

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

Form #7

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Nov 26 9 53 AM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

*Jan 7, 1997*

**NOTICE OF A EMERGENCY RULE**

AGENCY: Division of Human Services TITLE NUMBER: 78

CITE AUTHORITY W. Va. Code § 49-2B-4

EMERGENCY 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 FILED AS AN EMERGENCY: 18

TITLE OF RULE BEING FILED AS AN EMERGENCY: Family Day Care Facility Certification  
Requirements

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See attached.

*Gretchen O. Lewis*  
Gretchen O. Lewis, Secretary

11.60  
Use additional sheets if necessary



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton  
Governor

Gretchen O. Lewis  
Secretary

November 25, 1996

To: Legislative Rule-Making Review Committee

From: Kay Howard, Director  
Regulatory Development *Kay Howard*

Re: Emergency Rule - Family Day Care Facility Certification Requirements,  
78 CSR 18

1. Date of filing: November 25, 1996
2. Statutory authority for promulgating the rule: W. Va. Code §49-2B-4.
3. Date of filing of proposed legislative rule: The Agency-Approved rule was filed with the Legislative Rule-Making Review Committee August 30, 1996.
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule is a new rule.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

Not Applicable.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Not Applicable.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Emergency Filing Notice.

**Statement of Facts and Circumstances  
Relating to the Emergency Filing of  
Facility Day Care Certification Rule, 78 CSR 18 (Cont'd)**

Certain provisions of PRWORA necessitate implementation of welfare reform efforts on a State-wide basis as soon as possible after the implementation of WV WORKS because the new federal law limits the total amount of time a person can receive public assistance to sixty (60) months (five (5) years). This time limit starts for all individuals currently receiving assistance whenever welfare reform begins in any part of the State, which means the clock will start for all current West Virginia recipients on December 1, 1996. Additionally, under federal mandates, a state is required to enroll certain percentages of public assistance recipients in employment programs. Single parents with a child under age six (6) who are unable to participate in an employment program due to lack of available child care are, however, included by the federal government when calculating participation rates, and thus "count against" the State in meeting federal goals. The federal law contains fiscal sanctions for states who do not meet required participation rates. In West Virginia, this penalty could be as high as 5.5 million dollars.

Thus the existence of an adequate supply of affordable, accessible and quality child care placement slots is critical to the success and support of welfare reform in West Virginia. Otherwise, individuals who cannot work due to lack of child care will be forced to stay on public assistance longer than necessary, using up their own time limit, and reducing the State's successful participation in and receipt of financial assistance in the new federal program.

It should be noted that there is already a waiting list of potential providers who wish to provide care for children under the new State legislation. Early implementation of the proposed new Family Day Care Certification Rule will facilitate the badly needed increase in the supply of sufficient and adequate child care services to meet the needs of West Virginia's families. Increasing the availability of child care will initiate critical changes that are necessary to help public assistance recipients to end their dependency on government support.

**Statement of Facts and Circumstances  
Relating to the Emergency Filing of the Proposed New  
Family Day Care Certification Rule, 78 CSR 18**

The Division of Human Services declares that immediate implementation of the proposed new Family Day Care Certification Rule, 78 CSR 18, is necessary in order to prevent substantial harm to the public interest and the circumstances stated below meet the definition of an emergency rule stated in W. Va. Code § 29A-3-15(f)(3).

The 1996 Legislature initiated West Virginia's welfare reform effort in advance of federal initiatives with the passage of Senate Bill 140, establishing the WV WORKS Act, W. Va. Code § 9-9-1 through § 9-9-19. This program will be implemented in nine (9) counties starting December 1, 1996, in accordance with legislative intent to begin the process of welfare reform "as soon as possible" as indicated in W. Va. Code § 9-9-4(b).

Subsequent to the adjournment of the 1996 State legislative session, Congress passed the federal welfare reform legislation, H. R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, USC (PRWORA), which became effective October 1, 1996. The goal of both WV WORKS and PRWORA is to assist persons receiving public assistance to find employment. One critical factor in accomplishing this goal is the ready availability of child care for the children of individuals receiving assistance. West Virginia has a barrier to achieving this goal in the form of a severe shortage of child care facilities with the oversight needed to assure the safety and suitability of the child care provided. A recent survey of the availability of regulated child care conducted by the Governor's Cabinet on Children and Families documented that currently available child care placement slots are sufficient to meet the needs of only twenty (20) percent of the State's children. There are nine (9) counties as of this filing in which there is no day care center and fourteen (14) counties which have only one (1) licensed day care center. Therefore, not only is there a shortage of day care placement slots, there is also a transportation problem created by the lack of conveniently located care settings. Transportation for families on assistance is often difficult to arrange and is often a problem in arranging needed child care.

Until recently, State law has provided for the licensure of day care centers caring for seven (7) or more children. The 1996 Legislature recognized the need for an increase in the number of child care facilities and a mechanism to facilitate the increase. It created a new category of family day care facility designed to care for seven to twelve (7-12) children, and redefined day care center as a larger type of facility to care for thirteen (13) or more children in House Bill 4170, which became effective June 7, 1996. The intent was that the new, smaller type of facility, which would frequently be provided by home-owners in their private homes, would need less stringent standards in certain areas of operation than larger facilities, as for example, in the kitchen. These small facilities will be less costly to start up and maintain. By increasing the economic feasibility of setting up and operating a small child care facility, the numbers of State-monitored day care placement slots could be more readily increased. Additionally, the presence of a greater number and likely more widely dispersed facilities should ease the transportation burden by providing day care closer to the homes of persons needing this service in order to become employed. It was thought that both these outcomes of implementing the new legislation would facilitate the goal of moving individuals off the public assistance rolls.

**PROPOSED RULE ABSTRACT  
DIVISION OF HUMAN SERVICES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS  
78 CSR 18**

**Summary:** This proposed new legislative rule establishes the requirements for the operation of family day care facilities. This is a new class of day care facility created by the Legislature in 1996 in House Bill 4170. There are no previous rules. The proposed rule addresses the following areas: the operator and staff of these facilities; volunteers; programming; procedures for certification; space and other requirements for the physical components of the facility; background checks; and, investigation of complaints.

**For further information contact:** The Office of Social Services, Linkage Division, Department of Health and Human Resources, Building 6, Room B-850, Capitol Complex, Charleston, West Virginia 25305, telephone (304) 558-7980; or the Office of Regulatory Development, Bureau of Operations, Department of Health and Human Resources, Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

Copies of the proposed rule may be purchased from the Administrative Law Division of the Office of the Secretary of State, State Capitol Complex, Building 1, Suite 157K, Charleston, WV 25305-0771, telephone (304) 558-6000.

11/25/96

## FISCAL NOTE FOR PROPOSED RULES

Rule Title: Certification Requirements for Family Day Care Facilities

Type of Rule:  Legislative       Interpretive       Procedural

Agency: Division of Human Services (By the Bureau for Children and Families)  
Department of Health and Human Resources

Address: Room 617, Building 6, Capitol Complex  
Charleston, W. Va. 25305

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

2. Explanation of above estimates.

The Department will carry out the certification process with existing staff. The fiscal note submitted with H.B. 4170 (S.B. 125) during the 1996 Regular Legislative Session estimated the program cost at \$22,699. This included a 1/2-time specialist, benefits, current expenses, and equipment. The funds were to be allocated in a line item for the Governor's Child Care Initiative, with the net effect of freeing up sufficient Department resources through task shifting to allow the Department to implement the certification program.

3. Objectives of this rule:

This proposed new legislative rule establishes the requirements for the operation of family day care facilities. This is a new class of day care facility created by the Legislature in 1996 in House Bill 4170.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None. The Department will use existing staff to carry out the certification process. The proposed rule will have a positive impact on state government. It will help parents interested in becoming employed or parents already employed to continue to be so because of the increased availability of child care.

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

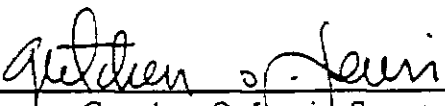
The proposed rule will have a positive impact on all these parties. It will increase the availability of child care which is a necessary support for working parents. It will also provide employment opportunities for persons who want to work in the child care field.

C. Economic Impact on Citizens/Public at Large.

The public will benefit from increased supports to working parents as the addition of this class of day care will encourage persons to obtain or maintain employment.

Date:

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
Gretchen O. Lewis, Secretary  
Department of Health and Human Resources

TITLE 78  
LEGISLATIVE RULE  
DIVISION OF HUMAN SERVICES

SERIES 18  
FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS

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Emergency Rule  
Filed \_\_\_\_\_  
Effective \_\_\_\_\_, 1996

LEGISLATIVE RULE  
DIVISION OF HUMAN SERVICES

SERIES 18  
FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS

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TITLE 78  
LEGISLATIVE RULE  
DIVISION OF HUMAN SERVICES  
SERIES 18

NOV 25 9 53 AM '96

FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
SECRETARY OF STATE

**§78-18-1. General.**

1.1. Scope. -- The purpose of this new legislative rule is to establish minimum standards of acceptable care, protection and supervision for children in family day care facilities and to provide a uniform standard of enforcement statewide for the certification of family day care facilities. The rule is intended to promote the health, safety and well-being of children placed in family day care facilities and to enhance their growth and development.

