

TITLE 8 SOCIAL SERVICES
CHAPTER 9 EARLY CHILDHOOD EDUCATION AND CARE
PART 6 GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY
VERIFICATION

8.9.6.1 ISSUING AGENCY: Early Childhood Education and Care Department (“ECECD”)
[8.9.6.1 NMAC - Rp, 12/8/2026]

8.9.6.2 SCOPE:
This rule has general applicability to operators, volunteers, interns, employees, and prospective operators, staff and employees, of child-care facilities, including every facility, ECECD contractor, program receiving ECECD funding or reimbursement, or other program that has or could have primary custody of children for twenty hours or more per week, and direct providers of care for children including, but not limited to the following settings: licensed and registered child care, home visiting programs, and Family Infant Toddler (FIT) programs.
[8.9.6.2 NMAC - Rp, 12/8/2026]

8.9.6.3 STATUTORY AUTHORITY:
The Early Childhood Education and Care Department Act, specifically Subsection E of Section 9-29-6 NMSA 1978, Subsection H of Section 9-29-8 NMSA 1978, and Section 9-29-8.1 NMSA 1978; and the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978.
[8.9.6.3 NMAC - Rp, 12/8/2026]

8.9.6.4 DURATION: Permanent
[8.9.6.4 NMAC - Rp, 12/8/2026]

8.9.6.5 EFFECTIVE DATE: December 8, 2026, unless a later date is cited at the end of a section.
[8.9.6.5 NMAC - Rp, 12/8/2026]

8.9.6.6 OBJECTIVE:
The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required to identify information in applicants’ backgrounds to determine whether they are eligible to provide child care services.
[8.9.6.6 NMAC - Rp, 12/8/2026]

8.9.6.7 DEFINITIONS:

- A. “Administrative review”** means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.
- B. “Administrator”** means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.
- C. “Adult”** means a person who is the chronological age of 18 years or older, except for persons under Medicaid certification as set forth in Subsection K below.
- D. “Appeal”** means a review of a determination made by the BCU, which may include an administrative review or a hearing.
- E. “Applicant”** means any person who is required to obtain a background check under these rules or Section 9-29-8.1 NMSA 1978.
- F. “Arrest”** means notice from a law enforcement agency about an alleged violation of law.
- G. “Background check”** means a screen of ECECD’s information databases, state and federal criminal records, and any other reasonably reliable information about an applicant.
- H. “BCU”** means the ECECD background check unit.
- I. “Care recipient”** means any person under the care of a licensee.
- J. “Child”** means a person who is the chronological age of less than 18 years, and persons under applicable Medicaid certification up to the age of 21 years.
- K. “Child care facility”** includes a licensed child care center, registered child care home, licensed family child care home, licensed group child care home, licensed out-of-school time program, and registered family child care food-only homes.

L. “Child care services” means providing care to or having direct care responsibilities for less than 24 hours per day in a child care facility, including in:

- (1) licensed child care homes;
- (2) licensed child care centers;
- (3) registered child care homes;
- (4) registered family child care food-only homes;
- (5) licensed before and after school care or licensed out-of-school time program; or
- (6) non-licensed or exempt after school programs participating in the at risk component of

the child and adult care food program.

M. “Child care service provider” means a person who provides child care services or has potential unsupervised physical access to a child in a child care facility.

N. “Conviction” means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state, and excludes:

(1) successful or pending completion of a conditional discharge under Section 31-20-13 NMSA 1978, or Section 30-31-28 NMSA 1978, or a comparable provision of another state’s law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court;

(2) any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case; or

(3) any of the foregoing if the applicant has received a legally effective executive pardon for the conviction.

O. “Criminal history” means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

P. “Department” or “ECECD” means the Early Childhood Education and Care Department;

Q. “Department-contracted provider” means a person who contracts or volunteers with ECECD to provide services outside of a child care facility, including for:

- (1) home visiting programs;
- (2) family infant toddler (FIT) programs; or
- (3) any other ECECD program or other program that receives ECECD funding or

reimbursement, that:

(a) has or could have primary custody of children for twenty hours or more per

week; or

(b) will have direct contact with children in the provision of ECECD-sponsored

services.

R. “Department employee” means an ECECD employee who is not a child care service provider.

S. “Direct physical supervision” means continuous visual contact or live video observation by a child care service provider with a background check clearance of an applicant during periods when the applicant is in immediate physical proximity to care recipients.

T. “Employment history” means a written summary of the most recent three-year period of employment with names, addresses, and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment; and verifying references.

U. “Investigation” includes an investigation by the department, the Children, Youth and Families Department (CYFD), or by any other local, state or federal agency with investigative authority.

