

TITLE 8 SOCIAL SERVICES
CHAPTER 17 NON-LICENSED CHILD CARE
PART 2 REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY
CHILD CARE HOMES

8.17.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.17.2.1 NMAC - Rp, 8.17.2.1 NMAC, 08/31/06]

8.17.2.2 SCOPE:
All non-licensed family child care homes within the state of New Mexico who are intending to participate in the child and adult care food program or the child care assistance program.
[8.17.2.2 NMAC - Rp, 8.17.2.2 NMAC, 08/31/06]

8.17.2.3 STATUTORY AUTHORITY:
The requirements (regulations) set forth herein, are established pursuant to the federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, Parts 255, 256, 257 Title 4-E, the New Mexico Public Health Act, Sections 24-1-2 and 24-1-5 NMSA 1978, and the New Mexico Children's Codes, Section 32A-15-2-3 NMSA 1978. These regulations are promulgated by authority 9-2A-7 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) are health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978.
[8.17.2.3 NMAC - Rp, 8.17.2.3 NMAC, 08/31/06]

8.17.2.4 DURATION: Permanent.
[8.17.2.4 NMAC - Rp, 8.17.2.4 NMAC, 08/31/06]

8.17.2.5 EFFECTIVE DATE: August 31, 2006, unless a later date is cited at the end of a section.
[8.17.2.5 NMAC - Rp, 8.17.2.5 NMAC, 08/31/06]

8.17.2.6 OBJECTIVE:
The objective of 8.17.2 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulation 8.16.2 NMAC to participate in the federal child and adult care food program (CACFP) and the state and federal child care assistance programs (CCAP) through self-certification and registration.
[8.17.2.6 NMAC - Rp, 8.17.2.6 NMAC, 08/31/06]

8.17.2.7 DEFINITIONS:

- A.
"Child" means any person twelve (12) years old or younger; children of migrant workers fifteen (15) years old or younger, any person with certain disabilities who is eligible under federal child and adult care food program standards; or any person eligible under state and federal child-care assistance programs standards.
- B.
"Child care assistance program (CCAP)" means the state of New Mexico's child care services bureau which administers the federal child care and development fund (CCDF).
- C.
"Child and adult care food program (CACFP)" means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.
- D.
"Emergency caregiver" means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, 48 hours or less, on behalf of the primary caregiver.
- E.
"Exempt provider" means a family day care home provider who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.
- F. "Infant" means a child from birth to one-year-old.
- G. "Nonresident child" means any child who does not reside in the caregiver's home.
- H.
"Notifiable diseases" means confirmed or suspected diseases/conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.
- I.
"Primary caregiver" means a family day care home provider 18 years of age or older who is personally providing care to non- resident children, less than 24 hours a day, in his/her own residence and has completed a self certification registration form and paid the required fee.
- J.
"Registered family child care home" means the residence of an independent caregiver who registers the home under these regulations to participate in the child and adult care food program or as a vendor in the state and federal child care assistance programs.
- K.
"Resident child" means any child who resides in the home, such as provider's own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the residential unit.

L. "Second caregiver" means someone 18 years of age or older who is authorized by the primary caregiver and the day care home sponsoring organization to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC Governing Background Checks and Employment History Verification provisions, annual training hours and initial orientation and training for participation in the CACFP and/or the child care assistance program.
[8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 08/31/06]

8.17.2.8 APPLICATION:

An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must register as a family child care home provider by submitting a completed self-certification and registration agreement and paying the processing charge. One provider per household can be registered. All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are exempt.
[8.17.2.8 NMAC - Rp, 8.17.2.8 NMAC, 08/31/06]

8.17.2.9 CAREGIVER REQUIREMENTS:

A. All caregivers, including primary, second and emergency caregivers must be at least 18 years of age, and must be mentally, physically and emotionally able to provide appropriate care for children.

B. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions. Anyone who provides care repeatedly and/or in reasonably foreseeable circumstances is a second caregiver and must have the required background checks.

C. In the event care is provided by an emergency caregiver, all parents/guardians must be notified as promptly as possible.

D.

