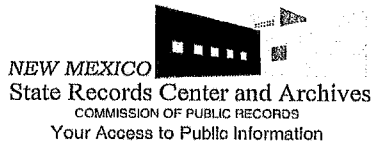


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NMAC

Transmittal Form



Volume: Issue: 19 Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renumber (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No

Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

Concise Explanatory Statement For Rulemaking Adoption:

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Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of the rulemaking is to promulgate amendments to 8.9.3 NMAC. In summary, the amended rules will update necessary changes prohibiting gross receipts tax being charged to child care assistance families. ECECD is updating the Child Care Assistance regulations (8.9.3 NMAC) to make the emergency amendments that it promulgated on July 1, 2024, permanent through the required amendment process.

Based on public comments, ECECD made one change from the original proposed amendments to 8.9.3 NMAC. The reasons for any change between the published proposed rule and the final rule are as follows:

8.9.3.3 NMAC changed the citation in Statutory Authority to read 7-9-77.2 NMSA 1978 to correctly reflect the statutory reference contained therein.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Elizabeth Groginsky

Check if authority has been delegated

Title:

Cabinet Secretary, ECECD

Signature: (BLACK ink only OR Digital Signature)

Elizabeth Groginsky Digitally signed by Elizabeth Groginsky
Date: 2024.09.26 10:02:52 -06'00'

Date signed:

This is an amendment to 8.9.3 NMAC, Sections 3 & 15 effective 10/08/2024 2024 SEP 26 PM 1:48

8.9.3.3 STATUTORY AUTHORITY: Subsection E of Section 9-29-6 NMSA 1978; [~~Section 7-9-121 NMSA-1978.~~] Section 7-9-77.2 NMSA 1978.
[8.9.3.3 NMAC - N, 11/01/2022; A, 10/08/2024]

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

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

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

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

D. Notification of changes: Child care providers must notify the department if a child is disenrolled or child care has not been used for 14 consecutive calendar days without notice from the client. If a client notifies the provider of non-attendance beyond 14 consecutive calendar days, the department will continue to pay the provider for the period of non-attendance, not to exceed six weeks following the first date of nonattendance.

(1) If the provider notifies the department of the above, the provider will be paid through the period of nonattendance, not to exceed six weeks.

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

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

(4) Providers who do not comply with this requirement are sanctioned and may be subject to recoupment or disallowance of payments as provided in 8.9.3.21 NMAC.

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

(1) Providers are not allowed to charge clients a registration/educational fee for any child who is receiving child care assistance benefits as listed under 8.9.3 NMAC. The rates set forth below are informed by a cost estimation model and include expenses for registration/educational fees per child and child and family activities on behalf of clients under 8.9.3 NMAC.

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

(3) Child care providers are not allowed to charge child care assistance families the [applicable] gross receipts tax for the sum of the child care assistance benefit and copayment. Child care providers may claim the gross receipts tax deduction pursuant to Section 7-9-77.2 NMSA 1978, as applicable.

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

G. Owners and licensees may not receive child care subsidy payments to provide care for their own children.

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

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participate in the subsidy program.

I. Providers must promote the equal access of services for all children and families by developing and implementing policies and procedures that prohibit discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, or age (40 or older).
[8.9.3.15 NMAC - N, 11/01/2022; A, 8/1/2023; A 10/08/2024]

NMAC

Transmittal Form



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Volume: Issue: 1819 Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renumber (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

**Concise Explanatory Statement For
Rulemaking Adoption:**

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Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of the rulemaking is to promulgate amendments to 8.9.4 NMAC. In summary, ECECD is promulgating these rules to provide for its own agency regulations as well as changes required by the federal Child Care Development Fund (CCDF) grant. The Child Care and Development Block Grant (CCDBG) Act is the law (along with Section 418 of the Social Security Act). It will update training that all new educators in licensed centers are required to take to include ECECD approved child development courses that address domains of development as defined by the federal CCDF and require the completion of this course within three months of date of hire to comply with the federal CCDF rules, and twelve months of date of hire to comply with additional training ECECD seeks to implement. It will also remove the hour limitation for training that is done online.

