



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: 78-18
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 78-18 Family Child Care Facility Licensing Requirements

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. The Department of Health and Human Resources is empowered to enact each provision of W. Va. Code of State Rules 78-18 by the authority specifically found in W. Va. Code § 49-2-121.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2017

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 family child care facility licensing requirements address 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 of 2014. 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.

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE RULE

A family child care facility serves groups seven (7) to twelve (12) children. Family child care facility licensing regulation is governed by West Virginia Code Chapter 49, Article 2 (Part I). Family child care facility settings in West Virginia must be licensed per WV Code 49-2-114. West Virginia Code Chapter 49, Article 2 (Parts I & II), charges DHHR with the responsibility to assure proper and appropriate child care is given and maintained. It further grants the power to promulgate rules governing child care, established penalties for failure to comply with rules, sets conditions for regulation, and establishes requirements for supervision, monitoring and investigation. Supervision by the Department of licensing is required by WV Code 49-2-116. Supervision is to ascertain compliance with the rules and is conducted through regular monitoring, visits, documentation, evaluation and reporting.

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, 2017. 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 National Sex Offender Registry.

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 unknow 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 unknow at this time; therefore, no projection of revenue can be completed.

C. FISCAL NOTE DETAIL:

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

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

TITLE 78
LEGISLATIVE RULES

DEPARTMENT OF HEALTH AND HUMAN RESOURCES
SERIES 18
FAMILY CHILD CARE FACILITY LICENSING REQUIREMENTS

§78-18-1. General.

1.1. Scope -- The purpose of this legislative rule is to establish minimum standards of acceptable care, protection and supervision for children in family child care facilities and to provide a uniform standard of enforcement statewide for the licensure of family child care facilities. The rule is intended to promote the health, safety and well-being of children placed in family child care facilities and to enhance their growth and development.

1.2. Authority -- West Virginia Code, §49-2-121.

1.3. Filing Date. -- ~~April 28, 2016~~

1.4. Effective Date. -- ~~July 1, 2016.~~

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 family child care facilities in West Virginia.

§78-18-2. Application and Enforcement.

2.1. Application -- This rule applies to any family child care facility that operates in West Virginia.

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

§78-18-3. Definitions.

3.1. Approved Training -- Instruction or training approved by the Secretary or provided by a trainer approved or sponsored through the West Virginia State Training and Registry System (STARS).

3.2. Child Abuse and Neglect -- Personal injury, mental or emotional injury, sexual abuse, sexual exploitation, the sale or attempted sale or negligent treatment or maltreatment of a child by a parent responsible for the child's welfare.

3.3. 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.

3.34. Core Knowledge/Core Competencies of Early Childhood Educators -- Skills and knowledge that represent common standards of practice in the early childhood field in areas including child development; health, safety and nutrition; positive interactions and relationships; curriculum; child observation and assessment; family and community; program management; and professionalism.

3.45. Criminal History Background Check -- ~~A process, including but not limited to fingerprinting, used to identify a person who has been arrested or convicted of criminal behavior.~~ 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.

3.56. Disinfect -- Eliminate most germs from a contact surface through the use of heat or chemical disinfectants, such as the bleach solution listed in Appendix 78-18-A of this rule.

3.67. Family Child Care Facility Operator -- A person designated as responsible for the ongoing daily operations of the family child care facility. This person may be the owner of the facility or an employee of the owner.

3.78. Infant -- A child less than twelve (12) months of age.

3.89. Parent -- A parent by blood, marriage, or adoption, or a legal guardian or other person standing in loco parentis.

3.910. Plan of Correction -- A written agreement completed by the Department and the family day care facility operator and/or owner in response to deficiencies identified by the Department as the result of an inspection and/or the investigation of a complaint. The plan of correction shall describe the steps the operator shall take to correct the deficiencies. The Secretary shall review and accept the plan prior to its implementation.

3.11. 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).

3.102. Pre-Schooler -- A child between the ages of two (2) and four (4) years of age.

3.113. Revocation -- The termination of a licensure when a family child care facility fails to maintain the minimum requirements established by the Department under this rule.

3.124. School-Age Child -- A child age five (5) years to thirteen (13) years of age.

3.15. Self-disclosure Application and Consent Form -- A signed declaration of criminal convictions, indictments, and authorization to allow a criminal history background check.

3.136. Serious Communicable Diseases or Conditions -- Include, but are not limited to measles, mumps, rubella, chicken pox, strep or streptococcal infections, hepatitis, impetigo, infestations of lice or scabies, diarrhea and/or vomiting, pertussis, tuberculosis, conjunctivitis and pneumonia.

3.147. Significant Developmental Delay -- A delay of at least twenty-five (25) percent in one (1) or more areas of development, or a six (6) month delay in two (2) or more areas as determined by an early intervention program, special education program or other multi-disciplinary team.

~~3.15. Statement of Criminal Record -- A signed declaration of criminal convictions, arrests, indictments, and authorization to allow a criminal history background check.~~

3.168. Substitute -- An individual who cares for children when the caregiver is absent and is responsible to the facility owner.

3.179. Toddler -- A child between the ages of twelve (12) and twenty-four (24) months.

3.1820. Universal Precautions -- Procedures for infection control, as listed in Appendix 78-18-B of this rule, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids that might contain blood.

§78-18-4. Certificate of License Procedures.

4.1. Application for License.

4.1.a. Any family child care facility that operates in West Virginia shall apply for and obtain a certificate of license from the Secretary before beginning operations and accepting children for care.

4.1.b. A family child care facility shall submit an application for renewal of a current license at least sixty (60) days before expiration of the current certificate of license.

4.1.c. Applications for licensure as a family child care facility shall be made separately for each facility to be licensed.

4.2. General Requirements.

4.2.a. A certificate of license is not transferable to a third party and applies only to a facility and its location as stated in the application for licensure.

4.2.b. If the ownership of a facility changes, the new owner shall submit an application for a certificate of license. The facility shall not operate until a certificate of license has been issued by the Secretary.

4.2.c. The certificate of license shall be publicly displayed.

4.2.d. A family child care facility may be located in the provider's residence or a separate building.

4.3. Departmental Action on Applications for Certificate of License. Within sixty (60) days of receipt of an application, the Secretary shall provide a written decision to the family child care facility that does one of the following:

4.3.a. Issues an initial six (6)-month license to an applicant establishing a new service found to be in compliance on initial review with regard to policy, procedure, risk management, human resources, service environment and record-keeping rules;

4.3.b. Issues a regular certificate of license to a facility that complies with the provisions of the West Virginia Code § 49-2-101 and the requirements of this rule. A regular license is valid for a period of up to two (2) years from the date of issuance unless revoked or modified to a provisional status;

4.3.c. Issues a provisional certificate of license to a facility that is not in compliance with the provisions of this rule, if operation does not pose a significant risk to the rights, well-being, and health and safety of children. A provisional license expires no more than six (6) months from the date of issuance and may not be reissued unless the recommendation is that of the State Fire Marshal; or

4.3.d. Denies the application for license if the facility does not substantially comply with the requirements of this rule.

4.4. Terms and Conditions of Licensure.

4.4.a. The Department shall inspect every certified family child care facility prior to issuing a certificate of license to determine compliance with this rule.

4.4.b. The Secretary shall have immediate and open access to the premises of a facility and to all aspects of a facility's operation, including personnel, children in care, household members, and records of each facility, including, but not limited to, case records on children and personnel, corporate, and financial records. Inspections may be made with or without prior notice as a condition of licensure.

4.4.c. Applicants shall maintain compliance with applicable rules of the Bureau for Public Health, and the State Fire Marshall, and the Department of Agricultural Pest Management at all times.

4.4.d. Prior to implementing any significant change in its program that was not included in its initial application for a certificate of license, a facility shall submit an application for an amendment to its certificate of license.

