



**WEST VIRGINIA SECRETARY OF STATE**

**KRIS WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Human Services TITLE-SERIES: 78-02  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 78-02 Child Placing Agencies Licensure

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code §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:

W. Va. Code §49-2-121 requires the Secretary of the Department of Human Services to promulgate legislative rules regarding the licensure, approval, certification, and registration of child care facilities. W. Va. Code St. R. §78-2-1, et seq. is the series of legislative rules promulgated to satisfy the requirement of W. Va. Code §49-2-121.

W. Va. Code St. R. §78-2-1 sets forth the scope of the rule, its effective date, and the duration of its effectiveness. This is the only section of the rule that is being amended; DoHS is seeking an extension of the sunset date to August 1, 2031.

W. Va. Code St. R. §78-2-2 explains how the rule is to applied and enforced.

W. Va. Code St. R. §78-2-3 sets for the pertinent legal definitions for the rule.

W. Va. Code St. R. §78-2-4 establishes the requirements for licensing a child placing agency, or anyone accepting placement of children; application procedures; the various types of licenses available; and how and when a license may be amended, renewed, or revoked.

W. Va. Code St. R. §78-2-5 establishes the procedures for inspections, complaints, plans of correction, and waivers.

W. Va. Code St. R. §78-2-6 sets forth the policies and procedures that must be in place for governance of a licensed entity under the rule.

W. Va. Code St. R. §78-2-7 sets forth the staffing process for a licensed entity.

W. Va. Code St. R. §78-2-8 sets forth the staffing requirements for all individuals employed by a licensed facility.

W. Va. Code St. R. §78-2-9 establishes a list of the Child's Rights and the Child's Family's Rights.

W. Va. Code St. R. §78-2-9 sets forth requirements for placement plans and procedures including the licensed facility's intake/referral process; written service agreements; service plans; child assessments; match summary (evaluates child's needs and strengths to determine most appropriate placement); preparation of child for placement; child's planning team; master service plans; and service plan reviews.

W. Va. Code St. R. §78-2-11 governs processes and procedures for transfers and discharges of children by a licensed entity.

W. Va. Code St. R. §78-2-12 sets forth the licensed entity's responsibilities specifically to foster parents and adoptive parents served by the entity.

W. Va. Code St. R. §78-2-13 sets forth the required characteristics and criteria for approved foster and adoptive parents.

W. Va. Code St. R. §78-2-14 establishes requirements for any Agreements between foster/adoptive parents and the licensed entity.

W. Va. Code St. R. §78-2-15 sets forth safety requirements for foster and adoptive homes.

W. Va. Code St. R. §78-2-16 requires licensed entities to complete a comprehensive home study prior to placement of any child and sets forth the minimum requirements/procedures for such study.

W. Va. Code St. R. §78-2-17 governs how and when a foster or adoptive home placement may be approved or denied.

W. Va. Code St. R. §78-2-18 sets forth the conditions and requirements for re-certification of approved foster and adoptive parents.

W. Va. Code St. R. §78-2-19 establishes required training for foster or adoptive parents.

W. Va. Code St. R. §78-2-20 requires licensed entities to develop written procedures for foster/adoptive home placements, as well as home closures.

W. Va. Code St. R. §78-2-21 establishes services required to be provided to biological parents in private adoptions.

W. Va. Code St. R. §78-2-22 establishes the role and requirements of a foster or adoptive parent in Department adoptions.

W. Va. Code St. R. §78-2-23 sets forth requirements and procedures for licensed entities performing private adoptions.

W. Va. Code St. R. §78-2-24 sets forth the services to be provided by licensed entities in private adoptions and Department adoptions.

W. Va. Code St. R. §78-2-25 establishes requirement for a licensed entity to have a transitional living program for those youth aging out of foster care.

W. Va. Code St. R. §78-2-26 requires a licensed entity to establish a grievance procedure for children, foster parents, adoptive parents, and biological parents who feel aggrieved by a decision or action of the licensed entity.

W. Va. Code St. R. §78-2-27 grants a right of administrative due process pursuant to the Administrative Hearings Act for any person aggrieved by an action or order of the Secretary.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED: No

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

PUBLIC HEARING:

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

RELEVANT FEDERAL STATUTES OR REGULATIONS:

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:

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

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

D. FISCAL NOTE DETAIL:

| Effect of Proposal                 | Fiscal Year                            |  |  |
|------------------------------------|--|--|--|
|                                    | 2025<br>Increase/Decrease<br>(use "-") | 2026<br>Increase/Decrease<br>(use "-") | Fiscal Year (Upon<br>Full<br>Implementation) |
| <b>1. Estimated Total Cost</b>     |  |  |  |
| Personal Services                  |  |  |  |
| Current Expenses                   |  |  |  |
| Repairs and Alterations            |  |  |  |
| Assets                             |  |  |  |
| Other                              |  |  |  |
| <b>2. Estimated Total Revenues</b> |  |  |  |

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

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**Daron A Light -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 78  
LEGISLATIVE RULE

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 2  
CHILD PLACING AGENCIES LICENSURE

**§78-2-1. General.**

1.1. Scope. -- This rule establishes minimum standards and procedures for the licensure of child placing agencies under the provisions of W. Va. Code, Chapter 49, Article 2 (Part I), and related federal and state codes. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.wvlegislature.gov/>

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

1.3. Filing Date. -- ~~May 11, 2021.~~

1.4. Effective Date. -- ~~July 1, 2021.~~

1.5. Sunset Provision. This rule shall terminate and have no further force or effect on ~~August 1, 2026~~August 1, 2031.

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

2.1. Application. -- This rule applies to agencies that place children in temporary living arrangements.

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

**§78-2-3. Definitions.**

3.1. Aftercare. -- Services to be provided subsequent to a child's discharge from placement as identified in the discharge plan.

3.2. Agency. -- A child placing agency.

3.3. Case Record. -- A comprehensive collection of information about a child in the care of a child placing agency.

3.4. Certificate of License. -- A written certificate issued by the Secretary authorizing an individual, corporation, partnership, voluntary association, municipality, county or an agency thereof, to provide specified child placing services for a limited period of time in accordance with the terms and conditions of the certificate and this rule.

3.5. Child. -- A person less than 18 years of age or is a transitioning adult.

3.6. Child Abuse and Neglect. -- Any act or omission that creates an abused child or a neglected child as those terms are defined in W. Va. Code §49-1-201.

3.7. Child Placing Agency. -- A child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the assessment and certification of foster family homes as provided in W. Va. Code §49-1-101, *et seq.* The function of a child placing agency may also include the supervision and support of youth or transitioning adults who are 17 to 26 years old and living in unlicensed residences.

3.8. Child's Case Plan. -- A comprehensive document prepared by the Department pursuant to the requirements of W. Va. Code §49-4-604 following an adjudication by the court that the child is an abused or neglected, or both, child, that directs the provision of all casework services including the services provided to the child.

3.9. Child-specific training. -- Training provided to respond to the individualized needs of a child.

3.10. 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 69 CSR 10, and an examination of protective service records to determine eligibility for employment or participation under this rule.

3.11. Crisis Intervention Skills and Techniques. -- Methods used to de-escalate situations that could result in harm to persons or property.

3.12. Crisis Support. -- The use of crisis intervention skills and techniques.

3.13. Department. -- The West Virginia Department of Health and Human Resources.

3.14. Discharge. -- The termination of a child's services with an agency.

3.15. Disruption. -- A change that results in the decision that an adoptive or foster care placement will not continue.

3.16. Foster Family Home. -- A private residence that is used for the care on a residential basis of no more than six children who are unrelated by blood, marriage, or adoption to any adult member of the household.

3.17. Goal. -- An expected result or condition that takes time to achieve, is specified in a statement of relatively broad scope, and provides guidance in establishing intermediate objectives directed toward its attainment.

3.18. Guardian. -- A person or persons, the Department, or the Division of Juvenile Services, who has legal custody of a child, as a result of any contract, agreement, or legal proceedings.

3.19. Governing Board. -- The group of persons that has the administrative control and legal authority to set policy and oversee operations of an agency.

3.20. Incident. -- An act, or series of acts or behaviors, that place a child or others at risk.

3.21. Initial Plan of Care. - A plan developed when the child initially enters placement to ensure that the child receives appropriate care while in placement. If the child is in the Department's custody, and if a Safety Plan or a Child's Case Plan exists, they must be incorporated in the Intake Service Plan.

3.22. Institutional Investigative Unit. -- A unit of the Department authorized by the Secretary to investigate complaints of child abuse or neglect in an agency.

3.23. Life Skills. -- Tasks, abilities, or knowledge required to perform the activities of daily living.

3.24. Multidisciplinary Treatment Team or Multidisciplinary Team (MDT). -- A treatment team that includes the individuals listed in W. Va. Code §49-4-405(b) or §49-4-406(d)(2), as the case may be, who assess, plan, and implement a comprehensive, individualized service plan for the child.

3.25. Normalcy. -- A practice of allowing children and youth in out-of-home care to experience childhood and adolescence in ways similar to their peers who are not in foster care.

3.26. Objective. -- An expected result or outcome that is stated in measurable terms, has a specified time for achievement, and is related to the attainment of a goal.

3.27. Placement. -- Any temporary or permanent living arrangement of a child who is in the custody of the state in any foster home, group facility, or other approved living setting.

3.28. Placement Agreement. -- A written document signed by the child's parent or guardian and a representative of the agency, that specifies the terms of the child's placement.

3.29. Plan of Correction. -- A written agreement between the Department and an agency that outlines the steps an agency shall take to correct deficiencies identified by the Department through an inspection or the investigation of a complaint.

3.30. Policy. -- A statement of the principles that guide and govern the activities operations of a program. This term is interchangeable with "procedure" depending on the organization of the agency.

3.31. Procedures. -- The methods by which a policy is carried out.

3.32. Program. -- A system of services provided to those persons who use the agency.

3.33. Psychotropic Medication. -- Any drug that affects brain activities associated with mental processes and behaviors.

3.34. Reasonable and prudent parent standard. -- The standard characterized by careful and sensible parental decisions that are reasonably intended to maintain the health, safety and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural and social activities.

3.35. Respite Care. -- Alternative short-term care.

3.36. Restraint. -- Restriction of a child's freedom of movement as a means to avoid imminent harm.

3.37. Rules. -- A set of requirements issued by the Secretary to regulate child placing agencies.

3.38. Scattered-Site Living Arrangement. – A living arrangement where youth, age 17 to 26, live in a setting that allows staff to be available as needed depending on the youth’s level of autonomy. Sites are in community environments to allow the youth full access to services and resources in order to fully develop independent living skills.

