

NMAC

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Volume: Issue: Publication date: Number of pages: (ALD Use Only) Sequence No.

Issuing agency name and address:

Agency DFA code:

HCA - Medical Assistance Division

630

Contact person's name:

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Type of rule action:

(ALD Use) Recent filing date:

New ☐ Amendment ☒ Repeal ☐ Emergency ☐ Renumber ☐

6/13/2024

Title number:

Title name:

8

Social Services

Chapter number:

Chapter name:

371

Developmental Disabilities

Part number:

Part name:

2

Requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Amending (20) Sections.

Sections 1, 2, 6-9, 11, 12, 15, 20, 21, 26, 28, 33, 37, 62, 69, 78, 91 and 96 of 8.371.2 NMAC.

Are there any materials incorporated by reference?

Please list attachments or Internet sites if applicable.

Yes ☐ No ☒

If materials are attached, has copyright permission been received?

Yes ☐

No ☐

Public domain ☐

Specific statutory or other authority authorizing rulemaking:

Section 9-8-6 NMSA 1978

Notice date(s):

Hearing date(s):

Rule adoption date:

Rule effective date:

2/10/2026

3/12/2026

7/29/2026

9/1/2026

Concise Explanatory Statement For Rulemaking Adoption:

Findings required for rulemaking adoption:

Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

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A public hearing was held on March 12, 2026, to receive public comments on this proposed NMAC. One comment was received but was not within the scope of this rule promulgation. The HCA will review the comment for consideration in future revisions. The NMAC is being implemented as proposed.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Kari Armijo

Check if authority has been delegated

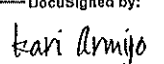
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Title:

Secretary

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:

1BA9EB5EAD00489

8/4/2026

This is an amendment to 8.371.2 NMAC, Sections 1, 2, 6-9, 11, 12, 15, 20, 21, 26, 28, 33, 37, 62, 69, 78, 91 and 96, effective 9/1/2026.

8.371.2.1 **ISSUING AGENCY:** New Mexico health care authority (HCA).
[8.371.2.1 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.2 **SCOPE:** These regulations apply to any facility providing services as outlined by these regulations and any facility which by federal regulation must be licensed by the state of New Mexico to obtain or maintain full or partial permanent or temporary federal funding as an intermediate care facility for ~~the mentally retarded (ICF/MR)]~~ individuals with intellectual disabilities (ICF/IID). All facilities licensed after the effective date of these regulations shall be limited to a capacity of no greater than four clients, except as provided herein in Subsection C of 8.371.2.21 NMAC.
[8.371.2.2 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.6 **OBJECTIVE:** The purpose of these regulations is to:

- A. Establish professional minimum standards for [ICF/MR] ICF/IID facilities in the state of New Mexico which were formerly licensed under regulations governing long term care facilities.
- B. Monitor [ICF/MR] ICF/IID facilities with these regulations through surveys to identify any areas which could be dangerous or harmful to the clients or staff.
- C. Encourage the maintenance of [ICF/MR] ICF/IID facilities that provide quality services which maintain or improve the health and quality of life to the clients.
- D. Expand the availability of [ICF/MR] ICF/IID programs to assure timely placement for persons who need residential services.
- E. Assure integrated active treatment programs, homelike living arrangements, and consumer protections for [ICF/MR] ICF/IID clients.
- F. Promote access and availability statewide.
- G. Recognize specialized [ICF/MR] ICF/IID programs to serve individuals with intense needs.

