired water heaters must be separated from other parts of the facility by partitions having a fire-resistive rating of one hour. Doors to the enclosure must be 1 3/4" solid core. Exception: Adult day care homes.

B. All water heaters must be equipped with a pressure relief valve (pop-off-valve) complete with relief drain line to the outside of the facility.

C. Water heaters must not be located in participant areas used for activity or sleeping.

D. Temperature of hot water for lavatories must not be above 110 degrees fahrenheit.

[8.370.20.35 NMAC - N, 7/01/2024]

8.370.20.36 SEWAGE AND WASTE DISPOSAL:

A. All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

B. Where a municipal sewage system is not available, the systems used must be inspected and approved by the New Mexico environment department, and the construction industries division. **Exception: Adult day care homes.**

C. Where municipal or community garbage collection and disposal service are not available, the method of collection and disposal of garbage used by the facility must be inspected and approved by the New Mexico environment department. **Exception: Adult day care homes.**

D. All garbage and refuse receptacles must be durable, have tight fitting lids, must be insect and rodent proof, washable, leak proof, and constructed of materials which will not absorb liquids. Receptacles must be kept clean.

[8.370.20.36 NMAC - N, 7/01/2024]

8.370.20.37 LIGHTING AND LIGHTING FIXTURES:

A. All areas of the facility, including storerooms, stairways, hallways, and entrances must be lighted sufficiently to make all parts of the area clearly visible.

B. All lighting fixtures must be shielded in participant activity areas and food preparation areas.

C. Adult day care centers must be provided with emergency lighting which will activate automatically upon disruption of electrical service.

D. Adult day care homes must have at least a flashlight readily available and in operable condition for use as emergency lighting.

[8.370.20.37 NMAC - N, 7/01/2024]

8.370.20.38 ELEMENTS OF FACILITY ELECTRICAL SYSTEM:

A. Electrical installations and electrical equipment must comply with all current state and local codes.

B. All fuse and breaker boxes must be labeled to indicate the area of the facility to which each fuse or circuit breaker provides services.

C. The main electrical service line must have a readily available disconnect switch. All staff and caregivers must know the location of the electrical disconnect switch and how to operate it in case of emergency.

D. The use of jumpers or devices to bypass circuit breakers or fuses is prohibited.

[8.370.20.38 NMAC - N, 7/01/2024]

8.370.20.39 ELECTRICAL CORDS, APPLIANCES, AND OUTLETS:

A. Electrical cords and appliances must be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Under no circumstances shall extension cords be used as a general wiring method.

(3) Extension cords must be plugged into an electrical outlet within the room where used and must not be connected in one room and extended to another room.

B. The use of multiple sockets (gang plugs) in electrical outlets is strictly prohibited.

[8.370.20.39 NMAC - N, 7/01/2024]

8.370.20.40 WINDOWS: All activity areas for participants must have a least one (1) window or skylight area of at least 1/20 of the floor area.

[8.370.20.40 NMAC - N, 7/01/2024]

8.370.20.41 EXITS:

A. There must be at least two exits remote from each other from each floor of the facility.

B. Exit ways must be kept free from obstructions at all times.

C. All exits must be marked by signs having letters at least six inches high whose principal strokes are at least three-fourths of an inch wide.

D. Exit signs, when applicable, must be visible at all times. **Exception: Adult day care homes are not required to have exit signs.**

[8.370.20.41 NMAC - N, 7/01/2024]

8.370.20.42

DOORS:

- A. Required exit doors must be openable from the inside at all times the facility is in operation.
- B. All required exit doors must have a minimum width of 36 inches. Exception: Adult day care homes.
- C. Required exit doors in facilities having a capacity of 50 or more must open outward.
- D. Locks and latches on closets and bathrooms must be of the type that the lock can be released from the outside.

