



Facilities and Centers Background Check and Fingerprint Instructions

IF YOU HAVE QUESTIONS ABOUT YOUR BACKGROUND CHECK, CONTACT:

Background Check Unit
Phone: (505) 827-7326
Fax: (505) 827-7422
Email: cyfd.bcu@state.nm.us
Address: P.O. Drawer 5160
Santa Fe, NM 87502-5160



CHECKLIST

Please refer to the box below that indicates correct setting.

FACILITY AND CENTER

Submit the following:

- Application for Background Check AND Cogent Fingerprint Submission Receipt for each employee
- Dispositions (if applicable)
- Employer Statement for each employee

LICENSED HOME

Submit the following:

- Application for Background check AND Cogent Fingerprint Submission Receipt for the following:
 - Primary caregiver
 - Employee or other caregiver
 - Household members over 18 years of age
- Dispositions (if applicable)

REGISTERED HOME - SUBSIDY & FOOD

Submit the following:

- Application for Background Check AND Cogent Fingerprint Submission Receipt for the following:
 - Primary caregiver
 - Substitute caregiver
- Adult Written Statement AND Cogent Fingerprint Submission Receipt for the following:
 - Household members over 18 years of age
 - Adults over the age of 18 that spend a significant amount of time in the home
- Dispositions (if applicable)

***Please note:** The primary caregiver must name a food sponsor in Section 1.

REGISTERED HOME - FOOD ONLY

Submit the following:

- Application for Background Check AND Cogent Fingerprint Submission Receipt for the following:
 - Primary caregiver
 - Substitute caregiver
- Adult Written Statement (**No Fingerprint Submission Receipt required**) for the following:
 - Household members over the age of 18
 - Adults over the age of 18 that spend a significant amount of time in the home
- Dispositions (if applicable)

*** Please note:** The primary caregiver must name a food sponsor in Section 1.

Please see reverse side for background check & fingerprinting procedures.

BACKGROUND CHECK & FINGERPRINTING PROCEDURE

REGISTRATION:

To begin the application process, every new applicant is required to register either online at www.cogentid.com or by phone at 877-996-6277.

1. At the time of registration you will be asked to provide an ORI and reason for fingerprinting. The proper ORI is NM920120Z and the reason for fingerprinting is Child Care Licensing.
 - If this information is entered incorrectly you may be required to re-register and pay an additional fee.
2. The fee is \$44.00 and may be paid by credit card at the time of registration or by money order made payable to 3M Cogent at the time of fingerprinting.

FINGERPRINTING:

Locate a fingerprinting site during the time of registration by clicking on the fingerprint location map. You may choose from a variety of locations. If you are registering by phone, simply ask the customer service representative for a location near you. No appointment is necessary.

FOLLOW UP:

It is very important to remember to submit the proper CYFD background check forms along with your fingerprint registration receipt immediately to the background check unit. We will not know that you've been fingerprinted unless we receive your forms. These forms may be mailed, emailed or faxed to:

CYFD Background Check Unit
PO Drawer 5160
Santa Fe, NM 87502
Fax: (505) 827-7422
Email: cyfd.bcu@state.nm.us

If a background clearance has not been received within 4-6 weeks or if you have any questions regarding the background check process, please call for assistance.

Phone: (505) 827-7326
Toll Free: (888) 317-7326

*The information submitted will be used to conduct an FBI supported background check.

Facility Information

APPLICANT WRITTEN STATEMENT

EMP



Name _____

Mailing Address _____

City _____ State _____ Zip _____

Physical Address of Applicant's Service _____

INSTRUCTIONS: All questions must be answered completely and to the best of your knowledge. Please print legibly. Answers left blank may result in the rejection of the application.

Fingerprint Registration Number: _____

Full Name

First Name _____

Middle Name No Middle Name

Last Name _____

Aliases

(birth name, married name(s), nick names)

Date of Birth (month, day, year)

____/____/____

Social Security Number None

Place of Birth (city, state, country)

____, ____/____

Primary Language

Current Physical Address

Address _____

Address (optional) _____

City _____ State _____ Zip _____

Mailing Address

Same as physical

Address _____

Address (optional) _____

City _____ State _____ Zip _____

Contact Information

Primary Phone Number

Home Mobile Work Other

Secondary Phone Number (optional)

Home Mobile Work Other

Previous Addresses (past five years, most recent first, and include number, street, city, state, zip code.) If you need more space, use a separate sheet of paper.

