

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #7

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FILED

Nov 26 9 52 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Jan = 7, 1997

NOTICE OF A EMERGENCY RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code § 16-1-7

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Child Care Centers

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See attached.

Gretchen Q. Lewis

Gretchen Q. Lewis, Secretary

Use additional sheets if necessary

10-40



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

November 25, 1996

To: Legislative Rule-Making Review Committee
From: Kay Howard, Director
Regulatory Development *Kay Howard*
Re: Emergency Rule - Child Care Centers, 64 CSR 21

1. Date of filing: November 25, 1996.
2. Statutory authority for promulgating the rule: W. Va. Code § 16-1-7.
3. Date of filing of proposed legislative rule: The Agency-Approved rule was filed with the Legislative Rule-Making Review Committee August 30, 1996.
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

The emergency rule amends a current legislative rule.

5. Has the same or similar emergency rule previously been filed and expired?

No.

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

Not Applicable.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Not applicable.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Emergency Filing Notice.

ABSTRACT - PROPOSED RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
DIVISION OF HEALTH
CHILD CARE CENTERS

64 CSR 21

Summary: This proposed revised legislative rule amends the current rule, Child Care Centers, 64 CSR 21 to incorporate standards for a new class of day care facility created by the 1996 Legislature in House Bill 4170. This new type of facility, called "family day care facility" may have seven (7) to twelve (12) children, including children who are living in the household who are less than six (6) years of age. No more than four (4) of the total number of children may be less than twenty-four (24) months of age. Day care centers now have thirteen (13) or more children. The Child Care Center Rule applies to both types of facilities.

The proposed amendments add a set of food service requirements more suitable for family day care facilities. Proposed amendments also clarify some standards which have caused confusion and update some older standards. Stylistic and technical changes are also proposed.

For further information contact: Linda Jones, Office of Environmental Health Services, Bureau for Public Health, Department of Health and Human Resources, 815 Quarrier Street, Charleston, West Virginia, 25301; or the Office of Regulatory Development, Bureau of Operations, Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223.

Copies of the proposed rule may be purchased from the Administrative Law Division of the Office of the Secretary of State, State Capitol Complex, Building 1, Suite 157K, Charleston, WV 25305-0771, phone (304) 558-6000.

7/26/96

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Child Care Centers, 64 CSR 21

Type of Rule: Legislative Interpretive Procedural

Agency: Bureau for Public Health (For the Division of Health)
Department of Health and Human Resources

Address: Building 3, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs & Alterations					
Equipment					
Other					
Revenue					

2. Explanation of above estimates.

The proposed revisions are not anticipated to have any fiscal impact.

3. Objectives of this rule:

This proposed revised legislative rule modifies existing standards to include a set of food service requirements more suitable for family day care facilities. This is a new class of day care facility created by the Legislature in 1996 in House Bill 4170.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

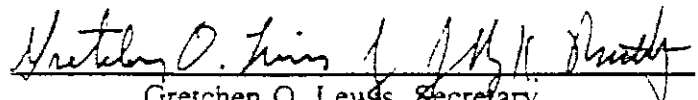
The proposed rule will have a positive impact on all these parties. It will increase the availability of child care which is a necessary support for working parents. It will also provide employment opportunities for persons who want to work in the child care field.

C. Economic Impact on Citizens/Public at Large.

The public will benefit from increased supports to working parents as the addition of this class of day care will encourage persons to obtain or maintain employment.

Date: July 26, 1996

Signature of Agency Head or Authorized Representative



Gretchen O. Lewis, Secretary

Department of Health and Human Resources

TITLE 64
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH
SERIES 21
CHILD CARE CENTERS

Emergency Rule
Filed _____
Effective _____, 199_

**PROPOSED - TITLE 64
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH
SERIES 21
CHILD CARE CENTERS**

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**PROPOSED - TITLE 64
WEST VIRGINIA LEGISLATIVE RULE
DIVISION OF HEALTH
SERIES 21
CHILD CARE CENTERS**

FILED

Nov 26 9 52 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Ed. Note: This emergency rule has been renumbered and reformatted according to the revised rules of the Secretary of State, Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, Title 153, Series 6, effective June 7, 1996. The differences between this emergency rule and the Agency-Approved rule filed with the Legislative Rule-Making Review Committee on August 30, 1996 are described in the endnote at the end of this rule.