[8.370.20.42 NMAC - N, 7/01/2024]

8.370.20.43

OUTDOOR AREAS:

- A. Outdoor area must be located on the premises of the facility.
- B. If required by the agency, the outdoor area must be fenced and have at least one latched gate available for emergency exit.
- C. Outdoor areas must be kept free of sharp objects, trash, weeds, or other hazardous items.
- D. Outdoor areas must be designed to permit direct supervision of the participants at all times.

[8.370.20.43 NMAC - N, 7/01/2024]

8.370.20.44

TOILET AND BATHING FACILITIES:

- A. Bathrooms must be completely enclosed. A window or mechanical system for ventilation must be provided.
- B. Toilets and lavatories (hand washing sinks) must be provided for each sex in the following ratios in adult day care centers:
 - (1) One toilet for one to 15 participants.
 - (2) One toilet for each additional 15 participants or fraction thereof.
 - (3) Lavatories must be provided within each toilet room at a ratio of one to 40 participants.
 - (4) Toilet paper, soap, and disposable towels must be provided in all toilet rooms.
 - (5) The use of a common towel or wash cloth is prohibited.
 - (6) Bathrooms and lavatories must be cleaned as often as necessary to maintain a clean and sanitary condition.
- C. Adult day care homes are required to have at least one toilet and one lavatory.
- D. Facilities accepting participants with special bathing needs, or provide bathing as a service, will provide approved bathing facilities.

[8.370.20.44 NMAC - N, 7/01/2024]

8.370.20.45

FIRE SAFETY COMPLIANCE: All current applicable requirements of state and local codes for fire prevention and safety must be met by the facility.

[8.370.20.45 NMAC - N, 7/01/2024]

8.370.20.46

FIRE CLEARANCE AND INSPECTIONS:

- A. Written documentation from the state fire marshal's office or fire authority having jurisdiction evidencing a facility's compliance with applicable fire prevention codes must be submitted to the licensing authority prior to issuance of an initial license. Exception: Adult day care homes are not required to have fire authority inspections.
- B. Each facility shall request from the fire authority having jurisdiction an annual fire inspection. If the policy of the fire authority having jurisdiction does not provide for annual inspection of the facility, the facility must document the date the request was made and to whom. If the fire authority having jurisdiction does make annual inspections, a copy of the latest inspection must be kept on file in the facility. Exception: Adult day care homes are not required to have annual fire inspections.

[8.370.20.46 NMAC - N, 7/01/2024]

8.370.20.47

FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:

- A. The facility must be equipped with an approved, manually operated alarm system or other continuously sounding alarm approved in writing by the fire authority having jurisdiction. Exception: Adult day care homes are not required to have manually operated alarm systems.

B. The facility must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement. Exception: Adult day care homes are only required to have one smoke detector in the participants activity rooms which may be battery operated.

C. Fire extinguishers as approved by the state fire marshal or fire authority having jurisdiction must be located in the facility. Facilities must as a minimum have two 2A10BC fire extinguishers, one centrally located in the facility activity areas. Exception: Adult day care homes are only required to have one 2A10BC fire extinguisher located in the kitchen or food preparation area.

D. Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting equipment must be properly maintained and inspected at least yearly, and more often if recommended by the manufacturer, state fire marshal, or fire authority having jurisdiction. Fire extinguishers must be tagged noting the date of inspection.

E. All fire extinguishers must be inspected yearly and recharged as specified by the manufacturer, state fire marshal or local fire prevention authorities. All fire extinguishers must be tagged noting the date of inspection.

[8.370.20.47 NMAC - N, 7/01/2024]

8.370.20.48 STAFF FIRE AND SAFETY TRAINING:

A. All staff of a facility must know the location of and be instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instruction in fire prevention and techniques of evacuation.

B. The staff of a facility must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit ways, and any other condition which could cause burns, falls, or other personal injury to the participants or staff.

C. Fire drills: The facility must conduct at least one fire drill each month.

(1) Fire drills must be held at different times of the day.

(2) The fire alarm system or detector system in the facility shall be used in the conduct of fire drills.