1.2. Authority. -- W. Va. Code § 49-2B-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Applicability. -- This rule applies to all family day care facilities which operate in West Virginia, including family day care facilities approved by the department for receipt of funding, except for the following:

1.5.a. A kindergarten, preschool or school education program operated by a public school, accredited by the state department of education, or which operates with sessions not exceeding four (4) hours per day for any child;

1.5.b. An individual or facility which offers occasional, temporary care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

1.5.c. Summer recreation camps operated for children attending sessions for periods not exceeding thirty (30) days;

1.5.d. Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing; or

1.5.e. Persons providing family day care solely for children related to them, including grandparents, aunts and uncles.

1.6. Enforcement. -- This rule is enforced by the secretary of the department of health and human resources.

**§78-18-2. Definitions.**

2.1. "Child" means any person less than eighteen (18) years of age. (The department provides reimbursement for day care for children up to the age of thirteen (13).)

2.2. "Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of a child's rights and entitlements.

2.3. "Department" means the West Virginia department of health and human resources.<sup>1</sup>

2.4. "Facility" means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose.

2.5. "Family day care facility" means any facility which is used to provide nonresidential child care for compensation for seven (7) to twelve (12) children, including children who are living in the household who are less than six (6) years of age. No more than four (4) of the total number of children may be less than twenty-four (24) months of age.

2.6. "Family day care home" means a home which is used to provide nonresidential child care for compensation in other than the child's own home. The provider may care for four (4) to six (6) children, including children who are living in the household, who are less than six (6) years of age. No more than two (2) of the total number may be less than twenty-four (24) months of age.

2.7. "Family day care facility operator" means a person designated as responsible for the ongoing daily operations of the family day care facility. This person may be the owner of the facility or an employee of the owner.

2.8. "Infant" means a child under the age of twelve (12) months.

2.9. "Plan of correction" means a written agreement completed by the department and the family day care facility operator and/or owner in response to deficiencies identified by the department as the result of an inspection and/or the investigation of a complaint. The plan of correction shall describe the steps the facility will take to correct the deficiencies. The secretary shall review and accept the plan prior to its implementation.

2.10. "Secretary" means the secretary of the department of health and human resources or his or her delegate.

2.11. "Pre-schoolers" means a child between the ages of two (2) and four (4) years of age.

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<sup>1</sup> The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Human Services was renamed the Division of Human Services and made a part of the DHHR (W. Va. Code §§F-1-1 et seq.). Administratively within the DHHR the Bureau for Children and Families through its Commissioner carries out the child welfare licensing functions of the Division of Human Services.

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2.12. "Toddler" means a child between the ages of twelve (12) and twenty-four (24) months.

2.13. "Variance" means a written declaration by the secretary that a certain requirement may be satisfied in a manner different from the manner set forth in this rule.

2.14. "Waiver" means a written declaration by the secretary that a certain requirement is inapplicable in a particular circumstance.

### §78-18-3. Administrative Procedures.

#### 3.1. Certification Requirements.

3.1.a. Any family day care facility which operates in West Virginia, including family day care facilities approved by the department for receipt of funding, shall apply for and obtain a statement of certification from the secretary before beginning operations and accepting children for care.

3.1.b. A regular statement of certification is effective for a period of two (2) years from the date of issuance, unless it is: (a) revoked, or (b) modified to provisional status, based on evidence of a failure to substantially comply with the provisions of West Virginia Code 49-2B-1 et seq., or the requirements of this rule.

3.1.c. A statement of certification is not transferable to any third party and applies only to a facility and its location as stated in the application for certification.

3.1.d. In the event that the ownership of a facility changes, the new owner shall submit an application for a statement of certification. The facility shall not operate until a statement of certification has been issued by the secretary.

3.1.e. The statement of certification shall be posted in a conspicuous place in the facility at all times.

#### 3.2. General Conditions of Certification.

3.2.a. Every certified family day care facility shall be inspected by the department prior to issuance of certification to determine compliance with this rule.

3.2.b. The secretary shall have immediate and open access to the premises of a facility and to all aspects of a facility's operation, including personnel, children in care, household members, and records of each facility, including, but not limited to, case records on children and personnel, corporate, and financial records.

3.2.c. Applicants for certification shall consent to on-site administrative inspections, made with or without prior notice, as a condition of certification.

3.2.d. Any individual that owns or operates, is employed by, or provides services for

a facility shall be made available for a personal interview upon request by the secretary.

3.2.e. Applicants shall be in compliance with applicable rules of the division of health and the state fire marshal.

3.3. Application for a Statement of Certification.

3.3.a. A facility shall submit information as determined by the department with its initial application for a statement of certification.

3.3.b. Before making any decision regarding the issuance of a statement of certification, the secretary shall cause an investigation to be made of a facility, its proposed program, and any persons responsible for the custody and care of children placed in that facility. This investigation shall include, but not be limited to, the following:

3.3.b.1. Evaluation of a facility's proposed services in order to determine the need for such services and the facility's ability to maintain compliance with this rule. This need may be assessed base upon a statewide need for these services or be specific to the individual facility and the services offered; and

3.3.b.2. Compilation and review of information regarding reputation, background checks, medical records, character, financial resources, and purposes of the applicant, owners; employees, and other household members in order to determine whether the facility meets the requirements of this rule.

3.4. Issuance of a Statement of Certification.

3.4.a. The secretary shall issue a statement of certification to a facility that complies with: (a) the provisions of the West Virginia Code 49-2B-1, et seq.; and (b) the requirements of this rule.

3.4.b. A statement of certification may be modified to provisional status based on evidence of a failure to comply with the provisions of the West Virginia Code 49-2B-1, et seq., the requirements of this rule, any terms and conditions of the certification, any plan of correction, or any proposed sale or transfer of ownership to a third party.

3.5. Amendment to a Statement of Certification.

Prior to implementing any new child care service or making any significant change in its program that was not identified or otherwise included in its initial application for a statement of certification, a facility shall submit an application for an amendment to its statement of certification. The application shall include the same type of information and documentation for its new service or program as required for submission under its initial application for a statement of certification.

3.6. Provisional Statement of Certification.

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3.6.a. The secretary may issue a provisional statement of certification to an uncertified facility upon submission of a complete initial application for a statement of certification when:

3.6.a.1. The facility has been unable to demonstrate compliance with the requirements of this rule because its program is not yet fully operational; or

3.6.a.2. In the event of a proposed sale or transfer of ownership to a third party.

3.6.b. The secretary may issue a provisional statement of certification to a certified facility that is temporarily unable to demonstrate compliance with the requirements of this rule. The issuance of any provisional statement of certification under this section shall be contingent upon submission of a plan of correction by the department to the secretary and the secretary's approval of the plan.

3.6.c. A provisional statement of certification shall expire six (6) months from the date of issuance and may be reinstated no more than two (2) consecutive times.

3.6.d. In the event that a facility is unable to demonstrate compliance with the requirements of this rule within eighteen (18) months of the issuance of the first provisional statement of certification, the statement of certification shall not be renewed without the prior written approval of the secretary.

### 3.7. Renewal of a Statement of Certification.

3.7.a. At least sixty (60) days prior to the date of expiration of a statement of certification, a facility shall submit a renewal application for a statement of certification.

3.7.b. The secretary shall renew the statement of certification in the event that a facility remains in compliance with the provisions of: (a) West Virginia Code 49-2B-1, et seq.; (b) the requirements of this rule, any terms and conditions of its certification, or (c) any plan of correction.

3.7.c. In the application for renewal of a statement of certification, a facility shall provide any additional documentation or other information not submitted in its initial application for a statement of certification that confirms that the facility remains in compliance with the provisions of West Virginia Code 49-2B-1, et seq., the requirements of this rule, any terms and conditions of its certification, or any plan of correction.

### 3.8. Waivers and Variances.

3.8.a. A facility shall comply with the provisions of West Virginia Code 49-2B-1, et seq.; the requirements of this rule, any terms and conditions of its statement of certification, or any plan of correction, unless a waiver or variance has been granted by a prior written agreement issued by the secretary.

3.8.b. The secretary may approve a request for a waiver or variance only in the event

that the health, safety or well-being of a child in care with that facility would not be endangered or otherwise placed at risk.

3.8.c. A written request for a waiver or variance shall be made by the facility and addressed to the secretary and shall include the following:

3.8.c.1. A reference to the specific requirement of this rule to be waived or varied;

3.8.c.2. A statement of the reasons for seeking a waiver and the factual basis as to why a specific requirement of this rule should not be applied in a particular circumstance; and

3.8.c.3. A statement of the reasons for seeking a variance and the factual basis as to how compliance with a specific requirement of this rule can be accomplished in a manner different from that set forth under West Virginia Code 49-2B-1, et seq., or the requirements of this rule.

3.8.d. In the event that a waiver or variance is approved by the secretary, the approval shall set forth the following:

3.8.d.1. The effective date and duration of the waiver or variance, whether temporary or permanent, or for a specific period of time;

3.8.d.2. The terms and conditions under which the waiver or variance is granted;

3.8.d.3. A schedule of specific dates for the periodic review of any waived or varied requirement in order to ensure that the facility has maintained substantial compliance with the terms and conditions of that waiver or variance; and

3.8.d.4. The terms and conditions under which the waiver or variance may be modified or rescinded.

