



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

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

AGENCY: Human Services TITLE-SERIES: 78-21  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 78-21 Out-of-School Time Child Care Center

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: 49-2-121

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

**STATUTORY AUTHORITY**

The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with W. Va. Code §29A-3-1 et seq. to implement the all of the provisions of W. Va. Code §49-2-121 et seq. The Department of Health and Human Resources is empowered to enact each provision of W. Va. Code of State Rules 78- 21 by the authority specifically found in W. Va. Code §49-2-121.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/26/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: Yes

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

**BRIEF SUMMARY OF THE RULE**

The proposed revisions in the out of school time child care licensing rule addresses comprehensive caregiver background checks, pre-service training and tuberculosis risk assessment. The proposed changes to the criminal background and pre-service training coincide with the 2014 Child Care and Development Block Grant (CCDBG) Act.

In addition, the proposed change of a tuberculosis risk assessment upon hire (as opposed to annually as previously required) is proposed based upon the passage of West Virginia House Bill 2669 in 2015, the Center for Disease Control's recommendation and the fee for service implemented at various West Virginia Health Departments. Other proposed revisions are simply numerical changes due to the revision and addition of new regulations.

**STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:**

The CCDBG Act of 2014 added new requirements for States and Territories receiving CCDF funds to conduct criminal background checks on child care staff members and prospective staff members of child care providers. States and Territories are required to have requirements, policies, and procedures in place to conduct criminal background checks for staff members of child care providers (other than relatives) that are licensed, regulated or registered under State/Territory law or receive CCDF funds. Background check requirements apply to any staff member who is employed by a child care provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. For family child care homes, this includes the caregiver requesting a check of him/herself, as well as any other individuals in the household that may have unsupervised access to children. These provisions must be in place no later than September 30, 2018.

The CCDBG Act of 2014 specifies what a comprehensive criminal background check includes and a child care provider must submit a request to the appropriate State/Territory agency for a criminal background check for each child care staff member, including prospective child care staff members at least once every 5 years. A criminal background check must include a search of: State criminal and sex offender registry in the State where the staff member resides and each State where the staff member has resided over the past 5 years; State child abuse and neglect registry in the State where the staff member resides and each State where the staff member has resided over the past 5 years, National Crime Information Center (run by the FBI); FBI fingerprint check using Next Generation Identification and an adult and child protective services check in the state where the staff member resides and any state where the staff member has resided for the previous 5 years.

**SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:**

**A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:**

At this time, the fiscal impact of this rule is not able to be determined. This proposed rule is in response to a federal rule requirement as a result of the Child Care Development Block Grant reauthorization. With the implementation of the proposed regulation, child care providers will begin paying for the criminal background checks. With the move to WV CARES, it is anticipated that licensed providers will incur a cost of \$54.25 per person (staff members and volunteers). Registered providers such as Informal/Relative and Family Home Child Care providers will also incur the cost for themselves and any household member 18 and older. That cost included a \$20 prescreening fee that is paid to WV Cares and a \$34.25 fee paid to MorphoTrust to conduct LiveScan fingerprints. If, during the prescreening process, it is determined that the individual was convicted of a crime that prohibits the individual to work in child care, no further fees will be paid. The number of background checks needing to be conducted is unknown at this time; therefore, no projection of revenue can be completed.

**B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:**

At this time, the fiscal impact of this rule is not able to be determined. This proposed rule is in response to a federal rule requirement as a result of the Child Care Development Block Grant reauthorization. With the implementation of the proposed regulation, child care providers will begin paying for the criminal background checks. With the move to WV CARES, it is anticipated that licensed providers will incur a cost of \$54.25 per person (staff members and volunteers). Registered providers such as Informal/Relative and Family Home Child Care providers will also incur the cost for themselves and any household member 18 and older. That cost included a \$20 prescreening fee that is paid to WV Cares and a \$34.25 fee paid to MorphoTrust to conduct LiveScan fingerprints. If, during the prescreening process, it is determined that the individual was convicted of a crime that prohibits the individual to work in child care, no further fees will be paid. The number of background checks needing to be conducted is unknown at this time; therefore, no projection of revenue can be completed.