V. “Licensed” means authorized to operate by issuance of an operator’s license or certification certificate by the licensing authority.

W. “Licensee” means the holder of, or applicant for, a license, certification, or registration for a child care facility under 8.9.4 NMAC, 8.9.5 NMAC, child care service provider, or other program or entity within the scope of these regulations.

X. “Licensing authority” means the ECECD division having authority over the licensee.

Y. “Neglect” means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

Z. “Provisional clearance” means the BCU reviewed an applicant’s fingerprint-based federal or New Mexico criminal record and made a determination that the applicant may begin employment under direct

physical supervision until receiving background check clearance. A notice of provisional clearance may also indicate that the applicant must receive a complete background check clearance prior to beginning employment.

AA. “Rehabilitated” means that an applicant has demonstrated sustained change such that they no longer pose an unreasonable risk to children, as determined by the department.

BB. “Unreasonable risk” means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

[8.9.6.7 NMAC - Rp, 12/8/2026]

8.9.6.8 PROVIDER AND LICENSEE REQUIREMENTS:

A. A person shall not provide child care services or work as a department employee or department-contracted provider without obtaining a background check clearance, except as provided in 8.9.6.10 NMAC.

B. A person’s background check clearance expires upon the earliest of the following occurring:

- (1) five years after the date of issuance;
- (2) a break in the person’s provision of child care service more than 180 days after the background check clearance was issued; or
- (3) a transfer of employment more than 180 days after the background check clearance was issued.

C. To continue providing child care services or working as a department employee or department-contracted provider after a background check clearance expires, a person must submit a renewal using the same process and meeting the same requirements as an initial application under 8.9.6.9 NMAC.

D. A licensee shall not:

(1) hire, contract with, use in volunteer service, or retain any child care service provider or department-contracted provider:

- (a) without a background check clearance or provisional clearance;
- (b) for whom information received from any source indicates the person poses an unreasonable risk to care recipients; and
- (c) in any way inconsistent with or in violation of the provisions of these regulations; and

(2) retain a child care service provider or department-contracted provider for more than ten working days following the issuing of a notice of background check denial for failure to respond by the BCU.

[8.9.6.8 NMAC - Rp, 12/8/2026]

8.9.6.9 APPLICATION:

A. To obtain or renew background check clearance, a person shall apply to the licensee by submitting a complete application on the forms and in the manner prescribed by ECECD, including:

(1) an electronic fingerprint submission receipt and the required forms for all direct providers of care, household members in licensed and registered child care homes, or any staff member, employee, or volunteer present while care recipients are present, or other adult as required by the applicable regulations prior to the commencement of service, whether employment, contractual, or volunteer. In the case of a licensed child care home and a registered child care home, the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members or for any adult who is required to obtain a background check pursuant to 8.9.4 NMAC or 8.9.5 NMAC as applicable. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening;

- (2) employment history and references;
- (3) all of the states in which an applicant resided during the preceding five years;
- (4) a screen of abuse and neglect information in each state in which the applicant resided during the preceding five years;
- (5) an inter-state criminal history check in each state in which a new applicant resided during the preceding five years, except if a new applicant has resided in a state that participates in the federal bureau of investigation's national fingerprint file;

(6) an adult household member written statement form for each adult household member in a registered family child care food-only home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home; the licensee must submit the required forms for new adult household members pursuant to 8.9.5 NMAC; and

- (7) any other information that the BCU staff requires.

- B.** A licensee, upon receiving a complete background check application shall:
- (1) submit to ECECD the electronic fingerprint submission receipt and all other required forms;
 - (2) verify and document the employment history of the applicant by contacting references and prior employers to elicit information regarding the reason for leaving prior employment or service, except for registered home providers;
 - (3) retain and make available upon ECECD request all background check applications, documentation, correspondence, submissions, and verifications provided under these regulations; and
 - (4) provide any further information requested by ECECD within fifteen calendar days of the date of the request.
- [8.9.6.9 NMAC - Rp, 12/8/2026]

8.9.6.10 PROVISIONAL BACKGROUND CHECK CLEARANCE AND TRANSFER:

A. Provisional Background Check Clearance: An applicant may receive from ECECD a notice of provisional clearance and begin providing child care services or working as a department-contracted provider prior to obtaining background check clearance if all of the following requirements are met:

- (1) the licensee sends ECECD a completed application in accordance with 8.9.6.9 NMAC;
- (2) the applicant is at all times under direct physical supervision until the applicant obtains background check clearance; and
- (3) not more than 45 days shall have passed since the date of the initial application, unless the BCU documents good cause shown for an extension.