3.8.e. In the event that a request for a waiver or variance is denied, a facility has the right to contest that decision upon making a request for a hearing to the secretary within thirty (30) days of the date of receipt of the notice of the decision.

### 3.9. Supervision and Consultation.

3.9.a. The secretary shall provide supervision to a facility to determine continuing compliance with the requirements of this rule through regular monitoring and announced and unannounced visits to the facility. An inspection of each facility shall occur at least once every two years.

3.9.b. The secretary shall provide consultation to a facility to assist the facility in providing high quality care and services to children.

### 3.10. Operational Requirements and Records.

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3.10.a. The operator and/or owner of a family day care facility shall administer the facility in a manner that complies with all of the requirements established for this category of care and all applicable Federal and State laws, ordinances, and regulations.

3.10.b. In addition to the certificates, the operator shall display the following items in a prominent place for review by parents and staff:

3.10.b.1. Current menus for all meals and snacks served by the facility;

3.10.b.2. An emergency exit plan and a record of the required monthly fire drills for the past twelve (12) months;

3.10.b.3. A copy of the "Requirements for Family Day Care Facilities" for use by staff and parents;

3.10.b.4. Daily activity schedule, including field trips;

3.10.b.5. The most recent inspection reports from the Fire Marshal's Office and the Division of Health Department.

3.10.c. At the time a child is placed in a family day care facility, the facility shall obtain information about the child's developmental history, personal characteristics, and special needs. Confidential records on children shall include the following information:

3.10.c.1. The child's full name, address, telephone number, birth date, and date of enrollment;

3.10.c.2. Emergency contact information, which shall be updated annually and shall include (1) home and work addresses and telephone numbers of the parent(s), ~~the child's physician or other health care providers, and emergency contact people;~~ and (2) the names, addresses and telephone numbers of any persons authorized to pick up the child. (3) the child's physician or other health care providers. (4) emergency contact persons. and (5) health insurance coverage and policy number for the child;

3.10.c.3. Written authorization signed by parent(s) for emergency medical treatment, transportation, field trips, and water activities;

3.10.c.4. A report of the child's most recent medical checkup and immunization records for all children age six (6) and under to be on file within thirty (30) days of child's enrollment and updated every two (2) years; and, a report of the child's most recent immunization records for all children age six (6) and under residing in the household and updated every two (2) years;

3.10.c.5. Daily attendance records which include: the name of the provider, parents, guardians or custodians complete names, sign in/sign out information, dates and times with the designation AM or PM;

3.10.c.6. Reports of accidents, injuries, or illnesses involving a child while at the facility;

3.10.c.7. Written consent and instructions signed by parents regarding medications or special dietary needs;

3.10.c.8. A statement of any special needs of the child, including allergies, existing illnesses or injuries, previous serious illnesses or injuries, and any medication prescribed for long-term continuous use; and

3.10.c.9. Names of schools and telephone numbers for all school-aged children.

3.10.d. Records on all staff, including the operator, substitutes, and volunteers, as appropriate, shall include:

3.10.d.1. The name, date of birth, home address and telephone number, emergency contact, and date of employment and/or termination;

3.10.d.2. Documentation of qualifications and education/ training attended in relation to early childhood development, past employment, and experience with children;

3.10.d.3. Application forms or materials, if any, including at least two letters of reference;

3.10.d.4. Criminal record check (CIB) information, including: (1) a statement signed by the employee indicating any past criminal conviction or any pending charges; and (2) a clearance or waiver if the individual has such convictions or charges and (3) criminal background (CIB) clearances on all adult household members, if any;

3.10.d.5. Documentation of required medical examinations completed no more than six (6) months prior to nor more than thirty (30) days after employment and every two (2) years thereafter, and a negative tuberculosis screening, repeated every two (2) years, and

3.10.d.6. Lists of regular volunteers, with documentation of tuberculosis test results and CIB checks, where appropriate, and lists of household members with documentation of tuberculosis test results.

3.11. All records shall be maintained in a confidential manner; and a facility shall not provide, release, or make available, information from any child's or employee's record except to: (a) persons authorized by law; (b) for the child, a parent or guardian of the child; (c) for the child, persons authorized, in writing, by the parent(s) of the child; and (d) employees or representatives of the department.

3.12. Staffing schedules shall be kept for up to twelve (12) months to demonstrate that the home meets staff/child ratios.

3.13. The facility shall carry fire and liability insurance as a protection for the children in

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care. A copy of the current policy shall be maintained on file at the facility.

### §78-18-4. Administration of the Family Day Care Facility.

#### 4.1. Staff/Child Ratio.

4.1.a. A family day care facility shall have:

4.1.a.1. No more than twelve (12) children in care at any time, including the caregiver's own children under the age of six (6) years; and

4.1.a.2. No more than four (4) ~~children~~ infants, ages zero (0) to twenty-four (24) months, including the caregiver's own children under twenty-four (24) months of age;

4.1.b. If the facility provides care to more than two (2) infants or six (6) children at the same time, there shall be two (2) staff on duty who provide care for and supervision of the children.

4.1.c. No operator or staff shall be used to meet staff/child ratios for more than two (2) consecutive eight-hour shifts of care.

#### 4.2. Substitutes.

4.2.a. The family day care facility shall have an arrangement with a substitute caregiver to assist in an emergency situation when the operator or staff are unavailable to meet the requirements of this rule.

4.2.b. A substitute may be used to allow for staff persons to take vacation, short term medical leave, or to take care of routine appointments. However, use of substitutes shall be time limited, and the facility shall notify parents in advance when use of a substitute is necessary for non-emergency situations.

4.2.c. A regular substitute caregiver shall meet the same qualifications that apply to new staff, including requirements with regard to background checks.

#### 4.3. Programming of Children's Activities.

4.3.a. The home shall provide a planned program of activities geared to the individual needs and developmental levels of the children served and designed to promote the development of language and thinking skills, large and small muscles, social skills, self-esteem, and positive self-image.

4.3.b. Daily activities shall provide the following:

4.3.b.1. Regularity of such routines as meals and nap periods with flexibility to respond to a child's individual needs;

4.3.b.2. A balance of active and quiet activities;

4.3.b.3. Individual and group activities;

4.3.b.4. Daily indoor and outdoor activities, weather permitting, which make use of large and small muscles;

4.3.b.5. Participation in vigorous outdoor play;

4.3.b.6. Opportunities for children to select individual projects, such as creative activities, crafts, games, or homework, and play independently as well as to do activities that require adult involvement and supervision;

4.3.b.7. Sufficient time to complete activities without long waiting periods between activities or prolonged periods where children must stand or sit;

4.3.b.8. Varieties of creative activities including arts and crafts, dramatic play, stories and books, science and building toys; and

4.3.b.9. Opportunities to practice self-help skills such as feeding, dressing, toileting, hand washing and grooming skills, which foster independence in the child.

4.3.c. School age children shall be provided with opportunities to:

4.3.c.1. Have periods for rest or relaxation;

4.3.c.2. Select individual projects such as homework;

4.3.c.3. Become involved with friends their own age; and

4.3.c.4. Join in group play and community activities.

4.3.d. Television and video tapes are allowed, if the contents are designed for and of benefit to a child, and viewing time is limited. Adult programming rated "PG 13", "R" and "X" or which contains either violent or sexually explicit scenes or language, is prohibited.

4.4. Guidance and Discipline.

4.4.a. The facility shall have a written policy on the guidance and discipline of children. Staff shall follow this policy in providing guidance and discipline with kindness and understanding. The policy shall be consistent with the following guidelines:

4.4.a.1. The policy shall use positive, developmentally appropriate methods of guidance and discipline to help the individual child develop self-control, self-esteem, self-direction, cooperation, respect for others, and the assumption of responsibility for his or her own acts;

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4.4.a.2. Simple and consistent rules shall be established for children and staff that set clear-cut limits of behavior;

4.4.a.3. Encouragement shall be emphasized along with redirection of inappropriate behavior, rather than punishment;

4.4.a.4. Responses to a child's behavior shall be appropriate to the child's level of development and understanding;

4.4.a.5. Timeouts may be used as a supplement to positive approaches to discipline, but shall be limited to brief periods of approximately one minute for each year of a child's age. Caregivers shall discuss the reason for the time out with the child in a way that the child can understand. If a child is removed from a group as a discipline measure, the child shall remain under visual supervision and shall never be left unattended behind closed doors; and

4.4.a.6. Discipline shall be consistently applied, carried out in a timely manner, and appropriate to the infraction and age of the child.

4.4.b. The following methods of punishment are prohibited:

4.4.b.1. Any form of physical punishment, such as hitting, slapping, shaking, striking or spanking with the hand or another instrument, pinching, pulling hair, or biting;

4.4.b.2. Mental or emotional punishment, including name calling, ridicule, yelling, threats, or any verbal remarks that belittle children or their families;

4.4.b.3. Chemical, mechanical, or physical restraints used for discipline or to control behavior;

4.4.b.4. Restriction of a child's movements by binding, tying, or by confining a child in an enclosed area such as a closet or closed room;

4.4.b.5. Withholding or forcing meals, snacks, rest, or necessary toilet use;

4.4.b.6. Any punishment of a child for lapses in toilet training, failure to eat, failure to go to sleep, or failure to complete a prescribed activity;

4.4.b.7. Any form of treatment considered to be child abuse, sexual abuse, or child neglect as defined by state statute; and

4.4.b.8. Any other form of punishment which humiliates or frightens a child.

