

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 26 FOSTER CARE AND ADOPTION**  
**PART 4 LICENSING REQUIREMENTS FOR FOSTER AND ADOPTIVE HOMES**

**8.26.4.1 ISSUING AGENCY:** Children, Youth and Families Department (CYFD), Protective Services Division (PSD).

[8.26.4.1 NMAC - Rp, 8 NMAC 27.3.1, 5/29/09]

**8.26.4.2 SCOPE:** PSD staff and all PSD licensed agencies providing foster care services in New Mexico.

[8.26.4.2 NMAC - Rp, 8 NMAC 27.3.2, 5/29/09; A, 8/15/11]

**8.26.4.3 STATUTORY AUTHORITY:** Children, Youth and Families Department Act, 9-2A-7 D, NMSA 1978; New Mexico Children's Code Adoption Act, 32A-5-6 A, NMSA 1978; Child Placement Licensing Act, 40-7A-4 D, NMSA 1978.

[8.26.4.3 NMAC - Rp, 8 NMAC 27.3.3, 5/29/09]

**8.26.4.4 DURATION:** Permanent.

[8.26.4.4 NMAC - Rp, 8 NMAC 27.3.4, 5/29/09]

**8.26.4.5 EFFECTIVE DATE:** May 29, 2009 unless a later date is cited at the end of a section.

[8.26.4.5 NMAC - Rp, 8 NMAC 27.3.5, 5/29/09]

**8.26.4.6 OBJECTIVE:** To create uniform standards for licensing of foster care and adoptive homes in New Mexico which are consistent with the best interest, safety, permanency, and well-being of children by:

- A.** enabling protective services division or licensed child placement agencies to license and monitor foster and adoptive homes;
- B.** enabling protective services division to set standards for the application and operation of foster and adoptive homes to protect the best interest of children in foster or adoptive placement; and
- C.** complying with the New Mexico Children's Code, the New Mexico Adoption Act and regulations, the Indian Child Welfare Act, the Adoption and Safe Families Act, the Interstate Compact on Placement of Children, the Interstate Compact on Adoption and Medical Assistance, the Multi-Ethnic Placement Act, as amended by the Inter-Ethnic Adoption Provisions of 1996, the Safe and Timely Interstate Placement of Foster Children Act, the Adam Walsh Act, the Fostering Connections for Success and Increasing Adoptions Act and the Child Abuse Prevention and Treatment Act Reauthorization of 2010.

[8.26.4.6 NMAC - Rp, 8 NMAC 27.3.6, 5/29/09; A, 8/15/11]

**8.26.4.7 DEFINITIONS:**

- A.** **"Administrative appeal"** is a formal hearing for families whose license has been revoked, suspended, or not renewed. The family has the opportunity to present evidence to an impartial hearing officer in accordance with CYFD's Administrative Appeals regulations 8.8.4 NMAC.
- B.** **"Administrative review"** is an informal process in which may include an informal conference or a record review, and does not create any substantive rights for the family.
- C.** **"Adoptee"** refers to any person who is the subject of an adoption petition.
- D.** **"Adoption"** is the establishment of a court sanctioned legal parental relationship between an adult and a child.
- E.** **"Adoptive home"** refers to:
  - (1) a foster family licensed by PSD or by a licensed child placement agency who chooses to adopt a foster child; or
  - (2) a family approved by PSD and a private agency or a licensed individual to adopt a child.
- F.** **"Agency"** means any PSD licensed individual, partnership, association or corporation, for profit or non-profit, undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services. An agency may be licensed as an adoption agency, a foster care agency or both.
  - (1) **"Adoption agency"** means an agency licensed by PSD to facilitate the adoption of a child or perform a service within the adoption process.
  - (2) **"Foster care agency"** means an agency licensed by PSD for the purpose of supervising foster care homes, treatment foster care homes, or other levels of foster care as developed by PSD.
- G.** **"Applicant"** is any person who applies to be considered as a potential foster care provider, treatment foster care provider, or an adoptive family.
- H.** **"Application"** is the document by which persons who wish to become foster or adoptive parents request an assessment of their home and family, and the issuance of a license. The document also authorizes the department or licensed child placement agency to obtain relevant information from the applicant and other authorized persons in order to conduct an assessment of the applicant's qualifications. The applicant shall certify that there are no willful misrepresentations in the application.
- I.** **"Assessment"** is the process of collecting information and conducting interviews with applicants by the licensing agent, and evaluating that information to determine the suitability of an applicant for a foster parent license.
- J.** **"Child abuse and neglect check"** is a review of the PSD information management system (also known as FACTS), or another state's central abuse or neglect registry to determine if there have been any previous referrals on the family to this state's or any other state's child

protective services division.

**K. “Client”** means a foster care or adoptive parent applicant, foster care or adoptive family, a foster or adoptive child, or the child’s biological family who receives services from a child placement agency or protective services.

**L. “Concurrent planning”** refers to case planning and legal practices providing reunification services while simultaneously implementing an alternative case plan.

**M. “Criminal records check (CRC)”** means federal, state or local checks for criminal offenses conducted by CYFD on potential and current foster and adoptive parents, and of all adults living in the foster or adoptive home.

