

78CSR21

TITLE 78  
LEGISLATIVE RULES  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 21

OUT-OF-SCHOOL-TIME CHILD CARE CENTER LICENSING

Comments Summary and Response

**§78-21-3. Definitions.**

**Comment Summary:** 3.24 Add a module on healthy eating and physical activity to required pre-service training modules.

***Response:*** The Pre-Service Training modules required under 78CSR21 meet compliance with Federal Requirement §98.44 for nutrition and physical activity. The agency does not believe that additional clarification is needed.

**§78-21-6. Governance.**

**Comment Summary:** 6.6.a.1 - "immunization record" is added. No medical records are required for OST program attendance, as such, vaccination records should also not be required. Requesting proof of immunizations is an undue burden on custodians attempting to enroll students in program. Proof of medical history is not required by law for attendance in OST programs. Enrollment and use of OST programs is occasional, not necessarily "long term" and the paperwork process is already significant for families to participate. There is no justifiable reason within this type of short term child care program to require it prior to participation. Offering a grace period to specific students experiencing homelessness or who are in state custody as foster children, there is no specific duration specified within the regulation what that "grace period" is for those in foster care or experiencing homelessness - thus, the burden of proof on an OST program participant to identify themselves as experiencing homelessness or as a foster child is unnecessary. If a grace period based on individual circumstances is permitted to some children, then all children should be permitted the same grace period, regardless of their circumstances, which means the efficacy of this clause is moot. It causes increased paperwork for program administration, which means increased work hours for OST operators, which creates a financial burden on OST operators. Get rid of "requires vaccination records". Keep "grace period for foster, et al" regarding all records maintained by OST program administrators.

***Response:*** Federal requirement 98.41(a)(1)(i)(A) mandates children receiving services must be age-appropriately immunized based on the latest recommendation for childhood immunizations for the state of West Virginia. This health and safety requirement includes school age children. The regulation is being revised to include immunization records for school age children to meet compliance with federal law for CCDF Block Grant agencies. Likewise, establishing a grace period for children experiencing homelessness or children in foster care is a requirement under 98.41(a)(1)(i)(C). West Virginia does not designate a specific time period for purposes of

flexibility to accommodate and consider the individual child, family circumstance, and/or medical situation.

**§78-21-7. Staffing.**

**Comment Summary:** 7.4.b.3 - The State of WV should resume processing all background checks of potential hires/volunteers and remove this burden of paperwork from OST program operators (child care centers, child care facilities, child care homes, etc) as it was prior to 2016. The burden to process background checks on providers requires significant administrative hours which is a financial burden on OST program operation. Additionally, running background checks in OTHER STATES (besides WV via the wvcares system) is INCREDIBLY difficult, time consuming, and causes a financial burden on the OST operator AND THE POTENTIAL HIRE. Specifically, you CAN NOT PROCESS A BACKGROUND CHECK WITHOUT FINGERPRINTS in some states - which means the individual CAN NOT be hired, despite having an obviously clean background check within West Virginia, including national sex offender registry. I have a Ph.d doctorate student from Louisiana, who can not clear her out-of-state background check, without fingerprints, the process has sucked HOURS of 4 administrative staff between multiple departments, including the DHHR. It's ridiculous. Background checks are great. National background checks are great. Background checks of every state, lived within, for past 5 years - it's TOO COMPLICATED FOR A CHILD CARE PROGRAM to manage - this MUST be administered by the state. Remove 7.4.b.3 completely, except for "All staff and volunteers must complete a criminal background check via wvcares." Add, "The state of WV DHHR will process all background check requests for staff and volunteers."

***Response:*** Out-of-School Time regulations are governed under the provisions of federal and state codes. W. Va. Code R. §§69-10-1, *et seq.* requires the secretary to create and implement a background check program to facilitate the processing and analysis of the criminal history and background of applicants through a program called the West Virginia Clearance for Access: Registry and Employment Screening (WV CARES).

