

This is an amendment to 8.16.2 NMAC, Section 7, 11 and 12, effective July 15, 2014.

**8.16.2.7 DEFINITIONS:**

A. "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

- (1) physical contact that harms or is likely to harm a child;
- (2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and
- (3) an unlawful act, a threat or menacing conduct directed toward a child that results or might be expected to result in fear or emotional or mental distress to a child.

B. "Activity area" means space for children's activities where related equipment and materials are accessible to the children.

C. "Adult" means a person who has a chronological age of 18 years or older.

D. ~~["AIM HIGH" is a voluntary quality child care improvement program that is open to all and or licensed child care educators.]~~ "AIM HIGH" is a voluntary quality child care improvement program that is no longer open to new registered or licensed child care programs. Recognition of AIM HIGH will terminate on December 31, 2017.

E. "Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations). Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

F. "Attended" means the physical presence of an educator supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, Subsection LLL, 8.16.2.7 NMAC).

G. "Capacity" means the maximum number of children a licensed child care facility can care for at any one time.

H. "Child" means a person who is under the chronological age of 18 years.

I. "Child care center" means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

J. "Class A deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible, which results in death or serious physical or psychological harm; or a violation or group of violations of applicable regulations, which results in death, serious physical harm, or serious psychological harm to a child.

K. "Class B deficiency" means any abuse or neglect of a child by a facility employee or volunteer for which the facility is responsible; or a violation or group of violations of applicable regulations which present a potential risk of injury or harm to any child.

L. "Class C deficiency" means a violation or group of violations of applicable regulations as cited by surveyors from the licensing authority which have the potential to cause injury or harm to any child if the violation is not corrected.

M. "Clean" means to physically remove all dirt and contamination.

N. "Conditions of operation" means a written plan that applies to a licensed facility and is developed by the licensing authority when the licensing authority determines that provisions within these regulations have been violated. The plan addresses corrective actions that the licensee must take within a specified timeframe in order to come into compliance with licensing requirements. During this timeframe the licensing authority may increase its level of monitoring.

O. "Core hours" means the daily hours of operation of the child care facility.

P. "Corrective action plan" means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

Q. "Curriculum" is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program's mission statement, philosophy (which, in turn, is based on assumptions about young children's development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

R. "Deficiency" means a violation of these regulations.

S. "Direct provider of care" means any individual who, as a result of employment or contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

T. "Director" means the person in charge of the day-to-day operation and program of a child care center.

U. "Disinfect" means to destroy or inactivate most germs on any inanimate object, but not bacterial spores. Mix four tablespoons of bleach with one gallon of cool water or use an environmental protection agency (EPA) registered disinfectant.

V. "Drop-in" means a child who attends a child care facility on an occasional or unscheduled basis.

W. "Educator" means an adult who directly cares for, serves, and supervises children in a licensed child care facility.

X. "Environment" means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

Y. "Exploitation" of a child consists of the act or process, performed intentionally, knowingly, or recklessly, of using a child's property for another person's profit, advantage or benefit without legal entitlement to do so.

Z. "Facility" means any premises licensed under these regulations where children receive care, services, and supervision. A facility can be a center, home, program, or other site where children receive childcare.

AA. "Family child care home" means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than 24 hours of any day for no more than six children. The licensee will reside in the home and be the primary educator.

BB. "FOCUS" is a voluntary tiered quality rating and improvement program that is open to all registered and licensed child care programs.

~~[BB.]~~ CC. "Group child care home" means a home required to be licensed pursuant to these regulations, which provides care, services, and supervision for at least seven but not more than 12 children. The licensee will reside in the home and be the primary educator.

~~[CC.]~~ DD. "Guidance" means fostering a child's ability to become self-disciplined. Guidance shall be consistent and developmentally appropriate.

~~[DD.]~~ EE. "Home" means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary educator.

~~[EE.]~~ FF. "Infant" means a child age six weeks to 12 months.

~~[FF.]~~ GG. "License" means a document issued by CYFD to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

~~[GG.]~~ HH. "Licensee" means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

~~[HH.]~~ II. "Licensing authority" means the child care services bureau - licensing section of the early childhood services division of the New Mexico children, youth and families department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.

~~[H.]~~ JJ. "Mission statement," describes what the program aspires to do and whom the program aspires to serve.

~~[JJ.]~~ KK. [~~"National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds the standards of one of the following national accrediting bodies: the national association for the education of young children (NAEYC) academy for early childhood program accreditation; the national early childhood program accreditation (NECPA); the national association of family child care (NAFCC); the council of accreditation (COA); the national accreditation commission for early care and education programs (NAC); the international Christian accrediting association (ICAA); or the association of Christian schools international (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and~~

~~staff/child ratios.~~ “National accreditation status” means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. To determine approval of national accrediting bodies, the following standards are used: for center based programs, CYFD uses the 2007 national association for the education of young children (NAEYC) program standards and accreditation criteria as well as NAEYC’s 2007 accreditation process criteria; for family child care, CYFD uses the CYFD family child care accreditation standards; for before and after school care, CYFD uses the CYFD before and after school accreditation standards.

