

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #6

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Division of Human Services TITLE NUMBER: 78

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 NEW RULE BEING PROPOSED: 18


TITLE OF RULE BEING PROPOSED: Family Day Care Facility Certification Requirements

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB2345

SECTION 64-5-2, PASSED ON 4-12-97

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: June 23, 1997

  
\_\_\_\_\_  
Joan E. Ohl, Secretary

DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
RULE PROMULGATION HISTORY ABSTRACT

Rule Title: Family Day Care Facility Certification Requirements

Series Number: 18

Amendment of Existing Rule:  New Rule:

Responsible Agency: Division of Human Services

Date Filed for Public Hearing or Comment Period: 7-18-96

Date of Public Hearing (if any):

Date Public Comment Period Ended: 8-19-96

Date Agency-Approved Rule Filed with the  
Legislative Rule-Making Review Committee: 8-30-96

Date of Filing of Modified Rule as Approved by  
the Legislative Rule-Making Review Committee: 2-27-97

Date of Final Filing: 6-16-97

Effective Date: 6-23-97

Authorized by: HB2345 (With amendments? Yes  No )  
Passed: April 12, 1997.

Dates Emergency Rule in Effect (if any): 1-7-97 through

**WEST VIRGINIA DIVISION OF HUMAN SERVICES LEGISLATIVE RULES**

**TITLE 78, SERIES 18**

**FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS**

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1997

**WEST VIRGINIA DIVISION OF HUMAN SERVICES LEGISLATIVE RULES  
FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS**

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WEST VIRGINIA DIVISION OF HUMAN SERVICES LEGISLATIVE RULES 10 49 AM '97  
SERIES 18  
FAMILY DAY CARE FACILITY CERTIFICATION REQUIREMENTS

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**§78-18-1. General.**

1.1. Scope. -- The purpose of this 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. -- June 16, 1997.

1.4. Effective Date. -- June 23, 1997.

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

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

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

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

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

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

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

**§78-18-2. Definitions.**

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

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

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

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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

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 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.

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

2.8. "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 shall take to correct the deficiencies. The secretary shall review and accept the plan prior to its implementation.

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

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the Bureau for Children and Families through its Commissioner carries out the child welfare licensing functions of the Division of Human Services.

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

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

2.12. "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.

2.13. "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 valid 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. The department shall inspect every certified family day care facility prior to issuing 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 these services and the facility's ability to maintain compliance with this rule. This need may be assessed based 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 and financial resources 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:

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 is 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 expires 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 department shall not renew the statement of certification 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 and any terms and conditions of its certification; or (c) any plan of correction.

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

3.8. Waivers and Variances.

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

3.8.b. The secretary may approve a request for a waiver or variance only in the event that the health, safety or well-being of a child in care with that facility would not be endangered or otherwise placed at risk.

3.8.c. The operator shall make a written request for a waiver or variance 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 may 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, rules and regulations.

3.10.b. In addition to the statement of certification, 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. A 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 as required by this rule.

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 parents; (2) the names, addresses and telephone numbers of any persons authorized to pick up the child; (3) the names of the child's physician or other health care providers; (4) the names of emergency contact persons; and (5) health insurance coverage and policy number for the child;

3.10.c.3. Written authorization signed by the parents 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 which shall be on file within thirty (30) days of the 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 which shall be updated every two (2) years;

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

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

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

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

3.10.c.9. The 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 staff person's name, date of birth, home address and telephone number, or an emergency contact, and the date of employment and/or termination;

3.10.d.2. Documentation of qualifications and education or 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 background information including: (1) a statement signed by the employee indicating any past criminal conviction or any pending charges; (2) a clearance or waiver if the individual has convictions or charges; and (3) Criminal Identification Bureau (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 Criminal Identification Bureau (CIB) checks, where appropriate, and lists of household members with documentation of tuberculosis test results.