All caregivers are responsible for immediately reporting to the appropriate authorities any symptoms of child abuse or neglect.

E. Primary and secondary caregivers are required to attend six (6) hours of training annually. Training documentation must be maintained for three (3) years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

F. Primary caregivers caring for infants shall receive two hours of infant specific training within six-months of registration.

G. Primary caregivers are required to attend first aid training during their first year of registration.

H.

Remaining hours of training shall be within the seven competency areas. The competency areas are: 1) child growth, development and learning; 2) health, safety, nutrition and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism.
[8.17.2.9 NMAC - N, 08/31/06]

8.17.2.10 BACKGROUND CHECKS:

A.

All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC Governing Background Checks and Employment History Verification provisions as promulgated by the children, youth and families department. All non-licensed child care providers must adhere to these provisions to maintain their registration status.

B.

Child abuse and neglect screens. All adult members of the registered provider's household, the registered provider as primary caregiver, and all second caregivers, must undergo a child abuse and neglect screen. Any person who is present in the registered provider's home for significant periods while children are in care, or who commences being present in the registered provider's home for significant periods, may be required by the department to obtain a child abuse and neglect screen.

C. Criminal records checks.

All registered providers and second caregivers must undergo both a state and federal criminal records check in order to provide care for both relative as well as non-relative children.

Registered providers and second caregivers must submit the required fee with their state and federal criminal records checks application.

D.

The registered provider must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 08/31/06; A, 8/15/07]

8.17.2.11 RENEWAL: Caregivers must renew registration annually, and only after receiving an onsite inspection by the sponsoring organization, by submitting a self-certification registration agreement and paying the processing charge with cashier's check or a money order. Providers who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.
[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 08/31/06]

8.17.2.12 ANNUAL CERTIFICATION:

Independent caregivers shall certify upon renewal that they, or any other adult living in the home, have not been convicted of a disqualifying offense during the last twelve months.

[8.17.2.12 NMAC - Rp, 8.17.2.14 NMAC, 08/31/06]

8.17.2.13 VISITS BY THE SPONSORING AGENCY AND DEPARTMENT REPRESENTATIVES: Caregivers must consent

to visits by the children, youth and families department or the child and adult care food program sponsoring agency any time nonresident children are present and/or, for relative care only providers, during the provider's stated normal hours of operation.

[8.17.2.13 NMAC - Rp, 8.17.2.12 NMAC, 08/31/06]

8.17.2.14 NON-TRANSFERABILITY OF REGISTRATION:

- A. The caregiver's registration agreement is personal, and not transferable to any other person or location.
- B.

If the caregiver moves to a new location or has a change of name, the caregiver must register again and pay the processing charge.

[8.17.2.14 NMAC - Rp, 8.17.2.26 NMAC, 08/31/06]

8.17.2.15 INCIDENT REPORTS:

Registered providers shall notify CYFD immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger, such as but not limited to:

- A. a lost or missing child;
- B. the death of a child; or
- C. the abuse or neglect of a child.

[8.17.2.15 NMAC - Rp, 8.17.2.15 NMAC, 08/31/06]

8.17.2.16 COMPLIANCE:

By completing and submitting the self-certification registration agreement and annual renewals, the independent caregiver certifies the caregiver's home complies with these regulations.

The caregiver also agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

[8.17.2.16 NMAC - Rp, 8.17.2.9 NMAC, 08/31/06]

8.17.2.17 NON-COMPLIANCE:

- A. Complaints received by the children, youth and families department shall be investigated promptly.
- B.

The children, youth and families department may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with registration standards, or is unable to maintain compliance with registration standards.