§64-21-1. General.

1.1. Scope. -- This legislative rule establishes the environmental health requirements for the construction and operation of child care centers.

1.2. Authority. -- W. Va. Code § 16-1-7.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Supersession of Former Rule. -- This rule amends and replaces W. Va. Legislative Rule, Child Care Centers, 64 CSR 21, effective March 15, 1974.

1.6. Applicability. -- This rule applies to the owners and operators of child care centers.

1.7. Enforcement. -- This rule is enforced by the director of the division of health.¹

§64-21-2. Definitions.

2.1. Approved. -- A procedure of operation, installation or construction which is in accordance with the standards, specifications, and instructions established by the division of health.

2.2. Child Care Center. -- Any child care facility providing nonresidential child care for seven (7) or more children for all or part of a day. The term "child care center" includes: day care centers, family day care facilities, nursery schools, and preschools. "Child care center" does not include:

2.2.a. A kindergarten, preschool or school education program operated by a public

¹ The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

school, accredited by the state department of education;

2.2.b. An individual or facility which offers occasional, temporary care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

2.2.c. Summer recreation camps operated for children attending sessions for periods not exceeding thirty (30) days;

2.2.d. Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing; or

2.2.e. Persons providing family day care solely for children related to them, including grandparents, aunts and uncles.

2.3. Construct. -- Construct, extend, alter, or modify.

2.4. Day Care Center. -- A child care center which provides nonresidential child care for thirteen (13) or more children on a nonresidential basis.

2.5. Director. -- Director of the division of health or his or her lawful designee.

2.6. Disinfect. -- To eliminate virtually all germs from inanimate surfaces through the use of chemicals (e.g., products registered with the U.S. Environmental Protection Agency as "disinfectants") or heat. In the child care environment, a solution of one fourth ($\frac{1}{4}$) cup household liquid chlorine bleach added to one (1) gallon of tap water and prepared fresh daily is an effective disinfectant for environmental surfaces and other inanimate objects, if the surfaces have been cleaned.

2.7. Family Day Care Facility. -- A child care center which is used to provide nonresidential child care for seven (7) to twelve (12) children, including children who are living in the household who are less than six (6) years of age. No more than four (4) of the total number of children may be less than twenty-four (24) months of age.

2.8. Health Officer. -- The director of the division of health or the executive officer of the local board of health or his or her lawful representative.

2.9. Permit. -- A written document, issued by the division of health giving a designated person permission to operate, construct, extend, alter or modify a building or structure to be used, or being used, as a child care center.

2.10. Person. -- Individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency or any entity recognized by law.

§64-21-3. Permits, Hearings, Notices, Orders.

3.1. Construction and Modification.

3.1.a. Except for minor repairs, no person shall construct a building or structure to be used as a child care center, or extend, alter or modify any structure used as a child care center without first making written application to the division of health and receiving a permit for the child care center. Construction, extension, alteration, or modifications shall not begin until the division has issued a permit for the construction.

3.1.b. The division shall not issue a permit for the construction of a child care center until receiving an application for a construction permit and detailed plans and specifications of the child care center for review and approval.

3.1.c. The applicant shall submit a written permit application on a form prescribed by the division. The form shall be signed by the applicant or his or her authorized agent and shall contain all information requested by the division to enable it to determine if the child care construction is or will be in compliance with the applicable provisions of this rule.

3.1.d. When upon review of the plans, specifications, and application for a permit, the division of health is satisfied that the proposed construction of the child care center is satisfactory, it shall issue a permit. If the construction activities have not begun within six (6) months from the date of issuance of a permit, the permit automatically expires.

3.1.e. The application, plans, and specifications shall include, but not be limited to: a plot layout, floor plans, building or specifications, type of material used, a list of food service equipment, the type of potable and waste water treatment systems and the type of heating and ventilation systems.

3.1.f. Applications for plan approval and permit shall be made at least forty-five (45) days prior to the date that construction is to begin.

3.1.g. The division of health shall deny permission to construct, extend, alter, or modify the building or structure, if the information on the application, plans, specifications or supporting documentation is incomplete, inaccurate, false or misleading, or indicates that the applicable provisions of this rule cannot be met.