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

3.12. The facility shall maintain staffing schedules for up to twelve (12) months to demonstrate that the facility 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. Of the total of twelve (12) children, no more than four (4) children, ages birth 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) children under twenty-four (24) months of age 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. The facility may use a substitute to allow for staff persons to take vacation or short term medical leave or to take care of routine appointments. However,

use of substitutes shall be limited to no more than two (2) weeks, 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 operator 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 the 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 the children must stand or sit;

4.3.b.8. Varieties of creative activities including arts and crafts, dramatic play, stories and books and 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 to assume the 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, shak-

ing, 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 facility operator shall share the guidance and discipline policy with all parents, caregivers, aides, volunteers and 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, staff shall observe the following precautions 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, staff shall notify parents prior to each excursion. The facility shall have written permission on file or staff shall obtain written permission prior to each field trip.

4.6. Water Safety.

4.6.a. Swimming pools, including wading pools, shall meet the "Swimming Pool and Bathing Beach" requirements contained in 64 CSR 21.

4.6.b. If children are taken to a public pool, the adult caregiver shall continue to provide strict supervision.

4.7. Night Time Care.

4.7.a. The facility shall not provide overnight care (typically but not limited to the hours of eleven (11) PM to seven (7) AM) 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 as defined in subdivision 4.7.a of this rule 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. A facility shall serve an evening meal to children in overnight care and shall serve breakfast 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-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. 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 requirements of this subsection of this rule in addition to those that cover the facility generally.

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

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

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

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

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

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

4.8.d. Separate cribs shall be provided for infants who are not yet able to climb. Bars on cribs shall be no farther than two and three-eighths ( $2 \frac{3}{8}$ ) 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 shall comply with the provisions of Division of Health Legislative Rule, Child Care Centers, 64 CSR 21.

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

4.8.h.1. Infants shall be held while being bottle fed;

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

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

4.8.h.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.h.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.h.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.i. The facility and staff shall provide activities for infants and toddlers to

stimulate their physical, intellectual and emotional growth. Activities shall include:

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

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

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

4.8.i.4. Opportunities for children 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 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.i.5. Opportunity to play with safe, nontoxic, and age-appropriate toys which are stored in low, open shelves for easy access;

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

4.8.i.7. Encouragement of the child to play with a wide variety of toys and

to express themselves through conversation and imaginative play;

4.8.i.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.i.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.j. Staff's 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.k. 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. The 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 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. The requirement for permission by parents or guardians for field trips outside the facility, emergency medical treatment, water activity and provision of medications.

4.10.c. Staff shall notify the parent 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. Staff shall encourage parents to become involved with the facility and shall include them 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;

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

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

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

5.1.b.1. Completion of at least ten (10) clock hours of child development training or arrangements to complete the training 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; or

5.1.b.4. Completion of 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 requirements of subdivision 5.b.a. of this section. This designee shall be capable of carrying out the duties of the operator;

5.1.c.6. Is responsible for the 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;

5.1.c.9. Is responsible for screening, scheduling and supervising the conduct of all staff, volunteers, and others in the facility; and

5.1.c.10. Is 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 the English language 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. However, staff shall pro-

vide the required direct supervision 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. Every two (2) years thereafter, 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 shall be on file. Current health reports shall establish that the care giver is physically and mentally able to care for children and has negative test results for tuberculosis;

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

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

5.2.a.12. Complete at least eight (8) 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 vari-

ety 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. The department shall complete criminal background checks on all operators, care givers, employees, volunteers eighteen (18) years of age and over, and all adult household members and 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 have:

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

offense;

5.4.b.2. Been involved in any criminal activity involving violence against a person, including adult or child abuse or neglect; possession, sale, or distribution of illegal drugs; gross 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. These 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 §§ 49-6-1 et seq. and 49- 6A-1 et seq.

5.4.c. The department shall not approve a facility for continuing certification if a background check or complaint shows that the operator or a household member has been determined to have abused or neglected a child or has a criminal background as defined in this rule. Background checks shall include a clearance from the Central Abuse Registry maintained by the WV State Police.

5.4.d. The operator, an employee, volunteer or other household member or resident shall not have been diagnosed or be under treatment for a serious mental illness which might create a risk to children. The department and/or facility shall determine the risk to children 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 facility 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, the kitchen, office space or storage areas.

6.1.c. 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.d. 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 cook-top, a refrigerator and equipment for washing, rinsing and sanitizing cooking and eating utensils.