(3) In the conduct of fire drills, emphasis must be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of fire drills held must be maintained on file in the facility. Such record must show date and time of the drill, number of personnel participating in the drill, and any problem noted during the drill.

(5) The local fire department should be requested to supervise and participate in fire drills.

D. Each facility must have a fire evacuation plan conspicuously posted in the facility, and all staff must be familiar with the evacuation plan. Exception: Adult day care homes are not required to have evacuation.

[8.370.20.48 NMAC - N, 7/01/2024]

8.370.20.49 PROVISIONS FOR EMERGENCY CALLS:

A. An easily accessible telephone for summoning help in case of emergency must be available in each facility. A pay telephone will not fulfill this requirement.

B. A list of emergency numbers including, but not limited to, fire department, police department, ambulance services, and poison control center shall be posted by each telephone in the facility.

[8.370.20.49 NMAC - N, 7/01/2024]

8.370.20.50 SMOKING:

A. Smoking in the kitchen or food preparation areas is strictly prohibited.

B. Separate smoking areas must be designated and provided with suitable ashtrays.

C. Smoking must never be permitted in any area where oxygen is in use.

[8.370.20.50 NMAC - N, 7/01/2024]

8.370.20.51 CARPETS:

A. Carpeting, if used in new facilities, must be of at least class II rating. Existing facilities, as they replace carpeting, must replace with carpet having at least a class II rating.

B. Carpets must be of a stable and regular surface to prevent tripping or slipping hazards and allow wheelchair mobility.

[8.370.20.51 NMAC - N, 7/01/2024]

8.370.20.52 ACCESS REQUIREMENTS FOR THE HANDICAPPED:

A. Accessibility to the handicapped must be provided in all facilities and shall include the following:
Exception: Adult day care homes are not required to have access for the handicapped.

(1) Main entry into the facility must be ground level or ramped to allow wheelchair access.
(2) Building must allow access to participant's activity areas.
(3) Access to at least one toilet is required to have a minimum door clearance of 32 inches, 36 inches is recommended. Toilet room must also provide a 60 inch diameter clear space (turning radius for a wheelchair).

(4) If ramps are provided to the building, the slope must be at least 12 inches horizontal run for each one inch of vertical rise.

(5) Ramps leading to doorways must have a five foot by five foot level area at the doorway.

(6) Ramps exceeding a six inch rise shall be provided with handrails.

B. Requirements contained herein are minimum and additional handicap requirements may apply depending on size and complexity of the facility.

C. Consultation will be given to new facilities on handicap requirements upon submission of floor plans during the initial licensing process.

[8.370.20.52 NMAC - N, 7/01/2024]

8.370.20.53 ADULT DAY CARE CENTERS IN MULTI-USE FACILITIES:

A. An adult day care program must be self-contained with its own staff and separate area.

B. Depending on the nature of other activities in the building, it may or may not be appropriate for day care participants to share in them on a planned basis. Such involvement must be as part of the day care program plan and must be supervised by a day care staff member, i.e., senior center crafts and social events and lunch at a congregate meal site.

C. It is not appropriate for persons from other activity groups in the building to move through the day care area at will or to attend day care activities on an informal basis. The day care program is in a sense a "closed" program in that participation is open only to persons enrolled in the program and to visitors on a planned basis.

[8.370.20.53 NMAC - N, 7/01/2024]

8.370.20.54 GENERAL PERSONNEL AND STAFFING REQUIREMENTS:

A. All persons involved with the care of participants shall be of good character and physically, mentally and emotionally equipped to provide good care and maintain responsible supervision for the participants.

B. All involved with the care of participants must be screened by the licensee. Their qualifications, references and employment history must be verified prior to employment.

C. A person who has been convicted of a felony or of a misdemeanor involving moral turpitude shall not be allowed to work as an administrator/director/operator, direct service staff, or support staff member in a facility licensed pursuant to these regulations. This includes family members who work or reside in an adult day care home.

D. All persons volunteering with the facility, are deemed to be staff and are subject to these regulations.

E. Staff members who work directly with participants and who are counted in the staff/participant ratio must be 18 years of age or older.