(1) As of July 15, 2014 the following are the only national accrediting bodies that are approved by CYFD:

(a) the association of Christian schools international (ACSI);  
(b) the council on accreditation (COA) for early childhood education and after school programs;

(c) the international Christian accrediting association (ICAA);  
(d) the national association for the education of young children (NAEYC) academy for early childhood program accreditation; or  
(e) the national association of family child care (NAFCC).

(2) Effective July 15, 2014 accrediting bodies that have been previously approved by CYFD that are not on the above list will no longer be CYFD approved national accrediting bodies.

~~[KK.] LL.~~ “Night care” means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

~~[LL.] MM.~~ “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.

~~[MM.] NN.~~ “Notifiable diseases” means confirmed or suspected diseases/conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

~~[NN.] OO.~~ “Orientation” means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

~~[OO.] PP.~~ “Out of school time program” means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

~~[PP.] QQ.~~ “Parent handbook” is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

~~[QQ.] RR.~~ “Pest” means any living organism declared a pest pursuant to the Pesticide Control Act.

~~[RR.] SS.~~ “Pesticide” means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

~~[SS.] TT.~~ “Philosophy statement” describes how the program’s mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program’s perspective on early care and education and the nature of how children learn. The program’s philosophy is implemented through the curriculum.

~~[TT.] UU.~~ “Policy” is a written directive that guides decision-making. Policies form the basis for authoritative action.

~~[UU.] VV.~~ “Premises” means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

~~[VV.] WW.~~ “Procedure” is a series of steps to be followed, usually in a specific order, to implement policies.

~~[WW.] XX.~~ “Professional development” is an on-going plan for continued professional development for each staff member, including the director.

~~[XX.] YY.~~ “Program administrator” means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child’s development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. This definition applies to out of school time programs only.

~~[YY.] ZZ.~~ “Punishment” means the touching of a child’s body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

~~[ZZ.] AAA.~~ “Requirements” means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

~~[AAA.] BBB.~~ “Restriction” means to control enrollment, service type, capacity, activities, or hours of operation.

~~[BBB.] CCC.~~ “Revocation” means the act of making a license null and void through its cancellation.

~~[CCC.] DDD.~~ “Sanction” means a measure imposed by the licensing authority for a violation(s) of these standards.

~~[DDD.] EEE.~~ “Sanitize” means to reduce germs on inanimate surfaces to levels considered safe by public health codes or regulations. Mix one and one half teaspoons of bleach with one gallon of cool water or use an EPA registered sanitizer.

~~[EEE.] FFF.~~ “School-age” means a child in care who is age five to 18 years.

~~[FFF.] GGG.~~ “Staff evaluation” means that each staff member is evaluated by the director, using criteria from the individual’s job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual’s professional development plan.

~~[GGG.] HHH.~~ “Substitute” means an adult who directly cares for, serves, and supervises children in a licensed child care facility, who works in place of the regular educator, and who works less than an average of 40 hours per month in a six month period.

~~[HHH.] III.~~ “Suspension” means a temporary cancellation of a license pending an appeal hearing or correction of deficiencies.

~~[III.] JJJ.~~ “Site director” means the person at the site having responsibility for program administration and supervision of an out of school time program. This definition applies to out of school time programs only.

~~[JJJ.] KKK.~~ “Star level” means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

~~[KKK.] LLL.~~ “Substantiated complaint” means a complaint determined to be factual, based on an investigation of events.

~~[LLL.] MMM.~~ “Supervision” means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

~~[MMM.] NNN.~~ “Survey” means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

~~[NNN.] OOO.~~ “Toddler” means a child age 12 months to 24 months.

~~[OOO.] PPP.~~ “U/L” means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

~~[PPP.] QQQ.~~ “Unattended” means an educator is not physically present with a child or children under care.

~~[QQQ.] RRR.~~ “Unsubstantiated complaint” means a complaint not determined to be factual based on an investigation of events.

~~[RRR.] SSS.~~ “Variance” means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

~~[SSS.] TTT.~~ “Volunteer” means a person who is not employed as a childcare educator, spends less than six hours per week at the facility, is under direct physical supervision and is not counted in the facility ratio. Anyone not fitting this description must meet all requirements for staff members.

~~[TTT.] UUU.~~ “Waiver” means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.

[8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 11/30/12; A, 7/15/14]

#### **8.16.2.11 LICENSING:**

A. TYPES OF LICENSES:

(1) ANNUAL LICENSE: An annual license is issued for a one-year period to a child care facility that has met all requirements of these regulations.

