

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

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2009 JUN 30 AM 9:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: ~~West Virginia Department of Health and Human Resources~~ ^{Services} TITLE NUMBER: 78

RULE TYPE: Legislative CITE AUTHORITY: 49-2B-4

AMENDMENT TO AN EXISTING RULE: YES _____ NO x

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: ~~REQUIREMENTS~~ OUT-OF-SCHOOL-TIME CHILD CARE CENTER LICENSING

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 30, 2009 AT 5:00pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Comment on line at wvdhhr.org; email ~~Beth.H.Chambers@wv.gov~~, or
WVDHHR
Division of Early Care and Education
~~Room B-18~~
350 Capitol Street
Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Series 21 Day Care Center Licensing (Out-of-School-Time Child Care Center Licensing Requirements)

Type of Rule: X Legislative Interpretive Procedural

Agency: Health and Human Resources

Address: 1900 Kanawha Blvd. East
Bldg. 3, Room 206
Charleston, WV 25305

Phone Number: 304-558-0938 Email: judy.a.curry@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The purpose of this rule change is for the Department of Health and Human Resources to set forth minimum standards and procedures for licensing child care centers operating an out-of-school time program. These new licensing standards will require 4 additional licensing specialists and 1 new supervisor, as well as the associated current expense. In addition, programs will have to have criminal background checks on their workers and this will add known costs.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	393,120	349,120
Personal Services		320,120	320,120
Current Expenses		63,000	27,000
Repairs and Alterations			
Equipment		10,000	2,000
Other			
2. Estimated Total Revenues			

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

In order to license the out-of-school time programs, the Department will need 4 full time licensing specialists (HHR Specialist Sr.'s) and 1 additional supervisor (HHR Program Manager II). Salaries were estimated using the mid-range of the classification, benefits at 35% of salaries, and \$5,000 each for associated current expense, of which \$2,000 each is for initial equipment needs. Currently there are no licensing requirements for this type of program. There are currently an estimated 250 such programs in West Virginia. Criminal background investigations (CBI) for all employees are a requirement for licensing. Therefore, it is estimated 8 employees per program at a cost of \$24 per CBI to get an initial cost with a lesser amount for the subsequent year to cover staff turn-over and new programs.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The purpose of this rule is to establish minimum standards and procedures for the licensing of child care centers operating an out-of-school time program. Since these programs have not been licensed in the past, it is possible that these requirements will have a fiscal impact on the individual programs in order to get up to the licensing standard. However, without knowing what each program will need and if the Department will help defray these costs, it is impossible to provide an estimate of these costs.

Date

Agency

Authorized Representative

6-30-09

Department of Health and Human Resources

Martha Yeager Walker

Martha Yeager Walker
Secretary

78CSR1

**TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 21
DAY CARE CENTERS LICENSING**

Statement of Circumstances

The rule is being proposed due to a legal opinion that any program that falls within the definition of a child care center and provides child care services to school age children is required to be licensed, and that the exemption for a center that does not operate more than four hours per day does not apply to such a center.

Brief Summary for Proposed Rule

This rule establishes standards and procedures for the licensure of child care centers which operate as out-of-school-time programs under the provisions of West Virginia Code §49-2B-1 et seq. An out-of-school time program is one that offers activities to school children before and/or after school, on school holidays, when school is closed because of an emergency, and on school calendar days set aside for teacher activities. The Department sought input from programs that would be affected by this rule during the drafting of the rule. The proposed rule will help ensure minimum health and safety practices and minimum staff qualifications for centers providing out-of-school time care to children up to age 13.

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES LEGISLATIVE RULES

TITLE 78, SERIES 21

OUT-OF-SCHOOL-TIME

CHILD CARE CENTER LICENSING REQUIREMENTS

2010

FILED

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

2009 JUN 30 AM 9:59

SERIES 21
Child Care Center for Out-of-School Time

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 78-21-1. General.

1.1. Scope -- This rule establishes minimum standards and procedures for the licensing of child care centers operating an out-of-school time program under the provisions of West Virginia Code §49--2B-1 et. seq. , and related federal and state codes. The West Virginia Code is available in public libraries and on the West Virginia State Legislature's web page at www.legis.state.wv.us.

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

1.3. Filing Date - _____

1.4. Effective Date - July 1, 2010

§ 78-21-2. Application and Enforcement.

2.1. Application. This rule applies to any child care center operating an out-of-school-time child care program in West Virginia. The provision of rules applicable to hiring prohibitions in §78 CSR 7.5 et seq. shall apply retroactively and prospectively as these rules are regulatory in nature and are not meant to be penal.

2.2. This rule does not apply to child care centers operating programs for children younger than school age who are not a pre-k student; such programs are licensed under §78-1, Child Care Centers Licensing.

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

§ 78-21-3. Definitions.

3.1. Adequate Supervision. - The observation, oversight, and guidance of the individual child or groups of children, by the staff member taking responsibility for the ongoing activity of each child or group of children so that the staff member is close enough to intervene, if necessary, to protect the child from harm. Adequate supervision requires the staff member's physical presence, knowledge of the child's program of activities, individual needs, habits, interests and special problems, if any, and the acceptance of accountability for the child's or group's care.

3.2. Approved Source. - Food preparation from a source approved by the Health Department through an inspection or permit process, or commercially packaged consumables.

3.3. Approved Training. - Training that has been approved by the Secretary.

3.4. Authorization and Release for Protective Services Record Check. - A document provided by the Department, signed by a program's prospective staff member or employee, granting permission to conduct a search of Department records related to his or her involvement in child or adult abuse and neglect allegations, or other investigations documented by the Secretary.

3.5. Child. - For the purpose of this rule, an individual who is less than thirteen (13) years of age.

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

3.7. Child Care Center. - A facility maintained by the state or any county or municipality thereof, or any agency or facility operated by an individual, firm, corporation, association or organization, public or private, for the care of thirteen (13) or more children for child care services in any setting, if the facility is open for more than thirty (30) days per year per child, except:

3.7.a. A kindergarten through grade twelve education program, that is operated by a public school or that is exempt from the compulsory school attendance law by the state department of education;

3.7.b. A West Virginia Pre-K classroom operated by a county Board of Education in a public school setting;

3.7.c. Any other kindergarten, preschool or school program that operates with sessions not exceeding four (4) hours per day for any child;

3.7.d. An individual or facility that offers occasional 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;

3.7.e. Hospitals or other medical facilities that are primarily used for temporary care of children for treatment, convalescence, or testing; and

3.7.f. Persons providing care solely for children related to them.

3.8. Criminal Identification Bureau (CIB). - The State Police documentation, as a result of a fingerprinting process, that identifies a person who has been arrested or convicted of criminal behavior.

3.9. Disinfect. - Eliminate virtually all germs from an inanimate surface through the use of chemicals or heat.

3.10. Driver. - A staff member who transports program children more than three (3) times per week or a staff member whose job function is to transport children served by the child care program.

3.11. GED. - A certificate verifying passage of a test of General Educational Development recognized as equivalent to a high school diploma.

3.12. Group. - A specific number of children, distinct from the larger population of children, who interact with each other and with one (1) or more specific staff members, in an assigned space. The size of the group and required number of staff are determined by the staff:child ratio set out in this rule.

3.13. License. - A written certificate issued by the Secretary authorizing a person, corporation, partnership, voluntary association, municipality, county, or any agency thereof, to operate a child care program in accordance with the terms and conditions of the license and this rule.

3.14. Licensed Capacity. - The maximum number of children permitted in a program as determined by the Secretary.

3.15. Licensed Health Care Provider. - For the purpose of this rule, an individual who holds a license to practice in West Virginia as a physician - Doctor of Medicine (MD) or Doctor of Osteopathy (DO), a physician's assistant (PA), chiropractor or nurse practitioner.

3.16. Licensee. - The holder of a license or certificate of approval obtained from the Secretary to operate a child care program in West Virginia.

3.17. Medication Error. - The following constitutes an error:

- 3.17.a. Failure to administer a dose of medication;
- 3.17.b. Administering medication to the incorrect child;
- 3.17.c. Administering medication in the incorrect dosage;
- 3.17.d. Administering medication at the incorrect time, other than within thirty (30) minutes before or after the scheduled time;
- 3.17.e. Administering medication in the incorrect form;
- 3.17.f. Administering medication by the incorrect method or route; or
- 3.17.g. Administering medication that is incorrect itself.

3.18. Out-of-School Time Program. - A program that offers activities to school children before and/or after school, on school holidays, when school is closed because of an emergency, and on school calendar days set aside for teacher activities. Breaks between school sessions that exceed 15 days are not considered a school holiday.

3.19. Parent. - The biological or adoptive parent or parents of a child, a person or persons, or the Department, who has legal custody of a child, or the lawful guardian of a child.

3.20. Person-in-Charge. - The qualified staff member with responsibility for the daily operation of the program at any specific time.