F. Persons under the age of 18 shall at all times work directly under the supervision of a staff member who is physically present.

G. Persons employed solely for clerical, cooking and maintenance shall not be included in the staff/participant ratio.

H. Substitutes and part-time staff members, who are counted in the staff/participant ratios, shall meet the same requirement as regular staff.

[8.370.20.54 NMAC - N, 7/01/2024]

8.370.20.55 QUALIFICATIONS FOR DIRECTORS OF CENTERS:

A. The adult day care center shall have a full-time program director.

B. The program director shall have the authority and responsibility for the management of activities and direction of staff to insure that activities and services are provided appropriately and in accordance with established policies.

C. The program director shall meet all of the minimum qualifications and personal characteristics stated below.

- (1) 18 years of age or older;
- (2) shall have completed at least a baccalaureate degree from a nationally accredited institution of education in the field of geriatrics, or a health related course of study which includes the care of the elderly, or be a registered nurse;
- (3) shall have a minimum of two years experience and training in services to elderly or handicapped adults;
- (4) shall have demonstrated ability in supervision and administration.

D. Meet the requirements of Section 53.
[8.370.20.55 NMAC - N, 7/01/2024]

8.370.20.56 QUALIFICATIONS OF OPERATORS OF ADULT DAY CARE HOMES: Licensees of adult day care homes must have the following minimum qualifications:

- A. 18 years of age or older;
- B. be competent and have a demonstrated ability to manage all aspects of a day care program;
- C. have a minimum of a high school education or the equivalent;
- D. have at least two years of full-time work experience in services to elderly or handicapped adults;
- E. provide a written statement from a physician or a recognized health facility stating that the operator is free from communicable disease;
- F. have the ability to work with people;
- G. provide references, including former employer(s);
- H. meet the requirements of Section 53.

[8.370.20.56 NMAC - N, 7/01/2024]

8.370.20.57 VOLUNTEERS:

A. When volunteers are used in an adult day care program, adequate planning prior to the placement of the volunteers will take place in order to provide the volunteer with a written description of their duties and responsibilities. This written description shall outline in detail the tasks to be performed, qualifications for performing the tasks, and specifics about hours, days and length of commitment needed from the volunteer.

B. The volunteer shall take part in a formal or informal orientation and training session to inform him/her of the goals of the program, the operation and daily schedule of the program, specific needs of the adults being served and any necessary , specialized approaches the volunteer will be expected to use.

C. Employees of the program shall be properly informed of the use of a volunteer prior to their working in the program, staff's responsibility and role and the volunteer's responsibility and role. Employees shall be involved in planning for the volunteer and shall assist in writing the duties the volunteer will perform.

D. Volunteers working more than half-time and having direct contact with participants shall have a certificate from a physician or medical facility stating that they are free from tuberculosis in a transmissible form.
[8.370.20.57 NMAC - N, 7/01/2024]

8.370.20.58 STAFF TRAINING:

A. All facilities shall provide training for each staff member.

B. Documentation for training shall be kept on file at each facility and available for inspection by representatives of the licensing authority.

C. Documentation may take the form of certificates or a training log with the date, name of staff member or caregiver, hours spent in training, subject and source of training.

D. Before beginning work all facilities shall provide for each staff member an orientation which includes the following as a minimum:

- (1) scope of services, activities, and program offered by the facility;
 - (2) emergency first aid procedures, recognition of illness and indicators of abuse;
 - (3) fire prevention measures and emergency evacuation plans;
 - (4) review of licensing regulations;
 - (5) special problems of the elderly and disabled;
 - (6) participant rights;
 - (7) sanitation procedures.
- E. Emergency staff and substitutes are not required to participate in training.