(a) 1-star level requires meeting and maintaining licensing requirements at all times, except for the requirements outlined in the following items: Items (i), (ii) and (iii) of Subparagraph (a) of Paragraph (1) of Subsection A of 8.16.2.11 NMAC. 1-star level is designated for programs not receiving child care subsidy. All 1-star educators receiving subsidy and licensed at the time of publication of these rules shall have until July 1, 2012 to meet 2-star requirements included in the following sections of these regulations:

(i) for centers: Paragraph (16) of Subsection G of 8.16.2.22 NMAC, Paragraphs (5) through (9) of Subsection G of 8.16.2.24 NMAC, and Subsection H of 8.16.2.24 NMAC;

(ii) for licensed family and group child care homes: Paragraph (4) of Subsection E of 8.16.2.32 NMAC, Paragraph (14) of Subsection F of 8.16.2.32 NMAC, Paragraphs (4) through (8) of Subsection G of 8.16.2.34 NMAC, and Subsection H of 8.16.2.34 NMAC;

(iii) for licensed out of school time programs: Subparagraph (k) of Paragraph (1) of Subsection E of 8.16.2.41 NMAC, Paragraph (14) of Subsection F of 8.16.2.41 NMAC, Paragraphs (5) through (9) of Subsection B of 8.16.2.43 NMAC and Subsection C of 8.16.2.43 NMAC.

(b) 2-star level requires meeting and maintaining licensing requirements at all times.

(c) 2+ star level is voluntary and requires meeting and maintaining licensing requirements as well as meeting the most recent FOCUS eligibility requirements and 2+ star criteria.

~~[(e)] (d) [3-star level is voluntary and requires meeting and maintaining licensing requirements and AIM HIGH level 3 quality criteria at all times.]~~ 3-star level is voluntary and requires meeting and maintaining licensing requirements and AIM HIGH or FOCUS level 3 quality criteria at all times. AIM HIGH criteria will no longer be used for the determination of star level effective December 31, 2017.

~~[(d)] (e) [4-star level is voluntary and requires meeting and maintaining licensing requirements and AIM HIGH levels 3 and 4 criteria at all times.]~~ 4-star level is voluntary and requires meeting and maintaining licensing requirements and AIM HIGH or FOCUS levels 3 and 4 quality criteria at all times. AIM HIGH criteria will no longer be used for the determination of star level effective December 31, 2017.

~~[(e)] (f) [5-star level is voluntary and requires meeting and maintaining licensing requirements, and maintaining approved national accreditation status.]~~ 5-star level is voluntary and requires meeting and maintaining licensing requirements, FOCUS levels 3, 4 and 5 quality criteria at all times and maintaining CYFD approved national accreditation status.

(2) TEMPORARY LICENSE: The licensing authority will, at its discretion, issue a temporary license when it finds the child care facility in partial compliance with these regulations.

(a) A temporary license can, at the discretion of the licensing authority, be issued for up to 120 days, during which time the child care facility will correct all specified deficiencies.

(b) The licensing authority will not issue more than two consecutive temporary licenses.

(c) After a second temporary license has been issued, a new application and the required application fee must be submitted within 30 days in order to renew the license for the remainder of that one year period.

(3) AMENDED LICENSE: A child care facility will submit a new notarized application to the licensing authority before modifying information required to be stated on the license. Examples of such modifications include dates, capacity, director and number of stars.

(a) A child care facility will apply to the licensing authority for an amended license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application (Fee \$20.00) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and three years of experience. The temporary acting director's appointment is valid for 90 days.

(b) A notarized application must be submitted for a change of capacity (Fee \$20.00). Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

(c) A child care facility will apply to the licensing authority for an amended license in order to change the number of stars. An application for a different star level will not be approved nor an amended license issued until on-site visits have been made and it has been determined that the child care facility meets all applicable criteria.

(4) **PROVISIONAL 2-STAR LICENSE:** Newly licensed programs receiving child care subsidy will be given a provisional 2-star license for up to three months, pending observation by the licensing authority of the interactions between teachers and children in the classrooms.

**B. RENEWAL OF LICENSE:**

(1) A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least 30 days before expiration of the current license. CYFD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than 30 days prior to the expiration date will be considered late and a \$25.00 late fee must be submitted with the renewal fee.

(2) All licensed facilities must maintain an original background check eligibility letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would or would not be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence. The teenage child's guardian shall sign the annual statement on behalf of the teenage child.

(3) Upon receipt of a notarized renewal application, the required fee and the completion of an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the child care facility is in compliance with these regulations.

(4) If a licensee fails to submit a notarized renewal application with the required fee before the current license expires, the licensing authority may require the agency to cease operations until all licensing requirements are completed.

**C. POSTING OF LICENSE:** A child care facility will post the license on the licensed premises in an area readily visible to parents, staff members, and visitors.