4.5. Limitations on a Certificate of License.

4.5.a. The Secretary may place limitations on a certificate of license based on findings of:

4.5.a.1. Insufficient space in the facility;

4.5.a.2. Inadequate sleeping areas;

4.5.a.3. The provision of other home-based services such as foster care and adult family care; or

4.5.a.4. Non-compliance issues that require a plan of correction approved by the Secretary.

4.5.b. Limitations may apply to:

4.5.b.1. The age, sex, and type of problems of the children in care;

4.5.b.2. The intake of additional children; or

4.5.b.3. The total number of children in the home.

4.6. Waivers and Variances.

4.6.a. A family child care facility may request a waiver or variance of any requirement in this rule if:

4.6.a.1. The health, safety or well-being of children in the home is not adversely affected; and

4.6.a.2. The rule does not prohibit a waiver or variance for the requirement.

4.6.b. The request for waiver or variance shall be in writing, addressed to the Secretary, and shall include the following information:

4.6.b.1. The specific requirement to be waived or varied;

4.6.b.2. The reasons for seeking a waiver and why a specific requirement should not be applied in a particular circumstance; and

4.6.b.3. The reasons for seeking a variance and how compliance with a specific requirement of this rule can be accomplished in a manner different from that set forth in West Virginia Code § 49-2-101 or in this rule.

4.7. Closure of a Family Child Care Facility.

4.7.a. The Secretary may deny, refuse to renew, or revoke a license if the facility materially violates any provisions of West Virginia Code § 49-2-101 violates any terms or conditions of the certificate of license, or fails to maintain established requirements of child care.

4.7.b. If the Secretary finds that the operation of a family child care facility constitutes an immediate danger of serious harm to children served by the facility, the Secretary shall issue an order of closure terminating the operation of the facility.

4.7.c. A facility ordered closed by the Secretary may not operate pending administrative or judicial review without a court order.

4.7.d. The pendency of administrative or judicial review shall not prevent the Secretary from obtaining injunctive relief pursuant to § 49-2-120 of the West Virginia Code.

§78-18-5. Inspection and Investigation.

5.1. Before issuing a certificate of license, the Secretary shall investigate the facility, its proposed program, and any persons responsible for the custody and care of children placed in that facility. This investigation shall include, but not be limited to, the following:

5.1.a. An evaluation of a facility's proposed services and the facility's ability to maintain compliance with this rule; and

5.1.b. A review of information including criminal history background checks, medical records, character and financial resources of the applicant, owners, employees, and other household members.

5.2. A facility shall cooperate in the investigation of complaints against the facility including submission of items such as health or psychological examinations, and other third party verifications.

§78-18-6. Administration of the Family Child Care Facility.

6.1. The operator and/or owner of a family child care facility shall administer the facility in a manner that complies with all of the requirements established for this category of care and all applicable Federal and State laws, ordinances, rules and regulations.

6.2. In addition to the certificate of license, the operator shall display the following items in a prominent place for review by parents and staff:

6.2.a. Current menus for all meals and snacks served by the facility;

6.2.b. An emergency exit plan and a record of the required monthly fire drills for the past twelve (12) months;

6.2.c. A copy of the "Family Child Care Facility Licensing Requirements" for use by staff and parents;

6.2.d. A daily activity schedule, including field trips; and

6.2.e. The most recent inspection reports from the State Fire Marshal and the Bureau for Public Health as required by this rule.

6.3. A facility shall obtain information about the child's developmental history, personal characteristics and special needs.

6.4. A facility shall maintain confidential records on the children that include the following information:

6.4.a. The child's full name, address, telephone number, birth date and date of enrollment;

6.4.b. Emergency contact information which shall be updated annually and shall include:

6.4.b.1. Home and work addresses and telephone numbers of the parents;

6.4.b.2. The names, addresses, and telephone numbers of any persons authorized to pick up the child;

6.4.b.3. The name of the child's physician or other health care provider; and

6.4.b.4. The names of emergency contact persons;

6.4.c. Health insurance coverage and policy number for the child;

6.4.d. Written authorization signed by the parents for emergency medical treatment transportation field trips and water activities;

6.4.e. A report of the child's most recent medical checkup, which shall be supplied by the parents within thirty (30) days of the child's enrollment. The facility shall provide parents with a West Virginia HealthCheck periodicity chart for child health exams and shall ensure that a child's health assessment is updated with new or current information at least every two (2) years for the child under the age of six (6) years;

6.4.f. A report of the child's most recent immunization records which shall be supplied by the parents based on the following guidelines:

6.4.f.1. Immunization records shall be updated every two (2) years and shall be completed based on the schedule recommended by the Department.

6.4.f.2. If immunizations are not current, the facility shall obtain a schedule for completion from the parent for the caregiver's files.

6.4.f.3. Exemption from immunization requirements shall be available for parents who provide a signed statement from a child's health care provider indicating that immunization is contraindicated based on the child's medical condition;

6.4.g. Daily attendance records which include the name of the provider, the parents' complete names, sign in/sign out information, and dates and times with the designation a.m. or p.m.;

6.4.h. Written reports of accidents, injuries or illnesses involving a child while at the facility;

6.4.i. Written consent and instructions signed by parents regarding medications or special dietary needs;

6.4.j. A statement of any special needs of the child including allergies, existing illness or injuries, previous illnesses or injuries and any medication prescribed for long-term continuous use; and

6.4.k. The names and telephone numbers of schools for all school-aged children.

6.5. Records on all staff including the operator, substitutes, and volunteers, as appropriate, shall include:

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

6.5.b. Documentation of the staff person's qualifications and education or training attended in relation to early childhood development, past employment and experience with children and a pre-service training certificate completed prior to hire;

6.5.c. Application forms or materials, if any, including at least two (2) letters of reference.

6.5.d. ~~Criminal record background information~~ Evidence of a completed criminal history background check for each individual volunteer, employee, or household member over the age of 18 including:

6.5.d.1. ~~A Statement of Criminal Record~~ WV CARES self-disclosure application and consent form signed by the ~~employee~~ individual indicating any past criminal conviction or any pending charges;

6.5.d.2. A ~~clearance~~ variance or waiver if the individual has convictions or pending charges of disqualifying offenses; and

6.5.d.3. ~~Criminal Identification Bureau clearances on all adult household members, if any; A fitness determination of eligibility from the WV CARES unit; and~~

6.5.d.4. An examination of the previous five years of protective services records for the state of West Virginia and any other state the individual has resided in as an adult.

~~6.5.e. A consent to check Department records for child and adult abuse and neglect;~~

6.5.f. Documentation of required medical examinations that:

6.5.f.1. Includes the results from a tuberculosis risk assessment screening, TB skin test, or chest x-ray;

6.5.f.2. Were completed no more than six (6) months prior to nor more than thirty (30) days after employment; ~~and,~~

~~6.5.f.3. Are repeated every two (2) years thereafter; and~~

6.5.g. Lists of regular volunteers and household members with documentation of tuberculosis risk assessment screening, TB skin test or chest x-ray, ~~and Criminal Identification Bureau checks.~~

6.6. A facility shall maintain all records in a confidential manner and shall not provide, release or make available information from any child's or employee's record except to:

6.6.a. Persons authorized by law;

6.6.b. The child or a parent of the child as defined in subsection 3.8 of this rule;

6.6.c. Persons authorized, in writing, by the parents of the child; and

6.6.d. Employees or representatives of the Department.

6.7. The facility shall maintain staffing schedules for up to twelve (12) months to demonstrate that the facility meets staff/child ratios.

6.8. The facility shall carry fire and liability insurance as a protection for the children in care. A copy of the current policy shall be maintained on file at the facility.

§78-18-7. Family Child Care Facility Personnel.

7.1. Staffing/Facility Capacity.

7.1.a. A family child care facility shall have two (2) staff members on duty who provide care for and supervision of the children if the facility provides care to more than two (2) children under twenty-four months of age or more than six (6) children at the same time.

7.1.b. No operator or staff member shall be used to meet staff/child ratios for more than two (2) consecutive eight (8)-hour shifts of care.

