



## **CHILDCARE ASSISTANCE IN NEW MEXICO**

Prepared on Behalf of New Mexico Civil Legal Services

By

**Southwest Women's Law Center**

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The Southwest Women's Law Center is a non-profit legal advocacy organization in Albuquerque, New Mexico. Founded in 2005, the Center's mission is to provide women in New Mexico with the opportunity to achieve their full economic and personal potential by: eliminating gender bias, discrimination and harassment; lifting women and their families out of poverty; and ensuring access to comprehensive reproductive health services and information. SWLC integrates five tools to create social change: legal research; policy analysis; advocacy; community and stakeholder education; and coalition work on local, state and national levels. The Center's goals include ensuring low and middle-income families in the state have access to essential government services such as subsidized childcare.

### **INTRODUCTION**

Obtaining adequate and stable childcare is one of the biggest challenges that low income families face in New Mexico. Finding and maintaining quality childcare can be an enormous struggle for families because the cost is incredibly high. Many families often find themselves in a position where the majority of their weekly paycheck is used only to pay for childcare for their children while they are at work. Families may also find themselves in situations where they think it is more beneficial not to seek permanent employment in order to care for children themselves; putting them at great financial risk and also risking crucial work related benefits such as healthcare and life insurance. The New Mexico Children, Youth and Families Department has implemented a program, which aims to provide assistance with the cost of childcare.<sup>1</sup> This report details the intricacies of this program by discussing the its basic structure and requirements.

### **CHILDCARE BY THE NUMBERS**

Childcare is one of the biggest expenses that New Mexican mothers and families can expect to have. The median income of the average New Mexican in 2014 was \$20,758.<sup>2</sup> The average median income of a married couple in 2014 was \$68,669.<sup>3</sup> The average annual cost to place an infant in a childcare center was \$7,942.<sup>4</sup> This comprises 38.3 percent of a single parent's annual income and 11.6 percent of a married couples annual income.<sup>5</sup> The average annual cost to place a four-year-old in a childcare center was \$7,098.<sup>6</sup> This amounts to 34.2 percent of a single parent

and 10.3 percent of a married couple's annual income.<sup>7</sup> The average annual cost to place a school-aged child in a childcare center is \$3,286; 15.8 percent of a single parent's average annual income and 4.8 percent of a married couple's average annual income.<sup>8</sup>

The incredibly high cost of childcare is further illustrated when compared against the average annual cost of rent and mortgage payments in New Mexico. The average annual cost for a New Mexican paying rent is \$9,144 per year.<sup>9</sup> The average annual cost of a mortgage in New Mexico is \$14,916.<sup>10</sup> The average cost to place two children, one infant and one age four, in a childcare center is \$15,040.<sup>11</sup> Childcare for two children is 64.5 percent more expensive than rent and nearly equal to the cost of a mortgage payment in New Mexico.<sup>12</sup>

The cost of childcare has risen so high in New Mexico that it is now more expensive than sending a child to college. The average annual cost of childcare for an infant in a childcare center is \$7,942.<sup>13</sup> The annual cost to attend a public university in New Mexico is \$6,190, making it 28.3 percent more expensive to pay for one year of daycare than to pay for one year of higher education.<sup>14</sup>

These high costs have a particularly devastating impact on the poorest New Mexicans. A person making 100% of the federal poverty level can expect to pay 39.5 percent of their annual income for an infant and 74.9 percent of their annual income to place two children in a childcare center.<sup>15</sup> A person making 150 percent of the poverty level can expect to pay 26.4 percent for an infant and 49.9 percent for two children in annual childcare costs.<sup>16</sup> Finally a person making 200% of the poverty level is paying 19.8 percent of their income for an infant, and 37.4 percent of their income for two children.<sup>17</sup>

### **THE CHILD CARE ASSISTANCE PROGRAM**

The State of New Mexico administers the childcare assistance program through the Children, Youth and Families Department. Eligibility and amount of benefits provided by the program are determined by multiple factors including a family's total income; citizenship; age of the child; and the quality of the childcare center.

