

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

8.15.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.15.2.1 NMAC - Rp, 8.15.2.1 NMAC, 02/14/05]

8.15.2.2 SCOPE:
This policy applies to all clients seeking child care assistance benefits, all child care providers who provide services to clients qualifying for assistance benefits, and employees of the department who determine eligibility for child care assistance benefits. (See 8.15.2.8 NMAC for detailed list.)
[8.15.2.2 NMAC - Rp, 8.15.2.2 NMAC, 02/14/05]

8.15.2.3 STATUTORY AUTHORITY: NMSA section 9-2A-7 (1991).
[8.15.2.3 NMAC - Rp, 8.15.2.3 NMAC, 02/14/05]

8.15.2.4 DURATION: Permanent
[8.15.2.4 NMAC - Rp, 8.15.2.4 NMAC, 02/14/05]

8.15.2.5 EFFECTIVE DATE: February 14, 2005, unless a later date is cited at the end of section.
[8.15.2.5 NMAC - Rp, 8.15.2.5 NMAC, 02/14/05]

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.

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/or equitable manner, keeping in mind that consistency in application is the ultimate goal.

[8.15.2.6 NMAC - Rp, 8.15.2.6 NMAC, 02/14/05]

8.15.2.7 DEFINITIONS:

A.

"Attending a job training or educational program" means being physically present and actively participating in a job training or educational program.

B.

"Child with special needs" means a child with a medically documented condition, which results in physical or mental incapacity requiring care and supervision by an adult.

C.

"Closure" means the child care case is closed due to the client no longer having a need for child care assistance in accordance with program policy, being determined ineligible due to receipt of income in excess of the income guideline, moving out of state, failing to recertify in accordance with program procedures, completing or withdrawing from an educational or training program or being disqualified from participation in the program.

D.

"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.

E. "Department" means the New Mexico children, youth and families department.

F. "Earned income" means income received as wages from employment or as profit from self-employment.

G. "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.

The AIM HIGH essential elements, as approved by the child development board, are the criteria that will be used for determining the number of stars.

H.

"Incidental money" means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

I.

"Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

- (1) infant: 0-23 months;

- (2) toddler: 24 -35 months;
- (3) preschool: 3 to 5 year olds; and
- (4) school age: 6 year olds and older.

J.

“Job training and educational program” means participation in a short or long term educational or training program which provides specific job skills which allow the participant to enter the workforce and/or directly relate 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.

K.

“National accreditation status” means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD.

Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds the standards of one of the following national accrediting bodies: the national association for the education of young children (NAEYC); the national early childhood program accreditation (NECPA); the American Montessori society (AMS); the Montessori school accreditation commission (MSAC); the national association of family child care (NAFCC); the council of accreditation (COA); the national after school association (NAA); or the association of Christian schools international (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

L.

“Non-traditional hours of care” means care provided between the after hours of 7 p.m. and 7 a.m. Monday through Friday and/or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

M.

“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.

N.

“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.

O.

“Protective services child care” means child care services for children placed in the custody of the protective services of the department.

P.

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

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

(2) “Registered home” means child care provided in the home of a provider who is registered with the department’s child and adult care food program to care for up to four (4) 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 ineligible.

(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 (6) 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 twelve (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 school age child up to age thirteen immediately before and/or immediately after a regularly scheduled school day and/or when regular school is not in session.

Q.

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

R.

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

S.

“Residing with” means living in a household which provides shelter and care to a child during the non-working hours of the child’s parent or guardian.

T.

“Suspension” means that the child care case is kept open, but benefits are not paid.

U.

“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.

V.

“Teen parent” means a biological parent under the age of 20 who is attending high school or working towards a general equivalency diploma (GED).

W.

“Termination” means the child care case is terminated due to cause.

X.

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

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

Z. “Waiting list” means a list of families who have applied for child care services during a period of lack of funding.

AA. “Working” means employment of any type, including self-employment. For TANF recipients, this includes work experience and/or community service or any other activity that meets the TANF work activity requirements.

BB. “CACFP” means the child and adult care food program, administered by the children, youth and families department.
[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC, 02/14/05; A, 09/15/05; A, 08/31/06]

8.15.2.8 TYPES OF CHILD CARE:

These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents have a variety of child care services from which to choose:

A.

child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;

B. child care programs administered by tribal entities;

C. child care programs administered by church or religious organizations;

D. in-home care;

E. child care in licensed centers;

F. child care in registered family childcare homes;

G. child care in licensed family and group childcare homes;

H. out of school time programs; and

I. programs operated by employers for their employees.

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 02/14/05; A, 08/31/06]

8.15.2.9 PRIORITIES FOR ASSISTANCE:

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

A. Priority one and priority one A: Clients receiving temporary assistance to needy families (TANF) benefits are considered priority one clients. Clients participating in the food stamp employment and training (E&T) program as determined and administered by the human services department (HSD) are considered priority one A clients.