7.2. Substitutes.

7.2.a. The facility may use a substitute to allow for staff persons to take vacation or short term medical leave or to take care of routine appointments. However, use of a substitute shall be limited to no more than twenty (20) days, at eight (8) hour per day, per year, and the facility shall notify parents in advance when use of a substitute is necessary for non-emergency situations. Substitutes shall have approved training in cardio-pulmonary resuscitation, Sudden Infant Death Syndrome, Shaken Baby Syndrome and receive an orientation from the operator.

7.2.b. A regular substitute caregiver used more frequently than ~~twenty (20)~~ per year at eight (8) hours per day, ~~per year~~ shall meet the same qualifications that apply to new staff, including requirements with regard to criminal history background checks.

7.3. Programming of Children's Activities.

7.3.a. The operator shall provide a planned program of activities geared to the child's individual needs and developmental levels, which are designed to promote the development of language and thinking skills, large and small muscles, social skills, self-esteem, and positive self-image.

7.3.b. Daily activities shall provide the following:

7.3.b.1. Regularity of such routines as meals and nap periods with flexibility to respond to a child's individual needs;

7.3.b.2. A balance of active and quiet activities;

7.3.b.3. Individual and group activities;

7.3.b.4. Daily indoor and outdoor activities that make use of large and small muscles;

7.3.b.5. Participation in vigorous outdoor play whenever temperatures are above forty (40) degrees Fahrenheit and weather conditions permit;

7.3.b.6. Opportunities for children to select individual projects such as creative activities, crafts, games, or homework, and play independently, as well as to do activities that require adult involvement and supervision;

7.3.b.7. Sufficient time to complete activities without long waiting periods between activities or prolonged periods where the children must stand or sit;

7.3.b.8. Varieties of creative activities including arts and crafts, dramatic play, stories and books and science and building toys; and

7.3.b.9. Opportunities to practice self-help skills such as feeding, dressing, toileting, hand washing and grooming skills which foster independence in the child.

7.3.c. Age-appropriate books shall be read on a daily basis to children between the ages of six (6) months and five (5) years of age.

7.3.d. School age children shall be provided with opportunities to:

7.3.d.1. Have periods for rest and relaxation;

7.3.d.2. Select individual projects such as homework;

7.3.d.3. Become involved with friends their own age; and

7.3.d.4. Join in group play and community activities.

7.3.e. Television, video games and video tapes are allowed if the content is designed for and of benefit to a child and viewing time is limited. Adult programming rated "PG 13", "R", and "X" or song lyrics which contain either violent or sexually explicit scenes or language are prohibited.

§78-18-8. Guidance and Discipline.

8.1. Guidance The facility shall have a written policy on guidance of children which staff shall follow. The policy shall be consistent with the following guidelines:

8.1.a. The staff and parents shall discuss and agree upon positive methods of guidance that encourage a child's acceptable behavior;

8.1.b. The staff shall use guidance that helps a child understand appropriate behavior and is appropriate to the child's age;

8.1.c. A facility shall have rules that are fair, consistent, and relevant to the children's ages; and

8.1.d. Facility staff may use a time-out that is based on the following guidelines. Time-outs shall be used only:

8.1.d.1. As a supplement to positive approaches to discipline;

8.1.d.2. For the purpose of helping children regain control;

8.1.d.3. For brief periods of approximately one (1) minute for each year of a child's age;

8.1.d.4. After the caregiver has discussed the reason for the time-out with the child in a way that the child can understand; and

8.1.d.5. If children removed from groups remain under visual supervision and are never unattended or placed behind closed doors.

8.2. Discipline

8.2.a. A caregiver, household member, visitor, or substitute shall not use any of the following harmful forms of discipline:

8.2.a.1. Punishing a child physically including spanking, hitting, kicking, biting, shaking, swatting, thumping, pinching, popping, shoving, spitting, or other cruel treatment;

8.2.a.2. Punishing or threatening a child in association with food, sleep, rest, or toilet training;

8.2.a.3. Putting anything in or on a child's mouth as punishment;

8.2.a.4. Confining a child in a closet or locked room or using physical restraints for confinement;

8.2.a.5. Using loud, profane, or abusive language or threats of physical punishment;

8.2.a.6. Punishing a child psychologically including public or private humiliation, shaming, and negative remarks about the child or child's family;

8.2.a.7. Punishing a child emotionally including rejecting, terrorizing, ignoring, or isolating the child; and

8.2.a.8. Allowing a child to discipline other children.

8.2.b. A caregiver shall not seek or accept parental permission to use any punishments or acts prohibited in this rule.

8.2.c. The facility operator shall share the guidance and discipline policy with all parents, caregivers, aides, volunteers, and all individuals residing in or visiting the facility. All of these persons shall agree to abide by its content.

8.2.d. Only adult staff with direct supervisory responsibilities for children may discipline children. No child or other household member shall be delegated or permitted to discipline children in care.

§78-18-9. Transportation.

9.1. When transportation is provided by the facility, staff shall observe the following precautions:

9.1.a. Transport vehicles shall be in safe running condition and have current insurance, an inspection sticker and a license, according to state law;

9.1.b. Drivers shall be at least eighteen (18) years of age and appropriately licensed;

9.1.c. The driver and vehicle shall comply with all applicable motor vehicle laws;

9.1.d. Staff shall not leave any child unattended in a vehicle;

9.1.e. Each child shall be secured in an approved child safety seat or secured with seat belts at a ratio of one (1) child per seat belt as required by state law West Virginia §17C-15-56; and

9.1.f. Staff shall carry children's emergency consent forms in the vehicle in case of accident or illness.

9.2. Field Trip Transportation

9.2.a. During field trips, staff shall provide direct supervision to all children, regardless of age;

9.2.b. When field trips are scheduled, staff shall notify parents prior to each excursion; and

9.2.c. The facility shall have written permission on file or obtain written permission prior to each field trip.

§78-18-10. Night Time Care.

10.1. A facility shall not provide twenty-four (24) consecutive hours of care for an individual child except for emergency situations such as brief hospitalizations or occasional business trips. Twenty-four (24) hour care shall not last more than seventy-two (72) consecutive hours unless approved by the Secretary due to extenuating circumstances.

10.2. A facility that provides overnight care shall continue to meet staff/child ratios. If seven (7) or more children are in care, an adult staff member shall remain awake and shall check on sleeping children at least hourly.

10.3. A facility shall serve an evening meal to children in overnight care and shall serve breakfast prior to a child's leaving for school or other activities unless the parent indicates otherwise.

10.4. The facility shall establish bedtime schedules for children in consultation with the child's parent.

10.5. The facility shall ask parents to provide children with clean, comfortable, non-flammable or flame retardant sleeping garments, a toothbrush, and a comb or brush. The facility shall label and store personal items separately for each child.

10.6. Staff shall not place mats or sleeping bags directly on the floor for overnight sleeping.

10.7. When bathing a child, staff shall:

10.7.a. Discuss bathing arrangements with the child's parents;

10.7.b. Provide age appropriate bathing facilities for children in overnight care;

10.7.c. Supervise a child less than six (6) years of age while bathing;

10.7.d. Equip bathtubs and showers with safety devices to prevent slipping or falling;

10.7.e. Provide soap, clean water, clean individual wash cloths and towels for each child; and

10.7.f. Thoroughly clean the tub between each use.

§78-18-11. Care of Infants and Toddlers.

11.1. A facility providing care for children twenty-four (24) months or age or younger shall have sufficient space for the following:

11.1.a. Separate indoor and outdoor play areas for infants and toddlers away from those used by older children and

11.1.b. A quiet sleeping area with sufficient space to allow at least two (2) feet between infant cribs, portable packs and play yards, beds, or cots

11.2. Staff shall place an infant who is unable to turn over independently on his or her back to sleep unless medical documentation prohibits sleep in that position.

11.3. Staff shall use only a firm crib mattress covered by a sheet for sleep and keep soft objects and loose bedding out of an infant's sleeping environment.

11.4. Staff shall clothe infants lightly for sleep and keep the sleeping area at a temperature that is comfortable for lightly clothed adults.