- F. Adult day care centers:
 - (1) All staff members, including the director, shall participate in at least 40 documented clock hours of training during each year of employment.
 - (2) Of the 40 hours of required training, 20 hours shall be in areas covering the physical, emotional, intellectual, and social needs of adults.
 - (3) Other training may include, but is not limited to the following: nutrition, sanitation procedures, first aid, and cardiovascular resuscitation techniques.
 - G. Adult day care homes:
 - (1) All staff members shall participate in at least 24 documented clock hours of training during each year of licensure.
 - (2) The required 24 hours of training shall be in the subjects specified in these regulations.
 - H. Training may be obtained from, but not limited to, the following resources:
 - (1) public health division, health care authority.
 - (2) social services division, health care authority.
 - (3) adult day care associations and information and referral services.
 - (4) university related programs.
 - (5) vocational/technical schools.
 - (6) county extension offices.
 - (7) local fire department.
 - (8) red cross.
 - (9) self-study as approved by the licensing authority.
 - (10) In service training by a qualified staff member whose qualifications are approved by the licensing authority.
- [8.370.20.58 NMAC - N, 7/01/2024]

8.370.20.59 STAFFING REQUIREMENTS:

- A. General:
 - (1) Staff/participant ratios must be maintained at all times.
 - (2) The responsibility of staff members included in the staff/participant ratio shall be direct care of the participants.
 - (3) Each facility must keep a list on file of two readily available persons who can be called to the facility to substitute for any staff member in case of an emergency or illness. These persons names telephone numbers, and health certificates must be on file.
 - B. Staff/participant ratios:
 - (1) Adult day care centers - One full time equivalent staff position with responsibility for direct participant care for each five participants.
 - (2) Adult day care homes - One full time equivalent staff position with responsibility for direct care for no more than five participants.
- [8.370.20.59 NMAC - N, 7/01/2024]

8.370.20.60 GENERAL:

- A. The health, safety, and welfare of the participants must be the primary concern in all activities and services provided by facilities licensed pursuant to these regulations.
 - B. Participants must never be left unattended. Staff members must be physically present with the participants at all times.
- [8.370.20.60 NMAC - N, 7/01/2024]

8.370.20.61 CARE AND SERVICES FOR ADULTS WITH SPECIAL NEEDS: In addition to all other requirements contained in these regulations, facilities providing care and services to adults with special needs including respite care, must comply with the following:

- A. Facilities which are able to appropriately mainstream special needs adults may do so at their own discretion.
- B. An adult with a severe diagnosed mental or physical handicap may be admitted to a facility upon the written recommendation of a licensed physician or therapist.
- C. The facility must make appropriate provisions to meet the needs of adults who require special services such as additional space, wide doors, halls, ramps and specially equipped toilet rooms.

D. The licensing authority may require higher staff/adult ratios and staff qualifications to properly care for the adults with special needs, if deemed necessary.
[8.370.20.61 NMAC - N, 7/01/2024]

8.370.20.62 ACTIVITIES:

A. Adult day care activities shall be designed to meet the specific needs and interests of the participants, as determined by individual plans of care, and shall be consistent with the program's goals.

B. Activities shall be planned by staff, participants, family/caregivers, volunteers and other interested individuals and groups.

C. The day care center shall assure safe and healthy conditions for activities in and outside the facility.

D. The plan for, and conduct of, activities must be an ongoing process and shall be reviewed, revised and evaluated as necessary.

E. The adult day care program shall provide for a balance of activities to meet the interrelated needs and interest (social, intellectual, cultural, economic, emotional and physical) of participants.

F. Activities shall be designed to promote personal growth and improve the self-image of participants by providing opportunities to:

- (1) learn new skills and gain knowledge;
- (2) challenge and tap the potential of participants;
- (3) participate in activities of interest;
- (4) improve capacity for independent functioning;
- (5) develop satisfying and interpersonal relationships;
- (6) be exposed to, and involved in, activities and events within the greater community;
- (7) develop cultural enrichment;
- (8) have fun and enjoyment.

