

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

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

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

AGENCY: West Virginia Department of Health and Human Resources TITLE NUMBER: 78

CITE AUTHORITY: 49-2B-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ²¹ _____

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

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

Martha Yeager Walker
Authorized Signature

78CSR21

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 21
Out-of-School Time Child Care Center Licensing Requirements

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.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV Department of Health and Human Resources
Bureau for Children and Families
350 Capitol Street
Charleston, WV 25301
304-558-1885

LEGISLATIVE RULE TITLE: Out-of-School Time Child Care Center Licensing Requirements

1. Authorizing statute(s) citation 49-2B-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 30, 2009

b. What other notice, including advertising, did you give of the hearing?
WVDHHR web site; Statewide After School Network listserv; Child Care Center listserv; email notification to other interested parties.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 30, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 2009

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Beth Hall Chambers, Program manager

WVDHHR

350 Capitol Street, Room B-18

Charleston, WV 25301

phone: 304-558-4550

fax: 304-558-8800

Beth.H.Chambers@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

same

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

78CSR21

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 21
Out-of-School Time Child Care Center Licensing Requirements

Summary of Changes Made Based on Public Comment

7.4.3.d. added regarding background checks.

7.9 Revised to allow certain student interns under the age of 18 to count in the staff:child ratio.

Based on guidance from the Office of Child Nutrition, the table and notes in Appendix A describing the *Dietary Guidelines For Americans* has been removed, but is still referenced.

78CSR21

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 21
Out-Of-School Time Child Care Center Licensing Requirements

Comments Summary and Response

Response to General Comments:

The Department wants to thank the following groups and individuals for helping in this rule formulation process: The After School Investments Project, National Child Care Information and Technical Assistance Center, Jane Hange with WV Statewide Afterschool Network, John Glazebrook with the National Boys and Girls Club, the Bureau for Public Health, the State Fire Marshal's office, WV Department of Education 21st Century Community Learning Center staff, the Office of Child Nutrition, Child Care Centers United, and Department of Health and Human Resources staff. The Department wants to thank those individuals from various program types that participated in focus groups and especially those individuals that served on the work group that drafted recommendations for this rule - their time, assistance, representation of their peer programs and dedication to children and families is greatly appreciated.

One message the Department received clearly from out-of-school time providers was that regulation should not change the nature of their programs. The Department recognizes that out-of-school time programs are diverse and need to operate differently than the traditional child care center. The Department also recognizes its duty to ensure that the care provided to children while away from their families is safe and promotes healthy development. Hopefully the rule accommodates the needs of the providers and the needs of the Department in their mutual service to families.

West Virginia is not alone in the regulation of school age care. The After School Investments Project reports that, "Child care licensing regulations provide a baseline of health and safety requirements that child care programs must meet in order to operate in a given state. 46 states and the District of Columbia have specific requirements for school-age care within their licensing requirements for child care centers. The following 13 states have stand-alone school-age licensing regulations: California, Colorado, Hawaii, Indiana, Kansas, New Mexico, New York, North Dakota, Oklahoma, Rhode Island, South Dakota Vermont, and Washington."

Exempting certain program types begs the question of consistency and fairness as well as why any regulation at all for school age programs. In a joint position statement opposing exempt care, the National Association for Regulatory Administrators and the National Child Care Association state the following:

School-age care is a particular concern to many. Children who are unsupervised, without constructive activities and well-planned opportunities to develop positive relationships during after-school hours, may have more behavior problems or adjustment challenges as they progress in school, and may have limited social competence. ... Those who lack supervision are most at risk. ... License exempt care could meet other national, state or local standards, but these are often voluntary, sometimes not age-appropriate and not acceptable alternatives.

...With no licensing regulations and no monitoring by licensing staff, the risk of physical and emotional harm to children is likely to be higher than in regulated care settings. Regulation and monitoring assure baseline standards for all children insuring an imperative defense of children's safety in out-of-home care. Licensing agencies assure accountability and oversight of these baseline standards. In addition, the violation records of licensed facilities are available to parents seeking the best provider for their children. ...

As the number of license exemptions increases, regulatory agencies often observe the financial struggles of licensed programs that are forced into unfair competition with exempt programs that neither meet baseline regulations nor, in many cases, pay taxes. There is a lack of fundamental equity and fairness when regulations that serve children of the same age and needs are not applied universally. This inequity is compounded if tax dollars support exempt programs. Policy makers should seek to change this situation that is harmful to children's safety and optimal development, unfair to licensed providers, and wasting a portion of tax revenues. In the absence of regulatory equity, many providers--regardless of their status as non-profit or for-profit providers--will likely seek equalizing exemptions by joining the ranks of unlicensed providers or will put pressure on licensing agencies to lower regulations in order to reduce operating costs. If either strategy is successful, more children will likely be in programs that are not as safe from immediate and cumulative risks. Parents will not have the assurances of independent oversight and monitoring to help assure safety and good outcomes for their children.