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

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

11.5.b. Maintained in a sound, sanitary condition.

11.6. The use of jumpers and infant walkers is prohibited/

11.7. Effective December 28, 2012, the use of traditional drop side cribs, and any crib manufactured prior to June 28, 2011 is prohibited. Stackable cribs shall not be used. A family child care facility shall:

11.7.a. Only use cribs that comply with the Consumer Product Safety Commission crib standards, and were manufactured after June 28, 2011 and any portable pack and play yards manufactured after February 19, 2014;

11.7.b. Supply separate cribs or portable packs and play yards for infants. Portable packs and play yards shall not be used for infants able to climb; and

11.7.c. Have bars no farther than two and three-eighths (2 3/8) inches apart.

11.8. Diapering practices shall comply with the provisions of the Bureau for Public Health's Child Care Centers Rule, 64CSR21.

11.9. Toilet Training.

11.9.a. The operator shall discuss and agree upon toilet training methods with the parent of each child being toilet trained.

11.9.b. Toilet training shall not be initiated until the child is developmentally ready to control toileting functions.

11.9.c. Potty or training chairs shall be provided and shall be disinfected after each use.

11.9.d. No child shall be forced to sit in a training chair for extended periods of time.

11.10. Infant Nutrition and Feeding. Facilities shall:

11.10.a. Hold infants six (6) months of age and younger while bottle feeding. Bottle propping is prohibited;

11.10.b. Hold infants and toddlers with special needs over six (6) months of age while bottle feeding until they are able to hold their own bottles securely;

11.10.c. Refrigerate infant food and formula and feed infants in a sanitary manner;

- 11.10.d. Offer drinking water to infants and toddlers several times daily;
 - 11.10.e. Feed children according to plans of the child's physician or other health care provider, clinic, or parent;
 - 11.10.f. Clearly mark formula bottles with the child's name; and
 - 11.10.g. Encourage older infants and toddlers to feed themselves with supportive help from staff as needed.
- 11.11. High chairs shall be provided with safety straps and shall have a wide base to reduce the possibility of tipping.
- 11.12. The facility and staff shall provide activities for infants and toddlers to stimulate their physical, intellectual, and emotional growth. Activities shall include:
- 11.12.a. Opportunities to interact with caregivers, siblings, and other children;
 - 11.12.b. Frequent verbal communication and eye-to-eye contact between staff and children;
 - 11.12.c. Opportunities for the child to be held, rocked, played with, and dressed in an unhurried manner;
 - 11.12.d. Opportunities for children to explore and learn on their own in a protected area with the freedom to creep, crawl, toddle, and walk as they are physically able;
 - 11.12.e. Frequent moves of infants who are unable to climb and are awake and alert to different locations. Infants shall not routinely be left in a crib or portable packs and play yard except for rest or sleep. They may be left for short periods of time, however, if they are alert and responsive and provision is made for stimulating activity in the form of mobiles or other safe crib toys;
 - 11.12.f. Use of infant seats, swings, and high chairs when used for periods of less than one (1) hour and only if direct supervision is provided and the infant is content;
 - 11.12.g. Opportunities to play with safe, nontoxic, and age-appropriate toys which are stored in low, open shelves for easy access;
 - 11.12.h. Practice in self-care habits such as washing, dressing, brushing or combing hair, or toileting as the child shows evidence of the ability to do so;
 - 11.12.i. Play with a wide variety of toys;
 - 11.12.j. Opportunities for children to express themselves through conversation and imaginative play; and
 - 11.12.k. Opportunities for the child to participate in art and craft activities and to run, climb, and engage in other physical activities.

11.13. Staff shall give immediate attention to the emotional and physical needs of a child. Crying shall be attended to immediately.

11.14. Continuity of care shall be provided. The facility shall assign each infant or toddler to a primary caregiver who shall feed, diaper and play with the child on a daily basis to provide the reassurance and bonding necessary for the child's healthy development.

§78-18-12. Children with Special Needs.

12.1. For children who need special care because of a disabling or limiting condition, the operator shall provide the care and activities recommended by qualified psychologists, physicians, or other experts.

12.2. A parent, physician or other health care provider shall provide a written plan that includes instructions for any special treatment, diet or restrictions in activities necessary for the health of the child.

12.3. The operator shall permit an early intervention specialist, when appropriate, to enter the facility to provide services to the child, to assure the environment is appropriate for the child, and to instruct staff in proper techniques of care.

12.4. The facility shall perform only those procedures and treatments for which staff has the necessary training, experience, credential, or license to perform.

§78-18.13. Parental Involvement.

13.1. The facility shall have written operating policies which shall be discussed with parents at the time of enrollment. The policies shall cover the following areas:

13.1.a. Admission requirements, enrollment procedures and supplies that parents are expected to provide, if any;

13.1.b. A statement that the facility is operated on a nondiscriminatory basis in regard to race, color, sex, religion, marital status of the parents and disability, except when the child's needs cannot be met by the facility;

13.1.c. Guidance and discipline;

13.1.d. Rates, any additional fees charged, and the plan for payment;

13.1.e. Liability insurance coverage;

13.1.f. Unlimited access to visit the family child care facility at any time;

13.1.g. Transportation arrangements, when provided by the facility;

13.1.h. Written permission for field trips outside the facility, emergency medical treatment, water activity, and provision of medications;

13.1.i. Hours of operation;

13.1.j. Management of sick children;

13.1.k. Services provided by the facility;

13.1.l. Rules concerning personal belongings brought to the facility;

13.1.m. General procedures of the facility regarding cold weather outdoor play;

13.1.n. Animals on the premises;

13.1.o. Mandatory reporting of child abuse or neglect; and

13.1.p. Religious activities, if any. 13.2. Staff shall share information with parents regarding the accomplishments, successes, and improvements of their child as well as any problems that arise.

13.2. Staff shall share information with parents regarding the accomplishments, successes, and improvements of their child as well as any problems that arise.

13.3. Staff shall encourage parents to become involved with the facility and shall include them in planning for the child's care.

13.4. Staff shall provide parents with a national periodicity schedule for child health exams and a recommended immunization schedule.

§78-18-14. Family Child Care Facility Operator.

14.1. Requirements for Family Child Care Facility Operators

14.1.a. The operator shall meet all of the requirements that apply to staff. In addition, the operator shall:

14.1.a.1. Be at least twenty-one (21) years of age;

14.1.a.2. Have a general education development (GED) certificate or high school diploma;

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

14.1.a.4. Be certified in Cardiopulmonary Resuscitation (CPR) or first aid training that includes rescue breathing and first aid for choking; and

14.1.a.5. Complete at least fifteen (15) clock hours of approved training annually. Except for the first year of operation, training in CPR is in addition to the requirement for annual professional development. Approved sources of training include:

14.1.a.5.A. One Step at a Time or West Virginia Infant and Toddler Professional Development Training Program;

14.1.a.5.B. Apprenticeship for Child Development Specialists;

14.1.a.5.C. Any training provided by a trainer approved through STARS to provide training;

14.1.a.5.D. Any training provided by a trainer certified in the subject and/or field on which the training is provided. The facility owner shall verify the trainer's credentials;

14.1.a.5.E. College courses in early childhood development from an accredited college or university or distance education class; and

14.1.a.5.F. Any other vocational class from which the caregiver received a certificate, pending approval by the Secretary. The caregiver shall submit the class syllabus to the Secretary for review and approval.

14.1.b. Training shall be selected based on the Core Knowledge/Core Competency areas listed in subsection 3.3 of this rule and shall increase the operator's skills and knowledge in the early childhood field.

14.1.c. Over a four (4) year period, an operator shall select training that addresses all of the Core Knowledge areas.

14.1.d. Operators completing approved training modules lasting more than fifteen (15) hours may elect to apply training-module hours over and above fifteen (15) to the following year's training requirement. Training hours that may be carried over include hours earned through the West Virginia Infant and Toddler Professional Development Program, the Apprentice for Child Development Specialist, or other coursework approved by the Department.