G. Activities shall respond to individual differences in health status, lifestyle, ethnicity, values, experiences, needs, interests, abilities, skills and age by providing opportunities for a variety of types and levels of involvement, including:

- (1) small and large group activities;
- (2) individualized activities;
- (3) active and spectator participation;
- (4) inter-generational experience;
- (5) involvement in the greater community;
- (6) services to individuals and to the program

H. Activities shall be flexible and responsive to changes in:

- (1) the needs and interests of individual participants;
- (2) functional capacities of participants;
- (3) the characteristics of the adult population in the service area.

I. Activities shall emphasize individual participant's strengths and abilities rather than impairments, and shall contribute to participant's feeling of competence and accomplishment.

J. All program activities shall be supervised by program staff.

K. Participants shall have the choice of refusing to participate in any given activity, and time shall be allowed for rest and relaxation.

[8.370.20.62 NMAC - N, 7/01/2024]

8.370.20.63 SCHEDULE:

A. A monthly calendar of activities shall be prepared and distributed to participants and family/caregivers.

B. Daily activities (and services) shall be posted in a visible location within the center.

C. The participant and family caregivers shall be encouraged to evaluate activities and plan future activities on a six month basis.

[8.370.20.63 NMAC - N, 7/01/2024]

8.370.20.64 EQUIPMENT:

A. Each facility shall have a living or multi-purpose room for the use of participants. Such rooms shall be provided with reading lamps, tables, chairs, and couches. These furnishings shall be well constructed, comfortable, and in good repair.

B. The living room or multi-purpose rooms shall be provided with supplies to meet the varied interests and needs of the participants, including, but not limited to games, current magazines, books, radio and television.

C. The interest areas shall be arranged so that quiet and noisy activities can occur concurrently without disturbing each other.

D. Equipment, furniture and materials shall be kept in good condition and present no safety hazards.
[8.370.20.64 NMAC - N, 7/01/2024]

8.370.20.65 LINENS: Linens and bedding shall be kept clean at all times.

A. There shall be separate handling and storage of clean and soiled linens.

B. Clean linen shall be stored in clean storage area.

C. Linens shall be laundered and disinfected prior to re-use by another participant.

D. Any linen which has been used by a sick participant, or which has been dirtied by urine or defecation shall be collected, laundered and disinfected separately from other items.

E. New linens must be laundered before use.

[8.370.20.65 NMAC - N, 7/01/2024]

8.370.20.66 FIRST AID REQUIREMENTS: At all times there shall be one staff member on duty who holds current first aid certificate and has completed an approved cardiopulmonary resuscitation course.

A. A first-aid, accessible to all personnel, shall be kept in the facility.

B. The first aid kit shall contain as a minimum: band aids, gauze pads, adhesive tape, scissors, soap, and syrup of ipecac.

C. In case of accidental poisoning, the facility shall immediately contact the poison control center and their directions shall be followed.

D. Syrup of Ipecac must not be given to any participant without first contacting the poison control center.

E. All facilities are strongly encouraged to send all of their personnel to an approved cardiopulmonary resuscitation course.

F. All facilities shall have a first aid manual available to the staff or caregivers.

[8.370.20.66 NMAC - N, 7/01/2024]

8.370.20.67 PETS: The facility shall inform participants and guardians of the presence of pets in the facility.

A. There shall be no pets in the kitchen or food serving areas.

B. Pets shall be inoculated as prescribed by a veterinarian.

C. Proof of inoculation shall be kept on file in the facility.

D. Pets must be kept well groomed and healthy.

[8.370.20.67 NMAC - N, 7/01/2024]

8.370.20.68 FOOD SERVICE AND PREPARATION: Each facility that serves meals shall meet all state and local regulations governing food services establishments. **Exception: Adult day care homes.**

A. There shall be no smoking in food service and food preparation areas.

B. Refrigerators, work tables, cupboards, and stoves shall be maintained in clean condition.

C. All food and drink shall be protected from spoiling by proper storage and by putting it in air-tight containers or wrapping it.