3.1.h. The child care center shall only be constructed, extended, altered or modified in accordance with the plans and specifications approved by the division of health. The applicant shall submit a written description of any deviation from the approved plans or specifications. Implementation of the deviation shall not begin without the written approval of the division.

3.2. Permit to Operate.

3.2.a. No person directly or indirectly shall in any manner conduct, control, manage, maintain, or operate a child care center unless the person has in his or her possession a valid

permit by the health officer to operate a specific child care center.²

3.2.b. The applicant shall submit a written permit application to the health officer on a form prescribed by the division. The form shall be signed by the applicant or his or her authorized agent and shall contain all information requested by the division to enable it to determine if the child care center and its operation are in compliance with the applicable provisions of this rule.

3.2.c. The application for a permit shall be made at least fifteen (15) days before the actual or proposed operation of the child care center is to be effected.

3.2.d. The health officer shall deny a permit if the information on the application form is incomplete, inaccurate, false or misleading or indicates that the applicable provisions of this rule cannot be met.

3.2.e. Only persons who comply with the applicable provisions of this rule are entitled to retain a permit.

3.2.f. Child care centers in operation at the time this rule becomes effective, which meet all applicable prior rules, shall be eligible for a permit to operate. Any construction, extension, modification or alteration taking place after the effective date of this rule in child care centers permitted under this subsection shall comply with all applicable provisions of this rule.

3.2.g. Child care centers put into operation after the effective date of this rule shall comply in full with all applicable provisions of this rule.

3.2.h. Permits are not transferable or assignable and automatically become invalid upon a change of ownership or upon suspension or revocation.

3.2.i. A permit to operate expires at midnight on the 31st day of December following the date of issuance.

3.2.j. In the event of an intended change or actual change in ownership of a child care center, an application for a permit to operate shall be made at least fifteen (15) days prior to the date the proposed or actual change is effected.

3.2.k. A permit may be suspended or revoked by the health officer, if it is found that the child care center is being maintained or operated in violation of this rule or any applicable law, rule or ordinance.

3.2.l. A permit to operate shall not be reinstated until an inspection by the health officer determines that the child care center is in compliance with all applicable provisions of this rule and any orders, rules or instructions issued by the health officer.

² The permit issued under this rule is one of several approvals required in order for a child care center (a day care center, a family day care facility, or other type of child care center) to obtain a license or certification to operate issued by the division of human services.

3.2.m. Operational permits shall be posted in a conspicuous place within the child care center, and the permit shall be readily available to the health officer.

3.3. Hearings, Notices and Orders.

3.3.a. Any person whose application for the construction, extension, alteration, or modification of a child care center has been denied may petition and shall be granted a hearing on the matter within ten (10) days after the health officer has received a written petition requesting a hearing.

3.3.b. Any person whose application for a permit to operate a child care center has been denied, or whose permit has been suspended or revoked may petition and shall be granted a hearing on the matter within ten (10) days after the health officer has received written petition for the hearing.

3.3.c. Notwithstanding the other provisions of this rule, whenever the health officer finds at a child care center insanitary or other conditions that may constitute an immediate or substantial hazard to public health, he or she may, without warning notice or hearing, issue a written order to the operator, citing the conditions, specifying the corrective action to be taken and the time period in which the action shall be completed. When necessary, the order shall state that the permit to operate is immediately suspended.

§64-21-4. Inspections.

4.1. Each child care center shall be inspected at least once each six (6) months. The health officer shall also make additional inspections needed to determine satisfactory compliance with the provisions of this rule and any orders, notices, instructions, or specifications issued pursuant to this rule.

4.2. Any consecutive violation of the same item or items of this rule, may be considered as cause for the immediate suspension of a permit to operate.

4.3. A copy of the inspection report shall be posted within the child care center.

4.4. The owner, operator or person in charge of a child care center, shall provide the health officer with free access to the entire premises for the purpose of inspection, and shall furnish all requested information to make the inspection complete.

§64-21-5. General Building Requirements.

5.1. Location; Structure; Size.

5.1.a. Child care centers shall be located in a relatively noise and pollution free environment.

5.1.b. Child care center buildings or structures shall be of sound structure and maintained in good repair.

5.1.c. All painted surfaces shall be free of lead pigment or and other toxic materials.

