

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

Form #3

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AUG 30 3 47 PM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Division of Human Services TITLE NUMBER: 78

CITE AUTHORITY W. Va. Code § 49-2B-4

AMENDMENT TO AN EXISTING RULE: YES  NO

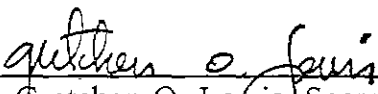
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 18

TITLE OF RULE BEING PROPOSED: Family Day Care Facility Certification

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

  
\_\_\_\_\_  
Gretchen O. Lewis, Secretary

17.50

**Date:** August 30, 1996  
**To:** Legislative Rule-Making Review Committee  
**From:** Kay Howard, Director  
Regulatory Development  
Department of Health and Human Resources  
**Re:** **Family Day Care Facility Certification, 78 CSR 18**

1. Authorizing statute(s) citation: W. Va. Code § 49-2B-4
2.
  - a. Date filed in State Register with Notice of Public Comment Period: 7-18-96
  - b. Other notice, including advertising, given of the public comment period:  
Copies were sent to all local health departments and a press release was sent to all daily newspaper in West Virginia.
  - c. Date Public Comment Period Ended: 8-19-96
  - d. List of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached  X  No comments received  \_\_\_\_\_
  - e. Date of filing in State Register the Agency-Approved proposed Legislative Rule following public comment period: 8-30-96
  - f. Name and phone number of agency contact person: Kay Howard, 558-3223
3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: Not Applicable
  - a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
  - b. Date of hearing:
  - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
  - d. Attach findings and determinations and reasons:

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

**CERTIFICATION REQUIREMENTS FOR FAMILY DAY CARE FACILITIES  
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.

7/17/96

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.**

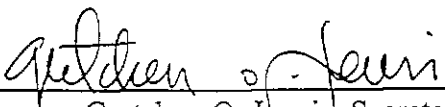
The proposed rule will have a positive impact on all these parties. It will increase the availability of child care which is a necessary support for working parents. It will also provide employment opportunities for persons who want to work in the child care field.

**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



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton  
Governor

Gretchen O. Lewis  
Secretary

**Date:** October 17, 1996

**To:** Administrative Law Office, Secretary of State  
Legislative Rule-Making Review Committee

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

**Re:** Family Day Care Facility Certification Requirements, 78 CSR 18

It was recently brought to my attention that pages 30 and 31 of the agency-approved Family Day Care Facility Certification Requirements rule filed August 30, 1996 did not copy properly. Apparently the pages stuck together in the automatic feed of the copier and went undetected by my staff. For your convenience, I am enclosing the complete rule with these pages corrected.

I apologize for any inconvenience this error may have caused.

KH/sm  
Enclosure

cc+enc: Michael O'Farrell  
Linda Jones

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

OCT 17 4 28 PM '96

FILED

**TITLE 78  
LEGISLATIVE RULES  
DIVISION OF HUMAN SERVICES**

**SERIES 18  
FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS**

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**Agency-Approved Proposed Rule  
Filed with the  
Legislative Rule-Making Review Committee**

TITLE 78  
LEGISLATIVE RULES  
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  
FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS

**§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.<sup>1</sup>

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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 §5F-1-1 et seq.). Administratively within the DHHR the Bureau for Children and Families through its Commissioner carries out the child welfare licensing

**§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.

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.

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

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functions of the Division of Human Services.

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.

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:

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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.

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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.

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.

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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;

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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 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;

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.~~

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

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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;

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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.

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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

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;

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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,

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including adult or child abuse or neglect; possession, sale, or distribution of illegal drugs; gross 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.~~

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~~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;~~

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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.

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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.

6.3.o. The staff shall employ universal precautions for protection from disease and infection. Spills of body fluids, which include urine, feces, blood, saliva, nasal discharge, eye discharge, and injury or tissue discharges, shall be cleaned up immediately, as follows:

6.3.o.1. Spills of vomit, urine, and feces on any surface shall be cleaned and disinfected;

6.3.o.2. Spills of blood or blood-containing body fluids and injury and tissue damage shall be cleaned and disinfected. Gloves shall be used in these situations ~~unless the amount is so small that it can easily be contained by the material used for cleaning;~~

6.3.o.3. Persons cleaning contaminated areas shall avoid exposure of open skin sores or mucous membranes to blood or blood-containing body fluids;

6.3.o.4. Blood contaminated material and diapers shall be disposed of in a plastic bag with a secure tie;

6.3.o.5. Mops shall be cleaned with a disinfectant solution; and

6.3.o.6. The disinfectant solution to be used to clean all spills of body fluids shall be a self-made solution consisting of one fourth cup household bleach to each gallon of water. This solution shall be made fresh daily in order to assure effectiveness.

### 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.~~

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~~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

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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;

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.**

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 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.~~

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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.

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.

**Discussion of Public Comments Received  
Concerning the Proposed Rule  
Certification Requirements for Family Day Care Facilities  
78 CSR 18**

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. The proposed rule establishes minimum standards of acceptable care, protection and supervision for children in this new class of facility. It also provides for certification of family day care facilities as well as a uniform standard of enforcement statewide.

Because this is a new class of day care facility, the Department of Health and Human Resources sought the advice and consultation of other interested parties in developing this rule. The efforts to involve others were coordinated by the Governor's Cabinet and included collaboration with the Early Childhood Implementation Committee. That committee includes: members of provider organizations, day care staff trainers, and representatives from the public and private sector interested in day care.

A public comment period was held from July 18, 1996 to August 19, 1996. The Department received numerous comments which are summarized and discussed below. Minor stylistic changes and correction of typographical, grammatical and format errors are not documented. Some revisions have necessitated renumbering. Comments and discussion are keyed to the version of the rule offered for public comment.

**General Comments**

In addition to specific suggestions for changes and clarifications, there were a number of comments about the rule as a whole. These comments were positive in nature. The writers expressed appreciation for the work of the various parties involved in developing the rule and were pleased with the scope, content and clarity of the rule itself.

**1. Comment:** In addition to identifying typographical and grammatical errors, the commentators raised some questions about the clarity of certain words or phrases. Many of these comments did not contain a specific suggestion for change. They simply pointed out that they considered a statement confusing but did not suggest any modification.

**Response:** The comments were reviewed by a panel composed of Department staff and persons involved with day care. All rules which were described as unclear were considered. Those that the panel determined to be clear were left as originally written. Others were clarified without changing the substance of the rule.

**2. Comment:** Some of the commentators expressed a concern that in addition to this rule, day care facilities were also subject to rules promulgated by the Division of Health. The commentators urged the Department to make sure that these two rules were compatible.

**Response:** Representatives from the respective offices associated with these rules did meet to insure that these concerns were addressed. As a result, substantial changes were made to the sections on: Water Safety (4.6), Care of Infants and Toddlers (4.8), Physical Safety (6.1), Sanitation and Health Issues (6.3), Food Services, and, Animals (6.6). Concurrently with the development of this proposed rule, the Division of Health has developed and offered for public comment revisions to its rule, Child Care Centers, 64 CSR 21, as needed to encompass this new type of facility. Both rules were offered for public comment to the same groups and in the same manner. Some of the modifications to the proposed certification rule (Family Day Care Facility Certification Requirements, 78 CSR 18), discussed in this document, involved moving standards from the certification rule into the Division of Health's proposed revised Child Care rule (64 CSR 21, see above), and cross referencing the Division of Health's rule. The Department believes that since concerned parties were given opportunity to comment on both rules that these changes, although perhaps unusual, are within the bounds of the rule-development process.

The purposes of these changes were to: eliminate conflicting or confusing rules between the two Divisions, to ensure that appropriate safeguards are in place, and, to avoid over-regulation.

### Comments Related to Specific Items

**1.5 Comment:** One person was concerned that the rule could be misconstrued to apply to Family Day Care Homes since this class of day care is not listed in the exception to this rule.

**Response:** Family Day Care Facilities and Family Day Care Homes are distinct and different forms of day care, both in statute and rule. An exception for Family Day Care Homes is not necessary as there are already separate requirements for that type of care.

**1.5.e Comment:** There is a concern about the exemption from regulation of persons who provide family day care solely for children related to them. Some persons believe that all providers should meet certain minimum expectations.

**Response:** The exemption is contained in state statute and cannot be changed by the Department.

**2.1 Comment:** Although the definition of "child" is statutorily correct, the Department does not provide reimbursement for children regardless of age. The inclusion of the definition without further modification may create the impression that the Department has changed its policy on reimbursement.

**Response:** The definition has been expanded by the addition of language which specifies the ages of children eligible for reimbursement.

**3.1.b Comment:** It was suggested that the period of certification be reduced from two (2) years to one (1) year.

**Response:** This rule is based on state statute and will remain as written.

**3.3.b.2. Comment:** It was suggested that the use of a person's reputation as one of the criteria for certification was unduly subjective.

**Response:** The Department is required by statute to consider a person's reputation as a part of the criteria for certification. The rule will remain as written.

**3.6.c. Comment:** There was objection to the granting of two (2) reinstatements of a provisional statement of certification. The concern was that this provided for an excessive period of time in which to comply with certification requirements.

**Response:** This rule is based on state statute which permits two (2) reinstatements. The rule will remain as written.

**3.6.d. Comment:** Eighteen (18) months is an excessive period of time in which to demonstrate compliance.

**Response:** This time frame is established in state statute. The rule will remain as written.

**3.6.a.1. Comment:** The only time a waiver or variance should be applicable is with a transfer of ownership. A new facility should be in compliance with all applicable requirements upon opening.