- C. Grounds to suspend, revoke or decline to renew registration include:

- (1) failure to comply with the group size and/or capacity requirement;
- (2) health and safety violations which place the children in immediate danger, including:
 - (a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;
 - (b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface; and
 - (c) unlocked or unsecured firearms in the home;
- (3) background check denial;
- (4) failure to timely obtain required background checks;
- (5) substantiated fraudulent activity in the CACFP or the CCAP;
- (6)

failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;

(7)

substantiated non-compliance with provider requirements to care for children in the registered home as defined in the enrollment documents;

(8)

substantiated abuse and/or neglect of children as determined by the protective services division of CYFD or a law enforcement agency;

- (9) situations where the children in care are placed in unreasonable and/or unnecessary danger, including but not limited to:

evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender maintaining residence in the home, accusations of sexual child abuse against a household member, or pending the outcome of a child protective services referral; and

(10)

any serious violation or other circumstance which reasonably leads the department to determine that the caregiver cannot reliably safeguard the health and/or safety of children.

D.

Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the investigation.

Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

E.

The children, youth and families department notifies the registered provider in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The registered provider may obtain an administrative appeal of the department's action.

F.

The child care services bureau notifies the family nutrition bureau of any revocation or suspension of registration for a provider participating in the child care assistance programs.

- G. Providers whose registration has previously been suspended or revoked may re-apply for registration. The child care services bureau may consider the reasons for the previous action, as well as changed and current circumstances, in determining whether to

allow the new application.

The children, youth and families department may require the registered provider to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

H.

The children, youth and families department may require the registered provider to implement specific actions, or to agree to specific conditions, in order to maintain registered status.

Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the registered home. Examples:

(1)

The department may require caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

(2)

The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to health and/or safety, or otherwise create a risk of harm to children.

I.

Registered providers who are required to implement actions or to agree to conditions pursuant to subsections G or H, are notified in writing, and shall have the opportunity for administrative appeal.

[8.17.2.17 NMAC - Rp, 8.17.2.13 NMAC, 08/31/06]

8.17.2.18 ADMINISTRATIVE APPEAL RIGHTS:

A.

Any registered provider who receives notice that registration is denied, revoked, suspended or that renewal is denied, has a right to an administrative appeal of the decision.

Any registered provider who is required by the department to implement specific actions, or to agree to specific conditions, in order to maintain registered status, has a right to administrative appeal.

B. Administrative appeals shall be conducted by a hearing officer appointed by the department's secretary.

C.

If the suspension or revocation is to take effect immediately, or if required conditions of continued operation are to take effect immediately, the department affords the registered provider the opportunity for an administrative appeal within 5 working days. If registration is suspended pending the results of an investigation, the provider may elect to postpone the hearing until the investigation has been completed.

D.

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

E.

For any action taken by the department pursuant to section 8.17.2.19 of this regulation, the applicable hearing procedure shall be that contained in section 8.17.2.19.

[8.17.2.18 NMAC - Rp, 8.17.2.27 NMAC, 08/31/06]

8.17.2.19 PROBABLE CAUSE OF IMMINENT DANGER:

A.

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

(1) The department shall consult with the owner or operator of the child care facility.

(2)

Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3)

Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days.

(4)

Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

(5)

No later than the conclusion of the fifteen day period, the department shall determine whether other action is warranted under this regulation.

B.

Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.

[8.17.2.19 NMAC - N, 08/31/06]

8.17.2.20 GROUP COMPOSITION REQUIREMENTS:

A. A caregiver will care for no more than four (4) non-resident children at any one time.

B.

A caregiver will care for no more than two (2) children under two (2) years old at any one time, including the provider's own children.

C.

A caregiver will care for no more than six (6) children under six (6) years old at any one time, including the provider's own children.

D.

Shifts are allowed provided there are never more than four (4) non-resident children present at any one time, including change of shifts.

E.

The primary caregiver will be physically present and actively involved in the care of nonresident children during the designated hours of child care as noted in the child enrollment forms, except for short absences when another approved caregiver is present, or emergencies. Regular outside employment is not considered a short absence.

[8.17.2.20 NMAC - Rp, 8.17.2.21 NMAC, 08/31/06]

8.17.2.21 HEALTH AND SAFETY REQUIREMENTS:

A.

A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D.

A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees (fahrenheit) and no more than 82 degrees (fahrenheit). A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.

E. The home must be adequately ventilated at all times.

F. All gas-fired equipment and water heaters must have a 100% cutoff valve and be city/county inspected and approved.

G.

All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees (fahrenheit) in all areas accessible to children.