6.1.e. Staff shall not permit children under the age of six (6) in food prepa-

ration areas when ranges or cooktops are in use.

6.1.f. 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 and preschool children are in care.

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

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

6.1.h.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. The facility may stagger play times and space based on the number of children using the area at one time;

6.1.h.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 the children.

6.1.h.3. The operator shall select play equipment of a safe design and shall maintain it 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.h.4. Swing, slides and climbing equipment shall not be placed on concrete or asphalt surfaces.

6.1.i. 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.j. An operator 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.k. The facility shall have indoor and outdoor play equipment, toys, materials and furniture that are:

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

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

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

6.1.k.4. Of sufficient quantity to provide choices for children and avoid competition for toys; and

6.1.k.5. Capable of providing for a variety of activities such as quiet and active play and individual and group play.

6.1.l. The facility shall have storage spaces 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 operator 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. All interior bathroom and closet doors which can be locked from the inside shall be capable of being unlocked from the outside.

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

6.2.e. The operator shall install protective covers on all unused electrical outlets accessible to children less than five (5) years of age.

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

6.2.g. 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 operator shall obtain a permit to operate from the health officer as required by the Division of Health Legislative Rule, Child Care Centers, 64 CSR 21. The health officer shall inspect the facility prior to beginning operation and semi-annually thereafter.

6.3.b. The operator shall keep the yard and equipment cleaned, repaired and

maintained to protect the health of children.

6.3.c. All persons in the facility shall practice good personal hygiene.

6.3.d. Hand washing practices shall be in compliance with the requirements of Division of Health Legislative Rule, Child Care Centers, 64 CSR 21.

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

6.3.f. The operator 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 the facility at the discretion of the care giver. The operator shall notify parents in advance of this policy, and shall give parents notice when the situation occurs.

6.3.g. 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.h. The operator shall notify parents of any communicable disease outbreak in the facility.

6.3.i. The operator shall insure that the following first aid supplies are available in the facility: antiseptic; band aids; a thermometer; gauze; tape; scissors; tweezers; disposable, nonporous gloves; a first aid guide; and syrup of ipecac. The operator shall use syrup of ipecac only with prior authorization from the parent and at the

direction of a poison control center or the child's physician. The operator shall insure that first aid supplies are not accessible to the children in care. Staff shall take a first aid kit on all trips away from the facility.

6.3.j. The operator or staff shall give or apply medicines:

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

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

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

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

#### 6.4. Food Services.

6.4.a. Family day care facilities shall use an on-site kitchen which complies with the requirements of Division of Health Legislative Rule, Child Care Centers, 64 CSR 21.

6.4.b. If meals are obtained from an off-site source, the off-site source shall be in compliance with applicable rules of the Division of Health.

#### 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) the milk group; (2) the protein group, including meat, fish, poultry, eggs, peanut butter, dried beans, dried peas, cheese; (3) the fruit and vegetable group, including 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 complete meals 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. The operator shall plan menus with the goal of meeting or working toward meeting the 1990 Dietary Guidelines for Americans. The operator shall prepare, date and post in advance in a conspicuous place, and shall keep them on file for thirty (30) days;

6.5.c.5. The operator 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 operator shall encourage children to eat the food served but shall not subject them to coercion or forced feeding;

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

6.5.c.8. A operator shall serve only pasteurized, inspected and GRADE (A) approved milk products to children. A facility shall not use 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 disease and be a friendly companion for children.

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

#### 6.7. Smoking.

6.7.a. Neither the provider nor the staff, volunteers or household members may 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 may smoke cigarettes, cigars, pipes or other tobacco products on any playground facility when a child is present.

**§78-18-7. Fire Safety.**

7.1. Family day care facilities shall meet the applicable rules of the state fire commission.

7.2. A family day care facility shall request 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 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 operator 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. The operator shall report 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 operator shall immediately report to the department any suspected child abuse or neglect by a parent, operator, employee, other care giver 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 operator operator, all employees and volunteers shall be aware of the mandated responsibility to report any suspected child abuse and neglect.