### **HOW CAN WOMEN AND FAMILIES QUALIFY FOR THE PROGRAM?**

#### ***Income***

As of April of 2016, families with an income of up to 200% of the Federal Poverty Level (FPL) can qualify for subsidized care.<sup>18</sup> In 2016, families making the following amounts would qualify for the childcare assistance program:<sup>19</sup>

#### 200% of the FPL in 2016

Family of 2	\$32,040
Family of 3	\$40,320
Family of 4	\$48,600
Family of 5	\$56,880
Family of 6	\$65,160
Family of 7	\$73,460
Family of 8	\$81,780

Prior to 2013, the income requirement was made it more difficult to qualify. Before 2013, the only families making up to 100% of the FPL qualified for assistance. Any family with a income over 100% of the FPL was placed on a waiting list. In 2013, the income for families at 100% of the FPL is as follows:<sup>20</sup>

100% of FPL in 2013

Family of 2	\$15,510
Family of 3	\$19,530
Family of 4	\$23,550
Family of 5	\$27,570
Family of 6	\$31,590
Family of 7	\$35,610
Family of 8	\$39,630

In February of 2013, the waiting list comprised of 5,467 families.<sup>21</sup> Since the income level was increased to 200% of the FPL, the waiting list has nearly disappeared.

***Other Required Qualifications***

In order to apply for the Childcare Assistance Program, women and families must be either a parent, grandparent, or legal guardian of a child. Women and families are required to be New Mexico residents to qualify for the program, and they are required to provide verification of their residency to the state. Women and families must also be either: (1) working (2) pursuing their high school diploma or college degree; or (3) participating in a job-training program to qualify for the program.<sup>22</sup>

Age restrictions also govern which children are eligible for the program. Generally, any child that is between the ages of six weeks and thirteen years old is eligible to participate in the program. Special exceptions can be given for children up to eighteen years old if they require special supervision.<sup>23</sup> These children are defined as being children “who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, or who are physically or mentally incapable of caring for themselves.”<sup>24</sup>

Several documents must be provided in order to qualify for the Childcare Assistance Program. Women and families must to provide current pay stubs for one month. All income must be reported. Families must provide verification of any child support, SSI and other income they receive. Families must provide birth verification for all children.<sup>25</sup> Women and families must verify their New Mexico residency. Providing a copy of a lease, mortgage, or utility bills can prove residency. Finally, school schedules for all children applicants must be provided.<sup>26</sup>

Recipients of childcare assistance must be a United State citizen or qualified alien. Qualified Aliens are defined are an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act.<sup>27</sup> If a child is determined to be a US citizen or qualified alien approved by the New Mexico Human Services Department, the child will be eligible regardless of the citizenship or alien status of the child’s parents.<sup>28</sup> The regulations stipulate that the

recipient of the benefits must be a citizen of the United States.<sup>29</sup> However, if a child is determined to be either a United States citizen, or a qualified alien that child will be eligible regardless of the status of their parents.<sup>30</sup> The CYFD website only mentions that proof of residency and verification of birth for all applicant children be provided.<sup>31</sup> It is unclear whether this document needs to only prove residence of the state of New Mexico or whether this also needs to serve as proof of citizenship for the parent and/or applicant child. Finally, the Southwest Women's Law Center looked to other third party resources to see what documentation they advise women to take in order to obtain childcare assistance. NewMexicoKids, a website created by the University of New Mexico, Division of Continuing Education, advises that social security cards must be provided for all household members.<sup>32</sup> While this information may not be correct, the fact that it is published can be damaging in itself. This may have a chilling effect on women seeking childcare assistance because they may have members of their family living in their household who would not be able to provide a social security card. This may unnecessarily keep women from seeking childcare assistance benefits when they would otherwise qualify.