**N. “CYFD”** means the New Mexico children, youth and families department.

**O. “FACTS”** means the PSD management information system.

**P. “Fictive kin”** is a person not related by birth or marriage who has an emotionally significant relationship with the child.

**Q. “Foster child”** is a child who is placed in the care and custody of children, youth and families department protective services division either under the legal authorization of the Children’s Code or through a voluntary placement agreement signed by the parent or legal guardian, or a child who is placed with a licensed child placement agency under the authority of the Child Placement Agency Licensing Act. If the court orders legal custody to a relative, person, facility, or agency other than the children, youth and families department protective services division, the child is not a foster child of protective services division.

**R. “Foster home”** refers to a person or persons licensed by PSD, or a licensed child placement agency to provide foster care services including emergency, respite, non-relative, relative, or treatment foster care. The persons may also be concurrently licensed to adopt

**S. “Foster home license”** is the document which bears the name or names and address or addresses of those who are foster parents for the protective services division or licensed child placement agency. The license displays the ages and number of foster children the licensee is authorized to care for and the date such authorization begins and ends. The license shall bear the signature of the authorized person who issued the license.

**T. “Foster parent”** is the person named on the license issued by protective services division or a licensed child placement agency who is authorized to care for foster children. Throughout this policy, the term foster parent also refers to an adoptive parent whose adoption has not yet finalized.

**U. “Home study”** is the final written document that results from the assessment process to determine the suitability of an applicant for a foster parent license.

**V. “Licensing agent”** means the individual with the proper credential and qualifications conducting a home study.

**W. “Protective services division (PSD)”** refers to the protective services division of the children, youth and families department, and is the state’s designated child welfare agency.

**X. “PSD custody”** means custody of children as a result of an action filed pursuant to the New Mexico Children’s Code, 32A-4-1 et seq. NMSA 1978 or 32A-3B-1 et seq. NMSA 1978.

**Y. “Relative”** refers to mothers, fathers, brothers, sisters, grandparents, aunts, uncles, nieces, nephews, first cousins, mother-in-laws, father-in-laws, sister-in-laws, and brother-in-laws, as well as fictive kin.

**Z. “Respite care”** means a licensed foster parent(s) who are able to care for foster children for short periods of time when the child’s original foster parents are unable to provide care.

**AA. “SAFE”** means the structured analysis family evaluation© home study format, which is the only home study format approved for use in New Mexico.

**BB. “Specialized foster home”** means a family foster home licensed by PSD in which at least one adult has the required education, training or experience necessary to care for a child who has been certified as special needs.

**CC. “Treatment foster care home”** is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

[8.26.4.7 NMAC - Rp, 8 NMAC 27.3.7 & 8.27.2.7 NMAC, 5/29/09; A, 8/15/11]

#### **8.26.4.8 ELIGIBILITY TO FOSTER OR ADOPT:**

**A.** Any adult age 18 or older who is a legal resident of the United States and who is a resident of New Mexico can apply to become a licensed foster parent.

**B.** A petition for adoption may be filed in New Mexico by any adult, age 18 or older, who:

(1) is a New Mexico resident as defined in the Adoption Act, 32A-5-3(Y) NMSA 1978, and pursuant to the Adoption Act, 32A-5-11(B) NMSA 1978; or

(2) is a non-resident, who meets the requirements pursuant to the Adoption Act, 32A-5-11(C) NMSA 1978, and the child was placed by CYFD or a New Mexico licensed child placement agency and the adoptee is a resident of New Mexico or was born in New Mexico, but is less than six months of age.

**C.** Any adult seeking to adopt a child in PSD custody must be approved as an adoptive parent and licensed as a foster parent.

**D.** CYFD employees who meet all licensing requirements may serve as foster or adoptive parents. A CYFD employee is not allowed to foster or adopt any child with whom he or she is working with in an official capacity.

**E.** A foster or adoptive family may be a single parent, a married couple or an unmarried couple.

**F.** No persons shall be licensed as foster parents whose own children are currently in foster care. Persons whose children have been formerly in foster placement may be licensed if the assessment of their application determines that the problems leading to the placement have been resolved.

**G.** To be considered for a PSD foster parent license issued by PSD, applicants shall have sufficient income, apart from the

reimbursement, to support themselves and their families.

**H.** PSD recruits foster and adoptive families who demonstrate the ability to care for children in PSD custody and may deny applicants who are not willing to accept children in PSD custody.

[8.26.4.8 NMAC - N, 5/29/09; A, 8/15/11]

#### **8.26.4.9 APPLICATION FOR INITIAL LICENSURE:**

**A.** All persons wishing to become licensed foster parents or an eligible adoptive home for PSD or for a child placement agency must:

- (1) complete an application form;
- (2) consent to a home study;
- (3) consent to a criminal records check and child abuse and neglect check; and
- (4) complete the required pre-service training.