**C. FISCAL NOTE DETAIL:**

<b>Effect of Proposal</b>	<b>Fiscal Year</b>		
	<b>2017 Increase/Decrease (use "-")</b>	<b>2018 Increase/Decrease (use "-")</b>	<b>Fiscal Year (Upon Full Implementation)</b>
<b>1. Estimated Total Cost</b>			
<b>Personal Services</b>			
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>			

**D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):**

NA

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.**

78CSR21

TITLE 78  
LEGISLATIVE RULE

~~(Technical Changes Only as Allowed by W. Va. Code §29A-1-3a)~~  
DEPARTMENT OF HUMAN SERVICES

SERIES 21  
OUT-OF-SCHOOL-TIME CHILD CARE CENTER LICENSING REQUIREMENTS

**§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 W. Va. Code Chapter 49, Article 2 (Part I), 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](http://www.legis.state.wv.us).~~

1.2. Authority. -- W. Va. Code §49-2-121.

1.3. Filing Date. -- ~~June 25, 2015.~~

1.4. Effective Date. -- ~~July 1, 2010.~~

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

1.6. Purpose. -- This rule governs the regulation of Out-of-School Time programs in West Virginia.

**§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 78CSR21.7.5 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 78CSR1, 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 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 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child, except those facilities, centers, programs, and individuals set forth in W. Va. Code Chapter 49, Article 2, (Part I).

3.8. Child Care Setting -- Any regulated setting providing child care services to children, typically between 6 weeks through 12 years of age to include relative and informal child care homes, family child care homes, family child care facilities, child care centers and Out-of-School Time programs.

~~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 Criminal History Background Check -- A review of information pursuant to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act (WV CARES), W. Va. Code §§16-49-1 et seq., and W. Va. Code R. §§69-10-1, et seq., and an examination of protective service records to determine eligibility for employment or participation under this rule.

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

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

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

3.123. Group. -- A specific number of children, distinct from the larger population of children, who interact with each other and with 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.

3.134. 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.

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

3.156. 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.

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

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

3.178.a. Failure to administer a dose of medication;

3.178.b. Administering medication to the incorrect child;

3.178.c. Administering medication in the incorrect dosage;

3.178.d. Administering medication at the incorrect time, other than within 30 minutes before or after the scheduled time;

3.178.e. Administering medication in the incorrect form;

3.178.f. Administering medication by the incorrect method or route; or

3.178.g. Administering medication that is incorrect itself.

3.189. 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.

3.19.20. 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.

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

3.221. 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).

3.232. 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).

3.24. Pre-service Training -- Training completed by all child care staff and applicable volunteers as required by the S1086 Child Care and Development Block Grant (CCDBG) Act of 2014, Section I. Health and Safety Requirements (I-XII).

3.235. 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.

3.246. 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.

3.257. 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.

3.268. 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 12 years of age.

3.279. Relevant Work Experience. -- Work that is directly with or on behalf of children from birth through 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 can be verified.

3.2830. 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.

~~3.301. Secretary. -- The Secretary of the Department of Health and Human Resources or his or her designee.~~ School-age Child. -- A person who is between 5 and 13 years of age and is eligible to attend school or is enrolled in grades K-12.

~~3.312. School-age Child. -- A person who is between 5 and 13 years of age and is eligible to attend school or is enrolled in grades K-12.~~ 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.

3.2933. Secretary. -- The Secretary of the Department of Health and Human Resources or his or her designee.

3.34. Self-disclosure Application and Consent form -- A signed declaration of criminal convictions, indictments, and court ordered supervision, and authorization to allow a criminal history background check.

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

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

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

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

3.35.d. A medication error that occurs;

3.325.de. A legal action involving or affecting the operation of the program;

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

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

~~3.346. Staff Member. -- Any program personnel, including substitutes and student interns, whether or not he or she receives compensation.~~ Staff: Child Ratio. -- A relationship which describes the number of children that 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.

~~3.337. Staff Member.~~ -- Any program personnel, including substitutes and student interns, whether or not he or she receives compensation.

~~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.~~

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

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

3.3840. Teen Aide. -- An individual who is between 13 and 18 years of age who works with or without compensation under direct supervision.



~~3.394~~1. 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.

3.402. 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.