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

(a) the unavailability of appropriate child care within a reasonable distance from the individual’s home or work site, or;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements, or;

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2)

A person who applies for participation exemption for any and/or all of the above reasons is referred to the children, youth & families department training and technical assistance (T&TA) contractor for that area. The T&TA assists the client with location of child care. The final validation/verification of a client’s inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months.

If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with the human services department (HSD). HSD is responsible for providing notice of the approval and/or denial of a participation exemption.

B.

Priority one B: Child care assistance for income eligible families whose income is at or below 100% of the federal poverty level. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority one B for children with special needs and for teen parents. If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds 100% of the federal poverty level but is at or below 200% of the federal poverty level to the priority four category.

C. Priority two: Child care assistance for a consecutive 12-month period for families transitioning off TANF. Clients must have received TANF for at least one (1) month in the past twelve (12) months in order to qualify for priority two. Only clients whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their twelve (12) consecutive month period of eligibility for priority two child care.

D. Priority three: No new families will be enrolled in priority three. This category will be eliminated through attrition as priority three families become ineligible for any reason including but not limited to: income exceeding 200% of the federal poverty level; failure to re-certify in a timely manner; and/or loss of employment which results in loss of benefits.

E.

Priority four: Child care assistance for families whose income is above 100% of the federal poverty level but at or below 200% of the federal poverty level, adjusted annually in accordance with federal guidelines.

These families are certified for a six month block of time subject to the availability of funds and renewable subject to the availability of funds. The department reserves the right to expand the eligibility requirement up to 200% of the federal poverty level based on budget availability.

Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority four for children with special needs and for teen parents.

F.

CPS child care: In addition to these priorities, the department pays for protective services child care (CPS) as determined by the protective services of the department.

[8.15.2.9 NMAC - Rp, 8.15.2.9 NMAC, 02/14/05; A, 09/15/05]

8.15.2.10 APPLICATION PROCESS:

Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person, or by mail, at the local child care office:

- A. a completed signed application form;
- B. proof of earned income or participation in the temporary assistance to needy families (TANF) program or the food stamp employment and/or training (E&T) program; social security numbers may be used to establish TANF participation or receipt of child care support;
- C. school schedule, if applicable;
- D. birth certificates for all applicant children;
- E. proof of unearned income;
- F. proof of residency; and
- G. the name, address, phone number, and social security number of the provider selected to care for the children;
- H. assistance is provided effective the first day of the month of application if all of the following apply:
 - (1) the client is utilizing child care services;
 - (2) the client is employed, attending school or a training program; and
 - (3) the provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 02/14/05; A, 08/31/06]

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.

The household: The household includes biological parents, stepparents, and legal guardians living in the household, thereby constituting an economic unit, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and/or are applying for child care benefits on behalf of the children.

B.

Allowed exclusions from the household: Excluded from the household for co-pay calculation purposes are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents and/or legal guardians in this situation are required to qualify for child care assistance as per Subsection D below and, upon qualification, have the required co-pay waived.

C.

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

D.

Household income: Income eligibility for benefits is determined by the number of members in the household and the total countable earned and unearned income.

E. 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). These include, but are not limited to: income from employment by working for others or from self-employment; child support payments; alimony payments; veterans administration (VA) payments except VA payments for educational purposes; union payments; unemployment or workman's compensation; social security benefits for dependent children; railroad retirement benefits; pensions; work study income; TANF benefits, including diversionary payments; royalties; cash gifts, and income from rental property.

F.

Exempt income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of a dependent child who is under 18 and in school; food stamps, 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; supplemental security income (SSI); 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; Work Investment Act (WIA) payments made to dependent children; relocation payments; department of vocational rehabilitation (DVR) training payments; in-kind gifts; 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.

G.

Verification of income: Clients applying for child care assistance benefits are required to verify income by providing proof of income for all members of the household who receive income. Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.

H.

Residency requirement: A recipient of child care assistance or a child care provider must be a resident of the state of New Mexico. Proof of residency is required.

I.

Citizenship: A recipient of child care assistance must be a citizen of the United States; or a qualified alien as determined by applicable federal laws. If a child is determined to be a citizen of the United States or a qualified alien, as approved by the New Mexico human services department, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship and/or alien status of the child's parent or parents.

