



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Human Services TITLE-SERIES: 78-20  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Informal and Relative Family Child Care Home  
Registration Requirements  
CITE STATUTORY AUTHORITY: §49-2-121

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 165

Section §64-5-1(i) Passed On 2/19/2018 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 1, 2018

This rule shall terminate and have no further force or effect from the following date:

04/01/2023

TITLE 78  
LEGISLATIVE RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 20  
INFORMAL AND RELATIVE FAMILY CHILD CARE HOME REGISTRATION REQUIREMENTS

**§78-20-1. General.**

1.1. Scope -- This rule establishes minimum standards and procedures for the registration of informal and relative family child care homes under the provisions of part one, article two, chapter 49 of the West Virginia Code, and related federal and state codes.

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

1.3. Filing Date -- March 15, 2018.

1.4. Effective Date -- April 1, 2018.

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect on April 1, 2023.

1.6. Purpose -- This rule governs the voluntary registration of those informal and relative family child care homes in West Virginia that participate in federal subsidy programs.

**§78-20-2. Application and Enforcement.**

2.1. Application -- This rule applies to any informal or relative family child care home that operates in West Virginia.

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

**§78-20-3. Definitions.**

In addition to the following definitions, the definitions in part one, article two, chapter 49 of the West Virginia Code are applicable to this rule.

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

3.2. Caregiver -- The person primarily responsible for child care in the informal or relative family child care home.

3.3. Child Abuse and Neglect -- Physical 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.

3.4. Corrective Action Plan -- A written agreement between the department and the informal or

relative family child care home when deficiencies are identified during an inspection or investigation of a complaint that includes the plan and time frame for correction.

3.5. 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.

3.6. Disinfect -- Eliminate most germs from a contact surface through the use of chemical disinfectants or heat.

3.7. Infant -- A child less than 12 months of age.

3.8. Informal Caregiver -- The person in an informal family child care home who is named in the certificate of registration.

3.9. Informal Caregiver Home -- A home that provides care for three or fewer children. At least one child is not related to the caregiver.

~~3.8-10.~~ Parent -- A parent by blood, marriage or adoption, or a legal guardian or other person standing in loco parentis.

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).

3.12. Relative Caregiver -- The person in a relative family child care home who is named in the certificate of registration.

3.13. Relative Family Child Care Home -- Home that provides care only to children related to the caregiver. The caregiver must be a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle or adult sibling.

3.14. Revocation -- The termination of a certificate of registration when an informal or relative family child care home fails to maintain the minimum requirements established by the department under this rule.

3.15. Sanitize -- Remove filth or soil and small amounts of certain bacteria. For a contact surface to be considered sanitary, the surface must be clean and the number of germs reduced so that disease transmission is unlikely.

3.16. School-Age Child -- A child age five years to 13 years of age.

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

3.18. Toddler -- A child between the ages of 12 and 24 months.

3.19. WV CARES Self-Disclosure Application and Consent Form -- A signed declaration of criminal

convictions and indictments, and authorization to allow a criminal history background check.

**§78-20-4. Certificate of Registration Information.**

4.1. Application for Registration.

4.1.a. Initial -- The department shall issue an initial certificate of registration to an informal or relative family child care home upon application and compliance with this rule.

4.1.b. Renewal -- The department shall issue a renewal of the certificate of registration to an informal or relative family child care home upon application for renewal, which shall be submitted at least 30 days before expiration of the current certificate.

4.2. General Requirements.

4.2.a. An informal or relative family child care home shall be registered under the name of only one caregiver per residence.

4.2.b. An informal or relative family child care home shall be located in the residence of the caregiver.

4.2.c. An informal or relative family child care home shall comply with the provisions of this rule.

4.3. Departmental Action on Applications for Registration -- Within 60 days of receipt of an application for certificate of registration, the secretary shall provide a written decision to the informal or relative family child care home that does one of the following:

4.3.a. Issues a regular certificate of registration if the informal or relative family child care home certifies compliance with all of the requirements of this rule; or

4.3.b. Denies a certification of registration if the informal or relative family child care home does not certify substantial compliance with all of the requirements of this rule.