Based on public comments, ECECD made three changes with respect to the new training requirements set forth in 8.9.4.23(B)(2)(b)-(c) NMAC,

ECECD will change 8.9.4.23(B)(2)(b) NMAC to read "all new staff members working directly with children," instead of "new educators." In addition, and for the sake of consistency, ECECD will make the same change of "all new staff member working directly with children" instead of "new educators" to 8.9.4.33(B)(1) NMAC (Licensed Homes) and 8.9.4.42(C)(2) NMAC (Out of School Time Programs).

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Elizabeth Groginsky

Check if authority has been delegated

Title:

Cabinet Secretary, ECECD

Signature: (BLACK ink only OR Digital Signature)

Elizabeth Groginsky Digitally signed by Elizabeth Groginsky
Date: 2024.09.26 10:03:48 -06'00'

Date signed:

This is an amendment to 8.9.4 NMAC, Sections 23, 33 & 42 effective 10/08/2024 SEP 26 PM 1:49

8.9.4.23 PERSONNEL AND STAFFING REQUIREMENTS FOR CENTERS:

A. PERSONNEL AND STAFFING REQUIREMENTS:

- (1) An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.9.6 NMAC to continue to work directly or unsupervised with children.
- (2) All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.
- (3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.
- (4) Clerical, cooking and maintenance personnel who also care for children and are included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios will not have as their primary responsibility cooking, clerical or cleaning duties while caring for children.
- (5) Volunteers shall not be counted in the staff/child ratios or left alone with children unless they meet all requirements for an educator.
- (6) Substitutes and part-time educators counted in the staff/child ratios will meet the same requirement as regular educators except for training requirements, professional development plan and evaluations. Substitutes, volunteers, and educators routinely employed in a center but working 20 hours or fewer a week, will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements and have professional development plans and evaluations. See Paragraph (2) of Subsection B of 8.9.4.23 NMAC for additional training requirements.
- (7) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of fifty percent of the center's daily core hours of operation. The licensing authority may require proof of the director's time on-site. See Paragraph (2) of Subsection F of 8.9.4.22 NMAC.
- (8) During any absence, the director will assign a person to be in charge and will post a notice stating the assignment.
- (9) A program will maintain staff/child ratios and group sizes at all times based on the age of the majority of children in the group. Children must never be left unattended whether inside or outside the facility. Staff will be onsite, available and responsive to children during all hours of operation. All educators shall perform head counts at regular intervals throughout the day.
- (10) A center will have a minimum of two staff members present at all times, with one being an educator. If the center has fewer than seven children, the second staff member may conduct other activities such as cooking, cleaning, or bookkeeping.
- (11) A center will keep a list of people who can substitute for any staff member. The list will include the people's names, telephone numbers, background check, health certificates and record of orientation.
- (12) Each room of the center and its premises shall be inspected at closing time on a daily basis to assure the center is secure, free of hazards, and that no child has been left unattended.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

(a) Unless exempted under Subparagraph (b) below, a child care center will have a director who is at least 21 years old and meets the requirements outlined in the table below.

Professional Preparation		Experience
Program Administration The first of three AA-level Early Childhood Program Administration courses in the Early Childhood Program Administration career pathway: <i>Program Management 1</i> Or The National Administrator Credential (NAC)*	and	Child Development/Early Childhood Education <i>Child Growth, Development and Learning</i> (one of the AA-level "common core courses")** Two-years experience in an early childhood growth and

