

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

Division of Health

AGENCY: Department of Health and Human Resources TITLE NUMBER: 78

CITE AUTHORITY W. Va. Code § 49-2B-4

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Child Placing Agencies Licensure

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Joan E. Ohl, Secretary

16.60

**Brief Summary of the Rule
Licensing Requirements for Child-Placing Agencies**

This proposed legislative rule repeals and replaces the existing Minimum Licensing Requirements for Child Placing Agencies. The rule contains the requirements that regulate Child Placing Agencies in the State of West Virginia. The Rule assures the health, safety and well-being of children placed in foster or adoptive homes in West Virginia by requiring full compliance with all Rule components. Full compliance with the Rule results in the issuance of a Child Placing License.

Statement of Circumstances Which Require the Proposed Rule

West Virginia State Code 49-2B-4 requires the promulgation, review and revision of the regulations governing the Child Placing License.

The commissioner shall promulgate rules for the purpose of carrying out the provisions of this article, to include the family day care registration program, within one hundred eighty days of the effective date hereof [Acts 1981, c. 44, July 10, 1981] pursuant to the provisions of chapter twenty-nine-a [§ 29A-1-1 et. seq.] of this code: Provided, That any rule promulgated as a result of the enactment of this section in the year one thousand nine hundred eighty-one need not be repromulgated.

The commissioner shall review the rules promulgated pursuant to the provisions of this article at least once every five years, making revisions when necessary or convenient. (1981, c. 44; 1989, c. 26.)

The current rule was written and adopted in 1982.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Child Placing Agencies Licensure, 78 CSR 2

Type of Rule: X **Legislative** _____ **Interpretive** _____

**Proce
dural**

Agency: Bureau for Children and Families/Office of Social Services
 Department of Health and Human Resources

Address: 350 Capitol Street, Room 730
 Charleston, WV 25301-3711

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$0	\$0	\$0	\$0	\$0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					
Revenue					

2. Explanation of above estimates:

Current staff will enforce and monitor the proposed rules. Costs will be incurred in printing and distributing the rules to interested parties. Costs are negligible and will be absorbed in current budget. Since these are replacement rules, the costs of regulatory enforcement are covered in the current budget.

3. Objectives of this rule:

The proposed Rule embodies those requirements which regulate Child Placing Agencies in the State of West Virginia. The Rule assures the health, safety and well-being of all children placed in foster or adoptive homes in West Virginia by requiring full compliance with all Rule components. Full compliance with the Rule results in the issuance of a Child Placing License.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government.

No additional costs will be incurred.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

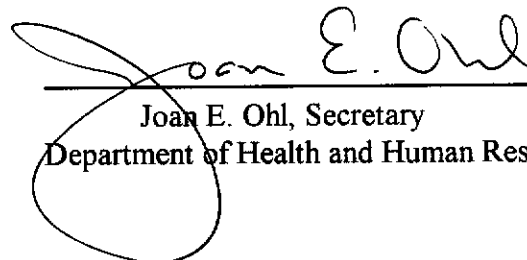
Licensed Child Placing Agencies, as now, will be required to continue their efforts to provide a higher standard of care for children placed in substitute living arrangements. This requires the development and implementation of training for employees and foster and adoptive parents. It also requires adequate record keeping, hiring qualified staff, appropriate quality assurance monitoring, and fiscal responsibility.

C. Economic Impact on Citizens/Public at Large.

None.

Date: August 30, 2000

Signature of Agency Head or Authorized Representative



Joan E. Ohl, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 30, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency name, Address & Phone No.) Division of Human Services
Department of Health and Human Resources
State Capitol Complex, Building 3, Room 201, Charleston, WV 25305
Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Child Placing Agencies Licensure

1. Authorizing statute(s) citation: WV Code Section 49-2B-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 26, 2000

b. What other notice, including advertising, did you give of the hearing?
Notice of the proposed rule was sent to members of the WV Child Care Association, all current Child Placing Agency license holders, all county WVDHHR offices, and public reception areas for DHHR offices.

c. Date of Public Hearing(s) or Public Comment Period ended:
August 25, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

78CSR2

TITLE 78
LEGISLATIVE RULES
DIVISION OF HUMAN SERVICES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

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SECRETARY OF STATE

SERIES 2
CHILD PLACING AGENCIES LICENSURE

§78-2-1. General.

1.1. Scope. -- This rule establishes standards and procedures for the licensure of child placing agencies under the provisions of W. Va. Code §49-2B-1 et seq., and related federal and state codes. The W. Va. Code is available in public libraries and on the Legislature's webpage, <http://www.legis.state.wv.us/>.

1.2. Authority. -- West Virginia Code § 49-2B-4.

1.3. Filing Date. -- , 20__.

1.4. Effective Date. -- , 20__.

1.5. Repeal and Replacement of Former Rule. -- This legislative rule repeals and replaces "Minimum Licensing Requirements for Child Placing Agencies in West Virginia," 78CSR2, effective June 1, 1982.

§78-2-2. Application and Enforcement.

2.1. Application. -- This rule applies to agencies that place children in temporary living arrangements.

2.2. Enforcement. -- This rule is enforced by the Secretary of the Department of Health and Human Resources.

§78-2-3. Definitions.

3.1. Aftercare. -- Services to be provided subsequent to a child's or young adult's discharge from placement as identified in the discharge plan.

3.2. Agency. -- A child placing agency.

3.3. Case Record. -- A comprehensive collection of information about a child in the care of a child placing agency.

3.4. Certificate of License. -- A written certificate issued by the Secretary authorizing an individual, corporation, partnership, voluntary association, municipality, county or an agency thereof, to provide specified child placing services for a limited period of time in accordance with the terms and conditions of the certificate and this rule.

3.5. Child. -- A person less than eighteen (18) years of age.

3.6. Child Abuse and Neglect. – Physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child’s welfare, under circumstances which harm or threaten the health and welfare of the child.

3.7. Child Placing Agency. -- A child welfare organization, other than one operated by the state, established for the purpose of placing children in private family homes or other approved living arrangements for foster care or for adoption.

3.8. Child’s Case Plan. – A comprehensive document prepared by the Department pursuant to the requirements of WV State Code §49-6-5 following an adjudication by the court that the child is an abused and/or neglected child, that directs the provision of all casework services including the services provided to the child.

3.9. Child-specific training. -- Training provided to respond to the specialized needs of a child.

3.10. Community re-entry program. -- A specialized group setting which provides twenty-four (24) hour supervision administered by the agency, developed for children targeted to return to their community.

3.11. Criminal Identification Bureau Record (CIB). -- A fingerprinting process that identifies those who have been arrested or convicted of criminal behavior.

3.12. Crisis Intervention Skills and Techniques.-- Methods used to de-escalate situations that could result in harm to individuals or property.

3.13. Crisis Support. -- The use of crisis intervention skills and techniques.

3.14. Department. -- The West Virginia Department of Health and Human Resources.

3.15. Discharge. -- The termination of a child’s affiliation with an agency.

3.16. Discipline. -- A system of rules governing conduct that usually prescribes consequences for the violation of rules.

3.17. Disruption. -- An event that results in the decision that an adoptive or foster care placement will not continue.

3.18. Foster Family Home. -- A private residence used for the residential care of five (5) or less children who are unrelated by blood or adoption to any adult member of the household.

3.19. Goal. -- An expected result or condition that takes time to achieve, is specified in a statement of relatively broad scope, and provides guidance in establishing intermediate objectives directed toward its attainment.

3.20. Guardian. -- A person or persons, the Department of Health and Human Resources, or the Department of Military Affairs and Public Safety, as a result of any contract, agreement, or legal proceedings, who has legal custody of a child.

3.21. **Governing Board.** -- The group of persons that has the administrative control and legal authority to set policy and oversee operations of an agency.

3.22. **Incident.** -- An act or series of acts which violates reasonable expectations or behavior and has the potential to place a child or others at risk.

3.23. **Institutional Investigative Unit.** -- A unit of the Department authorized by the Secretary to investigate complaints of child abuse or neglect in an agency.

3.24. **Intake Service Plan.** -- A plan developed when the child initially enters placement to assure that the child receives appropriate care while in placement. If the child is in the Department's custody, and if a Safety Plan or a Child's Case Plan exists, they must be incorporated in the Intake Service Plan.

3.25. **Life Skills.** -- Tasks, abilities, or knowledge required to perform the activities of daily living.

3.26. **Multi Disciplinary Team (MDT).** -- A group of representatives from disciplines including medical, child care, law-enforcement, social work, psychology and psychiatry who together identify and treat cases of child abuse and neglect with continuity and follow-up for parents and children.

3.27. **Multi Disciplinary Treatment Team.** -- A treatment team that includes the child's custodial parent(s) or guardian(s), other immediate family members, the attorney(s) representing the parent(s) of the child, the child if he or she is over the age of twelve (12) or the child's participation is deemed appropriate, the guardian ad litem, the prosecuting attorney, and any other person who may contribute to the team's efforts to assist the family.

3.28. **Objective.** -- An expected result or outcome that is stated in measurable terms, has a specified time for achievement, and is related to the attainment of a goal.

3.29. **Passive physical restraint.** -- A recognized behavior control method that requires the least amount of direct physical contact to prevent a child from harming himself, herself or others.

3.30. **Placement.** -- A change of living arrangement, or the ongoing care of a child in an adoptive or foster home, group facility, or other approved living situation.

3.31. **Placement Agreement.** -- A written document signed by the child's parent or guardian and a representative of the agency, that specifies the terms of the child's placement.

3.32. **Plan of Correction.** -- A written agreement between the Department and an agency, approved prior to implementation, that outlines the steps an agency will take to correct deficiencies identified by the Department through an inspection or the investigation of a complaint.

3.33. **Policy.** -- A statement of the principles that guide and govern the activities, procedures and operations of a program.

3.34. **Procedures.** -- The methods by which a policy is carried out.

3.35. **Program.** -- A system of services provided to those who use the agency.

3.36. **Psychotropic Medication.** -- Drugs that affect the mind, mood, behavior, or other mental processes.

3.37. Respite Care. -- Alternative short term care.

3.38. Restraint. -- Restriction of a child's freedom of movement as a behavior control means.

3.39. Rules. -- A set of requirements issued by the Secretary to regulate child placing agencies.

3.40. Secretary. -- The Secretary of the Department of Health and Human Resources or his or her designee.

3.41. Service Plan. -- A comprehensive, time limited, goal oriented, individualized plan based on a thorough evaluation of the child's needs that describes the services, program, treatment and educational needs of a child in care, incorporating any Child's Case Plan or Safety Plan developed through the MDT process.

3.42. Statement of Child Abuse or Neglect History Form. -- A document signed by a prospective employee or prospective foster or adoptive parent granting permission to conduct a search of Department records related to their involvement in child abuse or neglect allegations, or other investigations documented by the Department.

3.43. Statement of Criminal Record. -- A signed declaration by a prospective employee or prospective foster or adoptive parent of his or her arrests or convictions.

3.44. Transitional Living. -- A supervised living arrangement developed to assist children or young adults in the custody of the Department in acquiring skills and competencies to become independent.

3.45. Transitional Living Scattered Site Apartments. -- Placement arrangements for children or young adults in Transitional Living in apartments that are single-unit dwellings located throughout a community.

3.46. Transitional Living Training Center-Based Apartments. -- Placement arrangements for children or young adults in Transitional Living, in an apartment complex with multi-unit apartments, one of which serves as staff quarters, and that are co-located with educationally-based programs.

3.47. Universal Precautions -- A collection of medically related behaviors, procedures, and protocols designed to minimize the risk of disease transmission and contamination.

3.48. Variance. -- A written declaration by the Secretary that a certain requirement of this rule may be satisfied in a manner different from the manner set forth in the rule.

3.49. Waiver. -- A written declaration by the Secretary that a certain requirement may be treated as inapplicable in a particular circumstance.

3.50 Young Adult. -- A person not less than eighteen (18) years of age and not more than twenty-one (21) years of age.

§78-2-4. Licensing Information and Provisions.

4.1. Child Placing Licensing Requirements.

4.1.a. Before establishing, operating, or accepting children for placement in the State of West Virginia, an agency other than one operated by the state, shall obtain a license from the Secretary.

4.1.b. A regular license shall be valid for two (2) years from the date of issuance, unless revoked or modified to provisional status.

4.1.c. A license shall be valid only for the agency named in the application and shall not be transferable.

4.1.d. When the ownership of an agency changes, the new owner shall apply for a license and shall not operate until a provisional license is issued.

4.1.e. An agency shall post the license in a conspicuous place at its principal place of business.

4.2. Application Procedures for a License.

4.2.a. To apply for a license an agency shall submit a completed application obtained from the Department and the following additional written information:

4.2.a.1. Documentation of the legal authority authorizing the organization of the agency;

4.2.a.2. A list of the members of the governing board and employees of the agency;

4.2.a.3. The agency's mission statement;

4.2.a.4. The agency's description of the expectation for the involvement of biological families in supporting the health and welfare of their child;

4.2.a.5. An operating budget for the first fiscal year of operation and documentation of funds in escrow or a credit line equal to the operating budget projected for a six (6) month period;

4.2.a.6. A statement from an independent certified public accountant (CPA) that proper accounting procedures, including an annual audit from a CPA, are in place for the agency;

4.2.a.7. Proof of liability and fire insurance;

4.2.a.8. A copy of the agency's administrative manual;

4.2.a.9. The packet of forms that will be used to compile a complete case record for children placed, foster or adoptive parents, the home review process, and employees of the agency;

4.2.a.10. The orientation training curriculum for foster and adoptive parents;

4.2.a.11. The agency's employment policies, including detailed job descriptions and the hiring plan;

4.2.a.12. A plan for the training, supervision, and evaluation of employees of the agency;

4.2.a.13. Information on current agency employees; and

4.2.a.14. The fee or reimbursement schedule and procedures for payment of fees or reimbursements to foster and adoptive parents.

4.2.b. The agency shall be subject to an investigation that includes but is not limited to:

4.2.b.1. Evaluation of the quality of the program, the proposed services, and the agency's ability to carry them out effectively in the best interest of the children to be served;

4.2.b.2. Complete background information on applicant and principal owners, including a financial statement, a physical exam within six (6) months of application, and character references;

4.2.b.3. A criminal investigation bureau report for each applicant, owner and employee of the agency; and

4.2.b.4. A current physical exam report for each employee of the agency.

4.3. Amendment of a License.

4.3.a. When implementing a new service or changing a program, an agency shall submit an application for a proposed amendment to the license.

4.4. Issuance of a Provisional License.

4.4.a. The Secretary may issue a provisional license to an agency when:

4.4.a.1. There is insufficient information or program time for an agency to demonstrate compliance with this rule;

4.4.a.2. An agency makes an amendment to an application; or

4.4.a.3. A licensed agency is temporarily unable to demonstrate compliance with this rule and has submitted a plan of correction approved by the Secretary.

4.4.b. A provisional license shall expire six (6) months after the date of issuance and may be reissued no more than two (2) consecutive times.

4.5. Renewal of a License.

4.5.a. An agency shall submit a renewal license application form to the Secretary not less than sixty (60) days prior to the expiration of the current license, and additional information requested to show continuing compliance with the provisions of W. Va. Code §49-2B-1 et seq. and this rule.

4.5.b. The Secretary shall not renew the license when an agency is unable to demonstrate compliance with this rule within eighteen (18) months of the provisional license issuance.

4.6. Revocation of a License.

4.6.a. The Secretary may revoke an agency's license based on failure to maintain compliance with the provisions of W. Va. Code §49-2B-1 et seq., the requirements of this rule, the terms and conditions of its license and any plan of correction.

4.6.b. When the Secretary determines that an agency's operation constitutes a risk of harm to a child placed by that agency, he or she shall issue an order of closure terminating operation of the agency.

4.6.c. When the Secretary has revoked a license, an agency shall not operate pending administrative or judicial review, or without a court order.

4.6.d. When a license is revoked by the Secretary, he or she shall immediately direct the placement of children in the care of that agency into alternative care.

§78-2-5. Inspections, Complaints, Plans of Correction and Waivers.

5.1. Inspections.

5.1.a. An agency shall permit the Secretary unrestricted access to the agency to conduct announced and unannounced inspections of all aspects of its operation and premises.

5.1.b. An agency shall permit review of an agency's case records, corporate and financial records, board minutes and employment files as desired during an inspection.

5.1.c. An agency shall permit access to agency employees, members of the governing board and consumers receiving services from the agency as desired during an inspection.

5.2. Investigation of Complaints.

5.2.a. An agency shall provide all information requested by the Secretary and the Institutional Investigative Unit in the investigation of a complaint.

5.2.b. An agency's internal investigation shall be limited to ensuring the safety of the children in placement.

5.2.c. For a complaint alleging sexual abuse or serious physical injury to a child in placement by an employee, an agency shall remove the employee and discontinue the employee's contact with the children until an investigation is completed and a determination is made.

5.2.d. For a complaint alleging sexual abuse or physical injury to a child in placement by a foster or adoptive parent, an agency shall require immediate removal of the foster or adoptive children in that home to other appropriate care, and the agency shall ensure that the foster or adoptive parents discontinue contact with the children until an investigation is completed and a determination is made.

5.3. Plan of Correction.

5.3.a. After a complaint investigation, the Secretary may require an agency to submit a plan of correction within thirty (30) days of the date of receipt of the written summary.

5.3.b. An agency shall not implement a proposed plan of correction prior to approval by the Secretary.

5.3.c. Within ten (10) days of notification of the Secretary's approval of a plan of correction, an agency shall implement the plan, unless the approved plan specifies otherwise.

5.3.d. When the Secretary does not approve a proposed plan of correction, an agency shall submit another plan of correction within 7 (seven) working days.

5.4. Waivers and Variances.

5.4.a. An agency shall comply with the provisions of West Virginia Code §49-2B-1 et seq., the requirements of this rule, terms of its licensure and any plan of correction, unless a written waiver or variance has been granted by the Secretary.

5.4.b. An agency's written request for a waiver or variance from the Secretary shall include:

5.4.b.1. The specific requirement of this rule requested to be waived or varied; and

5.4.b.2. The reason or reasons for seeking a waiver or variance.

§78-2-6. Governance.

6.1. Administrative Manual.

6.1.a. An agency's policies and detailed plan of operations, including the dates of implementation, shall be written in an administrative manual that is available to employees.

6.1.b. An agency shall operate in accordance with its policies and plan of operations contained in the administrative manual.

6.1.c. Prior to applying for license renewal, an agency shall review the administrative manual to ensure continued compliance with this rule.

6.1.d. Employees shall have the opportunity to participate in the administrative manual review.

6.2. Legal Operating Authority.

6.2.a. An agency shall establish proof of the legal authority for the operation of an agency by proof of a certificate of association or incorporation issued by the West Virginia Secretary of State confirming that an agency is organized to do business in the state and is in good standing.

6.2.b. An agency shall have its charter, bylaws, partnership agreement, articles of association or incorporation or other documentation available for inspection at its principal place of business, including complete information about the owners, and a list of the names, addresses, phone numbers, and terms of office for the officers and governing board.

6.3. Governing Board.

6.3.a. An agency shall have a governing board or other supervisory structure whose responsibilities include:

6.3.a.1. Setting policy, defining and overseeing services, and being legally accountable for the operation of an agency;

6.3.a.2. Implementing a statement of purpose that sets forth an agency's goals and objectives, and defines the services and programs to be offered to meet the goals and objectives;

6.3.a.3. Developing the policies and procedures relating to the operation of its services and programs;

6.3.a.4. Overseeing procedures to maintain and ensure compliance with the provisions of West Virginia Code §49-2B-1 et seq., the requirements of this rule, and the terms of a license or plan of correction.

6.3.b. The governing board shall meet at least quarterly and keep a permanent written record of the minutes of all meetings of the board and its committees.

6.3.c. The governing board shall appoint a full-time executive director to manage the daily operations of an agency.

6.3.d. When changing an executive director, the governing board shall notify the Secretary in writing.

6.3.e. The governing board shall conduct an annual evaluation of the executive director and direct any necessary disciplinary actions regarding his or her job performance.

6.3.f. No employee, member of an employee's family, or an employee of a public agency that regulates, purchases the services of, or is responsible for placement decisions, shall serve on the governing board of the agency.

6.4. Standards of Ethical Conduct.

6.4.a. An agency shall have written standards of ethical conduct for its governing board and the employees.

6.4.b. An agency shall not misrepresent or operate a service or program in any way that is misleading, deceptive or illegal.

6.5. Confidentiality.

6.5.a. Anyone who obtains confidential information while implementing W. Va. Code §49-2B-1 et seq. may disclose it only to persons demonstrating a need that is essential to this rule or as required by law.

6.5.b. An agency shall maintain the confidentiality of all records in accordance with the provisions of W. Va. Code §49-7-1 and other applicable laws.

6.5.c. An agency that maintains records on computer disks or by other electronic storage means shall secure them against loss, tampering, or unauthorized use in accordance with the provisions of West Virginia Code §61-3C-1 et seq.

6.5.d. An agency shall include in the administrative manual the policy and procedures for the disclosure, maintenance and security of its records.

6.5.e. An agency shall provide specific training for employees, foster parents, and adoptive parents on policy and procedures for confidentiality and information disclosure.