3.21. Plan of Correction. - A written agreement between the Department and a program, approved prior to implementation, that outlines the steps the program shall take to correct deficiencies identified by the Secretary through an inspection or the investigation of a complaint. Also known as a Corrective Action Plan (CAP).

3.22. Pre-k. - WV Pre-k program operated in accordance with Code of State Rules, Title 126, Series 28, West Virginia's Universal Access to a Quality Early Education System (2525).

3.23. Public restroom. - A restroom that is routinely available for use by persons that are not part of the center's program. A public restroom can be located either on or off site.

3.24. Qualified Staff. - A staff member who has a high school diploma or GED and meets the requirements under this rule for the position of director, site supervisor, group leader, or assistant group leader.

3.25. Registered Apprenticeship Certificate for Child Development Specialist (ACDS). - A nationally recognized credential awarded by the United States Department of Labor for the successful completion of a combination of classroom and on-the-job training.

3.26. Related Field. - As approved by the Secretary, an area of study that may be associated with the child care and education field, including education, social work, recreation and leisure studies, nursing, counseling, psychology, and administration related to the care and education of the child from birth through twelve (12) years of age.

3.27. Relevant Work Experience. - Work that is directly with or on behalf of children from birth through twelve (12) years of age, and their families in areas of supervision, leadership or management; program coordination, development or regulation; training, instruction or technical assistance; or evaluation or research. Private or family child care is considered relevant work experience only if the care was regulated care and can be verified.

3.28. Responsible Person. - A parent, program staff member, or other person designated by the parent in written information, to drop off or pick up the child.

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

3.30. School-age Child. - A person who is between five (5) and 13 (thirteen) years of age and is eligible to attend school or is enrolled in grades K-12.

3.31. School-age Program. - Services provided by a child care center for the care and supervision for school-age children. Such programs include summer recreation camps, day camps and out-of-school time programs.

3.32. Serious Occurrence. - An event that either harms or could potentially harm a child. It may include:

3.32.a. A child who dies while in care;

3.32.b. A child who is injured while in care to the extent that the child requires medical care beyond immediate first aid;

3.32.c. A diagnosed reportable communicable disease that is introduced in the program; A medication error that occurs;

3.32.d. A legal action involving or affecting the operation of the program;

3.32.e. A serious violation of a licensing requirement, such as use of physical punishment or failure to supervise; or

3.32.f. A report is made to Child Protective Services of suspected abuse or neglect of a child at the program.

3.33. Staff Member. - Any program personnel, including substitutes and student interns, whether or not he or she receives compensation.

3.34. Staff:Child Ratio. - A relationship which describes the number of children that one (1) qualified staff member or substitute is permitted to supervise. The number varies according to the ages and developmental levels of the children and the types of activities in which they are participating.

3.35. Statement of Criminal Record. - A Department provided document signed by a person of his or her arrests or convictions and the authorization for the Department to do a search for a criminal record and release the findings to the program.

3.36. Student intern. - A student in a field of study gaining supervised practical experience.

3.37. Substitute. - An individual who is present at the program to maintain the staff:child ratio when a qualified staff member is absent.

3.38. Teen Aide. - An individual who is between thirteen (13) and eighteen (18) years of age who works with or without compensation under direct supervision.

3.39. Tuberculosis (TB) Risk Assessment. - A tool used to identify people at increased risk for acquiring latent TB infection or for progression to active disease once infected. Any "YES" response of the TB Risk Assessment Tool is considered a positive risk factor and is an indication for administering a tuberculin skin test.

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

3.41. Volunteer. - An individual who provides a direct service to the program for two (2) or more hours a week on a scheduled basis, without compensation, and is eighteen (18) years of age or older; provided, that a parent of an enrolled child working directly with his or her own child will not be considered a volunteer under this rule.

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

\$78-21-4. Licensing Information and Provisions.

4.1. Requirements for a License or Certificate of Approval.

4.1.a. Before establishing or operating a child care center:

4.1.a.1. The program director, the signatories on the application and at least one additional member of the governing body shall verify in writing that he or she has read this rule and is responsible for compliance with its requirements;

4.1.a.2. If operating an out-of-school-time program, other than one operated by the state, shall obtain a license from the Secretary;

4.1.a.3. Operated by the state shall obtain a certificate of approval from the Secretary.

4.1.b. A license is valid for up to two (2) years from the date of issuance, as determined by the Secretary, unless revoked or modified to provisional status.

4.1.c. A license is valid only for the program and its location named in the application and is not transferable.

4.1.d. A licensee shall post the license or certificate of approval in a conspicuous place in the program so that the public may view it.

4.1.e. If the ownership of a program changes, the new owner shall apply for a license and shall not operate until an initial license is issued.

4.1.f. Before the location of a program changes, the licensee shall:

4.1.f.1. Inform the Secretary of the planned change at least sixty (60) days prior to the relocation; and

4.1.f.2. Apply for a new license and shall not operate at the new location until an initial license is issued.

4.1.g. A center receiving a license under this rule may include a child younger than school age in the program only if the child is a West Virginia Pre-k student and the center's statement of purpose addresses services to the Pre-k child.

4.2. Application for a License or Certificate of Approval.

4.2.a. For each facility to be licensed or approved, an applicant shall submit a completed application as prescribed by the Secretary.

4.2.b. A licensee shall submit an application for renewal of a license or certificate of approval to the Secretary not less than sixty (60) days prior to the expiration of the current license.

4.3. Waivers and Variances.

4.3.a. A program shall comply with the provisions of West Virginia Code §49-2B-1 et seq., the requirements of this rule, terms of its license or certificate of approval and any plan of correction, unless a

written waiver or variance has been granted by the Secretary. A program may not obtain a waiver of the requirements of this rule on the basis of the inability to achieve compliance with the rule.

4.3.b. A request for a variance or waiver shall be submitted to the Secretary in writing. The request shall include:

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

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

4.3.c. A waiver or variance of a specific provision of this rule may be granted by the Secretary only if the following criteria are met:

4.3.c.1. The program has documented and demonstrated that the provision of the rule is inapplicable in a particular circumstance, or that the program complies with the intent of the provision in the rule in a manner not permitted by the rule;

4.3.c.2. The health, safety, and well-being of a child is not endangered; and

4.3.c.3. The waiver or variance agreement contains provisions for a regular review of the waiver or variance.

4.3.d. The waiver or variance agreement is subject to immediate cancellation if a program fails to comply with the stated terms of this rule.

4.4. Amendment of a License or Certificate of Approval.

4.4.a. A current licensee shall apply for an amendment of a license or certificate of approval when:

4.4.a.1. Implementing an additional program or changing a program described in the statement of purpose; or

4.4.a.2. Seeking to change the licensed capacity of the program.

4.4.b. In addition to an application requesting an amendment, a licensee shall submit to the Secretary in writing any of the following that apply to the change:

4.4.b.1. A copy of the program's revised statement of purpose as described in Subsection 6.2 of this rule;

4.4.b.2. The qualifications of the director and staff members as they relate to the amendment;

4.4.b.3. A copy of the program's revised plan for meeting program requirements and staff:child ratios;

4.4.b.4. A floor plan reflecting changes to the structure being used by a school age program;

4.4.b.5. A positive inspection report from the State Fire Marshal following any changes to the program's facility;

4.4.b.6. A positive inspection from the county Health Department, including a current Department of Health Permit to operate a Child Care Center or a general sanitation permit, whichever applies;

4.4.b.7. The Department of Health Inspection Report for Food Service Establishments;

4.4.b.8. A Pest Management Report as required by the West Virginia Department of Agriculture.

4.5. The Secretary may issue the following types of licenses:

4.5.a. An initial six month license for applicants establishing a new service;

4.5.b. A regular or renewal license for a period of up to two (2) years for a licensee in compliance with this rule;

4.5.c. A provisional license for a licensee not in full compliance with this rule, but does not pose a significant risk to children. A provisional license expires six (6) months from the date of issuance, and may not be consecutively reissued.

4.6. Conditions of a License. As a condition of issuing a license the Secretary may:

4.6.a. Limit the age, problems, type of behaviors, physical or mental conditions of children allowed admission to a particular program;

4.6.b. Prohibit intake of any children; or

4.6.c. Reduce the number of children that the program is licensed to receive.

4.7. Denial or Revocation of a License.

4.7.a. The Secretary may deny, refuse to renew, or revoke a license if the program materially violates any provisions of West Virginia Code §49-2B-1 et seq, violates any terms or conditions of the license, or fails to maintain established requirements of child care.

4.7.b. When the Secretary denies, refuses to renew, or revokes a license, the licensee shall not operate the program without a court order pending administrative or judicial review.

4.8. Closing of Program by the Secretary.

4.8.a. If the Secretary finds that the operation of a school age program constitutes an immediate danger of serious harm to the children served by the program, the Secretary shall issue an order of closure terminating the operation of the program.