5.1.d. Useable floor space of thirty-five (35) square feet per child shall be provided and available for children's activities, exclusive of halls, bathrooms, kitchen, office space, or storage areas.

5.2. Floors; Walls; Ceilings.

5.2.a. Floors, walls and ceilings shall be of easily cleanable construction.

5.2.b. Toilet rooms and areas housing food service facilities shall have moisture-resistant, nonabsorbent floors.

5.2.c. Toilet rooms and areas housing food service facilities shall have water-resistant walls to a minimum level of four (4) feet above floor level.

5.2.d. Toilet rooms and areas housing food service facilities shall provide a coved juncture between the floor and wall.

5.2.e. Carpets shall be securely attached or of a non-skid nature.

5.2.f. Carpeting shall not be used in toilet rooms or areas housing food service facilities.

5.2.f.1. In family day care facilities carpeting may be used in kitchen and dining areas if it is easily cleanable and kept clean and in good repair.

5.3. Heating; Ventilation.

5.3.a. All rooms shall have approved ventilation either by natural or mechanical means. Fans shall have shields with openings less than one-half inch or be out of the reach of children.

5.3.b. Child care centers shall be equipped with approved heating units sufficient to provide a temperature of at least sixty-eight degrees Fahrenheit (68°F) at floor level in all applicable rooms.

5.3.c. Unguarded open-face heaters are prohibited.

5.3.d. Oil and gas fired heating devices shall be properly vented to the outside air.

5.3.e. Shielding or other effective means shall be used to protect the children from direct contact with radiators, registers, hot water pipes and similar hazards.

5.3.f. All rooms used by children shall have a thermometer which shall be located approximately thirty (30) inches above floor level. Thermostats are not acceptable in lieu of thermometers.

5.4. Insect and Rodent Control.

5.4.a. All buildings or structures shall be of rat-proof construction.

5.4.b. All doors opening to the outside shall be close-fitting. Screen doors or doors used in lieu thereof shall be self-closing.

5.4.c. All openings to the outer air shall be effectively protected against the entrance of insects.

5.4.d. The child care center shall be free of insects and rodents at all times.

5.4.e. Only those insecticides and rodenticides approved by the U. S. Environmental Protection Agency shall be used in child care centers.

5.5. Lighting.

5.5.a. Play and activity surfaces shall have a minimum of fifty (50) foot candles of illumination at floor level. All other areas shall have at least thirty (30) foot candles of illumination at floor level.

5.5.b. Lighting may be by either natural or artificial means or both.

5.5.c. All light bulbs and fluorescent tubes shall be protected by effective shields.

5.6. Plumbing.

5.6.a. All plumbing shall meet the requirements of local plumbing codes or ordinances, or in the absence thereof, the state building code.

5.6.b. Cross-connections and potential backsiphonage possibilities are prohibited.

5.7. Toilet, Lavatory, and Bathing Facilities.

5.7.a. Toilet rooms shall be provided and shall be easily accessible to children.

5.7.b. In day care centers, separate and private toilet facilities shall be provided for males and females who are six (6) years of age or older.

5.7.c. One (1) flush toilet and one (1) lavatory shall be provided for each fifteen (15) children or fraction thereof, excluding children in diapers who are not receiving toilet training.

5.7.d. In day care centers, a handwashing sink shall be located in the diaper changing area. In family day care facilities, a handwashing sink shall be readily accessible to the diaper changing area.

5.7.e. Toilet fixtures shall be sized so that they may be used by children without assistance, or step stools and/or modified toilet seats which are safely constructed and can be cleaned easily may be used in lieu of specially sized toilet fixtures.

5.7.f. Lavatories shall be provided in or immediately adjacent to all toilet rooms. Each lavatory shall have mixing faucets, or be provided with tempered water. All lavatories shall be provided with soap and single service sanitary towels.

5.7.g. Waste receptacles shall be provided for used paper towels adjacent to lavatories.

5.7.h. If provided, separate adult employee restrooms shall have a minimum of one (1) flush toilet. At least one (1) lavatory shall be located within or immediately adjacent to the toilet room.

5.7.i. Adult employee restrooms shall meet the requirements of Sections 5.7.f and 5.7.g of this rule.

5.7.j. All restrooms shall have a covered waste container.