6.5.f. An agency shall obtain the written consent of the child's biological parents or guardian before a child may participate in a publicity event for an agency.

6.5.g. An agency shall use any photographs, audio or video recordings, or statements of a child in placement only in a manner that respects and promotes the best interests of the child and with permission of the child's biological parent or guardian.

6.5.h. An agency shall secure records against loss, tampering, or unauthorized use by maintaining records in an appropriate storage space and by establishing a protocol for restricting access to records to authorized employees.

6.5.i. An agency shall delete an individual's name and other identifying information when its disclosure may violate the right of privacy.

6.5.j. An agency shall delete an individual's name and other identifying information when using it for educational or research purposes.

6.5.k. When an agency ceases operation, it shall have a procedure for the secure storage or disposition of all of its records.

6.6. Records. An agency shall maintain accurate records for the following:

6.6.a. Children in Placement. Each child's or young adult's record shall include:

6.6.a.1. The child's name, social security number, sex, race, religion, birth date and birthplace;

6.6.a.2. An itemized list of the documents in the record that are required to be maintained by this rule, and the date that each document was received and completed;

6.6.a.3. A current photograph that is to be updated annually;

6.6.a.4. The name, address, telephone number and marital status of the child's biological parents or guardian;

6.6.a.5. The names, addresses, and telephone numbers of the foster or adoptive parents where the child is placed, including the dates of placement and removal;

6.6.a.6. The date of placement, name, address and telephone number of the referring agency, the names of the placing worker and his or her supervisor, and an emergency contact's name and telephone number;

6.6.a.7. The names, addresses, and telephone numbers of the medical and other professional persons directly involved in providing ongoing care for the child;

6.6.a.8. Information about the child's allergies, medical conditions or current prescribed medications;

6.6.a.9. The name, address and telephone number of the school, the name of the primary teacher or other school contact person, or the name, address and telephone number of the child's employer;

6.6.a.10. Information from the placing worker who referred the child to an agency, including:

6.6.a.10.A. The family assessment and social summary;

6.6.a.10.B. The current legal custody status;

6.6.a.10.C. A list of prior placements with dates and summaries of the discharges;

6.6.a.10.D. A copy of the birth certificate or other verification of a birth date;

6.6.a.10.E. Complete education, progress and health records; and

6.6.a.10.F. All Department placements require a social security card or verification that an application has been made.

6.6.a.11. The placement agreement;

6.6.a.12. Consent forms signed by the biological parents or guardian authorizing the agency to provide all necessary services and care; and

6.6.a.13. An individualized strength based assessment that includes all service and treatment plans, casework activities, counseling reports, special incident reports and an aftercare plan.

6.6.b. Foster and Adoptive Parents. Each record for them shall include:

6.6.b.1. An itemized list of the documents required to be maintained by this rule, and the date that each document was received and completed;

6.6.b.2. The names, birth dates, social security numbers and schools or work places for each household member;

6.6.b.3. The address, telephone number and directions to the home;

6.6.b.4. The date and conditions of approval as foster or adoptive parents;

6.6.b.5. A list of all placements with the child's name, dates of placement and removal, and a removal summary statement;

6.6.b.6. Documentation and verification of the financial status, marital status, medical examination, and a written report of the interviews with the references;

6.6.b.7. A narrative report of the initial home study, annual home reevaluation and recertification;

6.6.b.8. A letter of approval or denial from an agency including terms and conditions of the approval or denial and any other written agreements or memoranda of understanding;

6.6.b.9. Documentation of orientation training and continuing training as required under this rule;

6.6.b.10. A written statement of acknowledgment by the foster or adoptive parents that they have received a copy of the policies and procedures of an agency regarding the care and placement of a child;

6.6.b.11. A completed Statement of Criminal Record form, the CIB report, and any approved waivers from the Secretary;

6.6.b.12. A completed "Statement of Child Abuse or Neglect History" form;

6.6.b.13. Special incident reports, investigations of child abuse or neglect allegations, noncompliance with an agency's policies or procedures or the requirements of this rule;

6.6.b.14. Plans of correction; and

6.6.b.15. The date of closure and closure summary report.

6.6.c. Employees. Each record for an employee shall include:

6.6.c.1. The employee's application for employment or a resume;

6.6.c.2. The employee's position, title, job description, date of hire and date of separation from employment;

6.6.c.3. Three (3) letters of reference, two (2) of which shall be professional or educational, to be obtained before an employee is hired;

6.6.c.4. Documentation of credentials and certifications;

6.6.c.5. The employee's emergency notification information;

6.6.c.6. A health assessment, including a physical examination, a tuberculosis test with a negative result performed within three (3) months of the date of employment, and a report of any health related limitations or communicable diseases that may impair his or her ability for the job;

6.6.c.7. A job performance evaluation completed at three (3) months and at six (6) months, and copies of subsequent annual evaluations;

6.6.c.8. Reports of any actions or incidents relating to employment;

6.6.c.9. Verification of completion of required training, including information on the course title, date and hours of instruction, and name of instructor;

6.6.c.10. A completed "Statement of Criminal Record" form, the CIB report and any approved waivers from the Secretary;

6.6.c.11. A Completed "Statement of Child Abuse or Neglect History" form;

6.6.c.12. Acknowledgment of receipt of the agency's employee manual; and

6.6.c.13. A notice of resignation or termination from the agency.

6.6.d. Biological Parents. Each record for them shall include:

6.6.d.1. The names, addresses, telephone numbers, dates of birth, social security numbers and marital status of the biological parents;

6.6.d.2. Description of all services and programs provided to parents;

6.6.d.3. Information regarding status of parental rights including consent to adopt, determination of paternity, relinquishment of parental rights, court orders, and revocation of consent to adopt; and

6.6.d.4. Written agreements and authorized releases regarding the extent of information disclosure between the biological parents and their child.

6.7. Operating Oversight.

6.7.a. Quality Assurance Program. An agency shall have a written protocol for quality assurance that monitors and evaluates the agency services and programs and includes:

6.7.a.1. Policies and procedures necessary to maintain the highest quality care for the children in care and includes employee and client participation in the quality assurance program;

6.7.a.2. Policies and procedures for correcting a practice of noncompliance with the provisions of W. Va. Code §49-2B-1 et seq. and this rule; and

6.7.a.3. An annual written evaluation of the agency's effectiveness including a review of the following:

6.7.a.3.A. The goals, objectives and priorities;

6.7.a.3.B. The organizational structure, services and programs;

6.7.a.3.C. The number of referrals received and a list of children placed in each service, and the number of referrals denied by an agency and the reasons for those denials;

6.7.a.3.D. The number of children placed by the agency, and the number referred to another placement;

6.7.a.3.E. The number and nature of grievances filed and of accidents or incidents reported;

6.7.a.3.F. The number of times a child has been transferred from one placement to another and the reasons for each transfer;

6.7.a.3.G. The number of discharges, reasons for each and where each child was placed upon discharge;

6.7.a.3.H. The number of children placed in permanent foster care and adoption.

6.7.a.3.I. The number of employee terminations and the reasons for them;

6.7.a.3.J. The number, nature, and reasons for the use of passive physical restraints by an agency in its services or programs; and

6.7.a.3.K. The number and nature of complaints, investigations, and resulting plans of correction.

6.7.b. Emergencies and Incidents. An agency shall have an emergency telephone system available twenty-four (24) hours a day, seven (7) days a week, and have procedures in place for:

6.7.b.1. Reporting an allegation of abuse or neglect to the director, the Institutional Investigative Unit, the placing worker and the child abuse hotline;

6.7.b.2. Reporting an emergency or an incident of harm, abuse or neglect, a suicide attempt, suspected criminal activity, juvenile delinquent activity, a medical emergency, a death, or suspected use of illicit substances;

6.7.b.3. Identifying and reporting a child who is absent without leave to the guardian or child abuse hotline and a law enforcement authority within twenty-four (24) hours;

6.7.b.4. Removing the child from the present location and from further contact with the alleged adult offender until an investigation is complete, obtaining medical care and notifying law enforcement;

6.7.b.5. Writing a report of the emergency or incident to the director within forty-eight (48) hours of the date of the emergency or incident, that includes a complete description of the occurrence, the date and time it occurred, names of the individuals involved, precipitating factors, statements of witnesses, immediate actions taken by employees or other persons and other relevant information concerning the incident;

6.7.b.6. Changing the child's service plan or changing policy and procedures at the recommendation of the Secretary following an emergency or incident; and

6.7.b.7. Training employees and foster or adoptive parents in the protocol for emergencies and incidents during orientation.

6.7.c. Universal Precaution Policies and Procedures. An agency shall train employees and foster or adoptive parents on the policies including:

6.7.c.1. The prevention, recognition and treatment of infectious and communicable diseases, including sexually transmitted diseases; and

6.7.c.2. The risks of exposure to infectious agents, materials and instruments, and the control and disposal of them.

6.7.d. Noncompliance with an Agency's Policies. An agency's protocol shall:

6.7.d.1. Identify when employees and foster or adoptive parents are found to be in substantiated noncompliance with its policies and procedures that require a plan of correction or that provide grounds for suspension, dismissal, or closure; and

6.7.d.2. Establish time limits on the plan of correction and provide for its monitoring.

§78-2-7. Staffing Process.

7.1. Staffing Plan.

7.1.a. An agency shall have a staffing plan to provide for the effective implementation of its services and programs that includes a job description detailing the responsibilities, qualifications, and supervisory chain of command for each position in the agency.

7.1.b. Each separate service or program shall have a designated supervisor.

7.1.c. The staffing plan shall set a policy for the ratio of supervisors to employees based on the education and experience level of the supervisory position that can be adjusted for part-time supervisors or inexperienced employees, to ensure adequate guidance and support for each employee.

7.1.d. The staffing plan shall include a policy on case load size and the frequency and nature of contact with children.

7.1.e. The staffing plan shall be revised as needed to reflect changes in services and programs.

7.2. Employment Policies. An agency shall have written employment policies that include:

7.2.a. A statement that an agency is a nondiscriminating employer with regard to race, color, creed, religion, sex, national origin, disability, age or marital status;

7.2.b. Information on employment benefits including sick leave, vacation time and holidays;

7.2.c. Information on probationary periods and tenure provisions, if applicable;

7.2.d. Termination procedures, including resignation, retirement, suspension, layoff and dismissal;

7.2.e. Information on the liability insurance coverage provided by an agency;

7.2.f. A requirement that all employees complete a Statement of Criminal Record form and a CIB records check before employment;

7.2.g. A procedure for an immediate suspension upon any felony or misdemeanor indictment for an offense against a person, public indecency, or violation of the Uniform Controlled Substances Act, W. Va. Code §60A-1-101 et seq., until the charges are resolved, and a requirement for the employee to notify the director of any criminal indictment within twenty-four (24) hours. This procedure shall require that an employee convicted of these charges will no longer be permitted to provide direct services to children and their families.

7.2.h. A policy on the Statement of Child Abuse or Neglect History form stating:

7.2.h.1. Upon employment, employees shall sign and date a statement that defines child abuse or neglect, as defined in subsection 3.6. of this rule, and outlines the employee's responsibility to report immediately any suspected incident of child abuse or neglect to the executive director or his or her designee, to the Institutional Investigative Unit, and to the Child Abuse Hotline, 1-800-352-6513, in accordance with W. Va. Code §49-6A-1 et seq.; and

7.2.h.2. An employee who is alleged to have sexually abused or otherwise injured a child shall be immediately suspended from working with any child in placement pending the outcome of the investigation.

7.2.i. A general code of conduct policy on the relationship between employees, a child in placement and his or her family including provisions:

7.2.i.1. That contact be case-related only as described in the child's service plan, and continue only as specified in the plan; if a child who has been discharged from the program initiates contact with an employee, the employee shall report the nature of the contact to the director or his or her designee within twenty-four (24) hours;

7.2.i.2. That excursions are case-related only;

7.2.i.3. That a child shall not stay overnight in the home of an employee, and that any other daytime home visit, including a holiday, shall have prior documented approval from the child's guardian and the agency director that states the purpose, duration and names of those who will be present during the contact;

7.2.i.4. For gift giving among employees, the children and the families;

7.2.j. A policy that employees applying to be foster or adoptive parents shall:

7.2.j.1. Not be considered for foster or adoptive parenting by the agency that employs them, but before consideration for approval by another agency, the employing agency's director shall provide a reference; and

7.2.j.2. Not be supervised by the agency that employs them if a foster or adoptive child is placed in the employee's home;

7.2.k. A grievance procedure for employees; and

7.2.l. A policy on tobacco, alcohol, and drug use by employees.

7.3. Employee Manual. An agency shall have a manual of policies and procedures, revised for legislative changes or at the direction of the Secretary, to be provided to each employee upon employment and to each applicant upon request, that includes:

7.3.a. The information and documentation required under this rule; and

7.3.b. The date of implementation, review or revision.

§78-2-8. Employee Requirements.

8.1. Qualifications. An agency shall employ individuals whose education, training, experience and personal qualities contribute to the effective implementation of the program and the maximum health and safety of children in placement, and have the following qualifications of each position.

8.1.a. The Executive Director shall have a minimum of:

8.1.a.1. A Master's Degree in a human services field and five (5) years of experience in the human services field; or

8.1.a.2. A Bachelor's degree in a human services field and seven (7) years of experience in the human services field.

8.1.b. Administrative and Supervisory employees, including the Assistant Director, Program Director, and Case Management Supervisor shall have:

8.1.b.1. A valid West Virginia professional license in their fields; and

8.1.b.2. A Master's degree in a human services field and one (1) year of experience in a human services field, at least one (1) year of which is in child welfare services; or a Bachelor's degree in a human services field, two (2) years of experience in a human services field, at least one (1) year of which is in child welfare services.

8.1.c. Clinical and Therapeutic employees, including Physicians, Counselors, Clinical or Certified Social Workers, and Psychologists shall have valid West Virginia professional licenses in their fields and shall operate within the scope of their practice under W. Va. Code Chapter 30, Articles 3, 14, 21, 30 or 31.

8.1.d. Case Managers and Homefinders shall have:

8.1.d.1. Valid West Virginia Board of Social Work Examiners licenses; and

8.1.d.2. A Bachelor's degree in a human services field and one (1) year experience in child welfare services; or a Bachelor's degree in a human services field and three (3) years of experience in child welfare services.

8.1.e. Para-Professional employees shall have:

8.1.e.1. A high school diploma or GED and be at least twenty-one (21) years of age;

8.1.e.2. Training and supervised practice during the first six (6) months of employment as prescribed in this rule; and

8.1.e.3. If they provide direct services to clients, in addition to the general required training and supervised practice, completed client-specific training on the services they provide and have documentation from the training supervisor that they are competent to deliver the services.

8.2. Training and Development. An agency shall have a comprehensive plan for employee orientation, ongoing training, development and supervisory review, including performance and program evaluations.

8.2.a. Orientation Training. An agency shall require that all employees involved in child placing services within three (3) months of employment, complete a minimum of forty (40) hours of orientation training in areas including:

8.2.a.1. The agency philosophy, goals and objectives;

8.2.a.2. Overview of the agency's operations;

8.2.a.3. Licensing rules and legal aspects of substitute care;

8.2.a.4. Service planning process;

8.2.a.5. Interviewing techniques;

8.2.a.6. Conflict de-escalation and conflict resolution;

8.2.a.7. Crisis intervention and methods of passive restraint; and

8.2.a.8. Mandatory reporting requirements for child abuse and neglect.

8.2.b. First Aid and CPR Training. An agency shall require that all employees within the first three (3) months of employment receive First Aid and CPR training appropriate to the age of children they serve.

8.2.c. Supervised Practice. An agency shall require that on completion of the orientation training and before assuming full responsibility, all employees providing direct services to clients receive twenty (20) hours of one-on-one supervised practice in their specific job functions with an employee who has a minimum of one (1) year of experience in performing similar job functions to that of the employee in training.

8.2.d. Ongoing Training.

8.2.d.1. An agency shall require that all employees providing direct services to clients receive at least twenty (20) hours of ongoing training within six (6) months of employment in areas including assessment of family dynamics, human growth and development, values and cultural diversity, ethics, child abuse and neglect issues, and behavior management.

8.2.d.2. An agency shall require that after the first year of employment, all employees providing direct services to clients, complete a minimum of twenty-five (25) hours of training per year, fifteen (15) hours of which shall be directly related to the employee's responsibilities.

8.2.e. Supervisory Review.

8.2.e.1. An agency shall set a policy requiring all employees to receive regular, planned supervisory reviews through individual conferences and meetings, the frequency determined by the experience of an employee and the amount of consultation and guidance needed.

8.2.e.2. An agency shall require a supervisor to complete performance evaluations for each employee after the first three (3) months, six (6) months and annually. The evaluation, a copy of which shall be given to the employee, shall include setting goals and objectives for an employee, be signed and dated by the supervisor and the employee, and give the employee an opportunity to respond in writing.

8.3. Contracted Professional Services.

8.3.a. An agency shall verify that all contracted professional services are certified or licensed in the service they are providing, according to W. Va. Code §30-1-1 et seq.

8.3.b. An agency shall have a written agreement with contracted professionals who provide direct services to a child in placement describing the specific services to be provided.

8.3.c. A contracted professional providing direct services to a child in placement shall provide written reports to the child's case manager.

8.4. Volunteers.

8.4.a. An agency who uses volunteer services, including student field placements and internships, shall have a plan for their specific use, shall provide that an agency employee oversee their service, and shall provide training prior to their beginning service on:

8.4.a.1. The policies, procedures, goals and objectives of the agency;

8.4.a.2. The service planning process;

8.4.a.3. The services offered and the volunteer's role on the team;

8.4.a.4. The policies on confidentiality;

8.4.a.5. The policies on reporting child abuse or neglect;

8.4.a.6. The code of conduct between employee and children; and

8.4.a.7. The emergency protocol.

8.4.b. An agency shall require volunteers to provide references, complete a Statement of Criminal Record form and complete a Child Abuse or Neglect History form.

8.4.c. An agency shall require that volunteers have a physical examination and a tuberculosis test with negative test results within three (3) months of providing services to children and once a year after that, establishing that a volunteer is physically and mentally capable of providing services.

8.5. Adoption Services or Foster Care Handbook.

8.5.a. An agency that provides adoption or foster care services shall operate the program in accordance with this licensing rule, stating the necessary policies, procedures, laws and forms in a handbook given to the adoption and foster care parents.

8.5.b. An agency shall review and revise policies and procedures according to legislative changes under W. Va. Code §49-2B-1 et seq. or per the Secretary's directive during a licensure application, and shall record the dates of implementation and revision.

8.5.c. An agency shall give foster, adoptive and biological parents the opportunity to participate in the review and revision process.

§78-2-9. The Child's and Family's Basic Rights.

9.1. For the child and the biological family, an agency shall ensure the following rights:

9.1.a. Equal access to services regardless of race, religion, ethnicity, gender, disability, or sexual orientation;

9.1.b. Services consistent with identified needs in the least restrictive environment available;

9.1.c. Interdisciplinary, therapeutic services that meet a child's physical, emotional, social, educational and financial needs;

9.1.d. Active participation and respect as an individual during the delivery of services process;

9.1.e. Reasonable privacy;

9.1.f. Contact between a child and his or her biological family shall not be restricted as a means of punishment or in any way except as specified by court order or documented in the child's service plan and visits shall take place during hours different from an agency's business hours when the family cannot visit during those hours, and shall be arranged and take place with the prior knowledge of the foster parents;

9.2. A Child receiving services from the Agency shall have in addition to the rights in subsection 9.1 of this rule, the following:

9.2.a. Adequate shelter, food and clothing;

9.2.b. Education and training;

9.2.c. Services necessary to promote safety, permanency and well-being;

9.2.d. Adult guidance, support and supervision;

9.2.e. Freedom from abuse, neglect, and exploitation; and

9.2.f. Full communication with his or her attorney, clergyman, and an authorized representative of the placing agency or of the court of record, including visits, correspondence, and telephone calls.

9.3. An agency shall have policies to ensure that a child in placement's maximum health and safety needs are met including receiving:

9.3.a. The level of supervision required in the service plan;

9.3.b. Appropriate medical screening, diagnosis, and treatment on a regular basis; and

9.3.c. A minimum of the following routine treatment, and emergency medical and dental treatment:

9.3.c.1. An initial general medical examination by a physician thirty (30) days before placement or within thirty (30) days after placement and routine medical examinations after that as recommended for the child's age. In addition, children placed by the Department shall be treated in accordance with the Sander's Consent Decree, which is an agreed order between the Department and the court to provide medical care to children in the Department's custody, and the Health Check requirements available through the Department of Maternal and Child Health.