[8.371.2.6 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.7 **GENERAL DEFINITIONS:** For purposes of these regulations the following shall apply:

- ~~A. "Active treatment" means the consistent, aggressive, accountable, and continuous application of competent interactions between caregivers and persons with developmental disabilities whom they serve in structured and unstructured settings alike, directed toward each individual's developmental progress through the life cycle.~~
- ~~B. "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.~~
- ~~C. "Client" means an individual living in and receiving services from an ICF/MR licensed pursuant to these regulations.~~
- ~~D. "Community supports" means community services such as recreational activities, social clubs, religious services, employment services, and transportation, as well as other supportive services that are available to the general population and not designated to serve only persons with disabilities.~~
- ~~E. "Dietitian" means a person eligible or required to be licensed under the New Mexico Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978, effective July 1, 1989.~~
- ~~F. "Facility" means a building or buildings in which clients live and ICF/MR services are provided and is licensed or required to be licensed pursuant to these regulations.~~
- ~~G. "Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a facility licensed pursuant to these regulations.~~
- ~~H. "ICF/MR" means an intermediate care facility that provides food, shelter, health or rehabilitative and active treatment for the mentally retarded or persons with related conditions.~~
- ~~I. "License" means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.~~
- ~~J. "Licensee" means the person(s) who, or organization which, has an ownership, leasehold or similar interest in the ICF/MR facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.~~

- K.** "Licensing authority" means the New Mexico health care authority.
- L.** "NMSA" means the New Mexico Statutes Annotated 1978 compilation and all the revisions and compilations thereof.
- M.** "Nurse" is an individual who is currently licensed/registered in the state of New Mexico.
- N.** "Occupational therapist" is an individual who is eligible for certification by the American occupational therapy association or another comparable body.
- O.** "Physical therapist" is an individual who is eligible for certification as a physical therapist by the American physical therapy association or another comparable body.
- P.** "Plan of correction" means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.
- Q.** "Policy" means a statement of principle that guides and determines present and future decisions and actions.
- R.** "Premises" means all parts of buildings, grounds, and equipment of a facility.
- S.** "Procedure" means the action(s) that must be taken in order to implement a policy.
- T.** "Psychologist" is an individual who has at least a master's degree in psychology from an accredited school.
- U.** "Social worker" means a person required to be licensed under the Social Work Practice Act Sections 61-31-1 through 61-31-25 NMSA 1978.
- V.** "Speech language pathologist or audiologist" is an individual who is eligible for a certificate of clinical competence in speech language pathology or audiology granted by the American speech language hearing association or another comparable body or who meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.
- W.** "U/L approved" means approved for safety by the national underwriters laboratory.
- X.** "Training and habilitation services" means the training and services which are provided to a client intended to aid the intellectual, sensorimotor, and emotional development of that client.
- Y.** "Variance" means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of clients or staff of a facility, and is at the sole discretion of the licensing authority.
- Z.** "Waive/waiver" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.]
- A. Terms beginning with the letter "A":**
- (1) "Active treatment" means the consistent, aggressive, accountable, and continuous application of competent interactions between caregivers and persons with developmental disabilities whom they serve in structured and unstructured settings alike, directed toward each individual's developmental progress through the life cycle.
- (2) "Applicant" means the individual who, or organization which, applies for a license. If the applicant is an organization, then the individual signing the application on behalf of the organization, must have authority from the organization. The applicant must be the owner.
- B. Terms beginning with the letter "B": [RESERVED]**
- C. Terms beginning with the letter "C":**
- (1) "Client" means an individual living in and receiving services from an ICF/IID licensed pursuant to these regulations.
- (2) "Community supports" means community services such as recreational activities, social clubs, religious services, employment services, and transportation, as well as other supportive services that are available to the general population and not designated to serve only persons with disabilities.
- D. Terms beginning with the letter "D": "Dietitian" means a person eligible or required to be licensed under the New Mexico Nutrition and Dietetics Practice Act, Sections 61-7A-1 through 61-7A-15 NMSA 1978, effective July 1, 1989.**
- E. Terms beginning with the letter "E": [RESERVED]**
- F. Terms beginning with the letter "F": "Facility" means a building or buildings in which clients live and ICF/IID services are provided and is licensed or required to be licensed pursuant to these regulations.**
- G. Terms beginning with the letter "G": "Governing body" means the governing authority of a facility which has the ultimate responsibility for all planning, direction, control and management of the activities and functions of a facility licensed pursuant to these regulations.**