4.4. Terms and Conditions of Registration.

4.4.a. A certificate of registration is not transferable to another informal or relative family child care home.

4.4.b. A certificate of registration applies only to the informal or relative family child care home at the location identified in the application.

4.4.c. An informal or relative family child care home shall show its certificate of registration to parents and the public upon request.

4.4.d. The department shall maintain a record of all substantiated complaints against registered informal or relative family child care homes and subsequent corrective action. The department will provide this record to parents and the public upon request.

4.4.e. A regular certificate of registration is valid for a period of up to two years from the date of issuance unless revoked.

4.5. Limitations on a Certificate of Registration.

4.5.a. Based on the findings below, the secretary may place limitations on a certificate of registration:

4.5.a.1. Provision of other home-based services, such as foster care and adult family care;  
or

4.5.a.2. Non-compliance issues that require a corrective action plan approved by the secretary.

4.5.b. The limitations may apply to:

4.5.b.1. The age, gender and type of problems of 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. An informal or relative family child care home 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. If the caregiver wishes to request a waiver or variance, the caregiver shall submit a written request addressed to the secretary that includes 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 or variance 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 parts one and two, article 2, chapter 49 of the West Virginia Code or in this rule.

**§78-20-5. Inspection and Investigation.**

5.1. A caregiver shall allow a reasonable on-site monitoring inspection by the department.

5.2. The department may conduct inspections with or without advance notice.

5.3. During inspections, the caregiver shall provide access to the premises and to all aspects of the informal or relative family child care home operation, including the children in care and the household members.

5.4. An informal or relative family child care home shall ensure that its records are available in easily accessible files for inspection.

5.5. An informal family child care home shall cooperate in the investigation of complaints against the home.

**§78-20-6. Caregiver, Substitute, and Household Member Requirements.**

6.1. General Requirements.

6.1.a. The caregiver or substitute shall be:

6.1.a.1. At least 18 years of age; and

6.1.a.2. Able to read and write or have another adult present in the home, during the hours of care, who is able to read and write.

6.1.b. The caregiver or substitute shall ensure that alcoholic beverages or illegal substances are not used, and that no one present in the home is under the influence of those substances during the time children are in care.

6.1.c. The caregiver may only use a substitute to provide care for children during emergency situations, illness, and during occasional non-emergency situations such as vacations, child care training, and medical appointments.

6.1.d. A caregiver shall be physically present at the informal or relative family child care home and within sight or hearing of all children in care.

6.2. Health Requirements.

6.2.a. The caregiver shall, at his or her own cost, obtain a statement of good health from a licensed physician within 30 days of application for a certificate of registration and upon application for renewal of the certificate of registration. Statements of good health may be dated up to six months prior to application or renewal. The caregiver shall submit a copy of the medical report to the department and retain the original for the caregiver's files.

6.2.b. If an investigation determines a caregiver or household member may have a physical, mental, or emotional condition that could negatively impact the care of children, the caregiver shall provide a current physical or psychological examination report from a licensed physician or a licensed mental health professional assessing the condition and its impact on the provision of care for children, which will be used by the department to determine whether to continue, deny or place limits on the certificate of registration.

6.3. Training Requirements.

6.3.a. An informal relative caregiver shall complete approved pre-service health and safety training prior to providing care.

6.3.b. A relative caregiver shall complete an initial two hours of approved health or safety training within 30 days of application.

6.3.c. Informal and relative caregivers may obtain approved health and safety training through the local child care resource and referral agency or the local child and adult care food program.

6.3.d. Thereafter, a caregiver shall annually complete at least one hour of self-directed study related to child development.

6.3.e. A caregiver providing care for children under 13 months of age shall, within 60 days of accepting the child into care, complete either:

6.3.e.1. A Sudden Infant Death Syndrome self-study packet; or

6.3.e.2. Other approved Sudden Infant Death Syndrome training.

6.4. Background Checks.

6.4.a. At the time of application and renewal for a certificate of registration, a caregiver and each adult household member shall sign a WV CARES self-disclosure application and consent form.