W. Va. Code R. §§69-10-1, *et seq.* 3.1., requires a provider to prescreen all direct access personnel applicants considered for hire for negative findings by way of an internet search of registries and licensure databases through the WV CARES website. The revisions to 78CSR21 are required to meet compliance with Fed Requirement 98.43(b)(3), W. Va. Code Chapter 49, Article 2 (Part D), W. Va. Code §§16-49-1 *et seq.*, and W. Va. Code R. §§69-10-1, *et seq.*

The Division of Early Care and Education created a Background Check Guide to assist providers in the background check process. Section 4 of the guide explains interstate background checks, including the National Crime Prevention and Privacy Compact Act of 1998, establishing a National Fingerprint File (NFF) database. The Compact allows participating states to distribute its criminal history record information to other states for noncriminal justice purposes in accordance with the laws of the receiving state. A map of the compact states is included in the Resource section of the guide. For example, the state of Louisiana is a compact state which means the WV CARES background would include any information on record for the state of Louisiana. An additional FBI or state background check would not be required from the state of Louisiana due to its compact state status.

**Comment Summary:** 7.4.b.5 and 7.4.b.6 and 7.4.b.7 - in recognition of 7.4.b.3, these ordinances are fine as is, because requesting an operator due a search in the registries per state is different than requesting a completed background check from each state for the potential hire/volunteer. Preferably, the state of WV DHHR would again process these background searches through the internet on behalf of child care operators, as the burden of work is too great and too complicated, requires additional financial burden on operations and administration of the OST operator - however, doing a search for each staff member to clear a DB leaves the liability of hiring a potential criminal on the program operator, which is why this is here in the 1st place - to advise of best practices and to help OST program operators adhere to them. Such as: not hiring sex offenders. Understood and agreed.

***Response:*** Out-of-School Time providers have the responsibility of meeting compliance with 78CSR21, W. Va. Code §§16-49-1 *et seq.*, (a) and W. Va. Code R. §§69-10-1, *et seq.* The revisions to 78CSR21 are required to meet compliance with federal requirements for CCDF Block Grant agencies.

**Comment Summary:** 7.4.d - DO NOT REMOVE THE WORD "ALONE" from this line! It is absolutely impossible to require the extensive paperwork administration you are requesting throughout this regulation change AND find and hire qualified people to work as direct caregivers of children without SUPERVISED WORK WITH CHILDREN. Supervised training of new hires is a crucial element to efficiency and to retaining qualified staff. It can take WEEKS or MONTHS for a multi state background check to come through - by which point, the interested potential hire will have moved on to another type of work. Supervised work with children meets all the criteria of a "an occasional visiting parent providing irregular transportation OR contracted servicemen providing professional services under supervision" as in 7.4.c.2 and 7.4.c.3 - as such a potential new hire, undergoing training, and paperwork, and background checks, should be afforded the same supervised work freedoms as Parents and Professional Contractors who are around children for short durations of times. Remove this edit of "alone" - leave ALONE in this line of the regulation 7.4.d

***Response:*** Fed 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:** 7.4.f - what is "rap back enrollment"? I have no idea what this term is and it is not included in the definitions section of the document. You need a definition of what rap back enrollment is. Did you mean "1 year after their original hire date"? An annual re-upping of staff's info makes sense, or phrasing to include "the new academic operational year" - as OST programs operate only during the academic year.

***Response:*** The Rap Back, short for Record of Arrest and Prosecution Background, is a service that employers can use to continuously monitor their employee's criminal and arrest records by receiving alerts from WV CARES if there are any additions to an employee's FBI records. The agency will clarify the regulation.

Platt, Michelle B &lt;michelle.b.platt@wv.gov&gt;

**Fwd: public comment on regulatory changes for 78-21 OST**Michelle B Platt <michelle.b.platt@wv.gov>  
To: Michelle B Platt <michelle.b.platt@wv.gov>

Mon, Jul 25, 2022 at 11:27 AM

----- Forwarded message -----

From: Yta Rumbaugh <sosocialbaby@gmail.com>  
Date: Tuesday, July 19, 2022 at 5:58:10 PM UTC-4  
Subject: public comment on regulatory changes for 78-21 OST  
To: DHHR BFA ECE Providers <eceproviders@wv.gov>, cammie.l.chapman@wv.gov <cammie.l.chapman@wv.gov>

Dear Cammie Chapman,

I'm writing to request the following changes NOT be made to 78-21 Out of School Time (OST) regulation. These changes create an unfair and unnecessary burden to the hiring and retaining process of qualified staff, cause excessive financial burden on OST operators, and undue time and resource hardships on families while not increasing quality of program or increased safety for participants. The amendments create exceptions for some children and OST program adult participants while burdening others. These amendments further constrain the successful operation of OST programs, which already have a meager and disproportionate representation throughout our state