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

3.40. Self-disclosure Application and Consent Form. -- A signed declaration of criminal convictions, indictments, and court ordered supervision and authorization to allow a criminal history background check as required by the WV CARES process.

3.41. Service Plan. -- A comprehensive, time limited, goal oriented, individualized plan based on a thorough evaluation of the child’s needs that describes the services, interventions and educational needs of a child in care, incorporating any Child’s Case Plan or Safety Plan developed through the MDT process.

3.42. Statement of Child/Adult Abuse or Neglect History Form. -- A document signed by an employee or prospective foster or adoptive parent granting permission to conduct a search of Department records related to his or her involvement in adult or child abuse or neglect allegations or findings, or other investigations documented by the Department.

3.43. Supervised Group Setting. – A setting where youth 17 to 21 live with staff on site or are available 24 hours per day and 7 days per week. In this setting staff provide face-to-face daily contact with youth.

3.44. Trafficking. -- Knowingly recruiting, transporting, transferring, harboring, receiving, providing, obtaining, isolating, maintaining, or enticing an individual to engage in debt bondage, forced labor or sexual servitude. For minors, sexual servitude means maintaining or making a minor available for the purpose of engaging the minor in commercial sexual activity. Children can be sexually exploited through prostitution, pornography, or erotic entertainment.

3.45. Transitioning Adult. – An individual with a transfer plan to move to an adult setting who meets one of the following conditions: (a) is 18 years of age but under 26 years of age, was in the custody of the Department upon reaching 18 years of age and committed an act of delinquency before reaching 18 years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education, employment, or treatment program, or requires transitional supportive services, or (b) is 18 years of age under 26 years of age, was adjudicated abused, neglected, or in the custody of the Department upon reaching 18 years of age and enters into an agreement with the Department to continue in an educational, training, or treatment program or receive supportive transitional services.

3.46. Transitional Living. -- A supervised or semi-supervised living arrangement program developed to assist children in the custody of the Department or who were in the custody of the Department in acquiring skills and competencies to become independent and transition to adulthood.

3.47. Universal Precautions -- A collection of medically related behaviors, procedures, and protocols designed to minimize the risk of disease transmission and contamination.

3.48. Variance. -- A written declaration by the Secretary that a certain requirement of this rule may be satisfied in a manner different from the manner set forth in the rule.

3.49. Waiver. -- A written declaration by the Secretary that a certain requirement may be treated as inapplicable in a particular circumstance.

**§78-2-4. Licensing Information and Provisions.**

4.1. Child Placing Licensing Requirements.

4.1.1. Before establishing or operating a Child Placing Agency or accepting children for placement in the State of West Virginia, an agency, other than one operated by the state, shall obtain a license from the Secretary.

4.1.2. A regular license is valid for up to two years from the date of issuance, unless revoked or modified to provisional status.

4.1.3. A license is valid only for the agency named in the application and is not transferable.

4.1.4. When the ownership of an agency changes, the new owner shall apply for a license.

4.1.5. An agency shall post the license in a conspicuous place at its principal place of business.

4.2. Application Procedures for a License.

4.2.1. To apply for a license, an agency shall submit a completed application obtained from the Department and the following additional written information:

4.2.1.a. Documentation of the legal authority authorizing the organization of the agency;

4.2.1.b. A list of the members of the governing board and employees of the agency;

4.2.1.c. The agency's mission statement;

4.2.1.d. The agency's description of the expectation for the biological families' involvement in supporting the health and welfare of their children;

4.2.1.e. An operating budget for the first fiscal year of operation and documentation of funds in escrow or a credit line equal to the operating budget projected for a six-month period;

4.2.1.f. A statement from an independent certified public accountant (CPA) that proper accounting procedures, including an annual audit from a CPA, are in place for the agency;

4.2.1.g. Proof of liability and fire insurance;

4.2.1.h. A copy of the agency's administrative manual;

4.2.1.i. The packet of forms that will be used to compile complete case records for children, foster or adoptive parents, and employees of the agency;

4.2.1.j. The orientation training curriculum for foster and adoptive parents;

4.2.1.k. The agency's employment policies, including detailed job descriptions and the hiring plan;

4.2.1.l. A plan for the training, supervision, and evaluation of employees of the agency;

4.2.1.m. Information on current agency employees; and

4.2.1.n. The fee or reimbursement schedule and procedures for payment of fees or reimbursements to foster and adoptive parents.

4.2.2. The agency is subject to an investigation or a review process that includes but is not limited to:

4.2.2.a. Evaluation of the quality of the program, the proposed services, and the agency's ability to carry them out effectively in the best interest of the children to be served;

4.2.2.b. Complete background information on the applicant and the principal owners, including a financial statement and character references;

4.2.2.c. A "Fitness Determination" pursuant to the provisions of WV CARES for each applicant, owner, and employee of the agency; and

4.2.2.d. A tuberculosis risk assessment for direct service employees prior to initial assignment.

#### 4.3. Types of Licenses

Following application review, on-site inspection and an approved plan of correction, if necessary, the Secretary shall issue a license in one of three categories: initial license, provisional license and renewal license, if there is compliance with this rule and W. Va. Code §49-2-115.

4.4. Amendment of a License. When implementing a new service or changing a program, an agency shall submit to the Department an application for a proposed amendment to the license.

4.5. Renewal of a License. An agency shall submit a renewal license application form to the Secretary not less than 60 days prior to the expiration of the current license, and any additional information requested.

#### 4.6. Revocation of a License.

4.6.1. The Secretary may revoke an agency's license based on failure to maintain compliance with the provisions of W. Va. Code §49-2-117 *et seq.*, the requirements of this rule, the terms and conditions of its license and any plan of correction.

4.6.2. When the Secretary determines that an agency's operation constitutes a risk of harm to a child placed by that agency, he or she shall issue an order of closure terminating operation of the agency.

4.6.3. When the Secretary has revoked its license, an agency shall not operate pending administrative or judicial review, or without a court order.

4.6.4. When a license is revoked by the Secretary, he or she shall immediately direct the placement of children in the care of that agency into alternative care.

**§78-2-5. Inspections, Complaints, Plans of Correction and Waivers.**

5.1. Inspections.

5.1.1. An agency shall permit the Secretary unrestricted access to the agency to conduct announced and unannounced inspections of all aspects of its operation and premises.

5.1.2. An agency shall permit review of an agency's case records, corporate and financial records, board minutes and employment files as requested by the Secretary during an inspection.

5.1.3. An agency shall permit access to agency employees, members of the governing board, foster or adoptive parents, and consumers receiving services from the agency as requested by the Secretary during an inspection within three business days of such request.

5.2. Investigation of Complaints.

5.2.1. An agency shall provide all information requested by the Secretary and the Institutional Investigative Unit in the investigation of a complaint.

5.2.2. An agency shall limit internal assessment of an incident to ensure the safety of the children in placement without compromising the Department's subsequent investigation.

5.2.3. For any complaint against an employee alleging sexual abuse or serious physical injury to a child in placement, an agency shall remove the employee and discontinue the employee's contact with foster children until an investigation is completed and a determination is made.

5.2.4. For any complaint against a foster or adoptive parent alleging sexual abuse or physical injury to a child in placement by the foster or adoptive parent, an agency shall require immediate removal of the foster or adoptive children in that home to other appropriate care, and the agency shall ensure that the foster or adoptive parents discontinue contact with the children until an investigation is completed and a determination is made.

5.3. Plan of Correction.

5.3.1. After a complaint investigation, the Secretary may require an agency to submit a plan of correction after the receipt of the written summary of the investigation. Depending on the nature of the investigation, the Secretary may require the plan of correction to be submitted as he or she deems appropriate, including immediately, but no more than 30 days.

5.3.2. Within 10 days of notification of the Secretary's approval of a plan of correction, an agency shall implement the plan, unless the approved plan specifies a different date for implementation.

5.3.3. When the Secretary provides notification that a proposed plan of correction is not approved, an agency shall submit another plan of correction within seven working days of the notification.

#### 5.4. Waivers and Variances.

5.4.1. An agency shall comply with all relevant requirements within this rule unless a waiver or variance for a specific requirement has been granted by the Secretary through a written agreement.

5.4.2. An agency's written request for a waiver or variance from the Secretary shall include:

5.4.2.a. The specific requirement of this rule requested to be waived or varied; and

5.4.2.b. The reason or reasons for seeking a waiver or variance.

5.4.3. A waiver or variance of a specific provision of this rule may be granted by the Secretary only if the following criteria are met:

5.4.3.a. The agency has documented and demonstrated that the provision of the rule is inapplicable in a particular circumstance, or that the agency complies with the intent of the provision in the rule in a manner not permitted by the rule;

5.4.3.b. The health, safety, and well-being of a child is not endangered; and

5.4.3.c. The waiver or variance agreement contains provisions for a regular review of the waiver or variance.

5.4.4. The waiver or variance agreement is subject to cancellation if an agency fails to comply with the stated terms of this rule.

### **§78-2-6. Governance.**

#### 6.1. Administrative Policies.

6.1.1. An agency shall develop and maintain policies and procedures, including the dates of implementation, and make them available to employees.

6.1.2. An agency shall operate in accordance with its policies and procedures.

#### 6.2. Legal Operating Authority.

6.2.1. An agency shall establish proof of the legal authority for the operation of the agency by proof of a certificate of existence or authorization issued by the West Virginia Secretary of State confirming that an agency is organized to do business in the state and is in good standing.

6.2.2. An agency shall retain its charter, bylaws, partnership agreement, articles of association or incorporation or other documentation at its principal place of business available for inspection, including complete information about the owners, and a list of the names, addresses, phone numbers, and terms of office for the officers and governing board.

6.3. Governing Board.

6.3.1. An agency shall establish a governing board or other supervisory structure whose responsibilities include:

6.3.1.a. Approving policy, defining, and overseeing services, and being legally accountable for the operation of an agency; and

6.3.1.b. Approving the policies relating to the operation of its services and programs and compliance with W. Va. Code §49-2-101, *et seq.*, and this rule.

6.3.2. The governing board shall meet a minimum of twice per year and keep a permanent written record of the minutes of all meetings of the board and its committees.

6.3.3. The agency shall appoint a full-time executive director or similar administrative position to manage the daily operations of an agency.

6.3.4. The agency shall notify the Secretary in writing of a change in the executive director position.

6.3.5. An agency shall not permit an employee, member of an employee's family, or an employee of a public agency that regulates, purchases the services of, or is responsible for placement decisions, to serve on the governing board of the agency.