B. Transfer: A child care service provider may transfer employment, as permitted by 8.9.4.19 NMAC and 8.9.5.11 NMAC, or for a period of 180 days after the date of a background check approval letter from the BCU without having to submit a renewal application only if the child care service provider submits a preliminary application that meets the following conditions:

- (1) the child care service provider submits a statement swearing under penalty of perjury that the child care service provider has not been arrested or charged with any crimes, has not been an alleged perpetrator of abuse or neglect, and has not been a respondent in a domestic violence petition;
- (2) the child care service provider submits a preliminary application that describes the places of employment, registration, and certification since the provider's most recent background check approval with sufficient detail to allow the BCU to determine if further background checks or a new, full application is necessary; and
- (3) the BCU determines within 15 days of receipt of the preliminary application that the child care service provider's prior background check is sufficient for the direct provider's intended employment or position.

[8.9.6.10 NMAC - Rp, 12/8/2026]

8.9.6.11 BACKGROUND CHECK DENIAL:

A. A background check application shall be denied if it reveals an unreasonable risk or if an applicant knowingly makes a materially false statement in connection with the application. In determining whether an applicant poses an unreasonable risk, ECECD:

- (1) uses all reasonably reliable information about an applicant and weighs the evidence about an applicant to determine whether, in its discretion, the applicant poses an unreasonable risk to care recipients;
- (2) may consult with treatment, assessment, or other professionals or staff in the process of determining whether the cumulative weight of credible evidence establishes an unreasonable risk; and
- (3) need not limit its reliance on formal convictions or substantiated referrals, but relies only on evidence with indicia of reliability such as:
 - (a) reliable disclosures by the applicant, a victim, or a witness;
 - (b) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibited them from injuring, harassing or contacting another person;
 - (c) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or
 - (d) any other evidence with similar indicia of reliability.

B. A conviction may be proven by:

- (1) a copy of the judgment of conviction from the court;

- (2) a copy of a plea agreement filed in court in which a defendant admits guilt;
- (3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;
- (4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction; or
- (5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for background check denial, the applicant shall be given an opportunity to show that the applicant has successfully completed or is pending completion of a conditional discharge for the disqualifying conviction.

C. An applicant may disprove a conviction by showing that the applicant has a pending or successful completion of any conditional discharge or consent decree, that the relevant conviction has been overturned on appeal, or that the applicant has received a legally effective pardon.

D. If an applicant is determined to be an unreasonable risk and the applicant's background check application is denied because of a pending charge or investigation, the applicant may reapply after the resolution of the charge or investigation and provide proof that the charge was dropped or the investigation was unsubstantiated.

E. An applicant bears the burden of proving the applicant has been sufficiently rehabilitated, in accordance with 8.9.6.15 NMAC.
[8.9.6.11 NMAC - Rp, 12/8/2026]

8.9.6.12 UNREASONABLE RISK FOR PROVIDER AT A CHILD CARE FACILITY:

A. For a child care service provider at a child care facility the following shall result in a determination of unreasonable risk:

- (1) a conviction or pending charges, regardless of the degree of the crime or the date of conviction, of homicide, kidnapping, human trafficking, rape, sexual assault, or related sexual offenses, a crime against children, including child pornography, abuse or neglect, spousal abuse, or domestic violence;
- (2) a substantiated finding of sexual abuse, child abuse, or a failure to protect against sexual abuse or child abuse by ECECD, CYFD, or any other state or federal agency with authority to investigate abuse or neglect in any state or U.S. Territory;
- (3) the applicant's child is in the custody of the New Mexico's Children, Youth, and Families Department (CYFD) or another state's child protective service agency;
- (4) a registration, or a requirement to be registered, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006;
- (5) a felony conviction of a drug-related offense committed during the preceding five years;

or

- (6) a pending investigation of the provider by ECECD, CYFD, or any other state or federal agency with authority to investigate abuse or neglect in any state or U.S. Territory.

B. For a child care service provider at a child care facility, the following may be considered in making a determination of unreasonable risk:

- (1) a conviction or pending charges for a crime if the department determines that the convicted applicant has not been sufficiently rehabilitated;
- (2) a substantiated finding of child neglect by ECECD, CYFD, or any other state or federal agency with authority to investigate abuse or neglect in any state or U.S. Territory;
- (3) an outstanding warrant;
- (4) an arrest but no disposition for any such crime if a conviction as charged would result in a determination of unreasonable risk;
- (5) a felony conviction of a drug-related offense committed more than five years ago;
- (6) decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses;
- (7) any other pending investigation by ECECD, CYFD, or any other state or federal agency with investigative authority not already included in Paragraph (6) of Subsection A of this section; and
- (8) any other evidence that relates to whether an applicant can provide a safe, healthy, responsible, and morally positive setting for care recipients.