Address	City	State	Zip

Current Marital Status (circle one): Single Married Separated Divorced Widowed

Current Spouse/Significant Other

First _____ Middle _____ Last _____ Date of Birth (month, day, year) ____/____/____ Social Security Number ____-____-____

Full Name(s) and Date(s) of Birth of: Birth Children, Adopted Children, Foster Children, and other Children who have lived in your household(s) within the past five years (If you need more space, use a separate sheet of paper)

First Name	Middle Name	Last Name	Date of Birth (month, day, year)
			____/____/____
			____/____/____
			____/____/____
			____/____/____

Full Name(s) and Date(s) of Birth of all Adults who have previously lived with you (within the past five years) (If you need more space, use a separate sheet of paper)

First Name	Middle Name	Last Name	Date of Birth (month, day, year)
			____/____/____
			____/____/____
			____/____/____
			____/____/____
			____/____/____

Full Name(s) and Date(s) of Birth of all Adults who are **currently** living with you (If you need more space, use a separate sheet of paper)

First Name	Middle Name	Last Name	Date of Birth (month, day, year)
			/ /
			/ /
			/ /
			/ /
			/ /

Names and Places of School(s) attended, along with graduation dates (High School, University, College, and Vocational Training) (If you need more space, use a separate sheet of paper)

Name of School	Location of School	Graduation Date	Type (high school, college, etc.)

Employment History (past ten years, include dates of employment / explain gaps in employment) (If you need more space, use a separate sheet of paper)

Employer	Start Date	End Date	Explain Break in Employment

IF YOU DO NOT UNDERSTAND THESE QUESTIONS, PLEASE SEEK GUIDANCE BEFORE ANSWERING THEM!

Have you ever been involved in a CYFD investigation of abuse or neglect of children or adults as the alleged perpetrator or household member? If so, provide the dates of all such investigations and the outcome of those investigations. **NOTE: Failure to provide this information may lead to denial of your application.**

____ **Yes**, I have been involved in a CYFD (or other protective service agency) investigation of abuse or neglect of children or adults as the alleged perpetrator or household member (Provide details).

____ **No**, I have never been involved in a CYFD (or other protective service agency) investigation of abuse or neglect of children or adults as the alleged perpetrator or household member.

Have you ever been charged with, arrested for, or convicted of a crime? **NOTE: Failure to provide this information may lead to denial of your application.**

____ **Yes**, I have been charged with, arrested for, or convicted of a crime (Provide an explanation and disposition).

____ **No**, I have never been charged with, arrested for, or convicted of a crime.

I understand that information submitted will be used to conduct an FBI supported background check and I, _____, hereby affirm under penalty of perjury that all the answers given on this statement are true and accurate to the best of my knowledge. By signing this affirmation, I am acknowledging that any falsehoods, omissions, or intentionally misleading answers will be grounds for denial of my application. If I do not understand any of the questions, I will seek help and ask for more information.

SIGNATURE: _____

DATE: _____



EMPLOYER STATEMENT

Name of Facility or Program

Mailing Address

_____, _____
City State Zip

Physical Address of Applicant's Service

I, _____, authorized representative, hereby attest that _____ is an applicant for employment, an employee, contractor or volunteer with our organization. This applicant, employee, contractor or volunteer requires a CYFD background check pursuant to 8.8.3 NMAC and has direct care responsibilities or potential unsupervised access to care recipients. I understand that by signing this statement, our organization waives any claim that this applicant, employee, contractor or volunteer does not have direct care responsibilities or does not have potential unsupervised access to care recipients in the event that he/she is determined to be an unreasonable risk and denied background check eligibility.

I further attest that our organization has or could have primary custody of children for twenty hours or more per week.

Signature of Employer Representative

Title

Phone Number

Date

Disposition Request Information Sheet

CYFD is requesting disposition because some types of convictions can result in denial of a background check clearance. Disposition means outcome. CYFD wants to know the final outcome of the arrest.

Where to find disposition

Disposition can often be found at the courts in the county where you were arrested. You can also contact the agency that arrested you, or contact the attorney who represented you, if you had one.

Phone numbers for the Courts, Police Departments, and Attorneys can generally be found in the phone book, in the Government and/or Yellow pages. Out of state information might be found on the internet.

Acceptable forms of disposition

Dispositional information can be found in documents called:

- ✓ Judgment and Sentence
- ✓ Plea and Disposition Agreement
- ✓ Nolle Prosequi
- ✓ Certificate of Conviction

If you are unsure which of the forms contains your disposition, ask the Court clerk for help.