4.8.b. A program ordered closed by the Secretary shall not operate pending administrative or judicial review without a court order.

4.9. Administrative and Judicial Review.

4.9.a. Administrative and judicial review are subject to the provisions of §29A-5-1 et seq. of the West Virginia Code.

4.9.b. A decision issued by the Secretary may be made effective from the date of issuance. Immediate relief may be obtained upon a showing of good cause made by a verified petition to the circuit court of Kanawha County or the circuit court of any county where the affected program is located.

4.9.c. The pendency of administrative or judicial review shall not prevent the Secretary from obtaining injunctive relief pursuant to the West Virginia Code §49-2b-5.

§78-21-5. Inspection and Investigation.

5.1. An applicant or licensee shall permit the Secretary access to the program to conduct announced and unannounced inspections of all aspects of the program's operation and premises.

5.2. A licensee shall provide all information requested by the Secretary.

5.3. When an inspection or complaint investigation finds non-compliance with this rule, the Secretary may require a plan of correction.

5.4. The Secretary may request the licensee to submit the results of a health examination, psychological examination or drug and alcohol screening result on the licensee or any personnel of the program if good cause is found during an inspection or investigation.

§78-21-6. Governance.

6.1. Administrative Structure.

6.1.a. General. The Licensee is legally accountable for the operation of the program and shall ensure the program's compliance with the provisions of West Virginia Code §49-2B-1 et. seq. and the requirements of this rule.

6.1.b. A program shall have a governing body to ensure that the responsibilities of the licensee are carried out.

6.1.b.1. The governing body shall be comprised of at least one (1) parent of a child currently served by the program, or when no parent is available for the governing body, a parent advisory committee shall be established as described in this section;

6.1.b.2. No staff member, staff family member, or employee of a public agency that regulates or makes eligibility decisions for the program may serve, but the director may be an ex-officio non-voting member;

6.1.b.3. The governing body shall meet at least two (2) times in a twelve month period and preserve in writing the minutes of each meeting, including but not limited to, the meeting's date and time, members in attendance, issues considered, and decisions made.

6.1.b.4. The governing body shall appoint a program director to manage the daily operations of the program; submit the director's qualifications in writing for approval by the Secretary prior to employment; conduct an annual evaluation of the program director; and oversee any necessary action regarding the program director's job performance.

6.1.c. An unincorporated, individual licensee (owner) may act as the governing body. In addition to the requirements listed in paragraph 6.1.b.4. of this subsection, the owner shall appoint a parent advisory committee comprised of parents of children currently served by the program that meets with the program director at least two (2) times in a twelve month period.

6.2. Statement of Purpose.

6.2.a. An applicant or licensee shall ensure that each program has a written statement of purpose that guides the program delivered to children and guides staff development. The statement of purpose will include, but not be limited to:

- 6.2.a.1. The type of care and programs offered;
- 6.2.a.2. The goals and objectives for each of the offered programs;
- 6.2.a.3. The ages of the children served;
- 6.2.a.4. The role of parents in the program;
- 6.2.a.5. The scheduled days and hours of operations; and
- 6.2.a.6. An organizational chart.

6.2.b. An applicant or licensee shall ensure that the statement of purpose is:

- 6.2.b.1. Available to staff members and consumers of the program;
- 6.2.b.2. Reviewed with all staff members whenever changes are made; and
- 6.2.b.3. Filed with the licensing authority when changes are made.

6.3. Administrative Manual.

6.3.a. An applicant or licensee shall ensure that each program has an administrative manual that includes the program's policies and procedures with the dates they were implemented or revised, regarding:

- 6.3.a.1. Confidentiality and information disclosure;
- 6.3.a.2. Admission and discharge of children;
- 6.3.a.3. Behavior management;

6.3.a.4. Reporting of abuse;

6.3.a.5. Health, including, at a minimum, any parental objection to treatment, exclusion and re-admittance of the child with a communicable illness, and medication administration;

6.3.a.6. Attendance;

6.3.a.7. Emergencies;

6.3.a.8. Transportation;

6.3.a.9. Grievance procedures; and

6.3.a.10. Personnel:

6.3.a.10.A. Employment and hiring qualifications;

6.3.a.10.B. Termination;

6.3.a.10.C. Use of uncompensated personnel (student interns, student aids, volunteers, etc);

6.3.a.10.D. Background checks including criminal convictions, abuse and neglect findings and, if applicable, a waiver request process;

6.3.a.10.E. Compensation;

6.3.a.10.F. Circumstances, if any, under which the program reserves the right to require drug and alcohol screening for drivers, other staff and volunteers; and

6.3.a.10.G. Periodic performance evaluations;

6.3.b. An applicant or licensee shall ensure that the administrative manual is:

6.3.b.1. Available to staff members; and

6.3.b.2. Reviewed with all staff members when changes are made.

6.4. Standards of Ethical Conduct. A program shall not misrepresent or operate a program in any way that is misleading, deceptive or illegal.

6.5. Grievance Procedure. A program shall develop and implement a written grievance procedure for families and employees. The procedure shall be written in clear and simple language and provided to families and staff.

6.6. Records and Information Disclosure.

6.6.a. Records. A program shall maintain the confidentiality of all child and staff records and shall have a procedure for secure storage, maintenance and disposition of records.

6.6.a.1. A program shall retain a child's record for a minimum of three (3) years following the child's discharge. The record shall include, but not be limited to, admission or beginning service date, contact information for the parent of the child, contact information of the responsible person if designated by the parent, emergency information, agreements or acknowledgements signed by the parent pertaining to the child's participation and special instructions related to the child's health and development.

6.6.a.2. A program shall keep all current staff records on file according to the following:

6.6.a.2.A. A program that operates at more than one (1) site shall keep current staff members' emergency information on file at each location where a staff member is employed and at a central location; and

6.6.a.2.B. A program that operates at more than one (1) site may keep all staff records at a central location as long as the central location is in West Virginia.

6.6.b. Information Disclosure.

6.6.b.1. A program shall keep all information about the child confidential and shall only disclose it to staff members caring for the child in accordance with the program's policies and procedures.

6.6.b.2. A program shall obtain the written consent of the child's parent before disclosing information about the child, including photographs, audio or video recordings, or verbal statements about the child, except when disclosing information to the Secretary or his or her designee.

§78-21-7. Staffing.

7.1. This section applies to all program personnel including the private owners, volunteers, and parents who are used in a program capacity regardless of compensation.

7.2. This section does not apply to:

7.2.a. An adult not associated with the program who is in the facility for brief periods in the normal course of carrying out business or professional activities and is not left alone with nor aids in the supervision of children;

7.2.b. A parent of an enrolled child who is at the program only for the purpose of performing parental responsibilities in relation to his or her own child; or

7.2.c. A professional not associated with the program that performs a child specific service at the request of the child's parent or guardian, such as a speech or occupational therapist.

7.3. Staffing Procedures.

7.3.a. A program shall provide each new staff member with a written notification that includes his or her position title, qualifications, duties and responsibilities at the time of hiring.

7.3.b. A program shall conduct performance evaluations:

7.3.b.1. Annually on all staff employed; and

7.3.b.2. On all newly employed staff members at three (3) months, six (6) months, and twelve (12) months in the first year of employment.

7.3.b.3. A program shall provide each staff member with a written copy of his or her most recent evaluation, signed by the program director and the evaluated staff member, and a continuing education plan based on the evaluation.

7.3.c. A program shall maintain a file for each staff member that includes:

7.3.c.1. A current job description;

7.3.c.2. Written references, including three (3) professional references for the program director and two (2) references for other staff members one of which must be from a person familiar with the staff person's work;

7.3.c.3. Records of employment, including a duplicate copy of all performance evaluations;

7.3.c.4. Documents related to background checks;

7.3.c.5. Documents related to orientation; and

7.3.c.6. Documents related to continuing education and professional development while employed at the center.

7.4. Staff Character and Background.

7.4.a. No person shall be on the premises or have contact with the children in care whose health or behavior would harm the children, or who is under the influence of a controlled substance, including alcohol or a legal pharmaceutical, that impairs his or her functioning.

7.4.b. Other than the exceptions cited in Subdivision 7.4.d. of this subsection, a program shall ensure that a criminal background investigation is performed on each staff member and volunteer through the West Virginia Department of Military Affairs and Public Safety, Criminal Identification Bureau (CIB) and an authorized agency in a previous state of residence, if applicable, and shall keep the following information on file:

7.4.b.1. A completed, signed and witnessed Statement of Criminal Record. A copy of the statement shall be on file no later than the date of hire;

7.4.b.2. A CIB records check, except as described in this section; and

7.4.b.3. A report of a Federal Bureau of Investigation (FBI) records check, for any staff member who has lived outside West Virginia within the past five (5) years, or has established residence outside West Virginia for more than one (1) year since turning eighteen (18) years of age;

7.4.c. A program shall ensure that each staff member and volunteer has a completed, signed, and dated Authorization and Release for Protective Services Record Check. The release shall be on file and submitted to the Department no later than the date of hire.