9.3.c.2. Immunizations as recommended by the American Academy of Pediatrics;

9.3.c.3. For a child two (2) years and older, an examination by a dentist six (6) months before placement or within thirty (30) days after placement, and after that a semiannual examination by a dentist and follow-up treatment as needed; and

9.3.c.4. Any treatment or aids prescribed including eyeglasses, a hearing aid, a prosthetic or corrective device;

9.4. A Child with an Extraordinary Medical Need. Before accepting a child with an extraordinary medical need beyond routine and preventive medical care, an agency shall ensure that:

9.4.a. Unless a medical examination can be documented within the previous thirty (30) days, the child is examined by a physician within seven (7) days before initial placement, and the physician documents that the child can be appropriately cared for in a home setting;

9.4.b. The physician documents in the child's record complete orders for medication, treatment, diet, range of motion programs, habilitation, and special medical or developmental procedures needed;

9.4.c. The foster or adoptive parents receive all of the training necessary to care for the child prior to placement;

9.4.d. The foster or adoptive parents maintain a daily medication log for each child that includes the name of the medication, why it was prescribed, the physician who prescribed it, the dosage, the administration schedule, the potential side effects and any change in the medication that the physician makes;

9.4.e. Medication is administered for therapeutic reasons only and under the following provisions:

9.4.e.1. A physician shall examine the child before prescribing a medication, and he or she is the only one who can alter the medication or medication level;

9.4.e.2. The child's parents or guardian may revoke consent for a medication at any time, and upon revocation the administration of the medication shall cease immediately;

9.4.e.3. When the parents or guardian or child revoke consent, an agency shall inform the prescribing physician; if the prescribing physician reports that it is necessary for the well being of the child, an agency shall seek a court order to have it continued; and

9.4.e.4. An agency shall follow certain procedures if a medication error in dosage, administration or adverse side effects are noted that include contacting the prescribing physician;

9.4.f. Psychotropic medication prescribed shall have these additional provisions:

9.4.f.1. The parents or guardian of a child, and a child fourteen (14) years or older unless the child is documented to be lacking the capacity for informed consent, shall give prior written informed consent for the use of a psychotropic medication;

9.4.f.2. The child's foster or adoptive parents and primary case manager shall receive training related to the psychotropic medication, its expected results, its potential side effects, and an agency's policies regarding its use;

9.4.f.3. A child fourteen (14) years or older who refuses to take medication three (3) consecutive times shall be considered to have revoked consent;

9.4.f.4. When consent is revoked, the administration of medication shall cease immediately; and

9.4.e.5. When the parents or guardian revoke consent an agency shall inform the prescribing physician; if the prescribing physician reports that it is necessary for the well being of the child, an agency shall seek a court order to have it continued.

9.5. Religion.

9.5.a. An agency shall have a written description of its religious orientation, policies and procedures, if applicable, and shall provide the information to the child and his or her biological parents or guardian upon admission.

9.5.b. An agency shall inform the child and his or her biological parents or guardian about the foster parents' religious practices prior to placement; and

9.5.c. Upon a child's admission, an agency shall ask the child, and the parents or guardian, their religious preferences, and follow their requests and service plan regarding religious training and attendance at religious activities.

9.6. Multiethnic Placements.

9.6.a. An agency shall ensure that a child has the opportunity to participate in cultural and ethnic activities significant to his or her heritage.

9.6.b. In accordance with the Multiethnic Placement Act of 1994 as amended by the Removal of Barriers to Interethnic Adoption Act of 1996, an agency shall not delay or deny a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, ethnicity, color, or national origin.

9.6.c. An agency cannot deny any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, ethnicity, or national origin.

9.7. Behavior Management and Discipline. An agency shall provide policies and procedures for foster or adoptive parents to use as guides in disciplining a child and shall explain them to the agency employees, the placing worker, the child, the foster or adoptive parents, and the biological parents or guardian.

9.7.a. Appropriate methods of discipline include:

9.7.a.1. An emphasis on discipline with kindness and understanding, using positive feedback and rewards to reinforce good or improved behavior;

9.7.a.2. Simple, clear, understandable and consistent household rules;

9.7.a.3. Measures appropriate to the developmental level of the child that help him or her develop self-control and learn responsibility for his or her own actions;

9.7.a.4. That a parent or other prior approved adult care-giver only is permitted to discipline the child;

9.7.a.5. Measures administered close to the time of the child's act or behavior for teaching purposes and if time out is used, that it be for a reasonable period of time;

9.7.a.6. That crisis intervention skills and techniques be used according to agency policy only including provisions:

9.7.a.7. That passive physical restraint be used only after receiving training on the agency approved method of restraint; and

9.7.a.8. That the foster parents document the use of crisis intervention skills and techniques and submit an incident report to the director or his or her designee for review within twenty-four (24) hours or the next working day after the intervention.

9.7.b. Inappropriate Methods of Discipline. An agency shall have policies and procedures that ensure that a child is not disciplined with cruel, harsh, unusual or unnecessary punishment, and shall have a description of those measures and methods that are not permitted, including but not limited to the following:

9.7.b.1. Any type of physical hitting, spanking, slapping or other type of physical punishment inflicted in any manner upon the body;

9.7.b.2. Threats of removal from the foster or adoptive home;

9.7.b.3. Any acts, verbal abuse, or emotional abuse that humiliates, shames, disgraces, ridicules, belittles, or destroys a child's sense of dignity or self-worth including any remarks made about the child's biological parents or family;

9.7.b.4. Keeping a child out of school;

9.7.b.5. Denying food, clothing, shelter or bedding;

9.7.b.6. Closing or locking a child in any enclosed space;

9.7.b.7. Denying mail, telephone calls or visits with biological family members, unless it is related to section 9.1.f.1 of this rule;

9.7.b.8. Withholding a program service or a provision in the service plan; and

9.7.b.9. Administering a medication not prescribed.

9.7.c. Behavior problems shall be treated individually and privately. If there is a consistent pattern of unacceptable behavior, a separate behavior management plan shall be developed and added to the child's service plan.

9.8. The Child's Financial Resources.

9.8.a. Money that a child earns, or receives as a gift or an allowance shall be the child's personal property.

9.8.b. An agency shall not place conditions on a child's money unless they are specified in the service plan.

9.8.c. An agency shall not require a child to pay for his or her care or services unless it is specified in the child's service plan.

9.8.d. An agency shall maintain a separate account for each child's financial resources and return the resources upon the child's discharge.

9.9. Clothing.

9.9.a. An agency shall ensure that each child has adequate, well fitting and seasonal clothing appropriate to his or her age, sex and individual needs, shall allow the child choice in the selection of the clothing, and shall replenish the wardrobe as necessary; and

9.9.b. At the time of placement and at the time of discharge, an agency shall take an inventory of the child's clothing and personal possessions.

§78-2-10. Placement Plans and Procedures.

10.1. Referrals.

10.1.a. An agency shall accept referrals from persons or organizations that have an interest in the welfare, security or treatment of the child and family, and authority to make the referral.

10.1.b. An agency shall have policies and procedures for determining if a referral is appropriate for the services the agency offers, and for accepting a voluntary referral from a child or biological parent.

10.1.c. When an agency offers placement services to biological parents, it shall provide counseling to preserve the family unit including alternatives to placement, and document the counseling.

10.2. Intake. An employee designated by the agency shall be responsible for:

10.2.a. Conducting an intake interview with the child, the biological parents or guardian, or the foster or adoptive parents to determine the need for services;

10.2.b. Providing orientation to the agency, including an overview of the placement process, the child assessment process, and identifying which agency employee is responsible for each activity;

10.2.c. Coordinating the child assessment process with the child, his or her parents, and the placing worker;

10.2.d. Introducing the child and his or her family to the case manager assigned to them by the agency; and

10.2.e. Participating in the service planning process.

10.3. **Written Service Agreement.** Upon placement of the child an agency shall have a written, signed, and dated service agreement between the child's parents or guardian and the agency that includes:

10.3.a. Specific services to be provided;

10.3.b. A description of the fees or reimbursement;

10.3.c. A list of the planning team members;

10.3.d. Signed consent and authorization forms when necessary for the delivery of services, including to obtain medical and dental care, for travel, for the release of information, and to obtain photographs and audio or video recordings of the child;

10.3.e. Responsibilities of the child, the biological parent or guardian, the primary case manager, the foster parents or the adoptive parents during the service delivery; and

10.3.f. A description of the conduct or activity by the child or family that may result in the agency's discontinuing services to them.

10.4. **Intake Service Plan.** Based on the intake interview and available referral information, an agency shall develop an intake service plan within seven (7) days of placement to be signed and dated by the child, if appropriate to his or her age, and the child's biological parent or guardian that shall include:

10.4.a. An initial identification of the child's strengths and service needs;

10.4.b. The objectives of placement and the agency's plan for meeting them;

10.4.c. A recommendation for the best type of placement;

10.4.d. Services, assessments, and evaluations that need to be provided prior to the development of the service plan;

10.4.e. Specific management strategies agreed upon by the agency and biological parents or guardian in handling any known behavioral problems; and

10.4.f. Projected goal date for the development of the service plan.

10.5. **Child Assessment.** An agency shall complete a detailed narrative child assessment prior to developing the service plan, that includes the following information:

10.5.a. The name, telephone number and address of the referral source;

10.5.b. A summary of the circumstances that led to the child's referral for placement;

10.5.c. The child's physical description, including a recent photograph;

10.5.d. The child's personality description, including the child's appropriate and maladaptive behavior;

10.5.e. Complete developmental history, including birth and health history, and deviations from the normal range of development; and

10.5.f. Biological family history and background that provides:

10.5.f.1. Physical description and health history of each family member;

10.5.f.2. Description of the biological mother's pregnancy, including prenatal care, nutrition, and use of alcohol or drugs;

10.5.f.3. Formal education and training, functional level, and occupation of each family member;

10.5.f.4. Religion of each family member;

10.5.f.5. Special interests, achievements and abilities of each family member;

10.5.f.6. Relationship of each family member to the child;

10.5.f.7. Description of the child's or family's support system; and

10.5.f.8. Any other significant information that may affect the child's development.

10.5.g. An assessment of the child's current health status, including records of a current medical examination, immunizations, laboratory work done, and any additional tests or evaluations;

10.5.h. The child's education history, including the current level of functioning and the results of any testing that would indicate that special services are needed;

10.5.i. For any child age fourteen (14) years or older, a life skills assessment;

10.5.j. Description of the child's relationships with peers and significant adults outside of the family;

10.5.k. Special interests, achievements, and abilities of the child;

10.5.l. A complete description of previous interventions or placements with the child and biological family and their results;

10.5.m. The child's current legal status;

10.5.n. A copy signed and dated by the employee who wrote the child assessment; and

10.5.o. For emergency placements, a summary completed within two (2) working days of admission that describes the immediate conditions that led to the placement and as much information as is available about the child at the time of admission.

10.6. Match Summary.

10.6.a. An agency shall use an evaluation of the child's needs and strengths and the information provided by the referring entity to develop a match summary.

10.7. The Interstate Compact on the Placement of Children.

10.7.a. Before placing a child in a foster or adoptive home in another state or accepting a child for placement from another state, an agency shall make the referral through the Interstate Compact Administrator in the Department of Health and Human Resources. See W. Va. Code §49-2A-1 et seq. and §49-2C-1 et seq..

10.7.b. Before placing a child out of state, an agency shall secure written approval from the Interstate Compact Administrator in the receiving state.

10.8. Preparation of a Child for Placement.

10.8.a. An agency shall prepare a child for placement, as appropriate to his or her age and developmental level.

10.8.b. The agency shall provide information and support to the child as appropriate to help the child understand what the placement process is and what it will mean to him or her.

10.9. Planning Team.

10.9.a. An agency shall utilize a team to develop a service plan for foster care.

10.9.b. The planning team shall include the child as appropriate to his or her level of understanding, the parents or guardian, the family's case manager, the placing worker, the child's attorney, professionals working with the child, and other individuals significant in the child's life that have an interest in the child.

10.9.c. Any plan developed from the Multi Disciplinary Team process shall be used to assist in the development of the service plan and shall not conflict in any manner with the Child's Case Plan.

10.10. Service Plan.

10.10.a. An agency shall ensure that within thirty (30) days of placement of a child in foster care, the planning team develops a service plan for each child.

10.10.b. The planning team shall use the child assessment, an evaluation of the child's needs and strengths, and information from the Multi Disciplinary Team process to develop the service plan.

10.10.c. The service plan shall include:

10.10.c.1. The child's specific needs, the plan for meeting them, the way each strength will be supported, the time frame for meeting each need or goal, and the methods of measurement;

10.10.c.2. Any special services to be provided;

10.10.c.3. The nature and frequency of planned respite care, if appropriate;

10.10.c.4. Information about the nature and frequency of the child's contact with his or her biological family, employees, and other planning team members;

10.10.c.5. A description of the conditions under which a child shall be returned to his or her home, be placed for adoption, attain independent living or be discharged to another program;

10.10.c.6. Assessment of the long range goals and planning for the child; and

10.10.c.7. An identification of all persons responsible for implementing or overseeing the implementing of the goals, objectives, and services identified in the service plan.

10.10.d. The service plan shall be signed and dated by the planning team, and a copy shall be given to each member.

10.10.e. When a planning team member is unable to participate, the reasons shall be noted on the service plan.

10.10.f. An agency shall ensure that the service plan and subsequent revisions are explained to the child, his or her biological parents or guardian, and the foster or adoptive parents in language that is understandable to them, and the explanation shall be documented on the plan.

10.10.g. If an agency does not ensure that the service plan is explained, the reasons shall be documented in the plan.

10.11. Service Plan Review.

10.11.a. An agency shall ensure that each child's service plan is reviewed by the planning team no less often than once every three (3) months.

10.11.b. An agency shall give members of the planning team at least two (2) weeks notice of the scheduled review, and a copy of this notice shall be placed in the child's record.

10.11.c. The review shall include the following:

10.11.c.1. An evaluation of the progress toward meeting each identified need, goal and objective;

10.11.c.2. An evaluation of the continuing need for the current placement;

10.11.c.3. An identification of any new needs, goals or objectives, the plan and time frame for meeting them, the person who will be responsible for implementing them, and the methods of measurement;

10.11.c.4. Any changes in the estimated length of placement, long range goals, or discharge plans; and

10.11.c.5. An evaluation of the progress in alleviating the reasons the child was placed in care.

10.11.d. The review and updated service plan shall be signed and dated by the members of the planning team and a copy given to each member of the team.

§78-2-11. Transfers and Discharges.

11.1. An agency shall have a protocol for transferring a child from one foster or adoptive home or placement to another within the agency, including:

11.1.a. Documentation of the circumstances causing the move;

11.1.b. Documentation of the new match summary;

11.1.c. A procedure for obtaining supervisory and planning team approval for the new placement;

11.1.d. A procedure for notifying the planning team, specifically the child's guardian, of the new placement which shall occur not less than forty-eight (48) hours prior to a transfer, under W. Va. Code §49-6-8(e), or in an emergency transfer situation, not less than forty-eight (48) hours after the placement, under W. Va. Code §49-6-8(e);

11.1.e. A provision that a child six (6) months and older shall have a minimum of one (1) visit with the new foster parents prior to placement when the placement is not an emergency;

11.1.f. An account of the child's understanding of and response to the transfer;

11.1.g. A provision that prior to the child's placement the new foster parents shall be given a copy of the child's current service plan and the social, medical, psychological and school history;

11.1.h. A provision that the planning team shall amend the child's service plan within ten (10) working days of the transfer;

11.1.i. A provision that when a child is transferred more than three (3) times in a year, excluding planned respite time that does not exceed fourteen (14) days as documented in the child's service plan, the agency shall provide the following information to the child's placing worker, as required under W. Va. Code §49-6-8(d):

11.1.i.1. A written summary of the transfers, including reasons for the moves; and

11.1.i.2. Plans to prevent further transfers that are not in accordance with the child's service plan.

11.2. An agency shall have a written protocol for transferring a child to a placement outside of the agency's program.

11.3. An agency shall have a written protocol for terminating the placement of a child in a foster home after eighteen (18) months, and the protocol shall be in accordance with W. Va. Code §49-2-14.

11.4. Planned Discharge Protocol and Aftercare Planning. An agency shall ensure that the planning team develops an aftercare plan not less than three (3) months prior to the planned discharge of a child, that includes:

11.4.a. An evaluation of the most recent service plan, identifying the goals and needs that have been met and those that have not;

11.4.b. Identifying the services and resources necessary to meet the remaining goals and needs of the child, the individuals responsible for each service, and the frequency necessary for each service;

11.4.c. The name, address and telephone number of the person or agency to whom the child is to be discharged;

11.4.d. A protocol for transferring information and records about the child to the new program when the child is to be placed in another program upon discharge;

11.4.e. An account of the child's awareness and understanding of his or her aftercare plan;

11.4.f. The signatures of the planning team members and dates they signed the aftercare plan;

11.4.g. Documentation of any disagreement of a planning team member's with the child's discharge or aftercare plan; and

11.4.h. The reasons why a member of the planning team is unable to participate in the aftercare planning.

11.5. An agency shall have a written protocol for unplanned discharges that are not in the child's service plan. For an unplanned discharge other than an emergency, an agency shall give a minimum of ten (10) working days notice of the discharge to the placing worker, or his or her supervisor, and to the child's parents or guardian.

11.6. An agency shall have a written protocol for emergency discharges that includes the following provisions:

11.6.a. An emergency discharge shall occur only when a child's behavior may present a danger to him or herself or others;

11.6.b. Identification of employees designated by the agency to have the authority to assess the child's status and to recommend an appropriate alternate placement;

11.6.c. That an agency shall notify the placing worker, the biological parents or guardian, and the primary case manager immediately;

11.6.d. If the agency arranges for an emergency placement, the placing worker and the primary case manager shall be consulted in determining which program best meets the child's needs;

11.6.e. The child shall be accompanied by a designated agency employee to the receiving agency or individual;

11.6.f. An agency shall document the emergency discharge in the child's case record within twenty-four (24) hours of the discharge.

11.7. On the day of discharge an agency shall document the following information in the child's record:

11.7.a. The return by the agency of the child's personal items, prescribed medication and dosage instructions, and personal records including the birth certificate, social security card, and school records; and

11.7.b. The name, relationship to the child, and address of the person or agency receiving physical custody of the child upon discharge.

11.8. Within thirty (30) days of the date of a child's discharge an agency shall complete a written discharge summary that includes the following information:

11.8.a. The name, address, telephone number and relationship of the person or agency to whom the child was discharged;

11.8.b. The date and time of the child's discharge;

11.8.c. The reason for the child's discharge;

11.8.d. A summary of all services provided during placement;

11.8.e. An account of the child's growth and accomplishments during placement;

11.8.f. A description of the circumstances that led to the unplanned discharge if it is not in accordance with the child's service plan, the actions taken by the agency, and the reasons for these actions; and

11.8.g. The planning team's recommendation for the most appropriate placement for the child.

§78-2-12. The Agency's Responsibilities to Foster and Adoptive Parents.

12.1. An agency shall have a written description of the responsibilities of foster and adoptive parents to the child, to the child's family and to the agency.

12.2. An agency shall have a policy detailing its responsibilities to foster and adoptive parents that includes:

12.2.a. Providing a copy of the policy that describes the responsibilities of the parents and the agency in the placement of a child;

12.2.b. Providing information about the agency's emergency telephone on-call system operational at all times;

12.2.c. Informing them about the agency's grievance procedure;

12.2.d. Providing complete information about a child's background, his or her current physical, mental, emotional and behavioral functioning and any special needs prior to placement;

12.2.e. Involving foster parents on the child's service planning team and providing them a copy of the child's intake service plan and all subsequent plans;

12.2.f. Providing ongoing training, guidance and support, including crisis support;

12.2.g. Providing periodic respite care for a child in a foster care placement;

12.2.h. Providing complete information about the procedures to be followed when an allegation of child abuse or neglect, or a complaint of noncompliance with licensing regulations or agency policy is made;

12.2.i. Maintaining the confidentiality of records according to agency policy and procedure;

12.2.j. Providing foster parents access to their own record with the exception of reference letters and reference interviews;

12.2.k. Providing foster parents liability and personal loss coverage for loss or damage occurring as a result of their role as foster parents;

12.2.l. Giving foster parents ten (10) working days notice prior to removing a child, unless it is an emergency situation;

12.2.m. Informing adoptive parents of the child's legal status prior to and upon the final adoption; and

12.2.n. Informing adoptive parents of the legal procedures involved in adoption under W. Va. Code §49-4-1 et seq.

§78-2-13. Foster and Adoptive Parents' Characteristics and Criteria.

13.1. Character and Personal Requirements.

13.1.a. An agency shall accept applications from and recruit foster and adoptive parents with the life experiences, personal characteristics and temperament suitable for working with children in need of care.

13.1.b. Foster and adoptive parents shall be nurturing, responsible, patient, stable, flexible, mature, healthy adults capable of meeting the individual and specific needs of children referred for placement services.

13.1.c. Newly approved foster and adoptive parents shall be not less than twenty-one (21) years of age and not more than sixty-five (65) years of age unless a waiver is granted by the Secretary.

13.1.d. Prior to approval each foster and adoptive parent shall provide a written or tape-recorded detailed personal history that includes:

13.1.d.1. Childhood and family experiences, including those with extended family;

13.1.d.2. Education and employment history;

13.1.d.3. Important life experiences;

13.1.d.4. Values, ideals, religious beliefs and practices;

13.1.d.5. Current and previous marriages and the parent's view of them;

13.1.d.6. Health history, including use of drugs or alcohol;

13.1.d.7. Hobbies and interests; and

13.1.d.8. Parenting or child care experience.