We will not accept

- Clerk's Certificates marked "No Felony Convictions"
- Documentation from the arresting agency marked "No Record Found"
- An explanation of the arrest from your attorney.

Please call our office at (505) 827-7326 if you have any questions.

Disposition must be received no later than 15 days after the date of the request. It is your responsibility to provide this information to CYFD. This sheet is for informational purposes only. Your search for disposition should not be limited to the ideas presented here.

TITLE 8 SOCIAL SERVICES
CHAPTER 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS
PART 3 GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY
VERIFICATION

8.8.3.1 ISSUING AGENCY: Children, Youth and Families Department
[8.8.3.1 NMAC - Rp, 8.8.3.1 NMAC, 03/31/06]

8.8.3.2 SCOPE: This rule has general applicability to operators, volunteers, including student interns, staff and employees, and prospective operators, staff and employees, of child-care facilities, including every facility, CYFD contractor, program receiving CYFD funding or reimbursement, the administrative office of the courts (AOC) supervised visitation and safe exchange program, or other program that has or could have primary custody of children for twenty hours or more per week, juvenile treatment facilities, and direct providers of care for children in including, but not limited to the following settings: Children’s behavioral health services and licensed and registered child care, including shelter care.
[8.8.3.2 NMAC - Rp, 8.8.3.2 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.3 STATUTORY AUTHORITY: The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Section 28-2-1 to 28-2-6 NMSA and in the New Mexico Children’s and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to 32A-15-4 NMSA 1978 Amended.
[8.8.3.3 NMAC - Rp, 8.8.3.3 NMAC, 03/31/06]

8.8.3.4 DURATION: Permanent
[8.8.3.4 NMAC - Rp, 8.8.3.4 NMAC, 03/31/06]

8.8.3.5 EFFECTIVE DATE: March 31, 2006, unless a later date is cited at the end of a section.
[8.8.3.5 NMAC - Rp, 8.8.3.5 NMAC, 03/31/06]

8.8.3.6 OBJECTIVE:

- A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required in settings to which these regulations apply.
- B. Background checks are conducted in order to identify information in applicants’ backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.
- C. Abuse and neglect screens are conducted by BCU staff in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 03/31/06; A 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.7 DEFINITIONS:

- A. AOC means administrative office of the courts.
- B. ADMINISTRATIVE REVIEW means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.
- C. 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.
- D. ADULT means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection K below.
- E. APPEAL means a review of a determination made by the BCU, which may include an administrative review.
- F. APPLICANT means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3.
- G. ARREST means notice from a law enforcement agency about an alleged violation of law.
- H. BCU means the CYFD background check unit.
- I. BACKGROUND CHECK means a screen of CYFD’s information databases, state and federal criminal records and any other reasonably reliable information about an applicant.
- J. CARE RECIPIENT means any person under the care of a licensee.
- K. CHILD means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.

L. **CONDITIONAL EMPLOYMENT** means a period of employment status for a new applicant prior to the BCU's final disposition of the applicant's background check.

M. **CRIMINAL HISTORY** means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

N. **DIRECT, PHYSICAL SUPERVISION** means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients.

O. **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.

P. **ELIGIBILITY** means the determination that an applicant does not pose an unreasonable risk to care recipients after a background check is conducted.

Q. **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.

R. **LICENSED** means authorized to operate by the licensing authority by issuance of an operator's license or certification certificate.

S. **LICENSEE** means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC or other program or entity within the scope of these regulations, including AOC supervised visitation and safe exchange program providers. **CYFD LICENSEE** means program or entity within the scope of these regulations except the AOC supervised visitation and safe exchange program providers.

T. **LICENSING AUTHORITY** means the CYFD division having authority over the licensee.

U. **MORAL TURPITUDE** means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

V. **RELEVANT 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. The term **RELEVANT CONVICTION** also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under NMSA 1978, Section 31-20-13 (1994), or NMSA 1978, Section 30-31-28 (1972), 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. The term **RELEVANT CONVICTION** does not include 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 if the applicant has received a legally effective pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

W. **UNREASONABLE RISK** means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

[8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.8 APPLICABILITY: These regulations apply to all licensees and direct providers of care in the following settings:

- A. behavior management skills development;
- B. case management services;
- C. group home services;
- D. day treatment services;
- E. residential treatment services;
- F. treatment foster care services agency staff;

- G licensed child care homes;
 - H. licensed child care centers;
 - I. registered child care homes;
 - J. licensed shelter care;
 - K. licensed before and after school care;
 - L. non-licensed or exempt after school programs participating in the at risk component of the child and adult care food program;
 - M. comprehensive community support services;
 - N. CYFD contractors and any other programs receiving CYFD funding or reimbursement; and
 - O. AOC supervised visitation and safe exchange program providers.
- [8.8.3.8 NMAC - Rp, 8.8.3.8 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.9 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except when otherwise required by applicable Certification Requirements for Child and Adolescent Mental Health Services 7.20.11 NMAC or to the extent that such a program receives funding or reimbursement from CYFD:

- (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.