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The Provisional AA-Level NM Early Childhood Program Administration Certificate (All three AA-level Early Childhood Program Administration Courses and Practicum: <i>Program Management I, Effective Program Development for Diverse Learners and Their Families & Practicum, Professional Relationships & Practicum</i>)	and	development setting
The New Mexico Child Development Certificate (CDC) (Includes the following four courses as well as additional non-coursework requirements: <i>Child Growth, Development and Learning; Health, Safety and Nutrition; Family and Community Collaboration; and Assessment of Children and Evaluation of Programs</i>)		
The Child Development Associate (CDA) certificate		
The Child Care Professional (CCP) certificate		
The New Mexico Early Childhood Program Administration Certificate		
Montessori Teacher Certification		
The New Mexico One-Year Vocational Certificate		
Associate of Arts (AA) or Applied Sciences (AA or AAS) in child development or early childhood education		
Or		
A bachelor's degree or higher in early childhood education or a related field. Related fields include: early childhood special education, family studies, family and consumer sciences, elementary education with early childhood endorsement or any bachelor's degree with a transcript containing two or more Early Childhood courses.	and	One year of experience in an early childhood growth and development setting

*The NAC and two years of experience in an early childhood growth and development setting will be accepted as sufficient qualification for a director under the following conditions: a) The NAC was received prior to November 30, 2012 and b) the NAC has been maintained and has not expired subsequent to November 30, 2012.

**Directors shall be given until the end of the first full academic semester following their start date to successfully complete this course.

(b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as a director. Current directors having a break in employment of more than one year must meet the requirements as specified in Subparagraph (a) above.

(2) TRAINING:

(a) The director will develop and document an orientation and training plan for new staff members and volunteers and will provide information on training opportunities. The director will have on file a signed acknowledgment of completion of orientation by employees, volunteers and substitutes as well as the director. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following:

- (i) scope of services, activities, and the program offered by the center;
- (ii) emergency first aid procedures, recognition of childhood illness and indicators of child abuse;
- (iii) fire prevention measures, emergency evacuation plans and disaster preparedness plans;
- (iv) review of licensing regulations;
- (v) policies regarding guidance, child abuse and neglect reporting, and handling of complaints;
- (vi) review of written policies and procedures as defined in Subsection C of 8.9.4.22 NMAC;
- (vii) center/parental agreement;
- (viii) sanitation procedure;
- (ix) written goals of the program;
- (x) personnel handbook;
- (xi) parent handbook;
- (xii) names and ages of children;
- (xiii) names of parents;
- (xiv) tour of the facility; and
- (xv) introduction to other staff and parents.

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(b) All new [educators] staff members working directly with children regardless of the number of hours employed per week [will] shall complete the following training within three months of their date of hire. Training must be approved by ECECD to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators will have three months to comply with the following training from the date these regulations are promulgated:

- (i) prevention and control of infectious diseases (including immunization);
- (ii) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (iii) administration of medication, consistent with standards for parental consent;
- (iv) prevention of and response to emergencies due to food or other allergic reactions;
- (v) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (vi) prevention of shaken baby syndrome and abusive head trauma;
- (vii) emergency preparedness and response planning for emergencies resulting from natural or man-caused disasters;
- (viii) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (ix) precautions in transporting children (if applicable);
- (x) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component; [and]
- (xi) recognition and reporting of child abuse and neglect; and
- (xii) a child development course that addresses all major domains of child

development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund (<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>), or approved three-credit early care and education course or an equivalent approved by the department.

~~[(e) — New staff members working directly with children regardless of the number of hours per week will complete the 45-hour entry level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment. Substitutes are exempt from this requirement.]~~

(c) New staff members working directly with children regardless of the number of hours employed per week will complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

- (i) Learning Environment: How Classroom Arrangement Impacts Behavior
- (ii) Challenging Behavior: Reveal the Meaning
- (iii) Building Strong Relationships with Families
- (iv) Honoring All Families

(d) Each staff person working directly with children and more than 20 hours per week, including the director, is required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. The competency areas are:

- (i) child growth, development and learning;
- (ii) health, safety, nutrition and infection control;
- (iii) family and community collaboration;
- (iv) developmentally appropriate content;
- (v) learning environment and curriculum implementation;
- (vi) assessment of children and programs; and
- (vii) professionalism.