The purpose of licensing is "*Consumer Protection through Prevention.*" We know that appropriate licensing systems ensure attention to protecting children and provide a solid foundation for the nation's education and economic systems by addressing cumulative risks to children's optimal development.

Our mutual goal is to embrace all providers within an efficient, effective, and responsive regulatory infrastructure that recognizes current realities and safeguards every child in out-of-home care.

West Virginia code §49-2B-2 defines child care services as direct care and protection of children during a portion of a twenty-four hour day outside of the child's own home which provides experiences to children that foster their healthy development and education. The code further defines child care center and out-of-school time child care services. Child care services have moved beyond what some persons perceive as custodial care or "babysitting". There are exemptions provided for certain program types, but not to most who are requesting to be exempt from this rule. The Department does not support the request of those seeking to be exempt that are not already exempt by state code.

§ 78-21-2. Application and Enforcement.

§ 78-21-3. Definitions.

Comments Summary:

3.18 excludes summer vacations from the definition of school holiday. Does this mean they would have different regulations?

Response:

Programs operating between school sessions may possibly fall under child care center licensing, however, the program would need to meet the definition of a child care center. Those that operate during the summer months (for more than 30 days) would most likely be licensed as a child care center operating a summer recreation camp or day camp.

§ 78-21-4. Licensing Information and Provisions.

Comment Summary:

4.6-4.8 The DHHR determines how 21st Century program grants will be administered and has final determination of what students and how many can be served.

Response:

The requirements noted above are regarding the conditions that the Department could place on a center and the actions the Department could take if the center materially violates the terms of the license and such action is necessary to protect children. The Department does not determine how a 21st Century Community Learning Center grant is administered nor does the Department determine what students can be served. The Department does place a capacity on the facility based on space requirements; this is a basic health and safety regulation.

§ 78-21-5. Inspection and Investigation.

§ 78-21-6. Governance.

Comment Summary:

21st Century programs operated by public education should have these requirements waived since the Board of Education governs administrative structure and personnel.

Response:

See "Response to General Comments". 21st Century Community Learning Centers operated by the public school with public school teachers most likely fall under the exemption as a natural extension of the public school classroom, but there is such diversity of programs operated under this grant that each will need to be evaluated to see if the code exempts the program.

§ 78-21-7. Staffing.

Comment Summary:

21st Century programs operated by public schools should have requirements regarding personnel files and updated information waived.

Response:

See "Response to General Comments".

Comment Summary:

7.4 This combined with a definition of volunteer may discourage college students from completing volunteer hours with our program if the CIB process becomes too lengthy. Our members and our programs will suffer without those volunteers.

Response:

A volunteer does not need to wait for the report from the CIB before beginning services. The request for the background check must be submitted on the date services begin. The Department recognizes there is a substantial time lapse between submitting a request and receiving a report and very few programs can wait that long before utilizing staff. Also, for licensed child care, the Department will pay the cost for a WV CIB criminal background check. No change to regulation needed.

Comment Summary:

Add a 7.4.d.3. : Any representative of an outside agency contracted to perform programs or services under the direct supervision of staff members.

Response:

Change has been made.

Comment Summary:

7.5 and 7.6 should not apply to staff hired by county Boards of Education or RESA's.

Response:

See "Response to General Comments".

Comment Summary:

7.6 may cause large constraints on the operation of our program since we utilize more than 250 staff and volunteers in a year with a large amount of turnover. Do we not hire based on something in the health assessment? Are

regular day school employees required to have a health assessment? Our employees are not hired on a long term basis; does this rule apply?

Response:

The rule does not apply to a volunteer that works less than 40 hours per month.

Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Out-of-Home Child Care Programs, Second Edition, states the following: "All paid and volunteer staff members who work more than 40 hours per month shall have a health appraisal before their first involvement in child care work. Health appraisals shall be required every 2 years thereafter, unless the staff member's health provider recommends that this be done more frequently. ... All adults who work in child care shall be encouraged to have a full health appraisal. RATIONALE: Under the Americans with Disabilities Act (ADA), employers are expected to make reasonable accommodations for persons with disabilities. Under ADA, accommodations are based on an individual case by case situation. ... Even for young, healthy adults, care of children increases the risk of developing medical problems that can affect the adult's ability to perform on the job. For the protection of the children and adult staff members, a 2-year health appraisal should be considered as minimal surveillance. COMMENTS: To focus the evaluation by the health professional, child care facilities should provide the job description or list of activities that the staff person is expected to perform. Unless the job description defines the duties of the role specifically, under federal law the facility may be required to adjust the activities of that person."