**D. NON-TRANSFERABLE RESTRICTIONS OF LICENSE:** A licensee will not transfer a license by assignment or otherwise to any other person or location. The license will be void and the licensee will return it to the licensing authority when:

- (1) the owner of the child care facility changes;
- (2) the child care facility moves;
- (3) the licensee of the child care facility changes; or
- (4) the child care facility closes.

**E. AUTOMATIC EXPIRATION OF LICENSE:** A license will expire automatically at midnight on the expiration date noted on the license unless earlier suspended or revoked, or:

- (1) on the day a child care facility closes;
- (2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;
- (3) on the day a child care facility moves.

**F. ACCREDITED PROGRAMS:** Accredited programs must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to be designated as a 5-star facility. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.16.2.11 NMAC - Rp, 8.16.2.11 NMAC, 11/30/12; A, 7/15/14]

**8.16.2.12 LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:**

**A.** The licensing authority may revoke, suspend, or restrict a license, reduce star status, deny an initial or renewal license application, impose monetary sanctions pursuant to 7.1.8 NMAC, put in place conditions of operation, impose other sanctions or requirements against a licensee, or reduce to a base level of child care assistance reimbursement a licensee who is in receipt of a higher than base level of child care assistance reimbursement, for any of the following reasons:

- (1) violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the licensee cannot reasonably safeguard the health and safety of children;
- (2) failure to allow access to the licensed premises by authorized representatives of the licensing authority;
- (3) misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;

(4) allowing any person to be active in the child care facility who is or would be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC; this will include all adults and teenaged children living in a family child care or group child care home operated in a private residence;

(5) failure to timely obtain required background checks;

(6) failure to properly protect the health, safety and welfare of children due to impaired health or conduct or hiring or continuing to employ any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(7) allowing the number of children in the child care facility to exceed its licensed capacity;

(8) failure to comply with provisions of the other related regulations listed in these regulations;

(9) discovery of repeat violations of the regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous licensure periods;

(10) discovery of prior revocations or suspensions that may be considered when reviewing a facility's application for licensure or license renewal;

(11) loss of accreditation, regardless of reason, will result in a reduction in star status;

(12) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present or sold on the premises at any time, regardless of whether children are present; or

(13) making false statements or representations to the licensing authority with the intent to deceive, which the licensee knows, or should know to be false.

B. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

C. The children, youth and families department notifies the licensee in writing of any action taken or contemplated against the license/licensee. The notification shall include the reasons for the department's action.

D. The licensee may obtain administrative review of any action taken or contemplated against the license/licensee.

E. The administrative review shall be conducted by a hearing officer appointed by the department's secretary.

F. If the action is to take effect immediately, the department affords the licensee the opportunity for an administrative appeal within five working days. If the license is suspended pending the results of an investigation, the licensee may elect to postpone the hearing until the investigation has been completed.

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

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

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

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

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of 15 days.

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

(5) No later than the conclusion of the 15 day period, the department shall determine whether other action is warranted under this regulation.

(6) Nothing in Subsection H of 8.16.2.12 NMAC shall be construed to require licensure that is not otherwise required in this regulation.

I. The licensing authority may require a direct provider of care to undergo an additional background check if information shows any of the following:

(1) that the direct provider of care has pending charges for any criminal offense;

- (2) that the direct provider of care has a pending or substantiated CYFD protective services or juvenile justice service referral;
- (3) that the direct provider of care has any criminal history or history of a referral to CYFD protective services or juvenile justice services discovered after the most recent background check; or
- (4) that the direct provider of care is the subject of an allegation of abuse and neglect in any licensed facility.

J. There shall be no right to administrative review for reduction in star level resulting from loss of, or failure to maintain, national accreditation status. The licensee shall be bound by the rules, regulations, policies and procedures implemented by the national accreditation body that governs its accreditation process.

K. ~~[The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. The licensing authority shall reduce the star level of the license star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. If Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.]~~ The licensee shall notify the licensing authority within 48 hours of any adverse action by the national accreditation body against the licensee's national accreditation status, including but not limited to expiration, suspension, termination, revocation, denial, nonrenewal, lapse or other action that could affect its national accreditation status. The licensing authority shall reduce the star level of a provider granted national accreditation status by the department to star level 2 until the licensee regains national accreditation status, or until the facility can be verified at a level higher than star level 2. If a provider holding accreditation from an accrediting body no longer approved by CYFD fails to maintain these requirements, this will result in the provider reimbursement reverting to the base reimbursement rate. The provider may increase their star level only by meeting FOCUS criteria or by attaining CYFD approved national accreditation status. Child care subsidies shall be adjusted to correspond with any reductions or increases to star level.

[8.16.2.12 NMAC - Rp, 8.16.2.12 NMAC, 11/30/12; A, 7/15/14]