**Response:** The purpose of the rule is to permit the opening of a facility which can then demonstrate compliance by virtue of it being operational. The rule will remain as written.

**3.9 Comment:** As written, there is no specific time period in which compliance monitoring must occur.

**Response:** The rule will be changed to require compliance monitoring once every two (2) years as required by statute.

**3.10.c.2. Comment:** The rule, as written, does not require the collection of all necessary information, involvement of all appropriate parties or all appropriate safeguards.

**Response:** Agreed. The rule will be rewritten to: include information from parents and legal guardians and custodians; obtain the names of persons permitted to pick up a child from a facility; and, to require parents, guardians and custodians to notify a provider of changes in emergency contact information.

**3.10.c.4. Comment:** For the protection of children from infectious diseases, immunization records on all children in the home, not just those children receiving day care, should be maintained.

**Response:** Agreed. The rule will be changed to require the maintenance of this information.

**3.10.c.5. Comment:** It was suggested that the specific contents of daily attendance records be enumerated.

**Response:** Agreed. The rule will be revised to include the specific contents of the attendance records such as sign in/out sheets, times, etc.

**3.10.d.5 Comment:** There was concern expressed that the persons residing in the home and not just employees be periodically tested for tuberculosis.

**Response:** Agreed. The rule will be revised to require a tuberculosis screening for all residents in the home once every two (2) years.

**4.1.a.1. Comment:** There should be no more than twelve (12) children in care at one (1) time including the children of the caregivers' under the age of twelve (12). Children between the ages of six (6) and twelve (12) need supervision, taking time away from the ratio of twelve (12) children in care with two (2) caregivers.

**Response:** This rule is based on the requirements contained in state statute. The rule will remain as written.

**4.1.a.2. Comment:** The term infant as used in this rule appears to be different from the term as defined in 2.8.

**Response:** Agreed. The use of the word infant in this rule will be replaced by the word children.

**4.1.b. Comment:** I would like to propose that licensed providers be allowed to care for eight (8) children by themselves. The idea of having to hire an assistant is preposterous.

**Response:** The staff/child ratios required in this rule are similar to those for comparable situations. They are designed to provide for the safety of children and will remain as written.

**4.3. Comment:** There isn't any mention of multi cultural exposure in the programming of children's activities.

**Response:** The Department will address this issue in training and through consultation with child care providers. The Department does support and enforce a policy of non-discrimination.

**4.5.f. Comment:** The rule does not clearly describe the use of safety seats in regard to both the child's age and weight and may not be consistent with state law.

**Response:** Agreed. The rule as written does conform to state statute and not be changed.

**4.6.a. Comment:** There was a suggestion that wading pools not be permitted for use in these facilities because of possible sanitation and safety hazards.

**Response:** The rule was written to conform with the applicable regulations of the Division of Health.

**4.8.g. Comment:** There was a recommendation that changing surfaces should be sanitized whether or not disposable paper sheets are used.

**Response:** Agreed. The rule was rewritten to conform with the rules of the Division of Health.

**4.8.i. Comment:** It was recommended that containers for disposable diapers be sanitized daily.

**Response:** The rule was rewritten to conform with the rules of the Division of Health.

**4.8.a.1 Comment:** Infants should always be held while being bottle fed.

**Response:** Agreed. The option of not holding an infant while bottle feeding will be eliminated.

**4.8.c.2. Comment:** There are no clear cut requirements for the method, procedure and frequency required for sanitizing toys and play equipment.

**Response:** The Department will amend the rule to require sanitizing procedures which are in accord with the regulations of the Division of Health.

**4.8.p. Comment:** There isn't any mention of reading or music as activities for infants and toddlers.

**Response:** The Department believes that the activities specified under this rule are sufficient to meet the basic development needs of infants and toddlers. The rule will remain as written.

**4.8.p.4. Comment:** Jumpers, which are permitted under this rule, and walkers, which are not mentioned, should be prohibited because of the danger they pose to children.

**Response:** Agreed. Both jumpers and infant walkers will be prohibited for use in these facilities.

**4.10.b.6. Comment:** The rule as written is good but should also permit legal guardians and custodians to have access to the facility.

**Response:** Agreed. Legal guardians and custodians will be added to the list of persons who have access.

**5.1.b. Comment:** The completion of American Red Cross first aid and CPS Training should be a mandatory requirement for operators at the time of application for certification. Additionally, the requirements for post-certification training are confusing as written.

**Response:** The Department believes that the requirement for this class of operators should be no more stringent than for day care center operators who provide a higher level of care. The rule

will reflect that position. The regulation for post-certification training will be rewritten for purposes of clarity.

**5.2.a.3. Comment:** It should be stipulated that staff should be intellectually as well as physically and emotionally capable of performing activities related to providing child care.

**Response:** The Department believes that the rule as written is sufficient.

**5.2.a.12. Comment:** The requirement of six (6) clock hours of training was felt to be insufficient. A suggestion was made to increase it.

**Response:** Agreed. The rule will be changed to require eight (8) clock hours of training.

**5.4.a. Comment:** Change the wording from volunteers over age eighteen (18) and older since persons eighteen (18) years of age are adults.

**Response:** Agreed. The rule will be changed according to the suggestion described above.

**6.1.g. Comment:** The phrase periodic tests is not specific.

**Response:** The rule was rewritten to conform with the regulations of the Division of Health.

**6.1.i. Comment:** All facilities should have two (2) separate toilet facilities.

**Response:** The Department believes that one (1) toilet facility is adequate for this class of facility. The rule will remain as written.

**6.1.n.2. Comment:** Fences should be required and natural barriers such as hedges should not be permitted as substitutes as they will not keep children from leaving the yard.

**Response:** The rule was rewritten based on recommendations from the Division of Health.

**6.1.p. Comment:** No children shall share beds even with family members. At what age may siblings of opposite sex share a double bed?

**Response:** There was no consensus of opinion on this rule. Some persons opposed children sharing a bed under any circumstances while others believed that some young siblings may want this contact for emotional security. It does not appear reasonable to prohibit siblings from sharing a bed in any situation. Nor does it appear possible to list all situations in which sharing should be permissible. Therefore, the Department will change the rule by adding that siblings may share double beds if appropriate. This subject will also be addressed in training and monitoring.

**6.1.5. Comment:** Projectile toys and water play tables should be prohibited.

**Response:** The Department does not believe that it is possible to define projectile toys in a manner which would be clear and non-subjective. The Department does not agree with the ban

on water play tables. The rule will not be changed to incorporate this comment.

**6.2.d. Comment:** Guns should not be allowed in the home.

**Response:** The Department is not empowered to prohibit the possession of firearms. The requirement that firearms be inaccessible to children and stored in locked cabinets is a reasonable precaution and the rule will not be changed.

**6.3 Comment:** No smoking at any time in the house around children or outside on the playground.

**Response:** The Department agrees that providers should not smoke in the presence of children. Restrictions on smoking on the playground should be limited to those times when children are present. The rule will be revised to reflect this change.

**6.3.0.2. Comment:** Gloves shall be used to clean up all blood or blood containing bodily fluids regardless of the size of the spill.

**Response:** Agreed. The rule will be changed to make the use of gloves mandatory for all spills of blood regardless of size.

**6.3.a.3 Comment:** No wild animals should be allowed. Animals should not be permitted in the kitchen and children in care should not have access to an animal's food or water container.

**Response:** The Department believes that it can not prohibit operators from owning certain kinds of animals nor can it overly regulate the places in the facility where an animal may travel. The rules do require parental notification when children have access to pets and require supervision of this contact by the operator. The use of a provider who has pets is a matter of parental choice. The rule was changed after discussion with the Division of Health to insure that appropriate safeguards are in place when animals are present.

**8.1.d. Comment:** The Department should be notified of any change on personnel, not just a change in operator. Also, the Department should be notified of any employee who has been arrested and charged with a crime or who has been indicted for a crime.

**Response:** Agreed. The change on notification will be made to 8.1.d.2. The information about arrest/indictment will be added in a new section which will be 8.1.d.11.

**9.1.a.1. Comment:** There are many family day care homes operating that are not registered. Will a public service announcement be made to inform the public of the penalty?

**Response:** The Department will, in conjunction with other parties, provide information on these requirements. A specific public relations campaign has not been planned at this time.