H. A caregiver must provide safe playing areas inside and outside the home.

I.

A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, and sharp and pointed objects in a storage area inaccessible to children.

J.

The home provider must have a working telephone in the home at all times when non-resident children are present. The caregiver must have the telephone within sixty (60) days of registration. The CYFD may waive the telephone requirement if the caregiver lives in a rural area where phone service is not available or for other circumstances as approved by CYFD.

K. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center by the telephone.

L.

A caregiver will fence the outside play area when it is next to a highway, busy street, ditch or arroyo, or other hazardous area. The fence will have one latched gate for emergency exits.

M. A caregiver will install at least one working smoke detector in an appropriate area in the home.

N. A caregiver will store all firearms, such as rifles and handguns, in a locked area inaccessible to children.

O. A caregiver will prohibit smoking and the consumption of alcoholic beverages or illegal drugs when nonresident children or, for relative care only providers, when related children are present.

P.

The home will have at least one 2A-10BC fire extinguisher mounted near the exit of the kitchen. It must be visible and readily available for use and in operable condition at all times.

Q.

A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, or laundry rooms.

R.

In case of fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available.

S. A home will have two (2) major exits readily accessible to children.

T. Toys and objects (including high chairs) are safe, durable, easy to clean and nontoxic.

U.

Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

V.

The home will have a first aid kit stored in a convenient place inaccessible to children. The kit will contain at least band-aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

W. A caregiver will ensure that all pets in the home are inoculated as required by law and will keep proof of inoculations.

X.

A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area.

Caregivers will disinfect the diaper-changing surface and wash their hands and the child's hands after every diaper change.

Y. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device.

[8.17.2.21 NMAC - Rp, 8.17.2.22 NMAC, 08/31/06]

8.17.2.22 MEAL REQUIREMENTS:

- A. Children will not use common eating or drinking utensils.
- B. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.
- C.

Meals must meet age-appropriate USDA requirements, including the following meal components: one (1) serving of meat or alternate; two (2) servings of fruits or vegetables; one (1) serving of bread or alternate and one (1) serving of fluid milk. A caregiver must serve whole milk to children one to two years old.

- D. A caregiver must keep a daily menu.
- E. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.
- F. Caregivers will feed children a meal or snack every three (3) hours.
- G. Caregivers and children will wash their hands regularly and before each meal time.
- H. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees fahrenheit or below.
- I. Refrigerators shall have working thermometers.

[8.17.2.22 NMAC - Rp, 8.17.2.23 NMAC, 08/31/06]

8.17.2.23 RECORD KEEPING REQUIREMENTS: Caregivers must keep an information card for each child with:

- A. the child's full name;
- B. the child's birth date;
- C. any known food or drug allergies or unusual physical condition;
- D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;
- E. the name and telephone number of the child's physician;
- F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;
- G.

written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent; and,

H.

an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health.

[8.17.2.23 NMAC - Rp, 8.17.2.24 NMAC, 08/31/06]

8.17.2.24 CAREGIVING RESPONSIBILITIES:

- A. A caregiver will use discipline that is positive, consistent and age-appropriate. The caregiver will not use:
 - (1) physical punishment of any type;
 - (2) withdrawal of food;
 - (3) restriction of rest or bathroom opportunities;
 - (4) any form of public or private humiliation, including yelling or threats of physical punishment;
 - (5) isolation or unsupervised separation; or
 - (6) any other type of punishment that is hazardous to the physical, emotional or mental state of the child.
- B.

Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

C.

Caregivers of infants will allow them to creep, crawl or toddle and will hold them for bottle-feeding and at other times. Caregivers will allow infants to eat and sleep on their own schedules.

[8.17.2.24 NMAC - Rp, 8.17.2.25 NMAC, 08/31/06]

HISTORY OF 8.17.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

ISD CCAP 400, Provider Registration, 11/4/91

ISD CCAP 500, Provider Selection and Payment, 11/4/91

History of Repealed Material:

8 NMAC 17.2, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8/1/00.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/30/01.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/1/02.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 02/14/05.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8/31/06.