- H. Terms beginning with the letter "H": [RESERVED]**
- I. Terms beginning with the letter "I": "ICF/IID" means an intermediate care facility that provides food, shelter, health or rehabilitative and active treatment for individuals with intellectual disabilities or persons with related conditions.**
- J. Terms beginning with the letter "J": [RESERVED]**
- K. Terms beginning with the letter "K": [RESERVED]**
- L. Terms beginning with the letter "L":**
- (1) "License" means the document issued by the licensing authority pursuant to these regulations granting the legal right to operate for a specified period of time, not to exceed one year.
- (2) "Licensee" means the person(s) who, or organization which, has an ownership, leasehold or similar interest in the ICF/IID facility and in whose name a license has been issued and who is legally responsible for compliance with these regulations.
- (3) "Licensing authority" means the New Mexico health care authority.
- M. Terms beginning with the letter "M": [RESERVED]**
- N. Terms beginning with the letter "N":**
- (1) "NMSA" means the New Mexico Statutes Annotated 1978 compilation and all the revisions and compilations thereof.
- (2) "Nurse" is an individual who is currently licensed/registered in the state of New Mexico.
- O. Terms beginning with the letter "O": "Occupational therapist" is an individual who is eligible for certification by the American occupational therapy association or another comparable body.**
- P. Terms beginning with the letter "P":**
- (1) "Physical therapist" is an individual who is eligible for certification as a physical therapist by the American physical therapy association or another comparable body.
- (2) "Plan of correction" means the plan submitted by the licensee or representative of the licensee addressing how and when deficiencies identified at time of a survey will be corrected.
- (3) "Policy" means a statement of principle that guides and determines present and future decisions and actions.
- (4) "Premises" means all parts of buildings, grounds, and equipment of a facility.
- (5) "Procedure" means the action(s) that must be taken in order to implement a policy.
- (6) "Psychologist" is an individual who has at least a master's degree in psychology from an accredited school.
- Q. Terms beginning with the letter "Q": [RESERVED]**
- R. Terms beginning with the letter "R": [RESERVED]**
- S. Terms beginning with the letter "S":**
- (1) "Social worker" means a person required to be licensed under the Social Work Practice Act Sections 61-31-1 through 61-31-25 NMSA 1978.
- (2) "Speech language pathologist or audiologist" is an individual who is eligible for a certificate of clinical competence in speech-language pathology or audiology granted by the American speech-language hearing association or another comparable body or who meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.
- T. Terms beginning with the letter "T": "Training and habilitation services" means the training and services which are provided to a client intended to aid the intellectual, sensorimotor, and emotional development of that client.**
- U. Terms beginning with the letter "U": "U/L approved" means approved for safety by the national underwriters laboratory.**
- V. Terms beginning with the letter "V": "Variance" means an act on the part of the licensing authority to refrain from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of clients or staff of a facility, and is at the sole discretion of the licensing authority.**
- W. Terms beginning with the letter "W": "Waive/waiver" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the clients and staff are not in danger. Waivers are issued at the sole discretion of the licensing authority.**
- X. Terms beginning with the letter "X": [RESERVED]**
- Y. Terms beginning with the letter "Y": [RESERVED]**
- Z. Terms beginning with the letter "Z": [RESERVED]**

[8.371.2.7 NMAC - N, 7/1/2024; A, 9/1/2026]

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8.371.2.8 STANDARD OF COMPLIANCE: The degree of compliance required throughout these regulations is designated by the use of the words “shall” or “must” or “may”. “Shall” or “must” means mandatory. “May” means permissive. The use of the words “adequate”, “proper”, and other similar words means the degree of compliance that is generally accepted throughout the professional field by those who provide [ICF/MR] ICF/IID services to the public in facilities governed by these regulations.