6.4.b. The secretary shall not grant a certificate of registration to an informal or relative family child care home if the caregiver or a household member is an active recipient of child or adult protective services or has a history of substantiated child or adult abuse or neglect as determined by a court of law or an investigation by the department's protective services staff.

6.4.c. The secretary shall not grant a certificate of registration to an informal or relative family child care home if the caregiver or a household member:

6.4.c.1. Is currently under indictment or charged with any crime referenced in subsection 6.4.c.3;

6.4.c.2. Is on parole or probation for a felony or disqualifying offense;

6.4.c.3. Has been convicted of any of the disqualifying offenses as defined in W. Va. Code § 16-49-1(8) and W. Va. Code R. §69-10-2.10; or

6.4.c.4. Other crimes that the secretary determines may pose a risk to children.

6.4.d. If the caregiver or household member fails to report convictions to the department, the informal or relative family child care home shall not operate or continue operations unless the caregiver requests a waiver or variance and it is approved by the secretary.

6.4.e. An informal or relative family child care home shall report charges, indictments, and convictions of caregivers and household members to the department within 24 hours of their

occurrence. If the family child care home fails to report charges, indictments and convictions within 24 hours of their occurrence, the department will revoke the certificate of registration.

6.5. Informal Family Child Care Home Capacity.

6.5.a. An informal family child care home shall have no more than three children under 13 years of age in care at any one time.

6.5.b. The number of children in the informal family child care home includes children under six years old who live in the home.

**§78-20-7. Home Safety Requirements.**

7.1. Home Requirements -- An informal or relative family child care home shall have working heat, electricity, indoor plumbing, a cook stove, a refrigerator, and access to a working telephone or communications device.

7.2. Safety Barriers -- Safety gates shall be provided at the top and bottom of stairs that are accessible to children under 24 months of age.

7.3. Hazards -- Informal or relative family child care homes shall:

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

7.3.b. Store hazardous materials separately from food items; and

7.3.c. Store guns, ammunition, hunting knives, bows and arrows, and other weapons in a locked cabinet or locked closet.

7.4. Heating. Unvented gas heaters may be used as a source of heat when both of the following requirements are met:

7.4.a. A properly functioning digital carbon monoxide detector has been installed in a central location in the home; and

7.4.b. The heater is equipped with an oxygen depletion sensor that automatically shuts the heater off, if a hazardous level of carbon monoxide accumulates.

7.5. Pets and Animals. An informal or relative family child care home shall:

7.5.a. Confine animals that are sick, aggressive, or injured in an area not accessible to children;

7.5.b. Keep pets such as birds, ferrets, reptiles, or wild animals in an area of the home or the premises that is not accessible to children and away from food preparation areas; and

7.5.c. Keep documentation available on site of rabies vaccinations for all cats and dogs kept on the premises.



7.6. Play Areas<sub>2</sub> – Indoor and outdoor play areas shall be free from unsanitary or hazardous items.

7.7. Electrical Safety.

7.7.a. Caregivers shall install protective covers on all unused electrical outlets accessible to children who are under five years of age.

7.7.b. Extension cords shall be maintained in good condition, UL approved and not run under carpets or rugs, or through common walkways unless stabilized to prevent tripping.

**§78-20-8. Fire Safety.**

8.1. One working smoke detector shall be installed on every level of the home.

8.2. An ABC-rated multi-purpose fire extinguisher shall be available in the home at all times.

**§78-20-9. Health, Sanitation, and Nutrition.**

9.1. Health -- The caregiver shall obtain from the child's parent a record of each child's health examinations and immunizations and maintain the information in a file according to the following guidelines:

9.1.a. A general medical examination shall be obtained for all children within 30 days of admission to the home. The examination may be completed no more than six months prior to the child's admission to the home.

9.1.b. The caregiver shall provide parents with a WV HealthCheck periodicity chart for child health exams and shall obtain from the parent a new health assessment updated with new or current information at least every two years for any child under the age of six years.

9.1.c. Immunization records shall be completed and updated according to the schedule recommended by the department.