4.4.c. The guidance and discipline policy shall be shared with parents; with all caregivers, aides, and volunteers; and with all individuals residing in or visiting the facility. All of these persons shall agree to abide by its content.

4.4.d. Only adult staff with direct supervisory responsibilities for children may discipline

children. No child or other household member shall be delegated or permitted to discipline children in care.

4.5. Transportation.

When transportation is provided by the family day care facility, the following precautions shall be taken for the protection of children:

4.5.a. Transport vehicles shall be in good, safe condition and have a current inspection sticker and license, according to state law;

4.5.b. Drivers shall be at least eighteen (18) years of age and be appropriately licensed;

4.5.c. The driver and vehicle shall comply with all applicable motor vehicle laws;

4.5.d. During field trips, staff shall provide direct supervision to all children, regardless of age;

4.5.e. No child shall be left unattended in a vehicle;

4.5.f. Each child under the age of three (3) shall be secured in an approved child safety seat. Children over the age of three (3) shall be secured with seat belts at a ratio of one child per seat belt, as required by state law; and

4.5.g. When field trips are scheduled, parents shall be notified prior to each excursion. Written permission shall be on file or obtained prior to each field trip.

4.6. Water Safety.

~~4.6.a. Swimming pools, including wading pools, are required to meet the "Swimming Pool and Bathing Beach" requirements contained in 64 CSR 21. When a facility uses a splashing or wading pool with less than two (2) feet of water, this use shall be strictly supervised. These pools shall be emptied, cleaned, and disinfected after each use.~~

~~4.6.b. When the facility is equipped with a swimming pool, the following precautions apply:~~

~~4.6.b.1. The pool shall be enclosed by a five (5) foot fence with a locked gate. Above ground pools shall have a locked gate;~~

~~4.6.b.2. An adult who is able to swim shall supervise at all times when any child is in the pool, regardless of the age of the child;~~

~~4.6.b.3. Pools shall be maintained in a sanitary condition; and~~

~~4.6.b.4. Pool chemicals shall be inaccessible to children.~~

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4.6.c. If children are taken to a public pool, ~~a lifeguard shall be on duty at all times. Children shall not be left while at the pool.~~ The, the adult caregiver shall continue to provide strict supervision.

### 4.7. Night Time Care.

4.7.a. Night time care shall not be used in order to meet a family's need for twenty-four (24) hour care, except for emergency situations such as brief hospitalizations, or occasional business trips. Emergency night time care shall not last more than seventy-two (72) consecutive hours unless approved by the secretary, due to extenuating circumstances.

4.7.b. A facility which provides overnight care shall continue to meet staff/child ratios. If seven (7) or more children are in care, an adult staff member shall remain awake and shall check on sleeping children at least hourly.

4.7.c. An evening meal shall be served to children in overnight care and breakfast shall be served prior to a child's leaving for school or other activities unless the parent indicates otherwise.

4.7.d. The facility shall establish bedtime schedules for children in consultation with the child's parent.

4.7.e. The facility shall ask parents to provide children with clean, comfortable, non ~~non~~ flammable or flame retardant sleeping garments, a toothbrush and comb or brush. The facility shall label and store personal use items separately for each child.

~~4.7.f. There shall be a bathtub or shower, as well as appropriate bathing facilities for children of toddler age or younger. Bathtubs and showers shall be equipped to prevent slipping. No child under age six (6) shall be left unsupervised while in the tub or shower. Children shall have individual towels and washcloths.~~

4.7.g. The facility shall identify rooms where children are sleeping with tot-finder stickers to assist with rescue efforts in case of fire.

### 4.8. Care of Infants and Toddlers.

4.8.a. A facility providing care for children twenty-four (24) months of age or younger shall meet the following requirements in addition to those that cover the facility generally.

4.8.b. The facility shall have sufficient space to provide for the following:

4.8.b.1. Separate indoor and outdoor play areas for infants and toddlers away from those used by older children; and

4.8.b.2. A quiet sleeping area with sufficient space to allow at least two (2) feet between infant cribs, beds, or cots.

4.8.c. The facility shall provide indoor and outdoor play materials and equipment suitable for staff to use with infants and toddlers. These materials and this equipment shall be safe and physically, mentally, emotionally, and socially stimulating for the children. Equipment shall be:

4.8.c.1. Durable, safe, in good repair, and free of potentially hazardous characteristics, such as sharp edges, small objects, and toxic paint; and

4.8.c.2. Maintained in a sound, sanitary condition.

4.8.d. Separate cribs shall be provided for infants who are not yet able to climb. Bars on cribs shall be no farther than two and three-eighths (2 3/8) inches apart, and crib sides shall be secure and high enough to prevent accidents. Stackable cribs shall not be used.

~~4.8.e. Diapering practices must comply with the provisions of 64 CSR 21. Sheets shall be changed as soiled, prior to use by another child, or at least twice weekly.~~

~~4.8.f. Cots used by older children shall be sturdy and close to the floor.~~

~~4.8.g. Diapers shall be changed on a clean, safe surface. The surface shall be sanitized after each use or shall be covered with a disposable paper sheet which is disposed of after each diapering.~~

~~4.8.h. Diapers and other clothing shall be promptly changed when wet or soiled.~~

~~4.8.i. Infants shall never be left unsupervised on a raised, unprotected surface or in reach of diapering equipment such as pins, lotions, etc.~~

~~4.8.j. The facility shall use individual washcloths, towels, or disposable towelettes to thoroughly cleanse and dry the child at each diaper change.~~

~~4.8.k. Soiled diapers and other clothing shall be rinsed, placed in plastic bags or covered containers, and either washed or sent home daily.~~

~~4.8.l. Disposable diapers shall be placed in a covered container which is cleaned daily to prevent odors.~~

4.8.m. The operator shall discuss and agree upon toilet training methods with the parent of each child being toilet trained. At no time shall any form of punishment be used in connection with toilet training, nor shall toilet training be initiated unless the child is developmentally ready to control toileting functions.

4.8.n. Potty or training chairs shall be provided and shall be sanitized after each use. No child shall be forced to sit in a training chair for extended periods of time.

4.8.o. Facilities providing care for infants shall abide by the following requirements related to nutrition and feeding:

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4.8.o.1. Infants shall be held while being bottle fed. ~~With parental consent and when infants are old enough to hold their own bottles, they may feed themselves without being held. Bottles shall be removed once the child is finished and shall not be left in cribs or on the floor where they may be passed from one child to another;~~

4.8.o.2. Infant food and formula shall be refrigerated and fed to an infant in a sanitary manner;

4.8.o.3. Drinking water shall be offered to infants and toddlers several times daily;

4.8.o.4. Facilities caring for infants and toddlers shall feed children according to plans of the child's physician, clinic, or parent or guardian;

4.8.o.5. Formula bottles shall be clearly marked with the child's name. Facilities may prepare bottles only when prepackaged formulas are used; and

4.8.o.6. Older children shall be allowed and encouraged to feed themselves, with supportive help from staff as needed. High chairs shall be provided with safety straps and shall be non-tippable.

4.8.p. Activities shall be provided for infants and toddlers to stimulate their physical, intellectual and emotional growth. Activities shall include:

4.8.p.1. Opportunities to interact with caregivers, siblings, and other children in the facility in order to stimulate language development;

4.8.p.2. Frequent verbal communication and eye-to-eye contact between staff and children;

4.8.p.3. Opportunities for the child to be held, rocked, played with, and dressed in an unhurried manner;

4.8.p.4. Opportunities for a child to explore and learn on their own, with the freedom to creep, crawl, toddle, and walk, as they are physically able. Infants who are awake and alert shall be moved to different locations frequently and shall not routinely be left in a crib or playpen except for rest or sleep. They may be left for short periods of time, however, if they are alert and responsive and provision is made for stimulating activity in the form of mobiles or other safe crib toys. Infant seats, swings, and high chairs, ~~and jumpers~~ may also be used for short periods of time, up to an hour, if direct supervision is provided and the infant is content. ; ~~The use of jumpers and infant walkers is prohibited.~~

4.8.p.5. Opportunity to play with safe, nontoxic, and age-appropriate toys which are stored in low, open shelves for easy access;

4.8.p.6. Encouragement of the child to practice self care habits, such as washing, dressing, brushing or combing hair, or toileting, as the child shows evidence of the ability to do so;

4.8.p.7. Encouragement of the child to play with a wide variety of toys and to express themselves through conversation and imaginative play;

4.8.p.8. Opportunities for the child to participate in art and craft activities and to run, climb, and engage in other physical activities; and

4.8.p.9. For infants who are not yet crawling, spending some portion of the day in a protected area where they can move freely. Crawling infants shall be allowed to explore in protected areas for substantial periods of their waking hours.

4.8.q. Immediate attention shall be given to the emotional and physical needs of a child. No child shall be routinely left in a crib except to nap or rest. Crying shall be attended to immediately.

4.8.r. Continuity of care shall be provided. The facility shall assign each infant or toddler to a primary caregiver who shall feed, diaper and play with the child on a daily basis to provide the reassurance and bonding necessary for the child's healthy development.