3.413. Volunteer. -- An individual who provides a direct service to the program for 2 or more hours a week on a scheduled basis, without compensation, and is 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.

3.424. 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; and

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 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 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 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 W. Va. Code Chapter 49, Article 2 (Part I), 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; and

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 6 month license for applicants establishing a new service;

4.5.b. A regular or renewal license for a period of up to 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 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 W. Va. Code § 49-2-117, 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 W. Va. Code § 29A-5-1 et seq.

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 W. Va. Code § 49-2-120 .

#### **§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 W. Va. Code Chapter 49, Article 2 (Part I) 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 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 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; and

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 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, substantiated abuse and neglect findings and, if applicable, a waiver or variance 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 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 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 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 3 months, 6 months, and 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 3 professional references for the program director and 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 successful completion of approved pre-service training; 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.c. 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, pursuant to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act (WV CARES), W. Va. Code §§16-49-1 et seq., and W. Va. Code R. §§69-10-1, et seq.~~ and shall keep the following information on file:

7.4.b.1. ~~A completed, signed and witnessed Statement of Criminal Record~~ WV CARES self-disclosure application and consent form. A copy of the ~~statement form~~ shall be uploaded to the WV CARES system and on file no later than the date of hire;

7.4.b.2. ~~A CIB records check, except as described in this subsection~~ fitness determination of eligibility from the WV CARES unit;

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 5 years, or has established residence outside West Virginia for more than 1 year since turning 18 years of age;~~ variance or waiver if the individual has convictions or pending charges of disqualifying offenses; and

7.4.b.4. A report of the search of the state-based child abuse and neglect registries and databases in the state where the child care staff member or volunteer currently resides, and in each state where staff member or volunteer resided during the preceding five years.

~~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.c. A program does not require a criminal records check on the following:

7.4.d~~c~~.1. A new staff member who has on file at the program documentation of the required criminal history investigation~~(s)~~ within the previous ~~12 months~~ 180 days;

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

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

7.4.ed. No person shall work alone with a child or children prior to the center receiving the required ~~CIB, FBI and Protective Services reports~~ fitness determination of eligibility from the WV CARES unit.

7.4.fe. The Secretary may require a ~~CIB or FBI~~ criminal background check for good cause.

7.4.gf. A program shall require an individual over 13 and under 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 2 years; and~~

~~7.4.h.2. The completed CIB and, if required, FBI report at least every 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,~~ has pending charges, 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:~~ disqualifying offenses as defined in W. Va. Code §16-49-1(8) and W. Va. Code R. §69-10-2.10, or other crimes that the Secretary determines may pose a risk to children.

~~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 10 years;~~

~~7.5.a.7. Neglect or abuse by a caregiver; 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 or more misdemeanor crimes that are not listed in~~ Subdivision 7.5.a. a disqualifying offense unless the Secretary grants a waiver or variance.

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 or variance.

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,~~ pending charge, indictment, or conviction for a criminal offense to the program director within 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 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 or variance for an employee, then it shall have policies and procedures regarding waivers or variances 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 or variance 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 40 hours per month in the program. ~~Those employed at the time this rule takes effect shall have 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, that is on file upon hire.

7.6.e. Staff health records as described in this section shall be updated every 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 63 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; and

7.7.d.2. Abuse Recognition and Prevention. Within 6 3 months of employment or use, staff members shall have training in child abuse recognition and prevention; 2

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

7.9.a.4. 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.5. 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. Be responsible for the day-to-day operation of a single site;

7.9.b.4. Report to the program director; and

7.9.b.5. 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 1 year of supervised relevant work experience;

7.9.c.3. Be able to supervise and implement program activities for a group of children with or without assistance; and

7.9.c.4. 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 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; and

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; and
- 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 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 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 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 4 feet high and has no openings greater than 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 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; and

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 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 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 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 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 7 o'clock in the evening shall serve supper; and

12.2.d. An out-of-school-time program shall serve a snack or meal to the school-age child within 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 W. Va. Code § 49-2-801 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 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; and

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 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 1 time during the school calendar year.