D. All raw fruits and vegetables shall be washed thoroughly before being cooked or served.

E. All foods shall be protected from insects, rodents and other vermin.

F. Foods shall be served promptly and refrigerated immediately after use.

G. Utensils that can be re-used shall be washed and sanitized.

[8.370.20.68 NMAC - N, 7/01/2024]

8.370.20.69 KITCHENS:

A. There shall be no through traffic in the kitchen during food preparation or service. **Exception:** Adult day care homes.

B. Facilities may allow participants to prepare food as a program activity under careful supervision.
[8.370.20.69 NMAC - N, 7/01/2024]

8.370.20.70 FOOD PREPARATION:

A. Outer clothing of persons preparing or serving food shall be maintained with the highest degree of cleanliness.

B. When staff members are involved in food preparation or service, these persons shall thoroughly scrub their hands and wear clean fresh outer clothing before preparing or serving formula or food.

C. In facilities not under the jurisdiction of the New Mexico environment department, only snacks which require no cooking shall be served. Exception: Adult day care homes.

[8.370.20.70 NMAC - N, 7/01/2024]

8.370.20.71 FOOD TEMPERATURE REQUIREMENTS:

A. All perishable food shall, except when being prepared, be kept at 45 degrees fahrenheit or below, or 140 degrees fahrenheit or above.

B. Foods requiring refrigeration shall be kept at 45 degrees fahrenheit or below. Frozen foods shall be kept at zero degrees fahrenheit or below.

C. Refrigerators and separate freezers shall have thermometers. Metal stem thermometers shall be available to measure proper internal cooking and holding temperatures.

[8.370.20.71 NMAC - N, 7/01/2024]

8.370.20.72 MENUS:

A. The same menu must not be served twice in one week.

B. A copy of the current week's menu, including snacks, shall be posted in the kitchen and the entrance of the facility where it can be readily seen.

C. Posted menus shall be followed. Substitutions shall be of equivalent nutritional value and shall be recorded on the posted menu.

D. The weekly menu plans must be dated and kept on file for 30 days.

[8.370.20.72 NMAC - N, 7/01/2024]

8.370.20.73 MEAL TIMES AND NUTRITION:

A. Staff/participant ratios must be maintained at meal times.

B. Time allowed for meals shall enable the participants to eat at a leisurely rate.

C. Meals may be served in areas of main activity.

D. Dining areas shall be equipped with tables, chairs, eating utensils and dishes.

E. Nutrition:

(1) A meal shall be provided to each participant in attendance at the program during standard mealtimes. Each meal shall provide at least one-third of an adult's daily nutritional requirement.

(2) A nutritious mid-morning and mid-afternoon snack shall be offered daily to participants. Snacks shall be planned to keep sugar, salt and cholesterol intake to a minimum.

(3) Participants shall not go for more than three hours without being offered a meal or a snack.

(4) A therapeutic diet shall be provided, if prescribed in writing by a physician, for any participant. If therapeutic diets are prepared by program staff, such staff shall have training in planning and preparing therapeutic diets or shall provide documentation of previous training and education sufficient to assure ability to prepare meals in accordance with a physician's prescription.

(5) A registered dietitian/nutritionist must be consulted by the staff on basic and special nutritional needs and proper food handling techniques. Instruction in nutrition, weight control and safe food handling techniques may be provided as an ongoing part of program activities.

[8.370.20.73 NMAC - N, 7/01/2024]

8.370.20.74 NOTIFIABLE DISEASES: Facilities shall report any notifiable disease occurring to the participants to the local public health field office:

A. Each facility shall secure the current list of notifiable diseases published by the New Mexico health care authority and post it conspicuously in the facility.

B. Facilities shall not admit or allow the continued attendance of participants who are ill or who are known or suspected of having notifiable diseases.

C. After a participant has had a notifiable communicable disease, he or she shall be re-admitted to the facility only upon written approval of the attending physician.

[8.370.20.74 NMAC - N, 7/01/2024]

8.370.20.75 ISOLATION:

A. A participant who becomes sick at the facility must be separated from the rest of the participants until leaving the facility. The guardian or responsible party must be promptly notified of the participant's illness and arrangements must be made for the participant to be removed from the facility.