5.7.k. If night-time care is provided, a bathtub or shower shall be provided as well as age-appropriate bathing facilities for children of toddler age or younger.

5.7.k.1. No child under age six (6) shall be left unsupervised while bathing.

5.7.k.2. Soap and clean, individual washcloths and towels shall be provided for each child.

5.7.k.3. Bathtubs and showers shall be equipped to prevent slipping.

§64-21-6. Activity Areas and Equipment.

6.1. All activity equipment shall be free of safety hazards, shall be of smooth construction and, where applicable, easily cleanable. Activity equipment shall include, but not be limited to: toys, furnishings, tables, chairs, cots and similar equipment.

6.2. Usable outdoor play space of seventy-five (75) square feet per child shall be provided on the premises or within walking distance of the facility. Play times may be staggered, and space may be based on the number of children using the area at one (1) time.

6.2.a. Outdoor play spaces shall be well-drained and free of litter, solid waste and refuse, ditches, abandoned cars, used appliances, animal feces, toxic plants, or other conditions presenting a hazard.

6.2.b. Outdoor play spaces provided by day care centers shall be fenced or have natural barriers such as hedges or stationary walls at least three (3) feet high.

6.2.c. In family day care facilities, all areas accessible to the outdoor play area unsafe for children, for example, steep grades, cliffs, open pits, swimming pools, high voltage boosters, propane gas tanks, streets, roads, driveways, railroad tracks, or parking lots, shall be fenced off or have natural barriers at least three (3) feet high to protect children.

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6.2.d. Outdoor equipment used for climbing and similar play activities shall be installed to prevent tipping or collapse. Swings, slides, and climbing equipment shall not be placed over or immediately adjacent to concrete, asphalt, brick, or similar hard surfaces.

6.3. Sandboxes shall be covered when not in use.

6.4. Wading pools are prohibited unless they are an integral part of a swimming pool which meets the division of health's rule, Swimming Pool and Bathing Beach, 64 CSR 16.

§64-21-7. Animals.

7.1. Animals are permitted on child care premises.

7.2. Animals and their quarters shall be kept in a clean condition at all times.

7.3. Wild, dangerous, aggressive or obviously ill animals are prohibited.

7.4. Aquariums shall be under the supervision of the child care staff, located in the activity areas and kept out of reach of children.

7.5. Dogs and cats shall be currently vaccinated against rabies, distemper, hepatitis, and leptospirosis.

7.6. In day care centers, the outdoor quartering areas of dogs and cats shall be completely separate from children's outdoor activity areas.

7.7. Indoor animal quarters and litter boxes shall not be located in food preparation, storage, or serving areas.

7.8. Live animals, including birds and turtles, shall be excluded from food preparation, storage, serving areas, and in-use dining areas. This exclusion does not apply to edible fish, crustacea, shellfish, or to fish in aquariums.

§64-21-8. Bedding and Sleeping Area.

8.1. Each child who naps shall be provided with an individual bed, sturdy cot, crib, couch, baby bed, playpen, or mat. In family day care facilities, siblings may share double beds.

8.2. For infants who are not yet able to climb, separate cribs shall be provided. Cribs shall be spaced a minimum of twenty-four (24) inches apart on all sides. Bars on cribs shall be no farther apart than two and three-eighths (2 3/8) inches, and crib sides shall be secure and high enough to prevent accidents.

8.3. Individual sheets and covers shall be provided for each child and shall be laundered at least weekly or whenever soiled or prior to use by another child.

8.4. Mattresses, mats, cots, and other sleeping surfaces shall be water-proof or shall have

a water-proof cover.

8.5. Stackable cribs are prohibited. The upper levels of double-deck beds shall not be used by children under nine (9) years of age.

§64-21-9. Diaper Changing and Toilet Training.

9.1. Children shall be diapered or have soiled underwear changed in an established diaper changing area. The changing area shall not be located in food preparation areas.

9.2. Diaper changing shall be done on a clean, safe, impervious, nonabsorbent surface which is used for no other purpose.

9.3. The child's perineal (urinary and anal) area shall be cleaned with disposable wipes.

9.4. After removing a soiled diaper and before putting a fresh diaper on a child, staff members shall wipe their own hands with a pre-moistened towelette or a damp paper towel.