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;
- (4) volunteer parents of a care recipient if the parent is under direct physical supervision;
- (5) 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.

[8.8.3.9 NMAC - Rp, 8.8.3.9 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification or renewal, or continuation of same or participation in any other program or contract within the scope of these regulations.

B. The licensee is required to:

(1) submit an electronic fingerprint submission receipt and the required forms for all direct providers of care, including household members in licensed and registered child care homes, by the end of the next day following of commencement of service, whether employment or, contractual, or volunteer. In the case of licensed child care home and a registered home, the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members, within five working days, for any adult who is required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 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) verify the employment history of any prospective direct provider of care by contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: verification of employment history is not required for registered home providers or child care homes licensed for six (6) or fewer children.

(3) submit 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;

(4) provide such other information BCU staff determines to be necessary; and

(5) maintain documentation of all applications, correspondence and eligibility relating to the background checks required; in the event that the licensee does not have a copy of an applicant’s eligibility

documentation and upon receipt of a written request for a copy, the BCU may issue duplicate eligibility documentation to the original licensee provided that the request for duplicate eligibility documentation is made within one year of the applicant's eligibility date.

C. If there is a need for any further information from an applicant at any stage of the process, the BCU shall request the information in writing from the applicant. If the BCU does not receive the requested information within fifteen calendar days of the date of the request, the BCU shall deny the application and send a notice of background check denial.

D. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility.

[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining background check eligibility unless all of the following requirements are met:

(1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of disciplinary action;

(2) until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;

(3) by the end of the next day after the applicant begins providing supervised services, the licensee or applicant shall send the BCU a completed application form and an electronic fingerprint submission receipt; and

(4) no 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. If a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the BCU, the direct provider of care must re-comply with 8.8.3.10 NMAC. A direct provider of care may transfer employment for a period of 180 days after the date of an eligibility letter from the BCU without complying with 8.8.3.10 NMAC only if the direct provider of care submits a preliminary application that meets the following conditions:

(1) the direct provider of care submits a statement swearing under penalty of perjury that he or she 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 direct provider of care submits an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the BCU to determine if further background checks or a new application is necessary; and

(3) the BCU determines within 15 days that the direct provider of care's prior background check is sufficient for the employment or position the direct provider of care is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 03/31/06; A, 04/15/08; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.12 PROHIBITIONS:

A. Any CYFD licensee who violates these regulations is subject to revocation, suspension, sanctions, denial of licensure, certification, or registration or termination of participation in any other program within the scope of these regulations. AOC supervised visitation and safe exchange program providers will be monitored and sanctioned by the AOC.

B. Licensure, certification, registration or participation in any other program within the scope of these regulations is subject to receipt by the licensing authority of a satisfactory background check for the licensee or the licensee's administrator.

C. Except as provided in 8.8.3.13 NMAC below, licensure, certification, registration or participation in any other program within the scope of these regulations may not be granted by the licensing authority if a background check of the licensee or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service or contract with any direct provider of care for whom a background check reveals an unreasonable risk. The BCU shall deliver one copy of the notice of unreasonable risk to the facility or program by U.S. mail and to the licensing authority or the AOC by facsimile transmission or hand delivery.

E. A licensee shall be in violation of these regulations if it retains a direct provider of care for more than ten working days following the mailing of a notice of background check denial for failure to respond by the BCU.

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.8.3.11 NMAC.

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk to care recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate sanctions up to and including immediate emergency revocation of license or registration pursuant to the regulations applicable to that entity or termination of participation in any other program within the scope of these regulations.

[8.8.3.12 NMAC - Rp, 8.8.3.12 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk:

(1) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse;

(4) a substantiated referral, regardless of the date, for sexual abuse or for neglect characterized by a failure to protect against sexual abuse; or

(5) 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.