[8.9.6.12 NMAC - Rp, 12/8/2026]

8.9.6.13 UNREASONABLE RISK FOR DEPARTMENT EMPLOYEES AND DEPARTMENT-CONTRACTED PROVIDERS:

A. For department employees and department-contracted providers, the following shall result in a determination of unreasonable risk:

- (1) substantiated finding of sexual abuse, child abuse, or a failure to protect against sexual abuse or child abuse;
- (2) felony conviction of murder, a crime against children, including child pornography, child abuse, or child neglect, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or a drug-related offense committed during the preceding five years;
- (3) a registration, or a requirement to register, on a state sex offender registry or repository or the national sex offender registry established under the Adam Walsh Child Protection and Safety Act of 2006;
- (4) the applicant's child is in the custody of the New Mexico's Children, Youth, and Families Department (CYFD) or another state's child protective service agency; or
- (5) a pending investigation of the provider by ECECD, CYFD, or any other state or federal agency with authority to investigate abuse or neglect in any state or U.S. Territory.

B. For department employees and department-contracted providers, any other evidence, except as provided in Subsection C of this section, may be considered in making a determination of unreasonable risk, including the following:

- (1) a conviction or pending charges of homicide, kidnapping, human trafficking, criminal sexual penetration or related sexual offenses, trafficking in controlled substances, child abuse, child neglect, or domestic violence;
- (2) a conviction or pending charges for a crime that directly relates to whether the applicant can provide a safe, healthy, responsible, calm, or morally positive setting for care recipients;
- (3) a felony conviction of a drug-related offense committed more than five years ago;
- (4) a substantiated finding of child neglect by ECECD, CYFD, or any other state or federal agency with authority to investigate abuse or neglect in any state or U.S. Territory;
- (5) a documented failure to protect a child against sexual abuse, physical abuse, or child abuse;
- (6) an outstanding warrant; and
- (7) any other action or omission that demonstrates an applicant can provide a safe, healthy, responsible, calm, or morally positive setting for care recipients.

C. In making determinations of unreasonable risk under this section, the following, in accordance with the Criminal Offender Employment Act, shall not be used, distributed, or disseminated in connection with a background check application:

- (1) records of arrest not followed by a valid conviction;
- (2) convictions that have been sealed, dismissed, expunged, or pardoned;
- (3) juvenile adjudications; or
- (4) convictions for a crime that is not job-related for the position in question and consistent with business necessity.

[8.9.6.13 NMAC - Rp, 12/8/2026]

8.9.6.14 SUSPENSIONS, REINSTATEMENTS AND REVOCATIONS:

A. A background check clearance may be suspended or revoked if ECECD determines the person poses an unreasonable risk.

B. It is the duty of the administrator of a facility or the licensee and the background check clearance holder, upon learning of an unreasonable risk, to notify the licensing authority immediately. Failure to immediately notify the licensing authority may result in the revocation of background check clearance.

C. Background check clearance may be reinstated as follows:

- (1) if the applicant can provide information relating to the disqualifying criminal charge that would show that a conviction as charged would not lead to an unreasonable risk;
- (2) if the matter causing a suspension is resolved within six months of the suspension, the applicant may provide documentation to ECECD showing how the matter was resolved and request reinstatement of background check clearance. After review, ECECD may reinstate or revoke background check clearance; or
- (3) if the matter causing the suspension is resolved more than six months after the suspension, the applicant may reapply for background check clearance by submitting a renewal application using the

same process and meeting the same requirements as the initial application under 8.9.6.9 NMAC. After review, ECECD may reinstate or revoke the background check clearance.
[8.9.6.14 NMAC - Rp, 12/8/2026]

8.9.6.15 REHABILITATION PETITION:

A. An applicant whom the BCU concludes poses an unreasonable risk, except those provided in Paragraphs (1) through (4) of Subsection A of 8.9.6.12 NMAC and in Paragraphs (1) through (4) of Subsection A of 8.9.6.13 NMAC, may submit a rehabilitation petition to the BCU. The rehabilitation petition must describe with specificity all information that tends to demonstrate the applicant is no longer an unreasonable risk and any actions the applicant has taken to reduce the likelihood that the same or similar conduct or circumstances will recur. An applicant bears the burden of proving the applicant has been rehabilitated and no longer poses an unreasonable risk. Submission of a rehabilitation petition does not guarantee eligibility; the department determines whether an applicant has demonstrated rehabilitation on a case-by-case basis, based on the totality of the circumstances.