### **WHERE CAN BENEFITS BE USED?**

Women and families can choose from different types of childcare facilities where the childcare subsidy is accepted. For the childcare provider to be eligible to receive Childcare Assistance Program funds, the childcare provider must be licensed or registered with the state.

Registering as a childcare provider requires the provider to meeting qualifications for each primary and substitute caregiver including background checks, six hours of training annually, and maintaining first aid and CPR certifications.<sup>33</sup> Providers are limited to the number of children per caregiver at any point in time. A caregiver cannot care for more than six children under the age of six years old or two children under the age of two years old at any time.<sup>34</sup> This count includes the caregiver's own children. The registered facility is required to meet certain health and safety requirements,<sup>35</sup> including meal requirements.<sup>36</sup> Licensed childcare facilities very detailed and strict requirements for licensure far beyond that of registering with the state.<sup>37</sup> Further, licensed childcare facilities are rated on these requirements.<sup>38</sup> These ratings are classified as "star levels." The ratings range from one star to five stars.<sup>39</sup>

The Childcare Assistance Program provides for nine different types of facilities, including: Licensed Child Care Centers; Licensed Child Care Homes; Registered Child Care Homes; Summer Programs; After School Care; programs administered by tribal entities; childcare programs administer by church or religious organizations; childcare programs administered by public schools and post-secondary institutions that provide on-site care for the children of students; and programs operated by employers for their employees.<sup>40</sup>

A License Child Care Center is a non-residential setting where childcare is provided licensed by the state. A Licensed Child Care Home is a licensed childcare facility in the provider's home. A Licensed Child Care Family Home can care for up to six children,<sup>41</sup> and a Licensed Child Care Group Home can care for up to twelve children.<sup>42</sup> A Registered Child Care Home is provided in the home of the provider and that provider has registered with the states to care for up to four children.<sup>43</sup> Registered Child Care Homes can be the home of a family member if they register with the state.

Women and families are only allowed to use benefits on Summer Programs, After School Care Programs, and other programs described that are officially registered with the state.<sup>44</sup> Women must take special care here to ensure that any program they place their child in is registered with the state in order to ensure that childcare assistance benefits will be paid. Furthermore, families have to know the licensed facility's star rating. As of July 1, 2012, the Childcare Assistance Program no longer allows children to attend one-star facilities.

### **WHAT ARE THE SPECIFIC BENEFITS PROVIDED?**

Benefits are provided on a sliding scale and determined on a case-by-case basis with a CYFD counselor. CYFD creates an agreement with the childcare provider. This agreement outlines the number of hours the child needs services and the payment to the provider.<sup>45</sup> CYFD pays a monthly amount directly to the childcare provider.<sup>46</sup> The amount paid to the provider is agreed upon in the child's placement agreement.<sup>47</sup> The provider's payment is not based on the child's attendance. (However, the child's attendance can affect the continued eligibility for the Childcare Assistance Program.) The Childcare Assistance Program pays a certain amount toward the child's care. The child's family is responsible for a copayment.

### **HOW MUCH CAN WOMEN AND FAMILIES EXPECT TO PAY OUT OF POCKET?**

The amount of the subsidy received by women in the program varies based on income. The higher the income, the higher the parent's co-payment will be. For example, "[i]n 2015, a family of three with an income at 100 percent of the poverty level (\$20,090 a year) receiving child care assistance in New Mexico paid \$76 per month, or 5 percent of its income, in copayments. A family of three with an income at 150 percent of the poverty level (\$30,135 a year) receiving child care assistance paid \$174 per month, or 7 percent of its income, in copayments."<sup>48</sup>