The nature of the program begs for healthy staff persons to work with children. The Department will work with this program to evaluate what falls within the child care center definition that would be addressed by child care center licensing. Leadership programs for high school youth and (most likely) middle school youth would not fall within the scope of §49-2B.

Comment Summary:

7.7 Abuse recognition is very valuable, but are regular day teachers required to undergo this training? Also if only staff member at each site needs to have CPR and first aid this would be okay, but if all have to have it would be impossible for our program.

Response:

The abuse and neglect recognition training and the CPR/first aid training are basics for any staff being responsible for children and communicating with childrens' families. The proposed rule states that the staff person must have the training within 6 months and that the program must have at least one person trained in CPR/first aid on site that has completed the training. If your program will have an employee with the program for more than 6 months, the employee will need to have the training. Community programs can be an excellent source of getting information to children and families on child abuse and neglect. Community programs are also well situated to help reduce child abuse and neglect and many programs have this as a goal. Caregivers and teachers are mandated reporters of abuse and neglect and the training can

aid the mandated reporter in knowing what to report and where to report it. The Department will work to ensure that training is available and plans to develop training that can be viewed by video. The Department does not know if public school teachers are required to have such training, but understands that teachers have had significant formal education in child development and that schools and counties offer ongoing professional development to teaching staff in the area of child development and communication with families.

Comment Summary:

7.9 Staff Qualifications: We struggle to employ qualified workers, especially for part-time positions. A solution would be to employ mature high school students who would work under the direct supervision of another adult. Maryland permits aides to be 16 years of age and work under supervision with 6 clock hours of training per year. Tennessee permits 16 and 17 year olds that are enrolled in a Department recognized program to count in staff:child ratio, provided they are not left alone with a group of children and are supervised by an adult. Virginia permits aides to be 16 years of age and count in staff:child ratio. Kentucky permits a 16 year old enrolled in an approved curriculum to be used as a staff person. North Carolina permits those under the age of 18 to work under the direct supervision of a credentialed staff person who is at least 21 years of age. We recommend that 16 year olds who have started their child-care training to be counted n ratio while working under the direct supervision of an adult worker. We take the position that permitting a mature high school student into the child care work-force will significantly improve the pool of available workers.

Response:

As noted in Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Out-of-Home Child Care Programs, Second Edition "... age 18 is the earliest age of legal consent. Mature leadership is clearly preferable. Age 21 allows for the maturity necessary to meet the responsibilities of managing a center or independently caring for a group of children who are not one's own.... Caregivers are chosen for their knowledge of, and ability to respond appropriately to, the general needs of children ...and the unique characteristics of individual children."

The Department further believes that it would be unwise and unfair for a center to place the accountability of compliance to the rule upon a person who otherwise is not viewed as an adult who can provide legal consent and mature judgment. However, we agree that a mature student who is enrolled in an approved training program, is under the direct supervision of a qualified group leader and does not work alone may count in the staff:child ratio. Regulation has been revised.

Comment Summary:

7.9.c. Some programs rely on group leaders that have numerous years of experience but no college credits.

Response:

The rule allows for experience.

§ 78-21-8. Environment.

Comment Summary:

8.2.c. requiring outdoor areas. Some programs do not have access to outdoor areas if they are located in downtown areas.

Response:

The National After School Association Standards for Quality School-Age Care, states the following regarding appropriate environment: An appropriate environment for school-age care has sufficient and clean space for indoor and outdoor activities, attractive and welcoming décor, appropriate space, and supplies and furnishings to support the program's activities. Specifically, NAA encourages programs to have ... outdoor play equipment. The standards should require regular safety checks of indoor and outdoor settings.

Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Out-of-Home Child Care Programs, Second Edition, states the following: Outdoor play is not only an opportunity for learning in a different environment; it also provides many health benefits. Generally, infectious disease organisms are less concentrated in outdoor air than indoor air. Light exposure of the skin to sunlight promotes the production of Vitamin D that growing children require. Open spaces in outdoor areas, even those confined to screened rooftops in urban play spaces encourage children to develop gross motor skills and fine motor play in ways that are difficult to duplicate indoors.