13.1.e. At the time of consideration by an agency, foster and adoptive parents shall disclose and sign a release of information detailing any current or previous experience with other licensed agencies or the

Department, and if currently providing services to more than one (1) licensed agency, shall detail the responsibilities to each person and agency in a written statement.

13.2. Health Considerations.

13.2.a. Prior to approval foster and adoptive parents shall provide the following health documentation:

13.2.a.1. An initial medical exam report from a health care professional for parents and all other household members certifying they are in good health, free of communicable diseases, and test negative for tuberculosis. Foster parents shall have this exam and testing every five (5) years;

13.2.a.2. Immunization records for the family's own children; and

13.2.a.3. Any previous history of or current condition involving a disability, alcoholism, or addiction for all household members.

13.2.b. The agency, the Licensing Director or the Director of the Institutional Investigative Unit may require additional examinations, mental health assessments, or drug screens for indications that the safety or well-being of a child in care may be jeopardized by the physical and mental health of a household member.

13.2.c. An agency shall not approve foster and adoptive parents whose health, behavior, emotional or psychological make-up may endanger the well-being of a child, and shall have a procedure for the immediate removal of a child in placement if a concern for the child's safety or well-being is indicated.

13.2.d. A foster or adoptive parent currently in therapy shall provide a signed statement from the therapist indicating that he or she is capable of providing appropriate child care.

13.3. Marital Status.

13.3.a. Couples living together shall be legally married to be considered for foster or adoptive parenting, and must provide proof of marriage before consideration.

13.3.b. Prior to approval, foster or adoptive parents shall have been married for not less than one (1) year, and adoptive parents shall have been married for not less than two (2) years.

13.3.c. Prior to approval, a single foster or adoptive parent shall show proof that he or she has lived in his or her own established household for not less than one (1) year, and a single adoptive parent shall show proof that he or she has lived in his or her own established household for not less than two (2) years.

13.3.d. Divorced foster and adoptive parents shall provide a copy of the divorce decree.

13.4. Living Arrangements.

13.4.a. The total number of children in a foster home, including the family's own children living in the home, shall not exceed six (6).

13.4.b. An agency shall not permit a family to parent more than two (2) children less than two (2) years of age in the same home at the same time.

13.4.c. Foster parents shall not care for unrelated adults for compensation in the home, unless the adults were placed for care in that home as a foster child.

13.4.d. Foster parents shall not provide day care or babysitting services in the home for unrelated children for compensation.

13.5. References.

13.5.a. Foster and adoptive parents shall provide the names of not less than four (4) references from persons who are not related to the parents.

13.5.b. Three (3) of the four (4) references shall be interviewed face-to-face or by telephone to discuss in detail their responses and any related information, and copies of these interviews shall be signed and dated.

13.5.c. Prior to agency approval, all references for foster and adoptive parents shall be positive in nature.

13.6. Finances and Working Arrangement.

13.6.a. Foster and adoptive parents shall provide documentation of sufficient income and financial resources to meet their financial obligations.

13.6.b. If foster parents are or a single foster parent is employed outside the home, the agency shall approve a plan for the care and supervision of the child during work hours, and the plan shall be included in the child's service plan .

13.7. Background Check.

13.7.a. Prior to approval, all adult household members shall complete a CIB and a "Statement of Criminal Record" form.

13.7.b. Prior to approval, all adult household members shall complete a Statement of Child Abuse or Neglect History form and a signed release of information authorizing the Department to verify the information.

13.7.c. Any arrests or convictions other than minor traffic violations, shall require a waiver from the Secretary.

13.8. Transportation.

13.8.a. Foster and adoptive parents shall have reliable transportation available.

13.8.b. All vehicles used to transport children shall be maintained in safe running condition and in compliance with state law.

13.8.c. Foster and adoptive parents shall show proof that the vehicles used to transport children are covered by liability insurance and that all licensed drivers are included in the insurance policy.

13.8.d. Foster and adoptive parents shall document that anyone who will transport children has a valid driver's license.

13.8.e. Foster and adoptive parents shall use safety seats and seat belts when transporting children.

§78-2-14. Foster and Adoptive Parents' Agreement with an Agency.

14.1. Foster and adoptive parents shall enter into a cooperative agreement with an agency that includes the provisions that foster and adoptive parents shall:

14.1.a. Permit an agency and designated Department employees to conduct announced and unannounced home visits and permit access to children in the Department's custody upon request;

14.1.b. Maintain the records and other documentation required by an agency;

14.1.c. Promptly notify an agency concerning any change in the family's circumstances;

14.1.d. Immediately notify an agency about any hospitalization, surgery, accident, serious illness, death, arrest or detention by a law enforcement agency of a child, or about any other unanticipated incident involving the child placed in their home;

14.1.e. Follow an agency's policy on discipline and on confidentiality of the child's records;

14.1.f. Document their understanding of an agency's policy on child abuse or neglect;

14.1.g. Notify an agency not less than ten (10) days before requesting the voluntary removal of a child, unless there is an emergency or other circumstance that necessitates the immediate removal of a child;

14.1.h. Give an agency not less than thirty (30) days notice when requesting the voluntary closure of their home; and

14.1.i. Inform an agency of a charge, arrest or indictment of any adult household member within twenty-four (24) hours of the occurrence.

§78-2-15. Safety Requirements for Foster and Adoptive Homes.

15.1. An agency shall ensure that the physical facilities of a foster or adoptive home present no health or safety hazards, and that they be of a degree of comfort and cleanliness sufficient to ensure the well-being and respect of the family in the community.

15.2. The home shall have an indoor and an outdoor recreation area that is free of unsanitary or hazardous items and shall have toys available to children which are appropriate for their ages.

15.3. For sleeping:

15.3.a. Each child shall have an individual bed that is not a cot or roll away bed;

15.3.b. A maximum of four (4) children may share a bedroom.

15.3.c. A child shall not share a bedroom nor bed with an adult, or a child of the opposite sex with the exception of a child less than two (2) years old who may temporarily share a bedroom only after the written approval of the Department.

15.3.d. A child's bedroom may not be used for any other purpose.

15.3.e. A child's bedroom located in the attic or basement shall meet the same standards as all bedrooms in the home.

15.4. In the event this is contrary to a family's religious beliefs, the agency shall assure that emergency situations can be adequately addressed and that appropriate contacts can be made with the family and the child in a timely manner.

15.5. Household items including cleaning supplies, toxic or flammable materials, medicines, and alcoholic beverages, that may be hazardous to a child shall be stored in areas inaccessible to children.

15.6. Weapons, related attachments and ammunition shall be stored in a locked container inaccessible to children.

15.7. Electrical and fire prevention provisions shall include:

15.7.a. That a home have a fire escape plan that includes a diagram of the rooms, the escape routes, and an outside meeting place;

15.7.b. That a child walk through the fire escape plan and route with the foster or adoptive parent within twenty-four (24) hours of placement;

15.7.c. That a battery operated smoke detector be located near a child's bedroom;

15.7.d. That a fire extinguisher of a minimum of five (5) pounds be located in the kitchen;

15.7.e. That outlets and plug-in extensions, and kitchen, heating and other electric appliances have standard UL approved safety features and be clear of combustible materials;

15.7.f. That electrical circuits be protected by a maximum twenty (20) amp fuse or circuit breaker; and conform to reasonable safety standards;

15.7.g. That an operative flashlight be easily accessible for emergency lighting.

15.8. All mobile homes under consideration for placement homes shall be manufactured after the year one thousand nine hundred seventy-six (1976).

15.9. Non municipal water used in a home shall be tested and determined to be safe.

15.10. Children may not be housed in detached housing or unapproved rooms.

15.11. Hot water heaters shall require a safety valve and shall supply sufficient hot water to adequately meet household requirements.

15.12. All animals owned by the foster or adoptive parents that come in contact with a child in placement shall be vaccinated as required by state law.

§78-2-16. Comprehensive Home Study.

16.1. An agency shall conduct a comprehensive written home study with the prospective foster or adoptive parents and all household members prior to a child placement in the home including a minimum of one (1) individual in-person interview for each parent and two (2) joint interviews.

16.2. An agency shall write a narrative report on the home study that lists the dates, times, locations and participants, and is signed and dated by the agency employee who conducted it and the agency director, or his or her designee.

16.3. The study shall describe and evaluate aspects of the home and family including:

16.3.a. The composition of the household and intra-family relationships;

16.3.b. Attitudes, values and level of understanding of child development and sex education;

16.3.c. Family decision making process, including descriptive examples;

16.3.d. Handling of conflict, stress, and frustration, including descriptive examples;

16.3.e. Individual and family hobbies, recreation, community activities, and social life;

16.3.f. The family's values and attitudes and how they relate in the community and to religious, ethnic and cultural differences;

16.3.g. Each parent's personal history, attitudes, feelings, and values;

16.3.h. The parents' financial situation;

16.3.i. The motivation for the parents in becoming foster or adoptive parents;

16.3.j. The foster family's attitudes about having a foster child in the home, and about a foster child's biological parents and family;

16.3.k. An account of discipline methods discussed including:

16.3.k.1. Methods acceptable to the agency; and

16.3.k.2. The family's attitude about it and their past experiences;

16.3.l. A summary of the discussion of the multiple aspects of foster child care including the circumstances surrounding placement of a child in foster care, the family's expectations of a foster child's presence in the home, anticipated problem situations and coping skills, and possible reactions of the child placed;

16.3.m. An assessment of the adoptive parent's ability and willingness to make a lifetime commitment to the adopted child, and their understanding of the legal rights of the adopted child;

16.3.n. A summary of the discussion with the adoptive parents about who would become the adopted child's guardian if both of the adopted parents died;

16.3.o. An account of the discussion with the adoptive parents about open adoption;

16.3.p. A discussion with the adoptive parents about health insurance coverage for the adoptive child before the adoption is finalized;

16.3.q. A discussion with the adoptive parents about adopting a child with special needs, subsidies and the availability of community resources; and

16.3.r. A statement of the number, ages and gender of children desired by the foster or adoptive parents.

16.4. The home study shall identify the foster or adoptive parents' strengths, attributes, abilities, weaknesses, potential problem areas, or concerns as the basis for approval.

16.5. The home study shall make a recommendation regarding the number, ages, gender and any other special conditions or circumstances for which the home may be approved for placement.

§78-2-17. Approval or Denial of a Foster Home for Placement.

17.1. All employees who participated in the home study process shall be involved in the approval or denial of the home for placement, shall set the conditions or circumstances of the approval or denial, and shall notify the family in writing of one of the following:

17.1.a. Notification of Approval. An agency shall provide foster parents with a certification of the approval of their home for placement, including the names of the foster parents approved, the home address, the date of approval, the number, ages, and gender of children for which approval is given, and any other conditions placed on the approval. The certification shall expire one (1) year from the date of issuance unless it is revoked;

17.1.b. Notification of Denial. An agency shall provide foster parents with written notification of the denial that includes the reason for the denial; or

17.1.c. Notice of Revocation. An agency shall provide foster parents with written notification of revocation of the status of approval that includes the revocation date and the reason for the revocation.

§78-2-18. Approval or Denial of an Adoptive Home for Placement.

18.1. An agency shall provide adoptive parents with written notification of the approval or denial of their home for placement, including the date of approval or denial, the number, ages, and gender of children for which approval is given, any other conditions for approval identified in the home study, or the reason for denial.

§78-2-19. Evaluations for Approved Foster and Adoptive Parents.

19.1. For Foster Parents. An agency shall evaluate foster parents annually and complete a narrative summary that includes:

19.1.a. The children's names, ages, lengths of stay and reasons for leaving;

19.1.b. An assessment of the foster parents' ability to implement the children's service plans and any changes in the family's circumstances;

19.1.c. An assessment of the foster parent's attitudes on foster care, the foster child's biological family, and the agency;

19.1.d. An assessment of the foster parents' strengths and weaknesses;

19.1.e. A recommendation for any changes in the conditions of approval; and

19.1.f. The dates and signatures of the employee who writes the evaluation and the agency director or his or her designee.

19.2. Upon the successful completion of the annual evaluation, an agency shall renew the certificate of approval.

19.3. For Adoptive Parents who have not had a child placed with them, an agency shall evaluate them annually and complete a narrative summary that includes:

19.3.a. An update of each of the parent's biographies, and any changes in their circumstances or attitudes about adoption;

19.3.b. A recommendation for any changes in the adoptive parents' conditions of approval; and

19.3.c. The dates and signatures of the employee who writes the evaluation and the agency director or his or her designee.

§78-2-20. Training for Parents.

20.1. For Approved Foster Parents.

20.1.a. As a condition of approval an agency shall require that each foster parent participates in specified training curriculum.

20.1.b. An agency shall have a written plan for the orientation, annual training, and child-specific training for foster parents.

20.1.c. An agency shall document in the foster parents' record the date, subject and brief description of the training, its duration, and the name and title of the training instructor.

20.1.d. Prior to the placement of a child, an agency shall complete foster family orientation on the placement process, the agency's services and programs, legal aspects of foster care, discipline policies, behavior management, crisis de-escalation and intervention, and first aid training, including cardiac pulmonary resuscitation.

20.1.e. In addition to orientation training, an agency shall provide a minimum of fifteen (15) hours of ongoing training during the first year of approval.

20.1.f. After the first year of approval, an agency shall provide a minimum of twelve (12) hours of ongoing annual training in addition to training in first aid and cardiac pulmonary resuscitation.

20.1.g. An agency shall provide child-specific training to assist foster parents in implementing a child's service plan or a specific treatment objective.

20.2. For Approved Adoptive Parents.

20.2.a. As a condition of approval an agency shall require that each adoptive parent participates in a specified training curriculum.

20.2.b. An agency shall have a written plan for the training of adoptive parents, including pre-placement training and child-specific training.

20.2.c. An agency shall document in the adoptive parents' record the date, subject and brief description of the training, its duration, and the name and title of the training instructor.

20.2.d. An agency shall develop a program-specific training curriculum.

§78-2-21. Foster Child Placement and Home Closure Information.

21.1. Presentation of a Child to Prospective Foster Parents. An agency shall have a written protocol for the presentation of a child to the prospective foster parents, that includes the following provisions:

21.1.a. Prior to proceeding with the placement, the agency shall give a complete non-identifying description with all available information of the child to the prospective foster parents;

21.1.b. Upon request the agency shall have a profile available for the prospective foster parents;

21.1.c. The agency shall set a time frame for a decision by the prospective foster parents about proceeding with the placement; and

21.1.d. The agency shall document this process in the child's and the prospective foster parents' records.

21.2. Emergency Child Placements in Prospective Foster Care. An agency shall have a protocol for emergency placements, that includes the following provisions:

21.2.a. At the time of placement the agency shall provide as much information as is known about the child with the prospective foster parents, and additional information when it is available or as soon as the child assessment is completed;

21.2.b. An agency shall identify the needs and strengths of the child; and

21.2.c. An agency shall document the emergency placement process in the child's and the foster parents' record.

21.3. Involuntary Closure of a Foster Home. An agency shall have a protocol for the involuntary closure of a foster home that includes the following provisions:

- 21.3.a. A set of conditions, circumstances, and reasons for closure;
- 21.3.b. Specific procedures to follow;
- 21.3.c. That written notification be provided to the foster parents; and
- 21.3.d. Complete documentation of the process by the agency in the foster parents' record.

§78-2-22. Services to Biological Parents.

22.1. An agency shall ensure the protection of legal rights of biological parents to whom services are provided under a protocol that includes:

22.1.a. Complying with W. Va. Code §49-4-1 et seq. and §49-4A-1 et seq. and documenting that the biological parents have been fully informed about their legal rights.

22.1.b. Following a specific policy for the voluntary relinquishment of a child according to W. Va. Code §48-4-1 et seq.

22.1.c. Following a specific policy for releasing information about the child, the child's biological parents, and the child's adoptive parents according to W. Va. Code §48-4A-1 et seq..

22.2. An agency that accepts custody of a child from the biological parents, whether or not the child is placed for adoption, shall ensure that the following services are provided to the biological parents:

22.2.a. Counseling regarding the reasons for considering adoption planning for the child;

22.2.b. A complete information presentation about alternatives to adoption in an objective and non coercive manner;

22.2.c. Assistance in obtaining prenatal, maternity and postpartum care, health education, family planning services, and nutrition services shall be provided; and

22.2.d. Assistance in separating from the child, in accepting the permanence of the decision, and in determining immediate plans in their lives.

§78-2-23. Adoption.

23.1. Foster Parents' Role In Adoption Planning. If a child is in placement with foster parents, an agency shall include the foster parents in the child's adoption planning team by:

23.1.a. Explaining the foster parents' role in the adoption process;

23.1.b. Informing them of all plans for the child, including the child's placement planning; and

23.1.c. Providing support to them after the child has been placed in an adoptive home.

23.2. Presentation of Background Information.

23.2.a. When presenting a newborn child's background information to the prospective adoptive parents an agency shall follow a written protocol that includes the following provisions:

23.2.a.1. Prior to proceeding with an adoptive placement, prospective adoptive parents shall be given a complete verbal and written description of all available information on the biological parents' family histories and the prenatal care received by the biological mother;

23.2.a.2. If the agency practices open adoption, a preplacement agreement between biological parents and prospective adoptive parents that involves some amount of initial or ongoing contact, written policies and procedures shall be included in the protocol; and

23.2.a.3. Time frames shall be established for a decision by the prospective adoptive parents about proceeding with the adoptive placement.

23.2.b. When presenting an older child's background information to the prospective adoptive parents an agency shall follow a written protocol that includes the following provisions:

23.2.b.1. Prior to proceeding with an adoptive placement, the prospective adoptive parents shall be given a complete and accurate verbal description of the child;

23.2.b.2. Photographs or videos of the child shall be shown to the prospective adoptive parents;

23.2.b.3. A written summary including all information available about the child shall be provided to the prospective adoptive parents;

23.2.b.4. A meeting between the child's foster parents or other caretakers and the prospective adoptive parents shall be arranged if appropriate to discuss the child's day-to-day behavior; and

23.2.b.5. Time frames shall be established for a decision by the prospective adoptive parents about proceeding with the adoptive placement.

23.2.c. When presenting information about the prospective adoptive parents to the child an agency shall follow a written protocol that includes the following provisions:

23.2.c.1. That the prospective adoptive parents shall put together a scrapbook about themselves for use in presenting information to the child; and

23.2.c.2. That the child's foster parents shall be encouraged to be active partners in this process.

23.3. Adoption Placement Planning. An agency shall have a protocol for placement planning including the following provisions:

23.3.a. Placement planning shall be guided by the needs of the child and visits prior to placement for a child older than infancy shall occur over a minimum of a two (2) to three (3) week period; and

23.3.b. The agency shall contact the prospective adoptive parents during and after the parents' visits with the child to discuss concerns, needs and successes of the child and the adoptive parents;

23.4. Adoption Placement Services. An agency shall have a protocol for placement services including the following provisions:

23.4.a. The child's school records, medical history, and immunization records shall be provided to the adoptive parents upon placement;

23.4.b. The adoptive service agreement shall be signed by the adoptive parents and the agency upon placement; and

23.4.c. Documentation of the services offered or already provided shall be included in the child's and adoptive parents' records.

23.5. Adoption Support Services Following Placement.

23.5.a. An agency shall have a written description of the support services offered following placement, including:

23.5.a.1 The goals of the support services;

23.5.a.2. The rights and responsibilities of the agency and of the adoptive parents following placement;

23.5.a.3. The subsidies that may be available;

23.5.a.4. Time frames for contact and visits following the placement that shall include:

23.5.a.4.A. An initial telephone contact within seventy-two (72) hours of placement and an initial visit within one (1) week of placement;

23.5.a.4.B. A minimum of six (6) visits during the placement, at least four (4) of which are in the home of the adoptive parents;

23.5.a.4.C. In a two-parent family, both parents shall be involved in at least three (3) visits;

23.5.a.4.D. Additional visits on a frequency determined by the needs of the child and the adoptive parents;

23.5.a.5. Visits with all household members, and the child shall be observed during each visit; and

23.5.a.6. If the child is old enough to carry on a conversation, an interview with him or her in private during each visit;

23.5.b. An agency shall continue to provide support services for a minimum of six (6) months or longer until permanency is achieved; if the child is in the adoptive home as a foster care placement, the period of support services can include the time spent in the adoptive home in foster care;

23.5.c. A final visit shall be made to review the adoption process with the adoptive family prior to finalizing the adoption.

23.5.d. An agency shall document all activities during the placement period in the child's and adoptive parents' records.

23.6. Disruption of an Adoptive Placement. An agency shall have a protocol to follow when a disruption in an adoptive placement is being considered or appears imminent including:

23.6.a. An agency shall train employees to recognize the circumstances that can lead to the disruption of an adoptive placement;

23.6.b. An agency shall specify the roles and responsibilities of the agency and the adoptive parents during the process of disruption and the planning for a subsequent placement for the child;

23.6.c. An agency shall offer counseling to the child according to his or her needs in dealing with the disruption; and

23.6.d. An agency shall document the planning and services provided during a disruption in the adoptive parents' and child's records.