6.6.a.1 - "immunization record" is added. No medical records are required for OST program attendance, as such, vaccination records should also not be required. Requesting proof of immunizations is an undue burden on custodians attempting to enroll students in program. Proof of medical history is not required by law for attendance in OST programs. Enrollment and use of OST programs is occasional, not necessarily "long term" and the paperwork process is already significant for families to participate. There is no justifiable reason within this type of short term child care program to require it prior to participation. Offering a grace period to specific students experiencing homelessness or who are in state custody as foster children, there is no specific duration specified within the regulation what that "grace period" is for those in foster care or experiencing homelessness - thus, the burden of proof on an OST program participant to identify themselves as experiencing homelessness or as a foster child is unnecessary. If a grace period based on individual circumstances is permitted to some children, then all children should be permitted the same grace period, regardless of their circumstances, which means the efficacy of this clause is moot. It causes increased paperwork for program administration, which means increased work hours for OST operators, which creates a financial burden on OST operators. Get rid of "requires vaccination records". Keep "grace period for foster, et al" regarding all records maintained by OST program administrators.

7.4.b.3 - The State of WV should resume processing all background checks of potential hires/volunteers and remove this burden of paperwork from OST program operators (child care centers, child care facilities, child care homes, etc) as it was prior to 2016. The burden to process background checks on providers requires significant administrative hours which is a financial burden on OST program operation. Additionally, running background checks in OTHER STATES (besides WV via the wvcares system) is INCREDIBLY difficult, time consuming, and causes a financial burden on the OST operator AND THE POTENTIAL HIRE. Specifically, you CAN NOT PROCESS A BACKGROUND CHECK WITHOUT FINGERPRINTS in some states - which means the individual CAN NOT be hired, despite having an obviously clean background check within West Virginia, including national sex offender registry. I have a Ph.D. doctorate student from Louisiana, who can not clear her out-of-state background check, without fingerprints, the process has sucked HOURS of 4 administrative staff between multiple departments, including the DHHR. It's ridiculous. Background checks are great. National background checks are great. Background checks of every state, lived within, for past 5 years - it's TOO COMPLICATED FOR A CHILD CARE PROGRAM to manage - this MUST be administered by the state. Remove 7.4.b.3 completely, except for "All staff and volunteers must complete a criminal background check via wvcares." Add, "The state of WV DHHR will process all background check requests for staff and volunteers." ;)

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supervision" as in 7.4.c.2 and 7.4.c.3 - as such a potential new hire, undergoing training, and paperwork, and background checks, should be afforded the same supervised work freedoms as Parents and Professional Contractors who are around children for short durations of times. Remove this edit of "alone" - leave ALONE in this line of the regulation 7.4.d

7.4.f - what is "rap back enrollment"? I have no idea what this term is and it is not included in the definitions section of the document. You need a definition of what rap back enrollment is. Did you mean "1 year after their original hire date"? An annual re-upping of staff's info makes sense, or phrasing to include "the new academic operational year" - as OST programs operate only during the academic year.

#### Final Thoughts:

There are incredible varieties of after-school programs (aka: OST Child Care Centers) and the usual amount of contact with children is LESS THAN 4 hours per day. Creating high quality, safe, impactful programs for children is crucial for our community and improved education scores across the state. Make OST program administration /easier/ and reduce the paperwork administration required by simplifying regulations. Do not implement the proposed regulation changes to 6.6.a.1, 7.4.b.3, 7.4.f and most importantly, 7.4.d regarding the removal of the word "alone" which takes away our ability to process new hires and train them via supervised work during normal business hours.

I am available for additional comments, feedback, and quotes at any of the contact info below. Thank you for your consideration.

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Sincerely,  
Tia Fix Rumbaugh  
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### Comments on Child Care Licensing Standards Revisions [unsecure] 3 views

Subscribe



Criner, Jessica <Jessica.Criner@dcsmc.org>

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

to eceproviders@wv.gov, Jeffrey, Janette L., M.D., Barbara Debbert

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,

*Jessie Criner*  
EDUCATION SPECIALIST  
EVS & HEALTHY DS



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Making the healthy choice the easy choice  
for childcare, schools, and communities.

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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.

#### 16.8 (Child Care Centers)

**Recommendation:** 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.

#### 16.8.a (Child Care Centers)

**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."

#### 16.8.f.12.A (Child Care Centers)

**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.