According to the New Mexico Administrative Code, parents are also potentially liable for several different charges assessed by the child care facility. Facilities are allowed to charge for incidental costs such as field trips, special lunches or other similar situations.<sup>49</sup> These costs must not exceed the costs charged to private pay families for the same activities.<sup>50</sup> The regulations do not provide guidance on how many of these incidental events can be charged for within a time frame, nor do they require that notice must be given to families before assessing the cost. Additionally, childcare providers may charge a registration/ education fee to women receiving subsidized childcare.<sup>51</sup> These fees also cannot exceed those charged to private pay families.<sup>52</sup> The fees may be charged every six months and are limited to materials and supplies for the center.<sup>53</sup> The department reserves the right to suspend the childcare assistance contract in the event that these fees are found to be onerous or pose undue burden to families receiving childcare assistance benefits.<sup>54</sup> Finally, the childcare providers are allowed to charge childcare assistance families the applicable gross receipts tax for the sum of the child care assistance benefit and co-payment.<sup>55</sup> This is the most concerning of the additional fees that can be imposed on low-income women. The sales tax could add up to a very large amount that could seriously impact some mother's ability to obtain child care.

## **HOW DOES THE DEPARTMENT PRIORITIZE CLIENTS?**

CYFD officials should follow a set of outlined criteria when determining the priority level for applicants. Priority one clients are those who receive Temporary Assistance to Needy Families (TANF) benefits.<sup>56</sup> Priority one A clients are those who receive food assistance benefits through the Supplemental Nutrition Assistance Program (SNAP).<sup>57</sup> Priority one B clients are those whose income is at or below 100% of the federal poverty level.<sup>58</sup> In the event of budget constraints, CYFD is permitted to establish a waiting list. Within priority one B, CYFD is required to prioritize children with special needs (defined in the regulations as “a child with a medically documented condition, which results in physical or mental incapacity requiring care and supervision by an adult.”<sup>59</sup>) and teen parents<sup>60</sup> (defined as “means a biological parent under the age of twenty who is attending high school, working towards a general equivalency diploma (GED) or attending any other job skills training or educational programs directly related to enhancing employment opportunities”<sup>61</sup>). Priority two consists of “child care assistance for a consecutive twelve-month period for families transition off TANF.”<sup>62</sup> Clients in this category do not have to meet the income eligibility requirements during their twelve-month period.<sup>63</sup>

## **WHAT ARE THEIR BENEFITS WHILE SEARCHING FOR A JOB?**

Women and families can retain benefits for up to thirty days after graduation or loss of employment. After thirty days, women and families are no longer eligible for the benefits.<sup>64</sup>

## **HOW MUCH ARE CHILD CARE PROVIDERS REIMBURSED?**

New Mexico employs a tiered reimbursement scheme, which pays higher reimbursement rates for higher-quality care. According to the National Women’s Law Center, “In 2015 the reimbursement rate for center care for a four-year-old in metropolitan counties at the highest quality tier was 55 percent higher than the rate at the lowest quality tier. The reimbursement rate for care in a Licensed Child Care Center for a four-year-old in metropolitan counties at the highest quality tier is below the 75th percentile of current market rates.”<sup>65</sup>

CYFD calculates the reimbursement rates for the childcare provider based on the child’s age, the amount of time the child is to receive care, and the type of childcare facility. CYFD classifies children into three different age categories: infant, toddler, pre-school and school aged.<sup>66</sup> Children under the age of two are classified as infants. Toddlers are children ages two to three years old. Preschool children are ages three to five, and school age are children ages six and over. Infants have the highest payment rate, and school aged children have the lowest.

The provider’s rates are classified into four sections depending on the number of hours a child receives care. A child receiving 30 or more hours a week is considered full time. A child attending 8-29 hours a week is a part time 1 classification, which pays providers 75% of the full time rate. The part time 2 classification is only for children splitting their time between two providers. Part time 2 provides care for a child 6-19 hours a week and is paid at 50% of the full time rate. Finally, Part time 3 is for children receiving care 7 or fewer hours a week. Part time 3 providers are paid 25% of the full time rate.