6.4. Standards of Ethical Conduct.

An agency shall develop, implement, and maintain written standards of ethical conduct for its governing board and its employees.

6.5. Confidentiality.

6.5.1. Anyone who obtains confidential information while implementing W. Va. Code §49-2-101, *et seq.*, may disclose it only to persons demonstrating a need that is essential to this rule or as required by law.

6.5.2. An agency shall maintain the confidentiality of all records in accordance with the provisions of W. Va. Code §49-5-101 and other applicable laws.

6.5.3. An agency that maintains records by electronic storage means shall secure them against loss, tampering, or unauthorized use in accordance with the provisions of W. Va. Code §61-3C-1 *et seq.*

6.5.4. An agency shall maintain policies and procedures for the disclosure, maintenance, and security of its records.

6.5.5. An agency shall provide specific training for employees, foster parents, and adoptive parents on policy and procedures for confidentiality and information disclosure.

6.5.6. An agency shall obtain the written consent of the child's biological parents or guardian before a child may participate in a publicity event for the agency.

6.5.7. An agency shall use any photographs, audio or video recordings, or statements of a child in placement only in a manner that respects and promotes the best interests of the child and with permission of the child's biological parent or guardian.

6.5.8. An agency shall secure records against loss, tampering, or unauthorized use by maintaining records in an appropriate storage space and by establishing a procedure for restricting access to records to authorized employees.

6.5.9. An agency shall delete an individual's name and other identifying information when its disclosure may violate the right of privacy.

6.5.10. An agency shall delete an individual's name and other identifying information when using it for educational or research purposes.

6.5.11. When an agency ceases operation, it shall develop and implement a procedure for the secure storage or disposition of all of its records.

## 6.6. Records.

6.6.1. Children in Placement. Each child's record shall include:

6.6.1.a. The child's name, social security number, gender, race, biological family's religious preference, if any, and birth date;

6.6.1.b. An itemized list of the documents in the record that are required to be maintained by this rule;

6.6.1.c. A current photograph that is to be updated annually;

6.6.1.d. The name, address, telephone number and marital status of the child's biological parents or guardian;

6.6.1.e. The names, addresses, and telephone numbers of the foster or adoptive parents where the child is placed, including the dates of placement and removal;

6.6.1.f. The date of placement, name, address and telephone number of the referring agency, and the name of the placing worker and his or her supervisor;

6.6.1.g. The names, addresses, and telephone numbers of the medical and other professional persons directly involved in providing ongoing care for the child;

6.6.1.h. Information about the child's allergies, medical conditions, or current prescribed medications;

6.6.1.i. The name, address and telephone number of the child's school, the name of the primary teacher or other school contact person, or the name, address, and telephone number of the child's employer;

6.6.1.j. The placement agreement;

6.6.1.k. Consent forms signed by the biological parents or guardian authorizing the agency to provide all necessary services and care; and

6.6.1.l. An individualized strength-based assessment.

6.6.2. Foster and Adoptive Parents. Each record for foster or adoptive parents shall include:

6.6.2.a. The names, birth dates, and schools or work places for each household member, and the social security numbers of the household members over age 18;

6.6.2.b. The address, telephone number and directions to the foster or adoptive parent's home;

6.6.2.c. The date and type of certification as foster or adoptive parents;

6.6.2.d. A list of all placements with the child's name, dates of placement and removal, and a removal summary statement;

6.6.2.e. Documentation and verification of the foster or adoptive parent's financial status, marital status, medical examination, and a written report of the interviews with their references;

6.6.2.f. Narrative reports of the initial home study, annual home safety assessment and recertification;

6.6.2.g. A letter of approval or denial from the agency including terms and conditions of the approval or denial and any other written agreements;

6.6.2.h. Documentation of pre-service training and continuing training as required under this rule;

6.6.2.i. A written statement of acknowledgment by the foster or adoptive parents that they have received a copy of the policies and procedures of the agency regarding the care and placement of a child;

6.6.2.j. WV CARES self-disclosure and consent form, a fitness determination of eligibility from the Department, and any approved variances or waivers from the Secretary;

6.6.2.k. A completed "Authorization and Release for Protective Service and Provider Record Checks" form;

6.6.2.l. Special incident reports, investigations of child abuse or neglect allegations, noncompliance with the agency's policies or procedures or the requirements of this rule;

6.6.2.m. Plans of correction; and

6.6.2.n. The date of closure and closure summary report.

6.6.3. Employees. Each record for an employee shall include:

6.6.3.a. The employee's position, title, job description, date of hire and date of separation from employment;

6.6.3.b. Documentation of credentials and certifications;

6.6.3.c. Reports of any actions or incidents relating to employment;

6.6.3.d. Verification of completion of required training, including information on the course title, date and hours of instruction, and the name of the instructor;

6.6.3.e. WV CARES self-disclosure application and consent form, a fitness determination of eligibility form the Department, and any approved variances or waivers from the Secretary;

6.6.3.f. A Completed "Authorization and Release for Protective Service Checks" form;

6.6.3.g. Acknowledgment of receipt of the agency's employee manual; and

6.6.3.h. A notice of resignation or termination from the agency.

6.7. Operating Oversight.

6.7.1. An agency shall establish an emergency telephone system that is available 24 hours a day, seven days a week, and have procedures in place for:

6.7.1.a. Reporting an allegation of abuse or neglect to the director, the Institutional Investigative Unit, the placing worker, and the child abuse hotline;

6.7.1.b. Reporting an emergency or an incident of harm, abuse or neglect, a suicide attempt, suspected criminal activity, juvenile delinquent activity, a medical emergency, a death, or suspected use of illicit substances;

6.7.1.c. Identifying and reporting a child who is absent without permission to the guardian or child abuse hotline and a law enforcement authority immediately after determining the child cannot be located;

6.7.1.d. Reporting an incident in which the child is removed from the present location and from further contact with the alleged adult offender until an investigation is complete, medical care is obtained and law enforcement is notified;

6.7.1.e. Writing a report of the emergency or incident to the director within 48 hours of the date of the emergency or incident, that includes a description of the emergency or incident, the date and time it occurred, names of the individuals involved, precipitating factors, statements of witnesses, immediate actions taken by employees or other persons and other relevant information concerning the incident;

6.7.1.f. Changing the child's service plan or changing policy and procedures at the recommendation of the Secretary following an emergency or incident; and

6.7.1.g. Training employees and foster or adoptive parents in the procedure for emergencies and incidents.

6.7.2. An agency shall train employees and foster or adoptive parents on the universal precaution procedures.

6.7.3. An agency's protocol shall:

6.7.3.a. Identify when employees and foster or adoptive parents are found to be in substantiated noncompliance with its policies and procedures that require a plan of correction or that provide grounds for suspension, dismissal, or closure; and

6.7.3.b. Establish time limits on the plan of correction and provide for its monitoring.

**§78-2-7. Staffing Process.**

7.1. Staffing Plan.

7.1.1. An agency shall develop and implement a staffing plan to provide for the effective implementation of its services and programs that includes for each service position in the agency, a job description detailing the responsibilities, qualifications, and title of direct supervisor.

7.1.2. An agency shall designate a supervisor for each service or program.

7.1.3. The staffing plan shall set a policy for the ratio of supervisors to employees to ensure adequate guidance and support for each employee.

7.1.4. The staffing plan shall include a policy on case load size and the frequency and nature of the staff contact with children.

7.1.5. The agency shall revise as needed the staffing plan to reflect changes in services and programs.

7.2. Employment Practices. An agency shall have written employment practices that include:

7.2.1. A requirement for an immediate suspension of an employee upon any felony or misdemeanor charge for a disqualifying offense until the charges are resolved, and a requirement that the employee notify the director of any criminal charge within 24 hours. This requirement shall provide that an employee convicted of these charges shall no longer be permitted to provide direct services to children and their families.

7.2.2. A requirement for immediate suspension of an employee who is alleged to have sexually abused or otherwise injured a child pending the outcome of the investigation.

7.2.3. A policy on the Statement of Child Abuse or Neglect History form stating that upon employment, employees shall sign and date a statement that defines child abuse or neglect, as defined in subsection 3.6. of this rule, and outlines the employee's responsibility to report immediately any suspected incident of child abuse or neglect to the executive director or his or her designee, to the Institutional Investigative Unit, and to the Child Abuse Hotline, 1-800-352-6513, in accordance with W. Va. Code §49-2-801 and §49-2-803 *et seq.*; and

7.2.4. A general code of conduct on the relationship between employees, a child in placement and his or her family including provisions:

7.2.4.a. That contact be case related only as described in the child's service plan, and continue only as specified in the plan;

7.2.4.b. That excursions are case related only;

7.2.4.c. That a child cannot stay overnight in the home of an employee, unless the child is in a transitional living program; and

7.2.4.d. Guidelines for gift giving and receiving between employees and those served; and

7.2.5. A policy that employees applying to be foster or adoptive parents may not be considered for foster or adoptive parenting by the agency that employs them.

7.3. Background Checks. An agency shall submit a request for an application to the WV CARES unit of the Department for each potential employee prior to the employee working with children. After receiving notification from the WV CARES unit that a background check has begun, an applicant may work under direct supervision on a provisional basis for no more than 60 days while the background check is being processed. The agency must document that it has completed the background check process for each applicant pursuant to W. Va. Code §46-49-1 *et seq.*, by receipt of a fitness determination of eligibility or variance, if granted.

**§78-2-8. Employee Requirements.**

8.1. Qualifications. An agency shall outline in job descriptions minimum requirements for each position with regard to education, experience, and essential qualifications.

8.1.1. Administrative and Supervisory employees, including the Assistant Director, Program Director, and Case Management Supervisor shall possess:

8.1.1.a. An advanced degree in a human service field and two years of direct practice experience; or,

8.1.1.b. An advanced degree in a human service field and be licensed within the scope of their professional practice; or,

8.1.1.c. A Bachelor's degree in social work or a comparable human service field and two years of experience in a human services related field, at least one year of which is in child welfare services.

8.1.2. Clinical employees, including Physicians, Therapists, Clinical or Certified Social Workers, and Psychologists shall have valid West Virginia professional licenses in their fields and shall operate within the scope of their practice.

8.1.4. Case Managers shall have a bachelor's or master's degree in social work or a related human service field, or a Board of Regents degree with human service concentration, or a bachelor's degree and have completed department-approved training provided by the child placing agency.

8.1.5. Para-Professional employees shall possess a high school diploma or GED and be at least 21 years of age.

8.2. Training and Development. An agency shall develop and implement a comprehensive plan for employee orientation, ongoing training and development, and supervisory review, including performance and program evaluations.