**B.** Applicants shall complete and sign the foster home licensing application provided by PSD or licensed child placement agency. The application shall include but not be limited to the following:

- (1) demographic data such as name, address, telephone number; date of birth of all persons living in or frequently residing in the home;
- (2) previous addresses for the past five years, including the dates;
- (3) at least three year employment history preceding the date of application, if applicable;
- (4) a statement from the applicant asserting that, if approved for license, the applicant shall adhere to the applicable statutes and regulations applying to foster or adoptive homes and their responsibilities which shall include:
  - (a) working with children and families on reunification or alternate case plan;
  - (b) working with PSD or an agency to ensure placement stability, such as accepting only children who can remain in the placement until adopted or discharged from care;
  - (c) ensuring that the safety of children is paramount;
  - (d) adherence to foster parent responsibilities as set forth in Placement Services, 8.26.2.12 NMAC.
- (5) each applicant shall submit the names, addresses and telephone numbers of three non-related persons who have knowledge of the applicant character and suitability to be foster or adoptive parents; in addition to the names, addresses and telephone numbers of all adult children residing out of the home shall be provided for references;
- (6) a statement of monthly income and expenditures;
- (7) information regarding past or present medical conditions and hospitalizations, including any institutionalization or treatment for behavioral disorders for all adults and children living in the home;
- (8) a summary of current and past marriages and significant adult interpersonal relationships;
- (9) a history of any application or licensure for foster care or adoptive homes in this or any other state; if such history exists the application shall also include a PSD approved notification form signed by the applicant that will serve the purpose of notifying the previous agency of the applicant's application to the new agency and allow the release of assessment information and the home study to any agency considering the foster or adoptive family;
- (10) a history of arrests and investigations by PSD; and
- (11) signature and date: the applicant's signature shall certify the information provided in the application form is true and complete and the application contains no willful misrepresentation.

[8.26.4.9 NMAC - Rp, 8 NMAC 27.3.10 & 8.27.2.14 NMAC, 5/29/09; A, 8/15/11]

**8.26.4.10 CRIMINAL RECORDS CHECKS (CRC):** All persons wishing to become licensed foster parents or an eligible adoptive home for PSD or for a child placement agency must complete a criminal records check.

**A.** CRCs are required for all applicants and adults living in the foster or adoptive home.

**B.** CYFD CRC unit conducts federal and state criminal records checks for all applicants and adults living in the home. PSD placement staff or agency staff shall submit to the CYFD CRC unit two completed finger print cards for each applicant and adult living in the applicant's home. Agency staff shall also submit a certified check or money order payable to CYFD protective services division for the required fingerprinting fee for each applicant and adult living in the applicant's home. (Finger print packets including cards and instructions may be obtained from the CRC unit.)

**C.** PSD and agency staff shall conduct an additional criminal record check of the applicant and all adults living in the applicant's home through a search of nmcourts.com.

**D.** Licensure shall not be approved in any case in which the CRC results for the applicant or any adult living in the applicant's home reveal any of the following federally mandated automatic disqualifiers:

- (1) a felony conviction for child abuse or neglect;
- (2) a felony conviction for spousal abuse;
- (3) a felony conviction for a crime against children, including child pornography;
- (4) a conviction for any crime involving violence such as rape, sexual assault, or homicide, but does not include other physical assault or battery; or
- (5) a felony conviction within the past five years for physical assault, battery, or a drug related offense.

**E.** Applicants who have a conviction for crimes other than those noted above are not automatically disqualified; however this

information shall be used to determine suitability for licensure. All police or court records relating to the applicant or other adult living in the home shall be considered in determining suitability for licensure.

**F.** The home study process for any applicant or adult living in the home with a pending criminal charge and no disposition shall be closed. The applicant may reapply after disposition of the charge.

[8.26.4.10 NMAC - Rp, 8.27.2.16 NMAC, 5/29/09; A, 8/15/11]

#### **8.26.4.11 CHILD ABUSE AND NEGLECT CHECK:**

**A.** For families applying to be licensed by PSD, staff shall conduct a FACTS review for abuse and neglect referrals on the applicant and all adults living in the applicant's home. If the applicant or any other adult living in the home resided in any state(s) other than New Mexico in the five years prior to the date of the application, PSD shall request that each such state review its abuse and neglect information system or registry for information on the applicant or other adults living in the home and submit the results of that review to PSD.

**B.** For families seeking to become foster or adoptive homes through agencies other than PSD, the agency shall submit, at the time they submit finger print cards, a signed PSD approved "abuse and neglect check for prospective foster or adoptive parents" form to request that the CRC unit conduct a FACTS review for abuse and neglect referrals on the applicant and each adult living in the applicant's home. If the applicant or any other adult living in the home resided in any state(s) other than New Mexico in the five years prior to the date of the application, the agency shall request that each such state review its abuse and neglect information system or registry for information on the applicant or other adults living in the home and submit the results of that review to PSD.

**C.** If the applicant or any adult living in the applicant's home has been the subject of a substantiated allegation of sexual exploitation or sexual abuse of a child, or has been substantiated for child abuse that resulted in a child fatality, then the applicant shall not be licensed.

**D.** In the event of a substantiated report of child abuse or neglect, other than substantiated sexual exploitation or sexual abuse as listed above, involving the applicant or any adult living in the home, the application is assessed on a case-by-case basis to determine if the safety of any child in the home can be assured. This information shall be used to determine suitability for licensure.

**E.** Persons who have been referred to PSD for investigation of allegations of child abuse or neglect or exploitation may be considered for licensure. The best interest of children is paramount. Licensure may be denied based on the professional judgment of the licensing agent.