**9.2.a. Comment:** The term "maintain substantial compliance" is subjective and, as a result, difficult to enforce.

**Response:** Agreed. The rule will be rewritten using language from state statute.

### Commenters

#### Proposed Rule - Certification Requirements for Family Day Care Facilities, 78 CSR 18 Division of Human Services, Department of Health and Human Resources

Burlington United Methodist Family Services, Inc. - Mary Virginia Beckman, Supervisor,  
Child Care Resource and Referral  
Child Care Resource Center - Louise Patee, Educational Coordinator  
Child Care Resource Center - Mary A. Plama, Director  
Chums Early Learning Day Care Center - Marsha Viglianco  
Cobb, Sarah J. - Philippi, WV  
Dick, Donald - DHHR Romney  
Family Christian Child Care - Judith Varner Meyer  
Ferris, Denise - Dr. P.H., R.D., Director, Office of Nutrition Services  
Hancock County Health Department - Cora Childers, Licensing Specialist  
Jefferson County Health Department - Earl D. Allara, M.D.  
Kraft Family Day Care - Helena Kraft  
Link, Child Care Resource & Referral  
Lorentz, Ms. Lynn R., Social Service Supervisor, Kanawha District (2)  
Mercer, Tracy D.  
"Play 'n Learn" Family Child Care - Jennifer Bandy, Owner  
Putnam County Health Department - Margaret York, RS  
Thompson, Lemoine K., R.S. - Hardy County Health Department



Community Based Services

**RECEIVED**

**Burlington United Methodist Family Services, Inc.**

Route 4, Box 240-B, Keyser, WV 26726-9413

(304) 788-2342 FAX (304) 788-2409

**REGULATORY DEVELOPMENT**

AUG 12 1996

August 8, 1996

Regulatory Development  
Ms. Kay Howard  
Department of Health and Human Resources  
Room 265, Building 3, Capitol Complex  
Charleston, WV 25305

Dear Ms. Howard:

On page one of the Certification Requirements for Family Day Care Facilities, Paragraph 78-18-1., Section 1.5. (Applicability), Family Day Care Homes are not included in the list of exceptions. Paragraph 78-18-2. (Definitions), Sections 2.5. and 2.6., makes a distinction between a "Family Day Care Facility" and a "Family Day Care Home." Further, it is my understanding that this document and House Bill 4170 pertain to a new class of care called "Family Day Care Facilities." It is therefore my recommendation that the Family Day Care Home be included in the list of exceptions under Paragraph 78-18-1., Section 1.5., and following. Thank you for your consideration of this matter.

Sincerely,

*Mary Virginia Beckman*

Supervisor, Family Day Care  
Resource and Referral

MVB:t1e

Post-It® Fax Note 7671

Date	8-15	# of pages	8
To	Kay Howard		
From	Louise Paré		
CDT	Reg. Development		
Phone	Child Care Res Ctr		
Fax #	1-304-232-1603		
Fax #	1-304-232-1604		

RECEIVED

AUG 15 1996

REGULATORY DEVELOPMENT



Resource Center

1307 Jacob Street  
Wheeling, WV 26003

(304) 232-1603

Catholic Community Services

1-800-585-1603

August 15, 1996

Kay Howard  
Regulatory Development  
Department of Health and Human Resources  
Room 265 Building 3, Capital Complex  
Charleston, WV 25305

Dear Kay,

I want to commend the child care committee on a job well done in setting up the certification requirements for group family child care homes. However, I have suggestions for consideration after reviewing the proposed guidelines.

- 3.10.c You may wish to add, or legal guardians, after the word parent(s).  
See the enclosed National Health and Safety Performance Standards, Guidelines For Out-of-Home Child Care Programs, APP5.

You may wish to add APP5, A6 to 3.10

- 4.1.a.1 No more than 12 children in care at one time including the children of the caregivers' under the age of 12. Children between the ages of 6 and 12 need supervision, taking time away from the ratio of 12 children in care with two caregivers.  
See the enclosed National Health and Safety Performance Standards, Guidelines For Out-of-Home Child Care Programs, APP5.

- 5.1.a.2 The American Academy of Pediatrics endorses that children 44-60 lbs. be secured in an approved booster seat when transported.

- 5.1.b. Here CPR and First Aid become an option as a requirement but later in 5.2.a.10. it becomes a requirement.

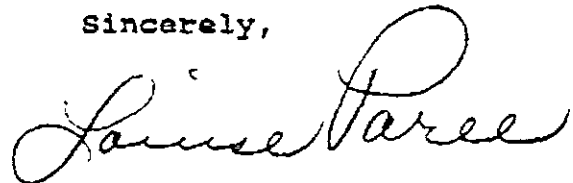
The new welfare bill retains health and safety protections included in the CCDBG enacted in 1990 which requires that all providers (except certain

relatives including grandparents, great grandparents, aunts, uncles, and siblings--if the provider lives in a separate residence) who receive federal funds meet minimum health and safety standards in the areas of prevention and control of infectious diseases (including immunizations), building and physical premises, safety, and minimum health and safety training.

- 6.1.p. Children shall be provided individual sleeping arrangements with clean linen. No children shall share beds, even with family members. See enclosed National Health and Safety Performance Standards, Guidelines for Out-of-Home Child Care Programs. FA189.
- 9.1.a. There are many family day care homes operating that are not registered. Will a public service announcement be made to inform the public of the penalty?

Thank you for your consideration.

Sincerely,



Louise Parea  
Education Coordinator  
Child Care Resource Center

LP:lw

# CHAPTER 1

## STAFFING

### 1.1 Child:Staff Ratio and Group Size

#### STANDARDS



ST1. One small family home caregiver (without an assistant) shall not care for more than six children, including no more than two children under age 2. These numbers include the caregiver's own children under the age of 6. If any child under age 3 is in care, there shall be no more than four children, including the caregiver's children under the age of 6. If only children under age 2 are in care, there shall be no more than three children, including those of the caregiver.



ST2. Child:staff ratios for centers and large family-child-care homes shall be maintained as follows during all hours of operation:

Age	Child:Staff Ratio	Maximum Group Size
Birth-12 mos	3:1	6
13-24 mos	3:1	6
25-30 mos.	4:1	8
31-35 mos.	5:1	10
Three-year-olds	7:1	14
Four-year-olds	8:1	16
Five-year-olds	10:1	18
Six-year-olds	12:1	20
Seven-year-olds	12:1	24

When there are mixed age groups in the same room, the child:staff ratio and group size shall be consistent with the age of the majority of the children when no infants or toddlers are in the mixed age group. When infants or toddlers are in the mixed age group, the child:staff ratio and group size for infants and toddlers shall be maintained.

#### RATIONALE

The 101 Life Safety Code 1988 of the National Fire Protection Association stipulates a child:staff ratio in small family-child-care homes of one staff for up to six children, including the caregiver's own children under age 6, with no more than two children under the age of 2.<sup>1</sup> (See also rationale for Standard ST2.)

These child:staff ratios are the more stringent ratios for each age group used by the National Association for the Education of Young Children (NAEYC) in its accreditation program.<sup>2</sup> NAEYC uses a range because it is able to apply a less stringent ratio in centers where the director and staff are more highly trained. The APHA/AAP collaborative project (see Preamble) supports NAEYC's use of child:staff ratios maintained in relation to group size used as the basis for accreditation. The APHA/AAP standard for child:staff ratios is a child:staff ratio rather than a group size.

Also, these child:staff ratios and group sizes are within the acceptable ranges, and in some cases are the more stringent ratio, and group sizes recommended in the National Research Council's report *Who Cares for America's Children? Child Care Policy for the 1990's*.<sup>4</sup> Child:staff ratios and group size are two of the four most critical areas needing to be addressed in national standards, according to this report.<sup>4</sup>

#### COMMENTS

Unscheduled inspections are required to confirm compliance with this standard.

The *child:staff ratio* indicates the maximum number of children permitted per caregiver (e.g., 3:1—three children to one caregiver). A *group* is the number of children assigned to a caregiver or team of caregivers occupying an individual classroom or well-defined space within a larger room.<sup>3</sup>

These ratios assume caregivers who have limited bookkeeping and housekeeping duties, so that they may be free to provide direct care for children.

These ratios do not include other staff such as paraprofessionals, assistants, or other personnel who may be involved in direct care of children.

These standards are based on what children need in order to have a reasonable amount of quality nurturant care. Those who question whether these ratios are affordable overlook the basic needs of young children in order to limit costs, which clearly reflects a lower priority for children than is acceptable.

applies to a small family-child-care home applies to a large family-child-care home applies to a center. If no symbol appears, the standard applies to all three.

**STANDARDS**

In large family-child-care homes with two or more caregivers caring for no more than 12 children, there shall be no more than three children under the age of 2.

**RATIONALE**

Low child:staff ratios for nonambulatory children are essential for fire safety. The National Fire Protection Association, in its *1988 Life Safety Code 101*, recommends no more than three children under 2 years of age in large family-child-care homes with two staff members caring for up to 12 children.<sup>1</sup>

Children benefit from social interactions with peers; however, larger groups are generally associated with less positive interactions and developmental outcomes.

Group size and ratio of children to adults are limited to allow for one-to-one interaction, intimate knowledge of individual children, and consistent caregiving.<sup>4</sup> Child:staff ratios are not predictors of quality of care, but direct, warm, social interaction between adults and children is more common and more likely with lower child:staff ratios.

Caregivers must be recognized as performing a job for groups of children that parents of twins, triplets, or quadruplets would rarely be considered able to handle alone. Caring for a group of three infants is the same as caring for infant triplets; four toddlers are equivalent to a set of quadruplets.

Research shows that the child:staff ratio is most critical for infants and young toddlers (0 to 24 months).<sup>4</sup> There is evidence that infant development will be impaired if large numbers of infants are permitted per caregiver.<sup>6</sup>

The overall size of the group of children was found by the National Fire Protection Association to have a positive effect on the quality of a facility without a concomitant effect on cost.<sup>1</sup> For 3- and 4-year-olds, the size of the group proved even more important than ratios.

The recommended group size and child:staff ratio allow 3- to 5-year-olds continued adult support and guidance while encouraging independent, self-initiated play and other activities.<sup>2</sup> In addition, the children's physical safety and the

**COMMENTS**

Unscheduled inspections are required to confirm compliance with this standard.

Small family-child-care homes for infants may offer lower chances of acquiring an infectious disease.