8.2.1. Orientation Training. An agency shall require that direct care service employees included in child placing services, within three months of employment, complete a minimum of 40 hours of orientation training in areas including:

8.2.1.a. Licensing rules and the legal aspects of foster care;

8.2.1.b. The service planning process;

8.2.1.c. A crisis intervention model that includes interviewing techniques, conflict de-escalation and conflict resolution, and crisis intervention;

8.2.1.d. Mandatory reporting requirements for child abuse and neglect;

8.2.1.e. Normalcy for foster children;

8.2.1.f. Reasonable Prudent Parent Standard;

8.2.1.g. Human Trafficking Prevention for foster children and National Runaway Youth Prevention;

8.2.1.h. Trauma-informed care;

8.2.1.i. Runaway youth procedures

8.2.1.j. Absent from supervision procedures; and

8.2.1.k. First Aid and CPR Training appropriate to the age of the children they serve.

8.2.2. Ongoing Training.

8.2.2.a. An agency shall require that all employees providing direct care services to clients receive at least 20 hours of additional training in the areas of values and cultural diversity, ethics, child abuse and neglect issues, trauma, the Adoption and Safe Families Act and behavior management, within the first six months of employment.

8.2.2.b. An agency shall require that after the first year of employment, all employees providing direct care services to clients, complete a minimum of 25 hours of ongoing training per year.

8.3. Contracted Professional Services.

8.3.1. An agency shall verify that all contracted professional services are certified or licensed in the service they are providing.

8.3.2. An agency shall require that a contracted professional providing direct care services to a child in placement provide documentation of services.

8.4. Volunteers.

8.4.1. An agency that uses volunteer services, including student field placements and internships, shall develop and implement a plan for their specific use, shall provide that an agency employee oversee their service, and shall provide training, prior to their beginning service, on:

8.4.1.a. The program and agency orientation;

8.4.1.b. The services offered and the volunteer's role on the team;

8.4.1.c. The policies regarding confidentiality;

8.4.1.d. The policies regarding mandatory reporting requirements for child abuse or neglect;

8.4.1.e. The code of conduct for the volunteer; and

8.4.1.f. The emergency procedure.

8.4.2. An agency shall require volunteers who are working directly with youth to complete background checks in accordance with the provisions of the WV CARES act and rules and complete a "Authorization and Release for Protective Service and Provider Record Checks" form.

8.4.3. An agency shall require that volunteers who are working directly with youth have a medical screening by a qualified medical practitioner and a tuberculosis risk assessment or test with negative risk assessment or test results prior to providing services to children and every five years thereafter.

**§78-2-9. The Child's and The Child's Family's Basic Rights.**

9.1. For the child and the child's biological family, an agency shall ensure the following rights:

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9.1.1. Equal access to services regardless of age, marital status, race, religion, ethnicity, gender, disability, or sexual orientation;

9.1.2. Services consistent with identified needs in the least restrictive environment available;

9.1.3. Interdisciplinary, therapeutic services that meet a child's physical, emotional, social, educational, and financial needs;

9.1.4. Active participation and respect as an individual during the delivery of services process;

9.1.5. Reasonable privacy; and

9.1.6. Contact between a child and his or her biological family is not restricted as a means of punishment or in any way except as specified by court order or documented in the child's service or treatment plan. Visits shall take place during hours different from an agency's business hours when the family cannot visit during those hours and shall be arranged and take place with the prior knowledge of the foster or adoptive parents.

9.2. A child receiving services from the Agency shall have in addition to the rights in subsection 9.1. of this rule, the following:

9.2.1. Adequate shelter, food, and clothing;

9.2.2. Education and training;

9.2.3. Services necessary to promote safety, permanency, and well-being;

9.2.4. Adult guidance, support, and supervision;

9.2.5. Freedom from abuse, neglect, and exploitation; and

9.2.6. Full and reasonable communication with his or her attorney, clergyman, and an authorized representative of the placing agency or of the court of record, including visits, correspondence, and telephone calls.

9.3. An agency shall develop and implement procedures to ensure that a child in placement's maximum health and safety needs are met including receiving:

9.3.1. The level of supervision required in the service plan as guided by reasonable and prudent parent standards;

9.3.2. Appropriate medical screening, diagnosis, and treatment on a regular basis; and

9.3.3. A minimum of the following routine medical, dental, and vision examinations and treatment, as proscribed, and emergency treatment, as needed:

9.3.3.a. An initial general medical examination by a physician 30 days before placement or within 30 days after placement and routine medical examinations after that as recommended for the

child's age. In addition, children placed by the Department shall be treated in accordance with the Health Check requirements available through the Office of Maternal and Child Health;

9.3.3.b. For children with extraordinary medical needs, unless a medical examination can be documented within the previous 30 days or the child was discharged from an inpatient facility, the child is examined by a physician within 72 hours after initial placement, and the physician documents that the child can be appropriately cared for in a home setting;

9.3.3.c. Immunizations as recommended by the American Academy of Pediatrics;

9.3.3.d. For a child two years and older, an examination by a dentist will be scheduled within 30 days after placement unless an examination can be documented within the previous 30 days, and after that a semiannual examination by a dentist and follow-up treatment as needed;

9.3.3.e. For a child four years and older, an eye screening by an optometrist will be scheduled within 30 days after placement unless a screening can be documented within the previous 30 days, and follow up as indicated by Health Check requirements;

9.3.3.f. Any treatment or aids prescribed including eyeglasses, a hearing aid, and a prosthetic or corrective device;

9.3.3.g. The documentation from the physician in the child's record, complete orders for medication, treatment, diet, range of motion programs, habilitation, and special medical or developmental procedures needed;

9.3.3.h. The foster or adoptive parents receive all of the training necessary to care for the child prior to placement or as soon as possible in the case of an emergency placement;

9.3.3.i. The foster or adoptive parents maintain a daily medication log for each child that includes the name of the medication, the physician who prescribed it, the dosage, the administration schedule, the potential side effects and any change in the medication that the physician makes;

9.3.3.j. Prescription medication is administered for therapeutic reasons only and under the following provisions:

9.3.3.j.1. A physician shall examine the child before prescribing a medication, and he or she is the only one who can alter the medication or medication level;

9.3.3.j.2. The child's parents or guardian may revoke consent for a medication at any time;

9.3.3.j.3. The parents or guardian of a child, and a child 14 years or older unless the child is documented to be lacking the capacity for informed consent, shall give prior written informed consent for the use of a psychotropic medication;

9.3.3.j.4. The child's foster or adoptive parents and primary case manager shall receive training related to the psychotropic medication, its expected results, its potential side effects, and an agency's policies regarding its use;

9.3.3.j.5. A child 14 years or older who refuses to take medication three consecutive times shall be considered to have revoked consent;

9.3.3.j.6. When consent is revoked, the administration of medication shall cease immediately unless titration is needed at the direction of the physician; and

9.3.3.j.7. When the parents or guardian revoke consent, an agency shall inform the prescribing physician; the agency shall relay the recommendation by the physician to the Department; and

9.3.3.j.8. An agency shall establish procedures for medication errors in dosage, administration or adverse side effects that include contacting the prescribing physician and documenting the incident.

9.3.3.k. Over-the-counter medication shall be dispensed by a foster parent using the reasonable and prudent parenting standards.

#### 9.4. Religious Preferences.

Upon a child's admission, an agency shall determine the religious preference of the child, if any, and the child's parent or guardian. The agency shall ensure the opportunity for the child to attend the religious service of his or her choice if he or she expresses one.

#### 9.5. Multiethnic Placements.

9.5.1. In placement or adoption decisions, an agency shall not consider race, color or national origin unless it is part of an individualized determination that the facts and circumstances of a particular case require the consideration of race, color or national origin in order to advance the best interests of the child and in accordance with applicable federal law and policy.

9.5.2. An agency shall ensure that a child, at his or her discretion, has the opportunity to participate in cultural and ethnic activities significant to his or her heritage.

9.5.3. In accordance with the Multiethnic Placement Act of 1994, as amended by the Removal of Barriers to Interethnic Adoption Act of 1996, an agency shall not delay or deny a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, ethnicity, color, national origin.

9.6. Behavior Management and Discipline. An agency shall provide policies and procedures for foster or adoptive parents to use as guides in disciplining a child and behavior management.

##### 9.6.1. Appropriate methods of discipline include:

9.6.1.a. An emphasis on discipline with kindness and understanding, using positive feedback and rewards to reinforce good or improved behavior;

9.6.1.b. Simple, clear, understandable, and consistent household rules;

9.6.1.c. Measures appropriate to the developmental level of the child that help him or her develop self-control and learn responsibility for his or her own actions;

9.6.1.d. That only a parent or other prior approved adult caregiver is permitted to discipline the child;

9.6.1.e. That measures are administered close to the time of the child's act or behavior for teaching purposes and if time out is used, that it be for a reasonable period of time;

9.6.1.f. That crisis intervention skills and techniques be used according to agency policy only.

9.6.2. Inappropriate Methods of Discipline. An agency shall develop and implement policies and procedures that ensure that a child is not disciplined with cruel, harsh, unusual or unnecessary punishment, and shall develop and implement a description of those measures and methods that are not permitted, including but not limited to the following:

9.6.2.a. Any type of physical hitting, spanking, slapping, or other type of physical punishment inflicted in any manner upon the child's body;

9.6.2.b. Threats of removal from the foster or adoptive home;

9.6.2.c. Any acts, verbal abuse, or emotional abuse that humiliates, shames, disgraces, ridicules, belittles, or destroys a child's sense of dignity or self-worth including any remarks made about the child's biological parents or family;

9.6.2.d. Keeping a child out of school;

9.6.2.e. Denying food, clothing, shelter, or bedding;

9.6.2.f. Closing or locking a child in any enclosed space;

9.6.2.g. Denying mail, telephone calls or visits with biological family members, unless it is related to subdivision 9.1.6. of this rule;

9.6.2.h. Withholding a program service or a provision in the service plan; or

9.6.2.i. Administering a medication that has not been prescribed.

9.6.3. An agency shall ensure that behavior problems are treated individually and privately. If there is a consistent pattern of unacceptable behavior, an agency shall develop a separate behavior management plan to be added to the child's service plan.

## 9.7. The Child's Financial Resources.

9.7.1. An agency shall ensure that money earned, received as a gift, or given as an allowance is the child's personal property.

9.7.2. An agency shall use reasonable and prudent parent standards to assist the child in making decisions regarding spending or saving the child's money.