Statements taken from Testimony of Kenneth Ginsburg, Md, Ms Ed, Faap On Behalf of The American Academy of Pediatrics : "Play in an outdoor, natural environment allows children to explore both their world and their own minds. ... Play [outdoors] provides children with opportunities for self-directed physical activity that can help promote physical health and reduce obesity."

The outdoor activity area can be located nearby and the space is required only if the program operates more than four hours on a routine basis. The benefits to children's health and development provided by outdoor activity cannot be ignored. No change will be made to the regulation.

Comment Summary:

8.3.h. should be waived for programs operating under the public school system since it is the responsibility of the county Board to maintain equipment.

Response:

See "Response to General Comments".

§ 78-21-9. Supervision of Children.

Comment Summary:

9.5 Requiring a second adult during routine transport will impose a financial hardship on out-of-school time programs and thus risk decreasing program availability for working families. A second qualified staff member is absolutely necessary for field trips or extended travel, however for routine

daily transportation within the community, a properly trained bus driver with a good emergency plan is adequate for basic health and safety. However, staff:child ratio should be maintained, so if a Pre-k student were present on the vehicle then a ratio of 1:12 would apply.

Response:

Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Out-of-Home Child Care Programs, Second Edition, states the following: "Child:staff ratios established for out-of-home child care shall be maintained on all transportation the facility provides or arranges. The driver shall not be included in the ratio. No child of any age shall be left unattended in a vehicle. RATIONALE: Children must continue to receive adequate supervision during transport. Placement of a child in a vehicle does not eliminate the need for supervision. Drivers must not be distracted from safe driving practices by being simultaneously responsible for the supervision of children."

The Department has compromised and moved from the above position stated in Caring for Our Children with its wording in the rule as proposed. The Department recognizes that transportation is essential for many families in order for their children to take advantage of programs offered, therefore, if a program is using a bus driver that has been trained by the public school system for transporting children (which is beyond what is required in the proposed rule) and is utilizing a school bus, then we suggest the center request a variance to the rule providing justification similar to that in the comment. No change is made to the regulation.

§ 78-21-10. Program.

No comments.

§ 78-21-11. Guidance and Discipline .

No Comments.

§ 78-21-12. Nutrition.

Comment Summary:

Nutrition guidelines should be waived for those participating in the CACFP.

Response:

The proposed rule follows the CACFP guidelines, therefore a program participating in that program would meet the regulation. A waiver is not necessary, but a program may request one if it wishes.

Based on guidance from the Office of Child Nutrition, the table and notes in Appendix A describing the *Dietary Guidelines For Americans* has been removed, but is still referenced.

Comment Summary:

12.2.d. In our program children are continuously coming and going. If we participate in the CACFP supper program must we also provide a snack?

Response:

The rule's intent is that a child would go no longer than 4 hours without a nutritious meal or snack with the assumption that the child has not had an

afternoon snack served by the school before the school day ended. There cannot be a reasonable expectation that the program knows if the child has eaten if a child is coming and going out of the program's care. If the child will be in the program longer than four hours and the program serves supper, but no snack, when is supper served? This needs further evaluation with the program and with the Office of Child Nutrition. No change to the regulation.

§ 78-21-13. Required Reporting to the Department.

No Comments.

§ 78-21-14. Emergency Procedures.

No Comments.

§ 78-21-15. Pest management.

No Comments.

§ 78-21-16. Transportation.

No Comments.

§ 78-21-17. Medication Administration.

No Comments.

§ 78-21-18. Enforcement Actions.

No Comments.

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

No Comments.

Contributors identified for requirement specific comments: Rosemary Anderson, Director, Anchor 21st CCLC, Wheeling; Melissa Colagrosso, Director, A Place To Grow, Fayetteville; Kent Estep, Pastor, South Charleston First Nazarene; Dennis Paluga, Boys and Girls Clubs, Morgantown; Verbie Helyger, Director, Harambee, Charleston; Stefani Pierson, Boys and Girls Clubs, Martinsburg; Zachary Zdanek, PATCH 21st CCLC, Spencer.

General comments regarding the rule:

- 21st Century Community Learning Centers staffed by regular school employees with certified teachers should be exempt from the rule. The program is academic in nature and we do not consider our program a child care center. Avis Caynor.
- This rule falls in line with what child care centers are currently doing. It is good to have regulations that are consistent for any program that serves school age children since there are certain things that need to be done by all to ensure safety for the children. It would be helpful to have all the school age regulations together. Not Identified.
- Afterschool programs have operated without licensing for years and only the child care centers complain who feel these programs take children from

their center. I know the afterschool program is not a center when I register my child; if I wanted my child to attend a child care center I would send him to one. Creating red tape risks shutting down good programs. Some are staffed by volunteer teachers; how do you regulate that? Not Identified.