The cost of child care must be increased to pay for enough staff to nurture the emotional and physical development of children.

Favorable group sizes allow for appropriate activities geared to the growing competence and complexity of the 3- to 5-year-old.

**STANDARDS**

**RATIONALE**

**COMMENTS**

maintenance of sanitation routines require staff who are not fragmented by excessive demands.

The "group" represents the "home-room" for the child 6 to 12 years old; it is the psychological base that the child identifies with and from which the child gains continual guidance and support as he/she moves into and among various activities. This standard does not prohibit larger numbers of children from joining in collective activities as long as child:staff ratios and the concept of "homeroom" are maintained.

Child:staff ratios in child care settings should be sufficiently low to keep staff stress below levels that might endanger children. Excessive numbers of young children increase the danger of high caregiver stress and loss of control.

**ST3.** Child:staff ratios established for out-of-home child care (see standards ST1 and ST2 on p. 1) shall be maintained on all transportation provided or arranged by the facility. No child of any age shall be left unattended in a vehicle.

This standard is necessary to ensure that children continue to receive adequate supervision while in care. Placement of a child in a vehicle does not eliminate the need for supervision during this time.

These ratios do not include other personnel (e.g., bus drivers) necessary for specialized functions (e.g., transportation).

**ST4.** The following child:staff ratios shall apply while children are wading or swimming.

This standard is needed to ensure safety and proper supervision. Our knowledge of the circumstances surrounding drownings and water-related injuries of young children suggests environmental modifications that will reduce the risk presented by common water sources. These modifications include fences and self-closing gates around all swimming/wading pools, hot tubs, and spas; and special safety covers on ponds, streams, etc. not in use. Children must be under the constant supervision of qualified personnel while playing in or with water.

These ratios do not include other personnel (e.g., bus drivers) necessary for specialized functions (e.g., transportation).

Similar Developmental Level	Children	Adults
Infants	1	1
Toddlers	2	1
Preschoolers	3	1
School-age children	6	1

Similar Developmental Level*	Children	Adults
Infants/toddlers	2	1
Infants/toddlers/ preschoolers	3	1
Infants/toddlers/ preschoolers/ school-age children	3	1
Infants/toddlers/ school-age children	4	1
Preschoolers/ school-age children	5	1

\*There shall be a minimum of two adults present during any swimming/wading activity involving mixed developmental levels when two or more infants and/or toddlers are swimming or wading. (See also *Swimming, Wading, and Water*, p. 192.)

**STANDARDS****RATIONALE****COMMENTS**

FA189. Children shall be provided individual sleeping arrangements (see standard FA181 on p. 175) with clean linen. No children shall share beds, even with family members.

FA190. Each item of sleep equipment (sheets, blankets, etc.) shall be assigned to a child and shall be used only by that child while he/she is enrolled in the facility. Children shall not share bedding. For children over 1 year of age, each mat, cot, or crib mattress shall be covered with the child's individual sheet for exclusive use by that child. No child shall sleep on a bare, uncovered surface. Seasonally appropriate covering, such as sheets or blankets that are sufficient to maintain adequate warmth, shall be available and shall be used by each child below school age. Pillows shall not be used for infants.

FA191. Bed linens used under children on cots, cribs, futons, and playpens shall be tight-fitting.

FA192. Substances of animal origin other than wool (such as feathers and down) shall not be used in

Separate sleeping and resting, even for siblings, reduces the spread of disease from one child to another.

See also rationale for standard FA181 on p. 175.

This standard provides comfort and minimizes transmission of disease via fomites. Lice infestation, scabies, and ringworm are among the most common infectious diseases in child care. These diseases are transmitted by direct skin-to-skin contact or by the sharing of personal articles such as combs, brushes, towels, clothing, and bedding. Prohibiting the sharing of personal articles helps prevent the spread of these diseases.

Appropriate hygiene and warmth are required.

Pillows pose a suffocation risk for infants.

The use of tight-fitting bed linens prevents suffocation and strangling.

These substances of animal origin commonly cause allergic reactions.

Products Manufacturers' Association  
for advice.

Juvenile Products Manufacturers'  
Association  
66 E. Main St.  
Morristown, NJ 08057

U.S. Consumer Product Safety  
Commission  
Washington, DC 20207

Caregivers may ask parents to provide bedding that will be sent home weekly for washing.

Pillows need not be used for older children.

For additional information on sleeping, see also *Storage of Clothing and Supplies*, on p. 178; *Supervision Policy*, on p. 272; *Sanitation, Disinfection, and Maintenance of Bedding*, on p. 79 and *Sleep*, on p. 66.

# Appendix C Child Records

## STANDARDS

**APP4.** The facility shall maintain a file for each child in one central location within the facility. This file shall be kept in a confidential manner (see *Confidentiality and Access to Records*, on p. 288) but shall be immediately available to the child's caregivers, parents or legal guardians, and the licensing authority upon request.

**APP5.** The file for each child (see standard APP4) shall include the following:

A) *Pre-admission enrollment information* including the following:

- 1) The child's name, address, sex, and date of birth.
- 2) The full names of the child's parents or legal guardians, and their home and work addresses and telephone numbers. Telephone contact numbers shall be confirmed by a call placed by the facility during its hours of operation. Names, addresses, and telephone numbers shall be updated at least quarterly.
- 3) The names, addresses, and telephone numbers of at least two additional persons to be notified in the event that the parents or legal guardians cannot be located. Telephone information shall be confirmed and updated as specified in item 2 above.
- 4) The names and telephone numbers of the child's primary sources of medical care, emergency medical care, and dental care.

5) The names and telephone numbers of the child's primary sources of medical care, emergency medical care, and dental care.

6) The names and telephone numbers of the child's primary sources of medical care, emergency medical care, and dental care.

7) The names and telephone numbers of the child's primary sources of medical care, emergency medical care, and dental care. This information shall be updated quarterly, and as necessary. The information shall be available at all times. This information shall be available at all times. This information shall be available at all times.

## RATIONALE

Operational control to accommodate the health and safety of individual children requires that information regarding each child in care be kept and made available on a need-to-know basis.

These records and reports are necessary to protect the health and safety of children in care. An organized, comprehensive approach to injury prevention and control is necessary to ensure that a safe environment is provided for children in child care. Such an approach requires written plans, policies, procedures, and record-keeping so that there is consistency over time and across staff and an understanding between parents and caregivers about concerns for, and attention to, the safety of children.

Emergency information is the key to obtaining needed care in emergency situations.<sup>1</sup> Caregivers must have written permission to allow them to respond quickly to emergency problems.<sup>2</sup> Contact information must be verified for accuracy.

But in a way that no one else can see. Life-threatening emergency care is provided.

## COMMENTS

Phone numbers provided for emergency contacts should never include an answering-machine phone number.

Duplicate records are easily made using multiple-copy forms, carbon paper, or photocopying.

# Crash up shows air safety.

are killed and crippled in any other cause of injury. Laws in every state that require child safety seats in cars.

Child seats provide excellent protection for children in the windshield or in other people, or during low-speed collisions. They are in places, so that you, the driver, are protected from the road.

Make sure your child's size and weight can be used correctly every time to make sure it meets current standards.

Child seats generally provide equal crash protection in all directions. They usually mean convenience and ease of use correctly.

Child seats are designed to keep harnesses from tangling in the hips. For small children, the seat should be so high and too far from the car that you can adjust while the child is asleep.

Check the label on the seat to see if it meets the standards set by the National Highway Traffic Safety Administration (NHTSA) on January 1, 1985. Those make sure you know the standards. Be sure you know the standards for any used seat.

Always use your baby's first ride with your child from a reliable source. Read the instructions and keep them with you.

Check the manual for special directions on how to use the seat and air bags.

Always use the seat in the car. The seat should hold the child in the car. The car seat may not be used in a car.

Do not stay tight, check the car seat is installed locking clip. Do not use in a crash.

## Infant Seats

**Convertible Seats (Birth to about 40 pounds)**  
 Advantage: Fits child from 7-8 pounds to about 40 pounds. Less portable than an infant car seat.  
 Use a convertible seat facing the rear for babies up to 20 pounds. Keep it rear-facing as long as possible for the best protection.

For children over 20 pounds who can sit up well alone, turn the seat to face forward. Use it until your child outgrows it, at about 40 pounds.

Make sure the seat belt is routed through the car seat correctly in both forward and rear-facing positions. There are usually two different belt paths. Pull the belt tight. Keep the harness snug, and readjust it as your child grows or changes outer clothing. Use a plastic harness clip at armpit level to hold shoulder straps in place, if provided.

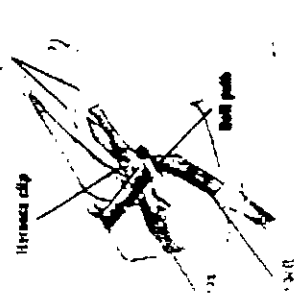
Thread the shoulder straps through the top harness slots in the forward-facing position. If you have an older seat that requires a top tether strap when facing forward, be sure to install it. Newer models do not need tether, although use of an optional tether gives extra protection.

**Infant-Only Seats, Seats (over 20-25 pounds)**  
 These may take the place of convertible seats where available and appropriate.

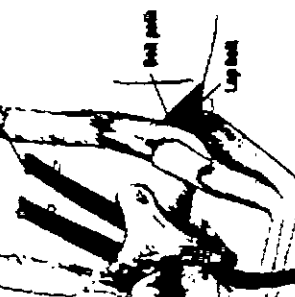
Follow installation and usage instructions with the device. Weight limits will vary.

