

78CSR1

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 1
DAY CARE CENTERS LICENSING

Comments Summary and Response

§ 78-1-3. Definitions.

Comment Summary: 3.45 Add a module on healthy eating and physical activity to required pre-service training modules.

Response: The Pre-Service Training modules required under 78CSR1 meet compliance with Federal Requirement §98.44 for nutrition and physical activity. Each center may train on additional topics. The agency does not believe that additional clarification is needed.

§ 78-1-8. Staffing.

Comment Summary: 8.4.c.5. I have one employee that lived in another state less than five years ago. Do I need to do a background check for that state at this time? If so, how do I go about doing this?

Response: Federal requirement 98.43(b)(3) states that a search be conducted in each state where a staff member resided during the preceding five years. The following link is a resource to simplify finding criminal background check contact information for other states maintained by the National Center on Subsidy Innovation and Accountability (NCSIA):

<https://childcareta.acf.hhs.gov/resource/child-care-subsidy-criminal-background-check-contact-list-0>. The Division of Early Care and Education created a Background Check Guide to assist providers in the background check process. The Background Check Guide is available at https://dhhr.wv.gov/bc/ece/COVID/Documents/Background%20Check%20Guide_FINAL_%2008062021%20%281%29.pdf. Interstate background check information is located in Section 4.

Comment Summary: 8.4.f. - No person shall work with a child or children prior to the center receiving the required fitness determination of eligibility from the WV CARES unit.

This is problematic and let me give you an example. I was making a fingerprint appointment just this morning with our local Identogo location. The soonest appointment available was Tuesday, August 2nd and today is July 11th. That is over three weeks before a staff member could even be around a child once employed if this new regulation takes effect. How do you train a staff member after hire if they can't even be around children for three weeks? This may not be an issue in every area but it is in Cabell and Wayne counties.

Response: Federal requirement 98.43(d)(4) mandates a federal and state background check be conducted on all prospective staff prior to working alone with children. Once the background check is completed and the individual is deemed eligible, the staff member must be supervised

while working with children until all required background checks are completed with eligible results.

Comment Summary: 8.4.f. Why the change to the WV cares backgrounds being completed before staff can start? I just spent 3 weeks waiting to get staff finger printed because the person in the Fairmont office quit and they had to hire and train someone before they could reopen.

Response: Federal requirement 98.43(d)(4) mandates a federal and state background check be conducted on all prospective staff prior to working alone with children. Once the background check is completed and the individual is deemed eligible, the staff member must be supervised while working with children until all required background checks are completed with eligible results.

Comment Summary: 8.4.f. My concerns with the proposed changes to WV Child Care Center Regulations regarding background checks 8.4.f are as follows:

We recently had to wait 3-4 weeks to get summer staff fingerprinted because the Fairmont office had someone quit and they had to hire and teach someone how to do fingerprints before they could start scheduling appointments. The office in Clarksburg only schedules people twice a week and they were completely booked.

I currently have several employees that were fingerprinted a week ago and we still don't have their background checks returned from WV CARES.

The Bridgeport office that we use to use, and which I believe is now closed would allow us to schedule people for fingerprints and then when the staff would show up the fingerprinting office would be closed because the staff hadn't shown up. This happened multiple times.

Another obstacle is if the employee's driver's license is expired it can take 30-45 days to get their new one in the mail before they can even schedule to be fingerprinted. I currently have two employees in this situation.

It is impossible to hire employees and then have to wait weeks before they can start working due to these changes for many reasons. First off, all the employee is likely to find a job elsewhere due to needing income. Secondly, when I hire I do so because I need someone to work, usually now, even if it's just to start the training process.

We currently make the employee waiting for the background check aware they cannot be left alone with a group of kids and also notify whoever is training them. I feel the plan we have in place assuring that new staff are not left alone until their background check comes back is effective.

I am unaware of why you are looking to change this requirement. Maybe if I knew the reasoning, I could offer some solutions to the problem. However, if it's a federal requirement or if it is needed for another reason then I strongly urge the state to come up with a more effective plan that maybe utilizes a mixture of ways to get the background checks completed instead of just relying on WV CARES. There is no way for us to continue to operate our facilities if we are

left to the mercy of one outside company. I cannot run a business when someone quits with no notice where I would potentially have to wait weeks to replace them without closing classrooms, inconveniencing parents, etc.