9.5. Both the child's and the staff member's hands shall be thoroughly washed after each diaper change. If disposable gloves are used, they must be discarded immediately and hands washed.

9.6. Changing tables and surfaces shall be cleaned and disinfected after each use by cleaning to remove visible soil, followed by wiping with an approved disinfectant solution, whether or not disposable, nonabsorbent paper is used. If disposable paper is used, it shall be discarded immediately after each diapering.

9.7. Soiled cloth diapers and/or soiled training pants shall be stored in a labeled container with a tight-fitting lid provided by a commercial diaper service or in a sealed plastic bag which is sent home with the child at the end of the day. If diapers are laundered by a commercial diaper service, the service shall be accredited by the Diaper Service Accreditation Council. Feces from soiled cloth diapers or training pants shall be disposed of by dumping in a toilet.

9.8. Soiled disposable diapers shall be stored in conveniently located, washable, plastic-lined, tightly covered waste containers. Each container shall be labeled and kept clean and free of buildup of soil and odor.

9.9. Toilet training chairs if used, shall be of easily cleanable construction and after each use shall be emptied into a toilet, and thoroughly cleaned and sanitized in a utility sink.

9.10. Hand washing sinks shall not be used for rinsing soiled diapers or clothing or for cleaning toilet training equipment.

§64-21-10. Employee Health.

10.1. All staff members shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to good hygienic practices while on duty.

10.2. Staff members shall not use tobacco in any form while engaged in any food service activities, feeding children or administering to the children's needs.

10.3. Smoking is prohibited in children's areas.

10.4. No staff member while affected with any disease in a communicable form, or while a carrier of such a disease, or while affected with boils, infected wounds, sores, or a respiratory infection shall work in any capacity in which there is likelihood of the staff member transmitting disease to other persons; and no person known or suspected of being affected with any disease or condition shall be employed in any area or capacity. In family day care facilities, appropriate measures shall be taken to protect staff and children from the direct or indirect transmission of diseases from non-staff household members.

10.5. The staff shall employ universal precautions for protection from disease and infection. Spills of body fluids, which include urine, feces, blood, saliva, nasal discharge, eye discharge, and injury or tissue discharges, shall be cleaned up immediately, and:

10.5.a. Surfaces soiled by spills of vomit, urine, and feces shall be cleaned and disinfected;

10.5.b. Surfaces soiled by spills of blood or blood-containing body fluids and injury and tissue damage shall be cleaned and disinfected;

10.5.c. Persons cleaning contaminated areas shall avoid exposure of open skin sores or mucous membranes to blood or blood-containing body fluids;

10.5.d. Blood-contaminated material and diapers shall be disposed of in a plastic bag with a secure tie; and

10.5.e. Mops shall be cleaned with a disinfectant solution.

§64-21-11. Food Service.

11.1. Child care centers shall comply with the the division of health's rule, Food Service Sanitation Rules, 64 CSR 17, except as specified in Section 11.2 of this rule.

11.2. Family day care facilities may use an on-site kitchen which complies with the following requirements:

11.2.a. All food preparation, service and storage areas, and all equipment and utensils shall be kept clean and in good repair;

11.2.b. Food contact surfaces of equipment and utensils shall be non-toxic, easily cleanable, and cleaned and sanitized after each use;

11.2.c. Dish washing facilities shall be provided and methods utilized to effectively remove food soil and sanitize dishes, utensils and equipment. Except for fixed equipment and

utensils too large to be cleaned in sink compartments, dishes, utensils and equipment shall be washed in a mechanical dishwasher capable of sanitizing, or washed in a hot detergent solution, rinsed free of detergent and abrasives, and sanitized by one (1) of the following methods:

11.2.c.1. Immersion for at least thirty (30) seconds in water at a temperature of one hundred seventy degrees Fahrenheit (170°F);

11.2.c.2. Immersion for at least one (1) minute in water at a temperature of at least seventy-five degrees Fahrenheit (75°F) and containing fifty (50) parts per million of available chlorine (approximately one (1) tablespoon liquid household bleach per gallon of water); or

11.2.c.3. Immersion in a clean solution containing any other approved chemical sanitizing agent;

11.2.d. Dishes, utensils and equipment shall be air dried;