(e) Training must be provided by individuals who are registered on the New Mexico trainer registry.

(f) Training provided by center employees, directors, owners, and direct affiliates of the provider shall count for no more than half of the required 24 hours of training each year.

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~~[(g)]~~ On-line training courses shall count for no more than 16 hours each year. If the 45-hour entry-level course or its equivalent is taken online, it is exempt from the online training limitation.]

~~[(h)]~~ [(g)] Online first aid and CPR training will not be approved, unless there is a hands-on component included. In-person requirements may be waived in case of an emergency.

~~[(i)]~~ [(h)] Identical trainings shall not be repeated for the purpose of obtaining credit.

~~[(j)]~~ [(i)] Directors may count hours in personnel and business training toward the training requirement.

~~[(k)]~~ [(j)] Infant and toddler educators must have at least four hours of training in infant and toddler care annually and within three months of starting work. The four hours will count toward the 24-hour requirement.

~~[(l)]~~ [(k)] A center will keep a training log on file for all staff with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate.

~~[(m)]~~ [(l)] A college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours. Basic level pre-requisites, such as math and English courses, leading to a degree in early childhood development will be considered equivalent to a minimum of 15 clock hours per credit hour.

~~[(n)]~~ [(m)] See Paragraph (6) of Subsection A of 8.9.4.23 NMAC for requirements for centers that operate less than 20 hours per week.

C. STAFF/CHILD RATIOS AND GROUP SIZES:

(1) Ratios and group sizes shall be observed as outlined in the tables below:

Centers where children are grouped by age		
Age Group	Adult to child ratio	Maximum group size
Infants	1:6 or fraction of group thereof	12*
Toddlers	1:6 or fraction of group thereof	12*
two years	1:10 or fraction of group thereof	20
three years	1:12 or fraction of group thereof	24
four years	1:12 or fraction of group thereof	24
five years	1:15 or fraction of group thereof	30
six years and older	1:15 or fraction of group thereof	30

Centers Where Age Groups Are Combined		
Age Group	Adult to child ratio	Maximum group size
six weeks through 24 months	1:6 or fraction of group thereof	12*
two through four years	1:12 or fraction of group thereof	24
three through five years	1:14 or fraction of group thereof	28
six years and older	1:15 or fraction of group thereof	30
18 to 24 months with children ages 24 through 35 months	1:6 or fraction of group thereof	12*

*Providers whose group size exceeds the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated shall continue with their current group size as long as ratios are maintained at all times. Providers whose group size meets the maximum group size for infants and toddlers indicated above prior to the date these regulations are promulgated must continue to meet the maximum group size. All new licensed providers and those requesting an infant or toddler capacity change after the date these regulations are promulgated must meet the maximum group size as indicated above.

(2) The number of children who may be in a group and the number of caregivers is specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) the room is divided so that different activity/interest areas are well-defined (i.e. creative art, dramatic play, books, manipulatives, blocks, science, and math);

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- (b) each activity/interest area will have a posted capacity, which may vary according to the activity and size of the space, and will not exceed the group size requirement as specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC;
- (c) placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;
- (d) individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;
- (e) a single educator is responsible for supervising up to the number of children allowed in the adult to child ratio age grouping specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC in one or more interest area as long as every child is in direct eyesight of the educator; and
- (f) the total number of children in a larger room must not exceed the room capacity based on activity space. For example, if a three to five year old classroom has a capacity of 40, and the maximum group size is 28, the room must be divided by at least two well-defined spaces that include various activity/interest areas and be supervised by at least three educators, who are spread out so that every child is "attended."
- (3) Child care facilities not meeting the requirements as specified in Paragraph (1) of Subsection C of 8.9.4.23 NMAC, must be able to clearly demonstrate the intent of group sizing through written procedures that must be approved by ECECD. The written procedures will address the following:
- (a) maintenance of adult to child ratio within the group size in Paragraph (1) of Subsection C of 8.9.4.23 NMAC. to facilitate adult to child interaction and constructive activity among children;
- (b) assignment of a group of children to an educator or team of educators; and
- (c) demonstrate how the educators will meet the needs of all children in the assigned classroom and account for all children at all times.
- (4) A center will schedule staff to minimize the number of primary educators a child has during the day and the week. A child will have no more than three primary, consecutive educators in any day including educators in the early morning and late afternoon. Each child must have an educator who is aware of details of the child's habits, interests, and any special concerns.
- (5) The same educator who cares for the children under age two years will supervise those children when they play with children over two years.
- [8.9.4.23 NMAC - N, 11/01/2022; A, 10/08/2024]

