

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Human Services

Subject: Family Day Care Home Registration Requirements, 78CSR19

PERTINENT DATES

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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.

Section 2 relates to application and enforcement. It states that the rule applies to any family day care home and is to be enforced by the Secretary of the Department of Health and Human Resources.

Section 3 defines terms.

Section 4 relates to certificate of registration information. It states that the Department will issue an initial certificate of registration to a family day care home upon application and self-certification of compliance with the rule. It contains general requirements regarding the homes such as a home may not operate longer than 18 consecutive hours in a 24 hours period.

A home may have no more than six children in care under 13 years of age at any one time and no more than two of the children may be under 24 months of age. A caregiver may use a substitute to provide care during emergency situations, illness and during occasional non-emergency situations such as vacations, etc. Substitutes may not be used for more than 2 consecutive full weeks annually or more than an average of 8 hours weekly.

Section 7 relates to home safety requirements. This section contains numerous requirements regarding the home, safety barriers, hazards, emergency exits and electrical safety.

Section 8 relates to fire safety. This section requires the home to develop and post a written plan for emergency evacuation of the children from the home; contains requirements regarding heating and cooling; and requirements relating to general fire safety.

Section 9 relates to environmental safety. It contains requirements regarding tobacco use, pets and animals, and play areas.

Section 10 relates to health, sanitation and nutrition. This section requires the caregiver to promptly report accidents, suspected illnesses or exposure of a child to communicable diseases to the child's parents and to isolate a sick child from other children. It contains guidelines for the administration of nonprescription and prescription medication and contains requirements regarding medical examinations and immunization records.

This section contains requirements for safe drinking water, hand washing and cleanliness. It requires that children receive nutritious meals and snacks.

Section 11 relates to water safety. This section states that a caregiver shall prohibit the children's use of wading pools, inflatable pools and hot tubs. It contains fencing requirements for in-ground and above ground pools and requires that hot tubs have a hard cover. Requirements are set forth regarding children involved in swimming activities.

Section 12 relates to emergency practices. It requires a home to ensure that certain emergency information is available near the

Section 20 relates to enforcement action. It states that the rule may be enforced by revocation of a certificate of registration, by immediate closure or both.

Section 21 relates to administrative and judicial review. It gives a home 30 days to seek an administrative review of a decision made by the Secretary or to seek immediate relief in the Circuit Court of Kanawha County or the Circuit Court where the home is located.

Appendix A sets forth West Virginia core competencies.

Appendix B contains standards for disinfectants and sanitizing solutions.

Appendix C contains universal precautions.

Appendix D contains a minimum meal pattern for children.

Appendix E contains suggested equipment and materials for infants, toddlers, children ages 2 to five years, and school age children.

AUTHORITY

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

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.

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

Yes.

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?

No.

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 PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.

telephone. It sets forth a list of first aid supplies, which must be available in a portable container.

Section 13 relates to transportation. This section contains general transportation requirements, including the requirement that the caregiver notify parents in advance when activities are planned that require transportation. It also contains requirements regarding the use of child safety seats and seat belts.

Section 14 relates to program and equipment. It requires the home to post a daily routine appropriate to the ages of the children in care and specifies what should be included in the routine. It also contains provisions regarding implementation of a program and toys and equipment that should be available.

Section 15 relates to guidance and discipline. This section requires a home to have rules that are fair, consistent and relevant to the children's ages. It also states that a home may not use a time out that lasts for more than one minute for each year of a child's age. Numerous forms of discipline are specifically prohibited.

Section 16 relates to infants and toddlers. This section contains age specific requirements regarding equipment, feeding and care, and diapering and toilet training.

Section 17 relates to night time care. It contains sleeping and bathing requirements for homes that provide night time care.

Section 18 relates to parent involvement. This section requires caregivers to require parents to review and sign daily sign in and out sheets to document the time all children are in care and requires all records to be kept for two years. It requires the caregiver to give custodial parents immediate and unlimited access to children in his or her care. It specifies to whom a child may be released.

Section 19 relates to required reporting to the Department. It requires a home to immediately report suspected child abuse or neglect, and any accidents or illnesses resulting in emergency treatment, hospitalization or the death of a child. It requires a home to report within 72 hours the addition of an adult to the household; major damage to the home; and a change of address.

This section requires the Secretary to provide a written decision within 60 days of receipt of an application that issues a regular certificate of registration; issues a provisional certificate of registration; or denies a certificate of registration. A regular certificate of registration is valid for two years from the date of issuance, unless revoked or modified to a provisional status. A provisional certificate of registration is valid for six months from the date of issuance and may be reissued no more than two times and is contingent on a plan of correction.

Under this section, the Secretary may place limitations on a certificate of registration based on specified findings and states that the limitations may apply to the age, sex and type of problems of children in care, the intake of additional children or the total number of children in the home.

A home may request a waiver or variance of any requirement of the rule, if the health, safety or well-being of the children is not adversely affected, and the rule does not prohibit a waiver or variance for the requirement.

Section 5 relates to inspection and investigation. It requires a caregiver to allow a reasonable on-site monitoring inspection by the Department with or without advance notice.

Section 6 relates to caregiver, substitute and household member requirements. This section requires that a caregiver be at least 18 years of age and be able to read and write. It requires a caregiver to obtain a medical examination and tuberculosis screening within 30 days of application for a certificate. A caregiver is required to complete eight hours of approved training annually in certain specified areas.

This section requires a caregiver and each adult household member, at the time of initial application or application for renewal, to sign a statement of criminal record and a consent to check Department records for child and adult abuse and neglect. This section sets forth a list of crimes which, if they have been committed by a caregiver or a household member, would require the Secretary to deny a certificate of registration. A home is to report arrests, charges, indictments and convictions of caregivers and household members to the Department within 24 hours of their occurrence.