9.7.3. An agency shall not require a child to pay for his or her care or services.

9.8. Clothing.

9.8.1. An agency shall ensure that each child has adequate, well-fitting, and seasonal clothing appropriate to his or her age and individual needs, shall allow the child choice in the selection of the clothing, and shall replenish the wardrobe, as necessary.

9.8.2. At the time of placement and at the time of discharge, an agency shall take an inventory of the child's clothing and personal possessions.

9.8.3. Agency shall ensure that each child has appropriate luggage or containers to transport his or her personal items.

**§78-2-10. Placement Plans and Procedures.**

10.1. Referrals.

10.1.1. An agency may accept referrals from persons or organizations that have an interest in the welfare, security or treatment of the child and the child's family, and that have authority to make the referral.

10.1.2. An agency may develop and implement policies and procedures for determining if a referral is appropriate for the services the agency offers, and for accepting a voluntary referral from a child or a child's biological parent.

10.2. Intake. An employee designated by the agency shall be responsible for:

10.2.1. Conducting an intake interview with the child, the child's biological parents or guardian, or the foster or adoptive parents to determine the need for services;

10.2.2. Providing orientation to the agency, including an overview of the placement process, the child assessment process, and identifying which agency employee is responsible for each activity;

10.2.3. Coordinating the child assessment process with the child, the child's biological parents, and the placing worker;

10.2.4. Introducing the child and his or her family to the case manager assigned to them by the agency; and

10.2.5. Participating in the service planning process.

10.3. Written Service Agreement. Upon placement of a child, an agency shall develop and implement a written, signed, and dated service agreement between the child's parents or guardian and the agency that shall include:

10.3.1. Specific services to be provided;

10.3.2. A description of the fees or reimbursement;

10.3.3. A list of the planning team members;

10.3.4. Signed consent and authorization forms when necessary for the delivery of services, including to obtain medical and dental care, for travel, for the release of information, and to obtain photographs and audio or video recordings of the child;

10.3.5. Responsibilities of the child, the biological parent or guardian, the primary case manager, the foster parents, or the adoptive parents during the service delivery; and

10.3.6. A description of the conduct or activity by the child or family that may result in the agency's discontinuing services to them.

10.4. Intake Service Plan. Based on the intake interview and available referral information, an agency shall develop an intake service plan within seven days of placement to be signed and dated by the child, if appropriate to his or her age, and the child's biological parent or guardian. The plan shall include:

10.4.1. An initial identification of the child's strengths and service needs;

10.4.2. The objectives of the placement and the agency's plan for meeting them;

10.4.3. Identification of the permanency plan;

10.4.4. Services, assessments, and evaluations that need to be provided prior to the development of the master service plan;

10.4.5. Specific management strategies agreed upon by the agency and biological parents or guardian in handling any known behavioral problems; and

10.4.6. A projected date for the development of the master service plan.

10.5. Child Assessment. An agency shall complete a detailed narrative child assessment prior to developing the master service plan that includes the following information:

10.5.1. A summary of the circumstances that led to the child's referral for placement;

10.5.2. The child's physical description, including a recent photograph;

10.5.3. The child's current strengths, presenting issues, and a summary of the child's history;

10.5.4. Any reported developmental history, including birth and health history, and deviations from the normal range of development;

10.5.5. Any known biological family history and background that provides:

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- 10.5.5.a. A physical description and health history of immediate family members;
- 10.5.5.b. A description of the biological mother's pregnancy, including prenatal care, nutrition, and use of alcohol or drugs;
- 10.5.5.c. The formal education and training, functional level, and occupation of immediate family members;
- 10.5.5.d. The special interests, religious preferences, if any;
- 10.5.5.e. The relationship of each family member to the child;
- 10.5.5.f. A description of the child's or family's support system; and
- 10.5.5.g. Any other significant information that may affect the child's development;
- 10.5.6. The child's current health status, including records of a current medical examination and immunizations;
- 10.5.7. The child's education history, including the current level of functioning and if special education service indicated by an individual educational plan (IEP) or 504 Plan;
- 10.5.8. For any child age 14 years or older, a life skills assessment;
- 10.5.9. A description of the child's relationships with peers and significant adults outside of the family;
- 10.5.10. The special interests, achievements, and abilities of the child;
- 10.5.11. A description of known previous interventions or placements with the child and biological family and their results;
- 10.5.12. The child's current legal status;
- 10.5.13. The date and signature of the employee completing the child assessment; and
- 10.5.14. For emergency placements, a summary of circumstances that describe the immediate conditions that led to the placement and as much information as is available about the child at the time of admission, completed within two (2) working days of admission.

### 10.6. Match Summary.

An agency shall use an evaluation of the child's needs and strengths and the information provided by the referring entity to develop a match summary that shall be used to place a child with an appropriate family.

### 10.7. The Interstate Compact on the Placement of Children.

10.7.1. Before placing a child in a foster or adoptive home in another state or accepting a child for placement from another state, an agency shall make the referral through the Interstate Compact Administrator in the Department in accordance with W. Va. Code §49-7-101 *et seq.* and §49-7-201.

10.7.2. Before placing a child out of state, an agency shall secure written approval from the Interstate Compact Administrator in the receiving state.

10.8. Preparation of a Child for Placement.

10.8.1. An agency shall prepare a child for a placement, appropriate to his or her age and developmental level.

10.8.2. The agency shall provide information and support to the child as appropriate to help the child understand what the placement process is and what it will mean to him or her.

10.9. Planning Team.

10.9.1. An agency shall utilize a planning team to develop a service plan for a child's foster care.

10.9.2. The planning team shall invite the child as appropriate to his or her level of understanding, the parents or guardian, foster parent, the family's case manager, the placing worker, the child's attorney, professionals working with the child, and other individuals significant in the child's life that have an interest in the child.

10.9.3. An agency shall ensure that any plan developed from the Multidisciplinary Team process assists in the development of the service plan, and any service plan developed by the agency shall not conflict in any manner with the Child's Case Plan.

10.10. Master Service Plan.

10.10.1. An agency shall ensure that within 30 days of placement of a child in foster care, the planning team develops a service plan for each child.

10.10.2. The planning team shall use the child assessment, an evaluation of the child's needs and strengths, and information from the Multidisciplinary Team process to develop the service plan.

10.10.3. The service plan shall include:

10.10.3.a. The child's specific needs and strengths, the plan for meeting or supporting them, the time frame for meeting each need or goal, and the methods of measurement;

10.10.3.b. Any special services to be provided;

10.10.3.c. The nature and frequency of planned respite care, if appropriate;

10.10.3.d. Information about the nature and frequency of the child's contact with his or her family;

10.10.3.e. A description of the child's permanency plan; and

10.10.3.f. An identification of all persons responsible for implementing or overseeing the implementing of the goals, objectives, and services identified in the service plan.

10.10.4. An agency shall ensure that the service plan is signed and dated by the planning team, and a copy given to each member.

10.10.5. When a planning team member is unable to participate, it shall be noted on the signature page of the service plan.

10.10.6. An agency shall ensure that the service plan and subsequent revisions are explained to the child, his or her biological parents or guardian, and the foster or adoptive parents in language that is understandable to them.

10.10.7. If an agency does not ensure that the service plan is explained, the reasons for the lack of explanation shall be documented on the signature page.

10.11. Service Plan Review.

10.11.1. An agency shall ensure that each child's service plan is reviewed by the planning team no less than once every three months.

10.11.2. An agency shall give members of the planning team at least two weeks' notice of the scheduled review, and a copy of this notice shall be placed in the child's record.

10.11.3. The review shall include the following:

10.11.3.a. An evaluation of the progress toward meeting each identified need, goal, and objective;

10.11.3.b. An identification of any new needs, goals or objectives, the plan and time frame for meeting them, the person who will be responsible for implementing them, and the methods of measurement; and

10.11.3.c. Any changes in the estimated length of placement, long range goals, or discharge plans.

10.11.4. The review and updated service plan shall be signed and dated by the members of the planning team and a copy given to each member of the team.

**§78-2-11. Transfers and Discharges.**

11.1. An agency shall develop and implement a procedure for transferring a child from one foster or adoptive home to another within the agency that includes:

11.1.1. Documentation of the circumstances causing the move;

11.1.2. Documentation of approval from the Department and notification to the planning team, as required by W. Va. Code §49-4-608;

11.1.3. An account of the child's understanding of and response to the transfer; and

11.1.4. A provision that the new foster or adoptive parents, excluding respite, shall be given a copy of the child's current service plan and the child's social, medical, psychological, and school history.

11.2. An agency shall ensure that the planning team develops an aftercare plan not less than three months prior to the planned discharge of a child that includes:

11.2.1. An evaluation of the most recent service plan, identifying the goals and needs that have been met and those that have not;

11.2.2. Identifying the services and resources necessary to meet the needs of the child;

11.2.3. The name, address and telephone number of the person or agency to which the child is to be discharged, if known;

11.2.4. A procedure for transferring information and records about the child to the new program when the child is to be placed in another program upon discharge;

11.2.5. An account of the child's awareness and understanding of his or her aftercare plan;

11.2.6. The signatures of the planning team members and dates they signed the aftercare plan;

11.2.7. Documentation of any disagreement of a planning team member with the child's discharge or aftercare plan; and

11.2.8. The reasons why a member of the planning team is unable to participate in the aftercare planning.

11.3. An agency shall develop and implement a written procedure for a request for removal from the agency's care that are not in the child's service plan. For a request for removal other than an emergency, an agency shall give a minimum of 10 working days' notice of the discharge to the placing worker, or his or her supervisor.

11.4. An agency shall develop and implement a written procedure for emergency discharges that includes the following provisions:

11.4.1. An emergency discharge shall occur only when a child's behavior may present a danger to himself or herself or others or when the foster family experiences a calamity;

11.4.2. The identification of employees designated by the agency to have the authority to assess the child's status and to recommend an appropriate alternate placement;

11.4.3. An agency shall notify the placing worker and the primary case manager of the discharge immediately;

11.4.4. If the agency arranges for an emergency placement, the placing worker and the primary case manager shall be consulted in determining which placement best meets the child's needs; and

11.4.5. An agency shall document the emergency discharge in the child's case record within 24 hours of the discharge.

11.5. On the day of a planned discharge an agency shall document the following information in the child's record:

11.5.1. The return by the agency of the child's personal items, prescribed medication and dosage instructions, and personal records including the child's birth certificate, and social security card; and

11.5.2. The name, relationship to the child, and address of the person or agency receiving physical custody of the child upon discharge, if known.