#### 4.9. Children With Special Needs.

4.9.a. The operator shall provide children who need special care at the facility because of a disabling or limiting condition with the care and activities recommended by qualified psychologists, physicians, or other experts.

4.9.b. A parent or physician shall provide a written plan that includes instructions for any special treatment, diet or restrictions in activities that are necessary for the health of the child.

4.9.c. The operator shall permit an early intervention specialist, when appropriate, to enter the facility to provide services to the child, assure the environment is appropriate for the child and to instruct staff in proper techniques of care.

4.9.d. The facility shall perform only those procedures and treatments for which staff have the necessary training, experience, credential or license to perform.

#### 4.10. Parental Involvement.

4.10.a. In order to address the concerns of parents about the quality and safety of child care, the facility shall have written operating policies, which shall be discussed with parents at the time of enrollment.

4.10.b. Policies shall cover the following areas:

4.10.b.1. Admission requirements, enrollment procedures and supplies that parents are expected to provide, if any;

4.10.b.2. A statement that the facility is operated on a nondiscriminatory basis in regard to race, color, sex, religion, national origin, marital status of the parents, and disability,

except insofar as the child's needs cannot be met by the facility;

4.10.b.3. The facility's policy for guidance and discipline which shall prohibit physical punishment. The facility shall also notify parents that they may not give permission to a facility to administer physical punishment, nor shall a parent administer physical punishment to their child while at the family day care facility;

4.10.b.4. Rates, plus any additional fees charged and the plan for payment;

4.10.b.5. Liability insurance coverage;

4.10.b.6. Unlimited ~~parental~~ access to visit the family day care facility at any time;

4.10.b.7. Transportation arrangements, when provided by the facility; and

4.10.b.8. Requirement for permission by parent(s) or guardian(s) for field trips outside the facility, emergency medical treatment, water activity, and provision of medications.

4.10.c. The parent shall be notified of policies regarding payment, hours of operation, management of sick children, services provided by the facility, rules concerning personal belongings brought to the facility, and general procedures of the facility regarding cold weather outdoor play, animals on the premises, mandatory reporting of child abuse or neglect, and religious activities, if any.

4.10.d. Staff shall share information with parents regarding the accomplishments, successes, and improvements of their child as well as any problems that arise. Parents shall be encouraged to become involved with the facility and shall be included in planning for the child's care.

#### **§78-18-5. Family Day Care Facility Personnel.**

##### 5.1. Requirements and Responsibilities of Operator.

5.1.a. The operator shall meet all of the requirements that apply to staff. In addition, the operator shall:

5.1.a.1. Be at least twenty-one (21) years of age;

5.1.a.2. Have a general education development certificate (GED) or high school diploma; and

5.1.a.3. Have six (6) months of experience in caring for children in a licensed day care center, registered family day care home, Head Start, or other early childhood or school-age child care program.

5.1.a.4. Be certified in pediatric first aid training that includes rescue breathing and first aid for choking.

5.1.b. The operator shall document that he or she has met one (1) of the following requirements:

5.1.b.1. Completion of at least ten (10) clock hours of child development training or provisions to do so during the first six (6) months of operation of the facility;

5.1.b.2. A child development associate (CDA) credential or completion of the Child Care Apprenticeship program;

5.1.b.3. Completion of at least three (3) credit hours in child development or a related field;

5.1.b.4. Completion of at least ten (10) clock hours of training annually ~~American Red Cross first aid and CPR training and/or pediatric first aid, including rescue breathing and first aid for choking; or attend at least ten (10) clock hours of training annually.~~ Training shall include topics that will increase the operator's skill in working with children and their families such as: child development, curriculum development, caring for children with special needs, appropriate guidance of children's behavior, working with children and their families, health, safety, infection control, and business practices directly related to the provision of child care. Over a four (4) year period, an operator shall select training that addresses all of these topics.

5.1.c. The operator:

5.1.c.1. Shall work on a site to administer the facility's daily operation;

5.1.c.2. Is responsible for providing a child care program and facility that meet the requirements of this rule;

5.1.c.3. Shall instruct staff in this rule and provide a copy for their use;

5.1.c.4. Is responsible for the supervision of staff, including maintaining staff/child ratios and assuring that additional staff is available as needed to maintain supervision of children in care;

5.1.c.5. Be present at the facility or, if absent, designate one (1) adult who meets the same requirements as the operator to be in charge. This designee shall be capable of carrying out the duties of the operator;

5.1.c.6. Shall be responsible for recruitment and hiring of staff; enrollment and admissions; informing parents of the policies of the family day care facility program; and training of staff in areas such as emergency and evacuation procedures, programming for children, working with parents, discipline policies, health care, sanitation procedures, release of children, child abuse and neglect reporting, and symptoms of illness and child abuse and neglect;

5.1.c.7. Shall maintain adequate records on enrollment, finances, staff, and children;

5.1.c.8. Submit reports to the department when requested; screening, scheduling and

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supervising the conduct of all staff, volunteers, and others in the facility; and

5.1.c.9. Shall be responsible for all legal and financial obligations.

5.1.d. If the family day care facility operator and owner are separate individuals, the owner shall assume the same responsibility as the operator for the operation of the facility in compliance with this rule.

### 5.2. Requirements and Responsibilities of Staff.

5.2.a. All staff working directly with children shall:

5.2.a.1. Be eighteen (18) years of age;

5.2.a.2. Be able to read and write and be able to understand and carry out all provisions of this rule;

5.2.a.3. Be physically and emotionally capable of performing activities related to providing child care. Such activities include meeting children's physical needs, including feeding and diapering; supervising children's activities; and supporting children's growth and development;

5.2.a.4. Understand children and their developmental needs and relate to children with courtesy, respect, patience and affection, and with understanding and respect for the child's family and culture;

5.2.a.5. Provide continuous supervision of young children, including during outdoor play, napping, field trips, and water activities, while realizing that children age nine (9) and up may need less direct adult supervision. Supervision of older children may consist of their playing within sight or hearing of nearby staff who shall conduct periodic checks every fifteen to twenty minutes, with the exception of direct supervision required for all children during field trips and water play;

5.2.a.6. Carry out methods of guidance and discipline without recourse to physical or emotional punishment;

5.2.a.7. Recognize and act against hazards to children and react in a calm manner in an emergency;

5.2.a.8. Have positive written responses from two (2) references;

5.2.a.9. Have on file a current health appraisal, including a physical examination and tuberculosis screening, prior to employment and every two (2) years thereafter, with an assessment of current immunization status and any health related limitations or communicable diseases that may impair the ability of the person to perform the job. Current health reports shall establish that the caregiver is physically and mentally able to care for children and has negative test results for tuberculosis;

5.2.a.10. Have successfully completed American Red Cross First Aid and CPR training or pediatric first aid, including rescue breathing and first aid for choking, or shall do so within the first six (6) months of employment;

5.2.a.11. Have received, prior to caring for children, an orientation from the operator with regard to evacuation procedures, discipline, child abuse and neglect reporting, recognition of symptoms of childhood illness and the requirements of this rule;

5.2.a.12. Complete at least eight (8)~~six (6)~~ clock hours of training relevant to the provision of child care annually, using the list of appropriate training suggested for operators and selecting training from a variety of areas; and

5.2.a.13. Meet and abide by all other requirements listed in this rule, including those with regard to background checks.

5.3. Volunteers.

5.3.a. A volunteer shall not be used to meet staff/child ratios.

5.3.b. Volunteers shall:

5.3.b.1. Be at least sixteen (16) years of age;

5.3.b.2. Be supervised by the owner or an adult staff person at all times;

5.3.b.3. Submit evidence of a negative tuberculosis screening completed during the past twenty-four (24) months;

5.3.b.4. Receive orientation to the facility and its programs and policies; and

5.3.b.5. Be familiar with and meet the requirements of this rule.

5.4. Background Checks.

5.4.a. Criminal background checks shall be completed by the department on all operators, caregivers, employees, volunteers ~~over age~~ eighteen (18) and over, and all adult household members/residents.

5.4.b. The operator shall not knowingly hire or continue to employ any staff person nor permit a volunteer or household member to be in contact with children in the facility if any of these persons shall have:

5.4.b.1. Been convicted of, indicted for, or admitted guilt to any felony offense or more than one misdemeanor offense;

5.4.b.2. Been involved in any criminal activity involving violence against a person, including adult or child abuse or neglect; possession, sale, or distribution of illegal drugs; gross

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irresponsibility or disregard for the safety of others, or fraud.; or

5.4.b.3. Been determined to have abused or neglected an adult or child. Such determinations include criminal or civil proceedings and/or the results of investigations conducted by department staff in accordance with the provisions of W. Va. Code § 49.

5.4.c. A facility shall not be approved or eligible for continuing certification if a background check or complaint shows that the operator or a household member have been determined to have abused or neglected a child or have a criminal background as defined in this rule.

5.4.d. The operator, an employee, volunteer, or other household member or resident shall not have been diagnosed or under treatment for a serious mental illness which might create a risk to children. The determination of risk to children shall be made on the basis of a written recommendation from a licensed psychologist or psychiatrist.

5.4.e. No operator, employee, volunteer, household member, or visitor to the facility shall be under the influence of alcohol or illegal drugs while children are in care.

5.4.f. No person working directly with children in the home shall take any substance or medication that would impair his or her ability to care for children.