B. The facility must have a bed available for a sick participant which must be thoroughly cleaned after use.

C. The sick participant must be kept in an area where he/she can be under constant observation.

D. Staff must wash their hands thoroughly after caring for sick participants.

[8.370.20.75 NMAC - N, 7/01/2024]

8.370.20.76 MEDICATIONS: Any facility licensed pursuant to these regulations who supervises self-administration of medication for the participants or safeguards medication for residents must have an appropriate custodial drug permit as determined by the state board of pharmacy.

A. To apply for a custodial drug permit, or to obtain information concerning management of drugs and pharmaceutical, the facility should contact the state board of pharmacy.

B. Only medications which can be self-administered by the participant, unless they will be administered by a licensed physician, dentist, or nurse, can be kept by a facility.

C. Medications prescribed for one participant must not be given to any other participant.

D. Drugs and medications shall neither be supplied nor given to participants, unless ordered or prescribed by a licensed physician, dentist, or other practitioner licensed to do so.

E. Over the counter medications may be given to a participant by the facility, if the facility has a written procedure reviewed and approved by a licensed physician for giving such medications.

F. Medications must be kept in a locked cabinet or other suitable container approved by the state board of pharmacy. Medications must be separated, by individual, in the storage area.

G. The key for the medication storage area must be made available only to personnel duly authorized by the director of the facility.

H. Medication which requires refrigeration must be kept in a separate locked box within a refrigerator, a locked refrigerator, or a refrigerator in a locked room.

I. All medications must be kept in their original containers.

J. Poisonous substances and medications labeled for "external use only" must not be accessible to participants and must be kept separate from other medications.

K. All outdated medications shall be disposed of in a manner approved by the state board of pharmacy.

L. No facility will prepare dosages of medications, in advance, to be given to participants for self-administration with assistance. The medications must be in the original container, the staff member assisting may hold the container, assist the participant in opening the container, and assist the participant in administering the medication. Exception: If a facility has on [sic] the staff nurses registered in the state of New Mexico who prepare dosage and administer to the resident.

[8.370.20.76 NMAC - N, 7/01/2024]

8.370.20.77 USE OF PHYSICAL RESTRAINTS:

A. Physical restraints may only be used when authorized by a physician in writing for a specified period of time or in emergencies.

B. The use of physical restraints may only be applied by a licensed nurse.

C. Physical restraints must be applied in accordance with the written policies and procedures of the facility.

D. Supervision of participants in restraints shall be on a one to one basis for the duration of the time the restraints are in place.

[8.370.20.77 NMAC - N, 7/01/2024]

8.370.20.78 TRANSPORTATION:

- A.** If a facility licensed pursuant to these regulations provides transportation to participants it is responsible for the participant from the time picked up until delivered.
 - B.** All vehicles used for transportation of participants must be licensed and meet all applicable laws of the state of New Mexico.
 - C.** All vehicles used for transportation of participants must be equipped with a fire extinguisher and first aid kit.
 - D.** Participants must be loaded and unloaded at the curb side of the vehicle.
 - E.** Drivers may leave the vehicle only to assist participants in boarding and leaving the vehicle, and must remain in sight of the vehicle at all times.
 - F.** Drivers of vehicles used to transport participants must be licensed and abide by state and local laws.
 - G.** Participants shall be transported no more than 30 minutes without being offered the opportunity to have a rest stop.
 - H.** Vehicles used to transport participants shall be equipped with seatbelts. Drivers shall insure participants use seatbelts while being transported.
- [8.370.20.78 NMAC - N, 7/01/2024]

8.370.20.79 RELATED REGULATIONS AND CODES: Adult day care facilities subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:

- A.** Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
 - B.** Health facility sanctions and civil monetary penalties, New Mexico health care authority, 8.370.4 NMAC.
 - C.** Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- [8.370.20.79 NMAC - N, 7/01/2024]

HISTORY OF 8.370.20 NMAC: RESERVED