9.1.d. If immunizations are not current, the caregiver shall obtain a schedule for completion from the parent for the informal or relative family child care home's files, unless the parent provides written documentation from a physician that immunizations are contraindicated due to the child's medical condition.

9.2. Sanitation.

9.2.a. The informal or relative family child care home shall have sufficient safe water for drinking, hand washing, and other household needs.

9.2.b. The caregiver and the children shall thoroughly wash their hands with soap and water for at least 20 seconds any time they are soiled, including at the following times:

9.2.b.1. Before eating;

9.2.b.2. Before handling or preparing foods;

9.2.b.3. After contact with animals;

9.2.b.4. Before and after diaper changing, assisting a child with toilet use, or personal bathroom use; and

9.2.b.5. When the caregiver or the children come into contact with blood or bodily fluids containing blood.

9.2.c. The caregiver shall store food and drinks in closed containers and refrigerate as needed.

9.2.d. To ensure the cleanliness of the home the caregiver shall:

9.2.d.1. Cover garbage cans with lids or place cans in an area inaccessible to children, maintain them in a sanitary manner with liners, and empty them daily;

9.2.d.2. Clean and disinfect bathroom facilities used by the children daily and when soiled;

9.2.d.3. Clean dishes in a dishwasher or in hot water and detergent. If they are washed by hand, they shall be rinsed thoroughly and allowed to air dry;

9.2.d.4. Maintain the informal or relative family child care home and furnishings in a safe and sanitary condition to prevent accidents and illnesses; and

9.2.d.5. Ensure that the informal or relative family child care home is free of rodent or insect infestation.

9.3. Nutrition -- Children shall receive nutritious meals and snacks, served in a sanitary manner and in amounts adequate to meet their nutritional needs, based on current United States Department of Agriculture's Dietary Guidelines for Americans.

**§78-20-10. Water Safety.**

10.1. The caregiver shall obtain written permission from parents before all water play or swimming activities, or both.

10.2. The informal or relative family child care home shall ensure that all pools and hot tubs are either emptied or inaccessible to children when not in use.

10.3. A caregiver shall be physically present and supervise the children at all times during water play or swimming activities, or both.

**§78-20-11. Emergency Practices.**

11.1. Emergency Information -- An informal or relative family child care home shall ensure that written emergency information is available near the telephone or other communications device within easy access of the caregiver, children, and substitutes that contains telephone numbers for the following:

11.1.a. Police and fire departments;

11.1.b. The child abuse and neglect hotline;

11.1.c. Ambulance service;

11.1.d. A poison control center or the universal poison control center telephone number 1-800-222-1222;

11.1.e. Each parent's work and home;

11.1.f. A health care provider for each child; and

11.1.g. An emergency substitute, if applicable.

11.2. Prior to each child's placement in the home, the provider shall obtain emergency contact information for each child, which includes emergency contacts, family information, and permission to seek medical treatment. The provider shall:

11.2.a. Maintain the emergency information in the provider's records;

11.2.b. Update emergency information records when information changes; and

11.2.c. Ensure that emergency consent forms are notarized.

11.3. Evacuation Plan -- An informal or relative family child care home shall develop and post a written plan for emergency evacuation of the children from the home, which includes primary and secondary exits from the home and a meeting place for children once they exit the home.

11.4. First Aid Supplies -- An informal or relative family child care home shall keep the following first aid supplies available in a portable container and ensure they are out of the children's reach:

11.4.a. A digital thermometer;

11.4.b. Disposable gloves;

11.4.c. Blunt-tipped scissors;

11.4.d. Tweezers;

11.4.e. Bandage tape;

11.4.f. Sterile gauze;

11.4.g. Non-medicated adhesive strips;

11.4.h. Sealed packages of alcohol wipes or antiseptic;

11.4.i. Soap; and

11.4. j. A first aid guide.

**§ 78-20-12. Transportation.**

12.1. When transporting children, the caregiver shall:

12.1.a. Accompany children on activities that require transportation;

12.1.b. Ensure the driver transporting the children has a valid drivers license; and

12.1.c. Ensure the vehicle used to transport the children is maintained in safe running condition, with insurance and a current inspection sticker.