11.2.e. Food shall be in sound condition, free from spoilage, filth or other contamination and shall be obtained from approved sources. Home-canned food is prohibited except for jams, jellies, preserves, apple butter, syrup and honey. Fluid milk and milk products shall be pasteurized and packaged in an approved milk processing plant;

11.2.f. Adequate refrigeration equipment shall be provided and used for perishable foods and shall be capable of maintaining food temperatures at forty-one degrees Fahrenheit (41°F) or below;

11.2.g. Food shall be prepared in a sanitary manner and protected at all times from potential contamination, including dust, insects, rodents, unnecessary handling, coughs and sneezes, overhead leakage, and unclean equipment and utensils;

11.2.h. Potentially hazardous foods, such as beef, poultry, and eggs, shall be thoroughly cooked;

11.2.i. Prepared foods shall be served immediately, refrigerated, or held at one hundred forty degrees Fahrenheit (140°F) or above;

11.2.j. Food service workers shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting to work, during work as often as is necessary to keep them clean, and after smoking, eating, drinking, or using the toilet; and

11.2.k. Food service workers shall employ good hygienic practices, shall wear clean clothing and hair restraints, and shall not use tobacco products in the food preparation and service areas.

11.3. When required by the applicable local health department, all persons engaged in food service activities shall have valid food service workers' permits.

§64-21-12. Garbage and Refuse Disposal.

12.1. All garbage and refuse shall be stored in approved watertight and vermin-proof containers.

12.2. When not in constant use, garbage and refuse containers shall be covered with tight-fitting lids.

12.3. Garbage and refuse shall be removed from the premises weekly, or more often, if necessary.

12.4. Except for family day care facilities, a concrete platform or a metal rack is required for outside storage of garbage and refuse containers.

12.5. Garbage and refuse containers shall be cleaned after each emptying.

12.6. If garbage can cleaning operations are conducted outside, then a frost-proof hose bibb shall be provided.

§64-21-13. Hand Washing.

13.1. Staff members shall wash their hands thoroughly in an approved lavatory before starting work, after diaper changing activity, and otherwise as often as necessary to remove soil and prevent contamination. No staff member shall resume work after visiting the toilet room without first washing his or her hands.

13.2. Children's hands shall be washed before and after eating meals and snacks, after handling pets or other animals, after visiting the toilet room, and before any food service activity, including setting the table.

§64-21-14. Housekeeping and Sanitation.

14.1. All areas and equipment of the child care center shall be kept clean and in good repair and in a neat and orderly condition at all times. Indoor environmental surfaces associated with children's activities, such as table tops, shall be cleaned and disinfected when they are soiled or at least once weekly.

14.2. Toys that are placed in children's mouths or are otherwise contaminated by body secretions or excretions shall be set aside to be cleaned and disinfected before handling by another child. Machine-washable cloth toys can be used and shall be machine-washed when contaminated.

14.3. All frequently touched toys in rooms in which infants and toddlers are cared for shall be cleaned and disinfected daily. Toys in rooms in which older, nondiapered children are cared for shall be cleaned weekly and when soiled. The use of soft, nonwashable toys for infants and toddlers shall be limited to personal use articles that are not shared between children.

14.4. Toilet rooms, flush toilets, toilet training equipment, and fixtures shall be cleaned and sanitized at least daily and when obviously soiled.

14.5. Rooms shall not be routinely cleaned while occupied by children.

§64-21-15. Laundry.

15.1. In day care centers, laundry done on the premises may not be done in children's activity areas or in food preparation, service or storage areas.

15.2. Soiled laundry shall be stored in nonabsorbent easily cleanable covered containers.

15.3. Soiled and clean laundry shall not be stored or placed in the same container or on a common table or shelf.

15.4. Clean laundry shall be stored in a manner to protect it from being soiled or contaminated prior to use.

15.5. Laundry shall either be mechanically washed and dried; or mechanically washed, rinsed in a chemical sanitizing solution, and air-dried.

§64-21-16. Safety.

16.1. All necessary precautions shall be taken to insure an accident-free environment for the children.

16.2. Children shall be supervised at all times, indoors and out, in accordance with the division of human resources staff/child ratios for Family Day Care Facilities, 78 CSR 18, and Day-Care Centers, 78 CSR 1.