14.1.e. The operator shall document that he or she has met one (1) of the following requirements prior to opening or operating a family child care facility:

14.1.e.1. Completion of at least fifteen (15) clock hours of child development training or arrangements to complete the training during the first six (6) months of operation of the facility;

14.1.e.2. A child development associate (CDA) credential or completion of the Child Care Apprenticeship Program; or

14.1.e.3. Completion of at least three (3) credit hours in child development or a related field at an accredited higher education institution.

14.2. Responsibilities – family child care facility operators:

14.2.a. Shall work on-site to administer the facility's daily operation;

14.2.b. Are responsible for providing a child care program and facility that meets the requirements of this rule;

14.2.c. Shall instruct staff in this rule and provide a copy for their use;

14.2.d. Are responsible for the supervision of staff including maintaining staff/child ratios and assuring that additional staff is available as needed to maintain supervision of the children in care;

14.2.e. Shall be present at the facility or, if absent, designate one (1) adult who meets the requirements of subsection 14.1. of this section. This designee shall be capable of carrying out the duties of the operator;

14.2.f. Are responsible for the recruitment and hiring of staff, enrollment and admissions, informing parents of the policies of the family child care facility program, and the training of staff in areas such as emergency and evacuation procedures, programming for children, working with parents, discipline policies, health care, sanitation procedures, release of children, child abuse and neglect reporting, symptoms of illness and medication administration.

14.2.g. Shall maintain adequate records on enrollment, finances, staff and children;

14.2.h. Shall submit reports to the Department when requested;

14.2.i. Are responsible for screening, scheduling and supervising the conduct of all staff, volunteers, and others in the facility;

14.2.j. Shall inform staff of the requirement to report child abuse and neglect per West Virginia Code §§ 49-2-801 et seq.; and

14.2.k. Are responsible for all legal and financial obligations.

14.3. If the family child care facility operator and owner are separate individuals, the owner shall assume the responsibility for the operation of the facility in compliance with this rule.

§78-18-15. Family Child Care Facility Staff.

15.1. All staff working directly with children shall:

15.1.a. Be eighteen (18) years of age;

15.1.b. Be able to read and write;

15.1.c. Understand children and their developmental needs and relate to children with courtesy, respect, patience and affection, and with understanding and respect for the child's family and culture;

15.1.d. Provide continuous supervision of young children including during outdoor play, napping, field trips, and water activities as follows:

15.1.d.1. Supervision of older children may consist of their playing within sight or hearing of nearby staff who shall conduct periodic checks every fifteen (15) to twenty (20) minutes;

15.1.d.2. Staff shall visually check on napping infants every fifteen (15) to twenty (20) minutes; and

15.1.d.3. Staff shall directly supervise all children during field trips and water play;

15.1.e. Carry out methods of guidance and discipline without recourse to physical or emotional punishment;

15.1.f. Recognize and act against hazards to children and react in a calm manner in an emergency;

15.1.g. Have positive written responses from two (2) references;

15.1.h. Have on file a health appraisal that:

15.1.h.1. Includes a physical examination and a tuberculosis skin test or risk assessment screening with negative results;

15.1.h.2. Indicates that the individual is physically and mentally able to care for children; and

15.1.h.3. Is completed prior to employment and updated every two (2) years;

15.1.i. Have successfully completed Cardiopulmonary Resuscitation (CPR) training or other certified first aid including rescue breathing and first aid for choking, or have a plan to do so within the first six (6) months of employment;

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

15.1.k. Complete at least twelve (12) clock hours of training annually, selecting training that addresses a variety of the Core Knowledge areas listed in subsection 3.3 of this rule;

15.1.l. Complete at least twelve (12) clock hours of training annually, selecting training that addresses a variety of the Core Knowledge areas listed in subsection 3.3 of this rule.

15.1.m. If staff completes approved training modules lasting more than twelve (12) hours, staff may elect to apply those training module hours over and above twelve (12) to the following year's training requirement. Training hours that may be carried over include hours earned through the West Virginia Infant and Toddler Professional Development Program, the Apprentice for Child Development Specialist, or other coursework approved by the Department.

15.1.n. Shall have completed a self-study packet on Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome or attended approved SIDS and Shaken Baby Syndrome training prior to caring for children less than thirteen (13) months of age; and

15.1.o. Meet and abide by all other requirements listed in this rule including those with regard to criminal history background checks.

15.2. If staff completes approved training modules lasting more than twelve (12) hours, staff may elect to apply those training module hours over and above twelve (12) to the following year's training requirement. Training hours that may be carried over include hours earned through the West Virginia Infant and Toddler Professional Development Program, the Apprentice for Child Development Specialist, or other coursework approved by the Department.

15.3. Volunteers.

15.3.a. Volunteers shall:

15.3.a.1. Be at least sixteen (16) years of age;

15.3.a.2. Be supervised by the owner or an adult staff person at all times;

15.3.a.3. Submit evidence of a negative tuberculosis risk assessment screening completed during the past twenty-four (24) months;

15.3.a.4. Receive orientation to the facility and its programs and policies; and

15.3.a.5. Be familiar with and meet the requirements of this rule.

15.3.b. A volunteer shall not be used to meet staff/child ratios.

15.4. Substitutes

15.4.a. Substitutes used twenty (20), eight (8) hour days, or fewer per year shall:

15.4.a.1. Be eighteen (18) years of age;

15.4.a.2. Be able to read and write;

15.4.a.3. Understand children and their developmental needs and relate to children with courtesy, respect, patience and affection, and with understanding and respect for the child's family and culture;

15.4.a.4. Provide continuous supervision of young children including during outdoor play, napping, field trips, and water activities as follows:

15.4.a.4.A. Supervision of older children may consist of their playing within sight or hearing of nearby staff who shall conduct periodic checks every fifteen (15) to twenty (20) minutes;

15.4.a.4.B. Staff shall visually check on napping infants every fifteen (15) to twenty (20) minutes; and

15.4.a.4.C. Staff shall directly supervise all children during field trips and water play.

15.4.a.5. Carry out methods of guidance and discipline without recourse to physical or emotional punishment;

15.4.a.6. Recognize and act against hazards to children and react in a calm manner in an emergency;

15.4.a.7. Have successfully completed Cardiopulmonary Resuscitation (CPR) training or other certified first aid including rescue breathing and first aid for choking, or have a plan to do so within the first six (6) months of employment;

15.4.a.8. Have received, prior to caring for children, an orientation from the operator with regard to evacuation procedures, discipline, child abuse and neglect reporting, recognition of symptoms of childhood illness, medication administration and the requirements of this rule;

15.4.a.9. Shall have completed a self-study packet on Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome or attended approved SIDS and Shaken Baby Syndrome training prior to caring for children less than thirteen (13) months of age; and

15.4.a.10. Meet and abide by all other requirements listed in this rule including those with regard to criminal history background checks.

15.4.b. Substitutes used more frequently than twenty (20), eight (8) hour days, per year shall meet all requirements listed in subsection 15.1. of this rule.

§78-18-16. Criminal History Background Checks.