J.

Age requirement: Child care benefits are paid for children between the ages of six (6) weeks up to the month in which the child turns 13 years old.

K. Teen parent: A teen parent who is attending a high school or a GED program or attending any other job skills training and/or educational programs directly related to enhancing employment opportunities is prioritized relative to budget availability.

L.

Failure to use authorized child care: If authorized child care has not been used for 10 consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, child care assistance services may be terminated. The department notifies the client and requests contact within fourteen (14) calendar days of the mailing date of the notification. If there is no contact by the final day of the expiration of the fourteen (14) calendar day notice, the case will be closed. The provider will be issued a fourteen (14) calendar day notice of the date of the closure and payment will be made through the final day of the expiration of the provider's fourteen (14) calendar day notice, if the provider has reported the non-attendance in a timely manner. Clients in cyclical employment are exempted.

M.

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.

Work, educational or community service activities must be approved by HSD for food stamp E&T clients. Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses.

N.

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

O.

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, school or other programs.

[8.15.2.11 NMAC - Rp, 8.15.2.11 NMAC, 02/14/05]

8.15.2.12 RECERTIFICATION:

Clients must recertify for services at least once every six (6) months and must provide continued proof of eligibility. If recertification is not completed in a timely manner, the case may be closed on the last day of the month for which assistance is provided under the previous placement agreement.

At time of recertification, clients must provide proof of income, and/or proof of school enrollment. Changes in income, household size, employment, training or educational status are noted in the client's record. Co-payment, if applicable, is re-determined at the time of recertification.

[8.15.2.12 NMAC - Rp, 8.15.2.12 NMAC, 02/14/05]

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 program. Using child care for recreational or other purposes is considered fraud and sanctions may be imposed, including recoupment.

A. Co-payments:

Co-payments are paid by all clients receiving child care assistance benefits, except for child protective services (CPS). Co-payments are based upon the size and income of the household.

B. Co-payments for each additional child are determined at one half of the co-payment for the previous child.

C. Co-payments for children in part-time care are determined based upon the block of time that the child is in care.

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

E.

In-home providers: Parents 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 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.

F.

Notification of changes: Clients must notify the department of changes in income or other factors affecting the receipt of child care benefits, and report any change(s) in circumstances that affect benefits within 14 calendar days of the change, including increase in earnings, losing or

changing employment, increase or decrease in work hours, change in school or training status, change in address or residency status, or household composition. Priority one clients whose TANF cases are closed by the human services department at the time of their TANF recertification, must contact the department immediately. Clients who do not comply with this requirement may be sanctioned, and may be subject to the recoupment process.

[8.15.2.13 NMAC - Rp, 8.15.2.13 NMAC, 02/14/05]

8.15.2.14 CASE SUSPENSIONS:

Clients who are engaged in cyclical educational programs or cyclical employment, such as students, public school employees, and school bus drivers may request temporary suspension, not to exceed three months per occurrence, of the use of child care assistance benefits without losing eligibility for benefits. Pregnant women in the third trimester of their pregnancy or whose doctor determines that continued employment before birth jeopardizes the mother or the unborn child's health may request suspension of their case. A client may request suspension of a case for maternity leave after the birth or adoption of a child for up to three months. The case may be suspended for longer than three months if there are documented medical complications for either the mother or the child. In addition, a case may be suspended for up to three months for a medically documented condition. A case may also be suspended with child care benefits being paid for up to 30 calendar days in a situation of lost employment, providing the client is making a bona fide effort to secure new employment, and the client reports the change in a timely manner. Case suspensions due to lost employment are not to exceed two occurrences per calendar year.

[8.15.2.14 NMAC - Rp, 8.15.2.14 NMAC, 02/14/05]

8.15.2.15 PROVIDER REQUIREMENTS: Child care providers must abide by all department regulations and provide child care paid for by the department to clients only while such clients are working, attending school or participating in a training program or participating in a TANF or food stamp E&T program approved activity/component. Child care provided for recreational or other purposes, or at times other than those outlined in the child care agreement, are paid for by the client. Knowingly accepting payment from the department for child care provided for recreational and other purposes is considered fraud and sanctions may be imposed.

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. All registered homes receiving child care assistance subsidies must be enrolled and participate in a CACFP, unless they are ineligible. All registered homes receiving child care assistance subsidies who register after July 1, 2006 must complete, within six months of registration, an 18-hour course or an equivalent approved by the department. The 18-hour course will count toward the 6-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP. Beginning July 1, 2006, all licensed providers receiving child care assistance subsidies must have a 2-Star level at the time of their renewal. 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.