**F.** The home study process for any applicant or adult living in the applicant's home with a pending child abuse or neglect investigation and no disposition shall be closed. The applicant may reapply when the investigation is complete.

[8.26.4.11 NMAC - Rp, 8.27.2.17 NMAC, 5/29/09; A, 8/15/11]

#### **8.26.4.12 ASSESSMENT PROCESS FOR FOSTER OR ADOPTIVE HOME LICENSE:**

**A.** Only qualified persons employed by PSD, qualified staff of licensed child placement agencies or individuals certified by PSD, as licensing agents shall conduct home studies. (See process for certification as a licensing agent as set forth in the Adoption Act Regulations, 8.26.3.17 NMAC)

**B.** Upon receipt of the application to become a foster or adoptive family, the licensing agent has five days to contact the family.

**C.** Home study forms and requirements are determined by PSD. The SAFE home study is the approved format to be used in New Mexico.

**D.** All foster or adoptive applicants are assessed for their suitability to care for children who might be placed in their home. Although any previous foster care assessments and home studies that are obtainable shall be considered, the licensing agent shall conduct an independent assessment and home study.

**E.** PSD gives priority to applicants that meet the needs of children in PSD custody.

**F.** In addition to the CRC and abuse and neglect checks, as described herein at 8.26.4.10 and 8.26.4.11 NMAC, the minimum documentation required for the assessment process includes:

(1) a physical exam report, paid for by the applicant, which certifies that all adult household members are in good mental and physical health with a statement from the physician as to whether any medical conditions may affect the applicant's ability to care for a foster child; the medical report shall be dated within twelve months of the application date and include a list of any prescribed medications and the reasons for which they are prescribed;

(2) immunization records or waiver issued by the department of health for any child residing in the home;

(3) a copy of the applicant's driver's license and proof of motor vehicle insurance for any vehicle used to transport a foster child;

(4) a copy of the applicant's current marriage license and all previous divorce decrees, if applicable;

(5) proof of school enrollment or home schooling for all school aged children residing in the home;

(6) proof of the applicant's U.S. citizenship such as a social security card, or proof of permanent residency, such as a green card;

(7) a signed PSD approved release of information form; and

(8) a signed foster parent agreement, if applicable.

**G.** The licensing agent shall contact the three references provided by the applicant and shall contact any adult children living out of the parental home. The purpose of the contact is to assist in determining the applicant's suitability to become a foster or adoptive parent.

**H.** The licensing agent shall conduct at least one individual interview with each adult living in the applicant's home. This includes children, and any relatives or other adults living in the home. If any person(s) who lives in the home declines to be interviewed, the foster or adoptive home shall not be licensed or certified.

**I.** A minimum of two home visits shall be made to the proposed foster or adoptive home.

**J.** The results of a foster home or relative foster home study are documented in PSD's approved home study format and filed in the foster parent record maintained by the licensing agent.

**K.** Once the home study process has been initiated, the licensing agent shall complete the home study within 120 days for non-relative foster or adoptive homes, and 90 days for relative foster or adoptive home.

[8.26.4.12 NMAC - Rp, 8 NMAC 27.3.14 & 15, 5/29/09; A, 3/31/10; A, 8/15/11]

#### **8.26.4.13 SAFETY CHECKLIST FOR FOSTER AND ADOPTIVE HOMES:**

**A.** Heating, cooling, and ventilation:

(1) A foster home shall be adequately ventilated. There shall be an effective means of providing fresh air to children's sleeping rooms, including at least one window.

(2) Fuel-burning equipment, including natural gas or liquid propane gas cooking ranges shall be vented appropriately and meet applicable safety code requirements.

(3) Heating equipment shall be adequate to maintain interior temperature of 65 degrees fahrenheit in all rooms. Gas furnaces shall have a cut-off valve.

(4) The heating systems and associated equipment shall meet all requirements of state and local safety codes.

**B.** Water:

(1) A foster home shall have an adequate supply of sanitary water.

(2) If water is not obtained from a public supply, a well water certificate from the New Mexico environment department shall be provided for initial licensure, and at five year intervals. Well water testing instructions and an application form are available on the environment department website. Bottled water may be used for cooking and drinking if the water source is assessed to be unsuitable.

(3) Water supply piping and associated equipment shall be installed and maintained in compliance with state and local safety codes. There shall be a pop-off valve on the hot water heater.

**C.** Sewage, waste and sanitation:

(1) A foster home shall be kept clean and free of accumulation of dirt, waste, and infestations of insects and rodents.

(2) Toilet and bathing facilities shall be provided and maintained in a sanitary manner.

(3) There shall be sanitary methods of household waste disposal which meet applicable safety codes.

(4) Foster homes shall be free of clutter that may cause tripping or falling hazards.

**D.** Electrical wiring and communication:

(1) Electrical wiring shall comply with state and local safety codes. If the licensing agent has doubt of the adequacy of electrical wiring, the licensing agent shall request the applicant arrange and pay for a local electrical inspector to inspect the wiring and submit a report to the licensing agent.

(2) Electrical extension cords shall not be used for general wiring.

(3) A readily available telephone in case of emergencies.

