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# NMAC

## Transmittal Form



Volume:  Issue:  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.

Please see attached document.

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)

Date signed:

Elizabeth  
Groginsky

Digitally signed by  
Elizabeth Groginsky  
Date: 2026.06.29  
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6/29/2026

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**8.9.4 NMAC Concise Explanatory Statement for Emergency Rulemaking Adoption:**

These emergency rule amendments are adopted pursuant to Section 14-4-5.6 NMSA 1978. Under Subsection E of that section, these emergency amendments are not permanent and will expire if no permanent rule is adopted within one hundred eighty (180) days from their effective date. These emergency amendments are necessary to avoid causing “an imminent peril to the public health, safety or welfare.” § 14-4-5.6(A)(1) NMSA 1978.

During the 2026 Regular Legislative Session, Senate Bill 96 (SB 96) was passed and signed by the Governor. SB 96 amends statutes relating to zoning, local government fees and taxes, and safety regulations applicable to child care providers. Most notably, the bill clarifies that child care homes must be considered a residential use of property for zoning purposes and be permitted by right. The bill also restricts zoning authorities from imposing additional regulations or requirements or requiring other discretionary local government review or approval, including conditional or special use permits, that do not also apply to other private residences within the same zoning district.

SB 96 takes effect on July 1, 2026. As of that date, the existing regulations in 8.9.4.31 NMAC will conflict with the state law enacted by SB 96. This conflict is likely to create confusion regarding licensing and registration requirements, delay or disrupt the licensing of child care homes, and impair the provision of child care services. The legislature tasked ECECD with furthering the common good by providing “New Mexico families with consistent access to appropriate early childhood care and education services”. § 9-29-8 NMSA 1978. ECECD’s licensing and registration of child care homes ensure the health and safety of children participating in the child care system. Accordingly, a conflict between state law and regulation would have immediate and negative consequences for ECECD’s ability to ensure the safe operation of child care homes and for participating families who rely on child care assistance to afford safe child care and maintain employment or pursue education.

An emergency rule is, therefore, necessary to amend 8.9.4.31 NMAC is necessary to prevent disruption of these services and to protect the public health, safety, and welfare by ensuring families can access safe, healthy, and affordable child care settings for their children, thereby ensuring the welfare of the most vulnerable New Mexicans. For these reasons, these emergency rule amendments are filed, effective on the dates set forth below, to amend 8.9.4.4 NMAC and Subsection A of 8.9.4.31 NMAC.

**Summary:**

8.9.4.3 NMAC is amended to clarify statutory authority, by adding “Section 3-21-1 NMSA 1978; Section 59A-52-18 NMSA 1978”.

Subsection A of 8.9.4.31 NMAC is amended as follows:

- “(a) ~~current written zoning approval~~ verification of zoning designation from the appropriate city, county or state authority; and
- (b) ~~current written approval of the state fire marshal office or other appropriate city, county or state fire prevention authority if applicable;~~”.

**Effective Date: July 1, 2026**

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This is an Emergency Amendment to 8.9.3 NMAC, Section 3 and 31 effective 07/01/2026.

**8.9.4.3 STATUTORY AUTHORITY:** The regulations set forth herein, which govern the licensing of facilities providing child care to children, have been promulgated by the secretary of the New Mexico Early Childhood Education and Care Department, by authority of the Early Childhood Education and Care Department Act, Section 9-29-1 to 9-29-12 NMSA 1978; Section 3-21-1 NMSA 1978; Section 59A-52-18 NMSA 1978; and Subsection D of Section 24-1-2 NMSA 1978, Subsection I of Section 24-1-3 NMSA 1978 and Section 24-1-5 NMSA 1978 of the Public Health Act, Sections 24-1-1 to 24-1-22, NMSA 1978, as amended.  
[8.9.4.3 NMAC - N, 11/01/2022; A/E, 07/01/2026]

**8.9.4.31 LICENSURE REQUIREMENTS FOR HOMES:**

**A. LICENSING REQUIREMENTS:**

(1) **APPLICATION FORM:** An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee. Applications will be rejected unless all supporting documents are received within six months of the date indicated on the application. A 45 day extension will be granted if the licensee provides documentation to the licensing authority that documents were submitted to the appropriate agencies in a timely manner but, through no fault of their own, they have not received responses from these agencies.