23.7. Placement of the Child After Disruption. An agency shall have a protocol to follow for subsequent placement after a disruption of adoptive placement including:

23.7.a. Making every effort to find another adoptive placement for the child and shall do everything possible to assist and support the child in adjusting to a new placement;

23.7.b. Giving complete information about the child to subsequent foster or adoptive parents prior to their making a decision to proceed with the new placement, including:

23.7.b.1. The nature of the disruption, the extent of the difficulties that resulted and the child's reaction to the disruption;

23.7.b.2. When possible, a meeting with the previous adoptive parents to learn about the child; and how separation and loss might affect a child's behavior; and

23.7.c. Documenting the planning and services provided during a placement after disruption in the subsequent foster or adoptive parents' and child's records.

23.8. Finalization of the Adoption. An agency shall have a written protocol that conforms with W. Va. Code §48-4-1 et seq. for the finalization of an adoption including the following provisions:

23.8.a. A description of the process of finalizing an adoption;

23.8.b. A description of the roles and responsibilities of everyone involved in finalizing an adoption; and

23.8.c. A child twelve (12) years or older shall give written consent to the adoption.

23.9. Post-Legal Adoption Services. An agency shall have a protocol for the post-legal adoption services it offers, including the following provisions:

- 23.9.a. Adoption subsidy assistance;
- 23.9.b. Counseling assistance for adoption issues, including search and contact;
- 23.9.c. A provision of information about the biological family and birth history;
- 23.9.d. Education and support services for adoptive families;
- 23.9.e. Referrals for needed community services; and
- 23.9.f. Information and counseling concerning the Mutual Consent Adoption Registry.

23.10. Intercountry Adoption Services.

23.10.a. An agency offering intercountry adoption services shall have a written protocol that describes the process for handling intercountry placement and placement disruptions that provides for the well being of the child, including an alternate placement plan.

23.10.b. An agency offering intercountry adoption services shall have a written protocol that complies with the United States immigration laws and the laws of the sending country and protects the rights of the child and biological parents.

23.10.c. The agency shall seek legal counsel when necessary.

§78-2-24. Transitional Living Services Program.

24.1. An agency shall have a manual of policies, procedures and forms for transitional living services, available to all employees that includes the following:

24.1.a. The information and documentation required under this licensing rule;

24.1.b. The date of implementation, review and revision of each policy, procedure or form; and

24.1.c. The reviews and revisions of the policies, procedures, and forms when required for legislative changes or a minimum of every five (5) years, and a provision that an agency encourage employees to participate in the review and revision process.

24.2. An agency shall operate in accordance with its written policies and procedures.

24.3. Eligibility Criteria for Transitional Living Services shall include:

24.3.a. Policies and provisions developed by an agency;

24.3.b. A child or young adult receiving transitional living placement services shall be a minimum of sixteen (16) years of age for training-based living arrangements, seventeen (17) years of age at scattered-site living arrangements and not more than twenty-one (21) years of age;

24.3.c. A child less than eighteen (18) years of age shall have written permission from his or her parents or guardian to enter a transitional living arrangement;

24.3.d. An agency shall have a written service agreement with a child or young adult entering a transitional living arrangement, and an alternate placement plan for a child or young adult who is not successful in living independently;

24.3.e. An agency shall determine that a child or young adult has lived in a stable placement for three (3) months immediately preceding consideration for entry into a transitional living arrangement;

24.3.f. An agency shall do a written assessment of a child's or young adult's life skills prior to placing him or her in a transitional living arrangement; and

24.3.g. A child or young adult in transitional living shall be attending or have completed an educational or training program, and either seeking employment or already employed.

24.4. An agency shall develop, approve and maintain in the case record a monthly budget for each child or young adult that outlines income, savings, and expenditures.

24.5. The Department shall approve any roommates for a child or young adult prior to placement in transitional living settings.

24.6. An agency shall provide additional specific, service training to employees providing transitional living services prior to their direct work with a child or young adult.

24.7. A section in the service plan shall outline face-to-face contact and hours spent with a child or young adult in transitional living services that includes the minimum number of face-to-face contacts and minimum hours a child or young adult shall spend with an assigned agency employee and shall include a range of two (2) to five (5) face-to-face contacts in the child's or young adult's residence per week and a range of four (4) to six (6) telephone contacts per week.

24.8. A minimum of once every six (6) months after a child or young adult is in transitional living placement, an agency shall assess the child's or young adult's progress in acquiring basic living skills.

24.9. An agency shall have policies and procedures to ensure that any child or young adult in transitional living receives appropriate health screening and services, including medical and dental.

24.10. An agency shall develop and follow procedures for the dwellings used for transitional living that includes provisions ensuring:

24.10.a. That an agency assist a child or young adult to find a safe, affordable dwelling;

24.10.b. That a dwelling comply with the State Fire Code and applicable health, zoning and building codes;

24.10.c. That a dwelling have a working telephone, and indoor cooking and bathing facilities;

24.10.d. That a dwelling is recognizable as residential accommodations;

24.10.e. That a dwelling not house more children or young adults in a transitional living program than the number the dwelling can accommodate, and the number of transitional living residents in a single apartment shall not exceed two (2); and

24.10.f. That a child or young adult is not placed in transient or overnight facility such as a rescue mission, motel, nonresidential hotel, emergency shelter, or tourist home.

24.11. A child or young adult shall have emergency services provisions while in transitional living including:

24.11.a. A twenty-four (24) hour a day, seven (7) day a week access to emergency services;

24.11.b. A plan developed by an agency for emergency medical care and emergency evacuation;

24.11.c. Training by the agency prior to or upon placement on how to use the agency's emergency telephone answering system; and

24.11.d. An agency employee designated to respond in person to the child or young adult within forty-five (45) minutes of the child's or young adult's call for assistance.

24.12. The planning team shall establish a minimum length of time to determine the child's or young adult's level of successful functioning in the transitional living program before he or she may be discharged.

24.13. The planning team shall develop an aftercare plan prior to discharge.

§78-2-25. Community Re-entry Program.

25.1. For children placed in a community re-entry program, an agency shall develop an operating manual, made available to employees and to applicants seeking employment, that includes:

25.1.a. The policies, procedures and forms for the plan of operation;

25.1.b. A complete and detailed description of the range of services offered and the process for implementing them;

25.1.c. The information and documentation required to be compiled by this licensing rule;

25.1.d. The date of implementation, review or revision of the policy, procedure or form; and

25.1.e. A description of the grievance procedure for expressing and resolving complaints or concerns.

25.2. An agency shall review and revise the policies, procedures and forms for the community re-entry program when required by legislative changes or at the time of application for a license or license renewal.

25.3. An agency shall provide employees and children or young adults placed in a community re-entry program an opportunity to participate in the review or revision process.

25.4. An agency shall operate in accordance with its written policies and procedures.

25.5. An agency shall implement eligibility criteria and policies defined by the Department for the community re-entry program including:

25.5.a. A child or young adult shall be a minimum of sixteen (16) and not more than twenty-one (21) years of age;

25.5.b. During placement in a re-entry setting a child or young adult shall have a comprehensive evaluation to determine vocational interests, aptitude, basic life skills and psychological and social potential for self-support;

25.5.c. A child or young adult in a community re-entry program shall be involved in an educational or training program, life skills classes, counseling, and psychological evaluations;

25.5.d. A scheduled plan for free time shall include, but is not limited to, community service, job preparation, drivers education, or basic living skills development;

25.5.e. A child or young adult in a community re-entry program shall be in the custody of the Department and referred by a Department employee;

25.5.f. The Department shall approve roommates of children or young adults in community re-entry settings before placement; and

25.5.g. An agency shall provide an alternate placement for the child or young adult who does not meet the level of success as determined by agency criteria.

25.6. An agency shall have policies to ensure that medical, dental and mental health services are provided to children and young adults in the community re-entry program as required by the Child's Case Plan and the Health Check Program, including health screening, preventive care and emergency medical services.

25.7. An agency shall provide to the children or young adults in the community re-entry program, his or her parents or guardian, and the placing worker a copy of the agency's policies and procedures regarding re-entry including a written description of the roles and responsibilities of all parties involved in the placement.

25.8. An agency shall keep accurate, complete, and up-to-date records on each child or young adult in placement.

25.9. The minimum age of direct care employees for the community re-entry program shall be twenty-five (25) years old.

25.10. An agency shall develop a protocol to provide onsite supervision to children and young adults twenty-four (24) hours a day seven (7) days a week by designated employees, and additional support services as required for children or young adults with certain identified behaviors to ensure their health and safety.

25.11. An agency shall ensure that a dwelling in the community re-entry program:

25.11.a. Is hazard-free and functional inside and around its premises;

25.11.b. Is equipped and maintained in a manner that reflects the agency's positive regard for children and young adults in placement, and is suited to a child or young adult's individual needs;

25.11.c. Not include a transient or overnight type facility, including rescue missions, motels, hotels, emergency shelters, and tourist homes;

25.11.d. Complies with applicable state and local fire, safety, zoning, building, and health codes; and

25.11.e. Is equipped with a working telephone with emergency numbers posted by it, a first aid kit, safe and secure storage for medication and toxic substances.

25.12. An agency shall have a written protocol for dealing with emergencies, shall train employees, children or young adults in emergency protocol, including the use of the agency's emergency telephone service and procedures prior to or at the time of placement, and shall document the training in the employees and children's records.

§78-2-26. Grievance Procedure.

26.1. An agency shall have a written grievance procedure for children and foster, adoptive, and biological families. The procedure shall be written in clear and simple language and shall include at least the following provisions:

26.1.a. An agency shall ensure that children and their biological families can express concerns or make complaints without fear of retaliation;

26.1.b. The grievance procedure shall assure due process; and

26.1.c. The child's primary case manager shall explain the procedure to the child and his or her biological parents or guardian upon admission and obtain written acknowledgment that an explanation of the procedure has been provided.

§78-2-27. Administrative Due Process.

27.1. Any person aggrieved by an order or other action by the Secretary based on this rule, or W. Va. Code §49-2B-1 et seq., may make a written request to the Secretary within thirty (30) days in accordance with the Division of Health rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings," 64CSR1, a copy of which may be obtained from the Secretary of State.

**Discussion of Public Comments Received
Concerning the Proposed Rule
CHILD PLACING AGENCIES LICENSING 78 CSR 2**

A public comment period on the proposed rule, Child Placing Agency Licensing, 78CSR2, was held beginning July 20, 2000 and ending August 21, 2000. Seven (7) commentaries were received. In addition the Department has elected to make certain changes to clarify the intent of the rule. Comments are summarized below, and the Department's responses and changes to the rule are detailed.

DHHR recommendations to clarify the intent of the rule

3.19 Change definition of Guardian from: A person or persons, as a result of any contract, agreement, or legal proceedings, who has legal custody of a child.

To: A person or persons, the Department of Health and Human Resources or the Department of Military Affairs and Public Safety, as a result of any contract, agreement, or legal proceedings, who has legal custody of a child.

Add the definition of (it becomes 3.27) Multidisciplinary Treatment Team-A treatment team that includes the child's custodial parent(s) or guardian(s), other immediate family members, the attorney(s) representing the parent(s) of the child, the child if he or she is over the age of twelve (12) or the child's participation if deemed appropriate, the guardian ad litem, the prosecuting attorney, and any other person who may contribute to the team's efforts to assist the family.

3.38. Change definition of Service Plan from: A comprehensive, time limited, goal oriented, individualized plan based on a thorough evaluation of the child's needs that describes the services, program, treatment and educational needs of a child in care.

To: A comprehensive, time limited, goal oriented, individualized plan based on a thorough evaluation of the child's needs that describes the services, program, treatment and educational needs of a child in care incorporating any Child's Case Plan or Safety Plan developed through the MDT process.

Add the definition of (it becomes 3.8) Child's Case Plan- A comprehensive document prepared by the Department pursuant to the requirements of WV State Code §49-6-5, following an adjudication by the court that the child is an abused and/or neglected child, that directs the provision of all casework services including the services provided to the child.

Add the definition of (it becomes 3.24) Intake Service Plan- A plan developed when the child initially enters placement to assure that the child receives appropriate care while in placement. If the child is in the Department's custody, and if a Safety Plan or a Child's Case Plan exists, they must be incorporated in the Intake Service Plan.

Add the definition of (it becomes 3.45) Transitional Living Scattered-Site Apartments. - Placement arrangements for children or young adults in Transitional Living in apartments that are

single-unit dwellings located throughout a community.

Add the definition of (it becomes 3.46) Transitional Living Training Center-Based Apartments. – Placement arrangements for children or young adults in Transitional Living in an apartment complex with multi-unit apartments, one of which serves as staff quarters and that are co-located with educationally-based programs.

4.2.b.1. Change from: Evaluation of the quality of the program, the proposed services, and the agency's ability to carry out them out effectively in the best interest of the children to be served;

To: Evaluation of the quality of the program, the proposed services, and the agency's ability to carry them out effectively in the best interest of the children to be served;

4.2.a.13. Change from: The fee schedule and procedures for payment of fees to foster and adoptive parents.

To: The fee or reimbursement schedule and procedures for payment of fees or reimbursements to foster and adoptive parents.

Add 6.6.a.10.F. All Department placements require a social security card or verification that an application has been made.

7.2.g. Change from: A procedure for an immediate suspension upon any felony or misdemeanor indictment for an offense against a person, public indecency, or violation of the Uniform Controlled Substances Act, W. Va. Code §60A-1-1 et seq., until the charges are resolved, and a requirement for the employee to notify the director of any criminal indictment within twenty-four (24) hours;

To: A procedure for an immediate suspension upon any felony or misdemeanor indictment for an offense against a person, public indecency, or violation of the Uniform Controlled Substances Act, W. Va. Code §60A-1-101 et seq., until the charges are resolved, and a requirement for the employee to notify the director of any criminal indictment within twenty-four (24) hours. This procedure shall require that an employee convicted of these charges will no longer be permitted to provide direct services to children and their families.

Add 8.2.a.8 Mandatory reporting requirements for child abuse and neglect.

8.2.d.1. Change from: An agency shall require that all employees providing direct services to clients receive at least twenty (20) hours of ongoing training within six (6) months of employment in areas including assessment of family dynamics, human growth and development, values and cultural diversity, and behavior management.

To: An agency shall require that all employees providing direct services to clients receive at least twenty (20) hours of ongoing training within six (6) months of employment in areas including assessment of family dynamics, human growth and development, values and cultural diversity, ethics, child abuse and neglect issues, and behavior management.

8.5.a. Change from: An agency that provides adoption or foster care services shall operate the program in accordance with this licensing rule, stating the necessary policies,

procedures and forms in a handbook given to the adoption and foster care parents.

To: An agency that provides adoption or foster care services shall operate the program in accordance with this licensing rule, stating the necessary policies, procedures, laws, and forms in a handbook given to the adoption and foster care parents.

9.2.c. Change from: Services necessary to promote health and safety;

To: Services necessary to promote safety, permanency, and well-being

9.3.c.1. Change from: An initial general medical examination by a physician thirty (30) days before placement or within thirty (30) days after placement and routine medical examinations after that as recommended for the child's age;

To: An initial general medical examination by a physician thirty (30) days before placement or within thirty (30) days after placement and routine medical examinations after that as recommended for the child's age. In addition, children placed by the Department shall be treated in accordance with the Sander's Consent Decree, which is an agreed order between the Department and the court to provide medical care to children in the Department's custody, and the Health Check requirements available through the Department of Maternal and Child Health.

9.6. Change from: Race, Color, National Origin, Culture and Ethnicity.

To: Multiethnic Placements

Change 9.6.b to 9.6.a

Add: 9.6.b. In accordance with the Multiethnic Placement Act of 1994 as amended by Removal of Barriers to Interethnic Adoption Act, an agency shall not deny a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, ethnicity, color, or national origin.

Add: 9.6.c. An agency cannot deny any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, ethnicity, or national origin.

10.3.b. Change from: A description of the fees

To: A description of the fees or reimbursement

10.4. Change from: Initial Service Plan. Based on the intake interview and available referral information, an agency shall develop an initial service plan within seven (7) days of placement to be signed and dated by the child, if appropriate to his or her age, and the child's biological parent or guardian that shall include:

To: Intake Service Plan- Based on the intake interview and available referral information, an agency shall develop an intake service plan within seven (7) days of placement to be signed and dated by the child, if appropriate to his or her age, and the child's biological parent or guardian that shall include:

Change the term master service plan to service plan in:

10.4.d, 10.4.f, 10.5, 10.10, 10.10.a, 10.10.c, 10.10.d, 10.10.e, 10.10.f, 10.10.g, 10.11, 10.11.a

10.9.c. Change from: Any plan developed from the Multi Disciplinary Team process shall be used to assist in the development of the service plan.

To: Any plan developed from the Multi Disciplinary Team process shall be used to assist in the development of the service plan and shall not conflict in any manner with the Child's Case Plan.

10.11.a. Change from: An agency shall ensure that each child's master service plan is reviewed by the planning team not less than once every three (3) months.

To: An agency shall ensure that each child's service plan is reviewed by the planning team no less often than once every three (3) months.

11.1.d. Change from: A procedure for notifying the planning team of the new placement which shall occur not less than forty-eight (48) hours prior to a transfer, under W. Va. Code §49-6-8(e), or in an emergency transfer situation, not less than forty-eight (48) hours after the placement, under W. Va. Code §49-6-8(e);

To: A procedure for notifying the planning team, specifically the child's guardian, of the new placement which shall occur not less than forty-eight (48) hours prior to a transfer, under W. Va. Code §49-6-8(e), or in an emergency transfer situation, not less than forty-eight (48) hours after the placement, under W. Va. Code §49-6-8(e);

12.2.e. Change from: Involving foster parents on the child's service planning team and providing them a copy of the child's initial service plan and all subsequent plans;

To: Involving foster parents on the child's service planning team and providing them a copy of the child's intake service plan and all subsequent plans;

Add 13.1.d.8 Parenting or child care experience

13.3.b. Change from: Prior to approval, foster parents shall have been married for not less than one (1) year, and adoptive parents shall have been married for not less than two (2) years.

To: Prior to approval, foster or adoptive parents shall have been married for not less than one (1) year

13.3.c. Change from: Prior to approval, a single foster parent shall show proof that he or she has lived in his or her own established household for not less than one (1) year, and a single adoptive parent shall show proof that he or she has lived in his or her own established household for not less than two (2) years.

To: Prior to approval, a single foster or adoptive parent shall show proof that he or she has lived in his or her own established household for not less than one (1) year,

Add 13.7.c. Any arrests or convictions other than minor traffic violations, shall require a waiver from the Secretary.

15.11. Change from: Hot water heaters shall supply sufficient hot water to adequately meet household requirements.

To: Hot water heaters shall require a safety valve and shall supply sufficient hot water to

adequately meet household requirements.

15.12. Change from: Animals living in the home shall be vaccinated as required by state law.

To: All animals owned by the foster or adoptive parents that come in contact with a child in placement shall be vaccinated as required by state law.

16.1. Change from: An agency shall conduct a comprehensive written home study with the approved foster or adoptive parents and all household members prior to a child placement in the home including a minimum of one (1) individual in-person interview and two (2) joint interviews.

To: An agency shall conduct a comprehensive written home study with the prospective foster or adoptive parents and all household members prior to a child placement in the home including a minimum of one (1) individual in-person interview for each parent and two (2) joint interviews.

Delete 24.1

24.4.b. Change from: A child or young adult receiving transitional living placement services shall be a minimum of seventeen (17) years of age and not more than twenty-one (21) years of age.

To: A child or young adult receiving transitional living placement services shall be a minimum of sixteen (16) years of age for training-based living arrangements and seventeen (17) years of age at scattered-site living arrangements and not more than twenty-one (21) years of age;

24.8. Change from: A section in the service plan shall outline face-to-face contact and hours spent with a child or young adult in transitional living services that includes the minimum number of face-to-face contacts and minimum hours a child or young adult shall spend with an assigned agency employee and shall include a minimum of three (3) face-to-face contacts in the child's or young adult's residence per week and four (4) telephone contacts per week.

To: A section in the service plan shall outline face-to-face contact and hours spent with a child or young adult in transitional living services that includes the minimum number of face-to-face contacts and minimum hours a child or young adult shall spend with an assigned agency employee and shall include a range of two (2) to five (5) face-to-face contacts in the child's or young adult's residence per week and a range of four (4) to six (6) telephone contacts per week.

24.11.e. Change from: That a dwelling not house more children or young adults in a transitional living program than the number the dwelling can accommodate, and the number of transitional living residents in a single apartment shall not exceed four (4); and

To: That a dwelling not house more children or young adults in a transitional living program than the number the dwelling can accommodate, and the number of transitional living residents in a single apartment shall not exceed two (2); and

24.12.d. Change from: An agency employee designated to respond to the child or young adult within forty-five (45) minutes of the child's or young adult's call for assistance.

To: An agency employee designated to respond in person to the child or young adult

within forty-five (45) minutes of the child's or young adult's call for assistance.