8.1.d. The operator 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. A change of ownership which requires the new owner to file for a new application;

8.1.d.2. A change of operator and change in staff;

8.1.d.3. Closure of the facility;

8.1.d.4. A change in hours of operation or change in ages of children served;

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 facility which requires the owner to file for a new application;

8.1.d.9. A disaster such as a fire or flood that damages the facility;

8.1.d.10. A change in the composition of the household; and

8.1.d.11. A report that an employee has been arrested, charged or 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: any complaint alleging a violation of the requirements of this rule; any matter involving a person 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 the 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 department shall notify the director of a facility 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 W.Va. 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 to the facility by certified mail within ten (10) days a written summary report of the findings, conclusions and recommendations of the investigation.

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 secretary shall approve the contents of the plan.

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

8.2.k. The operator shall fully implement the approved plan of correction within ten (10) days of the date of its receipt unless the 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 those 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 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).

9.1.b. Where a violation of W. Va. Code § 49-2B 1, et seq. or of this rule may result in serious harm to children under care, the secretary may seek injunctive relief as provided in W. Va. Code § 49-2B-5.

#### 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-1, et seq. 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.

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 immediately issue an order of closure 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 the 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 shall 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 issues involved. An impartial state hearing officer who has not previously been involved in the case under appeal shall conduct the hearing and make a final decision. The hearing officer shall serve a copy of the decision 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 county in which the petitioner lives or does business.

Senate Bill No. 182

1 (By Senator(s) Ross, Anderson, Macnaughtan,  
2 Boley and Buckalew)

3 [Introduced March 3, 1997; referred to the  
4 Committee on Health and Human Resources; and  
5 then to the Committee on the Judiciary.]  
6  
7  
8  
9

10 A BILL to amend article five, chapter sixty-four of the  
11 code of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
13 section, designated section two, relating to  
14 authorizing the commissioner of human services to  
15 promulgate a legislative rule relating to  
16 certification requirements for family day care  
17 facilities.

18 *Be it enacted by the Legislature of West Virginia:*

19 That article five, chapter sixty-four of the code of  
20 West Virginia, one thousand nine hundred thirty-one, as  
21 amended, be amended by adding thereto a new section,  
22 designated section two, to read as follows:

23 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND

1 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

2 §64-5-2. Commissioner of human services.

3 The legislative rule filed in the state register on  
4 the thirtieth day of August, one thousand nine hundred  
5 ninety-six; under the authority of section four, article  
6 two-b, chapter forty-nine, of this code, modified by the  
7 commissioner of human services to meet the objections of  
8 the legislative rule-making review committee and refiled in  
9 the state register on the twenty-seventh day of February,  
10 one thousand nine hundred ninety-seven, relating to the  
11 commissioner of human services (certification requirements  
12 for family day care facilities, 78 CSR 18), is authorized.

13

14 NOTE: The purpose of this bill is to authorize the  
15 Commissioner of Human Services to promulgate a legislative  
16 rule relating to Certification Requirements for Family Day  
17 Care Facilities.

18

19 This section is new; therefore, strike-throughs and  
20 underscoring have been omitted.

**5782**

**H. B. 2345**

1 Bill-Human\_Servs, Cert (By Delegate(s) Douglas, Hunt, Compton,  
2 Faircloth, Linch and Riggs)

3  
4 [Introduced March 3, 1997; referred to the  
5 Committee on Health and Human Resources then  
6 the Judiciary.]  
7  
8  
9

10 A BILL to amend article five, chapter sixty-four of the  
11 code of West Virginia, one thousand nine hundred  
12 thirty-one, as amended, by adding thereto a new  
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22 designated section two, to read as follows:

23 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND

78-18

1 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

2 §64-5-2. Commissioner of human services.

3 The legislative rule filed in the state register on  
4 the thirtieth day of August, one thousand nine hundred  
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7 commissioner of human services to meet the objections of  
8 the legislative rule-making review committee and refiled in  
9 the state register on the twenty-seventh day of February,  
10 one thousand nine hundred ninety-seven, relating to the  
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17 Care Facilities.

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19 This section is new; therefore, strike-throughs and  
20 underscoring have been omitted.

## ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** Division of Human Services

**Subject:** Family Day Care Facility Certification, 78CSR18

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### PERTINENT DATES

Filed for public comment: July 18, 1996

Public comment period ended: August 19, 1996

Filed following public comment period: August 30, 1996

Filed LRMRC: August 30, 1996

Filed as emergency: November 26, 1996

Fiscal Impact: None

### ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule. It states that the proposed rule applies to all family day care centers except for certain specified types of facilities.

Section 2 defines terms.

Section 3 requires any family day care facility to apply for and obtain a statement of certification before beginning operations and accepting children for care. The statement, which is nontransferable is valid for 2 years unless revoked or modified. This section requires inspection of the facility prior to issuance of the statement.

This section requires a facility to apply for the statement. The Secretary is to cause an investigation of the facility and persons responsible for the care of the children prior to making a determination on issuance of the statement. Specifics are provided for what an investigation must include. It requires the Secretary to issue the statement where the facility complies with the law and the rule. A statement may be modified to provisional status or amended. The Secretary may issue a provisional statement in certain circumstances.

This section allows the Secretary to issue waivers or variances where the health, safety, or well being of a child in care at that facility would not be endangered.

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The Secretary is to monitor and provide consultation to facilities and to inspect each facility at least once every two years. Facilities are required to maintain records containing certain specified information.

Section 4 sets forth the staff/child ratio for family day care facilities and provides for substitute care givers. It requires the facility to provide a planned program of activities and specifies daily required activities. It sets forth requirements for a written policy on the guidance and discipline of children and prohibits certain methods of punishment.

This section also contains provisions regarding transportation, water safety, night-time care, care of infants and toddlers and parental involvement.

Section 5 relates to family day care facility personnel. It sets forth age, education and experience requirements for an operator and the duties and responsibilities of an operator. It also sets forth requirements for staff and their responsibilities. It provides that volunteers may not be used to meet staff/child ratios.

It requires the Department to complete criminal background checks on all operators, care givers, employees and volunteers eighteen years of age and older and all adult household members and residents. It prohibits any of these persons who have a specified criminal history from being employed in a facility or have contact with children in the facility.

Section 6 sets forth standards for a facility's building and grounds.

Section 7 requires family day care facilities to meet the requirements of the State Fire Code. A facility must be inspected by the Fire Marshal prior to beginning operation and annually thereafter.

Section 8 sets forth situations which the facility must verbally report to the Department within 24 hours or by the next work day. The situations are serious occurrences which affect the operation of the facility. It also requires the reporting of any suspected child abuse or neglect. This section also requires the facility to provide written notification of certain specified occurrences such as change in ownership or staff.

This section also provides for the investigation of complaints and sets for time-lines for the investigation. It permits the Secretary to require a proposed plan of correction for a facility.

Section 9 contains sanctions for violation of the statute or the rule.

Section 10 provides for administrative due process.

Section 11 is a severability section which needs to be deleted.

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## AUTHORITY

Statutory authority: W.Va. Code, §49-2B-4, which provides, in part, as follows:

(a) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article.

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

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## ANALYSIS

### I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

### II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

### III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No. In fact the proposed rule was revised following the public hearing to resolve any conflicts with the Division of Health's proposed rule on child care centers.

### IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

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**V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?**

Yes.

**VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?**

Yes. Defining the term "family day care home" and then not indicating that these homes are not subject to the provisions of the proposed rule is very confusing.

**VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?**

Yes.

**VIII. OTHER.**

Counsel has technical modifications to suggest.

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Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

JAN CASTO  
Deputy Secretary of State

CATHERINE FREROTTE  
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WILLIAM H. HARRINGTON  
Chief of Staff

**RECEIVED** JUDY COOPER  
Director, Administrative Law

JUL 16 1997 PENNEY BARKER  
Supervisor, Corporations

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

**REGULATORY DEVELOPMENT**

(Plus all the volunteer help we can get)

TO: KAY HOWARD

AGENCY: DIVISION OF HEALTH

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 14, 1997

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

AUG 21 3 28 PM 1997

FILED

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 18 TITLE: 78 DIVISION OF HEALTH

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Kay Seward

TITLE OF PERSON SIGNING: Director, Office of Regulatory Development

DATE: August 20, 1997

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.