16.1. At the time of license application and renewal, a family child care facility must demonstrate compliance with 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. for a all facility owners, operators, staff, volunteers eighteen (18) years of age and over, and each adult household member. shall sign:

~~16.1.a. A Statement of Criminal Record;~~

~~16.1.b. A consent to check Department records for child and adult abuse and neglect; and~~

~~16.1.c. Submit fingerprints for purposes of obtaining a criminal record background check. Fingerprinting shall be done initially and repeated at least every five (5) years.~~

16.2. The Secretary shall not grant a certificate of license to a family child care facility if any of the owner/operator, staff, volunteers eighteen (18) years of age and over or household member: individuals listed in subsection 16.1 of this rule is determined to be ineligible pursuant to WV CARES. A negative fitness determination will result if the individual:

~~16.2.a. Is currently under indictment or charged with any crime;~~

16.2.ba. Is on parole or probation for a WV CARES disqualifying offense; or

16.2.eb. Has been convicted of or is currently under indictment or charged with any of the following crimes: of the WV CARES disqualifying offenses; or

~~16.2.c. Has been convicted of any of the following crimes:~~

~~16.2.c.1. Abduction;~~

~~16.2.c.2. Violent felonies including, but not limited to, rape, sexual assault, felonious physical assault, or felonious battery;~~

~~16.2.c.3. Child or adult abuse or neglect;~~

~~16.2.c.4. Exploitation of or harm to a child or incapacitated adult;~~

~~16.2.c.5. Domestic violence or spousal abuse;~~

~~16.2.c.6. Felony arson;~~

~~16.2.c.7. Felony drug-related offenses within the last ten 10 years;~~

~~16.2.8. Felony Driving Under the Influence (DUI) or Driving While Intoxicated (DWI) convictions within the last ten (10) years;~~

~~16.2.c.9. Hate crimes as described in W. Va. Code §1-6-21 61-6-21;~~

~~16.2.c.10. Murder;~~

~~16.2.c.11. Pornography involving children or incapacitated adults;~~

~~16.2.c.12. Purchase or sale of a child;~~

~~16.2.c.13. Sexual offenses, including but not limited to, incest, sexual abuse, or indecent exposure; or~~

16.2.c.14. Other crimes that the Secretary determines may pose a risk to children.

~~16.3. If a family child care facility owner or a household member or a staff member has convictions other than those listed in subdivision 16.2.c. of this rule, the family child care facility shall not operate or continue operations unless the caregiver requests a waiver and it is approved by the Secretary.~~

~~16.4. If the family child care facility owner or household member or staff member has been convicted of two or more misdemeanors, the family child care facility shall not operate or continue operations unless the facility owner requests a waiver and it is approved by the Secretary.~~

~~16.5.~~16.3. If the family child care facility owner or a staff member or household member individuals listed in subsection 16.1 of this rule failed to report convictions to the Department, a family child care facility shall not operate or continue operations unless the facility owner requests a waiver or variance and it is approved by the Secretary.

~~16.6.~~16.4. A family child care facility shall report ~~arrests, charges, indictments, and convictions of caregivers, staff and household members~~ individuals listed in subsection 16.1 of this rule to the Department within ~~twenty four (24) hours of their occurrence. If the family child care facility fails to report arrests, charges, indictments and convictions within twenty four (24) hours of the their occurrence, the Department will revoke~~ Failure to report will result in revocation of the certificate of registration and the family child care facility shall not operate or continue operations unless the facility owner requests a waiver or variance and it is approved by the Secretary.

16.75. The Department shall not approve a facility for continuing licensure if a criminal history background check or complaint shows reveals that the operator or a household member any individual listed in subsection 16.1 of this rule:

16.7.5.a. Has committed child or adult abuse and/or neglect according to Department protective services record or any other Department records;

16.7.5b. Is an active recipient of child or adult protective services; or

16.7.5c. Has a ~~criminal background as defined in the rule~~ fitness determination of ineligibility that may not be waived or for which a waiver or variance was not approved.

16.6. For facilities operated outside the operator's home, a certificate of license may be issued when a household member has a conviction if the household member with the conviction does not reside with, visit, or have contact with children in care.

§78-18-17. Other Personnel and Household Member Requirements.

17.1. The operator, an employee, volunteer, or other household member or resident shall not have been diagnosed or be under treatment for a serious mental illness which might create a risk to children. The Department and/or facility shall determine the risk to children on the basis of a written recommendation from a licensed psychologist or doctor of psychiatry.

17.2 No operator, employee, volunteer, or household member or visitor to the facility shall be under the influence of alcohol or illegal drugs while children are in care.

17.3 No person working directly with children in the facility shall take any substance or medication that would impair his or her ability to care for children.

§78-18-18. Physical Plant Safety.

18.1. Facility Requirements.

18.1.a. The building and grounds used for a family child care facility shall be suitable for the purpose of child care, kept clean and in good repair and shall present no hazard to the health and safety of children.

18.1.b. A family child care facility shall have heat, electricity, and indoor plumbing.

18.1.c. Family child care facilities shall be equipped with a working telephone with a listed number.

18.1.d. Facilities shall post the following emergency telephone numbers adjacent to the phone: ambulance, fire, police, poison control or universal poison control center and parents and health care providers for all children in care.

18.1.e. Usable floor space of thirty-five (35) square feet per child shall be available for children's activities, exclusive of halls, bathrooms, the kitchen, office space, or storage areas.

18.1.f. Family Child Care facilities shall use an on-site kitchen which complies with the requirements of Bureau for Public Health's Child Care Centers Rule, 64CSR21 and shall be equipped as follows:

18.1.f.1. Kitchen and eating areas shall be equipped to safely prepare, store and serve meals to children.

18.1.f.2. Equipment shall include an oven or microwave, a range or cook-top, a refrigerator, and equipment for washing, rinsing, and sanitizing cooking and eating utensils.

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

18.1.h. An operator shall provide an individual bed, sturdy cot, crib, couch, baby bed, portable packs and play yard, or mat for each child who naps. Siblings may share double beds.

18.1.i. All interior bathroom and closet doors which can be locked from the inside shall be capable of being unlocked from the outside.

18.1.j. Clear glass doors shall be clearly marked at a child's eye level.

18.1.k. There shall be usable outdoor play space of seventy-five (75) square feet per child available for the children's outdoor activities either on the premises or within walking distance of the facility. The facility may stagger play times and space based on the number of children using the area at one time.

18.2. Safety Barriers.

18.2.a. All indoor or outdoor stairways, hallways, and exits shall be unobstructed except for safety barriers.

18.2.b. Stairs of four (4) or more steps shall have hand railings when children less than five (5) years of age are in care.

18.2.c. Safety gates shall be provided at the top and bottom of stairs accessible to children under thirty-six (36) months of age.

18.2.d. Accordion expansion gates are prohibited.

18.2.e. Pressure mounted gates shall not be used at the top of a set of stairs.

18.2.f. Balconies, decks, porches, ramps, and play or living areas that are elevated more than thirty-six (36) inches shall be equipped with secure, child-proof railings and barriers.

18.3. Hazards. Family child care facilities shall:

18.3.a. Keep children away from areas undergoing remodeling or construction;

18.3.b. Store cleaning supplies, detergents, aerosol cans, pesticides, poisons, flammable materials, poisonous or unknown plants, medicines, and alcoholic beverages or toxic materials out of the reach of children less than six years of age;

18.3.c. Store hazardous materials separately from food items;

18.3.d. Store guns, ammunition, hunting knives, bows and arrows, and other weapons in a locked cabinet or closet, and store keys out of the children's reach;

18.3.e. Keep strings and cords long enough to encircle a child's neck (six inches or more) out of the children's reach;

18.3.f. Not permit children less than age six in food preparation areas when ranges or cook-tops are in use; and

18.3.g. Keep hanging items including Venetian blind cords, appliance cords, and table cloths out of the reach of small children.

18.4. Electrical Safety.

18.4.a. Electrical cords shall be maintained in good condition.

18.4.b. Extension cords shall be heavy duty, UL approved, and not run under carpets or rugs or through common walkways unless stabilized to prevent tripping.

18.4.c. Protective covers shall be installed on all unused electrical outlets accessible to children who are under five (5) years of age.

18.4.d. Small appliances shall be unplugged when not in use.

§78-18-19. Environmental Safety.

19.1. Tobacco Use.

19.1.a. Facilities shall notify parents in advance if staff, volunteers, or household members in the facility smoke or use smokeless tobacco.

19.1.b. A caregiver shall provide a smoke-free environment while children are present.

19.1.c. Smoking is prohibited when the children are in vehicles with caregivers.

19.1.d. All tobacco products, smoke abatement products, ashtrays, butts, ashes, spittoons, lighters, and matches shall be kept out of the children's reach.

19.2. Animals.

19.2.a. Any pet or animal present at the facility, indoors or outdoors, shall be in good health, show no evidence of carrying disease, and be a friendly companion for children.