5.4.g. The operator shall notify the department within twenty-four (24) hours if the operator, any employee, volunteer, household member, or anyone working directly with children has been charged with any crime or is alleged to have committed adult or child abuse or neglect.

### §78-18-6. Physical Plant, Sanitation, and Nutrition.

#### 6.1. Physical Facility.

6.1.a. The building and grounds used for a family day care facility shall be suitable for the purpose of child care, kept clean and in good repair, and shall present no hazard to the health and safety of children.

6.1.b. Usable floor space of thirty-five (35) square feet per child or a total of four hundred twenty (420) square feet for a facility caring for the maximum of twelve (12) children shall be available for children's activities, exclusive of halls, bathrooms, kitchen, office space, or storage areas.

~~6.1.c. There shall be adequate ventilation provided through open windows that are screened to prevent insect problems or by the use of fans or air conditioning. Fans shall have shields with openings less than one half inch or be out of the reach of children.~~

~~6.1.d. The facility shall have a safe heating system with vents, automatic controls and shields, as needed, to protect children from burns. Unvented fuel-fired heaters are not permitted.~~

~~6.1.e. There shall be a temperature of at least sixty-five (65) to sixty-eight (68) degrees~~

~~maintained during the winter heating season.~~

~~6.1.f. Floors and floor coverings shall be kept clean and in good repair. Carpets shall be securely attached or of a non-skid nature.~~

~~6.1.g. The facility shall have an adequate safe supply of water. Facilities that have private water systems shall have periodic tests to insure water safety.~~

~~6.1.h. The plumbing shall be kept in good working order.~~

6.1.i. The facility shall be equipped with a bathroom that includes a toilet and washbasin with hot and cold running water. Hot water temperature shall not exceed one hundred ten (110) degrees. Toilet facilities shall be cleaned and sanitized at least daily.

6.1.j. Kitchen and eating areas shall be equipped to safely prepare, store, and serve meals to children. The kitchen shall be equipped with an oven or microwave, a range or cooktop, a refrigerator, and equipment for washing, rinsing, and sanitizing cooking and eating utensils.

6.1.k. Staff shall not permit children under the age of six (6) in food preparation areas when ranges or cooktops are in use.

6.1.l. Halls and stairways used as exits shall be kept clear of stored items. Stairways shall be provided with railings and with barriers (safety gates) at the top and bottom whenever infants, toddlers, preschool children are in care.

6.1.m. A quiet space shall be available for children to nap or rest away from the noise of household activity.

6.1.n. Outdoor play areas shall meet the following requirements:

6.1.n.1. There shall be usable outdoor play space of seventy-five (75) square feet per child (a total of nine hundred (900) square feet or approximately thirty (30) foot by thirty (30) foot for a facility caring for the maximum of twelve (12) children) available for children's outdoor activities either on the premises or within walking distance of the facility. Play times may be staggered and space based on the number of children using the area at one time;

6.1.n.2. In family day care facilities, all areas accessible to the outdoor play area determined to be unsafe, including, but not limited to, steep grades, cliffs, open pits, swimming pools, high voltage boosters, propane gas tanks, streets, roads, driveways, railroad tracks, or parking lots, shall be fenced off or have natural barriers at least three (3) feet high to protect children. The area shall be fenced or have natural barriers such as hedges or stationary walls at least three (3) feet high if children under the age of five (5) are being served;

~~6.1.n.3. The area shall be kept free of litter, solid waste and refuse, ditches, abandoned cars, used appliances, animal feces, toxic plants, or other conditions presenting potential fire, sanitation or safety hazards to children;~~

6.1.n.4. Play equipment shall be selected and maintained to be of safe design and in good repair. It shall be free of sharp edges, protruding parts, weaknesses, or flaws. It shall be installed to prevent tipping or collapse; and

6.1.n.5. Swing, slides, and climbing equipment shall not be placed on concrete or asphalt surfaces.

6.1.o. Family day care facilities shall be equipped with a working telephone with a listed number and shall post the following emergency numbers adjacent to the phone: ambulance, fire, police, poison control, and numbers of parents and physicians for all children in care.

6.1.p. A facility shall provide an individual bed, sturdy cot, crib, couch, baby bed, playpen, or mat for each child who naps. Siblings may share double beds.

~~6.1.q. Individual sheets and covers shall be provided for each child and shall be laundered at least weekly or whenever soiled or prior to use by another child.~~

6.1.r. The facility shall have indoor and outdoor play equipment, toys, materials, and furniture that are:

6.1.r.1. Appropriate to the developmental needs and ages of children in care;

6.1.r.2. Safe, clean, durable, in good repair, and made of nontoxic materials;

6.1.r.3. Easily accessible to and appropriately sized for young children;

6.1.s. Of sufficient quantity to provide choices for children and avoid competition for toys; and

6.1.t. Capable of providing for a variety of activities such as quiet and active play and individual and group play.

6.1.u. Storage spaces shall be provided for each child's clothing and for toys and art supplies that are easily accessible to children. These spaces shall be designed to encourage children to pick up and put away toys and personal possessions.

## 6.2. Building and Physical Premises Safety.

6.2.a. The physical facility shall present no hazard to the health and safety of a child.

6.2.b. The facility shall insure that porches, balconies, decks, or platforms elevated more than three (3) feet above the ground are equipped with secure and child-proof railings and barriers.

~~6.2.c. Heaters, fans, and cooling equipment shall have safeguards that keep children from being injured or shall be placed out of children's reach.~~

~~6.2.d. All potentially dangerous or toxic materials or chemicals, including cleaning supplies, medicines, and poisons, shall be inaccessible to children and stored in original containers. Guns and alcoholic beverages shall be stored in locked cabinets.~~

6.2.e. All interior bathroom and closet doors which can be locked from the inside shall be capable of being unlocked from the outside.

6.2.f. Clear glass doors shall be clearly marked at a child's eye level.

6.2.g. Protective covers shall be installed on all unused electrical outlets accessible to children less than five (5) years of age.

6.2.h. Hanging items, including Venetian blind cords, appliance cords, and tablecloths shall be out of the reach of small children.

6.2.i. Care shall be taken with electrical appliances that are being used in areas frequented by small children. Appliances shall be unplugged when not in use.

6.3. Sanitation and Health Issues.

~~6.3.a. The facility shall obtain a permit to operate from the health officer as required by 64 CSR 21. The facility shall be inspected by the health officer prior to beginning operation and semi-annually thereafter have an inspection by the office of environmental health or their designee prior to beginning operation and annually thereafter.~~

6.3.b. The facility shall keep yard and equipment cleaned, repaired, and maintained to protect the health of children.

6.3.c. Good personal hygiene shall be practiced by all persons in the facility.

6.3.d. Hand washing practices must be in compliance with the requirements of 64 CSR 21. Adults and children shall follow the recommendations of the Centers for Disease Control with regard to hand washing in order to prevent the spread of illness. Hands shall be scrubbed for ten (10) seconds using soap and warm running water and procedures shall prevent re-contamination when turning off faucets. Hands shall be washed at the following times and whenever hands are contaminated with body fluids:

~~6.3.d.1. Before any food preparation activity, including preparation, table setting, handling, or serving;~~

~~6.3.d.2. After toileting or changing diapers;~~

~~6.3.d.3. After assisting a child with toilet use or nose wiping, and after a child has vomited;~~

~~6.3.d.4. Before and after eating meals and snacks; and~~

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~~6.3.d.5. After handling pets or other animals.~~

~~6.3.e. Antibacterial soap and toilet paper shall be available at all times. Paper towels or individual clean cloth towels shall be available for each child. Cloth towels shall be replaced with clean towels daily and shall be cleaned and disinfected daily or more often if needed.~~

~~6.3.f. Garbage and refuse shall be:~~

~~6.3.f.1. Collected, stored, and disposed of in a manner which prevents contamination;~~

~~6.3.f.2. Stored in covered containers, which are cleaned and sanitized as necessary, but no less than weekly; and~~

~~6.3.f.3. Kept in areas inaccessible to children or securely covered.~~

6.3.g. The facility shall be free from infestations of insects or rodents.

6.3.h. The facility shall exclude staff and children with a serious communicable disease and shall not permit the adult or child to be in contact with children in care unless the operator receives a statement from a licensed health professional that states the adult or child poses no health risk to the children in care. Children with mild illnesses, such as colds or allergies, may attend at the discretion of the caregiver, provided that parents are notified in advance of this policy, and are given notice when the situation occurs.

6.3.i. Serious communicable diseases include, but are not limited to measles, mumps, rubella, chicken pox, strep or streptococcal infections, hepatitis, impetigo, infestations of lice or scabies, diarrhea and/or vomiting, pertussis, tuberculosis, conjunctivitis, and pneumonia.

6.3.j. The facility shall notify parents of any communicable disease outbreak in the facility.

6.3.k. The following first aid supplies shall be available in the facility: antiseptic; band aids; thermometer; gauze; tape; scissors; tweezers; disposable, nonporous gloves; a first aid guide; and syrup of ipecac. Syrup of ipecac shall be used only with prior authorization from the parent and at the direction of a poison control center or the child's physician. First aid supplies shall not be accessible to the children in care. A first aid kit shall be taken by staff on all trips away from the facility.