**E.** Kitchen and food storage:

(1) A foster home shall have a kitchen with sufficient storage space. Food shall be stored separately from cleaning supplies and other household chemicals.

(2) The kitchen shall be equipped with a refrigerator sufficient to maintain cold food storage in a temperature range between 33 degrees and 45 degrees fahrenheit.

(3) The kitchen and food preparation equipment and storage shall be maintained in a sanitary condition.

**F.** First aid and medical supplies:

(1) Foster parents shall maintain a stock of first aid supplies in the foster home. The minimum acceptable stock includes:

(a) one box of non-medicated adhesive bandages;

(b) one pair of blunt scissors;

(c) one roll of two inch or three inch adhesive roller bandage;

(d) one roll of one-half inch adhesive tape;

(e) one box of sterile first aid dressings in sealed envelopes;

(f) first aid cream or ointment.

(2) These shall be stored in a single cabinet or kit, separate from food storage or household cleaning supplies or other chemicals/poisons.

(3) Prescription medicines shall be supplied and administered only as prescribed. They shall be properly labeled, and stored separately from food, cleaning agents or other household chemicals and poisons. After the prescribed course of treatment has been completed, leftover medicine shall be disposed of in an appropriate manner.

**G.** Personal items:

(1) Each foster child shall be provided an individual comb, toothbrush, night clothes, and under garments which shall not be interchanged between children.

(2) Linens and bedding shall be stored and maintained in a manner assuring that they will be clean. All linens and bedding shall be laundered before use by another child.

**H.** Any animal, birds, and pets shall be in good health with documentation of current vaccinations, and have a temperament such that they will not be frightening or hazardous to foster children.

**I.** Foster home space, furnishing and sleeping arrangement:

(1) A foster home shall have a separate bedroom for the foster parents and for any other adults living in or frequently residing in the home. This shall not preclude a foster child under the age of 18 months from sleeping in the same room with his or her foster parents provided that the bedroom space is available for the foster child when he or she reaches the age of 18 months.

(2) There shall be a separate bed provided for each foster child, except that two children of the same gender may sleep in the same double bed.

(3) A foster child over the age of five years shall not share a bedroom with another non-related child of the opposite gender.

(4) The licensing agent may allow exceptions to the sleeping arrangement requirements to permit placement of siblings together in the same foster home.

(5) Sleeping quarters for foster children shall be a contiguous part of the main family residential building or apartment. Exceptions can be made for those children over 16 years of age who are preparing for independent living.

(6) There shall be sufficient closet space or furniture storage space to permit the sanitary storage of children's clothes, linens and bedding.

(7) Furnishings shall be clean and maintained in a sanitary condition at all times.

**J. Doors and locks:**

(1) A foster home shall have at least two designated exits that meet fire code standards.

(2) There shall be no interior door hardware which makes it possible for a child to be locked inside. All privacy locks shall be provided with emergency unlocking mechanisms.

**K. Yard and play space:**

(1) A foster home shall have access to a safe indoor and outdoor designated play area.

(2) In areas which have a high density of traffic or other hazards to children, the yard or play space shall be adequately fenced for the children's protection.

(3) All outdoor play space and toys, swings and other outdoor equipment shall be maintained in a sound state of repair and free of projecting sharp edges, splinters or other hazards to children.

**L. Other safety issues:**

(1) If the applicant operates an automobile, he or she shall have automobile insurance as required by law and a valid driver's license. Motor vehicles shall have safety restraints as required by law and shall have properly installed car seats for age appropriate children.

(2) For age appropriate children, a foster home shall have safety gates and locking mechanisms for cabinets that contain cleaning agents or chemicals.

(3) A foster home shall have at least one fire extinguisher.

(4) A foster home shall have smoke detectors appropriate for the square footage.

(5) A foster family shall develop a fire evacuation plan.

(6) A foster family shall provide to PSD or the agency contact information for at least two locations (including one out of town location) where the foster family would go in the event that a community evacuation is necessary.

(7) All weapons owned or acquired by a foster family shall be stored and locked with ammunition stored separately as per the PSD approved weapons safety agreement. The foster family shall provide a signed copy of the PSD approved weapons safety agreement to the licensing agent.

(8) All pool areas, including hot tubs, shall be adequately fenced or secured in order to prevent the access of children when not accompanied by an adult. Spas or hot tubs shall be securely covered to prevent the access of children when not in use. Outdoor ponds shall not be within the immediate play area of children.

(9) Farm and ranch equipment shall not be easily accessible to foster children as a safety precaution. Farm animals shall be properly housed and secured as a safety precaution.

(10) At initial licensure, the licensing agent will check the list of properties on clandestine drug laboratories in New Mexico website located on the New Mexico environment department homepage to verify the home has not been listed as a contaminated property. This verification shall be documented in the home study. Homes that are listed as contaminated properties shall not be licensed. For homes that have been previously licensed, the licensing agent shall check the clandestine drug laboratories in New Mexico website at the time of re-licensure. If a home has not been listed as a contaminated property, the licensing agent need not check the home again in further re-licensure.

(11) Smoking shall be prohibited in the house and in any vehicle used for transporting foster children.