11.6. Within 30 days of the date of a child's discharge, an agency shall complete a written discharge summary that includes the following information:

11.6.1. The name, address, telephone number and relationship of the person or agency to which the child was discharged, if known;

11.6.2. The date of the child's discharge;

11.6.3. The reason for the child's discharge;

11.6.4. A summary of all services provided during placement;

11.6.5. An account of the child's growth and accomplishments during placement;

11.6.6. A description of the circumstances that led to an unplanned discharge if it is not in accordance with the child's service plan, the actions taken by the agency, and the reasons for these actions; and

11.6.7. The planning team's recommendation for the most appropriate placement for the child.

**§78-2-12. The Agency's Responsibilities to Foster and Adoptive Parents.**

12.1. An agency shall develop and implement a handbook of the responsibilities of foster and adoptive parents to the child, to the child's family and to the agency. The handbook shall state the necessary policies, procedures, laws, and forms.

12.2. An agency shall develop and implement a procedure detailing its responsibilities to foster and adoptive parents included in the service agreement between the agency and the foster or adoptive parent and the handbook. The procedure shall require the agency to:

12.2.1. Provide to the foster or adoptive parents a copy of the handbook that describes the responsibilities of the foster or adoptive parents and the agency in the placement of a child;

12.2.2. Provide that the agency's emergency telephone on-call system be operational at all times;

- 12.2.3. Inform foster or adoptive parents about the agency's grievance procedure;
- 12.2.4. Provide complete information about a child's background, his or her current physical, mental, emotional, and behavioral functioning and any special needs prior to placement;
- 12.2.5. Involve foster or adoptive parents on the child's service planning team and provide them a copy of the child's initial plan of care and all subsequent plans;
- 12.2.6. Provide ongoing training, guidance, and support, including crisis support;
- 12.2.7. Provide periodic respite care for a child in a foster care placement;
- 12.2.8. Provide complete information about the procedures to be followed when an allegation of child abuse or neglect, or a complaint of noncompliance with licensing rules or agency policy is made;
- 12.2.9. Maintain the confidentiality of records according to agency policy and procedure;
- 12.2.10. Provide foster or adoptive parents access to their own record with the exception of reference letters and reference interviews;
- 12.2.11. Ensure foster or adoptive parents maintain liability and personal loss coverage for loss or damage occurring as a result of their role as foster parents;
- 12.2.12. Give foster or adoptive parents 10 working days' notice prior to removing a child, unless it is an emergency situation or court order;
- 12.2.13. Inform adoptive parents of the child's legal status prior to and upon the final adoption;
- 12.2.14. Inform adoptive parents of the legal procedures involved in adoption under W. Va. Code §48-22-1 *et seq.*; and
- 12.2.15. Inform foster or adoptive parents of the foster child bill of rights (W.Va. Code §49-2-126) and the foster and kinship parent bill of rights (W. Va. Code §49-2-127).

**§78-2-13. Foster and Adoptive Parents' Characteristics and Criteria.**

- 13.1. Personal Characteristics.
  - 13.1.1. Newly approved foster and adoptive parents shall be age 18 or older.
  - 13.1.2. Prior to approval, each foster and adoptive parent shall provide the agency with a written or recorded detailed personal history in his or her own words which may include:
    - 13.1.2.a. Childhood and family experiences, including those with extended family;
    - 13.1.2.b. Education and employment history;
    - 13.1.2.c. Important life experiences;

13.1.2.d. Values, ideals, religious beliefs, if any, and practices;

13.1.2.e. Health history, including use of drugs or alcohol;

13.1.2.f. Hobbies and interests; and

13.1.2.g. Parenting or child care experience.

13.1.3. At the time of consideration by an agency, foster and adoptive parents shall disclose and sign a release of information detailing any current or previous experience with other licensed agencies or the Department. Foster and adoptive parents may only be certified with one agency at any given time.

### 13.2. Health Considerations.

13.2.1. Prior to approval, foster and adoptive parents shall provide the agency with the following health documentation:

13.2.1.a. An initial medical exam report from a physician for the foster and adoptive parents and all other household members certifying they are in good health, free of communicable diseases, and have had a tuberculin risk assessment or skin test. When TB results are positive, documentation of a physician's recommended follow-up must be on file. An agency shall require documentation of medical exams and TB risk assessment every five years from foster parents.

13.2.1.b. Immunization records for the family's own children; and

13.2.1.c. Any previous history of or current condition involving a disability, alcoholism, or addiction for all household members.

13.2.2. The agency, the Licensing Director or the Director of the Institutional Investigative Unit may require additional examinations, mental health assessments, or drug screens for indications that the safety or well-being of a child in care may be jeopardized by the physical and mental health of a household member.

13.2.3. An agency shall not approve foster and adoptive parents whose health, behavior, or emotional or psychological make-up may endanger the well-being of a child, and shall develop and implement a procedure for the immediate removal of a child in placement if a concern for the child's safety or well-being is indicated.

13.2.4. A foster or adoptive parent currently in therapy shall provide a signed statement from the therapist indicating that he or she is capable of providing appropriate child care.

### 13.3. Living Arrangements.

13.3.1. The total number of children in a foster home, including the family's own children living in the home, may not exceed six children.

13.3.2. An agency shall not permit a family to parent more than two children less than two years of age in the same home at the same time unless they are siblings.

13.3.3. Foster parents shall not care for unrelated adults for compensation in the home, unless the adults were placed for care in that home as a foster child.

13.3.4. Foster parents shall not provide day care services in the home for unrelated children for compensation.

#### 13.4. References.

13.4.1. Foster and adoptive parents shall provide the agency with the names of at least four references from persons who are not related to the parents.

13.4.2. The agency shall ensure that three of the four references are interviewed face-to-face or by telephone to discuss in detail their responses and any related information. The fourth reference may be in writing. Copies of these interviews shall be signed and dated by the interviewer.

13.4.3. An agency shall not approve a foster or adoptive home unless all references for the foster and adoptive parents are positive in nature.

#### 13.5. Finances and Working Arrangement.

13.5.1. Foster and adoptive parents shall provide the agency with documentation of sufficient income and financial resources to meet their financial obligations.

13.5.2. If foster or adoptive parents are, or a single foster or adoptive parent is, employed outside the home, the agency shall approve a plan for the care and supervision of the child during work hours, and the plan shall be included in the child's service plan.

#### 13.6. Background Checks.

13.6.1. Prior to approval, all household members over the age of 18 shall submit an application to the WV CARES unit of the Department for a criminal background check and a search of Department records of substantiated findings of abuse or neglect.

13.6.2. All offenses committed by current juvenile household members must be reported on a continual basis. These offenses shall be considered in determining the suitability of the home.

13.6.3. Alternate caregiver for a foster child shall meet the same criteria for background checks and protective service record checks as the foster or adoptive parent or be a licensed childcare provider. Alternate caregiver does not mean the occasional short-term, temporary act of caring for a foster child.

#### 13.7. Transportation. An agency shall require that:

13.7.1. Foster and adoptive parents have reliable, legal, and safe transportation available.

13.7.2. Foster and adoptive parents show proof that the vehicles used to transport children are covered by liability insurance.

13.7.3. Foster and adoptive parents will use the reasonable and prudent parent standard when deciding who may transport the child.

**§78-2-14. Foster and Adoptive Parents' Agreement with an Agency.**

14.1. Foster and adoptive parents shall enter into a cooperative agreement with an agency that includes the provisions that foster and adoptive parents shall:

14.1.1. Permit an agency and designated Department employees to conduct announced and unannounced home visits and permit access to children in the Department's custody upon request;

14.1.2. Immediately notify an agency about any hospitalization, surgery, accident, serious illness, death, arrest, or detention by a law enforcement agency of a child, or about any other unanticipated incident involving the child placed in their home;

14.1.3. Follow an agency's policy on discipline and on confidentiality of the child's records;

14.1.4. Document their understanding of an agency's policy on child abuse or neglect;

14.1.5. Notify an agency not less than 10 days before requesting the voluntary removal of a child, unless there is an emergency or other circumstance that necessitates the immediate removal of a child;

14.1.6. When possible, give an agency not less than 30 days' notice when requesting the voluntary closure of their home; and

14.1.7. Inform an agency of a charge, arrest, or indictment of any adult household member within 24 hours of the occurrence.

**§78-2-15. Safety Requirements for Foster and Adoptive Homes.**

15.1. An agency shall ensure that the physical facilities of a foster or adoptive home present no health or safety hazards, and that they are sufficiently clean and comfortable to ensure the well-being and respect of the family in the community. Cosmetic damages shall not be considered health or safety hazards so long as the damage does not affect the safety or wellbeing of a child.

15.2. An agency shall ensure that all approved homes have recreation spaces available to children that are appropriate for their ages.

15.3. For sleeping, an agency shall ensure that:

15.3.1. Each child shall have an individual bed that is not a cot or roll away bed;

15.3.2. A maximum of four children may share a bedroom;

15.3.3. A child shall not share a bedroom or a bed with an adult, or a child of the opposite sex. A child less than two years old may temporarily share a bedroom;

15.3.4. A child's bedroom may not be used for any other purpose;

15.3.5. A child's bedroom located in the attic or basement shall meet the same standards as all bedrooms in the home; and

15.3.6. Notwithstanding the above, a dedicated sleeping space as appropriate for the child's needs and age shall be permitted so long as it is similar to the sleeping spaces for other household members.

15.4. An agency shall ensure that the foster or adoptive home has an operative telephone which may be a landline or cellular service; alternative devices such as citizen band radios must be approved prior to use. In the event having a telephone is contrary to a family's religious beliefs, the agency shall ensure that emergency situations can be adequately addressed and that appropriate contacts can be made with the family and the child in a timely manner.

15.5. An agency shall ensure that household items including cleaning supplies, toxic or flammable materials, medicines, and non-refrigerated alcoholic beverages that may be hazardous to a child are stored in areas inaccessible to children.

15.6. An agency shall ensure that weapons, related attachments, and ammunition are stored in a locked container inaccessible to children.

15.7. An agency shall require a fire safety plan with the following:

15.7.1. That a home has a fire escape plan that includes a diagram of the rooms, the escape routes, and an outside meeting place;

15.7.2. That all age appropriate children will be walked through the fire escape plan and route with the foster or adoptive parent within 24 hours of placement;

15.7.3. That a battery-operated smoke detector be located near a child's bedroom;

15.7.4. That a fire extinguisher of a minimum of five pounds be located in the kitchen;

15.7.5. That outlets and plug-in extensions, and kitchen, heating and other electric appliances have standard UL approved safety features and be clear of combustible materials;

15.7.6. That electrical circuits be protected by a maximum 20-amp fuse or circuit breaker; and conform to reasonable safety standards; and

15.7.7. That an operative flashlight be easily accessible for emergency lighting.

15.8. An agency shall ensure that all mobile homes under consideration for placement homes are manufactured after 1976.

15.9. An agency shall ensure that non-municipal water used in a home is tested and determined to be safe.

15.10. An agency shall ensure that children are not housed in detached housing or unapproved rooms.

15.11. An agency shall ensure that hot water heaters have a safety valve and supply sufficient hot water to adequately meet household requirements.