Always keep seat belts and harness straps snug.

Infant Car Seat - Facing rearward -



Convertible Car Seat - Facing forward -



**Convertible Seats (Birth to about 40 pounds)**  
 Advantage: Fits child from 7-8 pounds to about 40 pounds. Less portable than an infant car seat.  
 Use a convertible seat facing the rear for babies up to 20 pounds. Keep it rear-facing as long as possible for the best protection.

For children over 20 pounds who can sit up well alone, turn the seat to face forward. Use it until your child outgrows it, at about 40 pounds.

Make sure the seat belt is routed through the car seat correctly in both forward and rear-facing positions. There are usually two different belt paths. Pull the belt tight. Keep the harness snug, and readjust it as your child grows or changes outer clothing. Use a plastic harness clip at armpit level to hold shoulder straps in place, if provided.

Thread the shoulder straps through the top harness slots in the forward-facing position. If you have an older seat that requires a top tether strap when facing forward, be sure to install it. Newer models do not need tether, although use of an optional tether gives extra protection.

**Infant-Only Seats, Seats (over 20-25 pounds)**  
 These may take the place of convertible seats where available and appropriate.

Follow installation and usage instructions with the device. Weight limits will vary.

Always keep seat belts and harness straps snug.

**Booster Seats (for children who have outgrown convertible seats)**  
 Built-Positioning Booster Seats (over 30 pounds)  
 Advantage: Uses vehicle shoulder-belt to protect upper and head. Preferred to shield booster when a lap/shoulder belt is available.  
 Disadvantage: Cannot be used in seating positions with belts only.

The booster base will raise a child up so lap and shoulder belts fit properly.

Some models have a separate shield that is added for when only a lap belt is available (preferably over about 50 pounds). Others (not listed in this pamphlet) have on base and are sold for children over 50 pounds.

**Shield Booster Seats (about 40 to 65 pounds)**  
 Advantage: Provides better protection than a lap belt at Disadvantage: Gives less protection than a convertible or belt-positioning booster.

A shield booster is suitable when a child has outgrown convertible or toddler seat at close to 40 pounds, one labeled for use at a lower weight.

Small shield boosters provide more protection than 1 belts alone if the lap belt does not fit very tight and 1 the hips or if the child slouches so it rides up danger high onto the tummy.

Never use a booster seat with a lap belt alone unless booster has a shield.

Booster Car Seat





**Child Care Resource Center**

1307 Jacob Street  
Wheeling, WV 26003

*Catholic Community Services*

**RECEIVED**

AUG -7 1996

**REGULATORY DEVELOPMENT**

(304) 232-1603

1-800-585-1603

July 31, 1996

Kay Howard  
Regulatory Development  
Department of Health and Human Resources  
Room 265, Building 3, Capital Complex  
Charleston, WV 25305

Dear Kay,

Upon review of Certification Requirements for Family Day Care Facilities I would like to comment on the following regulations:

3.10.c.2 Child's information form should include name of custodial parents and who is permitted to pick up the child.

4.1.a.1 No more than 12 children in care at one time including the children of the caregiver's under the age of 12.

5.1.c.5 Substitute for operator must have the First Aid and CPR that are required for the operator.

6.1.g. How often is "periodic" testing to ensure water safety?

6.1.i. Must have 2 separate toilet facilities.

6.1.p. Siblings of opposite sex up to what age may share a double bed?

6.1.q. Gloves shall be used to clean up all blood and other body fluids regardless of the size of the spill.

6.4.r. Tobacco use shall be banned in the facility at all times.

Sincerely,

Mary A. Palma  
Director  
Child Care Resource Center

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AUG 14 1996

REGULATORY DEVELOPMENT

Judy Curry,

After reviewing the day care regulations for 6-12 children I have some concerns!

- 1 "no smoking" at anytime in the house around children or outside in the playground
2. guns should not be allowed at the home (locked guns seem to always kill some children)
3. the playground area outside should have a 4ft high fence (a shrub barrier won't keep children from leaving the yard)

The regulations seem to be good!  
I hope there will be some kind of monitoring program with out the monitoring the regulations won't have much purpose.

Marsha Ugliarico

**CHUMS**  
**EARLY LEARNING**  
**DAY CARE CENTER**  
212 Liberty Avenue  
Clarksburg, West Virginia 26301

Mrs. Sarah Cobb  
6 N. High St.  
Philippi, W.V. 26416

August 16, 1996

Regulatory Development  
Dept. of Health and Human Resources  
Room 265, Building 3, Capitol Complex  
Charleston, W.V. 25305  
Attn: Kay Howard

Dear Ms. Howard:

I am a certified teacher living in Philippi, West Virginia. I graduated from the University of Cincinnati, with honors, in 1977. I then taught for four years in the public schools here in West Virginia. After teaching at both the first grade level, and also at the Kindergarten level, I opened my own Nursery School here in Barbour County. I am open M-W-F from 7:30 to 4:00 and accept enrollment from children, ages three to five years old. In keeping with West Virginia State Regulations, I have limited my enrollment to six children because my Nursery School is in my home.

I am very excited about the new category known as a Family Day Care Facility. I would like to propose that licensed providers be allowed to care for eight (8) children by themselves, provided that the children are at least three years old, and also that the facility meets all safety regulations. I currently hold a permanent teacher's certificate in the state. I am very dedicated to providing an excellent Nursery School experience for the children of our community. Every year I have a waiting list of children, whose parents would like me to be their child's first teacher! Please help me to be able to offer my program to just a few more children.

I currently charge \$11 per day for each student. If I were to have 7 to 12 children, and had to hire another staff person at \$5 per hour, I would, at the most, be earning only \$26 more per day; when compared to my normal enrollment of six children with no additional staff. Furthermore, as the employer, I would be required to pay half of my employee's Social Security taxes. This is just not a financially realistic formula.

Please make the new legislation workable in the field. Pearl Montgomery has been a wonderful supervisor for me. I am very hopeful that with all of us working together we can make Governor Caberton's dream of excellent pre-school care, by providers of the highest caliber, a reality for the children of West Virginia.

Sincerely yours,

*Sarah J. Cobb*

Sarah J. Cobb

**RECEIVED**  
AUG 19 1996  
**REGULATORY DEVELOPMENT**

RECEIVED

AUG 12 1996

**Proposed Regulations  
Family Day Care Facilities** REGULATORY DEVELOPMENT

**Public Comment Process**

**To All Interested Parties:**

*Comments  
are on  
form.*

The West Virginia Department of Health and Human Resources has issued proposed regulations for Family Day Care Facilities. These regulations allow for a new class of day care. They were established in 1996.

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The public comment process for review of the proposed regulations about them by any interested parties will be evaluated by the Department of Health and Human Resources. Regulations may be changed as a result of the comments.

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If you are interested in commenting on the proposed regulations, please do so according to the following information:

1. In order to be considered, any comment must be received no later than August 19, 1996 at 4:30 PM.
2. Only written comments will be accepted.
3. When making a comment, please include the title and address of the person or organization submitting the comment.
4. Please send written comments to:

Regulatory Development  
Department of Health & Human Resources  
Room 265, Building 3, Capitol Complex  
Charleston, WV 25305

**ATTN: Kay Howard**

*Donald  
Dicks*

TITLE 78  
LEGISLATIVE RULES  
DIVISION OF HUMAN SERVICES

SERIES 18  
CERTIFICATION REQUIREMENTS FOR FAMILY DAY CARE FACILITIES

§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:

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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.<sup>1</sup>

§78-18-2. Definitions.

*Is age for Day Care being changed from 13 to 18 now?*

2.1. "Child" means any person less than eighteen (18) years of age.

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.

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. *Infant changed from 24mo to 12 mo. now*

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. 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.

<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 §5F-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.

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

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. *Must be done for all day care STARR*

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 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.

3.10.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) 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 status for all children age six (6) years or older to be on file without charge (2000) and updated every two (2) years;

3.10.c.5. Daily attendance records;

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;

*Needs to be submitted  
Double check to have CIB with in body*

*Does not specify help such as regular. Don't make sense*

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.

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 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) 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. Regular check-in time and any 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-assertion, and self-respect.

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;

4.10.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:

2 5.1.a.1. Be at least twenty-one (21) years of age; *(what about the 18 & 19 yrs old yrs etc)*

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.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 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 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 90 days 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 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 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;~~ *Has this charge from del Postle to speeding ticket is a misdemeanor*

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 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

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 shall also be served.

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;

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 USDA approved milk products shall be served to children. Powdered milk shall not be used, except for cooking.

6.6. Animals.

6.6.a. 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 a.7 Animals should not have access to kitchen  
§78-18-7. Fire Safety. Animal food & water dishes should not  
Be kept in reach of children

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

7.2. A facility day care facility shall be inspected by the office of fire safety 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. ~~or a child of the facility~~

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;

8.1.d.3. Closure;

8.1.d.4. Relocation;

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. Should report any staff involvement in criminal activities on or off the property

8.1.d.10. A change in the composition of the household. *Personnel*

8.1.d.11 *A change of address of Facility*

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 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.



**JUDITH VARNER MEYER**  
Family Christian Child Care

23 Diamond Avenue • Wheeling, West Virginia • 304-242-5807

RECEIVED

AUG 15 1996

REGULATORY DEVELOPMENT

August 14, 1996

Regulatory Development  
Department of Health and Human Resources  
Room 265, Building 3, Capitol Complex  
Charleston, WV 25305  
ATTN: Kay Howard.