25.5. Change from: An agency shall develop eligibility criteria and policies for the community re-entry program including:

To: 25.5. An agency shall implement eligibility criteria and policies defined by the Department for the community re-entry program including:

25.5.b. Change from: Before re-entry a child or young adult shall have a comprehensive evaluation to determine vocational interests, aptitude, basic life skills and psychological and social potential for self-support;

To: During placement in a re-entry setting a child or young adult shall have a comprehensive evaluation to determine vocational interests, aptitude, basic life skills and psychological and social potential for self-support;

25.5.c. Change from: A child or young adult in transitional living shall be attending or have completed an educational or training program, and either seeking employment or already employed;

To: A child or young adult in a community re-entry program shall be involved in an educational or training program, life skills classes, counseling, and psychological evaluations;

25.6. Change from: An agency shall have policies to ensure that medical, dental and mental health services are provided to children and young adults in the community re-entry program including health screening, preventive care and emergency medical services.

To: An agency shall have policies to ensure that medical, dental and mental health services are provided to children and young adults in the community re-entry program as required by the Child's Case Plan and the Health Check program, including health screening, preventive care and emergency medical services.

26.1. Change from: An agency shall have a written grievance procedure for children and families. The procedure shall be written in clear and simple language and shall include at least the following provisions:

To: An agency shall have a written grievance procedure for children and foster, adoptive, and biological families. The procedure shall be written in clear and simple language and shall include at least the following provisions:

General comments:

Comment: An edited version of the old rules would have given a clear indication of the changes being considered and would eliminate the need for the cumbersome process of a side by side review with new regulations.

Response: True, but the rules are so different in content, arrangement and the format required by Regulatory Management that an edited version is almost impossible to develop and is of very little value.

Comment: Approximately a year ago, Child Welfare League of America identified the "duplicative overlapping, and at times conflicting licensing regulations by two separate state

agencies" particularly in regard to restraints' reporting, internal/external investigations and staffing. This issue placed providers in the position of being out of compliance with one set of rules by complying with another, both within DHHR. I would strongly urge that the Department examine the Child Placing Regulations to assure that they do not conflict where they overlap with those of the Office of Health Facility Licensure and Certification.

Comment: Are there any conflicts and/or contradictory standards with existing Behavioral Health Standards regulated by the Office of Health Facilities Licensure and Certification?

Response: These Child Placing Regulations do not conflict with any requirement of the Office of Health Facilities, Licensure and Certification. OHFLAC does not regulate foster or adoptive home settings.

Comment: I would also strongly urge that the Department assure that the rules adhere to the national Council on Accreditation standards before the process of promulgation is completed. Many state agencies and/or departments across the country have themselves become COA accredited. Such a move on the part of WVDHHR would enhance the quality of the child care system as well as provide a common set of rules for public and private agencies alike. These recommendations would best be served by having a single licensing unit/office for licensing and certification for the care and treatment of children and their families.

Comment: As we compared the new regulations with the Council on Accreditation standards, there is a lot of similarities. Has consideration been given to accepting the COA Accreditation certificate as a substitute for licensure? Such an approach may help off set some of the increased expectations set forth in the new regulations.

Response: The WV statute provides that the Commissioner of Human Services shall issue a child care license which may be deemed by the Commissioner of Health. The comment that these two entities (Office of Health Facilities, Licensure, and Certification under the Department of Health and Child Care Licensing under the Department of Human Resource) should be combined is beyond the scope of this regulatory process. Licensing regulations are considered minimum requirements to assure the health, safety and well-being of vulnerable populations, in the present instance, children. Any national accreditation certificate, as a threshold for application, requires full compliance with applicable state regulations. The Counsel on Accreditation routinely contacts Child Care Licensing for information and recommendations as part of their certification process.

Comment: Will state administered and directly delivered Adoption and Foster Care programs and out-of-state providers be required to comply with equivalent regulations.

Comment: Do the new regulations interface with the Department's Foster Care, Adoption, and Independent Living Policies that govern local DHHR office case work practices?

Response: These regulations were developed in collaboration with Department Program Specialists and with reference to Department programs, policies, procedures, and standards as well as state and federal statutes. This rule applies to any WV licensed child placing agency. Foster and adoptive homes certified by the Department are governed by state statute and are not regulated by these rules.

Comment: We do not agree that the regulations do not have a fiscal impact as indicated by the Department's fiscal note. Increased expectations for training, and services to biological

parents alone will increase the cost of the service.

Response: The fiscal note identifies the economic impact of this rule on Licensed Child Placing Agencies. The note recognizes "the requirement for the development and implementation of training for employees and foster and adoptive parents. It also requires adequate record keeping, hiring qualified staff, appropriate quality assurance monitoring, and fiscal responsibility" as a few of the fiscal implications. In addition, the requirement that services be provided to biological families is not new and is a current requirement.

Comment: Having a picture of each client in their files is an excellent idea.

Comment: I commend you on your comprehensive coverage of issues.

Response: Thank you

Specific Comments:

3.5 **Comment:** Since the standards govern foster care and independent living that serve youth from 18-21 as well as children, and youth under the age of 18 does accommodation need to be made to ensure the standards apply to that age category as well.

Response: This is covered in 3.45. in the definition of Young Adult

3.11 **Comment:** The term Crisis Support is also a Medicaid billing code for Emergency Shelters. It could be confusing for this term to be used in both situations, and we would suggest the Licensing Rules develop another term to accommodate the definition.

Response: The term crisis support is defined in this rule to reflect the intended use for child placing agencies.

4.2.a.3. **Comment:** We would not agree that it is appropriate for licensing standards to dictate an agency's mission statement.

Response: Agree. Separate into two rules. "The agency's mission statement," and "The agency's description of the expectation for the involvement of biological families in supporting the health and welfare of their child"

4.2.a.4. **Comment:** We would recommend language that indicates financial stability and viability rather than proposed language. How will this be monitored? Is an organization that is in bankruptcy proceeding financially stable?

Response: The terms financial stability and viability are not objectively measurable. The intent of this rule is to assure fiscal solvency for the agency and stability for children during the difficult first year of an agency's operation.

4.2.a.12. **Comment:** Change "information" to Personnel Files

Response: This rule pertains to initial application for a license. A new agency may or may not have established personnel files.

4.2.b.2 **Comment:** An agency is usually incorporated, either non-profit or for profit, therefore there would be no "principal owners" or personal finance statement needed. It should be required that an agency be incorporated and, preferably, be non-profit.

Comment: Needs clarification since private non-profit do not have "owners" like for

profit entities.

Response: Rule 6.2.a. requires proof of legal authority to operate. It is beyond the scope of these rules to require an agency or individual be incorporated or to operate on a for profit or nonprofit basis. The rule addresses operations which are both for profit and nonprofit and those individuals who choose not to become incorporated.

4.2.b.4 **Comment:** Requires a current physical examination for each employee. The requirement is costly to centers who would have to pay for the exams.

Response: This rule is consistent with requirements for all other child care settings. The intent is to assure health, safety and well-being of children.

4.5. **Comment:** Will agencies who are currently licensed under the existing rule be required to provide information listed under item 4.2.a.1-13? If so, clarify information on current agency employees which will be required (4.2.a.12).

Response: Regulations 4.2.a.1-13 refer to newly licensed agencies.

5.2. **Comment:** Regarding Investigation of Complaints: This particular section should also include a reasonable time frame for completion. Additional sections should be added to describe the investigation process and procedures.

Comment: Investigation of complaints: A reasonable time frame should be included for completion of the investigation of these complaints.

Response: This rule applies to child placing agencies and does not address nor govern Department functions or operations.

5.2.c. **Comment:** Requiring an agency to remove the employee and discontinue the employee's contact with children until a complaint alleging child abuse or neglect of a child by the employee does not allow for accidental injuries that may occur during passive physical restraint in the event the child should make an allegation of abuse as a result of an injury sustained during restraint.

Response: Agree. Rule 5.2.c. changed to: "For a complaint alleging sexual abuse or serious physical injury to a child in placement by an employee, an agency shall remove the employee and discontinue the employee's contact with the children until an investigation is completed and a determination is made."

5.3. **Comment:** It would be recommended that implementation of any corrective measures may be done with the agreement of the Licensing Specialist (prior to submission and approval of the Plan of Correction).

Response: The Licensing Specialist is the designee of the Secretary and can verbally approve corrective measures prior to written submission.

6.1. **Comment:** What does "standards of ethical conduct for its governing board and employees" mean? Do you mean "no conflict of interest?" Also, if you discuss a governing Board it is obvious that agencies must be non-profit and therefore refer back to 4.2.b.2.

Response: Standards of Ethical Conduct are covered in 6.4 not 6.1. The rule requires that an agency shall have a written standard of ethical conduct for its governing board and its

employees. It is the agency's responsibility to define "standards of ethical conduct." This rule requires a governing board for all agencies, not just nonprofit agencies.

6.2.b. Comment: regarding complete information about owners, officer and governing boards is vague as written. This section should specify exactly what "complete" information is- i.e., names, addresses, professional occupation, terms of office, etc.

Response: Agree, change rule to: "An agency shall have its charter, bylaws, partnership agreement, articles of association or incorporation or other documentation available for inspection at its principal place of business, including complete information about the owners and a list of the names, addresses, phone numbers, and terms of office for the officers and governing board."

6.3.d. Comment: Board of Directors may need to act prior to notifying Secretary of a change in Executive Director. Why would this standard be necessary?

Comment: Before changing an executive director . . . implies a consensual agreement between the governing board and the Secretary in approving the hiring of a new Executive Director. We would recommend that he work before be changed to when.

Response: Agree. Change to: 6.3.d. "When changing an executive director, the governing board shall notify the Secretary in writing." The initial license is based on the leadership identified to licensing at the time of application. Any changes in such leadership require notification to licensing and may impact the status of the license.

6.3.f. Comment: Does not offer a "grandfather clause" for an agency such as mine that has met previous licensing requirements, but does not and cannot meet this requirement. I believe that 6.3.f. needs to be modified so as not to punish agencies which have been originated, organized, administered, and run by one or two highly trained professionals.

Comment: Needs more clarification. DHHR staff participation on Board of Directors can contribute to the organization understanding of system needs. Certainly "conflict of interest" statements and protections can be built in.

Response: The intent of this rule is to assure consistency with current licensing requirements for residential child care settings. Further, the rule assures equitable, nonpartisan oversight of an agency's operations.

6.4.b. Comment: What is the practical application of this standard? We do not disagree, we are just not sure of how it is operational and/or measured.

Response: The intent of this rule is to provide a base line of ethical expectations. A child placing agency which is not providing the child placing services as represented in its application or submits fraudulent billing illustrates noncompliance with this rule.

6.6.a.9. Comment: The name, address, and telephone number of the school, teacher, and contact person is seldom received from DHHR staff. It is becoming difficult to enroll children due to incomplete information.

6.6.a.10 Comment: There should be a provision under this section that protects an agency from noncompliance in instances that the placing worker and DHHR has not provided ALL the necessary information on a child at the time of referral/placement.

Comment: Birth certificates are extremely difficult to obtain

Comment: If the information cannot be obtained from the placing worker, does the agency fail to comply with standard? We would agree the information ought to be obtained but in many instances such information is not provided by placing staff. The licensed agency may be held to a standard that is dependent on the actions of others.

Response: All of the requirements listed under 6.6.a.9 and 10 impacts an agency's ability to provide adequate care for a child placed under its supervision. No child should be accepted for placement without this basic information.

6.6.c.6 Comment: Establishes a requirement of medical exam/records for agency employees. The requirement could pose serious legal problems for agencies. Example: Couldn't an employee who tests positive for tuberculosis within three months of employment file a discrimination suit if he/she was suspended or discharged due to this medical condition?

Comment: Regarding employee verification of an immunization record. We believe this verification is unnecessary.

Response: The health, safety, and well-being of children is of primary concern. To this end, an agency is required to take appropriate steps to protect the health and safety of the children in its charge. This rule assures the agency's awareness of health risk to children posed by an agency employee, but does not require an agency to suspend or discharge an employee. The requirement for immunization records is being eliminated. The rule is changed to: 6.6.c.6. "A health assessment, including a physical examination, a tuberculosis test with a negative result performed within three (3) months of the date of employment, and a report of any health related limitations or communicable diseases that may impair his or her ability for the job"

6.6.c.7 Comment: A performance evaluation in 3 months and then yearly should be sufficient. Similar to 8.2.e.2.

Response: Initial three month and six month evaluations assure agency oversight of new employee progress and the development of necessary professional child care skills and competencies.

6.6.c.9 Comment: add the word personnel before 'actions or incidents . . . '

Response: This rule requires the reporting of any actions or incidents relating to an employee not just "personnel" actions.

6.7. Comment: Operating oversight is not clear. Can this be more descriptive?

Response: This rule requires an agency to self-assess its child placing operation. Rules 6.7.a.3 and 6.7.a.3.A-K specify the particulars which are to be included in the self-assessment.

6.7.b.3 Comment: Why is it necessary to contact the child abuse hotline when a child is absent without permission in addition to notifying the biological parents, guardian, placing worker, supervisor and law enforcement?

Response: Agree, change rule to: " Identifying and reporting a child who is absent without leave to the guardian or child abuse hotline and a law enforcement authority within twenty-four (24) hours"

6.7.b.5. Comment: Needs clarification and seems contradictory to IIU policy and

procedures. We would prefer the ability to create an internal response by non-involved trained personnel as to enable quick response.

Response: This rule is to assure health, safety, and well-being of children in care. Its intent is to provide immediate written documentation of any incident which negatively impacts the health, safety or well-being of children in an agency's care. This rule does not conflict with IIU policies or procedures which prohibit internal investigations.

7.2.i.2 Comment: Case related excursions: While adding another adult in transportation may be preferable, it is also very cost prohibitive.

Response: Agree, change the rule to: " That excursions are case-related only"

7.3. Comment: Our employee manual describes employee benefits, time off, introductory periods, non-discrimination practices, etc. It doesn't seem that this is the place for "legislative changes" unless they are in regard to the previous categories.

Response: This rule requires that a child placing agency produce an employee manual which incorporates the requirements of this rule and federal and state mandates which pertain to child placing agencies. This information and documentation requires review and revision in response to any legislative changes or directions from the Secretary. An example of recent legislation which should be addressed is the Drug Free Work Place mandate.

78-2-8 Comment: Are the provisions in this entire section (employee requirements) applicable to DHHR directly delivered foster care and/or adoption standards?

Response: This rule applies to licensed Child Placing Agencies. Specific sections and subsections of this rule were developed in close collaboration with DHHR employees and with reference to Department programs, policies and procedures.

8.1.a Comment: Executive Director should be broadened to include public/business administration with experience in human service field

Comment: Executive Director qualifications are the purview of Board of Directors and not necessarily relevant for program administration. It would be appropriate to set out qualifications for the individual directly responsible for the program administration (foster care and adoption).

Response: The Executive Director ultimately has the responsibility for assuring an agency complies with all requirements of this rule. To this end, this requirement assures that the person vested with this responsibility has competencies and skills directly related to this mandate. This rule does not limit utilizing education or experiences from other fields. The governing board has the ability to establish any and all other qualifications which meet this minimal requirement.

8.1.b.2 & 8.1.d.2 Comment: This is going to make it difficult to hire staff. Couldn't it be a Bachelors and 1 year experience in human relations?

Comment: regarding Employee Requirements- The qualifications for a case manager and home finder with a Bachelor's degree *exceed* that of the qualifications of Administrative and Supervisory employees (Bachelor's degree with three years of experience in child welfare services for case manager or home finder while a 'Supervisor requires only 3 years of generalized experience in a human services field, at least one of which is in child welfare services). We would

expect that the Regulations would desire higher qualifications for those in a supervisory capacity. Moreover, these employee qualifications exceed those which are specified in Foster Care Practice Standards for case work and home finding staff, which require graduation from an accredited 4 year college or university and licensure by the WV Board of Social Work Examiners. As licensing requirements are the minimum mandates to ensure the safety, health and well being of children, and practice standards are specifications for a higher level of service delivery, it is contradictory to set the benchmark higher in licensing regulations than practice standards. Last, while cognizant of the proviso that supervision may substitute for experience requirements, nonetheless we must question the feasibility of setting such formidable standards of three years experience for case workers and home finders, given the current recruitment and staffing environment for child welfare services in WV.

Response: In order to allow agencies more flexibility in recruiting qualified staff, regulation 8.1.b.2 is changed to: "A Master's degree in a human services field and one (1) year of experience in child welfare services; or a Bachelor's degree in a human services field, two (2) years of experience in a human services field, at least one (1) year of which is in child welfare services."

8.1.d. **Comment:** Recommend one year experience

Comment: This provision as written will restrict these practitioners to BSW and/or M.S.W. degrees. Are there enough? , And is a social work degree the only relevant degree for this type of work? Is that supported by research and/or national standards?

Response: In order to allow agencies more flexibility in recruiting qualified staff, rule 8.1.d.2 has been changed to: "A Bachelor's degree in a human services field." A specific degree (BSW, M.S.W.) is not required by this rule, but West Virginia Code requires that those engaged in the practice of social work obtain a social work license. Delete 8.1.d.3.

8.1.d.1 **Comment:** Reduces the pool of candidates and DHHR has been given a waiver from this making for an uneven playing field for private agencies to recruit potential candidates and may produce a larger exodus of graduates from disciplines from WV colleges.

Response: See previous response.

8.2 **Comment:** regarding Orientation and Training: Given the requirement of 3 years experience in the aforementioned section, the requirement of well over 100 hours of training or supervised practice in the first 6 months of employment seems excessive. While the West Virginia Child Care Association believes appropriate and relevant training is vital for quality services to the children in our care, nonetheless there are additional issues of cost, staff recruitment and retention, caseload ratios and service access, which make this requirement an area of difficulty and concern for the private child welfare providers. We would make the recommendation that 8.2.d.1 be extended from six months to within one year of employment.

Response: The experience requirement has been changed from three (3) years to one (1) year. In view of this, it is imperative that agencies assure that every new employee has a minimal understanding of family dynamics, human growth and development, values, cultural diversity, behavior management, and child abuse and neglect issues prior to assuming full job responsibilities. New employees must have a basic knowledge of these topics and others which are essential to the provision of professional child care. It is important that these competencies and skills be provided to or made available to the new employee as soon as possible subsequent to

employment.

8.2.a. Comment: The whole section on orientation training seems to require too much. It seems that 8.2.a should be 20 hours and that the 25 hours yearly required in 8.2.d.2 should include supervisory sessions as well as outside training. The training areas of 8.2.a.3, 8.2.a.6, and 8.2.a.7 only apply to foster care or agencies that place older children not infant placing agencies.

Response: The forty hours of orientation training, which this rule requires, is the minimum necessary for new employees to understand the critical nature of their employment. The twenty-five hours of annual training may include outside training or supervisory sessions. The twenty-five-hour requirement is based on statutory rules governing social work licensure. The requirements of 8.2.a.3, 8.2.a.6, and 8.2.a.7 apply to all child placing agencies.

8.2.b. Comment: This applies to agencies that place older children not newborn babies, who are not in temporary care and never left with the employees

Response: This requirement applies to all licensed child placing agencies. All child care professionals must be prepared to respond to emergencies affecting the health and safety of children regardless of their age.

8.2.c Comment: Two years is excessive-one year is more realistic.

Response: Agree, change to: "Supervised Practice. An agency shall require that on completion of the orientation training and before assuming full responsibility, all employees providing direct services to clients receive twenty (20) hours of one-on-one supervised practice in their specific job functions with an employee who has a minimum of one (1) year of experience in performing similar job functions to that of the employee in training."

8.2.e.2. Comment: Six months is soon enough to actually evaluate an individual's performance. Feedback, training, and action plans are almost continual during the first 90 days

Response: Licensed child placing agencies vary greatly in their attention to providing feedback, training, and action plans to new employees and, therefore, a minimum requirement of three months is established.

8.4.c. Comment: Regarding annual tuberculin test for volunteers: We question why the proposed regulations specify its necessity for only volunteers. Moreover, recent trends of tuberculin infection make annual testing unnecessary.

Response: The proposed regulation is not limited to volunteers. Rule 6.6.c.6 addresses the tuberculin test requirement for employees and 13.2.a.1 addresses the tuberculin testing requirement for foster and adoptive parents. Although recent legislation removes tuberculin testing requirements for specified groups of children, no such legislation addresses adult exemptions.

8.5. Comment: The Adoption Service Handbook does not seem relevant for adoption, only for foster care.

Response: A handbook provides relevant information for all programs an agency offers. A handbook for prospective adoptive or foster parents would provide the families with an agency's requirements, policies, and procedures pertaining to the specific program.

9.1.f **Comment:** Clear guidelines are needed regarding maximum distance to be traveled for supervised visitation. For instance, what would be the visitation expectation for a child placed by WVDHHR in an AYC home in Wayne County if the biological family lives in Morgantown? In these cases, how will DHHR be reimbursed for the additional travel expense?

Response: The transportation arrangement for visitations is a case management decision and needs to be addressed by the Multidisciplinary Team and the court. The comment which pertains to Department policy concerning reimbursements exceeds the scope of this rule.

9.3.c.4 **Comment:** Since Medicaid is the payer of medical services for children in care, this provision needs to be written to be consistent. Medicaid-covered services as opposed to generally requiring certain services within the standard.

Response: Medicaid funding may be the principle source of reimbursement for the majority of children in care, however, it is not the sole source of reimbursement. This rule requires that an agency formulate policies to assure that all children's health and safety needs are identified and addressed.