[8.26.4.13 NMAC - Rp, 8 NMAC 27.3.11, 5/29/09; A, 3/31/10; A, 8/15/11]

**8.26.4.14 FOSTER AND ADOPTIVE PARENT TRAINING:**

**A.** All foster and adoptive parent applicants licensed by PSD and all foster care applicants licensed by child placement agencies shall successfully complete the required pre-service training prior to being licensed in New Mexico.

**B.** All foster and adoptive parents licensed by PSD and all foster parents licensed by child placement agencies shall participate in at least twelve hours of PSD or agency approved training each year.

(1) Foster parents licensed by PSD: Six of the twelve hours required training hours shall be determined by the PSD foster care and adoption bureau. The remaining hours shall be determined by the foster family and shall be approved by their PSD worker. The PSD worker shall document training hours in FACTS prior to annual re-licensure.

(2) Foster parents licensed by child placement agencies: Child placement agencies shall provide a minimum of twelve hours of training annually to their licensed families. PSD may in its sole discretion mandate the specific topics in those twelve hours.

[8.26.4.14 NMAC - Rp, 8 NMAC 27.3.12 & 8.27.2.15 NMAC, 5/29/09; A, 8/15/11]

**8.26.4.15 INITIAL FOSTER HOME LICENSE:**

- A.** A foster home license shall be granted or denied based upon the assessment and participation in the licensing process. The issuance of a foster parent license is not an entitlement.
- B.** The applicant and adults living in the home shall complete all licensing requirements before the home can be licensed.
- C.** A license is only valid for the physical location reviewed during the assessment of the application. Licensed foster parents shall notify the licensing agent prior to moving to a new address. If the new residence meets licensing standards, the licensing agent shall issue a new license within 30 days for the remainder of the licensing period. A foster home license is not transferable.
- D.** A foster home license shall be valid for a period of two years from the date of issuance.
- E.** An initial foster parent agreement outlining the stipulations of licensure shall be reviewed by the licensing agent and the foster parent. Signing of the agreement is an acknowledgement that the stipulations are understood and accepted by all concerned. The initial agreement shall be signed prior to placing children in the home.
- F.** The maximum number of children in a foster home shall be determined by space limitations and the ability of the foster parent(s) to provide for adequate physical and emotional care. For homes licensed by PSD, a maximum number of six is recommended, and any more than six children including children already living in the home must be approved the PSD regional managers.
- G.** No foster home shall be concurrently licensed or certified by more than one licensing entity, unless necessary for the purpose of adoption with approval from the PSD director.

[8.26.4.15 NMAC - Rp, 8 NMAC 27.3.17 & 8.27.2.23 NMAC, 5/29/09; A, 8/15/11]

**8.26.4.16 RELATIVE FOSTER CARE:**

- A.** Relatives who provide foster care to children in PSD custody must be licensed.
- B.** A child in PSD custody may be placed on a provisional basis with a relative provided that the PSD worker:
  - (1) completes the initial relative assessment by collecting and assessing the following information:
    - (a) the child's attitude toward the prospective caregiver;
    - (b) the prospective caregiver's attitude toward the child and parents;
    - (c) the prospective caregiver's motivation to foster the child;
    - (d) the prospective caregiver's ability to safely parent the child;
    - (e) local background records check that does not contain a disqualifying conviction;
    - (f) a check of nmcourts.com for a disqualifying conviction;
    - (g) check of CYFD management information system for a referral history with PSD; and
    - (h) completion of the physical standards checklist;
  - (2) obtains supervisory approval.
- C.** The safety of the child is the primary consideration. If this is ever in conflict with the placement of the child with a relative, PSD makes the placement decision in favor of the child's safety.

**D.** A provisional license is limited to 60 days with one possible 30 day extension at the discretion of the PSD deputy director. When a child is placed in the home under a provisional license, the relative foster parents are expected to complete all requirements of foster home licensing within 60 days of placement. Failure to meet these requirements within the 60 day time frame shall result in the removal of the child.

[8.26.4.16 NMAC - Rp, 8.27.2.24 NMAC, 5/29/09; A, 8/15/11]

**8.26.4.17 TYPE OF LICENSES:**

- A.** Provisional license: A provisional license is a license issued by PSD to a relative upon satisfactory completion of the relative initial assessment. A provisional license may be issued to facilitate or expedite placement of a child with a relative. A provisional license is valid for 60 days, with the possibility of one 30 day extension as described herein at Subsection D of 8.26.4.16 NMAC.
- B.** Family foster home license: A two year license issued by PSD only after all licensing requirements have been completed.
- C.** Specialized foster home license: A license issued by PSD to a family foster home in which at least one adult has the PSD specified education or training necessary to care for a child needing specialized care. Such homes are limited to no more than three special needs certified children who need specialized care. When there are three special needs children in placement, no other children shall be placed.
- D.** Treatment foster care license: A license issued by a child placement agency to a family foster home to accept a child requiring intensive services when the agency has met both the child placement agency licensing regulations, and the treatment foster care standards contained in Treatment Foster Care Services, Certification Requirements for Child and Adolescent Mental Health Services, 7.20.11.29 NMAC. PSD does not license treatment foster care homes.