To Whom It May Concern:

Enclosed please find my concerns with the proposed rule by the Division of Human Services for certification requirements of Family Day Care Facilities.

Page 1 ; 1.5.e. states that persons providing family day care solely for children related to them do not need to comply with regulations. This is fine for private relative care, but those receiving child care assistance from the state should meet certification requirements.

Page 14 ; 4.5.f states that a child should be in a child safety seat until age 3. This should be changed to agree with state law for child safety restraints



## JUDITH VARNER MEYER

Family Christian Child Care

23 Diamond Avenue • Wheeling, West Virginia • 304-242-5807

Page 13; 4.8.d. Does the word crib used here include playpens? I feel it should.

Page 14; 4.8.n. Are child size toilet seats that fit on a regular sized toilet seat acceptable in place of a potty chair? These are very convenient and the toddlers seem to like them.

Page 14; 4.8.o.1. Infants under 12 months should not feed themselves a bottle without being held. Never should an infant or toddler have a bottle in the crib. Infants learning to feed themselves should do this only in a high chair. They should be held when given additional bottles such as before sleeping.

Page 16; 4.5.a.4 and Page 27; 6.5.4 could contradict. When parents disagree with USDA meal requirements - who should be followed?

**JUDITH VARNER MEYER**

Family Christian Child Care

23 Diamond Avenue • Wheeling, West Virginia • 304-242-5807

Page 15; 4.8.p4 states that jumpers may be used for short periods of time. Jumpers are not safe and should not be acceptable. I was very pleased to see that walkers were not listed here.

Page 17; 5.1.b1 American Red Cross First Aid and CPR should be required 5.1.b.4 the list of training choices should be included with 5.1.b.1. There should be no 5.1.b.4.

Page 17; 5.1.b.2. and 5.1.b.3. Additional trainings should be required annually or semi-annually for the operator to remain educated and updated. American Red Cross First Aid and CPR should be

Thank you to all who gave of their time and worked so hard to put this proposal together.

Sincerely,

Judith Var Meyer




STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton  
Governor

Gretchen O. Lewis  
Secretary

Date: August 19, 1996

To: Kay Howard  
Regulatory Development 

From: Denise Ferris, Dr. P.H., R.D., Director  
Office of Nutrition Services

Re: 78 CSR 18: Certification Requirements for Family Day Care Facilities

Attached are our comments for your review. If you have any questions, please call Linda Myers at 558-0030.

lm  
encl.

**RECEIVED**  
AUG 19 1996  
REGULATORY DEVELOPMENT

---

**BUREAU FOR PUBLIC HEALTH**  
**Office of Nutrition Services**  
1411 Virginia Street, East  
Charleston, West Virginia 25301-3013

Phone: (304) 558-0030

FAX: (304) 558-1541

PUBLIC COMMENTS ON:  
TITLE 78  
LEGISLATIVE RULES  
DIVISION OF HUMAN SERVICES

SERIES 18  
CERTIFICATION REQUIREMENTS FOR FAMILY DAY CARE FACILITIES

Section:

- 4.8o3 Breastmilk and infant formula contain sufficient water for an infant under normal circumstances who is not eating solid foods. Offering water to infants who have not yet started on solid foods could result in water intoxication. Refer to attached article.
- 5.1 The Operator should be required to complete a course in infant and child feeding, and a food sanitation course.
- 6.5a USDA no longer follows the basic four food groups. It is now based upon the Food Guide Pyramid for anyone over the age of two.
- 6.5c4 The 1990 Dietary Guidelines for Americans have been revised. The new Fourth Edition was released in 1995 by USDA and USDHHS.

There is an excellent publication, *National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs* (1992), designed for writing such legislation. It sets standards of care for all the areas covered in this bill. These standards were set by the American Public Health Association and the American Academy of Pediatrics. We recommend that you obtain a copy of this publication and rework the bill accordingly. You may order one free copy from:

The National Maternal and Child Health Clearinghouse  
8211 Greensboro Drive  
Suite 500  
McLean, VA 22102  
703-821-8955 ext 254.

Since we are concerned with nutrition and food service, we have reworked that section of the manual and enclosed it for your review.

**WVDHHR**  
213 THREE SPRINGS DRIVE  
WEIRTON, WV 26062  
304-723-5900  
FAX: 304-723-4133

August 16, 1996

Regulatory Development  
DHHR  
Room 265, Building 3, Capitol Complex  
Charleston, WV 25305  
ATTN.: Kay Howard

**RE: Comments on Proposed Regulations for Family Day Care Facilities**

Dear Ms. Howard:

National Health and Safety Standards suggest:

Rule 4.6.a.-that wading pools not be used since they do not permit adequate control of sanitation and safety and provide a superior means of transmission of infectious disease.

Rule 4.8.p.9.-that infant walkers be prohibited.

6.1.s.-that projectile toys and water play tables be prohibited

6.5.c.-that children in care for 8 hours be offered at least one meal and two supplements or two meals and one supplement; children in care for nine hours or more be offered two meals and two supplements or three supplements and one meal; and children shall be offered food at intervals not less than two hours and not more than three hours apart unless the child is asleep.

Sincerely,



Cora Childers  
Licensing Specialist

cc: ... Lucy Eates

**RECEIVED**

AUG 19 1996

**REGULATORY DEVELOPMENT**

# Jefferson County Health Department

EARL D. ALLARA, M.D.  
HEALTH OFFICER



44-1 WILTSHIRE ROAD  
KEARNEYSVILLE, W. VA.  
25430

August 15, 1996

RECEIVED

AUG 19 1996

REGULATORY DEVELOPMENT

Kay Howard  
Regulatory Development  
Department of Health & Human Resources  
Room, 265, Building 3, Capitol Complex  
Charleston, WV. 25305

Dear Ms. Howard:

The Jefferson County Health Department has received the proposed certification requirements for Family Day Care facilities.

Family Day Care operations need to be inspected by a sanitarian once every six months to assure adequate facilities and healthy environments for the children. This will require many man-hours and much travel, creating a significant economic impact on county health departments.

If a Family Day Care operation is going to be "certified" the State has an obligation to monitor these facilities through regular unannounced site evaluations. For the Family Day Care Program to effectively provide increased support to working parents and encourage persons to obtain employment, the facilities must provide quality care.

Requirements for renewal of certification should specify that documentation must be submitted showing a satisfactory evaluation by the county health department within the past 6 months. This will prevent a business from continuing to operate without regular inspections of the facility.

Regulations regarding procedures in releasing children to the care of anyone other than the parent or legal guardian at the end of the day should be strict. The caregiver should require identification of the person who is to pick up the child. Any changes in this procedure can only occur when the caregiver is notified in person by the parent or legal guardian.

The use of splash or wading pools must be prohibited due to the potential for the spread of disease. Any pools used by the children at a Family Day Care facility must meet the WV Division of Health's Rule 64CSR16.

Sofa's should not be permitted for napping - how can they be disinfected?

Food must be from an approved source, as defined in the WV Food Service Sanitation Regulations. Thermometers must be provided in refrigerators. Adults preparing the food must possess a valid food workers permit issued by the Health Department.

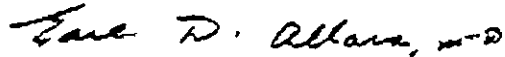
Page 2  
Regulatory Development  
August 15, 1996

The required records regarding staff, staff schedules, enrollment, programs and activities, and menus must be submitted to Department of Health and Human Services and reviewed by qualified personnel.

Toys and play equipment must be washed and sanitized weekly. Diaper changing must be performed on a "diaper changing table" used only for that purpose.

The Jefferson County Health Department inspects licensed Child Care Centers quarterly and is knowledgeable about safe and healthy Child Care operations. Representatives from this department have in the distant and recent past seen many in home Child Care operations lacking the basic facilities to provide care that is conducive to the healthy growth and development of children. The department recognizes the need for affordable Child Care in the area and wants to work with you towards improved care for children.

Sincerely,



Earl D. Allara, M.D.  
Physician/Director

EDA/jan

CC: Judi Rice, Registered Sanitarian

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AUG 16 1996

REGULATORY DEVELOPMENT

Kraft Family Day Care  
30 Willow Lane  
Weedon, WV 26043

August 13, 1996  
Regulatory Development  
Department of Health & Human Resources  
Room 265, Building 3, Capitol Complex  
Charleston, WV 25305

Dear Ms. Howard:

This letter is in reference to the proposed ruling for Certification Requirements for Family Day Care Facilities.

First of all I must stress to you and the committee how impressed I am with the proposal. As a family child care provider who is constantly striving to improve the quality of the care I provide, I find the proposals to meet and exceed some of the standards that are set forth by other states. I feel that this proposal will greatly increase the quality of care offered to West Virginia's most precious resource, OUR CHILDREN. It is my hope that the proposal will make it in to other areas of family child care, helping to increase the quality of ALL aspects of family child care, including relative care, Title 20 care, and family child care homes caring for 6 children or less. It alarmed me recently to find that a survey done on child care by Working Women Magazine\* ranked West Virginia in the bottom 10 of states that offer quality care. Hopefully this proposal will make the way for stricter laws and regulations governing all child care in West Virginia.