7.4.d. A program does not require a criminal records check on the following:

7.4.d.1. A new staff member who has on file at the program documentation of the required criminal history investigation(s) within the previous twelve (12) months;

7.4.d.2. A parent who transports children on an irregular basis for field trips without pay or compensation.

7.4.e. No person shall work alone with a child or children prior to the center receiving the required CIB, FBI and Protective Services reports.

7.4.f. The Secretary may require a CIB or FBI check for good cause.

7.4.g. A program shall require an individual over thirteen (13) and under eighteen (18) years of age, acting in the capacity of a teen aid or student intern, to have on file a signed affidavit from the individual's parent stating that his or her child has never been arrested or convicted of an offense against a person. The affidavit shall be on file prior to the individual having direct contact with the children on a regular basis.

7.4.h. A program shall update the following reports in each staff member's file:

7.4.h.1. The Statement of Criminal Record every two (2) years; and

7.4.h.2. The completed CIB and, if required, FBI report at least every five (5) years.

7.5. Hiring Prohibitions

7.5.a. A program shall not employ or use an individual who is currently under indictment or charged with any crime, is currently on parole or probation for a felony conviction, or has been convicted or entered a plea of guilty or no contest to any of the following:

7.5.a.1. A violent felony crime including, but not limited to, abduction, rape, sexual assault, homicide, hate crimes, kidnapping;

7.5.a.2. Child or adult abuse or neglect, or the exploitation of a child or an incapacitated adult;

7.5.a.3. Domestic violence or spousal abuse;

7.5.a.4. Arson;

7.5.a.5. A felony or misdemeanor crime against a child or incapacitated adult;

7.5.a.6. Felony conviction for Driving Under the Influence (DUI) or drug-related offenses within the last ten (10) years;

7.5.a.7. Neglect or abuse by a care giver; or

7.5.a.8. Pornography and sexual offense crimes involving children or incapacitated adults, including purchase or sale of a child, incest, sexual abuse, or indecent exposure.

7.5.b. A program shall not employ or use any individual who is determined by the Department to have abused or neglected a child or incapacitated adult.

7.5.c. A program shall not employ or use an individual who has entered a plea of guilty or no contest, or has been convicted of a felony, or two (2) or more misdemeanor crimes that are not listed in Subdivision 7.5.a. unless the Secretary grants a waiver.

7.5.d. A program shall not use an individual who failed to disclose a conviction on a Statement of Criminal Record or failed to disclose a finding of abuse or neglect on an Authorization and Release for Protective Services Record Check unless the Secretary grants a waiver.

7.5.e. A program shall have protocols requiring:

7.5.e.1. A staff member or volunteer to report his or her criminal arrest, charge, indictment, or conviction for a criminal offense to the program director within twenty-four (24) hours;

7.5.e.2. A staff member to report to the program director that he or she is subject of an abuse or neglect investigation;

7.5.e.3. The program to notify the Secretary of the staff member's report within twenty-four (24) hours; and

7.5.e.4. That the program prohibit a staff member or volunteer who is accused of having sexually abused or otherwise injured a child or incapacitated adult from caring for or having contact with children pending the outcome of an investigation.

7.5.f. If a program chooses to advocate for a waiver for an employee, then it shall have policies and procedures regarding waivers that do not conflict with Department policies. The staff person shall not have contact with the children until the Secretary reaches a decision on the waiver unless the licensee and the Department agree to a written safety plan that permits the staff member to continue in a staff position until the Secretary reaches a decision.

7.6. Staff Health. A program shall secure from the employee a recent health assessment performed not more than 90 days prior to the date hired for

the employee and signed by a licensed health care provider. The health assessment shall be on file no later than 30 days from the first date of employment. A health assessment for a volunteer shall be on file if the volunteer is scheduled to work at least forty (40) hours per month in the program. Those employed at the time this rule takes effect shall have twelve (12) months to meet this requirement. The health assessment shall include:

7.6.a. Any significant health history which the program needs to know in order to protect the health of the employee or the health and safety of children in care;

7.6.b. Vision and hearing screening;

7.6.c. A statement that the staff member has no known condition or disease which would interfere with the proper care of children; and

7.6.d. A tuberculosis risk assessment that is repeated annually or a tuberculosis screening by the Mantoux method, if a screening is indicated by the tuberculosis risk assessment.

7.6.e. Staff health records as described in this section shall be updated every two (2) years.

7.7. Staff Responsibilities and Training Requirements.

7.7.a. All staff must have sufficient education, training and experience to provide the skills necessary for carrying out the essential functions of his or her job with or without reasonable accommodation;

7.7.b. Prior to or during the first week of employment and prior to having sole responsibility for a group of children, a program shall provide orientation to the staff member that includes a review of:

7.7.b.1. The program's statement of purpose;

7.7.b.2. Regulatory requirements;

7.7.b.3. The center's administrative manual;

7.7.b.4. Staff duties;

7.7.b.5. Professional development plans;

7.7.b.6. Reporting child abuse and neglect;

7.7.b.7. Emergency and evacuation procedures;

7.7.b.8. Procedures for basic sanitation and infection control;

7.7.b.9. Procedures for maintaining an environment without hazards to children;

7.7.b.10. Procedures for promoting safety, both indoors and outdoors;

7.7.b.11. The daily schedule of the program and the specific schedule for the group of children to which the staff person is assigned, including the planned program of activities, routines and transitions; and

7.7.b.12. Communication at a program, including procedures to inform staff of any special dietary or other needs of the children for whom they will be responsible.

7.7.c. A program shall document that orientation training was provided by having the staff member and program director sign a statement acknowledging receiving orientation training and shall keep the statement in the staff member's file.

7.7.d. A program shall ensure that all staff members have approved training in:

7.7.d.1. Cardiopulmonary Resuscitation (CPR) and first aid within 6 months of employment or use provided a staff member who has received the training is present with children on or off site during the center's operation. The CPR certification and first aid shall be appropriate to the age of the children in care;

7.7.d.2. Abuse Recognition and Prevention. Within six (6) months of employment or use, staff members shall have training in child abuse recognition and prevention;

7.7.e. A program shall ensure that prior to any staff member administering medication, the staff member has received approved training in medication administration.

7.8. Professional Development

7.8.a. Programs shall have a professional development plan for each staff member employed more than 120 calendar days that includes a minimum of 12 clock hours of professional development annually for Directors and Site Supervisors and eight (8) clock hours of professional development annually for other staff positions. The professional development needs to be related to school age children and/or providing quality programs to school age children. Except in the first year of employment, the clock hours do not include the training required in 7.7.d. et seq.

7.8.b. All staff shall renew child abuse and neglect recognition every three years and keep first aid and CPR certification current.

7.9. Staff Positions and Qualifications

7.9.a. Director of an out-of-school time program shall:

7.9.a.1. Be at least 21 years of age;

7.9.a.2. Have at least one year of leadership experience in a school age program or similar program;

7.9.a.3. Have an associate or bachelor degree with at least 12 college credit hours in child development, elementary or secondary education or a related field;

7.9.a.4. Have a least six years of paid and verifiable relevant work experience if the educational qualification cannot be met;

7.9.a.5. Be responsible for the daily operation of the program and oversight of staff;

7.9.a.6. Have a written work plan for the routine on-site presence for each site under his or her responsibility and shall post the on-site schedule where it is accessible to staff and parents; and

7.9.a.7. Be responsible for appointing a person in charge to take responsibility for the operation of the program in his or her absence and be responsible for ensuring that there is a site supervisor for each site when the program operates multiple sites;

7.9.b. Site Supervisor of an out-of-school time program shall:

7.9.b.1. Be at least 21 years of age;

7.9.b.2. Have 18 months of supervised relevant work experience;

7.9.b.3. Have 28 college credit hours, or an ACDS or equivalent, or a total of three (3) years supervised relevant work experience;

7.9.b.4. Be responsible for the day-to-day operation of a single site;

7.9.b.5. Report to the program director; and

7.9.b.6. Not act in the capacity of a group leader when more than 60 children are present in the program.

7.9.c. Group Leader shall:

7.9.c.1. Be at least 18 years of age;

7.9.c.2. Have one (1) year of supervised relevant work experience;

7.9.c.3. Have twelve (12) college credit hours, or 120 clock hours of training related to children or children's programs, or a total of two (2) years supervised relevant work experience;

7.9.c.4. Be able to supervise and implement program activities for a group of children with or without assistance;

7.9.c.5. Have primary responsibility for the direct care of children.

7.9.d. Assistant Group Leader shall:

7.9.d.1. Be at least 18 years of age;

7.9.d.2. Have met the requirements for a High School diploma or GED and will receive the same within six (6) months;

7.9.d.3. Work under the supervision of at least a Group Leader and shall assist in implementing program activities for a group of children.