9.4 **Comment:** regarding Child with an Extraordinary Medical Need. It is recommended that 9.4a be reworded to say before initial placement.

Response: Agree, change to: "Unless a medical examination can be documented within the previous thirty (30) days, the child is examined by a physician within seven (7) days before initial placement into a foster care or adoptive home, and the physician documents that the child can be appropriately cared for in a home setting"

9.4.f **Comment:** since Psychotropic Medication is listed under this section, I am assuming then that it is the Department's intent to classify children on Psychotropic medication as children with extraordinary medical needs. Since it will be the placing worker's responsibility to see these children are examined by a physician within seven days before placement, the Department will want to ensure their field staff are properly apprized of this expectation in practice.

Response: This rule defines extraordinary medical needs as medical needs beyond routine and preventive medical care. The intent of the rule is to ensure that all children in out of home placements with such additional medical needs are medically assessed prior to placement to ensure that they can be appropriately and safely served in a foster or adoptive home setting. The Department's internal policies and procedures are beyond the scope of these rules.

9.5 & 9.6. **Comment:** Seems in conflict. If agencies cannot consider race, etc., why should they consider religion? Isn't this discriminatory and basically unnecessary?

Response: Rule 9.6 has been renamed Multiethnic Placements. In addition, West Virginia Code §49-2-1 requires, as far as practicable, that in placing any child in the care of a family or a child welfare agency the selection of the home shall be based on a family holding the same religious belief as the parents or relatives of the child

9.7.a. 5 **Comment:** recommend that time out be substituted for removal, as the latter term implies removal from the home

Response: Agree, change rule to “Measures administered close to the time of the child’s act or behavior for teaching purposes and if time out is used, that it be for a reasonable period of time”

10.3. **Comment:** The written service agreement seems only for foster or special needs adoption.

Response: This rule requires that a written service agreement exist for any out of home placement. The intent of this rule is to ensure a common understanding between the child’s parent or guardian and the agency of the responsibilities of each party and the services to be provided while the child is in placement.

10.5 **Comment:** This provision has cost and practical operating considerations. It does not represent good practice if such family-centered assessment practices are to be reimbursed, and do not conflict with the task responsibility of the DHHR placing staff.

Response: The intent of this rule is to assure that the licensed child placing agency has compiled or assembled adequate and comprehensive child assessment information to prepare and develop the service plan. Nothing in this rule prohibits soliciting and incorporating this assessment information from other sources.

10.5.o **Comment:** OFLAC requires seven days. Needs definition of emergency placement.

Response: Obviously, an emergency placement is an unplanned placement which is characterized by immediacy and urgency and cannot meet the requirements of this rule pertaining to the assembly of child assessment information. The Office of Health Facility Licensure And Certification allows seven days for the development of a service plan, not to obtain information to provide immediate and adequate care for the child.

10.5.i. **Comment:** Will the state determine which life skills assessment will be required for children 14 years or older, or will this be left to the agencies to choose?

Response: This rule refers to the total assessment of a child necessary to develop an appropriate service plan. A life skills assessment as defined in this document refers to the tasks, abilities, or knowledge required to perform the activities of daily living. This rule does not specify the tools or instrument required to complete this assessment.

10.6 **Comment:** This provision needs to require that “matches” be documented. The way it is written, it implies that standard format exists that we do not favor.

Comment: This section specifies that the agency will use an assessment and evaluation of child’s needs and strengths and the completed *child assessment* to develop a written match summary, which is used to select the specific foster or adoptive foster parents for the child. It is assumed that this summary will be developed prior to placement. However, section 10.5 specifies that the child assessment will be developed prior to developing the master treatment plan, which is developed within 30 days of placement. It is inconceivable that the amount of information required in the Child Assessment can be accommodated prior to placement; therefore child assessment needs to be deleted in section 10.6.a and minimum informational requirements for the match summary be established for this section.

Response: The question posed in the first comment is unclear. The rule requires a written match summary. We agree with the second comment and rule 10.6.a will be changed to: "An agency shall use an evaluation of the child's needs and strengths and the information provided by the referring entity to develop a written match summary" and delete 10.6.b and 10.6.c.

10.9 Comment: regarding planning team: A core value of the PRIDE model of foster care is recognizing/including foster parents as vital members of the treatment team. Therefore, in light of the State's plan to replicate this model statewide at some point, it would seem reasonable that foster parents be included as members of the planning team.

Response: Foster parents under 10.9.b are included as "other individual's significant in the child's life that have an interest in the child."

11.1.i Comment: We would recommend that the "critical juncture" language from OFLAC/Medicaid be adapted for this provision.

Response: This rule derives from the requirements of WV Code §49-6-8(d).

12.2.k Comment: Cost implications could be major.

Response: We do not believe that private individuals should suffer personal losses as a result of services they are providing to children on behalf of a licensed child placing agencies.

12.2.1 Comment: We believe the provisions should be written in a manner defines "emergency removals" and require that foster parents have active roles in the planned discharge process.

Response: This rule consistently requires that foster parents assume an active role throughout the placement and discharge of the child(ren) in their care. It specifies that the agency must provide adequate notice to the foster parents of any planned discharge. This notification requirement is waived in an emergency unplanned discharge.

13.1.c Comment: maybe discriminatory of "senior citizens" who are sixty-six (66) and older. It also does not appear to take into consideration the age of the child, the health condition of the "senior citizen" and his/her spouse, and the age of the senior citizens' spouse.

Response: The Department has revised this item and added "unless a waiver is granted by the Secretary" to allow individual consideration of these factors.

13.1.e Comment: Disclosure and release of information shall be obtained for all previous experiences and records of previous experiences shall be approved before approval.

Response: Agree, this rule is changed to: "At the time of consideration by an agency, foster and adoptive parents shall disclose and sign a release of information detailing any current or previous experience with other licensed agencies or the Department, and if currently providing services to more than one (1) licensed agency, shall detail the responsibilities to each person and agency in a written statement."

13.2.a.2 Comment: Why? This seems to be overstepping authority.

Response: This rule assures that all childrens' health and safety needs in the foster or adoptive home are being met. Such a requirement also minimizes the health risks to all parties.

13.3.a. **Comment:** This effectively eliminates homosexual couples, and common law relationships. We would argue that such "family" configurations have a role in helping to meet the needs of children in today's society.

Response: We acknowledge that such "family" configurations may have a role in helping to meet the needs of children. However, WV Code §61-8-4 states that "if any persons not married to each other lewdly and lasciviously associate and cohabit together . . ." they are guilty of engaging in illegal behavior.

13.3.b **Comment:** The real issue here is a healthy, respectful, stable relationship rather than arbitrary length of time in a marriage requirements [sic].

Response: The Department has changed this rule to require one year of marriage prior to the approval for both foster and adoptive parents. The terms healthy, respectful, and stable relationships are subjective terms and cannot be documented or measured.

13.4a **Comment:** To avoid any potential confusion, it is recommended that this section be expanded and part of the definition under 3.17 be restated to add that no more than five children who are unrelated by blood or adoption to the foster parents shall be placed in the home.

Comment: Is a waiver required for sibling groups of more than six.

Response: Rule 3.17 is a definition of foster family home and derives from West Virginia Code §49-2B-2(o). Rule 13.4.a., in accordance with the statutory definition of foster family home (which serves up to five (5) unrelated children), allows for one additional (related) child in the foster family home. Any placement which exceeds the placement limitations of this rule would require a licensing waiver.

13.4.b. **Comment:** Does not indicate a time frame

Comment: In addition to: we believe there ought to be age difference requirements between age of foster parent(s) and age of children placed, at least a minimum of four years. With such a requirement a 21 year old foster parent could not parent children older than 16 years at the time of placement.

Response: The rule has been changed to "An agency shall not permit a family to parent more than two (2) children less than two (2) years of age in the same home at the same time." The second comment is related to the "good judgment of the child placing agency" in developing a match summary and should not need to be regulated or addressed in these rules.

13.5.b **Comment:** While I am in favor of a very careful evaluation, I believe having to contact the references personally may pose an unnecessary intrusion into their home and/or work life. Maybe the references can indicate whether or not the reference has additional information that they would like to discuss with the agency.

Response: The Department is cognizant of the additional work this may entail, but a personal contact with references provides an opportunity for references to have an open discussion, to make unsolicited comments, and to discuss items not identified on a reference form.

15.1 **Comment:** There needs to be minimum space (square foot) requirements.

Response: We disagree. Foster and adoptive homes are private residences and the licensing entity is unable to regulate their individual characteristics. The licensed child placing agency

utilizes its professional discretion and delegated authority to make determinations related to the appropriateness of individual adoptive and foster homes.

15.4 Comment: This poses a problem for some religious groups like the Amish. My Amish families have agreed to have a phone installed outside of their home, on a porch or pole, so they can use it in emergencies.

Response: To allow for those rare occasions in which this rule may conflict with religious beliefs, the item has been amended to include this addition, "In the event this is contrary to a family's religious beliefs, the agency shall assure that emergency situations can be adequately addressed and that appropriate contacts can be made with the family and the child in a timely manner."

16.1. Comment: What is meant by two (2) group interviews? Does this mean with both members of a couple of a group or applicants? What if there is only one family at a time applying?

Response: The Department has changed this rule to clarify that each parent is to be individually interviewed at least once and both parents jointly interviewed on two (2) occasions. The rule has been changed to "An agency shall conduct a comprehensive written home study with the prospective foster or adoptive parents and all household members prior to a child placement in the home including a minimum of one (1) individual in-person interview for each parent and two (2) joint interviews."

16.2 Comment: Many of the categories refer to foster families and families already with children. Does this section need to be so specific?

Response: The categories required in the comprehensive home study are related to marital and family relationships, attitudes, values, etc. These categories specifically relate to and impact the health, safety, and well-being of any child residing in a foster or adoptive home. They allow families to document parenting or child care experiences and knowledge of child development issues but do not require experiences in these areas.

20.2.d Comment: In light of the DHHR's intent to replicate the PRIDE pre-service training program statewide for foster and adoptive parents, it is unclear at this point what else would be included in a program specific training program.

Response: This rule requires that the licensed child placing agency develop a training curriculum which reflects the specific model and/or program which the agency has elected to utilize. Since not all adoptive agencies have contracted to provide services through or for the Department, this rule addresses an agency's responsibility to develop a training program for adoptive parents.

21.1. Comment: regarding Presentation of a Child to Prospective Foster Parents: Section 11. 1. e. regarding a minimum of one visit prior to placement would best fit here in this section.

Response: Section 21.1 requires that an agency have a written protocol for the placement of foster children. Section 11.1 relates to transferring a child within an agency's foster care program

21.3 **Comment:** Can FACTS be updated to track Internal Investigation Unit results, and involuntary closures?

Response: This comment is not related to these rules.

23.2.a. **Comment:** This seems to be what would be included in a training manual for social service staff. Also 23.5 the same thing.

Response: Yes, these are the requirements for a licensed child placing agency to provide child placing services in the state of WV.

23.5 **Comment:** I think this section should have added a written statement from the child's doctor confirming, in writing, that the child has received appropriate newborn/child care, shots, etc.

Response: Many children, who are initially placed in foster care and later become available for adoption, have not received appropriate newborn/child care from a physician prior to placement in foster care. Nothing in this rule prevents the licensed child placing agency from obtaining such medical information when it is available. Requirements for medical information are identified in 6.6.a.8, 10.5.g, 11.1.g and 23.4.b of this rule.

23.5.a.4.A. **Comment:** A visit within one (1) week does not give the family much time to get over their initial nervousness, excitement and newness. I believe a two or three week period might be more sensitive to the new family. The one (1) week requirement may be impossible to meet in Interstate Compact placements, when it often takes the adoptive family (e.g. a WV family who has gone to Maryland for the child) longer than one (1) week to get approval to leave Maryland and return to WV.

Response: We consider the date of placement to be the date the child actually resides in the adoptive home in WV. A visit within one week of placement can serve to assure the adoptive parent(s) that the support services they require and/or need are available to them.

23.5.a.4.B. **Comment:** Requiring four (4) of the six (6) visits to take place in the adoptive family's home appears excessive in most cases and may impose unnecessary costs to the adoptive family for agency personnel to travel. Why not require at least one or two in the home, and make the agency document why additional home visitations are not needed.

Comment: Six (6) visits for special needs and older children but three (3) are all that seems necessary for newborn infants.

Response: Visits outside of the home do not give a full and accurate picture of family functioning and adaptation. Conversely, visits in the home empower and support the adoptive family in their own environment. For these reasons, this rule requires four (4) of the six (6) visits to be in the adoptive family home.

23.5.a.4.C **Comment:** Shouldn't only one (1) visit require both parents?

Response: No, since **both** parents are adopting an assessment is required of both throughout the placement.

23.2., 23.3., 23.4., 23.5., 23.7., 23.8., 23.9., 23.10. **Comment:** The term "protocol" seems to mean Program Description. Is this correct?

Response: When the term protocol is utilized in these rules, the intent is to prescribe program description and procedure.

24.1 **Comment:** Have these standards been written with consideration to current or draft independent living program policy?

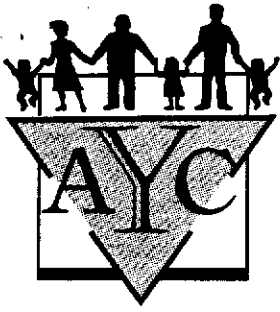
Response: Yes

78-2-25 **Comment:** regarding Community Re-Entry Program. While community re-entry is defined in the definitions, it is a fairly new service definition, whose programmatic elements are unclear at this point. Defined as a specialized group setting for children targeted to return to their community, the target population thus could be very broad indeed and encompass a wide range of service and programmatic needs. Theoretically, in the absence of clearer programmatic standards, some of the needs of these youth could be quite challenging. However, even given that this is a quasi group residential program in practice, it is disturbing that the *minimum requirements are less than those of all other services defined in these regulations*. At a minimum, staffing requirements should be established, training for staff relevant to the program be defined, the same relevant and minimum standards for a foster home should be required, and the additional safety requirements for foster and adoptive homes be required for these programs as well. For example, the current draft regulations specify master service plans be developed within 30 days for a 'child in foster care' but the terminology thus precludes this requirement for community re-entry. Would not the expectation be that children in community re-entry have a master service plan? Moreover, Behavior Management and Discipline policies and procedures are to be developed for foster or adoptive parents to use as guidelines in disciplining a child, but does not specify what policies are expected for staff in community re-entry programs. While I would assume it is the same standard, nonetheless these standards as written are unclear. It is strongly encouraged that the DHHR carefully review all these regulations and ensure that specific wording does not preclude appropriate regulation and oversight to this program.

Response: These are 24 hour a day staffed settings comparable to transitional living settings which are covered in 2.24 of this rule. The community re-entry program is a specialized program which targets individual children who are coming out from under the supportive living umbrella provided by the Department. The Department individually contracts with provider agencies to provide this service and sets rates of reimbursement. These rules were written in collaboration with those currently responsible for developing the community re-entry program. The intent of this rule is to establish minimum regulatory requirements to implement this program. Since both transitional living settings and community re-entry settings are considered foster care placements, all requirements of the rule pertaining to foster care would apply, including the service plan. Staffing requirements are addressed in 25.10 and fire, safety, and health are addressed in 25.11.d.

25.1 **Comment:** This appears to be a "new" program. Integration of standard of care for children and youth returning to the community is better addressed as an expectation of discharge and aftercare services within both child placing and child care regulations.

Response: See previous response.



ACTION YOUTH CARE RECEIVED

AUG 22 2000
STAFF DEVELOPMENT
& TRAINING

Beth Marquart, Director, Office of Regulatory Support
Department of Health and Human Resources
Capitol Complex - Building 3, Room 201
Charleston, WV 25305

Dear Ms. Marquart,

Thank you for the opportunity to comment on the Child Placing Agencies Licensure Rules. The amount of time and effort that was given to this project is greatly appreciated. In reference to the draft rule, the following is a list of comments or suggestions for changes:

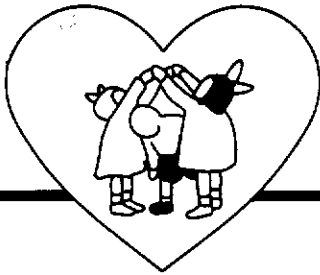
1. Pg. 6, 3.2. Investigation of Complaints: A reasonable time frame should be included for completion of the investigations of these complaints.
2. Pg. 10, 6.6.a.9. The name, address, and telephone number of the school, teacher, and contact person is seldom received from DHHR staff. It is becoming difficult to enroll children in school due to incomplete information.
3. Pg. 10, 6.6.a.10. Birth certificates are extremely difficult to obtain.
4. Pg. 19, 9.1.f. Clear guidelines are needed regarding maximum distance to be traveled for supervised visitations. For instance, what would be the visitation expectation for a child placed by WVDHHR in an AYC foster care home in Wayne County if the biological family lives in Morgantown? In these cases, how will DHHR

reimburse for the additional travel expenses?

5. Pg. 33, 13.4.a. Is a waiver required for sibling groups of more than six?

If you have any questions or comments regarding the above, please do not hesitate to contact me.

Sincerely,
Evelyn J. Perdue, M.A., Regional Director



Adoptions From The Heart®

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<http://www.adoptionsfromtheheart.org>
Maxine G. Chalker, MSW/LSW, Executive Director

August 16, 2000

Beth Marquart
Director, Office of Regulatory Support
Dept. of Health & Human Resources
Capitol Complex – Building 3, Room 201
Charleston, WV 25305

Re: Comments regarding proposed Child Placing Agency
Licensing Regulations

Dear Ms. Marquart:

I am enclosing some comments on your proposed regulations. I commend you on your comprehensive coverage of issues but there are a few places that I feel need clarification because I am not sure what you are describing. Adoptions From The Heart is a relatively new agency in your state and I am sure that new agencies will need to understand the regs in order to maintain compliance.

Please feel free to contact me for any clarification of my comments and thank you for the opportunity to offer them.

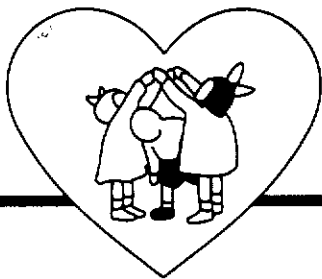
Sincerely,

Maxine Chalker, MSW/LSW
Executive Director

Enclosure

Branch Offices

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1525 Oregon Pike, Suite 501, Lancaster, PA 17601 ♥ 451 Woodland Avenue, Cherry Hill, NJ 08002 ♥ 18A Trolley Square, Wilmington, DE 19806
9 Claremont Drive, Greensburg, PA 15601 ♥ 7014 Grand Central Station Drive, Morgantown, WV 26505



Adoptions From The Heart

COMMENTS ON PROPOSED REGS FOR WV CHILD PLACING AGENCIES

- 4.2.a.12. Change "information" to Personnel Files
- 4.2.b.2 An agency is usually incorporated, either non-profit or for profit, therefore there would be no "principal owners" or personal financial statement needed. It should be required that an agency be incorporated and, preferably, be non-profit.
- 4.5.a An agency shall "receive an application and" submit.....
- 78-2-6
6.1 Administrative Manual. This section is the most confusing. What is an Administrative Manual? What is a detailed plan of operations? Do you mean Program Descriptions? What does 6.1.d. mean? Employees participate in the administrative manual review. I don't understand this entire section.
- 6.4.a. Governing Board – What does "standards of ethical conduct for its governing board and the employees" mean? Do you mean "no conflict of interest?" or state any conflict of interest? Also, if you discuss a governing Board it is obvious that agencies must be non-profit and therefore refer back to 4.2.b.2.
- .6.c.7. A performance evaluation in 3 months and then yearly should be sufficient, in my opinion.
- 6.7 Operating Oversight. This is the only other entire section that is not clear to me. Can this be more descriptive to someone that is not familiar with it or for smaller agencies?
- 7.3 Employee Manual. Our employee manual describes employee benefits, time off, introductory periods, non-discriminatory practices, etc. and was made up by our payroll company to comply with various State laws. It doesn't seem that this is the place for "legislative changes" unless they are in regard to the previous categories.
- 78-2-8 Employee Requirements

8.1.b.2 & 8.1.d.2 Both require a BS degree in human services and three (3) years experience in human relations or child welfare. This is going to make it very difficult to hire staff. Couldn't it just be a Bachelors degree and one (1) year experience in human relations? Three years would rule out many new graduates and a specific focus of degree would rule out someone with a BA and a lot of experience in human services.

8.2.a. Orientation Training. This whole section seems to require too much. It seems that 8.2.a. should be 20 hours and that the 25 hrs yearly required in 8.2.d.2 should include supervisory sessions as well as outside training. 8.2.e.2. was previously addressed.

The training areas of 8.2.a.3. and 8.2.a.6 and 8.2.a.7 only apply to foster care or agencies that place older children not infant placing agencies.

8.2.b. This also applies to employees of agencies that place older children not newborn babies, who are not in temporary care and never left with the employees.

8.5 Adoption Services Handbook. This does not seem relevant for adoption, only for foster care.

9.5 & 9.6 Seem in conflict. If agencies cannot consider race, etc. why should they consider religion? Isn't this discriminatory and basically unnecessary?