8.9.4.33 PERSONNEL AND STAFFING REQUIREMENTS FOR HOMES:

A. PERSONNEL AND STAFFING REQUIREMENTS:

- (1) A licensee will not allow any staff member, including the licensee, or any other adult living in the home involved in an incident which would disqualify that staff member or other adult under the department's most current version of the background check and employment history verification provisions pursuant to 8.8.3 NMAC to continue to work directly or unsupervised with children or to reside in the home.
- (2) All staff members will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.
- (3) Educators who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.
- (4) The licensee shall be in the licensed child care home during at least seventy-five percent of the home's core hours of operation.
- (5) Substitutes, volunteers and part time second educators counted in the staff/child ratios shall meet the same requirements as regular staff members, except for training requirements. Substitutes and part time second educators routinely employed in the home but working 20 hours or less a week shall complete half the required training hours. Such employees working more than 20 hours per week shall complete all required training hours. The primary educator in a licensed home shall complete all required training hours, regardless of the number of hours worked.
- (6) A home licensed to provide care for six or fewer children will have at least one educator in the home at all times. A home licensed to provide care for more than two children under the age of two will have at least two educators in the home at all times.
- (7) A home licensed for seven to 12 children will have at least two educators at the home when more than six children are present or when more than two children under the age of two are present.
- (8) Children will never be left unattended. An educator will be with the children at all times whether activities are inside or outside of the home. Educators will be onsite, available and responsive to children

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during all hours of operation. Providers and secondary caregivers shall perform head counts at regular intervals throughout the day.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) All new [educators] staff members working directly with children regardless of the number of hours employed per week [will] shall complete the following training within three months of their date of hire. Training must be approved to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators will have three months to comply with the following training from the date these regulations are promulgated:

- (a) prevention and control of infectious diseases (including immunization);
- (b) prevention of sudden infant death syndrome and use of safe sleeping practices;
- (c) administration of medication, consistent with standards for parental consent;
- (d) prevention of and response to emergencies due to food or other allergic reactions;
- (e) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (f) prevention of shaken baby syndrome and abusive head trauma;
- (g) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
- (h) handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
- (i) precautions in transporting children (if applicable);
- (j) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component; [and]
- (k) recognition and reporting of child abuse and neglect; and
- (l) a child development course that addresses all major domains of child

development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund (<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>), or approved three-credit early care and education course or an equivalent approved by the department.

(2) New staff members working directly with children regardless of the number of hours employed per week will complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

- (a) Learning Environment: How Classroom Arrangement Impacts Behavior
- (b) Challenging Behavior: Reveal the Meaning
- (c) Building Strong Relationships with Families
- (d) Honoring All Families

~~[(2)]~~ (3) A home will keep a training log on file including the date of the training, name of educator, hours earned, subject/competency area, source of training, and training certificates.