- Of course out-of-school time programs should be licensed, but do not require centers already licensed for school age care have to get another license. Not Identified
- 21st CCLC should be exempt. Being included in the policy could cause extra expenses and those extra expenses could inhibit successful functioning. Not identified
- I do not see a need for 21st CCLC to be covered by this regulation. The program is held to a high standard by the WVDE. My program is staffed by certified teachers, held in school buildings, transportation is provided by the system's school buses and the program is seamless from the school day. Not identified
- We need a clear understanding of when school age groups can mix when the program serves children 6-18 years of age. We have concerns about the cost of meeting facility requirements. Concerns regarding additional time and cost associated with new staff hires and needing to fill positions immediately. Stefani Pierson, Boys and Girls Clubs, Martinsburg.
- I believe the licensing requirements are appropriate as written. George H. Reinberg
- I would recommend using specific ages. Children under the age of six or seven, regardless of their placement in school, may not have the ability to self regulate. However, using ages could also present a problem for children with mental disabilities so there may need to be a qualifying statement such as: children under the age of six and diagnosed mental age under the age of 6. Mary Jo Graham
- Congratulations for such a great draft so quickly. This rule seems to bring after school regulations in line with current child care center regulations and is a step in the right direction. Verbie Helyger
- I read the draft and feel it covers all areas of care. Karen Morgan, Director, St. Joseph's Day Care Center.
- We recommend the language of the law be changed or 21st CCLCs under the WVDE be exempt. This rule will make it harder to involve high school students, community members and parents to help instruct after school programs. Zach Zdanek, PATCH 21st CCLC, Spencer.
- WV Alliance of Boys and Girls Clubs propose language to exempt those programs from regulation:

West Virginia exempts any "neighborhood youth development" organization from child care licensing requirements providing:

- A. The program is affiliated and in good standing with a national Congressionally chartered organization and thereby adheres to that organization's standards;
- B. The program provides activities designed for recreational, educational, and character building purposes for children ages 6-18;
- C. The governing body of the program adopts standards for care, that at a minimum include staff ratios, staff training, health and safety standards and mechanisms for assessing and enforcing the program's compliance with the standards;
- D. The program does not collect compensation for its services except one time annual membership dues not to exceed \$50 per year or program service fees for special activities (i.e. field trips or sports leagues);
- E. The program informs each parent that licensing does not regulate the operations;
- F. The program provides a process to receive and resolve parental complaints;
- G. The program conducts national criminal background checks for all employees and volunteers who work with children. The checks must also include background screening information from the Federal Bureau of Investigation.

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

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES LEGISLATIVE RULES
TITLE 78, SERIES 21
OUT-OF-SCHOOL-TIME
CHILD CARE CENTER LICENSING REQUIREMENTS
2010

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

RECEIVED

2009 JUL 31 PM 3:17

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

SECRETARY OF STATE
STATE OF WEST VIRGINIA

§ 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.d.3. A professional not associated with the center, but contracted to provide services for brief periods to the children under the supervision of program staff.

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 at least 16 years old and not yet 18 years old may count in the staff: child ratio provided the intern is in a field of study related to child care as approved by the Secretary, works under the direct supervision of at least a group leader and acts only in an aide capacity not having final decision making authority

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.

78-21-12. 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 (Benydril®) 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 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 |
| 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 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 cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains | 1/2 slice 1/2 serving 1/4 cup 1/4 cup 1/4 cup | 1/2 slice 1/2 serving 1/3 cup 1/4 cup 1/4 cup | 1 slice 1 serving 3/4 cup 1/2 cup 1/2 cup |
| 1 meat/meat alternate meat or poultry or fish ⁴ or alternate protein product or cheese or egg ⁵ or cooked dry beans or peas or peanut or other nut or seed butters or nuts and/or seeds or yogurt ⁶ | 1/2 ounce 1/2 ounce 1/2 ounce 1/2 egg 1/8 cup 1 Tbsp. 1/2 ounce 2 ounces | 1/2 ounce 1/2 ounce 1/2 ounce 1/2 egg 1/8 cup 1 Tbsp. 1/2 ounce 2 ounces | 1 ounce 1 ounce 1 ounce 1/2 egg 1/4 cup 2 Tbsp. 1 ounce 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.