19.2.b. When pets are kept on the premises, the facility shall comply with the rules of the Bureau for Public Health's Child Care Centers Rule, 64CSR21.

19.3. Play Areas and Equipment.

19.3.a. All areas accessible to the outdoor play area determined to be unsafe, including, but not limited to, steep grades, cliffs, open pits, swimming pools, high voltage boosters, propane gas tanks, streets, roads, driveways, railroad tracks or parking lots, shall be fenced off or have natural barriers at least three (3) feet high to protect the children.

19.3.b. Play equipment shall be of a safe design and shall be maintained in good repair. It shall be free of sharp edges, protruding parts, weaknesses or flaws and shall be installed to prevent tipping or collapse.

19.3.c. Swings, slides, and climbing equipment shall not be placed on concrete or asphalt surfaces;

19.3.d. Trampolines shall not be accessible to the children in care.

19.3.e. The facility shall have indoor and outdoor play equipment, toys, materials, and furniture that are:

- 19.3.e.1. Appropriate to the developmental needs and ages of the children in care;
 - 19.3.e.2. Safe, clean, durable, in good repair, and made of nontoxic materials;
 - 19.3.e.3. Easily accessible to and appropriately sized for young children;
 - 19.3.e.4. Of sufficient quantity to provide choices for children and avoid competition for toys; and
 - 19.3.e.5. Capable of providing for a variety of activities such as quiet and active play and individual and group play.
- 19.3.f. The facility shall have storage spaces for each child's clothing and for toys and art supplies that are easily accessible to children. These spaces shall be designed to encourage children to pick up and put away toys and personal possessions.

§78-18-20. Sanitation and Health Issues.

20.1. The operator shall obtain a permit to operate from the health officer as required by Bureau of Public Health's Child Care Center Rules, 64CSR21. The facility must maintain the permit.

20.2. All persons in the facility shall practice good personal hygiene.

20.3. Hand washing practices shall be in compliance with the requirements of Bureau of Public Health's Child Care Centers Rules, 64CSR21.

20.4. The caregiver shall employ universal precautions for protection from disease and infection, as detailed in Appendix 78-19 B of this rule.

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

20.6. Staff shall observe children daily upon arrival and throughout the day for signs of illness or injury.

20.7. The operator shall isolate or exclude staff and children with a serious communicable disease per the facility's policy on management of sick children.

20.8. The operator shall notify parents of any communicable disease outbreak in the facility.

20.9. The operator shall ensure that the following first aid supplies are available in the facility: soap; alcohol wipes or antiseptic; non-medicated adhesive strips; a digital thermometer; sterile gauze; bandage tape; blunt-tipped scissors; tweezers; disposable, nonporous gloves; and a first aid guide.

20.10. The operator shall ensure that first aid supplies are not accessible to the children in care.

20.11. Staff shall take a first aid kit on all trips away from the facility.

20.12. The operator or staff shall administer:

20.12.a. Non-prescription medications only with prior written permission from the parents, which includes a written schedule with information about dosage amount, method and times, or upon directions from the child's health care provider; and

20.12.b. Prescription medication only from the original container clearly labeled with the child's name and dosage, the date, and name of the medication, following the health care provider's directions.

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

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

§78-18-21. Nutrition.

21.1. The operator shall plan menus and provide meals and snacks with the goal of meeting or working toward meeting the current United States Department of Agriculture Dietary Guidelines for Americans.

21.2. The operator shall prepare, date, and post menus in advance in a conspicuous place and shall keep them on file for thirty (30) days.

21.3. The operator shall consider information provided by parents about children's eating habits, food preferences, and special dietary needs when planning menus.

21.4. When parents provide food for meals, the facility shall supplement any meal that does not provide nutritious and sufficient amounts of food for the children, as needed, to meet the requirements of this rule.

21.5. No child shall be permitted to be without a meal or snack for excessively long periods of time. A facility shall provide meals according to the following requirements:

21.5.a. In a facility open morning through afternoon, lunch and morning and afternoon snacks shall be served;

21.5.b. The facility shall serve a snack to school age children arriving after school; and

21.5.c. The facility shall offer breakfast, mid-morning or mid-afternoon snack, lunch, and dinner to a child when attendance is prior to seven in the morning (7:00 a.m.) or after seven-thirty in the evening (7:30 p.m.).

21.6. The operator shall encourage children to eat the food served but shall not subject them to coercion or forced feeding.

21.7. An operator shall limit the use of snack foods with high sugar and salt content.

21.8. An operator shall serve only pasteurized, inspected and Grade A approved milk products to children. A facility shall not use powdered milk except for cooking.

§78-18-22. Fire Safety and Evacuation Plans.

22.1. Family Child Care facilities shall meet the applicable rules of the State Fire Marshal's Office.

22.2. A family child care facility shall request an inspection by the State Fire Marshal prior to beginning operation and annually thereafter.

22.3. The facility shall establish and post a written plan for evacuation in the event of fire, natural disaster or other threatening situation that may pose a health or safety hazard to the children in the facility.

22.3.a The plan shall include, but not be limited to:

22.3.a.1. A designated relocation site and evacuation;

22.3.a.2. Procedures for notifying parents of the relocation and ensuring family reunification;

22.3.a.3. Procedures to address the needs of individual children, including children with special needs;

22.3.a.4. Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

22.3.a.5. Coordination with local emergency management officials; and

22.3.a.6. A program to ensure that appropriate staff are familiar with the components of the plan.

22.3.b. The facility shall:

22.3.b.1. Update the evacuation plan by December 31, of each year. If the facility fails to update the plan, the child care regulatory specialist shall take no action against the facility's license until

notice is provided and the facility is given thirty days after the receipt of notice to provide an updated plan;

22.3.b.2. Retain an updated copy of the plan for evacuation;

22.3.b.3. Provide notice of the plan;

22.3.b.4. Provide notification that a copy of the plan will be provided upon request to any parent, custodian or guardian of each child at the time of the child's enrollment in the child care service and when the plan is updated; and

22.3.b.5. Provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

22.4. The facility shall prevent children from entering areas which contain furnaces and water heaters or shall install shields to prevent burns.

22.5. Water heaters shall be equipped with thermostatic controls and pressure relief valves.

§78-18-23. Reporting and Investigation of Complaints.

23.1. Reporting.

23.1.a. The operator shall immediately report any serious incident affecting the operation of the facility to the Department and follow up with a written report within seventy-two (72) hours on a form designated by the Department.

23.1.b. The operator shall report the following situations:

23.1.b.1. Any accident, injury, or illness occurring while a child is in care that results in emergency treatment, hospitalization, or death;

23.1.b.2. Any serious communicable disease of a child, operator, employee, or family member that results in temporary closure of the facility;

23.1.b.3. Any incident which results in legal action by or against the facility; and

23.1.b.4. Serious violations of requirements by the facility operator or its employees such as use of physical punishment or failure to supervise which could have resulted in harm to a child.

23.1.c. In accordance with W.Va. Code §§ 49-2-801 et seq., the operator shall immediately report suspected child abuse or neglect to the statewide child abuse and neglect intake hotline or to Department child protective services staff in the county office where the facility is located.

23.1.d. The operator shall also notify the Department, in writing, of any occurrence affecting the operation of the facility. This includes, but is not limited to, the following:

23.1.d.1. A change in ownership that requires the new owner to file for a new application;

- 23.1.d.2. A change of operator;
- 23.1.d.3. Closure of the facility;
- 23.1.d.4. A change in hours of operation or change in ages of children served;
- 23.1.d.5. Additions to or reductions in space affecting the facility's capacity;
- 23.1.d.6. Additions such as a swimming pool;
- 23.1.d.7. Reductions such as removal of fences;
- 23.1.d.8. Location of facility which requires the owner to file for a new application;
- 23.1.d.9. A disaster such as a fire or flood that damages the facility; and
- 23.1.d.10. A change in the composition of the household.