~~[(3)]~~ (4) Educators working for a home will receive at least 12 documented hours of training during each year, including six hours in child growth and development and three hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven competency areas. The competency areas are:

- (a) child growth, development and learning;
- (b) health, safety, nutrition and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

~~[(4)]~~ (5) An educator cannot count more than three hours in first aid or CPR training toward the total hours required. Online first aid and CPR training will not be approved unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. For this purpose, a year begins and ends at the anniversary date of employment. Training must be provided by individuals who are registered on the New Mexico trainer registry. ~~[On-line training courses shall count for no more than eight hours each year. If the 45-hour entry-level course or its equivalent is taken online, it is exempt from the online training limitation.]~~ Identical

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trainings shall not be repeated for the purpose of obtaining credit.

~~[(5)]~~ (6) Infant and toddler educators must have at least two hours of training in infant and toddler care within six months of starting work. The two hours will count toward the 12-hour requirement in Paragraph (3).

~~[(6) — The primary educator will complete the 45-hour entry-level course or approved three-credit early care and education course or an equivalent approved by the department prior to or within six months of employment.]~~

(7) A home must have all educators certified in first aid and cardio-pulmonary resuscitation (CPR) with a pediatric component. Staff shall obtain the first aid and CPR certification within three months of being hired. All staff shall maintain current first aid and CPR certification. Prior to licensure, the primary caregiver shall have CPR certification.

[8.9.4.33 NMAC - N, 11/01/2022; A, 10/08/2024]

8.9.4.42 PERSONNEL AND STAFFING REQUIREMENTS FOR OUT OF SCHOOL TIME CARE:

A. PERSONNEL AND STAFFING REQUIREMENTS:

(1) An employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the background check and employment history verification provisions pursuant to 8.9.6 NMAC to continue to work directly or unsupervised with children;

(2) All educators will demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

(3) Educators (staff members) who work directly with children and who are counted in the staff/child ratios must be 18 years of age or older.

(4) Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Educators counted in the staff/child ratios will not be responsible for cooking, clerical or cleaning duties while caring for children.

(5) Substitutes, volunteers and part-time educators counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and educators routinely employed in a facility but working 20 hours or fewer a week, will complete half the required training hours. Such employees working more than 20 hours a week will meet full training requirements. See Paragraph (4) of Subsection C of 8.9.4.42 NMAC for additional training requirements.

(6) Each site will have a site director. The site director or a designated co-director who meets the same qualifications as the site director will be on site 50 percent of the program's core hours of operation.

(7) A program will maintain staff/child ratios and group sizes at all times. Children must never be left unattended whether inside or outside the facility.

(8) A program will have a minimum of two staff members present at all times, with one being an educator. If the program has less than seven children, the second staff member may be engaged in other duties.

(9) Each site will have one adult for every 15 children age five or older. Maximum group size of 30.

(10) The number of children who may be in a group and the number of caregivers is specified in Paragraph (9) of Subsection A of 8.9.4.42 NMAC. More than one group of children may occupy a room, provided the following conditions are met:

(a) The room is divided so that different activity/interest areas are well-defined (i.e. art, dramatic play, fine motor, homework, science, math, and quiet homelike area);

(b) Each activity/interest area will have a posted capacity, which may vary according to the activity and size of the space, and will not exceed 30;

(c) Placement of cabinets, tables, carpeting, room-dividers, or shelving clearly define the different activity/interest areas;

(d) Individual children may freely move from one activity/interest area at their own pace as long as the capacity of any individual interest area is not exceeded;

(e) A single educator is responsible for supervising up to 15 children in one or more interest area as long as every child is in direct eyesight; and

(f) The total number of children in the larger room must not exceed the room capacity based on activity space. For example, if the larger room has a capacity of 90, and the maximum group size is 30, the room must be divided by at least three well-defined activity/interest areas and be supervised by at least six caregivers, who are spread out so that every child is "attended".

B. STAFF QUALIFICATIONS:

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(1) Unless exempted under Paragraph (3) below, an out of school time program will have an administrator/director who is at least 21 years old and has proof of a current copy of:

(a) a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC), or an associate of arts or applied science degree in child development or early childhood education and at least two years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b) a bachelor's degree or higher in early childhood education or a related field with at least one year of experience in an early childhood growth and development setting or a school-age child care growth and development setting; early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three years of experience working with children.