[8.26.4.17 NMAC - Rp, 8 NMAC 27.3.16, 5/29/09; A, 8/15/11]

**8.26.4.18 UPDATES AND RENEWAL OF FOSTER HOME LICENSE:**

- A.** The licensing agent shall conduct an annual review of each foster home to include:
  - (1) documentation of completion of the training requirements as described herein at Subsection B of 8.26.4.14 NMAC;
  - (2) a check of FACTS is conducted on all adults living in the home;
  - (3) a check of nmcourts.com shall be conducted on all adults living in the home;
  - (4) a review of the agreement between the foster parent, licensing agency, and PSD or child placement agency; the agreement shall be signed again to cover the remainder of the licensing period or the new licensing period;

(5) a review of placements made during the year, identification of strengths and training needs, and a review of current policies affecting foster care; and

(6) a review with the foster parent their duty to disclose any arrests or abuse and neglect referrals.

**B.** Foster families must meet the following re-licensure requirements every two years. The SAFE home study update shall be used for re-assessment for re-licensure. The reassessment shall include all requirements listed above in Paragraphs (1) - (5) of Subsection A of 8.26.4.18 NMAC.

**C.** Before the end of the licensure period, both foster parents and PSD or licensed child placement agency shall ensure that all requirements are met to qualify the family for a renewed license.

**D.** PSD or child placement agency foster home licenses shall be issued every two years, if they continue to meet requirements [8.26.4.18 NMAC - Rp, 8 NMAC 27.3.17, 5/29/09; A, 8/15/11]

#### **8.26.4.19 DENIAL, REVOCATION, SUSPENSION, OR NON-RENEWAL OF A LICENSE:**

**A.** Denial of a license:

(1) PSD or agency staff may deny an applicant's request for licensure based on a documented professional assessment that the applicant cannot adequately provide safety, permanency, and well-being for children or when in the professional opinion of the licensing agent, conditions in the prospective foster home are not conducive to the fostering of children.

(2) Applicant's may be denied licensure at any point in the licensing process. The applicant shall be notified in writing of the denial within 10 days of the decision.

(3) Applicants who have been denied an initial foster parent license may request an administrative review of the reasons for the denial of the initial license. This is an informal process completed by the licensing agent, which may include an informal conference or record review. The administrative review does not create any substantive rights for the family.

**B.** Revocation or non-renewal of a license: A foster home license may be revoked or not renewed by the licensing agent at any time for reasons which may include but are not limited to:

(1) disqualifying criminal records check results as described herein at Subsection D, E and F of 8.26.4.10 NMAC;

(2) disqualifying abuse and neglect check results as described herein at Subsection C, D, E and F of 8.26.4.11 NMAC;

(3) failure to comply with 8.26.2, 8.26.4, 8.26.5 NMAC and agency policies;

(4) failure to comply with safety measures, including those requirements described herein at 8.26.4.13 NMAC;

(5) returning a child to PSD or an agency without seeking support services provided by PSD or the agency or community service providers in order to preserve the placement;

(6) refusal to comply with case plan;

(7) inability to adequately meet the needs the child;

(8) failure to include children in family activities;

(9) overuse or inappropriate use of respite care;

(10) failure to actively preserve connections with foster children and their birth families and community of origin such as:

(a) siblings or other birth relatives;

(b) church community; and

(c) fictive kin, or the child's friends;

(11) failure to demonstrate the ability to provide emotional support during important developmental points in the course of a child's life;

(12) repeated refusals by the family to accept children who have been matched for placements;

(13) failure to participate in required training;

(14) failure to comply with PSD decisions regarding the child's safety, permanency, and well-being;

(15) abuse of substances including but not limited to:

(a) alcohol;

(b) illegal drugs; or

(c) prescription drugs or controlled substances;

(16) exposure of the child to cigarette smoking and tobacco products; and

(17) a documented professional assessment that continued licensure would be contrary to the safety, permanency, and well-being of the child, or in the opinion of the licensing agent that conditions in the foster home are not conducive to the fostering of children.

**C.** Suspension of a license: Suspension of a license can be voluntary or involuntary and last not more than six months.

(1) Voluntary reasons for suspension must be approved by the licensing agency and may include, but not limited to:

(a) medical conditions;

(b) adoption; or

(c) life changes within the household.

(2) Involuntary reasons for suspension may include all the reasons described herein at Paragraphs (1) - (17) of Subsection B of 8.26.4.19 NMAC, as well as:

(a) screened-in abuse or neglect referrals; or

(b) during the period of a professional development plan.

**D.** Notification: The foster family shall be notified in writing, by return of receipt mail, of the proposed action and the reason for revocation, involuntary suspension or non-renewal of the license and shall provide the foster family the opportunity to request an appeal before an



impartial hearing officer appointed by or approved by the CYFD secretary where the family has the opportunity to present evidence on their behalf and to be assisted by counsel. The foster family shall request an appeal within 10 days of receipt of the notification of the proposed action. If the family does not request an appeal within the 10 days, then the decision to revoke, suspend or not renew a license shall be final.

**E.** Reinstatement or reissuance of license: A foster or adoptive family whose license has been revoked, suspended, placed on probation, or not renewed may petition the licensing agency that issued the license to have the license reinstated, or reissued upon proof that the noncompliance with the rules have ceased.