7.9.e. Student Intern shall:

7.9.e.1. Perform duties under the direct supervision of a Group Leader, Site Supervisor or Director and in accordance with a training plan developed jointly by the educational or training institution and the center;

7.9.e.2. Receive periodic supervision from the educational or training program sponsoring the intern;

7.9.e.3. If under the age of 18 years, not be responsible for a group of children or be left alone with a child or group of children.

7.9.f. Teen aid shall:

7.9.f.1. Be between the ages of 13 and 18 years;

7.9.f.2. Be directly supervised by at least a Group Leader;

7.9.f.3. Aid staff only in the delivery of program activity; and

7.9.f.4. Not be responsible for a group of children or be left alone with a child or group of children.

7.9.g. Driver. A driver shall:

7.9.g.1. Be at least 21 years of age;

7.9.g.2. Have a valid driver's license that authorizes the driver to operate the vehicle being driven;

7.9.g.3. Upon hire, have evidence of a safe driving record for the five year period prior to hiring and have no record of DUI related convictions for a five year period;

7.9.g.4. Not be impaired to drive at the time of transporting children including, but not limited to, impairment caused by medications;

7.9.g.5. Maintain a safe driving record while employed.

7.9.h. Persons holding the positions equivalent to the Director, Site Supervisor, and Group Leader shall have two years from the effective date of this rule to meet the qualifications of their positions except for the age qualification for the Director and Group Leader.

§78-21.8. Environment

8.1. Licensed Capacity. A center shall ensure that at all times the maximum number of children participating in activities on or off the premises does not exceed the licensed capacity. Personnel and group size may be factored into the maximum capacity for certain age groups.

8.2. Space.

8.2.a. A center shall provide a minimum of thirty-five (35) square feet per child of usable indoor space that is approved by the Secretary for daily program activities. A center shall make the rooms and areas of the center that are not approved for a child's use inaccessible to the children.

8.2.b. Indoor space for daily program activities does not include any space that is not available for a child's activities including space occupied by columns, vestibules, corridors and areas to be clear for a means of egress; fire escapes; areas used exclusively for eating; bathrooms; staff lounges; adult work areas including offices, laundry and furnace rooms; kitchens; permanently equipped isolation areas; and storage spaces.

8.2.c. For out-of-school-time programs that operate more than four continuous hours on a daily basis, the center shall provide an outdoor activity area that includes a minimum of seventy-five (75) square feet of space per child, or if the outdoor activity area has less than that, a center shall establish an outdoor activity schedule for rotating groups of children to meet the minimum space requirement and to ensure that each child has an opportunity to have outdoor activity each day.

8.3. Environmental Safety. A center shall:

8.3.a. Take all necessary precautions to provide an accident-free and smoke-free environment for the children, staff members and visitors to the center;

8.3.b. Prohibit Smoking and tobacco product use by anyone on the premises and everywhere in the presence of children;

8.3.c. Prohibit smoking anytime in vehicles operated by the center, even in the absence of children;

8.3.d. Require all tobacco products, lighters and matches be kept out of the children's reach and sight.

8.3.e. Ensure that the premises, furnishings, equipment and supplies are in good repair and present no hazard to the health and safety of the children;

8.3.f. Ensure all equipment and materials are regularly inspected by staff for potential hazards;

8.3.g. Ensure equipment is regularly cleaned, disinfected as needed, and discarded when no longer useable;

8.3.h. Ensure equipment and materials are installed, maintained and used in accordance with manufacturer's instructions.

8.3.i. Store products containing potentially hazardous chemicals, including identified poisons, certain cleaning supplies, and art supplies not clearly labeled as "nontoxic," away from activity space and food, and when possible, stored in their original containers and never in containers originally designed for food. If pre-k children are present in the program, these products must be stored in a manner to be inaccessible to children;

8.3.j. Have on file a material safety data sheet for each product containing potentially hazardous chemicals;

8.3.k. Ensure outdoor play areas meet current Consumer Product Safety Commission guidelines for safe public playgrounds. Facilities shall have four (4) years from the effective date of this rule to comply with this standard and shall file a plan with the Secretary by January 1, 2011 of how this requirement will be met; and

8.3.l. Ensure an unenclosed outdoor activity area is away from traffic areas and other hazards; and

8.3.m. Enclose an outdoor play area used by children younger than school age with a natural barrier or secure fence that is at least four (4) feet high and has no openings greater than three and one-half (3 ½) inches.

§78-21-9. Supervision of Children.

9.1. A center shall ensure that:

9.1.a. Staff provide adequate supervision to children at all times;

9.1.b. Staff can account for children at all times through a means to track children as they participate in the program, take independent restroom breaks, as activities change, as transportation occurs and takes action when a child is missing on or off the premises;

9.1.c. Public restrooms are in staff's line of vision if used by children participating in the program; provided, that staff shall accompany children under nine (9) years of age to public restrooms that are adjoined to or located within locker rooms, shower rooms or other similar type facilities;

9.1.d. At no time is a pre-k child without adult supervision including restroom breaks;

9.1.e. When children are on the premises, at least one staff member and one other facility staff member are present;

9.1.f. In determining and maintaining the staff:child ratio, the center shall not include any staff member who is performing other duties such as maintenance or accounting, except in an emergency situation when staff may be reassigned to supervise the children;

9.1.g. A student intern that is not yet 18 years old is not counted in the staff:child ratio unless the intern is a Youth Apprentice in

the second year of classes in the Child Development Specialist program approved by the WV Department of Education;

9.1.h. Student interns and teen aides do not work alone.

9.2. A center shall group children and consider their ages when determining the staff:child ratio as follows:

9.2.a. For programs that operate with Pre-K children, the program shall ensure that:

9.2.a.1. A 1:12 staff to child ratio is maintained; and

9.2.a.2. Group sizes are limited to twenty-four (24) for any group that mixes older children with a pre-k child.

9.2.b. For programs that operate with school age children only, the program shall ensure that:

9.2.b.1. A 1:16 staff to child ratio is maintained;

9.2.b.2. The group size is determined by the activity and is limited to facilitate staff/child interaction and safe, constructive participation by children; and

9.2.c. During water activity such as swimming, canoeing, and fishing the staff:child ratio is maintained at 1:8 for groups of school age children and is maintained at 1:4 for any group with a Pre-k child.

9.3. Groups of children must be distinct with staff persons knowing to which group they are assigned.

9.4. Staff:child ratio and group size are always maintained based on the age of the youngest child in the group.

9.5. During transportation, the center shall:

9.5.a. Maintain the staff:child ratio;

9.5.b. Have a staff member or volunteer accompany the driver when more than six children are being transported and at least one of those children is kindergarten or younger;

9.5.c. Ensure that no child is left unattended on a vehicle;

9.5.d. Have a staff or designated responsible person present outside the vehicle to supervise when children are loading or unloading from a vehicle; and

9.5.e. Immediately upon unloading the last child from a vehicle, or before parking the vehicle, the driver or the designated staff member shall physically search the vehicle to ensure that all children have been unloaded.

§ 78-21-10. Program. The center shall have a program of activities that:

10.1. Meets the goals of the center as established by the statement of purpose;

10.2. Is based on knowledge of child development for the school-age child and, if applicable, pre-school age child;

10.3. Encourages parent input and review;

10.4. Provides supervised activities designed especially for the age and skill level of participating children, to include:

10.4.a. Opportunities for child input and choice of activities;

10.4.b. Opportunities to develop physical fitness;

10.4.c. Opportunities for concentration, alone or in a group;

10.4.d. Opportunities to read or do homework;

10.4.e. Opportunities to be creative, to explore the arts, sciences, and social studies, and to solve problems;

10.4.f. Opportunities for community service experience; and

10.4.g. Opportunities for adult supervised skill building and self-development groups.

§ 78-21-11. Guidance and Discipline.

11.1. Positive Guidance.

11.1.a. The program staff shall use guidance that helps the children understand age appropriate behavior.

11.1.b. An out-of-school-time child care program shall have rules that are fair, consistent, and relevant to the children's ages.

11.1.c. An out-of-school-time child care program may use a time-out that lasts no more than one (1) minute for each year of a child's age and only for the purpose of helping a child regain control. Time-out must be under adequate supervision.

11.2. Negative Discipline. Program staff shall not use any of the following harmful forms of discipline:

11.2.a. Punishing a child physically including spanking, hitting, kicking, biting, shaking, popping, swatting, thumping, pinching, shoving, spitting, forced exercise or other cruel treatment;

11.2.b. Punishing or threatening a child in association with food, sleep, rest, or personal hygiene;

11.2.c. Putting anything in or on a child's mouth as punishment;

11.2.d. Confining a child in a closet or locked room or using physical restraints for confinement;

11.2.e. Using loud, profane, or abusive language or threats of physical punishment;

11.2.f. Punishing a child psychologically including public or private humiliation, shaming, and negative remarks about the child or child's family;

11.2.g. Punishing a child emotionally; and

11.2.h. Allowing a child to punish another child or children in care.