23.2. Investigation of Complaints.

23.2.a. A facility shall fully cooperate with the Secretary in the investigation of any complaints, including alleged violation of the requirements of this rule, allegations of creating or otherwise causing risk of serious harm to a child, a violation of the juvenile or criminal laws of this state, or reports of suspected child abuse or neglect.

23.2.b. If a complaint alleges that the behavior or conduct of any operator, employee, household member or volunteer may pose risk of serious harm to a child in care, the facility shall immediately remove that person from further contact with the children until an investigation is completed and a determination is made.

23.2.c. If the Secretary determines there are violations of this rule, a facility shall submit a plan of correction within thirty (30) days of receipt of the written summary report.

23.2.d. The operator shall fully implement the approved plan of correction within the time frame specified by the Secretary.

§78-18-24. Enforcement Action.

The Department may enforce this rule by revocation of a certificate of license or by immediate closure, or both, in accordance with West Virginia Code §§49-2-117 and 118.

§78-18-25. Administrative and Judicial Review.

25.1. A family child care facility aggrieved by an adverse decision may contest the decision of the Secretary by making a written request for a hearing within thirty (30) days of receipt of the decision.

25.2. Administrative and judicial review shall be made in accordance with the provisions of West Virginia Code §§49-2-105 et seq.

25.3. 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 facility is located.

Appendix 78-18- A

DISINFECTANT SOLUTION

Add ¼ cup bleach to 1 gallon of water:



1/4 cup bleach

+



1 gallon of cool water

OR

Add 1 tablespoon of bleach to 1 quart of water:



1 tablespoon bleach

+



1 quart of cool water

Mix a fresh solution each day.

Use it to disinfect surfaces that have been cleaned.

Dispense it from a spray bottle that you keep out of the reach of children.

Wet the entire surface until glistening and *leave* solution on the surface at least 2 minutes. *Dry* with a paper towel or allow to air dry.

Source: *Healthy Young Children*, 4th Edition, 2012

Appendix 78-18-B Universal Precautions
Spills of body fluids (i.e., urine, feces, blood, saliva, nasal discharge, and injury of tissue discharge) shall be cleaned up immediately as follows:
For spills of vomit, urine, and feces: walls, bathroom, table tops, toys, kitchen counter-tops, and diaper-changing tables shall be cleaned and disinfected.
For spills of blood or blood-containing body fluids and injury tissue discharges: the area shall be cleaned and disinfected. Gloves shall be used in these situations unless the amount of blood or body fluid is so small that it can easily be contained by the material used for cleaning. If disposable gloves are used, they shall be discarded immediately and hands washed.
Persons involved in cleaning contaminated surfaces shall avoid exposure of open sores or mucous membranes to blood or blood-containing body fluids and injury or tissue discharges by using gloves to protect hands when cleaning contaminated surfaces.
Mops shall be cleaned, rinsed in sanitizing solution, wrung as dry as possible and hung to dry. Persons cleaning mops shall wear gloves.
Blood-contaminated material and diapers shall be disposed of in a plastic bag with a secure tie.

Appendix 78-18-C
Resource Tables for Sections 7 and 11 of this rule

The following tables suggest examples of play equipment, types of toys, and materials that can be used with children of different age groups. All activities and equipment need to be suited to a child's age and stage of development.

Table A: Equipment and Materials for Infants

Type of Materials	Types of Supplies and Equipment
Music, Art and Dramatic Play	Wrist or ankle bells; rattles; adult operated tape or cd player with assorted music; musical toys designed for infants; musical mobiles; banging materials that are simple and light weight; secured unbreakable infant mirrors; play telephones; soft washable dolls, animals and puppets; simple toys with wheels or rollers.
Blocks and Manipulative Play	Soft and textured blocks, disks or keys on a ring; squeeze toys; teething toys; interlocking rings; large connecting blocks, large hollow blocks; jumbo pop beads; nesting cups, stacking toys; simple peg boards; boxes.
Language and Science	Picture books; toy telephones; adult operated recordings, tapes, discs and players; photographs; textured surfaces; floating toys; sponges; spoons and scoops.
Large Muscle Equipment	Low, soft or padded climbing platform for crawlers; infant activity gym; foam or soft plastic balls; simple push toys; secure swings designed for infants.

Table B: Equipment and Materials for Toddlers

Types of Materials	Types of Supplies and Equipment
Music, Art and Dramatic Play	Well secured unbreakable mirrors; adult operated tape or cd player with assorted music accompanied by simple body and finger
Blocks and Manipulative Play	Large connecting blocks, large hollow blocks, large wooden blocks; jumbo pop beads; nesting cups; simple peg boards, simple puzzles; simple threading toys; mobile pull toys; simple dial, key and button toys; pop-up boxes; boxes.
Language and Science	Picture books, touch-me books, simple rhyming books, books for lap reading; toy telephones; adult operated recordings/tapes/discs and players; photographs; water play toys, scoops and containers.
Large Muscle Equipment	Low, soft or padded climbing platforms and slides; riding/rocking toys that are feet propelled; foam or soft plastic balls; gym mats; play tunnels; push toys; secure swings designed for toddlers

Table C: Equipment and Materials for Children age 2-5 years

Types of Materials	Types of Supplies and Equipment
Music, Art and Dramatic Play	Bells, cymbals, drums, tambourines, sand blocks, triangles, rhythm sticks, keyboards, blowing instruments; rattles; adult operated tape or cd player with assorted music; non toxic art supplies such as play-dough, large crayons and finger paints; large paint brushes used with washable paint on paper; washable markers; glue sticks; chalk; sponges; adjustable easel; colored construction paper; blunt end scissors; unbreakable mirrors; dress-up and role playing materials; masks; housekeeping equipment; play house; doctor kit; doll equipment; play scene sets with people figures and animal figures; puppets; train and car sets.
Blocks and Manipulative Play	Connecting blocks, large hollow blocks, hardwood unit blocks and accessories; nesting cups, stacking toys; pop beads; peg boards, puzzles; threading toys; boxes; shape sorters; matching games; mosaic blocks.
Language and Science	Picture books, easy to read along books or beginning reader books, pop-up books; hidden pictures; child oriented magazines; child dictionary; tape/cd players and recorders; photographs; beginning computer software; aquariums; terrarium; sandbox and play equipment; water play equipment such as cups, droppers, floating toys, containers; magnets; magnifying glasses; collections such as rocks and shells; simple gear and lever devices; simple math games.
Large Muscle Equipment	Low climbing platforms and slides; riding and rocking toys; foam or soft plastic balls; sports balls of all sizes matching the age of child; jump rope; flying disks; gym mats; play tunnels; push and pull toys that look like adult equipment; low child swings; stable ride on equipment.

Table D: Equipment and Materials for School Age Children

Type of Materials	Types of Supplies and Equipment
Music, Art and Dramatic Play	Tape, CD or karaoke player/recorder; variety of music; assorted musical instruments such as hand bells, xylophones, drums, pianos/keyboards; art supplies such as clay, paints, paint brushes, markers, yarn, scissors, glue, colored pencils, variety of art paper, chalk, scraps of material, beads, common household items for art construction; weaving materials; models; mirrors; dress-up and role playing materials; masks; housekeeping and gardening equipment; play house, tent, grocery store, work shop; doctor kit; culturally diverse dolls; doll equipment; play scene sets with people figures and animal figures; puppets;
Blocks and Manipulative Play	Small interlocking blocks; log builder sets; wood blocks and accessories; geometric interlocking blocks; materials for detailed construction of models; jig-saw puzzles and 3-D puzzles.

Language and Science	Story books; chapter books; tape recorders; cameras; computer programs; games and books that require problem solving; games based on words; matching games; beginning strategy games; globes; maps; aquariums; terrarium; gardening; magnets; magnifying glasses; collections such as rocks and shells; ant farms; child microscope.
Large Muscle Equipment	Music for movement; sports balls and equipment for beginning team play; target activities; complex climbing structures such as ladders and ropes; hula hoops; jump rope; outdoor running and tagging games.