Licensed childcare facilities will be reimbursed more than registered facilities. For example a full time monthly rate for an infant at a licensed childcare center would be \$720.64, while the state would pay \$289.89 for a full time infant at a registered home. The star rating of the childcare facility will also be utilized to calculate payments. CYFD pays a differential for the licensed facility's star rating. The state will pay a differential of \$88 for an infant at a facility with two stars and a differential of \$550 for an infant at a facility with five stars.<sup>67</sup>

In 2013, New Mexico's reimbursement rates for most childcare providers serving families receiving childcare assistance were below the federally recommended level. The recommended level is to have childcare cost fall within the 75th percentile of current market rates. This level is designed to give families access to 75 percent of the providers in their community. New Mexico's monthly reimbursement rate for center care for a one-year-old in metropolitan counties was \$521. This was \$186 below the 75th percentile of current market rates for this type of care. New Mexico was providing 26 percent below this recommended rate. New Mexico's monthly reimbursement rate for center care for a four-year-old in metropolitan counties was \$440, which was \$197 (31 percent) below the 75th percentile of current market rates for this type of care.<sup>68</sup>

## CONCLUSION

Providing stable and quality childcare is one of the biggest challenges facing the State of New Mexico. The cost comparisons show how difficult it is for many New Mexicans to afford childcare because of its incredibly high cost. New Mexico has implemented the Childcare Assistance Program to help low income families cope with this high cost. While strides have been made, there is still a long way to go. The process is incredibly complex and lacks transparency. There is a plethora of governing regulations that are difficult for the average New Mexican to find, let alone interpret. The Children, Youth and Families Department provides some preliminary information via their website, but there are large gaps in information that should be provided in order for families to make the best decisions regarding childcare.

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<sup>1</sup> NMSA 1978, § 9-2A-7.

<sup>2</sup> CHILD CARE AWARE, *Parents and the High Cost of Child Care: 2015 Report 55* (2015), <http://usa.childcareaware.org/wp-content/uploads/2016/05/Parents-and-the-High-Cost-of-Child-Care-2015-FINAL.pdf>