[8.371.2.8 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.9 [ICF/MR] ICF/IID FACILITY AND SCOPE OF SERVICES PROVIDED: The [ICF/MR] ICF/IID provides active treatment in the least restrictive setting and includes all needed services for [mentally retarded individuals] individuals with intellectual disabilities or persons with related conditions whose mental or physical condition require services on a regular basis that are above the level of a residential or room and board setting and can only be provided in a facility which is equipped and staffed to provide the appropriate services.

8.371.2.11 INITIAL LICENSURE PROCEDURES: The following procedures must be followed by the applicant for initial licensure of an [ICF/MR] ICF/IID facility.

A. Initial phase: These regulations should be thoroughly understood by the applicant and used as a reference for design of a new building or renovation or addition to an existing building for licensure as an [ICF/MR] ICF/IID facility pursuant to these regulations. Prior to starting construction, renovations, or additions to an existing building the applicant of the proposed facility shall:

- (1) advise the licensing authority of intention to open a [ICF/MR] ICF/IID facility pursuant to these regulations;
- (2) submit a complete set of construction documents (blueprints) for the total building;
- (3) blueprints will be reviewed by the licensing authority for compliance with current licensing regulations, building and fire codes;
- (4) if blue prints or plans are approved the licensing authority will advise the applicant that construction may begin.

B. Construction phase: During the construction of a new building or renovations or additions to an existing building, the applicant must coordinate with the licensing authority and submit any changes to the blueprints or plans for approval before making such changes.

C. Licensing phase: Prior to completion of construction, renovation or addition to an existing building the applicant will submit to the licensing authority the following:

- (1) Application form:
 - (a) will be provided by the licensing authority;
 - (b) all information requested on the application must be provided;
 - (c) will be printed or typed;
 - (d) will be dated and signed;
 - (e) will be notarized.
- (2) Fees: All applications for licensure must be accompanied by the required fee.
 - (a) Fees must be in the form of a certified check, money order, personal or business check made payable to the state of New Mexico.
 - (b) Fees are non-refundable.
- (3) Zoning and building approval:
 - (a) All initial applications must be accompanied with written zoning approval from the appropriate authority (city, county, or municipality).
 - (b) All initial applications must be accompanied with written building approval (certificate of occupancy) from the appropriate authority (city, county, or municipality).
- (4) Fire authority approval: All initial applications must be accompanied with written approval of the fire authority having jurisdiction.
- (5) New Mexico environment department approval: All initial applications must be accompanied by written approval of the environmental improvement division for the following:
 - (a) private water supply, if applicable;
 - (b) private waste or sewage disposal, if applicable;
 - (c) kitchen approval.

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(d) Exception: Facilities utilizing the kitchen as a training site for clients to develop personal skills in meal planning and preparation may be exempt from this requirement if the New Mexico environment department waives the requirement and a letter of exemption is on file in the facility.

(6) Copy of appropriate drug permit issued by the state board of pharmacy.

(7) Initial survey: Upon receipt of a properly completed application with all supporting documentation as outlined above an initial survey of the proposed facility shall be scheduled by the licensing authority.

(8) Issuance of license: Upon completion of the initial survey and determination that the facility is in compliance with these regulations the licensing authority shall issue a license.

[8.371.2.11 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.12 LICENSES:

A. Annual license: An annual license is issued for a one year period to an [ICF/MR] ICF/IID facility which has met all requirements of these regulations.

B. Temporary license: The licensing authority may, at its sole discretion, issue a temporary license prior to the initial survey or when the licensing authority finds partial compliance with these regulations.

(1) A temporary license shall cover a period of time, not to exceed 120 days, during which the facility must correct all specified deficiencies.

(2) In accordance with Subsection D of Section 24-1-5 NMSA 1978, no more than two consecutive temporary licenses shall be issued.

C. Amended license: A licensee must apply to the licensing authority for an amended license when there is a change of administrator/director, or when there is a change of name for the facility

(1) Application must be on a form provided by the licensing authority.

(2) Application must be accompanied by the required fee for amended license.

(3) Application must be submitted within 10 working days of the change.