6.3.l. The facility shall give or apply medicines:

6.3.l.1. Only with prior written permission from the parents or upon directions from a physician; and

6.3.l.2. Only from the original bottle following the physician's directions, and to the child whose name appears on the label.

6.3.m. The facility shall notify parents or guardians immediately of illness or injury to the child.

6.3.n. If necessary to secure emergency treatment for a child, a staff person shall accompany and remain with the child during care or treatment until the parent arrives.

6.4. Food Services.

~~6.4.a. Family day care facilities shall use an on-site kitchen which complies with the requirements of 64 CSR 21. The kitchen and all food preparation, storage and serving areas, and utensils shall be kept clean and in good repair.~~

~~6.4.b. If meals are obtained from an off-site source, then the supplier must have a permit to operate from the health office. The kitchen shall have hot and cold running water.~~

~~6.4.c. All dishes, cups and glasses used by the children in care shall be free from chips, cracks, or other defects.~~

~~6.4.d. Food contact surfaces shall be easily cleanable and shall be cleaned after each use.~~

~~6.4.e. Sinks and drain boards shall be self-draining.~~

~~6.4.f. Dishes shall be pre-cleaned, washed in hot water, rinsed and sanitized with: water at a temperature of one hundred seventy degrees (170°) Fahrenheit; or immersed for one (1) minute in water at a temperature of at least seventy five degrees (75°) and containing three fourths (3/4) to one and a half (1 1/2) tablespoons of liquid chlorine bleach per gallon of water; or washed in a automatic dishwasher.~~

~~6.4.g. Dishes shall be air-dried.~~

~~6.4.h. Food and milk or formula and other perishable food shall be stored in closed containers and kept refrigerated.~~

~~6.4.i. Refrigeration shall be used for perishable foods and shall maintain temperatures of forty five degrees (45°) Fahrenheit or below. Freezers shall maintain temperatures of zero degrees (0°) or below.~~

~~6.4.j. Cleaning supplies shall be stored separately from food.~~

~~6.4.k. Food shall be in sound condition, free from spoilage, filth or other contamination and shall be safe for human consumption.~~

~~6.4.l. Fluid milk and milk products shall be pasteurized and dry milk products shall be made from pasteurized milk products.~~

~~6.4.m. Food shall be protected at all times from contamination from sources such as~~

~~insects, dust, coughs and sneezes, etc.~~

~~6.4.n. Food shall be prepared in a sanitary manner.~~

~~6.4.o. Raw fruits and vegetables shall be washed before cooking or serving.~~

~~6.4.p. Potentially hazardous foods, such as hamburger, red meat, chicken and turkey, shall be cooked thoroughly.~~

~~6.4.q. Prepared foods shall be served immediately or refrigerated to prevent spoilage.~~

~~6.4.r. Adults preparing and serving food shall practice good personal cleanliness habits, including hand washing, clean clothing, and hair restraints, and shall not use tobacco products during food preparation.~~

~~6.4.s. Cleaned and sanitized equipment, dishes, and utensils shall be stored in a clean location that protects from contamination by splash, dust, etc.~~

#### 6.5. Nutrition.

6.5.a. The facility shall provide nutritious meals and snacks that meet the standards of the United States Department of Agriculture and consist of foods from all four (4) basic food groups: (1) milk; (2) protein group, including meat, fish, poultry, eggs, peanut butter, dried beans, dried peas, cheese; (3) two (2) fruits or vegetables or one (1) of each, including a wide variety of green, white, yellow and red vegetables and fruits; and (4) the grain group, including whole grain and enriched breads, cereals, pasta, crackers, and rice.

6.5.b. When parents provide food for meals, the facility shall supplement any meal that does not provide nutritious and sufficient amounts of food for children as needed to meet the requirements of this rule.

6.5.c. No child shall be permitted to be without a meal or snack for excessively long periods of time. A facility shall provide meals according to the following requirements:

6.5.c.1. In a facility open morning through afternoon, lunch and morning and afternoon snacks shall be served. If a facility serves breakfast to all children, a morning snack is not required;

6.5.c.2. The facility shall serve a snack to school age children arriving after school;

6.5.c.3. The facility shall offer a complete meal to a child when planned attendance is prior to seven (7 am) in the morning or after seven-thirty (7:30 pm) in the evening;

6.5.c.4. Menus shall be planned with the goal of meeting or working toward meeting the 1990 Dietary Guidelines for Americans. Menus shall be prepared, dated, posted in advance in a conspicuous place, and kept on file for thirty (30) days;

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6.5.c.5. The facility shall consider information provided by parents as to children's eating habits, food preferences, and special dietary needs when planning menus;

6.5.c.6. The facility shall encourage children to eat the food served but shall not subject children to coercion or forced feeding;

6.5.c.7. A facility shall limit the use of snack foods with high sugar and salt content; and

6.5.c.8. Only pasteurized, inspected and GRADE (A) USDA approved milk products shall be served to children. Powdered milk shall not be used, except for cooking.

### 6.6. Animals.

6.6.a. Any pet or animal present at the facility, indoors or outdoors, shall be in good health, show no evidence of carrying and disease and be a friendly companion for children. When animals are kept on the premises, the facility shall:

~~6.6.a.1. Maintain pet areas in a sanitary manner;~~

~~6.6.a.2. Have pets immunized as recommended by a veterinarian;~~

~~6.6.a.3. Not allow children access to domestic animals who are sick or aggressive nor to potentially harmful wild animals;~~

~~6.6.a.4. Notify parents when their children have access to pets and supervise children in play with animals;~~

~~6.6.a.5. Not keep animal litter boxes in the kitchen or dining area or in reach of young children; and~~

~~6.6.a.6. Cover sand boxes when not in use, in order to keep out pets.~~

6.6.b. When pets are kept on the premises, the facility shall comply with the rules of the Division of Health contained in 64 CSR 21.

### 6.7. Smoking

6.7.a. Neither the provider nor the staff, volunteers or household members are permitted to smoke cigarettes, cigars, pipes or other tobacco products in the presence of children.

6.7.b. Neither the provider nor the staff, volunteers or household members are permitted to smoke cigarettes, cigars, pipes or other tobacco products on any playground facilities when a child is present.

### §78-18-7. Fire Safety.

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7.1. Family day care facilities shall meet requirements of the State Fire Code.

7.2. A family day care facility shall have an inspection by the office of the state fire marshal prior to beginning operation and annually thereafter.

7.3. The facility shall establish and post a disaster plan for fire, storm, and other emergencies, which includes a written plan for emergency evacuation of the children from the facility.

7.4. The facility shall prevent children away from entering areas which contain furnaces and water heaters or shall install shields to prevent burns. Water heaters shall be equipped with thermostatic controls and pressure relief valves.

### **§78-18-8. Reporting and Investigation of Complaints.**

8.1. Reporting.

8.1.a. The facility shall verbally report to the department any serious occurrences affecting the operation of the facility within twenty-four (24) hours of the occurrence or by the next work day. Reports shall include the following situations:

8.1.a.1. Any accident, injury, or illness occurring while a child is in care and resulting in extensive medical care, hospitalization or death;

8.1.a.2. Serious communicable disease of a child, operator, employee, or family member;

8.1.a.3. Any incident which results in legal action by or against the facility; and

8.1.a.4. Serious violations of requirements by the facility operator or its employees, such as use of physical punishment or failure to supervise which could have resulted in harm to a child.

8.1.b. The facility shall immediately report to the department any suspected child abuse or neglect by a parent, operator, employee, other caregiver, or household member. Complaints shall be made to the department's child protective services office in the county where the facility is located or called into the statewide child abuse and neglect hotline at 1-800-352-6513, as required by state law.

8.1.c. The facility operator, all employees, and volunteers shall be aware of the mandated responsibility to report any suspected child abuse and neglect.

8.1.d. The facility shall also notify the department, in writing, of any occurrence affecting the operation of the facility. This includes, but is not limited to, the following:

8.1.d.1. Change of ownership, requiring a new application;

- 8.1.d.2. Change of operator and change in staff;
- 8.1.d.3. Closure;
- 8.1.d.4. Operating hours and age range;
- 8.1.d.5. Additions to or reductions in space affecting the facility's capacity;
- 8.1.d.6. Additions such as a swimming pool;
- 8.1.d.7. Reductions such as removal of fences;
- 8.1.d.8. Location of home, requiring a new application;
- 8.1.d.9. A disaster such as a fire or flood that damages the home; ~~and~~
- 8.1.d.10. A change in the composition of the household and;

8.1.d.11. Any employee who has been arrested and charged with a crime or who has been indicted for a crime.

## 8.2. Investigation of Complaints.

8.2.a. A facility shall fully cooperate with the secretary in the investigation of any complaints.

8.2.b. Complaints may include: (a) any complaint alleging a violation of the requirements of this rule, (b) any matter involving an individual suspected of creating or otherwise causing any unreasonable or imminent risk of serious harm to a child, any violation of the juvenile or criminal laws of this state; or reports of suspected child abuse or neglect.

8.2.c. In the event that a complaint alleges that the behavior or conduct of any operator, employee, household member, or volunteer, may create an unreasonable or imminent risk of serious harm to a child in care, the facility shall immediately remove that person from having any further contact with children in care until such time as an investigation is completed and a determination is made upon the merits of that complaint.

8.2.d. For complaints that do not involve suspected child abuse or neglect, the director of a facility shall be informed of a complaint as soon as appropriate but no later than thirty (30) days after the date of its receipt by the secretary.