11.3. Program staff shall not seek or accept parental permission to use any punishments or acts prohibited in this rule.

78-21-21. Nutrition.

12.1. A center shall provide children with meals and snacks that are consistent with the United States Department of Agriculture's current Dietary Guidelines for Americans and in accordance with the Child and Adult Care Food Program meal patterns (see Appendix A and B of this rule).

12.2. A center shall ensure that no more than four (4) hours elapse between meals and snacks. A center shall provide meals and snacks according to the following requirements:

12.2.a. A center that is open from morning through afternoon shall serve a morning snack or breakfast, lunch and an afternoon snack;

12.2.b. A center that provides care before seven (7) o'clock in the morning shall ensure a child has breakfast available; and

12.2.c. A center that provides care to the child whose planned attendance extends beyond seven (7) o'clock in the evening shall serve supper;

12.2.d. An out-of-school time program shall serve a snack or meal to the school-age child within one (1) hour of arriving after a normal school day;

12.3. A center may choose to allow a child to bring meals and snacks to the center provided:

12.3.a. The center has written policies that address:

12.3.a.1. Providing parents and staff with the nutritional guidelines in this rule;

12.3.a.2. Providing to parents and staff guidelines on the proper preparation and storage of food;

12.3.a.3. Providing to parents and staff a list of foods the center will not permit, including known food allergens to other children;

12.3.a.4. An explanation to parents of how the center will address the issue if a child does not bring meals or snacks, or if the meals

or snacks the child does bring are not within the nutritional guidelines provided by the center;

12.3.a.5. That the food prepared from an unapproved source is for consumption by the child and not to be shared with other children or the group.

12.3.b. The center has safe storage and refrigeration of the food as needed. Storage must be approved by the Health Department;

12.3.c. Each child's meal or snack is clearly labeled with the child's first and last names and the date it was brought to the center;

12.3.d. No additional food preparation is required by the center;

12.3.e. The center provides a meal or snack when the parent fails to provide a meal or snack from home;

12.3.f. The center includes children with food allergies in the group during meal or snack time; and

12.3.g. The center has milk available at meal times in accordance with meal patterns described in Appendix B of this rule.

§ 78-21-13. Required Reporting to the Department. A center shall:

13.1. Immediately report suspected child abuse or neglect to the Department in accordance with West Virginia Code 49-6A-1. et. seq.

13.2. Report within 24 hours to the Secretary any serious occurrence and shall immediately inform the parent or parent's authorized designee when a child is involved in a serious occurrence. For each serious occurrence, the center shall;

13.2.a. Ensure that the staff member in charge prepares and signs a serious occurrence report; and

13.2.b. Place the report in the child's file and in a separate cumulative file maintained by the center.

13.3. Report within seventy-two (72) hours any major damage to the facility caused by fire, flood, storms or other events.

13.4. Report immediately a change in the center's phone number.

78-21-14. Emergency Procedures.

14.1. Emergency File. A center shall develop and maintain an emergency file with information for each enrolled child that is accessible to all staff members, including at off-site activities.

14.2. While children are off the premises, at least one direct care staff has completed a course in child first aid and has current certification in CPR appropriate to the age of the children in care.

14.3. Emergency Policies, Procedures and Plan. A center shall develop, implement and maintain policies and procedures for responding to an emergency, including a plan:

14.3.a. For medical and non medical emergencies and for situations that could pose a hazard to staff and children, including, a fire, storm, flood, chemical spill, power failure, bomb threat, persons coming onto the premises whose health or behavior may be harmful or kidnapping;

14.3.b. For evacuation from the center in the event of an emergency that could cause damage to the center or pose a hazard to the staff and children;

14.3.c. For evacuation from a vehicle used to transport children;

14.3.d. That considers the age and physical and mental abilities of the enrolled children; types of emergencies that are likely to affect the area; the requirements of the State Fire Marshal; and advice from the Red Cross or other health and emergency professionals;

14.3.e. For documenting the review of its emergency plans with new staff during orientation and with all staff at least annually.

14.4. Evacuation and Drill Plan.

14.4.a. A center shall have a plan for evacuating the center or for sheltering in place during an emergency posted in each room of the center that identifies:

14.4.a.1. Staff members responsible for implementing the plan;

14.4.a.2. Procedures to be followed;

14.4.a.3. The location of the children's attendance records and emergency information; and

14.4.a.4. A diagram of safe routes by which children and staff members may exit each area of the center.

14.4.b. A center shall conduct and document an evacuation drill at least one (1) time each month during its regular hours of operation, keeping a written record of the dates and times when evacuation drills are conducted;

14.4.c. A center shall conduct and document a shelter in place drill one (1) time during the school calendar year.

14.5. First Aid Kit. A center shall provide a first aid kit for every twenty (20) children that is stored where it is easily accessible to staff members. The location of the first aid kit shall be clearly marked and in view of the staff member. The kit shall be:

14.5.a. Equipped with band aids, a non mercury thermometer, gauze, tape scissors, tweezers, disposable nonporous gloves, a first aid guide, the telephone number of a poison control center, and pencil and paper. A bottle of clean water shall be stored with or accompany the first aid kit; and

14.5.b. Readily available at all times, including in the outdoor activity area, on all trips away from the center and in each vehicle provided by the center for the transportation of children.

14.6. Telephone. A center shall provide at least one (1) operable, direct-line telephone that is in the facility, is not a pay station or locked telephone, and is available during the center's hours of operation.

§78-21-15. Pest Management.

15.1. A center shall document that the facility has an integrated pest management program as required by the WV Department of Agriculture.

15.2. A center shall provide for insect and rodent control that does not compromise the safety of children.

§78-21-16. Transportation. When providing transportation, a center shall ensure that:

16.1. The vehicle used is currently licensed, inspected, insured, and is equipped with signs and warning lights or alternative warning devices as required by West Virginia Code §17C-12-7a;

16.2. By September 1, 2012, any vehicle used for transportation that has a capacity that exceeds ten (10) passengers meets the National Highway Traffic Safety Administration (NHTSA) standards for a school bus. Provided, that any vehicle used prior to September 1, 2012 for transportation that has a capacity that exceeds ten (10) passengers and does not meet the NHTSA standards shall follow the recommendation of the NHTSA for preventing rollover;

16.3. The driver holds a current driver's license for the type of vehicle being driven;

16.4. The driver does not use a cell phone or engage in conversation while driving;

16.5. The driver or a qualified staff member ensures that each child is in an approved child safety restraint system that meets the federal recommendations of the National Highway Traffic Safety Administration (NHTSA), either a child safety seat or booster seat, and is secured with a seat belt at a ratio of one child per seat belt; provided, a county owned public school bus is exempt from this requirement if not required by state or federal law to use a child safety restraint system;

16.6. The vehicle is equipped with emergency supplies, including a first-aid kit, fire extinguisher, and, if only one adult is in the vehicle, a mobile telephone or two-way radio to be used for emergencies;

16.7. When the center owns the vehicle, identifying information is placed on the outside of the vehicle, which can be read by a pedestrian or other passing vehicle, that includes the name, address and telephone number of the center; and

16.8. When the center owns the vehicle, a weekly safety check is conducted and recorded. The safety check shall include vehicle tire pressure, headlights, windshield wipers, emergency flashers, brake lights, turn signals, first aid kit, gas gauge, oil and other fluids.

§ 78-21-17. Medication Administration.

17.1. A center shall only administer medication with written permission from the child's parent, and with a prescription or a written order from a licensed health care provider except as provided for in Section 17.5;

17.2. The center shall secure instructions from the child's parent for each medication to be administered. The center shall not accept instructions that indicate to administer the medication on an as needed basis unless the order is accompanied by a medical treatment plan written by the child's licensed health care provider which describes the as needed condition. All medication instruction must be legibly written, signed by the parent, attached to the medication log and shall include:

17.2.a. The child's first and last name;

17.2.b. The name of the medication to be given;

17.2.c. The reason the medication is being given; and

17.2.d. Directions for the administration of the medication including the specific dosage, specific frequency or time to be given, and the route to be given.

17.3. A center shall ensure that medication is only administered by designated qualified staff members with training in medication administration.

17.4. A center shall ensure that prescription medication is only administered when the prescriptive medicine bottle or package has the original pharmacy label showing the prescription number, name of the medication, date the prescription was filled, the licensed health care provider's name, the child's first and last names, specific, legible directions for administration and storage, and the expiration date.