[8.371.2.12 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.15 NON-TRANSFERABLE RESTRICTION ON LICENSE: A license shall not be transferred by assignment or otherwise to other persons or locations. The license shall be void and must be returned to the licensing authority when any one of the following situations occur:

A. ownership of the facility changes;

B. the facility changes location;

C. licensee of the facility changes;

D. The facility discontinues operation.

E. A facility wishing to continue operation as a licensed [ICF/MR] ICF/IID facility under circumstances found in Subsections A through D above must submit an application for initial licensure in accordance with Section 11 of these regulations at least 30 days prior to the anticipated change.

[8.371.2.15 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.20 CURRENTLY LICENSED FACILITIES: Any facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but which fails to meet all building requirements may continue to be licensed as an [ICF/MR] ICF/IID.

A. Variance may be granted for those building requirements the facility cannot meet provided the variances granted will not create a hazard to the health, safety and welfare of the clients and staff, and;

B. The building requirements for which variances are granted cannot be corrected without an unreasonable expense to the facility, and

C. Variances granted will be recorded and made a permanent part of the facility file.

D. Facilities currently licensed for more than four clients may not increase their capacity.

[8.371.2.20 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.21 NEW FACILITY: A new facility may be opened in an existing building or a newly constructed building.

A. If opened in an existing building a variance may be granted for those building requirements the facility cannot meet under the same criteria outlined in Subsections A, B and C of 8.371.2.20 NMAC, if not in conflict with existing building and fire codes. This is at the sole discretion of the licensing authority.

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B. A new facility opened in a newly constructed building must meet all requirements of these regulations.

C. A new facility may not be licensed for more than four clients. Exception: 2024 ICF/MR/ICF/IID: 43 facilities may be licensed for a maximum capacity of six clients based upon a written plan that must be submitted to the licensing authority prior to the facility's licensure. Approval of the plan is in the discretion of the licensing authority. The plan must demonstrate the following:

(1) The anticipated facility service benefits to the client population.
(2) How the facility's services will promote, independence, active treatment and community supports.

(3) How the facility's services will address the needs and protections of the proposed clients.
[8.371.2.21 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.26 REPORTS AND RECORDS REQUIRED TO BE ON FILE IN THE FACILITY: Each facility licensed pursuant to these regulations must keep the following reports and records on file and make them available for review upon request of the licensing authority.

- A. a copy of the latest fire inspection report by the fire authority having jurisdiction;
- B. a copy of the last survey conducted by the licensing authority and variances granted;
- C. record of fire and emergency evacuation drills conducted by the facility;
- D. licensing regulations: a copy of these regulations: Requirements for intermediate care facilities for ~~the Mentally Retarded~~ individuals with intellectual disabilities, New Mexico health care authority, 8.371.2 NMAC;
- E. health certificates of staff;
- F. a copy of the current license, registration or certificate, of each staff member for which a license, registration, or certification is required by the state of New Mexico;
- G. valid drug permit as required by the state board of pharmacy;
- H. latest inspection by the state board of pharmacy;
- I. New Mexico environment department approval of private water system, if applicable;
- J. New Mexico environment department approval of private waste or sewage disposal, if applicable;
- K. New Mexico environment department approval of the kitchen. NOTE: An approval of kitchen is not required if preparing meals is part of the training program of the clients of the facility and the facility has a letter of exemption on file from the New Mexico environment department;
- L. documentation of fire equipment and fire systems inspections;
- M. reports of client abuse and incidents involving clients.

[8.371.2.26 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.28 PHILOSOPHY, OBJECTIVES AND GOALS: Each facility licensed pursuant to these regulations must have a written outline of the philosophy, objectives, and goals it is striving to achieve that includes, at least:

- A. the facility's role in the state comprehensive program for ~~the mentally retarded~~ individuals with intellectual disabilities;
- B. the facility's goals for its clients to include but not limited to: an integrated active treatment program, homelike living environments and consumer protections;
- C. the facility's concept of its relationship to the parents or legal guardians of its residents;
- D. the facility's outline of the above must be available for distribution to staff, consumer representatives, and the interested public;
- E. the facility's promotion of informed decision making by the consumer;
- F. the facilities policies on utilization of community supports and how clients will be involved in the community.