B. In determining whether an applicant has been rehabilitated, any relevant evidence may be considered, including evidence of reduced likelihood of reoffending, actions taken to prevent harmful conduct, treatment or other interventions addressing factors that contributed to the circumstances underlying the unreasonable risk determination, improvement in conduct and character, and participation in restorative practices. Evidence the department may consider as favorable, but that does not by itself establish rehabilitation, includes:

(1) the nature, severity, and circumstances of the conduct or circumstances underlying the applicant's unreasonable risk determination;

(2) the length of time, especially periods exceeding five years, that has elapsed since the conduct or circumstance underlying the unreasonable risk determination, including, as applicable, the period following completion of any sentence, probation, parole, treatment, or other court-ordered requirements;

(3) the applicant's conduct since the events underlying the unreasonable risk determination, including the absence of subsequent convictions, substantiated findings of abuse or neglect, or other reliable evidence of conduct that presents an unreasonable risk;

(3) documentation of rehabilitation or rehabilitative efforts or education, such as completion of degrees, programs, coursework, vocational training, and community service;

(4) testimony or other information from therapists, counselors, parole officers, or other relevant professionals verifying therapeutic progress, character, or employment suitability;

(5) completion of treatment or other interventions, especially cognitive behavioral therapy, relapse prevention aligned with Risk-Need-Responsivity (RNR) principles, or similar intervention programs;

(6) full resolution of charges and successful completion of probation or parole;

(7) a stable employment history, including steady employment, satisfactory performance, and positive employment references; and

(8) any other actions taken by the applicant to address factors that contributed to the unreasonable risk determination and to reduce the likelihood of recurrence.

[8.9.6.15 NMAC - Rp, 12/8/2026]

8.9.6.16 SANCTIONS:

Any firm, person, corporation, individual, or other entity that violates a provision of these regulations shall be subject to appropriate sanctions up to and including immediate suspension or revocation of the background clearance pursuant to the regulations applicable to that entity.

[8.9.6.16 NMAC - Rp, 12/8/2026]

8.9.6.17 APPEAL RIGHTS:

A. Denials: Any applicant who receives a background check denial after completion of a background check may request an administrative review from ECECD. The request for an administrative review shall be in writing and the applicant shall assure that the BCU receives it within 15 days of the date of the BCU's written notice of a determination of unreasonable risk. If the request is mailed, three days are added after the period would otherwise expire. The administrative review shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to:

(1) whether the BCU's conclusion of unreasonable risk is supported by any section of these regulations; and

(2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer and

includes the applicant's written request for an administrative review and other relevant evidence provided by the applicant. The hearing officer conducts the administrative review and submits a recommendation to the cabinet secretary no later than 60 days after the date the request for administrative review is received unless ECECD and the applicant agree otherwise.

B. Suspensions and revocations: a person whose background check clearance is suspended or revoked may appeal that decision to ECECD and shall be entitled to a hearing pursuant to ECECD's identified administrative hearing regulations. The request for appeal shall be in writing and received by BCU no later than 15 calendar days after the date of the BCU's written notice of suspension. If the request is mailed, three calendar days are added after the period would otherwise expire.
[8.9.6.17 NMAC - Rp, 12/8/2026]

8.9.6.18 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except to the extent that such a program receives funding or reimbursement from ECECD:

- (1) hospitals or infirmaries;
- (2) intermediate care facilities;
- (3) children's psychiatric centers;
- (4) home health agencies;
- (5) diagnostic and treatment centers;
- (6) unlicensed or unregistered child care homes;
- (7) behavior management skills development;
- (8) case management services;
- (9) day treatment services;
- (10) residential treatment services;
- (11) treatment foster care services agency staff;
- (12) licensed shelter care;
- (13) comprehensive community support services; and
- (14) AOC (administrative office of the courts) supervised visitation and safe exchange

program providers.

B. These regulations do not apply to the following adults:

- (1) treatment foster care parents;
- (2) relative care providers who are not otherwise required to be licensed or registered;
- (3) foster grandparent volunteers; and
- (4) all other volunteers for any program or entity within the scope of these regulations if the

volunteer spends less than six hours per week at the program, is under direct physical supervision, and is not counted in the facility ratio.

[8.9.6.18 NMAC - N, 12/8/2026]

NMAC History:

8.9.6 NMAC, Governing Background Checks and Employment History Verification, filed 11/01/2022, repealed effective 12/8/2026.