Response: Federal requirement 98.43(d)(4) mandates a federal and state background check be conducted on all prospective staff prior to working alone with children. Once the background check is completed and the individual is deemed eligible, the staff member must be supervised while working with children until all required background checks are completed with eligible results.

Comment Summary: 8.6.b. Our staff has already completed the Pre-Service Training. Has this changed and do we need to retake it?

Response: The requirement for pre-service training has not changed. Staff who have completed the training do not need to retake. Regulation 3.45 is being revised for clarification purposes to identify the names of the 10 modules in the training program to meet compliance with federal requirement 98.44(b)(1).

Comment Summary: 8.6.f.1. Does the Pediatric CPR change take place when we are due for this training again? I believe we have pediatric training but our cards may not say it.

Response: The Pediatric CPR/First Aid training requirement will become effective when the existing training verification card expires. The revised requirement will become effective immediately for new staff hired on or after the effective date of the amended rule, estimated to be April 1, 2023.

Comment Summary: 8.7.d. Specify that STARS training topics include health, safety, healthy eating, physical activity, and child development. This is consistent with CCDF block grant requirement 2.4.3 requiring training on physical health and development, including healthy eating and physical activity.

Response: The Pre-Service Training modules required under 78CSR1 meet compliance with Federal Requirement §98.44 for nutrition and physical activity. The agency does not believe that additional clarification is needed.

§ 78-1-14. Program.

Comment Summary: 14.2.b. Change from “Include an appropriate balance of ...” to “Caregivers/teachers shall promote children’s active play and participation in active games that promote movement at least two or more times a day, including a balance of”

Response: Physical activity and active play are adequately covered in 14.3.c.-14.3.c.4. The agency does not believe that additional clarification is needed.

Comment Summary: 14.3.c. Add between the first and second sentences: “The center shall develop written policies on the promotion of physical activity and the removal of potential barriers to physical activity participation.”

Response: Regulations 14.3.c.-14.3.c.6. require physical activity for specified periods of time based on age groupings eliminating the need for center policies. The agency does not believe that additional clarification is needed.

Comment Summary: 14.7.h. Change to: “Use of screen media including television, video, DVD, and computers is prohibited with children under 2 years and during meal and snack times.”

Response: This regulation already prohibits any type of screen media for children under the age of 2, including during meal and snack times. The agency does not believe that additional clarification is needed.

§ 78-1-16. Nutrition and Food.

Comment Summary: 16.4. Add a separate notation: “A center shall avoid sugar, including concentrated sweets such as candy, sodas, sweetened drinks, and fruit nectars.”

Response: Regulation 16.4.c. will be added stating: A center shall avoid concentrated sweets such as candy, sodas, sweetened drinks, and fruit nectars.

Comment Summary: 16.8. Add a separate notation: “For children between 6 months and 1 year, whole fruits, mashed or pureed, shall be served.” **Best Practice:** Footnotes 12 (page 87) and 19 (page 88) of Appendix 78-1-C should also be changed to reflect this.

Response: Child care regulations follow the meal and snack patterns of the Child and Adult Care Food Program. Regulations would be changing CACFP guidelines for meal and snack patterns if this were added to 78CSR1. The agency does not believe that additional clarification is needed.

Comment Summary: 16.8. Add a separate notation: “For children younger than 12 months, no fruit juice shall be served.” Alternative: Add to the end of 16.4.b: “only for children 12 months and above.” **Best Practice:** Footnotes 12 (page 87) and 19 (page 88) of Appendix 78-1-C should also be changed to reflect this.

Response: Regulation 16.8. requires centers to follow meal plans developed in collaboration with the parent, licensed health care provider if applicable, and CACFP meal and snack patterns. Adding this recommendation as an additional requirement eliminates collaboration and does not recognize the individual needs of children with special circumstances. Centers would be required to submit a waiver for approval to meet compliance. In addition, this recommendation changes CACFP meal and snack requirements. The agency does not believe that additional clarification is needed.

Comment Summary: 16.8.a. Add “formula mixed with cereal, fruit juices, or other foods” to “solid foods and fruit juices.”