[8.371.2.28 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.33 AGREEMENTS WITH OUTSIDE RESOURCES: If the [ICF/MR] ICF/IID does not employ a qualified professional to furnish a required service, it must have in effect a written agreement with a qualified professional outside the [ICF/MR] ICF/IID to furnish the required service. The agreement must:

- A. contain the responsibilities, functions, objectives, and other items agreed to by the [ICF/MR] ICF/IID and the qualified professional;
- B. be signed by the administrator or their representative and by the qualified professional;

C. the facility must assure that outside providers meet all appropriate state and federal requirements, and the quality of services meet the needs of the individual.
[8.371.2.33 NMAC - N, 7/1/2024; A, 9/1/2026]

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8.371.2.37 BUILDING(S), GROUNDS, AND SAFETY REQUIREMENTS:

A. Those programs which are located in a building which is licensed as a long term care facility or hospital must meet all the building requirements for that type facility as outlined in the following regulations:

- (1) Requirements for General and Special Hospitals, New Mexico health care authority, 8.370.12 NMAC.
- (2) Requirements for Long Term Care Facilities, New Mexico health care authority, 8.370.16 NMAC.

(3) Copies of these regulations may be requested from the licensing authority.

B. **Capacity of building(s):** All building requirements contained in these regulations are based on a maximum capacity of 15 clients. All facilities requesting licensure for more than 15 clients will have additional requirements according to the applicable building and fire codes. Due to the complexities of the building and fire codes these additional requirements will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review and on site surveys during the licensing process. Maximum capacity for any facility licensed after the effective date of revisions to these regulations is four clients. Exception: [ICF/MR] ICF/IID facilities may be licensed for a maximum capacity of six clients based upon a written plan that must be approved by the licensing authority prior to the facility's licensure. The plan must demonstrate the following:

- (1) the anticipated facility service benefits to the client population;
- (2) how the facility's services will promote, independence, active treatment and community supports;
- (3) how the facility's services will address the needs and protections of the proposed clients.

C. **Number of stories:** All building requirements contained in these regulations are based on buildings of one story, which do not house clients above or below ground level. Buildings which are multi-storied or house clients below ground level shall have additional requirements which vary due to the complexities of the building and fire codes. These additional requirements will be outlined by the appropriate building and fire authorities and by the licensing authority through plan review and on-site surveys during the licensing process.

D. **Additional requirements:** A facility applying for licensure pursuant to these regulations may have additional requirements not contained herein. The complexity of building and fire codes and requirements of city, county, or municipal governments may require these additional requirements. Any additional requirement will be outlined by the appropriate building and fire authorities, and by the licensing authority through plan review, consultation and on-site surveys during the licensing process.

E. **Access to the handicapped:** All facilities licensed pursuant to these regulations must be accessible to and usable by handicapped employees, visitors and clients.

F. **Prohibition on mobile homes:** Trailers and mobile homes must not be used as any part of a facility in which services and care are given to clients.

G. **Extent of a facility:** All buildings on the premises providing client care and services shall be considered part of the facility and must meet all requirements of these regulations.

H. **Individual living units** may not be located within 150 feet of each other.
[8.371.2.37 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.62 QUALIFIED ~~[MENTAL RETARDATION]~~ INTELLECTUAL DISABILITY

PROFESSIONAL: Each facility licensed pursuant to these regulations must have a qualified ~~[mental retardation]~~ intellectual disability professional. A qualified ~~[mental retardation]~~ intellectual disability professional is a person who has specialized training or one year of experience in treating or working with ~~[the mentally retarded]~~ individuals with intellectual disabilities and is one of the following:

- A. a psychologist with a masters degree from an accredited program;
- B. a licensed doctor of medicine or osteopathy;
- C. an educator with a degree in education from an accredited program;
- D. a social worker with a bachelors degree in:
 - (1) social work from an accredited program; or
 - (2) a field other than social work and at least three years of social work experience under the supervision of a qualified social worker.