After reading through Proposal 78 CSR 18 I would like to make the following comments:

At 4.3 Programming of Children's Activities there isn't any mention of including multicultural exposure. In my opinion, multiculturalism encourages children to become more aware of their own and others heritage and ethnic background. I feel that if we are ever to erase prejudice in our world, we must do it by exposing children at a young age to a non-biased curriculum. By exposing children to different cultures daily, we will be fostering them towards an acceptance of all people no matter what their ethnical background may be.

At 4.8 Care of Infants and Toddlers there are no clear cut requirements for the method and procedure required for sanitizing toys and play equipment. Also, what type of sanitizing method will be required? And, how often should sanitization be done?

Also, at 4.8.P. Activities for Infants and Toddlers there isn't mention made of READING or music. In my opinion a love for reading should be encouraged in very young children.

As for the proposed rulings from Bureau of Public Health I find that they are double regulating some of the most basic things in Proposal 78 CSR 18. I would suggest that the state regulate the standards Public Health proposes in a permanent law, question their rules on prohibiting food prepared in a kitchen area and... I do feel that the pool should be dumped and sanitized daily as set forth in Proposal 78 CSR 18.

Thank you for the opportunity to voice my opinions.

Sincerely,  
  
Helena Kraft

\* Working Woman Magazine-How Does Your State Rate? June 1996



# Link

Child Care Resource & Referral  
916 Fifth Avenue, Suite 208  
Huntington, West Virginia 25701  
(304) 523-9540 or 1-800-894-9540  
FAX (304) 697-4821

**RECEIVED**

AUG 15 1996

**REGULATORY DEVELOPMENT**

MEMORANDUM

TO: Kay Howard, Regulatory Development

FROM: LINK, Child Care Resource & Referral

DATE: August 14, 1996

RE: Public Comments Process

Enclosed you will find our personnel's written comments concerning the proposed regulations on Family Day Care Facilities.

Cathy Forsythe

### **ADMINISTRATIVE PROCEDURES**

3.6c The language is too lenient. One extension consecutively of a provisional certificate is enough.

3.6d 12 months (these are our children).

3.10c.2 Can we add "in the event of a change in the emergency contact's phone number and/or address".

### **ADMINISTRATION OF THE FAMILY DAY CARE FACILITY**

4.1b DO NOT LESSEN. KEEP IT THE SAME!

4.2c GREAT!

4.3d KEEP!

4.5f Should this state "under 3 or less than forty pounds". That is the recommendation.

4.8l "and sanitized"

4.10b.6 Good language.

### **FAMILY DAY CARE FACILITY PERSONNEL**

5.1.B.1. Ten hours too few - change to 30.

5.1.b.3 Three hours too few - at least 15 credit hours.

5.1.c.4 At least one staff present at all times, trained in first aid and CPR, trained in CPR, first aid, and fire safety. This should be a requirement not a choice. Does not belong in this section.

5.2.a.12 Can we raise this?

5.3 Have no record of child neglect, abuse, or assault.

5.4.a Strike "over age eighteen".

Debbie Stowers

**ADMINISTRATIVE PROCEDURES**

3.10.c.5 Daily attendance records need to be specific - sign in/out sheets- child's full names - time am/pm - parents' full names-centers/family providers - each month.

**FAMILY DAY CARE FACILITY PERSONNEL**

5.4.b.3 Does this include CPS past and present?

**QUESTION:**

Will day care providers already registered be grandfathered in or will they have so long to meet new requirements CDA? and all others? GED? CPR?

John Martin

**DEFINITIONS**

2.1 This implies that all children less than eighteen (18) will be eligible for child care.

2.8 This paragraph and 4.1.o.2 are not consistent with each other.

**ADMINISTRATIVE PROCEDURES**

3.1.c Language is confusing.

3.1.d Language is confusing.

**ADMINISTRATION OF THE FAMILY DAY CARE FACILITY**

4.4.7e Noon-flammable to non-flammable.

4.4.8.o.5 Is there a phrase that follows "and"?

**PHYSICAL PLANT, SANITATION, AND NUTRITION**

6.6.3.d Second sentence is unclear. Maybe procedures should be followed to prevent re-contamination.

6.6.4.h Fifth line other parents are notified in advance.

6.6.3.l In a non-emergency situation I question following the directions of a physician unless the parents have passed on the information.

Melissa Stevenson

**ADMINISTRATION OF THE FAMILY DAY CARE FACILITY**

4.1.a.2 I am concerned about a caregiver and helper having four infants while caring for eight other children. I feel that the infants may only be cared for in a custodial manner. Maybe the limit should still be two infants, even with 2 caregivers.

4.8.p.4 I think the use of walkers should be directly prohibited in the regulations.

**FAMILY DAY CARE FACILITY PERSONNEL**

5.2.a.3 Should read - "Be physically, emotionally, and intellectually capable".

**PHYSICAL PLANT, SANITATION, AND NUTRITION**

6.3 Smoking should be addressed as a health issue. It should be prohibited in the facility.

Judy Kachelreis

**GENERAL**

1.5e It doesn't sound like there are any limits here.

**ADMINISTRATIVE PROCEDURES**

3.1.b If it were manageable, one (1) year would be better because the print-outs help us watch for one (1) year reviews.

3.6.c For the same problem? If so, why two (2) times? If it may be for different reasons, then two (2) times is o.k.

3.6.d Too much time. Children's safety is at issue 12 months at the most.

3.7.a Excellent - will they be reminded in any way or will they just know to do that?

3.10.c.4 Add "including any children who live in the home and under the age of six".

3.10.d.5 Are other family members who live in the home going to be required to have physicals? They will be with the children? At the very least a TB test.

3.10.d.6 Wording? Does this mean "a list of regular volunteers and their TB test results & CIB checks" or "a list of regular volunteers, TB & CIB documentation"? Where appropriate means what?

**ADMINISTRATION OF THE FAMILY DAY CARE FACILITY**

4.1.a.2 Good - will the term infants here be confusing because of the previous definition infants - 12 months? Could you say infants/toddlers in place of "infants"?

4.1.b Sincerely entered! Good.

4.1.c Is this for like morning and evening shifts? If so then yes it's o.k. But if it's from day to day, a person couldn't staff the facility economically.

4.4.a.5 Somehow state that it should not be the first option - but either the last or in situations where the child him/herself is in danger or another child is in danger of being hurt.

4.8.g Add or reword - surface should be sanitized even if it was covered by disposable paper sheet.

4.8.l Good - add "and disinfected daily" take out "to prevent odors".

### ***FAMILY DAY CARE FACILITY PERSONNEL***

5.1.B.1-4 "Meet one (1) of the following" The four (4) options listed are not of equal value - example a CDA and 10 clock hours of child development don't match. Completion of American Red Cross first aid & CPR training doesn't match with 3 credit hours of child development, etc.

Keep #1 but make it 15 or 16 hours. #4 should not even be included . It should just be a flat out requirement giving them 3 months to complete.

5.1.b.4 It's too long and starts a whole new topic when it starts with "Training shall include..."

### ***PHYSICAL PLANT, SANITATION AND NUTRITION***

6.3.a Office of Environmental Health - who is that?

### ***FIRE SAFETY***

7.4 Take out "away".

**RECEIVED**

JUL 31 1996

**REGULATORY DEVELOPMENT**

# MEMO

**To:** Ms. Kay Howard  
**From:** Ms. Lynn R. Lorentz, Social Service Supervisor, Kanawha District  
**Subject:** Comments regarding Proposed Family Day Care Facilities  
**Date:** July 30, 1996

I have reviewed the Proposed Family Day Care Facility policy and have the following concerns:

- 3.3b2- Refers to the reputation of the Day Care operator in determining eligibility to open a facility. How do you gather and review such a subjective criteria?
- 3.9.a.- Requires regular monitoring but does not have a time frame. Please clarify whether it should be once a year, semi-annually, etc. I assume this responsibility will be the District staff but it does not designate whose staff will be used.
- 2.1- Defines a child as any person less than eighteen years of age. Our policy allows a payment to age thirteen. Should that be addressed so that providers will not assume that we pay for children age thirteen and over?

The policy appears to be clearly written and is easily understood. Please contact me at telephone 558-8925 ext. 620 if you would like to discuss my concerns. Thank you.

cc: Mr. Tom Gunnoe, Regional Director, Region II  
Mr. Troy Posey, Community Service Manager, Kanawha District  
Ms. Barbara Burdette, Social Service Coordinator

RECEIVED

AUG -7 1996

REGULATORY DEVELOPMENT

# MEMO

**To:** Ms. Kay Howard  
**From:** Ms. Lynn R. Lorentz, Social Service Supervisor, Kanawha District  
**Subject:** Additional Concerns regarding Family Day Care Facility Requirements  
**Date:** August 5, 1996

I spoke with Ms. Judy Curry on August 2nd, regarding the last paragraph of the proposed requirements- 9.2.a.Revocation and Closure. My concern was that "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" reads as if a provider is required to comply with the majority of the rules, etc. not all. We are required to inform providers that they may request a hearing when closed for non-compliance. I believe that most providers would request a hearing in this matter; especially since this is a business venture as opposed to Informal Providers caring for a grandchild, etc.

Since the requirements are not weighted; it would be a subjective decision by the Social Worker to close a provider. When would a provider be out of compliance with the law/ rules, etc. to warrant closure? Any attorney, representative or Provider could argue in most cases that they were compliant with "a substantial amount" of the requirements. One or two non-compliance issues such as a lack of a current Fire Marshall's inspection and/or staff to child ratio problems could be reason to revoke a certification due to child safety issues. I believe that the Department would be hard pressed to make any closure stick if taken to a hearing.