Response: This regulation requires approval from a licensed health care provider for any food intake. Adding this wording would go above and beyond the boundaries of regulation. The regulation requires approval from a licensed health care provider for any food intake based on

the individual child's development. CACFP meal patterns for children birth to 5 months is breast milk or formula without mention of cereal, juice, or other foods. The agency does not believe that additional clarification is needed.

Comment Summary: 16.8.d. Add at end: "or juice."

Response: Add "or juice" as recommended by comment.

Comment Summary: 16.8.f.12.A. Add "breast milk storage bags" to hard plastic and glass bottles. Add "Avoid plastics containing bisphenol (BPA) with recycle symbol #7."

Response: Add "breast milk storage bags." Specific scientific information would create a burden for both parents, center owners and staff. Until the Consumer Product Safety Commission makes this a standard, the regulation should not include this information. 78CSR1.20.2.b. require centers to meet the standards of the Consumer Product Safety Commission.

Comment Summary: 16.8.f.12.C. Delete "breast milk" (already covered in 16.8.f.9) and change formula from "within 30 minutes of when a child has finished eating" to "within one hour of when a child has finished eating."

Response: Delete 'breast milk' and change 30 minutes to 1 hour after finished eating. This corrects conflict with revised 16.8.f.9.

Comment Summary: 16.8.f.12.D. Reword as: "A center shall use unfrozen, fresh refrigerated breast milk up to 4 days from date milk expressed and frozen breast milk stored in freezer for up to 6 months" (see

<https://www.cdc.gov/breastfeeding/recommendations/handling-breastmilk.htm>).

Response: Reword as: A center shall use freshly expressed or pumped breast milk, fresh refrigerated breast milk up to 4 days from date milk expressed and frozen breast milk stored in freezer for up to 12 months.














Comment Summary: 16.8.g.1. Add at end, "including outdoor time" in order to be specific.

Response: The current regulation states 'at all times' which includes outdoor time. This regulation does not need to be revised to include outdoor time.

§78-1-Appendices.

Comment Summary: APPENDIX 78-1-C: NUTRITION -- MEAL AND SNACK PATTERNS. I can't tell if the Child Meal Pattern- Snack has changed a lot. On the email, everything is underlined. I just had our snack menu approved by a dietician and hope it will still be acceptable.

Response: Assistance is available at the West Virginia Child and Adult Care Food Program website located at <https://wvde.us/student-support-well-being/child-nutrition/child-and-adult-care-food-program/>.

-   **Groups**
-  **New conversation**
-  **My groups**
-  **Recent groups**
-  **All groups**
-  **Favorite groups**
-  **Starred conversations**
- DHHR BFA ECE Providers**
-  **Conversations** 99+
- Approved 99+
- Pending
-  **People**
- Members
- Pending members
- Banned users
-  **About**
-  **My membership settings**
-  **Group settings**

Conversations





Public comment 3 views

Sub:






JENNIFER Trippett ecubby44@man.com
to ecproviders@wv.gov

Jul 11, 2022, 2:58:09 PM (10 days ago)  



 My concerns wit...

 Reply all  Reply to author  Forward

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Thank You

Jennifer Trippett

Director-Cubbys Child Care Center

Groups

Conversations

New conversation

My groups

Recent groups

All groups

Favorite groups

Starred conversations

DHHR BFA ECE Providers

Conversations 99+

Approved 99+

Pending

People

Members

Pending members

Banned users

About

My membership settings

Group settings

Comments on Child Care Licensing Standards Revisions [unsecure] 3 views

Subject



Criner, Jessica <Jessica.Criner@csmc.org>
to eceproviders@ev.gov, Jeffrey, Jamie L., M.D., Barbara Gebhard

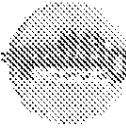
Jul 25, 2022, 2:42:53 PM (yesterday) ☆ ↵

Division of Early Care and Education Staff,

Please accept these comments on behalf of the policy workgroup of *The Earlier, The Better* initiative.