[8.26.4.19 NMAC - Rp, 8.27.2.25 & 26 NMAC, 5/29/09; A, 3/31/10; A, 8/15/11]

#### **8.26.4.20 CHANGES IN HOUSEHOLD EFFECTING LICENSURE STATUS:**

**A.** Licensed foster parents must notify their licensing agent immediately of any circumstance that may impact their license. Such circumstances may include but are not limited to:

- (1) birth or death of household member;
- (2) serious illness of household member;
- (3) criminal arrest or conviction of any household member;
- (4) child abuse or neglect referrals involving a household member;
- (5) new person living in the home or a person leaving the home; or
- (6) change in address.

**B.** The licensing agent shall assess changes within the foster home that may affect licensing status and take appropriate action based upon the assessment.

**C.** Any adult intending to move into the foster or adoptive home shall meet all licensing requirements prior to residing in the home.

[8.26.4.20 NMAC - Rp, 8.27.2.27 NMAC, 5/29/09]

#### **8.26.4.21 DOCUMENTATION RELATED TO LICENSING OF FOSTER AND ADOPTIVE HOMES:**

**A.** Maintenance of records:

(1) Foster home parent files: The agency and PSD shall maintain records concerning the evaluation of a foster home, including but not limited to the application, assessment information, recertification of information, releases of information, criminal records and background checks, medical examination records, a copy of the foster home license and correspondence. PSD and licensed agencies shall retain records concerning the evaluations of a foster home for 10 years after the case is closed. If an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

(2) Adoption files: The agency, attorney, independent agent or PSD shall maintain records concerning adoptive families, including the foster home parent file as described above at Paragraph (1) of Subsection A of 8.26.4.21 NMAC, as well as adoption case information including but not limited to the adoption decree, annual contact reports, and adoption assistance agreements.

(a) Finalized adoption cases: PSD and agencies shall retain finalized adoption records in locked files for 100 years from the date of birth of the youngest child. The agency may preserve records through microfilming or other electronic measures. In the event an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

(b) Disrupted or proposed adoptions not finalized: PSD and agencies shall retain cases for five years after the case is closed. In the event an agency is closed or goes out of business, the agency shall comply with the Child Placement Agency Licensing Standards currently codified at 8.26.5.30 NMAC.

**B.** Confidentiality: Under CYFD's general rulemaking authority Section 9-2A-7 NMSA, the confidentiality provisions of the New Mexico Children's Code, 32A-3B-22 and 32A-4-33, the specific authority related to certification of foster homes, Section 40-7-4 (D) and the Adoption Act, 32A-5-6 and 32A-5-8 NMSA, all client case records and client identifying information including foster and adoptive families, and applicant files are confidential and may not be publicly disclosed.

(1) Release in response to court order: PSD and agencies may release such files only upon a valid court order provided that confidential criminal and abuse and neglect information may not be released, unless a court order specifically orders such a release.

(2) Release to another agency that is considering a previously licensed family for licensure: An agency that has licensed a foster or adoptive family may release assessment information and the home study to any agency that is considering the foster or adoptive family for licensure, upon receipt of the signed notification by the foster family of its licensure history with previous agencies as described herein at Paragraph (9) of Subsection B of 8.26.4.9 NMAC.

**C.** Foster or adoptive parents files:

(1) Upon request foster or adoptive parents shall be allowed to review their own file with the exception of letters of reference and the identity of any abuse or neglect report source regarding the foster or adoptive parents. Copying the file is not permitted.

(2) PSD shall provide an unofficial copy of the home study to the foster or adoptive family upon written request to PSD.

(3) Foster or adoptive parents may purchase an official copy of their home study for reasonable fee to be determined by the PSD

director.

[8.26.4.21 NMAC - Rp, 8.27.2.30 NMAC, 5/29/09; A, 8/15/11]

#### **HISTORY OF 8.26.4 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under: HSSD 75-7, Minimum Requirements for Licensing of Child Placement Agencies, 9/15/75.

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/86;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 1/29/87;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 11/18/87;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 6/14/88;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 8/22/88;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 9/18/90;  
SSD 5.3.0, Substitute Care for Children - Department Responsibilities, filed 3/15/91;  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 8/22/86.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 1/29/87.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 6/18/87.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 11/18/87.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 8/22/88.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/28/89.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/20/90.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 9/18/90.  
SSD 5.4.0, Substitute Care for Children - Licensing Standards for Foster Homes, 3/15/91.  
SSD 5.5.0, Foster Care Child Placement Agency Licensing Regulations, 12/7/89.

**History of Repealed Material:**

8 NMAC 27.2, Foster Parenting, filed 6/16/1997 - Repealed 2/14/2001.  
8.27.2 NMAC, Foster Parenting, filed 2/1/2001 - Repealed 7/15/2004.  
8.27.2 NMAC, Foster Parenting, 7/2/2004 - Repealed effective 11/15/2005.  
8.27.2 NMAC, Foster Parenting, filed 11/1/2005 - Repealed effective 5/29/2009.  
8 NMAC 27.3, Licensing Standards for Foster Care, filed January 13, 1997 - Repealed effective May 29, 2009.