(3) Program administrators and site directors employed in a licensed program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one year must meet the requirements.

C. TRAINING:

(1) The program administrator will develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following areas:

- (a) scope of services and activities offered by the program;
- (b) emergency first aid procedures;
- (c) indicators of child abuse and neglect;
- (d) fire prevention measures, emergency evacuation plan and disaster preparedness

plan;

- (e) review of licensing regulations;
- (f) review of policies regarding guidance;
- (g) child abuse and neglect reporting;
- (h) handling of incidents and complaints; and
- (i) health and safety, including infection and injury prevention and control.

(2) All new [educators] staff members working directly with children regardless of the number of hours employed per week [will] shall complete the following training within three months of their date of hire. Training must be approved to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current educators will have three months to comply with the following training from the date these regulations are promulgated:

- (a) prevention and control of infectious diseases (including immunization);
 - (b) administration of medication, consistent with standards for parental consent;
 - (c) prevention of and response to emergencies due to food or other allergic
- reactions;
- (d) building and physical premises safety, including identification of and protection
- from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
- (e) abusive head trauma;
 - (f) emergency preparedness and response planning for emergencies resulting from
- natural or man-caused disasters;
- (g) handling and storage of hazardous materials and the appropriate disposal of bio
- contaminants;
- (h) precautions in transporting children (if applicable);
 - (i) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric
- component; [and]
- (j) recognition and reporting of child abuse and neglect; and
 - (k) a child development course that addresses all major domains of child

development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund (<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>), or approved three-credit early care and education course or an equivalent approved by the department.

(3) New staff members working directly with children regardless of the number of hours

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employed per week will complete the following, or a three-credit early care and education course or an equivalent approved by the department prior to or within twelve months of employment or the effective date of these regulation amendments. Substitute educators are exempt from this requirement. Training must be approved by ECECD to fulfill the requirements. Approved trainings and substitutions will be listed on ECECD's website.

- (a) Learning Environment: How Classroom Arrangement Impacts Behavior
- (b) Challenging Behavior: Reveal the Meaning
- (c) Building Strong Relationships with Families
- (d) Honoring All Families

~~[(3)]~~ (4) A program will keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

[(4)] (5) All educators are required to obtain at least 24 hours of training each year. For this purpose, a year begins and ends at the anniversary date of employment. Training must address all seven competency areas within two years. Training shall be relevant to school age children. Identical trainings shall not be repeated for the purpose of obtaining credit. The competency areas are:

- (a) child growth, development, and learning;
- (b) health, safety, nutrition, and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

[(5)] (6) Training must be provided by individuals who have education or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department.

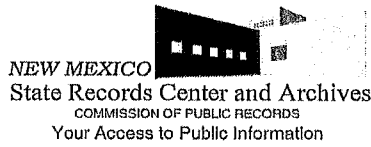
[(6)] (7) Program administrators may count hours in personnel and business training toward the training requirement.

[8.9.4.42 NMAC - N, 11/01/2022; A, 10/08/2024]

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NMAC

Transmittal Form



Volume: Issue: 18 19 Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address: Agency DFA code:

Contact person's name: Phone number: E-mail address:

Type of rule action: New Amendment Repeal Emergency Renumber (ALD Use) Recent filing date:

Title number: Title name:

Chapter number: Chapter name:

Part number: Part name:

Amendment description (If filing an amendment): Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes No Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes No Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s): Hearing date(s): Rule adoption date: Rule effective date:

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Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency:

The purpose of the rulemaking is to promulgate amendments to 8.9.5.10 NMAC. In summary, ECECD is promulgating these rules to provide for its own agency regulations as well as changes required by the federal Child Care Development Fund (CCDF) grant. The Child Care and Development Block Grant (CCDBG) Act is the law (along with Section 418 of the Social Security Act). It will update training all new educators in non-licensed child care homes are required to take to include child development courses that address domains of development as defined by the federal CCDF.