15.12. An agency shall ensure that all animals owned by the foster or adoptive parents that come in contact with a child in placement are vaccinated as required by state law.

**§78-2-16. Comprehensive Home Study.**

16.1. An agency shall conduct a comprehensive written home study with the prospective foster or adoptive parents and all household members prior to placing a child in the home including a minimum of one individual in-person interview for each parent and two joint interviews.

16.2. An agency shall write a narrative report on the home study that lists the contact dates, times, locations and participants, and is signed and dated by the agency employee who conducted it and the agency director, or his or her designee.

16.3. The study shall describe and evaluate aspects of the home and family and shall include:

16.3.1. The composition of the household and intra-family relationships;

16.3.2. The family's attitudes, values, and level of understanding of child development and sex education;

16.3.3. The family decision making process, including descriptive examples;

16.3.4. The manner in which the family handles conflict, stress, and frustration, including descriptive examples;

16.3.5. Individual and family hobbies, recreation, community activities, and social life;

16.3.6. The family's values and attitudes and how they relate in the community and to religious, ethnic, and cultural differences;

16.3.7. Each parent's personal history, attitudes, feelings, and values;

16.3.8. The parent's financial situation;

16.3.9. The parent's motivation to become foster or adoptive parents;

16.3.10. The family's attitudes about having a foster child in the home, and about a foster child's biological parents and family;

16.3.11. An account of discipline methods discussed with the family including:

16.3.11.a. Methods acceptable to the agency; and

16.3.11.b. The family's attitude about discipline and their past experiences with discipline methods;

16.3.12. A summary of the agency's discussion of the multiple aspects of foster child care including the circumstances surrounding placement of a child in foster care, the family's expectations of a foster child's presence in the home, anticipated problem situations and coping skills, and possible reactions of the child placed;

16.3.13. An assessment of the adoptive parent's ability and willingness to make a lifetime commitment to the adopted child, and their understanding of the legal rights of the adopted child;

16.3.14. A summary of the agency's discussion with the adoptive parents about who would become the adopted child's guardian if both of the adopted parents died;

16.3.15. An account of the agency's discussion with the adoptive parents about open adoption;

16.3.16. The agency's discussion with the adoptive parents about health insurance coverage for the adoptive child before the adoption is finalized;

16.3.17. The agency's discussion with the adoptive parents about adopting a child with special needs, subsidies, and the availability of community resources; and

16.3.18. A statement of the number, ages and gender of children desired by the foster or adoptive parents.

16.4. The home study shall identify the foster or adoptive parents' strengths, attributes, abilities, weaknesses, potential problem areas, or concerns as the basis for approval.

16.5. The home study shall make a recommendation regarding the number, ages, and gender of children for which the home may be approved for placement and any other special conditions or circumstances that may apply.

**§78-2-17. Approval or Denial of a Foster or Adoptive Home for Placement.**

All employees who participated in the home study process shall be involved in the approval or denial of the home for placement, shall set the conditions or circumstances of the approval or denial, and shall notify the family in writing of one of the following:

17.1. Notification of Approval. An agency shall provide foster or adoptive parents with a certification of the approval of their home for placement, including the names of the foster or adoptive parents approved, the home address, the date of approval, the number, ages, and gender of children for which approval is given, and any other conditions placed on the approval. The certification expires three years from the date of issuance unless it is revoked;

17.2. Notification of Denial. An agency shall provide foster or adoptive parents with written notification of the denial that includes the reason for the denial; or

17.3. Notice of Revocation. An agency shall provide foster or adoptive parents with written notification of revocation of the status of approval that includes the revocation date and the reason for the revocation.

17.4. An agency shall not deny a foster or adoptive parent a certification of approval of their home for placement on the basis of a class of individuals protected by federal or state statutes or rules.

**§78-2-18. Re-Certification for Approved Foster and Adoptive Parents.**

18.1. An agency shall re-evaluate foster or adoptive parents every three years and complete a narrative summary that includes:

18.1.1. The names, ages, and lengths of stay of the children placed with the foster or adoptive parents and the children's reasons for leaving;

18.1.2. An assessment of the foster or adoptive parents' ability to implement the children's service plans and any changes in the family's circumstances;

18.1.3. An assessment of the foster or adoptive parents' attitudes on foster care, the foster child's biological family, and the agency;

18.1.4. An assessment of the foster or adoptive parents' strengths and weaknesses;

18.1.5. Ensure continued compliance with all Criminal History Background Check requirements;

18.1.6. Requirements for any changes in the conditions of approval; and

18.1.7. The dates and signatures of the employee who wrote the re-certification and the agency director or his or her designee.

18.2. An agency shall renew a foster or adoptive family's certificate of approval upon the successful completion of the re-certification process.

18.3. For foster or adoptive parents who have not had a child placed with them, an agency shall evaluate them every three years and complete a narrative summary that includes:

18.3.1. An update of each of the parent's biographies, and any changes in their circumstances or attitudes about adoption;

18.3.2. Requirements for any changes in the foster or adoptive parents' conditions of approval; and

18.3.3. The dates and signatures of the employee who wrote the evaluation and the agency director or his or her designee.

18.4. An agency shall complete an annual safety assessment for each foster or adoptive parent that includes:

18.4.1. Documentation of 12 hours of in-service training completed;

18.4.2. Home environment check;

18.4.3. Documentation of an emergency response plan updated annually;

18.4.4. Review of any investigation of the family or the home;

18.4.5. Review of any corrective action plan or any non-compliance issue;

18.4.6. Review of any changes in the home or with the family, including but not limited to financial or employment status, home composition, home structure and environment, and health issues.

**§78.2.19. Training for Foster or Adoptive Parents.**

19.1. For Approved Foster or Adoptive Parents.

19.1.1. As a condition of approval, an agency shall require that each foster parent participate in approved pre-service training curriculum.

19.1.2. An agency shall develop and implement a written plan for the orientation, annual in-service training, and child-specific training for foster or adoptive parents.

19.1.3. An agency shall document in the foster or adoptive parents' record the date, subject, its duration, the format of the training and the name and title of the training instructor, if applicable.

19.1.4. Prior to the placement of a child, the agency shall complete foster parent training on the placement process, the agency's services and programs, legal aspects of foster care and adoption, the agency's discipline policies, behavior management, crisis de-escalation and intervention, first aid training, including cardiac pulmonary resuscitation, the lifelong implications of adoption, normalcy, reasonable prudent parent standards, and the dangers of trafficking.

19.1.5. In addition to orientation training, an agency shall provide foster or adoptive parents with a minimum of 15 hours of ongoing training during the first year of approval.

19.1.6. After the first year of approval, an agency shall provide foster parents with a minimum of 12 hours of ongoing annual training in addition to training in first aid and cardiac pulmonary resuscitation.

19.1.7. An agency shall provide child-specific training to assist foster or adoptive parents in implementing a child's service plan or a specific treatment objective.

**§78-2-20. Foster or Adoptive Child Placement and Home Closure Information.**

20.1. Presentation of a Child to Prospective Foster or Adoptive Parents. An agency shall develop and implement a written procedure for the introduction of a child to the prospective foster or adoptive parents for planned placements that includes the following provisions:

20.1.1. Prior to proceeding with the placement, the agency shall give a complete non-identifying description of the child with all available information to the prospective foster or adoptive parents;

20.1.2. Upon request, the agency shall have a profile available for the prospective foster or adoptive parents;

20.1.3. The agency shall set a time frame for a decision by the prospective foster or adoptive parents about proceeding with the placement; and

20.1.4. The agency shall document this process in the child's and the prospective foster or adoptive parents' records.

20.2. Emergency Child Placements in Prospective Foster Care. An agency shall establish a procedure for emergency placements that includes the following provisions:

20.2.1. At the time of placement the agency shall provide as much information as is known about the child to the prospective foster or adoptive parents, and shall provide additional information when it is available or as soon as the child assessment is completed;

20.2.2. An agency shall identify the needs and strengths of the child; and

20.2.3. An agency shall document the emergency placement process in the child's and the foster or adoptive parents' record.

20.3. Closure of a Foster or Adoptive Home. An agency shall establish a procedure for the closure of a foster home that includes the following provisions:

20.3.1. A set of conditions, circumstances, and reasons for closure;

20.3.2. Specific procedures to follow;

20.3.3. That written notification be provided to the foster or adoptive parents; and

20.3.4. Complete documentation of the process by the agency in the foster or adoptive parents' record.

**§78.2.21. Services to Biological Parents in Private Agency Adoption Only.**

21.1. An agency shall ensure the protection of the legal rights of a child's biological parents to whom services are provided by following the procedures set forth in W. Va. Code §48-22-101, *et seq.*

21.2. An agency that accepts custody of a child from the biological parents, whether or not the child is placed for adoption, shall ensure that the following services are provided to the biological parents:

21.2.1. Counseling regarding the reasons for considering adoption planning for the child;

21.2.2. A complete information presentation about alternatives to adoption in an objective and noncoercive manner;

21.2.3. Assistance in obtaining prenatal, maternity, and postpartum care, health education, family planning services, and nutrition services; and

21.2.4. Assistance in separating from the child, in accepting the permanence of the decision, and in determining immediate plans in their lives.

21.3. An agency shall maintain records for biological parents. Each record for biological parents shall include:

21.3.1. The names, addresses, telephone numbers, dates of birth, social security numbers and marital status of the biological parents;

21.3.2. A description of all services and programs provided to parents;

21.3.3. Information regarding the status of parental rights including consent to adopt, determination of paternity, relinquishment of parental rights, court orders, and revocation of consent to adopt; and

21.3.4. Written agreements and authorized releases regarding the extent of information disclosure between the biological parents and their child.