I questioned Ms. Curry about whether I was reading and interpreting the paragraph correctly and she was unsure. Obviously, it would be helpful if it were written differently. Article 3.7.b clearly states that the facility must be in compliance with the provisions of the Code, the rule, and any plan of correction. I believe this conflicts with the phrase "maintain substantial compliance" used in 9.2.a.. Which would the worker follow? I would advocate for the word substantial to be removed. This would remove the arbitrary decision making by the worker and allow for a much clearer definition of compliance. I feel strongly that compliance with the rules

is attainable and would like to discuss this matter with you and your supervisor. Please let me know your convenience. Again, the Requirements are well written and I believe the Family Day Care Facilities will be a boon to our county and customers. Thank you.

cc : Mr. Tom Gunnoe, Regional Director, Region II  
Mr. Troy Posey, Community Service Manager, Kanawha District  
Ms. Barbara Burdette, Social Service Coordinator

Dear Ms. Howard,

RECEIVED

AUG 15 1996

REGULATORY DEVELOPMENT

My name is Tracy Mercer. I am a certified day care provider in West Virginia. I am writing to comment on the proposed changes in the day care regulations to create a new class of home day care.

First, I would like to say I was never informed by the Dept. of Human Services about these changes. I was told by an outside source. I called Leslie Allen in Martinsburg and she informed me of the fact that a copy of the regulations was at the Dept. of Human Services and she explained the comment period. I think it is ridiculous that as a certified provider, I was not informed of any of this. Essentially my right to comment was taken away by this non-information. All providers should have been notified. Also, the only way to read the proposed regulations was to go to the D.H.S. and read the only copy available. This is next to impossible since the majority of providers work during the day and are unable to take time away to go to the D.H.S. and read the ones. This could have been handled better.

I would like to say I opposed ~~unilaterally~~ the ~~attempt~~ to make some changes in some day care in this state. At present I feel conditions, in my area are deplorable. But that is another subject. A few of the proposed regulations are a little unreasonable as far as home day care goes. I know all regulations are made with the child in mind. But the idea of having to hire an

assessment is premature. Home day care providers are definitely not the Rockefellers. We do not have the income to hire an employee. If we did we would have to charge the parents an outrageous amount and would have no business. As a person who has worked in a military day care and taught at a privately owned preschool, I can say any provider worth her salt can handle a larger group of children on their own. I feel maybe an individual evaluation of providers abilities may be a solution.

Another point is the regulation concerning the area designated for infants. I believe the regulation states there should be a separate area for infants to play inside and out. I would like to remind you this is home day care. We work in our homes. I would have to believe that most providers are lucky to have one area exclusively for day care children, let alone two.

As I stated before, I feel this new opportunity is wonderful. I just think you need to remember that we are talking about home day care and not a day care center with large numbers of children that definitely need large square footage and larger staff. I have long wanted the home day care system to expand.

I would not want to see when they are I also hope all providers are informed so they may choose to take advantage of this opportunity.

Thank you for the chance to voice my opinion.

111 Payneford Rd.,  
Martinsburg, WV 25401

Sincerely,  
Tracy D. Mercer

**RECEIVED**  
AUG 16 1996  
**REGULATORY DEVELOPMENT**

**"Play 'n Learn" Family Child Care**

Jennifer Bandy, Owner

405 Warwood Avenue, Wheeling, WV 26003

(304) 277-4530

August 13, 1996

Regulatory Development Department of Health & Human Resources  
Room 265, Building 3, Capital Complex  
Charleston, WV 25305  
Attn: Kay Howard

To Whom It May Concern,

This letter is in regards to proposed rules pertaining to Family Day Care Facilities from both the Division of Human Services and the Division of Health.

- \* A regulation that I find fault with in both is that (2.2.e Division of Health and 1.5.e. Division of Human Services) states: Applicability does not apply to Persons providing care for children related to them. Private limited child care for relatives I find no fault in exempting them, but when they are receiving tax dollars for payment, they most definitely need to comply with the same standards as non-relative care.

I feel it necessary to interject without any specifics that we do not need double regulated, double monitored is fine but I feel it is necessary to find a way to get rid of two rulings on the same topic. I feel that this will be very

6.4.f. When sanitizing with 170 degree F water, dishes must be immersed for at least 1/2 minute, and the requirements for the bleach should be at least 50 ppm available chlorine.

6.4.p. Temperature requirements are needed.

6.6.a.3. No wild animals should be allowed.

Other general comments:

The kitchen/food service requirements are woefully inadequate. More specifics are required if the West Virginia Food Service Regulation is not included in its entirety.

Proper sewage disposal requirements are not addressed.

Plumbing requirements are not addressed, i.e. cross connections/back siphonage problems, water pressure.

Lighting requirements are not addressed.

Laundry requirements are not addressed.

Separation of outdoor animal areas and child play areas.

Potential lead problems are not addressed.

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HARDY COUNTY HEALTH DEPARTMENT AUG 13 1996

MOOREFIELD, WEST VIRGINIA 26836  
(304) 538-6355

REGULATORY DEVELOPMENT

August 12, 1996

Regulatory Development  
ATTN: Kay Howard  
Dept of Health & Human Services  
Capitol Complex--Building 3, Room 265  
Charleston, WV 25305

Dear Ms. Howard:

Enclosed please find my comments regarding the revised legislative rule for Child Care Centers (64 CSR 21) and Certification Requirements for Family Day Care Facilities (78 CSR 18).

64 CSR 21

There is a need for a definition for the "division of health" which expands this entity to include local health units in a manner similar to the definition for "health officer". In most cases where the term division of health is used in this rule the service or function will be performed by a local health entity. The present wording implies that these functions will be performed at the state level.

Section 5.53: The second sentence lacks clarity. It appears that "to keep it covered" should not be part of that sentence.

Section 6.2.c.1: "100 degrees" has to be a misprint.

Section 9.2: Eliminate one of the "with the requirements".

Section 10.9: Last sentence--how can a litter box be located out of reach of children and still be accessible to animals?

Section 11.7: Change food handler to food service worker.

78 CSR 18

There are some conflicts (temperatures, times, and concentrations) between Section 6.4, Food Service, 78 CSR 18 and Section 6, Food Service Facilities, 64 CSR 21. Since 64 CSR 21 has precedence over food service requirements, it may be practical to just state in 78 CSR 18 that the food service must meet the requirements of 64 CSR 21. It is almost impossible to have 2 separate regulations say exactly the same thing. Even if they can both say exactly the same at the outset, a change in 64 CSR 21 requirements would necessitate a change and possible revision of 78 CSR 18.

Sincerely,

*Lemoine K. Thompson, R.S.*  
Lemoine K. Thompson, R.S.

confusing and may discourage many potential providers. If Human Service and the Division of Health could jointly form one set of regulations to rule Facilities that would be best.

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In regards to the regulations from Division of Human Services, I commend a wonderful job. I am proud that West Virginia is pulling up in ranks nationally with regulations. I do, however, have a few small concerns that are as follows:

\* In 3.10.c.4 it states that a child's medical records need to be updated every 2 years. I do not feel it is unreasonable to require an update every year.

\* Another concern I have is dealing with Personnel. 5.1.b. states that an operator needs to have ONE of the following, this seems to make a CDA equal to a CPR class. Also I feel EVERYONE who is working with children needs to have CPR and First Aid in addition to the other requirements, which with the exception of the CPR, seem to be similar.

\* I also wonder if one bathroom facility adequately provides for 12 children and 2 adults.

There were many areas that I feel were excellent in these regulations. Many thanks to those involved in the work necessary to present these.

Thank you for your time and consideration.

Sincerely,

Jennifer Bandy

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AUG 19 1996

COMMENTS ON THE NEW RULE  
CERTIFICATION REQUIREMENTS FOR FAMILY DAY CARE  
FACILITIES

REGULATORY DEVELOPMENT

Margaret York  
Registered Sanitarian  
Putnam County Health Department

3.6.a.1. The only time when a waiver or variance should be applicable is with a transfer of ownership. A new facility should be in compliance with all applicable requirements upon opening.

4.6. Wading pools that are fill and drain can be a major contributor to the spread of communicable diseases and parasites and should be prohibited.

Swimming pools should meet at least the following requirements of the West Virginia Administration Rules 64CSR16 Sections:

6.1.	8.1.	8.8.1.	9.2.	10.2.3.
6.2.	8.2.	8.8.2.	9.3.	11.1.
6.3.	8.3.	8.8.2.(a)	9.4.	11.2.
7.1.	8.4.	8.9.1.	10.1	11.3.
7.2.	8.5.	8.9.2	10.2.1.	12.1.
7.3.	8.7.1.	9.1.	10.2.2.	12.3.

6.1.g. Private water supplies must meet design standards.

6.2.d. Guns and alcoholic beverages pose a serious potential health hazard even in locked cabinets. therefore should be prohibited on premises.

6.3.e. Common towels must be prohibited.

Staff and children should not attend with any communicable disease.

6.3.j. The Division of Health should also be notified of any communicable disease outbreaks.

6.3.k. The first aid requirements are adequate only for very minor injuries. No provisions are made for serious injuries or sprains, etc.

6.4.e. Food contact surfaces must be cleaned and sanitized after each use.