There were no public comments regarding 8.9.5 NMAC and ECECD is not making any amendments to the published proposed rule.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Elizabeth Groginsky

Check if authority has been delegated

Title:

Cabinet Secretary, ECECD

Signature: (BLACK ink only OR Digital Signature)

Elizabeth Groginsky

Digitally signed by Elizabeth Groginsky
Date: 2024.09.26 10:05:34 -06'00'

Date signed:

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This is an amendment to 8.9.5 NMAC, Section 10 effective 10/08/2024

8.9.5.10 CAREGIVER REQUIREMENTS:

A. All child care primary caregivers 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 exempt.

B. All caregivers, including primary, substitute and emergency caregivers must be at least 18 years of age, and must demonstrate the ability to perform essential job functions that reasonably ensure the health, safety and welfare of children in care.

C. Primary and substitute caregivers must comply with background check requirements in accordance with the most current provisions of 8.9.6 NMAC governing background checks and employment history verification provisions. A request for a background check must be submitted prior to a substitute caregiver employment. A substitute caregiver must receive a notice of provisional employment prior to beginning employment or obtain a background check in accordance with 8.9.6 NMAC.

D. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions for up to eight hours per month on behalf of the primary caregiver. Emergency caregivers must comply with background check requirements, and be certified in first – aid and cardiopulmonary resuscitation (CPR) with a pediatric component. Emergency caregivers may be exempted from all other training requirements. Anyone who provides care repeatedly or in reasonably foreseeable circumstances is a substitute caregiver and must have the required background checks and training.

E. A substitute caregiver is anyone who provides care repeatedly or in reasonably foreseeable circumstances and must have the required background checks and training.

F. In the event care is provided by a substitute or emergency caregiver, all parents/guardians must be notified as promptly as possible.

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

H. All new primary and substitute caregivers of registered family child care homes, with the exception of registered family child care food-only homes, must complete the following training within three months of their original date of initial registration. Training must be approved to fulfill the following requirements. Approved trainings and substitutions will be listed on the ECECD's website. All current primary and substitute caregivers in a registered family child care home will have three months to comply with the following training from the date these regulations are promulgated:

- (1) prevention and control of infectious diseases (including immunization);
 - (2) prevention of sudden infant death syndrome and use of safe sleeping practices;
 - (3) administration of medication, consistent with standards for parental consent;
 - (4) prevention of and response to emergencies due to food or other allergic reactions;
 - (5) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
 - (6) prevention of shaken baby syndrome and abusive head trauma;
 - (7) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused;
 - (8) handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
 - (9) precautions in transporting children (if applicable);
 - (10) first aid and cardiopulmonary resuscitation (CPR) awareness with a pediatric component;
- [and]
- (11) recognition and reporting of child abuse and neglect; and
 - (12) a child development course that addresses all major domains of child development, including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund (<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>), or approved three-credit early care and education course or an equivalent approved by the department.

including cognitive, social emotional, physical development and approach to learning as defined by the federal Child Care and Development Fund (<https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-98.98.44.b.ii>), or approved three-credit early care and education course or an equivalent approved by the department.

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

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J. Primary and substitute caregivers caring for infants shall receive two hours of infant or toddler specific training within six-months of registration.

K. If a registered home caregiver completes the 18-hour course, it will count toward the six-hour annual training requirement during the year in which the course was completed and the following year, exclusive of training required by CACFP.

L. Primary and substitute caregivers are required to obtain current first aid and CPR certification with a pediatric component prior to becoming registered and maintain this certification at all times. On-line first aid and CPR classes are not valid unless there is a hands-on component included. In-person requirements may be waived in case of an emergency. A caregiver cannot count more than four hours in first aid and CPR trainings toward their total hours of annual training requirements.

M. 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.

[8.9.5.10 NMAC - N, 11/01/2022; A, 10/08/2024]