Thank you for your consideration,

Jessi Criner
EDUCATION SPECIALIST
KEYS 4 HEALTHYKIDS

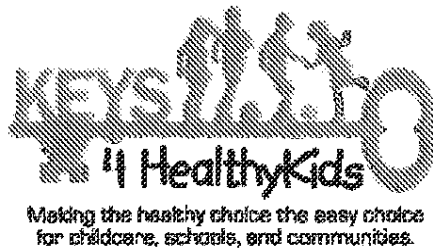


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WV Department of Health and Human Resources
Attn: Division of Early Care and Education
350 Capitol Street, Room B18
Charleston, West Virginia 25301

Division of Early Care and Education Staff:

Thank you for the opportunity to comment on the proposed licensing and regulation changes to the child care regulations. On behalf of the Child Care Policy Workgroup of *The Earlier, The Better* initiative of KEYS for Healthy Kids, we are submitting the following comments for your consideration.

The focus of *The Earlier, The Better* is on obesity prevention in child care, and our comments reflect this focus. We have reviewed a number of national sources from the Centers for Disease Control, the American Academy of Pediatrics, and The National Resource Center for Health and Safety in Child Care and Early Education, and cross-checked them with the proposed regulations to form the basis of our comments.

The majority of these comments relate to the child care center licensing regulations. In cases where the same comment should be considered in other sets of regulations, a reference is included.

Thank you for your careful consideration of these comments as you finalize the child care regulations to propose for the next five-year cycle.

Sincerely,

Jamie Jeffrey, MD FAAP

A handwritten signature in cursive script that reads "Jamie Jeffrey".

Barbara Gebhard, Early Childhood Policy Consultant

A handwritten signature in cursive script that reads "Barbara Gebhard".

**COMMENTS ON CHILD CARE LICENSING STANDARDS REVISION
CHILD CARE POLICY WORKGROUP OF THE EARLIER, THE BETTER**

3.45 (Child Care Centers)

3.24 (Out of School Time)

3.14 (Family Child Care Facilities)

3.12 (Family Child Care Homes)

3.11 (Informal Care)

Recommendation: Add a module on healthy eating and physical activity to required pre-service training modules.

8.7d (Child Care Centers)

14.1.a.8 (Family Child Care Facilities)

Recommendation: Specify that STARS training topics include health, safety, healthy eating, physical activity, and child development. This is consistent with CCDF block grant requirement 2.4.3 requiring training on physical health and development, including healthy eating and physical activity.

14.2.b (Child Care Centers)

Recommendation: Change from "include an appropriate balance of ..." to "Caregivers/teachers shall promote children's active play and participation in active games that promote movement at least two or more times a day, including a balance of"

14.3.c (Child Care Centers)

Recommendation: Add between the first and second sentences: "The center shall develop written policies on the promotion of physical activity and the removal of potential barriers to physical activity participation."

14.7.h (Child Care Centers)

Recommendation: Change to: "Use of screen media including television, video, DVD, and computers is prohibited with children under 2 years and during meal and snack times."

16.4 (Child Care Centers)

Recommendation: Add a separate notation: "A center shall avoid sugar, including concentrated sweets such as candy, sodas, sweetened drinks, and fruit nectars."

16.8 (Child Care Centers)

Recommendation: Add a separate notation: "For children between 6 months and 1 year, whole fruits, mashed or pureed, shall be served."

Best Practice: Footnotes 12 (page 87) and 19 (page 88) of Appendix 78-1-C should also be changed to reflect this.

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Best Practice: Footnotes 12 (page 87) and 19 (page 88) of Appendix 78-1-C should also be changed to reflect this.

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Recommendation: Add "formula mixed with cereal, fruit juices, or other foods" to "solid foods and fruit juices."

16.8.d (Child Care Centers)

Recommendation: Add at end: "or juice."

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Recommendation: Add "breast milk storage bags" to hard plastic and glass bottles. Add "Avoid plastics containing bisphenol (BPA) with recycle symbol #7."

16.8.f.12.C (Child Care Centers)

Recommendation: Delete "breast milk" (already covered in 16.8.f.9) and change formula from "within 30 minutes of when a child has finished eating" to "within one hour of when a child has finished eating."

16.8.f.12.D (Child Care Centers)

Recommendation: Reword as: "A center shall use unfrozen, fresh refrigerated breast milk up to 4 days from date milk expressed and frozen breast milk stored in freezer for up to 6 months" (see <https://www.cdc.gov/breastfeeding/recommendations/handling-breastmilk.htm>).

16.8.g.1 (Child Care Centers)

Recommendation: Add at end, "including outdoor time" in order to be specific.