8.2.e. The secretary shall investigate any complaint alleging violation of the provisions of Code §49-2B-1, et seq., the requirements of this rule, or a plan of correction.

8.2.f. The secretary shall complete the investigation of a complaint within thirty (30) days of the date of its receipt. In the event that an investigation cannot be completed within thirty (30) days of the receipt of the complaint, the secretary shall provide written notice to the

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facility setting forth the reasons for the delay in completing the investigation, and shall further establish a reasonable schedule for the completion of the investigation, not to exceed ninety (90) days.

8.2.g. After an investigation of a complaint has been completed, the secretary shall mail a written summary report of the findings, conclusions and recommendations of that investigation to the facility by certified mail within ten (10) days.

8.2.h. In the event that the secretary judges it necessary and appropriate, a facility shall be required by the secretary to submit a plan of correction within thirty (30) days of the date of receipt of the written summary report from the secretary in order to comply with the findings, conclusions and recommendations of that report.

8.2.i. Before the facility implements the proposed plan of correction, the plan shall be approved by the secretary.

8.2.j. Upon approval of the plan, the secretary shall send it to the facility by certified mail.

8.2.k. The approved plan of correction shall be fully implemented by a facility within ten (10) days of the date of its receipt unless that plan includes an alternative schedule of compliance.

8.2.l. In the event that a complaint contains specific allegations of any violation of the juvenile or criminal laws of this state, the secretary shall immediately refer the investigation of such matters to the appropriate law enforcement authority or agency.

8.2.m. If the complaint alleges child abuse or neglect, a facility shall conduct an internal investigation of a complaint only to the extent necessary to ensure the immediate protection of children. Any further internal investigation shall require the prior written approval of the secretary.

8.2.n. In the event that a complaint alleges child abuse or neglect by the operator, any employee, a volunteer, or a person living in a facility, or it alleges that the behavior or conduct of any operator, employee, volunteer, or person living in a facility may create an unreasonable or imminent risk of serious harm to a child in care, the facility shall immediately remove that person from having any further contact with children in care until such time as an investigation is completed and the allegations found to be unsubstantiated. The operator, staff, and all family members living in the facility shall cooperate fully in the investigation of any incident or allegation. Upon substantiation of a complaint the secretary shall require either corrective action or closure of the facility.

### **§78-18-9. Sanctions.**

#### 9.1. Penalties.

9.1.a. Any family day care facility which operates without certification when

certification is required is subject to criminal penalties as stated in W. Va. Code §§ 49-2B-5(a) as follows: guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500).

9.1.b. Where a violation of W. Va. Code § 49-2B of the West Virginia Code or of this rule promulgated by the secretary may result in serious harm to children under care, the secretary may seek injunctive relief against any person, corporation, child welfare agency, child placing agency, day care center, family day care facility, family day care home or governmental official through proceedings instituted by the attorney general, or the appropriate county prosecuting attorney, in the circuit court of Kanawha County or in the circuit court of any county where the children are residing or may be found.

## 9.2. Revocation and Closure.

9.2.a. ~~The secretary may revoke the certificate of registration of any facility regulated pursuant to the provisions of W. Va. Code § 49-2B if a facility materially violates any provision of the article, or any terms or conditions of certification, or fails to maintain established requirements of child care. expressly reserves the right to revoke any facility's statement of certification under any exigent circumstances which may require immediate action or based on evidence of a pattern and practice of failure to maintain substantial compliance with the provisions of W. Va. Code § 49-2B-1, et seq., the requirements of this rule, any terms and conditions of its certification or any plan of correction.~~

9.2.b. In the event that the secretary finds that the operation of a facility creates any unreasonable or imminent risk of serious harm to any child in care; the secretary shall issue an order of closure forthwith that temporarily suspends the statement of certification of that facility.

9.2.c. In the event that a statement of certification is suspended by the secretary, a facility shall not operate in any manner pending administrative or judicial review of that suspension, unless a court order is entered staying the execution of the secretary's order of closure.

9.2.d. The secretary may also take any of the following actions, if needed to protect the health, safety and welfare of children cared for by the facility:

- 9.2.d.1. Limit the age and sex of children allowed to be in care of a facility;
- 9.2.d.2. Limit the nature, type and scope of services to be provided by a facility;
- 9.2.d.3. Limit the intake of additional children by a facility; or
- 9.2.d.4. Reduce the number of children allowed to be cared for by a facility.

## §78-18-10. Administrative Due Process.

### 10.1. Appeals.

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10.1.a. Any person aggrieved by a decision of the secretary to deny, limit, revoke or adversely affect certification may contest the decision by requesting a hearing by the secretary within thirty (30) days of receipt of notice of an adverse decision. Administrative and judicial review shall be made in accordance with W. Va. Code § 29-A-5.

10.1.b. Upon receipt of a request for a hearing, the state hearing officer will schedule the hearing and give all parties at least ten (10) days notice of the date, time and place of the hearing, and a brief statement of the matters asserted or the issue(s) involved. The hearing will be conducted by an impartial state hearing officer who has not previously been involved in the case under appeal and who will conduct the hearing and make a final decision. A copy of the decision will be served upon all involved parties in person or by registered or certified mail.

10.1.c. Any party adversely affected by the final decision may institute a judicial review by filing a petition in either the circuit court of Kanawha County or in the circuit court of the count in which the petitioner lives or does business.

### **§78-18-11. Severability.**

The provisions of this rule are severable. If any portion of this rule is held invalid, the remaining provisions remain in effect.

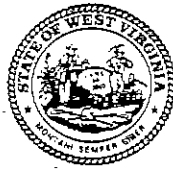
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we can get)  
OFFICE OF THE SECRETARY OF STATE  
JAN 7 4 34 PM '97  
FILED

January 7, 1997

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Human Services

RULE: New Rule, Series 18, Family Day Care Facility Certification Requirements

DATE FILED AS AN EMERGENCY RULE: November 26, 1996

### DECISION NO. 1-97

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

Handwritten signature of Ken Hechler in cursive.

KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

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## EMERGENCY RULE DECISION (ERD 1-97)

AGENCY: Division of Human Services  
RULE: New Rule, Series 18, Family Day Care Facility Certification Requirements

FILED AS AN EMERGENCY RULE: November 26, 1996

- par. 1 The Division of Human Services (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State November 26, 1996 and with the LRMRC November 26, 1996.

par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §49-2B-4 reads:

*(a) The commissioner shall promulgate rules in accordance with the provisions of §29A-1-1 et seq. of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article.*

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

The Division of Human Services declares that the immediate implementation of the proposed new Family Day Care Certification Rule, 70 CSR 18, is necessary in order to prevent substantial harm to the public interest and the circumstances stated below meet the definition of an emergency rule stated in W. Va. Code §29A-3-15(f)(3).

The 1996 Legislature initiated West Virginia's welfare reform effort in advance of federal initiatives with the passage of SB 140, establishing the WV WORKS Act, W. Va. Code §9-9-1 through §9-9-19. This program will be implemented in 9 counties starting December 1, 1996, in accordance with legislative intent to begin the process of welfare reform "as soon as possible" as indicated in W. Va. Code §9-9-4(b).

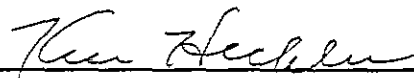
Subsequent to the adjournment of the 1996 State legislative session, Congress passed the federal welfare reform legislation, H.R. 3734, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, USC (PRWORA), which became effective October 1, 1996. The goal of both WV WORKS and PRWORA is to assist persons receiving public assistance to find employment. One critical factor in accomplishing this goal is the ready availability of child care for the

children of individuals receiving assistance. West Virginia has a barrier to achieving this goal in the form of severe shortage of child care facilities with the oversight needed to assure the safety and suitability of the child care provided. A recent survey of the availability of regulated child care conducted by the Governor's Cabinet on children and Families documented that currently available child care placement slots are sufficient to meet the needs of 20% of the State's children. There are 9 counties as of this filing in which there is no day care center and 14 counties which have only 1 licensed day care center. Therefore, not only is there a shortage of day care placement slots, there is also a transportation problem created by the lack of conveniently located care settings. Transportation for families on assistance is often difficult to arrange and is often a problem in arranging needed child care.

Until recently, State law has provided for the licensure of day care centers caring for 7 or more children. The 1996 Legislature recognized the need for an increase in the number of child facilities and a mechanism to facilitate the increase. It created a new category of family day care facility designed to care for 7-12 children, and redefined day care center as a larger type of facility to care for 13 or more children in HB 4170 which became effective June 7, 1996. The intent was that the new, smaller type of facility, which would frequently be provided by home-owners in their private homes, would need less stringent standards in certain areas of operation than larger facilities, as for example, in the kitchen. These small facilities will be less costly to start up and maintain. By increasing the economic feasibility of setting up and operating a small child care facility, the numbers of State-monitored day care placement slots could be more readily increased. Additionally, the presence of a greater number and likely more widely dispersed facilities should ease the transportation burden by providing day care closer to the homes of persons needing this service in order to become employed. It was thought that both these outcomes of implementing the new legislation would facilitate the goal of moving individuals off the public assistance rolls.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 1-97 or ERD 1-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Division of Human Services, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

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SECRETARY OF STATE

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