(2) A home will submit a new application to the licensing authority before changing anything required to be stated on the license such as dates, capacity, operator, or address.

(3) **BACKGROUND CHECK:** In addition to the basic requirements at 8.9.4.19 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's background check and employment history verification provisions (8.9.6 NMAC), regulations, fingerprint instructions, and forms for recording an employment history. The licensee will be responsible for obtaining background checks on all staff members, educators, volunteers, and prospective staff members, educators, volunteers, any person who may have unsupervised physical access to children, and all adults residing in the home as per the requirements outlined in the department's most current version of the background check and employment history verification provisions. A household member reaching the age of 18 must submit their background check in accordance with the most current provisions of 8.9.6 NMAC within 30 days after their eighteenth birthday. All requirements of the current background check and employment history verification provisions pursuant to 8.9.6 NMAC must be met prior to the issuance of an initial license. Prior to a staff member's employment, a staff member must receive a notice of provisional employment or obtain a background check in accordance with 8.9.6 NMAC. A background check must be conducted in accordance with 8.9.6 NMAC at least once every five years on all required individuals.

(4) **ZONING AND OTHER APPROVALS:** An applicant will have:

(a) current written [~~zoning approval~~] verification of zoning compliance from the appropriate city, county or state authority; and

~~[(b) current written approval of the state fire marshal office or other appropriate city, county or state fire prevention authority if applicable;]~~

~~[(e) (b) current written approval from the New Mexico environment department or other environmental health authority for: (i) Private water supply, if applicable; (ii) Private waste or sewage disposal, if applicable; and (iii) A swimming pool, if applicable.~~

(5) **SCHEDULE:** All applications for a new license will include a description of the home's proposed activities and schedule.

(6) **INITIAL SURVEY:** The licensing authority will schedule a survey for a home when it receives a complete application with all supporting documents.

**B. CAPACITY OF A HOME:**

(1) The number of children in a home, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed home, including the educator's own children under the age of six, in the capacity of a home, even if the children are on a field trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of non-residential school age children.

(3) A home may be licensed for up to 12 children.

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(4) A home licensed as a family day care home under these regulations providing care for a maximum capacity of six children may care for up to four children under the age of two providing a second educator is present in the home and the home is licensed to provide such care. A home licensed as a group day care home under these regulations providing care for a maximum of 12 children may care for up to four children under age two providing a second educator is present in the home and the home is licensed to provide such care.

(5) A home must have 35 square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than 12 children. A home must have at least one bathroom with a toilet and sink. For a home licensed for no more than six children, one activity room will be measured. For a home licensed for 12 children, no more than two rooms will be measured. Children shall not be cared for in unlicensed areas of the home.

(6) The home will have an outdoor play area, which must be contained by a fence. Outside play areas must be on the premises or approved by the licensing authority.

C. INCIDENT REPORTING REQUIREMENTS:

(1) The licensee will report to the appropriate authorities the following incidents. After making a report to the appropriate authorities, the licensee shall notify the licensing authority of the incident giving rise to its report as soon as possible but no later than 24 hours after the incident occurred. A report should first be made by telephone and followed with written notification. The licensee shall report any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (a) a lost, or missing or unattended child;
- (b) a serious injury;
- (c) the abuse or neglect of a child;
- (d) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;
- (e) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;
- (f) any legal action against a home, household member, or staff members;
- (g) any incident that could affect the background check eligibility of any cleared person related to this license;
- (h) the use of physical or mechanical restraints, unless due to documented emergencies or medically documented necessity; or
- (i) any known change in an educator's health condition or use of medication that impairs his or her ability to provide for the health, safety or welfare of children in care.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that has threatened the health or safety of children in the home. The licensee shall ensure that it obtains parent or guardian signatures on all incident reports within 24 hours of the incident. The licensee shall immediately notify the parent or guardian in the event of any head injury. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.9.4.31 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.9.4.31 NMAC - N, 11/01/2022; A/E, 07/01/2026]