12.2. An informal or relative family child care home shall ensure that children are secured in an approved child safety seat or in individual seat belts, as required by W. Va. Code §17C-15-46.

**§78-20-13. Program and Equipment.**

13.1. Daily Routine -- An informal or relative family child care home shall have a daily routine appropriate to the ages of the children in care that includes:

13.1.a. Specific meal times;

13.1.b. Nap times for children who need them;

13.1.c. Indoor play time; and

13.1.d. Outdoor play time on days when temperatures are 40 degrees and above, weather and circumstances permitting.

13.2. Program -- An informal or relative family child care home shall implement a program that is appropriate to the ages and stages of development of the children in care and enhances the healthy growth and development of the children.

13.3. Equipment -- An informal or relative family child care home shall select toys, equipment, and activities that are nontoxic, safe, sturdy, easy to clean and free of hazards.

**§78-19-14. Guidance and Discipline.**

14.1. Guidance.

14.1.a. The caregiver shall use guidance that helps the children understand appropriate behavior and is appropriate to their ages.

14.1.b. An informal or relative family child care home shall have rules that are fair, consistent, and relevant to the children's ages.

14.1.c. An informal or relative family child care home may use a time-out that lasts no more than one minute for each year of a child's age and only for the purpose of helping a child regain control.

14.2. Discipline -- A caregiver, household member or substitute shall not use any of the following harmful forms of discipline:

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

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

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

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

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

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

14.2.g. Punishing a child emotionally including rejecting, terrorizing, ignoring, or isolating the child; and

14.2.h. Allowing a child or other adult to punish the children in care.

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

**§78-20-15. Children Under 24 Months of Age.**

15.1. Equipment -- An informal or relative family child care home:

15.1.a. Shall provide children under 13 months of age with a crib, port-a-crib, or playpen that has no more than 2 3/8 inches between slats, side, or end panels;

15.1.b. Shall not allow children under 13 months of age to sleep on any type of adult bed or sofa;

15.1.c. Shall not place soft pillows or stuffed animals in beds with children under 13 months of age during sleep or nap times;

15.1.d. Shall ensure that high chairs, infant swings, playpens and cribs are safe, sanitary and in good working condition; and

15.1.e. Shall disinfect toys and play equipment used by children under 24 months of age after each use.

15.2. Feeding and Care -- An informal or relative family child care home caring for infants and toddlers shall:

15.2.a. Hold infants six months of age and younger while bottle-feeding. Bottle propping is prohibited;

15.2.b. 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; and

15.2.c. Visually observe and check on children in cribs and playpens every 15 minutes.

15.3. Diapering and Toilet Training.

15.3.a. A caregiver caring for children in diapers shall:

15.3.a.1. Have sufficient quantities of clean diapers available; and

15.3.a.2. Change diapers when they are soiled and dispose of them in a closed container that is emptied daily.

15.3.b. An informal or relative family child care home caring for a child who is toilet training shall discuss and agree with the child's parent on a schedule for toilet training.

**§78-20-16. Required Reporting to the Department.**

16.1. An informal or relative family child care home shall immediately report suspected child abuse or neglect to the department in accordance with parts one and two, article 2, chapter 49 of the West Virginia Code.

16.2. An informal or relative family child care home shall immediately report to the department any accidents or illnesses resulting in emergency treatment, hospitalization, or the death of a child and follow up with a written report form prescribed by the department within 72 hours.

16.3. An informal or relative family child care home shall report the following within 72 hours:

16.3.a. An adult added to the household so a criminal history background check can be completed;

16.3.b. Major damage to the home caused by fire, flood, or storms;

16.3.c. A change in address; and

16.3.d. A change in phone number.

**§78-20-17. Enforcement Action.**

The department may enforce this rule by revocation of a certificate of registration, or by immediate closure, or both, in accordance with part one, article two, chapter 49 of the West Virginia Code.

**§78-20-18. Administrative and Judicial Review.**

18.1. In accordance with the provisions of part one, article two, chapter 49 of the West Virginia Code, an informal or relative family child care home 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.

18.2. An informal or relative family child care home 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 home is located.