<sup>3</sup> CHILD CARE AWARE, *supra* note 2 at 55

<sup>4</sup> CHILD CARE AWARE, *supra* note 2 at 55

<sup>5</sup> CHILD CARE AWARE, *supra* note 2 at 55

<sup>6</sup> CHILD CARE AWARE, *supra* note 2 at 57

<sup>7</sup> CHILD CARE AWARE, *supra* note 2 at 57

<sup>8</sup> CHILD CARE AWARE, *supra* note 2 at 59

<sup>9</sup> CHILD CARE AWARE, *supra* note 2 at 61

<sup>10</sup> CHILD CARE AWARE, *supra* note 2 at 61

<sup>11</sup> CHILD CARE AWARE, *supra* note 2 at 61

<sup>12</sup> CHILD CARE AWARE, *supra* note 2 at 61

<sup>13</sup> CHILD CARE AWARE, *supra* note 2 at 63

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- <sup>14</sup> CHILD CARE AWARE, *supra* note 2 at 63
- <sup>15</sup> CHILD CARE AWARE, *supra* note 2 at 67
- <sup>16</sup> CHILD CARE AWARE, *supra* note 2 at 67
- <sup>17</sup> CHILD CARE AWARE, *supra* note 2 at 67
- <sup>18</sup> CHILDREN YOUTH & FAMILIES DEP'T, *Governor Martinez Announces Expansion of Child Care Services*, (Apr. 21, 2016) <https://cyfd.org/news-events/news/governor-martinez-announces-expansion-of-child-care-services>.
- <sup>19</sup> HEALTHCARE.GOV, *Federal Poverty Level (FPL)*, <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/> (last visited: June 27, 2016).
- <sup>20</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., *2013 Federal Poverty Guidelines*. Available at <https://aspe.hhs.gov/2013-poverty-guidelines>.
- <sup>21</sup> NAT'L WOMEN'S LAW CTR., *State Child Care Assistance Policies: New Mexico*, [http://www.nwlc.org/sites/default/files/pdfs/ccsubsidy2014/new\\_mexico-childcare-subsidy2014.pdf](http://www.nwlc.org/sites/default/files/pdfs/ccsubsidy2014/new_mexico-childcare-subsidy2014.pdf) (last updated: Dec. 2014).
- <sup>22</sup> NMCA 8.15.2.11(M)
- <sup>23</sup> NMCA 8.15.2.11(O)
- <sup>24</sup> *Id.*
- <sup>25</sup> CHILDREN YOUTH & FAMILIES DEP'T, *Child Care Application Checklist*, <https://cyfd.org/child-care-services/child-care-applicant-checklist> (last visited: June 27, 2016).
- <sup>26</sup> CHILDREN YOUTH & FAMILIES DEP'T *supra* note 25
- <sup>27</sup> 8 U.S.C. 1101 et seq.
- <sup>28</sup> NMCA 8.15.2.11(I)
- <sup>29</sup> *Id.*
- <sup>30</sup> *Id.*
- <sup>31</sup> CHILDREN YOUTH & FAMILIES DEP'T *supra* note 25
- <sup>32</sup> NEW MEXICO KIDS, *Need Help Paying for Child Care?* <http://nmdev.unm.edu/#.pages.childcare.assistance>. (last visited: June 28, 2016).
- <sup>33</sup> NMCA 8.17.2.10
- <sup>34</sup> NMCA 8.17.2.22(B) & (C).
- <sup>35</sup> NMCA 8.17.2.23.
- <sup>36</sup> NMCA 8.17.2.24.
- <sup>37</sup> NMCA 8.16.2
- <sup>38</sup> NMCA 8.16.2.10(A).
- <sup>39</sup> *Id.*
- <sup>40</sup> NMCA 8.15.2.8
- <sup>41</sup> NMCA 8.15.2.7(Q)(3)..
- <sup>42</sup> NMCA 8.15.2.7(Q)(4)..
- <sup>43</sup> NMCA 8.15.2.7(Q)(1).
- <sup>44</sup> NMCA 8.15.2.15(A).
- <sup>45</sup> NMCA 8.15.2.17(C).
- <sup>46</sup> NMCA 8.15.2.17.
- <sup>47</sup> *Id.*
- <sup>48</sup> NAT'L WOMEN'S LAW CTR., *State Child Care Assistance Policies: New Mexico*, [nwlc.org/wp-content/uploads/2016/04/newmexico-childcare-subsidy2015.pdf](http://www.nwlc.org/wp-content/uploads/2016/04/newmexico-childcare-subsidy2015.pdf) (last updated: Mar. 2016).
- <sup>49</sup> NMCA 8.15.2.15(E)(1).

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<sup>50</sup> *Id.*

<sup>51</sup> NMCA 8.15.2.15(E)(2).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> NMCA 8.15.2.15(E)(3).

<sup>56</sup> NMCA 8.15.2.9(A).

<sup>57</sup> NMCA 8.15.2.9(B).

<sup>58</sup> NMCA 8.15.2.9(C)

<sup>59</sup> NMCA 8.15.2.7(B)

<sup>60</sup> NMCA 8.15.2.9(C)

<sup>61</sup> NMCA 8.15.2.7(Y)

<sup>62</sup> NMCA 8.15.2.9(D)

<sup>63</sup> *Id.*

<sup>64</sup> NAT'L WOMEN'S LAW CTR., *supra* note 51.

<sup>65</sup> *Id.*

<sup>66</sup> NMCA 8.15.2.17(G),

<sup>67</sup> NMCA 8.15.2.17(J).

<sup>68</sup> NAT'L WOMEN'S LAW CTR., *supra* note 21