**§78.2.22. Department Adoption.**

22.1. Foster or Adoptive Parents' Role in Adoption Planning. An agency shall include the foster or adoptive parents in the child's adoption planning team by:

22.1.1. Explaining the foster or adoptive parents' role in the adoption process;

22.1.2. Informing them of all plans for the child, including the child's placement planning; and

22.1.3. Providing support to them after the child has been placed in an adoptive home.

**§78-2-23. Private Agency Adoption**

23.1. Presentation of Background Information.

23.1.1. When presenting a newborn child's background information to the prospective adoptive parents, an agency shall follow a written procedure that includes the following provisions:

23.1.1.a. Prior to proceeding with an adoptive placement, an agency shall provide prospective adoptive parents with a complete verbal and written description of all available information on the biological parents' family histories and the prenatal care received by the biological mother;

23.1.1.b. If the agency practices open adoption, the agency shall prepare a preplacement agreement to be signed by the biological parents and the prospective adoptive parents that identifies the amount of initial or ongoing contact, and written policies and procedures defining each party's role; and

23.1.1.c. An agency shall establish time frames for a decision by the prospective adoptive parents about proceeding with the adoptive placement.

23.1.2. When presenting an older child's background information to the prospective adoptive parents, an agency shall follow a written procedure that includes the following provisions:

23.1.2.a. Prior to proceeding with an adoptive placement, an agency shall give a complete and accurate verbal description of the child to the prospective adoptive parents;

23.1.2.b. An agency shall show photographs or videos of the child to the prospective adoptive parents;

23.1.2.c. An agency shall provide a written summary including all information available about the child to the prospective adoptive parents;

23.1.2.d. An agency shall arrange a meeting between the child's foster parents or other caretakers and the prospective adoptive parents if appropriate to discuss the child's day-to-day behavior; and

23.1.2.e. An agency shall establish time frames for a decision by the prospective adoptive parents about proceeding with the adoptive placement.

23.1.3. When presenting information about the prospective adoptive parents to the child an agency shall follow a written procedure that includes the following provisions:

23.1.3.a. The agency shall present information to the child about the prospective adoptive parents by using a scrapbook created by the prospective adoptive parents about themselves; and

23.1.3.b. The agency shall encourage the child's foster parents to be active partners in this process.

23.2 Adoption Placement Planning. An agency shall establish a procedure for placement planning that includes the following provisions:

23.2.1. Placement planning shall be guided by the needs of the child and visits prior to placement for a child older than infancy shall occur over a minimum of a two-to-three-week period; and

23.2.2. The agency shall contact the prospective adoptive parents during and after the parents' visits with the child to discuss concerns, needs and successes of the child and the adoptive parents.

23.3. Intercountry Adoption Services.

23.3.1. An agency offering intercountry adoption services shall establish a written procedure that describes the process for handling intercountry placement and placement disruptions that provides for the well-being of the child, including an alternate placement plan.

23.3.2. An agency offering intercountry adoption services shall establish a written procedure that complies with the United States immigration laws and the laws of the sending country and protects the rights of the child and biological parents.

23.3.3. The agency shall seek legal counsel when necessary.

**§78-2-24. Services Provided for Private Agency and Department Adoptions.**

24.1. Adoption Placement Services. An agency shall establish a procedure for placement services that includes the following provisions:

24.1.1. An agency shall provide the child's school records, medical history, and immunization records to the adoptive parents upon placement;

24.1.2. The agency and the adoptive parents shall sign the adoptive service agreement upon placement; and

24.1.3. The agency shall document the services offered or already provided to the child and the adoptive parents in the child's and adoptive parents' records.

24.2. Adoption Support Services Following Placement.

24.2.1. An agency shall develop and implement a written description of the support services offered following placement, that includes:

24.2.1.a. The goals of the support services;

24.2.1.b. The rights and responsibilities of the agency and of the adoptive parents following placement;

24.2.1.c. The subsidies that may be available;

24.2.1.d. Time frames for contact and visits following the placement that shall include:

24.2.1.d.1. An initial telephone contact within 72 hours of placement and an initial visit within one week of placement;

24.2.1.d.2. A minimum of six visits during the placement, at least four of which are in the home of the adoptive parents;

24.2.1.d.3. In a two-parent family, both parents involved in at least three visits;

24.2.1.d.4. Additional visits on a frequency determined by the needs of the child and the adoptive parents;

24.2.1.e. Visits with all household members, and the child shall be observed during each visit; and

24.2.1.f. If the child is old enough to carry on a conversation, an interview with him or her in private during each visit;

24.2.2. An agency shall continue to provide support services for a minimum of six months or longer until permanent placement of the child is achieved; if the child is in the adoptive home as a foster care placement, the period of support services can include the time spent in the adoptive home in foster care;

24.2.3. An agency shall provide a final visit with the adoptive family to review the adoption process prior to finalizing the adoption.

24.2.4. An agency shall document all activities during the placement period in the child's and adoptive parents' records.

24.3 Disruption of an Adoptive Placement. An agency shall establish a procedure to follow when a disruption in an adoptive placement is being considered or appears imminent that includes a requirement that the agency:

24.3.1. Train employees to recognize the circumstances that can lead to the disruption of an adoptive placement;

24.3.2. Specify the roles and responsibilities of the agency and the adoptive parents during the process of disruption and the planning for a subsequent placement for the child;

24.3.3. Offer counseling to the child according to his or her needs in dealing with the disruption; and

24.3.4. Document the planning and services provided during a disruption in the adoptive parents' and child's records.

24.4 Placement of the Child After Disruption. An agency shall establish a procedure to follow for subsequent placement after a disruption of the adoptive placement that includes the agency:

24.4.1. Making every effort to find another adoptive placement for the child and doing everything possible to assist and support the child in adjusting to a new placement;

24.4.2. Giving complete information about the child to subsequent foster or adoptive parents prior to their making a decision to proceed with the new placement that includes:

24.4.2.a. The nature of the disruption, the extent of the difficulties that resulted from the disruption and the child's reaction to the disruption;

24.4.2.b. When possible, a meeting with the previous adoptive parents to learn about the child; and how separation and loss might affect a child's behavior; and

24.4.3. Documenting the planning and services provided during a placement after disruption in the subsequent foster or adoptive parents' and child's records.

24.5 Finalization of the Adoption. An agency shall establish a written procedure that conforms with W. Va. Code §48-22-1, *et seq.*, for the finalization of an adoption that includes the following provisions:

24.5.1. A description of the process of finalizing an adoption;

24.5.2. A description of the roles and responsibilities of everyone involved in finalizing an adoption; and

24.5.3. The written consent of a child 12 years or older to the adoption.

24.6. Post-Legal Adoption Services. An agency shall establish a procedure for the post-legal adoption services it offers, that includes the following provisions:

24.6.1. Adoption subsidy assistance;

24.6.2. Counseling assistance for adoption issues, including search and contact;

24.6.3. Information about the biological family and birth history;

24.6.4. Education and support services for adoptive families;

24.6.5. Referrals for needed community services; and

24.6.6. Information and counseling concerning the Mutual Consent Adoption Registry.

**§78-2-25. Transitional Living Services Program, Supervised Setting for Children Living Independently.**

25.1. An agency shall develop and implement policies, procedures, and forms for transitional living services, that will be provided to children transitioning from foster care, that includes the following:

25.1.1. The information and documentation required under this licensing rule; and

25.1.2. The date of implementation, review and revision of each policy, procedure, or form.

25.2. An agency shall operate in accordance with its written policies and procedures.

25.3. An agency shall establish eligibility criteria for transitional living services that include:

25.3.1. Policies and provisions developed by an agency based on Department requirements that specifies the services that will be provided to children transitioning to adulthood;

25.3.2. Age requirements for child receiving transitional living placement services is 17 years of age, but not more than 26 years of age;

25.3.3. Written permission from the child's parents or guardian for a child less than 18 years of age to enter a scattered-site living arrangement;

25.3.4. A written service agreement with a transitioning adult entering a transitional living arrangement;

25.3.5. A determination by an agency that a child has shown that he or she is stable, mature, and responsible enough for entry into the determined level of transitional living arrangement;

25.3.6. A life skills assessment by an agency of a child prior to placing him or her in a transitional living arrangement and renewed annually; and

25.3.7. A written transition plan developed with the child that identifies educational or training program or employment or pursuance of employment by the child in transitional living.

25.4. An agency shall assist the child in the development of a monthly budget that outlines income, savings, and expenditures.

25.5. The agency and child shall determine if a roommate is appropriate for a child prior to placement in transitional living settings. The roommate must be able to support his or herself and contribute at least one-half of the living expenses for the scattered-site setting.

25.6. An agency shall provide specific service training to employees providing transitional living services prior to their direct work with a child.

25.7. An agency shall document face-to-face contact and hours spent with a child in a transitional living setting in the service plan that meet the child's needs and program level.

25.8. After a child is in a transitional living placement, an agency shall assess the child's progress in acquiring basic living skills at a minimum of once every six months.

25.9. An agency shall develop and implement policies and procedures to ensure that any child in a transitional living setting receives training and guidance on appropriate health screening and services, including medical and dental screening and services.

25.10. An agency shall develop policies and procedures for assisting child in searching for an appropriate dwelling that will be used as a scattered-site living setting that includes the following provisions:

25.10.1. A safe, affordable dwelling;

25.10.2. A dwelling has a working telephone or other means of communication in an emergency, indoor cooking and an appropriate water source for cooking, cleaning, and bathing;

25.11. An agency shall develop policies for assisting the child in emergencies and develop a plan that includes the following:

25.11.1. A 24 hour a day, seven day a week access to emergency services;

25.11.2. A plan developed by the agency and child for emergency medical care and emergency evacuation;

25.12. The agency shall develop policies and procedure on how it will determine the child's level of successful functioning in the transitional living setting before he or she may be discharged.

25.13. The agency shall develop policies and procedures on developing aftercare plans for children prior to discharge.

25.14. The agency shall develop a grievance procedure for expressing and resolving the child's complaints or concerns.

25.15. The agency shall provide employees and children placed in a scattered-site setting or receiving transitioning services an opportunity to participate in the review or revision process of policies, protocols, or procedures.

**§78-2-26. Grievance Procedure.**

An agency shall develop and implement a written grievance procedure for children and foster, adoptive, and biological families. The procedure shall be written in clear and simple language and shall include at least the following provisions:

26.1. An agency shall ensure that children and their biological families can express concerns or make complaints without fear of retaliation;

26.2. The grievance procedure shall ensure due process; and

26.3. The child's primary case manager shall explain the procedure to the child and his or her biological parents or guardian upon admission and obtain written acknowledgment that an explanation of the procedure has been provided.

**§78-2-27. Administrative Due Process.**

Any person aggrieved by an order or other action by the Secretary based on this rule, or W. Va. Code §49-2-105 may make a written request to the Secretary within 30 days in accordance with the Department of Health and Human Resources rule, "Rules for Hearings Under the Administrative Procedures Act," 69CSR1, a copy of which may be obtained from the Secretary of State. In the alternative, foster parents or foster children may file a complaint with the Foster Care Ombudsman.