17.5. A center shall ensure that non-prescription medication is only administered when the following criteria are met:

17.5.a. The center administers oral non prescription medication for no more than three (3) consecutive days within a thirty (30) day period without written instruction from a licensed health care provider;

17.5.b. The center applies non prescription topical products (ointments, creams, or lotions) for no more than five (5) consecutive days within a thirty (30) day period without written instruction from a licensed health care provider. Sunscreens or lip balms used for preventative purpose are excluded from this requirement;

17.5.c. The original non prescriptive medicine bottle or package has a label with the child's first and last names written by the parent, specific, legible directions for administration including the appropriate dosage based on weight or age, directions for storage, and verification that the medicine will not expire during the time to be used;

17.5.d. Medication does not contain aspirin (acetylsalicylic acid) or any form of salicylate such as Alka-Seltzer® or Pepto-Bismol®;

17.5.e. Medication for cough, cold or congestion does not contain codeine;

17.5.f. Any topical containing diphenhydramine hydrochloride (Benydryl®) shall not be applied without written instruction from a licensed health care provider;

17.5.g. That the medication shall not be administered in a manner inconsistent with the manufacturer's recommendations without written instructions from the child's licensed health care provider.

§ 78-21-18. Enforcement Actions.

The secretary may revoke or make a license provisional, or issue an order of closure to a Child Care Center in accordance with West Virginia Code §49-2B-11 and -12.

§ 78-21-19. Administrative and Judicial Review.

19.1. In accordance with the provisions of West Virginia Code §49-2B-13, a child care center may seek an administrative review of a decision made by the Secretary by requesting a hearing within thirty (30) days of receiving the notice of the decision.

19.2. A child care center may also seek immediate relief from the decision of the Secretary by a showing of good cause made by verified petition to the circuit court of Kanawha County or the circuit court of the county where the program is located.

APPENDIX 78-21-A: USDA FOOD GUIDE FOR RECOMMENDED NUTRIENT INTAKE

Taken from the 2005 *DIETARY GUIDELINES FOR AMERICANS*. The Dietary Guidelines are jointly issued and updated every five (5) years by the Departments of Agriculture (USDA) and Health and Human Services (HHS).

The guidelines can be found at <http://www.cnpp.usda.gov/dietaryguidelines.htm>
Please refer to the most current guidelines when using this rule.

Appendix A-2. USDA Food Guide

The suggested amounts of food to consume from the basic food groups, subgroups, and oils to meet recommended nutrient intakes at 12 different calorie levels. Nutrient and energy contributions from each group are calculated according to the nutrient-dense forms of foods in each group (e.g., lean meats and fat-free milk). The table also shows the discretionary calorie allowance that can be accommodated within each calorie level, in addition to the suggested amounts of nutrient-dense forms of foods in each group.

Daily Amount of Food From Each Group (vegetable subgroup amounts are per week)												
Calorie Level	1,000	1,200	1,400	1,600	1,800	2,000	2,200	2,400	2,600	2,800	3,000	3,200
Food Group ¹	Food group amounts shown in cup (c) or ounce-equivalents (oz-eq), with number of servings (srv) in parentheses when it differs from the other units. See note for quantity equivalents for foods in each group. ² Oils are shown in grams (g).											
Fruits	1 c (2 srv)	1 c (2 srv)	1.5 c (3 srv)	1.5 c (3 srv)	1.5 c (3 srv)	2 c (4 srv)	2 c (4 srv)	2 c (4 srv)	2 c (4 srv)	2.5 c (5 srv)	2.5 c (5 srv)	2.5 c (5 srv)
Vegetables ³	1 c (2 srv)	1.5 c (3 srv)	1.5 c (3 srv)	2 c (4 srv)	2.5 c (5 srv)	2.5 c (5 srv)	3 c (6 srv)	3 c (6 srv)	3.5 c (7 srv)	3.5 c (7 srv)	4 c (8 srv)	4 c (8 srv)
Dark green veg.	1 c/wk	1.5 c/wk	1.5 c/wk	2 c/wk	3 c/wk	3 c/wk	3 c/wk	3 c/wk	3 c/wk	3 c/wk	3 c/wk	3 c/wk
Orange veg.	.5 c/wk	1 c/wk	1 c/wk	1.5 c/wk	2 c/wk	2 c/wk	2 c/wk	2 c/wk	2.5 c/wk	2.5 c/wk	2.5 c/wk	2.5 c/wk
Legumes	.5 c/wk	1 c/wk	1 c/wk	2.5 c/wk	3 c/wk	3 c/wk	3 c/wk	3 c/wk	3.5 c/wk	3.5 c/wk	3.5 c/wk	3.5 c/wk
Starchy veg.	1.5 c/wk	2.5 c/wk	2.5 c/wk	2.5 c/wk	3 c/wk	3 c/wk	6 c/wk	6 c/wk	7 c/wk	7 c/wk	9 c/wk	9 c/wk
Other veg.	3.5 c/wk	4.5 c/wk	4.5 c/wk	5.5 c/wk	6.5 c/wk	6.5 c/wk	7 c/wk	7 c/wk	8.5 c/wk	8.5 c/wk	10 c/wk	10 c/wk
Grains ⁴	3 oz-eq	4 oz-eq	5 oz-eq	5 oz-eq	6 oz-eq	6 oz-eq	7 oz-eq	8 oz-eq	9 oz-eq	10 oz-eq	10 oz-eq	10 oz-eq
Whole grains	1.5	2	2.5	3	3	3	3.5	4	4.5	5	5	5
Other grains	1.5	2	2.5	2	3	3	3.5	4	4.5	5	5	5
Lean meat and beans	2 oz-eq	3 oz-eq	4 oz-eq	5 oz-eq	5 oz-eq	5.5 oz-eq	6 oz-eq	6.5 oz-eq	6.5 oz-eq	7 oz-eq	7 oz-eq	7 oz-eq
Milk	2 c	2 c	2 c	3 c	3 c	3 c	3 c	3 c	3 c	3 c	3 c	3 c
Oils ⁵	15 g	17 g	17 g	22 g	24 g	27 g	29 g	31 g	34 g	36 g	44 g	51 g
Discretionary calorie allowance ⁶	165	171	171	132	195	267	290	362	410	426	512	648

Notes for Appendix A-2:

¹ Food items included in each group and subgroup:

- Fruits - All fresh, frozen, canned, and dried fruits and fruit juices: for example, oranges and orange juice, apples and apple juice, bananas, grapes, melons, berries, raisins. In developing the food patterns, only fruits and juices with no added sugars or fats were used. See note 6 on *discretionary calories if products with added sugars or fats are consumed.*
- Vegetables - In developing the food patterns, only vegetables with no added fats or sugars were used. See note 6 on *discretionary calories if products with added fats or sugars are consumed.*
 - Dark green vegetables - All fresh, frozen, and canned dark green vegetables, cooked or raw: for example, broccoli; spinach; romaine; collard, turnip, and mustard greens.
 - Orange vegetables - All fresh, frozen, and canned orange and deep yellow vegetables, cooked or raw: for example, carrots, sweet potatoes, winter squash, and pumpkin.
 - Legumes - All cooked dry beans and peas and soybean products: for example, pinto beans, kidney beans, lentils, chickpeas, tofu. (dry beans and peas) (See comment under meat and beans group about counting legumes in the vegetable or the meat and beans group.)
 - Starchy vegetables - All fresh, frozen, and canned starchy vegetables: for example, white potatoes, corn, green peas. < beans, green lettuce, juice, tomato tomatoes, example, for raw: or cooked vegetables, other canned and frozen, fresh, All - vegetables>
- Grains - In developing the food patterns, only grains in low-fat and low-sugar forms were used. See note 6 on *discretionary calories if products that are higher in fat and/or added sugars are consumed.*
 - Whole grains - All whole-grain products and whole grains used as ingredients: for example, whole-wheat and rye breads, whole-grain cereals and crackers, oatmeal, and brown rice..
 - Other grains - All refined grain products and refined grains used as ingredients: for example, white breads, enriched grain cereals and crackers, enriched pasta, white rice.

See note 6 on *discretionary calories if higher fat products are consumed.* Dry beans and peas and soybean products are considered part of this group as well as the vegetable group, but should be counted in one group only.

- Milk, yogurt, and cheese (milk) - All milks, yogurts, frozen yogurts, dairy desserts, cheeses (except cream cheese), including lactose-free and lactose-reduced products. Most choices should be fat-free or low-fat. In developing the food patterns, only fat-free milk was used. See note 6 on *discretionary calories if low-fat, reduced-fat, or whole milk or milk products-or milk products that contain added sugars are consumed.* Calcium-fortified soy beverages are an option for those who want a non-dairy calcium source.