10.3 Written Service Agreement. This seems only for foster care or special needs adoption.

16.1 What is meant by two (2) group interviews? Does this mean with both members of a couple or a group of applicants? What if there is only one family at a time applying?

16.2 Many of the categories refer to foster families and families already with children. Does this section need to be so specific?

23.2.a. This seems to be what would be included in a training manual for social service staff. Also 23.5 the same thing.

23.5a.4.B. Six (6) visits for special needs and older children but three (3) is all that seems necessary for newborn infants. The same with 23.5.a.4.C, shouldn't only one (1) visit require both parents?

23.2, 23.3, 23.4, 23.5, 23.7, 23.8, 23.9, 23.10 The term "protocol" seems to mean Program Description. Is this correct?



ALLIANCE FOR CHILDREN, INC.

PO Box 3717

Charleston, WV 25337

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"An innovative partnership caring for children and their families."

Scott R. Boileau

Executive Director

RECEIVED
AUG 21 2000
STATE DEPARTMENT
OF HEALTH & HUMAN RESOURCES

August 21, 2000

Beth Marquart, Director, Offices of Regulatory Support
WV Department of Health and Human Resources
Capitol Complex, Building 3, Room 201
Charleston, WV 25305

Dear Beth:

We appreciate having the opportunity to comment on the draft, Child Placing Agencies Licensure regulations.

First, we'd like to commend the Department on its efforts to update the regulations with an eye to national accreditation standards. As we compared the new regulations with the Council on Accreditation standards there is a lot of similarity. Since the regulations seemed to be based on COA standards, has consideration been given to accepting the COA Accreditation certificate as a substitute for licensure? Such an approach may help off set some of the increased expectations set forth in the new regulations.

Additionally general comments and questions we have are:

- (1) Will state administered and directly delivered Adoption and Foster Care programs be required to comply with the proposed regulations?
- (2) Will out-of-state foster care and/or adoptive providers be required to comply with equivalent regulations?
- (3) Were the draft regulations reviewed to see if there are any conflictive and or contradictory standards with the existing Behavioral Health Standards regulated by the Office of Health Facilities Licensure and Certification?
- (4) It was not possible to determine if the new regulations also interface with the Department's Foster Care , Adoption, and Independent Living policies that govern local DHHR office case work practice. This consideration is important because the expectations created by the regulations may not be understood and/or conflict with the practices employed by local offices that make referrals and placement decisions.

- (5) We do not agree that the regulations do not have a fiscal impact as is indicated by the Department's fiscal note. Increased expectations for training, and services to biological parents alone will increase the cost of the service.

As to specific provisions please note the following:

- 3.5 Since the standards govern foster care and independent living that serve youth from 18-21 as well as children, and youth under the age of 18 does accommodation need to be made to ensure the standards apply to that age category as well?
- 4.2.a.3 We would not agree that it is appropriate for licensing standards to dictate an agency's mission statement.
- 4.2.a.4 We would recommend language that indicates financial stability and viability rather than proposed language. How will this be monitored? Is an organization that is in bankruptcy proceedings be financially stable?
- 4.2.6.2. Needs clarification since private non-profits do not have "owners" like for profit entities.
- 6.3.d. Board of Directors may need to act prior to notifying Secretary of a change in Executive Director. Why would this standard be necessary?
- 6.3.f. Needs more clarification. DHHR staff participation of Board of Directors can contribute to the organization understanding of system needs. Certainly "conflict of interest" statements and protections can be built in.
- 6.4.b. What is the practical application of this standard? We do not disagree, we are just not sure of how it is operationalized and/or measured.
- 6.6.a.10 If the information cannot be obtained from the placing worker, does the agency fail to comply with standard? We would agree the information ought to be obtained but in many instances such information is not provided by placing staff. The licensed agency may be held to a standard that is dependent on the actions of others.
- 6.7.b.5. Needs clarification and seems contradictory to IIU policy and procedures. We would prefer the ability to create an internal response by non-involved trained personnel as to enable quick response.
- 8.1.a Executive Director qualifications are the purview of Board of Directors and not necessarily relevant for program administration. It would be appropriate to set out qualifications for the individual directly responsible for program administration (foster care and adoption).

- 8.1.d This provision as written will restrict these practitioners to BSW and/or MSW degrees. Are there enough?, and is a social work degree the only relevant degrees for this type of work? Is that supported by research and/or national standards?
- Are the provisions in this entire section (employee requirements) applicable to DHHR directly delivered foster care and/or adoption standards.
- 9.3.c.4. Since Medicaid is the payor of medical services for children in care this provision needs to be written to be consistent. Medicaid covered services as opposed to generally requiring certain services within the standard.
- 10.5 This provision has cost and practical operating considerations. It does not represent good practice is such family-centered assessment practices are to be reimbursed, and do not conflict with the task responsibility of the DHHR placing staff.
- 10.5.0 OFLAC requires seven days. Needs definition of emergency placement.
- 10.6. This provision needs to require that "matches" be documented. The way it is written, it implies that standard format exists that we do not favor.
- 11.1.i. We would recommend that the "critical juncture" language from OFLAC/Medicaid be adapted for this provision.
- 12.2.k. Cost implications could be major.
- 12.2.1 We believe the provision should be written in a manner defines "emergency removals", and require that foster parents have active roles in the planned discharge process.
- 13.1.e. Disclosure and release of information shall be obtained for all previous experiences and records of previous experiences shall be approved before approval.
- 13.2.a.2. Why? This appears to be an overstepping of authority.
- 13.3.a. This effectively eliminates homosexual couples, and common law relationships. We would argue that such "family" configurations have a role in helping to meet the needs of children in today's society.
- 13.3.6. The real issue here is a healthy, respectful, stable relationship rather arbitrary length of time in a marriage requirements.
- 13.4.b. In addition to:
We believe there ought to be age difference requirements between age of

foster parent(s) and age of children placed, at least a minimum of four years. With such a requirement a 21 year old foster parent could not parent children older than 16 years old at the time of placement.

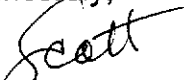
- 15.1 There needs to be minimum space (square foot) requirements.
- 21.3 Can FACTS be updated to track Internal Investigation Unit results, and involuntary closures?
- 24.1 Have these standards been written with consideration to current or draft independent living program policy?
- 25.1 This appears to be a "new" program. Integration of standards of care for children and youth returning to the community is better addressed as an expectation of discharge and aftercare service within both child placing and child caring regulations.

Again, thank you for the opportunity to comment. We respectfully request a copy of any changes made to the draft regulations as a result of comment period.

These comments are made on behalf of the following Members of the Alliance for Children, Inc.

Burlington United Methodist Family Services, Inc.
Cammack Children's Center
Children's Home Society of West Virginia
Children's Home of Wheeling
Elkins Mountain School

Sincerely,


Scott R. Boileau
Executive Director

SRB/bm

CC: Carol Childer



BRALEY & THOMPSON, INC.

Planning and Management

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August 10, 2000

Beth Marquart, Director, Office of Regulatory Support
Department of Health and Human Resources
Capitol Complex - Building 3, Room 201
Charleston, West Virginia 25305

Dear Ms. Marquart:

My review of the proposed child placing agencies licensure rule generated the following comments:

1. Regarding 4.5 - Renewal of a license: Will agencies who are currently licensed under the existing rule be required to provide information listed under item 4.2.a.1-13? If so, please clarify what information on current agency employees will be required (item 4.2.a.12)?
2. Item 4.2.b.4 - requires a current physical exam report for each employee. The requirement would be costly to centers, who would have to pay for the exams.
3. Having pictures of each client in their individual files is an excellent idea.
4. Item 6.6.c.6 again establishes a requirement of medical exams/records for agency employees. The requirements could pose serious legal problems for agencies. Example: Couldn't an employee who tests positive for tuberculosis within three months of employment file a discrimination suit if he/she was suspended or fired due to this medical condition?
5. Item 10.5.i. Will the state determine which life skills assessment will be required for children 14 years or older; or will this be left to the agencies to choose?

Sincerely,

Tami Shamblin
Quality Improvement Coordinator

TS/cy

THE PressleyRidge

SCHOOLS OF WEST VIRGINIA

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August 17, 2000

Beth Marquart, Director
Office of Regulatory Support
Department of Health and Human Resources
Capitol Complex-Building 3, Room 201
Charleston, WV 25305

RECEIVED

AUG 21 2000

STAFF DEVELOPMENT
& TRAINING

Dear Ms. Marquart:

Thank you for the opportunity to review the Child Placing Licensure Rules being considered for promulgation. Our staff have looked at the entire scope of the regulations. Their comments and concerns are noted below. I would like to comment that recent sets of rules prepared for review often noted the editing that occurred within the body of the regulations. I would like to recommend that this be considered for future presentations as it allows for a clear indication of what changes are being considered and eliminates that need for the cumbersome process of a side by side review with existing regulations.

The revisiting and subsequent promulgation of rules is a wonderful opportunity to upgrade past regulations and take advantage of the changes and advancements in the field of childcare and treatment that have occurred in at least the past 5 years. From a global standpoint I would like to share a relatively recent concern which I am unclear if the Department has addressed.

Approximately one year ago the Child Welfare League of America (CWLA) was invited to West Virginia by the Commissioner of the Bureau of Children and Families to do a third party review of concerns expressed at the Pressley Ridge White Oak facility. We found the recommendations of CWLA very valuable and beneficial to Pressley Ridge. We complied with virtually all of them. One of the systems issues identified by CWLA was the "duplicative, overlapping, and at times conflicting licensing regulations by two separate state agencies" particularly in regard to restraints, reporting, internal/external investigations and staffing. This issue placed provider agencies in a position of being out of compliance with one set of rules by complying with another, both within DHHR. I would strongly urge that the Department examine the Child Placing Regulations to assure that they do not conflict where they overlap with those of the Office of Health Facility Licensure and Certification. Now is the time to resolve these issues.

Page Two
B. Marquart

Closely aligned to this issue is the fact that a majority of childcare agencies in West Virginia have become or are in the process of becoming accredited by the Council on Accreditation (COA). Again I would strongly urge that the Department assure that the Rules in question adhere to the national COA standards before the process of promulgation is completed.

Many state agencies and/or departments across the country have themselves become COA accredited. Such a move on the part of WV DHHR would indeed enhance the quality of the child care system as well as provide a common set of rules for public and private agencies alike.

Although it is beyond the scope of this review, the above recommendations would best be served by having a single licensing unit/office for licensing and certification for the care and treatment of children and their families.

With that being said I would like to address several individual regulations that staff have commented upon (see attached for specific comments).

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert C. Knittle".

Robert C. Knittle
Deputy Executive Director

78-2-5 Inspections, Complaints, Plans of Correction and Waivers

5.2 Investigation of Complaints

5.2.c For a complaint alleging abuse or neglect of child by an employee, an agency shall remove the employee and discontinue the employee's contact with the children until an investigation is completed and a determination is made.

Concern- this does not allow for accidental injuries that may occur during passive physical restraint. In the event that a child should make an allegation of abuse as result of injury sustained during restraint it should not warrant the removal of staff from child contact.

5.3 Plan of Correction

5.3.b An agency shall not implement a proposed plan of correction prior to the approval of the Secretary.

Concern- It is often necessary to address issues as soon as they are identified. It would be recommended that implementation of any corrective measure may be done with the agreement of the Licensing Specialist (prior to submission and approval of a Plan of Correction).

78-2-6 Governance

6.6 Records

6.6.a.10 Information from the placing worker who referred the child to an agency...

Concern- There should be a provision under this section that protects the agency from noncompliance in instances that the placing worker and DHHR has not provided ALL the necessary information on a child at the time of referral/placement.

6.7.b.3 Identifying and reporting a child who is absent without leave to the biological parents or guardian, the supervisor, placing worker, child abuse hotline, and a law enforcement authority within twenty four (24) hours.

Concern- Why is it necessary to contact the child abuse hotline when a child is absent without permission in addition to notifying the biological parents, guardian, placing worker, supervisor and law enforcement?

78-2-8 Employee Requirements -

concern - under this section all positions require at least one year of experience. This makes almost all colleges graduates ineligible to begin their chosen profession. This

contradicts the state's position of encouraging people to choose a position in human services or childcare.

reg.# 8.1.d. Case Managers and Homefinders shall have:

8.1.a. The Executive Director shall have a minimum of : 1. A Masters degree or 2. A Bachelors degree in a human service field.

concern - the nature and scope of skills required by the position of executive director in this day and age are not always well served by having a degree in a human service discipline. This should be broadened to include public/business administration WITH experience human services/child welfare services

8.1.d.1. A valid West Virginia professional license in their fields

concern- 1.)the Social Work Board of Examiners as of 7/1/2000, will only issue temporary licenses to those who hold a BSW degree. 2.) professionals from other disciplines who are equally capable of handling this type of work have no licensing criteria to abide by. 3.) such narrow and stringent criteria gravely reduces the pool of candidates for such positions. 4.) DHHR has recognized this and has been given a time limited "waiver" from this criteria making for an even more uneven playing field for private agencies to recruit potential candidates.

My larger fear is that such a mandate will produce a larger exodus of graduates from other human service disciplines from West Virginia colleges.

8.2.c Supervised practice. An agency shall require that on completion of the orientation training and before assuming full responsibility, all employees providing direct services to clients receive twenty (20) hours of one on one supervised practice in their specific job functions with an employee who has a minimum of two (2) years experience in performing similar job functions to that of the employee in training.

Concern- In order to provide this supervised practice, requiring two (2) years experience in a similar job function is excessive. One (1) year of experience in a similar function is more realistic.

8.2.e.2 An agency shall require a supervisor to complete a performance evaluation for each employee after the first 3 months.....

concern- this portion of this regulation lacks any real practical value and should be deleted. All employees are closely monitored during their first 90 days of service and frankly are still learning their position. Feedback, training, and action plans are almost continual. Six months is soon enough to actually evaluate an individual's performance.

August 14, 2000

Ms. Beth Marquart
Director, Office of Regulatory Support
Department of Health and Human Resources
Capitol Complex, Building 3, Room 201
Charleston, WV 25305

RE: Title 78 Licensing Requirements for Child Placing Agencies

Dear Ms. Marquart:

In reference to the aforementioned draft rule, the members of the West Virginia Child Care Association appreciate the extraordinary amount of work that has gone into updating the child placing regulations, and the opportunity to comment on these draft regulations. While the overall product of these efforts is commendable, the following comments and recommendations are offered as suggestions for changes to content:

- 1) page 2, Crisis Support: This definition is also a Medicaid billing code for Emergency Shelters. It could be confusing for this term to be used in both situations, and we would suggest the Licensing Rules develop another term to accommodate the definition.
- 2) page 6, 5.2 regarding Investigation of Complaints: This particular section should also include a reasonable time frame for completion of investigation of complaints. It is recommended that three additional sections be added specifying that 1) the Department complete investigations in 30 days 2) in the event that the investigation cannot be completed within that time frame, provide written notice to the agency as to reasons why the investigation cannot be completed and when it is anticipated that the investigation will be completed. We would also recommend that a maximum time limit of 90 days be established for the latter. 3) Written reports or summaries of the investigation shall be forwarded to the agency within 10 days of completion of the investigation.
- 3) page 8, 6.3d: 'Before changing an executive director...' implies a consensual agreement between the governing board and the Secretary in approving the hiring of a new Executive Director. We would recommend that the word before be changed to when.
- 4) page 12, section 6.6.c.6 regarding employee verification of an immunization record. We believe this verification is unnecessary, and note that it is not required for volunteers or for foster parents.
- 5) page 15, 7.2.i.2 re: case related excursions: While adding another adult in transportation may be preferable, it is also very cost prohibitive, and in most instances not dictated based on the needs of the child. We would recommend that preferably be changed to reflect *when the needs of the child dictate or whenever possible*, rather than establishing a preferable standard that agencies will not be able to accommodate in a cost effective manner.

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6) page 16 regarding Employee Requirements. The qualifications for a case manager and home finder with a Bachelor's degree *exceed* that of the qualifications of Administrative and Supervisory employees (Bachelor's degree with three years of experience in child welfare services for case manager or home finder while a supervisor requires only 3 years of generalized experience in a human services field, at least one of which is in child welfare services). We would expect that the Regulations would desire higher qualifications for those in a supervisory capacity.

Moreover, these employee qualifications exceed those which are specified in Foster Care Practice Standards for case work and home finding staff, which require graduation from an accredited 4 year college or university and licensure by the WV Board of Social Work Examiners. As licensing requirements are the minimum mandates to ensure the safety, health and well being of children, and practice standards are specifications for a higher level of service delivery, it is contradictory to set the benchmark higher in licensing regulations than practice standards.

Last, while cognizant of the proviso that supervision may substitute for experience requirements, nonetheless we must question the feasibility of setting such a formidable standard of three years experience for case workers and home finders, given the current recruitment and staffing environment for child welfare services in WV.

7) page 17, 8.2 regarding Orientation and Training: Given the requirement of 3 years experience in the aforementioned section, the requirement of well over 100 hours of training or supervised practice in the first 6 months of employment seems excessive. While the West Virginia Child Care Association believes appropriate and relevant training is vital for quality services to the children in our care, nonetheless there are additional issues of cost, staff recruitment and retention, caseload ratios and service access, which make this requirement an area of difficulty and concern for the private child welfare providers. We would make the recommendation that 8.2.d.1 be extended from six months to within one year of employment.

8) page 19, regarding annual tuberculin test for volunteers: We question why the proposed regulations specify its necessity for only volunteers. Moreover, recent trends of tuberculin infection make annual testing unnecessary.

9) page 20, 9.4 regarding Child with an Extraordinary Medical Need. It is recommended that 9.4a be reworded to say before initial placement. Additionally, since Psychotropic Medication is also listed under this section, I am assuming then that it is the Department's intent to classify children on Psychotropic medication as children with extraordinary medical needs. Since it will be the placing worker's responsibility to see these children are examined by a physician within seven days before placement, the Department will want to ensure their field staff are properly apprised of this expectation in practice.

10) page 26, 10.6 regarding Match summary: Section 10.6a specifies that the agency will use an assessment and evaluation of child's needs and strengths and the completed *child assessment* to develop a written match summary, which is used to select the specific foster or adoptive foster

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parents for the child. It is assumed that this summary will be developed prior to placement. However, section 10.5 specifies that the child assessment will be developed prior to developing the master treatment plan, which is developed within 30 days of placement. It is inconceivable that the amount of information required in the Child Assessment can be accommodated prior to placement; therefore child assessment needs to be deleted in section 10.6.a and minimum informational requirements for the match summary be established for this section.

11) page 26, 10.9 regarding planning team: A core value of the PRIDE model of foster care is recognizing/including foster parents as vital members of the treatment team. Therefore, in light of the State's plans to replicate this model statewide at some point, it would seem reasonable that foster parents be included as members of the planning team.

12) page 39, 20.2.d In light of the DHHR's intent to replicate the PRIDE pre-service training program statewide for foster and adoptive parents, it is unclear at this point what else would be included in a program specific training program.

13) Page 46, 78-2-25 regarding Community Re-Entry Program. While community re-entry is defined in the definitions, it is a fairly new service definition, whose programmatic elements are unclear at this point. Defined as a specialized group setting for children targeted to return to their community, the target population thus could be very broad indeed and encompass a wide range of service and programmatic needs. Theoretically, in the absence of clearer programmatic standards, some of the needs of these youth could be quite challenging. However, even given that this is a quasi group residential program in practice, it is disturbing that the *minimum requirements are less than those of all other services defined in these regulations*. At a minimum, staffing requirements should be established, training for staff relevant to the program be defined, the same relevant and minimum standards for a foster home should be required, and the additional safety requirements for foster and adoptive homes be required for these programs as well. For example, the current draft regulations specify master service plans be developed within 30 days for a 'child in foster care' but the terminology thus precludes this requirement for community re-entry. Would not the expectation be that children in community re-entry have a master service plan? Moreover, Behavior Management and Discipline policies and procedures are to be developed for foster or adoptive parents to use as guidelines in disciplining a child, but does not specify what policies are expected for staff in community re-entry programs. While I would assume it is the same standard, nonetheless these standards as written are unclear. It is strongly encouraged that the DHHR carefully review all these regulations and ensure that specific wording does not preclude appropriate regulation and oversight to this program.

In addition the following require further specification, as these sections can be somewhat confusing as written:

1) page 8, 6.2b regarding complete information about owners, officer and governing boards is vague as written. This section should specify exactly what "complete" information is-ie., names, addresses, professional occupation, terms of office, etc.

2) page 12, 6.6.c.8-add the word personnel before 'actions or incidents...'

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- 3) page 22, 9.7.a.5 recommend that time out be substituted for removal, as the latter term implies removal from the home
- 4) page 33, 13.4a To avoid any potential confusion, it is recommended that this section be expanded and part of the definition under 3.17 be restated to add that no more than five children who are unrelated by blood or adoption to the foster parents shall be placed in the home.
- 5) page 39, 21.1 regarding Presentation of a Child to Prospective Foster Parents: page 28, Section 11.1.e regarding a minimum of one visit prior to placement would best fit here in this section.

Please do not hesitate to contact me if you have any questions or require further clarification on any of the recommendations made in this letter.

Sincerely,



Vickie James
Executive Director

/vj

cc: Association Members