16.3. Stairways, walks, corridors and all other areas of the child care center shall be free of ice, snow, physical obstructions, or any other item which may be a safety hazard. Porches, balconies, decks, or platforms elevated more than three (3) feet above the ground shall be equipped with secure child-proof railings or barriers. Stairways shall be provided with railings and with barriers or safety gates at the top and bottom whenever infants, toddlers or preschool children are in care.

16.4. A first aid kit shall be provided on the premises and shall be readily available at all times. Minimum contents shall include, but not be limited to, band aids; thermometer; gauze; tape; scissors; tweezers; disposable, nonporous gloves; a first aid guide; and syrup of ipecac. Syrup of ipecac shall be used only with prior authorization from the parent and at the direction of a poison control center or the child's physician. First aid supplies shall not be accessible to the children in care. A first aid kit shall be taken by staff on all trips away from the facility.

§64-21-17. Sewage System.

17.1. Sewage and excreta disposal systems shall comply in full with applicable small sewage and excreta disposal systems rules.

17.2. Sewage and excreta disposal systems shall be kept in good repair and properly

maintained and operated.

§64-21-18. Storage.

18.1. Approved storage facilities shall be provided for, but not limited to the following items: food stuffs, utensils, toys, work materials, cleaning supplies, clothing, linens, medicines, toxic materials, and all items which may be hazardous to children.

18.2. Poisons and other potentially hazardous items shall be inaccessible to children and stored in original containers.

§64-21-19. Water Supply.

19.1. All water supply systems shall comply in full with the current standards and requirements issued by the division of health.

19.2. Hot and cold running water, with a minimum pressure of twenty pounds per square inch (20 p.s.i.) shall be provided in all areas where food is prepared, at all hand washing facilities, and all other applicable areas. Where the water will be in direct contact with children, the temperature shall not exceed one hundred twenty degrees Fahrenheit (120°F).

19.3. Drinking fountains, if provided, shall be of the angle-jet type with a non-oxidizing mouth guard.

19.3.a. Drinking fountains shall be easily accessible to the children and the water pressure at the fountains shall be properly regulated.

19.3.b. Drinking fountains, if provided, shall be at the ratio of one (1) per each forty (40) children or fraction thereof.

19.3.c. Drinking cups shall be dispensed from an approved sanitary single service dispenser. This does not preclude the use of properly washed and sanitized glasses.

§64-21-20. Penalty for Violating Provisions of Regulations.

20.1. Any person who violates any provision of this rule is guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than two hundred dollars (\$200) or by imprisonment for not more than thirty (30) days or both fine and imprisonment.

20.2. Each day's failure to comply with any applicable provision of this rule constitutes a separate offense.

§64-21-21. Administrative Due Process. — Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so as prescribed in the division of health's administrative rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR 1.

§64-64-22. **Severability.** – The provisions of this rule are severable. If any provision of this rule is held invalid, the remaining provisions remain in effect.

End Note

This emergency rule has been renumbered and reformatted according to the revised rules of the Secretary of State, Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, Title 153, Series 6, effective June 7, 1996. The Agency-Approved rule was filed with the Legislative Rule-Making Review Committee August 30, 1996. This emergency rule differs from the Agency-Approved rule as follows: 1) It has been reorganized and accordingly renumbered; 2) A section on universal precautions, originally included in the Division of Human Service's proposed new rule, Family Day Care Certification Requirements, 78 CSR 18, has been moved from that rule to this rule. The Divisions of Health (Bureau for Public Health) and Human Services (Bureau for Children and Families) agree that these standards are more appropriate for the Child Care Centers Rule; 3) It has undergone received additional non-substantive editing for format and style; and, 4) Cross-references have been changed to correspond with the new numbers. These changes will be proposed to the Legislative Rule-Making Review Committee for approval as modifications to the agency-approved rule to be incorporated into the rule submitted to the full Legislature.

The emergency rule is being filed as a "clean" rewritten rule without strike-through and underlining. An annotated copy which shows the above-described new proposed modifications is available from the Office of Regulatory Development of the Department of Health and Human Resources, State Capitol Complex, Building 3, Room 265, Charleston, West Virginia, 25305, telephone (304) 558-3223. A table showing the equivalent item numbers for the rule currently in effect, the agency-approved rule, and the reorganized emergency rule is also available at the same location.