² Quantity equivalents for each food group:

- Grains - The following each count as 1 ounce-equivalent (1 serving) of grains: ½ cup cooked rice, pasta, or cooked cereal; 1 ounce dry pasta or rice; 1 slice bread; 1 small muffin (1 oz); 1 cup ready-to-eat cereal flakes.
- Fruits and vegetables - The following each count as 1 cup (2 servings) of fruits or vegetables: 1 cup cut-up raw or cooked fruit or vegetable, 1 cup fruit or vegetable juice, 2 cups leafy salad greens.
- Meat and beans - The following each count as 1 ounce-equivalent: 1 ounce lean meat, poultry, or fish; 1 egg; ¼ cup cooked dry beans or tofu; 1 Tbsp peanut butter; ½ ounce nuts or seeds.
- Milk - The following each count as 1 cup (1 serving) of milk: 1 cup milk or yogurt, 1½ ounces natural cheese such as Cheddar cheese or 2 ounces processed cheese. Discretionary calories must be counted for all choices, except fat-free milk.

³ Explanation of vegetable subgroup amounts: Vegetable subgroup amounts are shown in this table as weekly amounts, because it would be difficult for consumers to select foods from each subgroup daily. A daily amount that is one-seventh of the weekly amount listed is used in calculations of nutrient and energy levels in each pattern.

⁴ Explanation of grain subgroup amounts: The whole grain subgroup amounts shown in this table represent at least three 1-ounce servings and one-half of the total amount as whole grains for all calorie levels of 1,600 and above. This is the minimum suggested amount of whole grains to consume as part of the food patterns. More whole grains up to all of the grains recommended may be selected, with offsetting decreases in the amounts of other (enriched) grains. In patterns designed for younger children (1,000, 1,200, and 1,400 calories), one-half of the total amount of grains is shown as whole grains.

⁵ Explanation of oils: trans fat) shown in this table represent the amounts that are added to foods during processing, cooking, or at the table. Oils and soft margarines include vegetable oils and soft vegetable oil table spreads that have no trans fats. The amounts of oils listed in this table are not considered to be part of discretionary calories because they are a major source of the vitamin E and polyunsaturated fatty acids, including the essential fatty acids, in the food pattern. In contrast, solid fats are listed separately in the discretionary calorie table (appendix A-3) because, compared with oils, they are higher in saturated fatty acids and lower in vitamin E and polyunsaturated and monounsaturated fatty acids, including essential fatty acids. The amounts of each type of fat in the food intake pattern were based on 60% oils and/or soft margarines with no trans fats and 40% solid fat. The amounts in typical American diets are about 42% oils or soft margarines and about 58% solid fats.

⁶⁶ Explanation of discretionary calorie allowance: The discretionary calorie allowance is the remaining amount of calories in each food pattern after selecting the specified number of nutrient-dense forms of foods in each food group. The number of discretionary calories assumes that food items in each food group are selected in nutrient-dense forms (that is, forms that are fat-free or low-fat and that contain no added sugars). Solid fat and sugar calories always need to be counted as discretionary calories, as in the following examples:

- The fat in low-fat, reduced fat, or whole milk or milk products or cheese and the sugar and fat in chocolate milk, ice cream, pudding, etc.
- The fat in higher fat meats (e.g., ground beef with more than 5% fat by weight, poultry with skin, higher fat luncheon meats, sausages)
- The sugars added to fruits and fruit juices with added sugars or fruits canned in syrup
- The added fat and/or sugars in vegetables prepared with added fat or sugars
- The added fats and/or sugars in grain products containing higher levels of fats and/or sugars (e.g., sweetened cereals, higher fat crackers, pies and other pastries, cakes, cookies)

Total discretionary calories should be limited to the amounts shown in the table at each calorie level. The number of discretionary calories is lower in the 1,600-calorie pattern than in the 1,000-, 1,200-, and 1,400-calorie patterns. These lower calorie patterns are designed to meet the nutrient needs of children 2 to 8 years old. The nutrient goals for the 1,600-calorie pattern are set to meet the needs of adult women, which are higher and require that more calories be used in selections from the basic food groups. Additional information about discretionary calories, including an example of the division of these calories between solid fats and added sugars, is provided in appendix A-3.

APPENDIX 78- -B: CHILD AND ADULT CARE FOOD PROGRAM - MEAL PATTERNS

The Child and Adult Care Food Program (CACFP) is administered by the USDA. Eligible public or private child care centers, outside-school-hours care centers, Head Start programs, and other institutions which are licensed or approved to provide child care services may participate in CACFP, independently or as sponsored centers. Meals served to children are reimbursed at rates based upon a child's eligibility for free, reduced price, or paid meals. More information and current meal pattern plans can be found at <http://www.fns.usda.gov/cnd/care/CACFP/aboutcacfp.htm> .

Child Meal Pattern Breakfast			
Select All Three Components for a Reimbursable Meal			
Food Components	Ages 1-2	Ages 3-5	Ages 6-12¹
1 milk			
fluid milk	1/2 cup	3/4 cup	1 cup
1 fruit/vegetable			
juice, ² fruit and/or vegetable	1/4 cup	1/2 cup	1/2 cup
1 grains/bread³			
bread or	1/2 slice	1/2 slice	1 slice
cornbread or biscuit or roll or muffin or	1/2 serving	1/2 serving	1 serving
cold dry cereal or	1/4 cup	1/3 cup	3/4 cup
hot cooked cereal or	1/4 cup	1/4 cup	1/2 cup
pasta or noodles or grains	1/4 cup	1/4 cup	1/2 cup
¹ Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column. ² Fruit or vegetable juice must be full-strength. ³ Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.			

Child Meal Pattern Lunch or Supper

Food Components	Ages 1-2	Ages 3-5	Ages 6-12¹
1 milk fluid milk	1/2 cup	3/4 cup	1 cup
2 fruits/vegetables juice, ² fruit and/or vegetable	1/4 cup	1/2 cup	3/4 cup
1 grains/bread³ bread or	1/2 slice	1/2 slice	1 slice
combread or biscuit or roll or muffin or	1/2 serving	1/2 serving	1 serving
cold dry cereal or	1/4 cup	1/3 cup	3/4 cup
hot cooked cereal or	1/4 cup	1/4 cup	1/2 cup
pasta or noodles or grains	1/4 cup	1/4 cup	1/2 cup
1 meat/meat alternate meat or poultry or fish ⁴ or	1 ounce	1 1/2 ounces	2 ounces
alternate protein product or	1 ounce	1 1/2 ounces	2 ounces
cheese or	1 ounce	1 1/2 ounces	2 ounces
egg or	1/2 egg	3/4 egg	1 egg
cooked dry beans or peas or	1/4 cup	3/8 cup	1/2 cup
peanut or other nut or seed butters or	2 Tbsp.	3 Tbsp.	4 Tbsp.
nuts and/or seeds ⁵ or	1/2 ounce	3/4 ounce	1 ounce
yogurt ⁶	4 ounces	6 ounces	8 ounces

¹ Children age 12 and older may be served larger portions based on their greater food needs.

They may not be served less than the minimum quantities listed in this column.

² Fruit or vegetable juice must be full-strength.

³ Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.

⁴ A serving consists of the edible portion of cooked lean meat or poultry or fish.

⁵ Nuts and seeds may meet only one-half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch or supper requirement.

⁶ Yogurt may be plain or flavored, unsweetened or sweetened.

Child Meal Pattern Snack

Select Two of the Four Components for a Reimbursable Snack

Food Components	Ages 1-2	Ages 3-5	Ages 6-12¹
1 milk fluid milk	1/2 cup	1/2 cup	1 cup
1 fruit/vegetable juice, ² fruit and/or vegetable	1/2 cup	1/2 cup	3/4 cup
1 grains/bread³ bread or	1/2 slice	1/2 slice	1 slice
cornbread or biscuit or roll or muffin or	1/2 serving	1/2 serving	1 serving
cold dry cereal or	1/4 cup	1/3 cup	3/4 cup
hot cooked cereal or	1/4 cup	1/4 cup	1/2 cup
pasta or noodles or grains	1/4 cup	1/4 cup	1/2 cup
1 meat/meat alternate meat or poultry or fish ⁴ or	1/2 ounce	1/2 ounce	1 ounce
alternate protein product or	1/2 ounce	1/2 ounce	1 ounce
cheese or	1/2 ounce	1/2 ounce	1 ounce
egg ⁵ or	1/2 egg	1/2 egg	1/2 egg
cooked dry beans or peas or	1/8 cup	1/8 cup	1/4 cup
peanut or other nut or seed butters or	1 Tbsp.	1 Tbsp.	2 Tbsp.
nuts and/or seeds or	1/2 ounce	1/2 ounce	1 ounce
yogurt ⁶	2 ounces	2 ounces	4 ounces

¹ Children age 12 and older may be served larger portions based on their greater food needs.

They may not be served less than the minimum quantities listed in this column.

² Fruit or vegetable juice must be full-strength. Juice cannot be served when milk is the only other snack component.

³ Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.

⁴ A serving consists of the edible portion of cooked lean meat or poultry or fish.

⁵ One-half egg meets the required minimum amount (one ounce or less) of meat alternate.

⁶ Yogurt may be plain or flavored, unsweetened or sweetened.