B. A disqualifying 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;

(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 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. If a background check shows pending charges for a felony offense, any misdemeanor offense involving domestic violence or child abuse, an arrest but no disposition for any such crime, or a pending referral with CYFD, there shall be a determination of unreasonable risk. An arrest or criminal charge for any felony offense or for any misdemeanor offense involving domestic violence or child abuse or a pending referral with CYFD shall result in the immediate suspension of the applicant's background check eligibility until such time as the charge or CYFD referral is disposed of. It is the duty of the administrator of a facility or the licensee, upon learning of any such arrest or criminal charge or any pending referral with CYFD, to notify the licensing authority immediately. A suspension of background check eligibility shall have the same effect as a determination of unreasonable risk until the charge or CYFD referral is disposed of. If an arrest or criminal charge results in a conviction, the applicant may reapply for background check eligibility and shall be subject to all applicable criminal records check provisions and may be determined to be an unreasonable risk. If an arrest or criminal charge results in an acquittal, conditional discharge, suspension of proceedings based on participation in a pre-prosecution diversion program or dismissal of the charges, or any other disposition that is not a criminal conviction, the applicant may thereafter reapply and be considered for a determination that the applicant is eligible.

D. If a background check shows that an applicant is wanted for any offense by any law enforcement agency due to a warrant having been issued, or if the applicant is shown to have failed to appear for any pending criminal court proceeding, there shall be a determination of unreasonable risk. If such information shall be reported

to the licensing authority after an initial determination that the applicant is eligible, the applicant's background check eligibility shall be suspended until such time as the matter is disposed of. After the matter has been disposed of, the applicant shall be subject to all of the background check provisions set forth in Subsections A, B, and C above.

[8.8.3.13 NMAC - Rp, 8.8.3.13 NMAC, 03/31/06; A, 07/31/09; A, 07/30/15]

8.8.3.14 UNREASONABLE RISK:

A. The BCU may, in its discretion, weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to care recipients. The BCU may also consult with legal staff, treatment, assessment or other professionals in the process of determining whether the cumulative weight of credible evidence establishes unreasonable risk.

B. In determining whether an applicant poses an unreasonable risk, the BCU need not limit its reliance on formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

- (1) reliable disclosures by the applicant or a victim of abuse or neglect;
- (2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;
- (3) circumstances indicating the applicant is or has been a victim of domestic violence;
- (4) 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
- (5) any other evidence with similar indicia of reliability.

[8.8.3.14 NMAC - N, 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

8.8.3.15 REHABILITATION PETITION: Any applicant whom the BCU concludes is an unreasonable risk on any basis other than those described at Paragraphs (1), (3), (4) or (5) of Subsection A of 8.8.3.13 NMAC, may submit to the BCU a rehabilitation petition describing with specificity all information that tends to demonstrate that the applicant is not an unreasonable risk. The petition may include, but need not be limited to, a description of what actions the applicant has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur.

[8.8.3.15 NMAC - N, 03/31/06; A, 07/30/15]

8.8.3.16 APPEAL RIGHTS:

A. Any CYFD licensee who is denied licensure, certification, registration or is sanctioned or terminated from participation in any program pursuant to these regulations may appeal that decision to the children, youth and families department. A previously cleared direct provider of care whose eligibility has been suspended may appeal that decision to CYFD. If a CYFD licensee or a previously cleared direct provider of care alleges facts in good faith that demonstrate a conclusion of unreasonable risk will substantially affect a present vested right such as current employment or other similar currently vested rights the CYFD licensee or a previously cleared direct provider of care shall be entitled to a hearing. The request for appeal shall be in writing and the party requesting the appeal shall cause the BCU to receive it within fifteen days of the date of the BCU's written notice of a determination of unreasonable risk.

B. Any direct provider of care who is found ineligible after completion of background check may request an administrative review from CYFD. The request for an administrative review shall be in writing and the party requesting the appeal shall cause the BCU to receive it within fifteen days of the date of the BCU's written notice of a determination of unreasonable risk.

C. 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 CYFD and the applicant agree otherwise. The appeal that is a hearing under this section shall be pursuant to CYFD's administrative hearing regulations at 8.8.4 NMAC.

[8.8.3.16 NMAC - Rp, 8.8.3.15 NMAC 03/31/06; A, 07/31/09; A, 05/31/11; A, 07/30/15]

HISTORY OF 8.8.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

HED 85-6 (HSD), Regulations Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, 8/30/85.

History of Repealed Material:

HED 85-6 (HSD), Regulations Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, filed - Repealed 7/30/2001.

8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification, filed 7/30/2001 - Repealed effective 3/29/2002.

8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification, filed 3/15/2002 - Repealed effective 10/30/03.

8.8.3 NMAC, Governing Background Checks and Employment History Verification, filed 10/16/2003 - Repealed effective 3/31/2006.