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- E. a physical or occupational therapist who meets all criteria of the state or federal government as a physical or occupational therapist.
 - F. a speech pathologist or audiologist who meets all criteria of the state or federal government as a speech pathologist or audiologist.
 - G. a registered nurse licensed in the state of New Mexico.
 - H. a therapeutic recreation specialist who:
 - (1) is a graduate of an accredited program; or
 - (2) meets all criteria of the state or federal government as a therapeutic recreation specialist;
 - I. a rehabilitation counselor who is certified by the committee on rehabilitation counselor certification.
 - J. a human services professional who has at least a bachelor's degree in a human services field (including but not limited to sociology, special education, rehabilitation counseling, or psychology).
- [8.371.2.62 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.69 STAFF/CLIENT RATIOS: For each facility regardless of organization or design must have, as a minimum, overall staff/client ratios (allowing for a five day work week plus holiday, vacation and sick time) as shown below:

- A. Those facilities serving children under the age of six years, severely and profoundly ~~[retarded]~~ intellectually disabled, severely physically handicapped, or client's who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio is one staff member to three point two (3.2) clients.
 - B. Those facilities serving moderately ~~[retarded]~~ intellectually disabled clients requiring habit training, the overall ratio is one staff member to four clients.
 - C. Those facilities serving clients in vocational training programs and adults who work in sheltered employment situation, the overall ratio is one staff member to six point four (6.4) clients.
- [8.371.2.69 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.78 BEHAVIOR MODIFICATION PROGRAMS:

- A. "Aversive stimuli": things or events that a client finds unpleasant or painful that are used to immediately discourage undesired behavior may be used by the facility as a means of behavior modification.
 - B. "Time out": a procedure designed to improve a client's behavior by removing positive reinforcement when their behavior is undesirable may be used by the facility as a means of behavior modification.
 - C. Behavior modification programs involving the use of aversive stimuli or time out must be:
 - (1) reviewed and approved by the facility's human rights committee and the qualified ~~[mental retardation]~~ intellectual disability professional;
 - (2) conducted only with the consent of the affected client's parents or legal guardian;
 - (3) described in written plans that are kept on file in the facility;
 - (4) a physical restraint used as a time-out device shall be applied only during behavior modification exercises and only in the presence of the trainer.
 - (5) time-out devices and aversive stimuli may not be used for longer than one hour for time-out purposes involving removal from a situation, and then only during the behavior modification program and only under the supervision of the trainer.
- [8.371.2.78 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.91 SOCIAL SERVICES: The facility must provide, as part of an inter-disciplinary set of services, social services to each client directed toward:

- A. maximizing the social functioning of each client;
 - B. enhancing the coping capacity of each client's family;
 - C. asserting and safeguarding the human and civil rights of ~~[the retarded]~~ individuals with intellectual disabilities and their families;
 - D. fostering the human dignity and personal worth of each client;
 - E. the development of the discharge plan;
 - F. the referral to appropriate community resources.
- [8.371.2.91 NMAC - N, 7/1/2024; A, 9/1/2026]

8.371.2.96 **RELATED REGULATIONS AND CODES:** [HCF/MR] ICF/IID facilities subject to these regulations are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

- A. Health facility licensure fees and procedures, New Mexico health care authority, 8.370.3 NMAC.
- B. Health facility sanctions and civil monetary penalties, 8.370.4 NMAC.
- C. Adjudicatory hearings, New Mexico health care authority, 8.370.2 NMAC.
- D. Caregivers criminal history screening requirements, New Mexico health care authority, 8.370.5

NMAC.

[8.371.2.96 NMAC - N, 7/1/2024; A, 9/1/2026]

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