First time registered home providers have up to a 45 consecutive calendar day grace period in which to comply with the registration requirement. A 45 calendar day grace period is issued one time only.

A child protective services screen will be conducted on all new registered providers and at their annual registration renewal. Evidence of a substantiated referral for child abuse and/or neglect for a provider, a second caregiver, or any persons age 18 or over residing in the provider's home and/or working in a licensed child care center/home will result in the ineligibility of that provider to receive payments under the child care assistance program.

The only exception is when a custodial parent has a substantiated referral but resides with the child care provider who does not have a substantiated referral.

B.

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

C.

New child care providers must participate in at least one orientation session within the first six months of becoming a child care vendor for the department. Providers are notified of this requirement. Providers who do not comply with this requirement are not paid past this six month grace period and are provided notice that payment may be suspended until this requirement is met.

D. Child care providers must notify the department if the child is disenrolled or is absent for 10 consecutive scheduled days. Absences totaling ten or more consecutive scheduled days must be approved by the client's caseworker. Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments.

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.

(1)

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.

(2)

Providers may charge a registration/educational fee to a child care assistance family comparable to but not to 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 and/or terminate assistance payments to a licensed or registered provider.

[8.15.2.15 NMAC - Rp, 8.15.2.15 NMAC, 02/14/05; A, 09/15/05]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

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

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

- C.

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

- D. Child care assistance workers determine eligibility for all child care assistance programs except for TANF and E&T.

Eligibility for TANF and food stamp E&T program is determined by the New Mexico human services department.

- E.

Child care assistance workers must inform parents of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

- F.

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

- G.

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

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 02/14/05; A, 08/31/06]

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. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

- A.

When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; 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.

When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the fourteen (14) calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

- C.

The amount of the payment is based upon the 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 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 agreement covering the certification period.

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

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6-19 hours per week per month	Care provider for an average of 5 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

- E.

Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1).

- F.

Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time).

- G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type.

H. Monthly reimbursement rates

Licensed child care centers								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$476.37	\$418.75	\$357.28	\$314.06	\$238.19	\$209.38	\$119.09	\$104.69
Toddler	\$425.72	\$389.63	\$319.29	\$292.22	\$212.86	\$194.81	\$106.43	\$97.41
Pre-school	\$395.01	\$363.02	\$296.26	\$272.27	\$197.51	\$181.51	\$98.75	\$90.76
School age	\$345.64	\$332.96	\$259.23	\$249.72	\$172.82	\$166.48	\$86.41	\$83.24
Licensed group homes (capacity: 7-12)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$379.01	\$355.96	\$284.26	\$266.97	\$189.51	\$177.98	\$94.75	\$88.99
Toddler	\$343.93	\$336.23	\$257.95	\$252.17	\$171.97	\$168.12	\$85.98	\$84.06
Pre-school	\$338.08	\$330.81	\$253.56	\$248.10	\$169.04	\$165.40	\$84.52	\$82.70
School age	\$333.53	\$323.53	\$250.15	\$242.65	\$166.77	\$161.77	\$83.38	\$80.88
Licensed family homes (capacity: 6 or less)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$365.20	\$342.60	\$273.90	\$256.95	\$182.60	\$171.30	\$91.30	\$85.65
Toddler	\$325.08	\$320.04	\$243.81	\$240.03	\$162.54	\$160.02	\$81.27	\$80.01
Pre-school	\$324.17	\$317.09	\$243.13	\$237.81	\$162.09	\$158.54	\$81.04	\$79.27
School age	\$319.28	\$309.64	\$239.46	\$232.23	\$159.64	\$154.82	\$79.82	\$77.41
Registered homes and in-home child care								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-school	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

I.

The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, Star level status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider.

Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties. All other providers receive the rural rate.

J.

Providers holding national accreditation status receive an additional \$120.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro 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. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher Star levels as follows: 2-Star at \$45.00 per month per child for full time care above the base reimbursement rate; 3-Star at \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at \$104.50 per month per child for full time care above the base reimbursement rate, and 5-Star at \$132.00 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 star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L.

The department pays a differential rate equivalent to 5, 10, or 15% 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
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After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

M.

If a significant change occurs in the client's circumstances, (for example, an increase or decrease in income, or a change in work schedule) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N.

The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned.

Providers must provide all relevant information requested by the department during an audit.

O.

Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 8/15/07]

8.15.2.18 UNDER PAYMENTS:

If a client or provider is underpaid for child care services, the department may issue a one-time payment within 15 calendar days of the departments

knowledge or receipt of notification. Notification of the department by the client or provider must occur within 90 calendar days of the occurrence of alleged underpayment.

[8.15.2.18 NMAC - Rp, 8.15.2.18 NMAC, 02/14/05]

8.15.2.19 OVER PAYMENT AND RECOUPMENT:

If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the family services director deems otherwise in exceptional circumstances. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, usually not to exceed four months. The department arranges with the client or provider to make regular payments over the agreed-upon payment period or establishes a schedule of deductions from future payments issued over the agreed-upon payment period. Failure to make regular payments may result in sanctions including termination of benefits and/or referral of the account to a collection agency and/or legal action.

[8.15.2.19 NMAC - Rp, 8.15.2.19 NMAC, 02/14/05]

8.15.2.20 FRAUD:

The purposeful misrepresentation of facts relating to eligibility for benefits, or knowingly omitting information that affects eligibility is fraud and appropriate sanctions are initiated by the department. Fraudulent cases are reported to the department, which will take such action as is deemed necessary. The case remains open at the same rate of benefits until the investigation is concluded and disposition is determined.

[8.15.2.20 NMAC - Rp, 8.15.2.20 NMAC, 02/14/05]

8.15.2.21 SANCTIONS:

Sanctions may be imposed on clients/providers for failing to meet programmatic requirements which affect benefits and result in an overpayment. Sanctions are imposed according to the severity of the infraction as determined by the department and as detailed below.

A.

Providers or clients who fail to make timely payments in the case of recoupment of overpayments are disqualified from the program until payment is brought current.

B.

Providers or clients who fail to report in a timely manner that a child is not in attendance for ten consecutive, scheduled days will have the payment recoupment process initiated.

C.

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

D.

Clients who fail to pay co-payments may be disqualified until the co-payment is paid and/or until an agreement is made between the client and the provider to bring the co-payment current. The department assists the provider in collecting the co-pay only if the co-pay has been in arrears 30 calendar days or less.

E.

Clients who fail to timely report changes that affect their eligibility resulting in an overpayment will be sanctioned and payment recoupment will be sought for the entire amount accruing from the end of the 14 calendar days allowed for notification through the date the client provides notice of the change to the department. A first offense results in a written warning and recoupment; a second offense results in a 3-month

suspension and recoupment; and a subsequent offense results in permanent disqualification.

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 02/14/05; A, 08/31/06]

8.15.2.22 FAIR HEARINGS:

Clients who have been denied benefits, whose benefits have been reduced, suspended, or terminated, or who have been sanctioned or disqualified from the program, or providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

A.

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

B.

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

C.

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

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

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF and E&T. Eligibility for TANF and food stamp E&T program is determined by the New Mexico human services department. If TANF and E&T benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp, 8.15.2.22 NMAC, 02/14/05]

8.15.2.23 COMPLAINTS:

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

The local supervisor, bureau chief, director or secretary responds to complaints by clients or providers orally or in writing as is deemed appropriate in each case.

[8.15.2.23 NMAC - Rp, 8.15.2.23 NMAC, 02/14/05]

8.15.2.24 CO-PAYMENT SCHEDULE:

The department will develop and publish an annual co-payment schedule based on the federal poverty guidelines.

[8.15.2.24 NMAC - Rp, 8.15.2.24 NMAC, 02/14/05]

8.15.2.25 CONFIDENTIALITY:

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

- A. to the client upon request;
- B. to an individual who has written authorization from the client;
- C. to department employees and agents who need it in connection with program administration, including program auditors;
- D. to other agencies or individuals including law enforcement officers who satisfy the following conditions:

(1) agency

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

(2) information

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

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

(4)

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

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

[8.15.2.25 NMAC - Rp, 8.15.2.25 NMAC, 02/14/05]

HISTORY OF 8.15.2 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the Commission of Public Records B State Records Center and Archives:
ISD CCAP 200, Child Care Assistance Programs, 11/4/91.
ISD CCAP 300, Hours Of Child Care, 11/4/91.
ISD CCAP 700, Working Family Child Care Assistance Eligibility, 11/4/91.
ISD CCAP 800, Income Eligible Child Care Assistance, 2/10/92.

History of Repealed Material:

8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/99.
8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/00.
8 NMAC 15.2 Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 8/1/01.
8.15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 11/01/02.
8 15.2 NMAC Requirements for Child Care Assistance Programs for Clients and Child Care Providers, - repealed, 2/14/05.