14.5. First Aid Kit. A center shall provide a first aid kit for every 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 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 W. Va. Code § 17C-12-7a;

16.2. ~~By September 1, 2012, a~~Any vehicle used for transportation that has a capacity that exceeds 10 passengers meets the National Highway Traffic Safety Administration (NHTSA) standards for a school bus. ~~Provided, that any~~Any vehicle used ~~prior to September 1, 2012~~ for transportation that has a capacity that exceeds 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<sup>2</sup>.

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 3 consecutive days within a 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 5 consecutive days within a 30 day period without written instruction from a licensed health care provider. Sunscreens or lip balms used for preventative purpose are excluded from this requirement;

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

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

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



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

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

**§78-21-18. Enforcement Actions.**

The secretary may revoke or make a license provisional, or issue an order of closure to a Child Care Center in accordance with W. Va. Code § 49-2-117.

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

19.1. In accordance with the provisions of W. Va. Code § 49-2-105, a child care center may seek an administrative review of a decision made by the Secretary by requesting a hearing within 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 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 78-21-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**

<b>Food Components</b>	<b>Ages 1-2</b>	<b>Ages 3-5</b>	<b>Ages 6-12<sup>1</sup></b>
<b>1 milk</b> fluid milk	1/2 cup	3/4 cup	1 cup
<b>1 fruit/vegetable</b> juice, <sup>2</sup> fruit and/or vegetable	1/4 cup	1/2 cup	1/2 cup
<b>1 grains/bread<sup>3</sup></b> 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

<sup>1</sup> 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.

<sup>2</sup> Fruit or vegetable juice must be full-strength.

<sup>3</sup> 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**

<b>Food Components</b>	<b>Ages 1-2</b>	<b>Ages 3-5</b>	<b>Ages 6-12<sup>1</sup></b>
<b>1 milk</b> fluid milk	1/2 cup	3/4 cup	1 cup
<b>2 fruits/vegetables</b> juice <sup>2</sup> , fruit and/or vegetable	1/4 cup	1/2 cup	3/4 cup
<b>1 grains/bread<sup>3</sup></b> 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
<b>1 meat/meat alternate</b> meat or poultry or fish <sup>4</sup> 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 <sup>5</sup> or	1/2 ounce	3/4 ounce	1 ounce
yogurt <sup>6</sup>	4 ounces	6 ounces	8 ounces

<sup>1</sup> 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.

<sup>2</sup> Fruit or vegetable juice must be full-strength.

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

<sup>4</sup> A serving consists of the edible portion of cooked lean meat or poultry or fish.

<sup>5</sup> 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.

<sup>6</sup> Yogurt may be plain or flavored, unsweetened or sweetened.

**Child Meal Pattern  
Snack**

**Select Two of the Four Components for a Reimbursable Snack**

<b>Food Components</b>	<b>Ages 1-2</b>	<b>Ages 3-5</b>	<b>Ages 6-12<sup>1</sup></b>
<b>1 milk</b> fluid milk	1/2 cup	1/2 cup	1 cup
<b>1 fruit/vegetable</b> juice <sup>2</sup> , fruit and/or vegetable	1/2 cup	1/2 cup	3/4 cup
<b>1 grains/bread<sup>3</sup></b> 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
<b>1 meat/meat alternate</b> meat or poultry or fish <sup>4</sup> or	1/2 ounce	1/2 ounce	1 ounce
alternate protein product or	1/2 ounce	1/2 ounce	1 ounce
cheese or	1/2 ounce	1/2 ounce	1 ounce
egg <sup>5</sup> or	1/2 egg	1/2 egg	1/2 egg
cooked dry beans or peas or	1/8 cup	1/8 cup	1/4 cup
peanut or other nut or seed butters or	1 Tbsp.	1 Tbsp.	2 Tbsp.
nuts and/or seeds or	1/2 ounce	1/2 ounce	1 ounce
yogurt <sup>6</sup>	2 ounces	2 ounces	4 ounces

<sup>1</sup> 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.

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

- <sup>3</sup> Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.
- <sup>4</sup> A serving consists of the edible portion of cooked lean meat or poultry or fish.
- <sup>5</sup> One-half egg meets the required minimum amount (one ounce or less) of meat alternate.
- <sup>6</sup> Yogurt may be plain or flavored, unsweetened or sweetened.