

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In This Box

FILED

AUG 30 3 46 PM '96

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: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code § 16-1-7

AMENDMENT TO AN EXISTING RULE: YES X NO

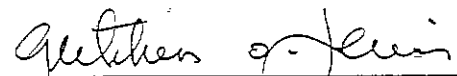
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Child Care Centers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Gretchen O. Lewis, Secretary

Date: August 30, 1996
To: Legislative Rule-Making Review Committee
From: Kay Howard, Director
Regulatory Development
Department of Health and Human Resources
Re: **Child Care Centers, 64 CSR 21**

1. Authorizing statute(s) citation: W. Va. Code § 16-1-7
2.
 - a. Date filed in State Register with Notice of Public Comment Period: 7-29-96
 - b. Other notice, including advertising, given of the public comment period:
Copies were sent to local health departments and all licensed day care centers. A press release was sent to all daily newspapers in West Virginia.
 - c. Date Public Comment Period Ended: 8-28-96
 - d. List of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received
 - e. Date of filing in State Register the Agency-Approved proposed Legislative Rule following public comment period: 8-30-96
 - f. Name and phone number of agency contact person: Kay Howard, 558-3223
3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation: Not Applicable
 - a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.
 - b. Date of hearing:
 - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?
 - d. Attach findings and determinations and reasons:

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.

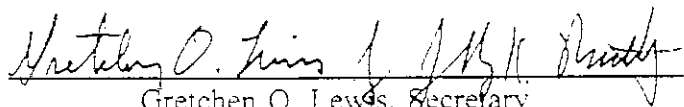
The proposed rule will have a positive impact on all these parties. It will increase the availability of child care which is a necessary support for working parents. It will also provide employment opportunities for persons who want to work in the child care field.

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

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

**Agency-Approved Proposed Rule
Filed with the
Legislative Rule-Making Review Committee**

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

TABLE OF CONTENTS

§64-21-1. General	1
§64-21-2. Definitions	1
§64-21-3. Permits, Hearings, Notices, Orders	3
§64-21-4. Inspections	5
§64-21-5. General Requirements - Building	6
§64-21-6. Food Service Facilities	10
§64-21-7. Laundry	11
§64-21-8. Bedding and Sleeping Area	12
§64-21-9. Safety	13
§64-21-10. Animals	13
§64-21-11. Employee Health Requirements	14
§64-21-12. Penalty for Violating Provisions of Regulations	15
§64-21-13. Administrative Due Process	15
§64-64-14. Severability	15

FILED

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

AUG 30 3 46 PM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Ed. Note: This 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.

§64-21-1. General.

1.1. Scope. -- ~~These legislative rules establish~~ 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. Application and Enforcement.~~

~~2.1. Application.~~ -- ~~These legislative rules apply to the owners and operators of child care centers.~~

~~2.2. Enforcement.~~ -- ~~The enforcement of these legislative rules is vested with the director of the West Virginia department of health or his lawful designee.~~

§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 ~~state department~~

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.

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 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.

2.5.a 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 1/4 cup household liquid chlorine bleach added to one gallon of tap water and prepared fresh daily is an effective disinfectant for environmental surfaces and other inanimate objects., provided that the surfaces have been cleaned.

2.6. 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.

2.7. Health Officer. -- The state director of the division of health or the executive officer of the local board of health or his ~~duly authorized~~ or her lawful representative.

2.8. Permit. --A written document, issued by the ~~department~~ 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.

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

~~2.10. State Director of Health. -- The administrative head and chief executive officer of the state board of health or his duly authorized representative.~~

~~3.6. Child Care Center. -- Any child care facility receiving seven or more children for all or part of a day. The term shall be construed to mean day care center, day nurseries, nursery schools, kindergartens, play groups, night time care facilities, or centers or workshops for the mentally or physically handicapped.~~

~~3.7. Construct. -- The term construct shall also be construed to mean and include the terms extend, alter, and modify.~~

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

3.1. Construction and Modification.

3.1.a. ~~On and after March 15, 1974, the date these regulations became effective~~ 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 ~~state department~~ division of health and having received a permit for same. Construction, extension, alteration, or modifications shall not commence until a permit has been obtained for ~~such~~ that purpose from the ~~state department~~ division of health.

3.1.b. A permit for the construction of a child care center shall not be issued until an application for a construction permit and detailed plans and specifications of the child care center have been submitted to the ~~state department~~ division of health for review and approval.

3.1.c. An application for a permit shall be made in writing and submitted to the division of health on a form prescribed by ~~that agency, the director.~~ The form shall be signed by the applicant or his or her authorized agent, and shall contain such the information as may be requested by the ~~state department~~ division of health to enable it to determine if the child care center construction is in compliance with all applicable provisions of ~~these regulations~~ this rule.

3.1.d. When upon review of the plans, specifications, and application for a permit, the ~~state department~~ division of health is satisfied that the proposed construction of the child care center is satisfactory, a permit shall be issued. If the construction activities have not commenced within six (6) months from the date of issuance of a permit, ~~said~~ the permit shall automatically ~~expire~~ expire.

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 ~~state department~~ 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 information is incomplete, inaccurate, false or misleading or indicates that the applicable provisions of this ~~regulation~~ 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 as approved by the ~~state department~~ division of health. Any deviation from the approved original plans or specifications ~~must~~ shall be submitted in writing to the ~~state department~~ division of health for review and written approval obtained before ~~such~~ the changes are made.

3.2. Permit to Operate.

~~4.2.1. 3.2.a. On and after March 15, 1974, the date these regulations became effective, No person directly or indirectly shall in any manner conduct, control, manage, maintain, or operate a child care center unless said the person has in his or her possession a valid permit by the health officer to operate such a specific child care center.² The required permit to operate shall in no way affect or preclude the requirement that a license to operate a child care center must be obtained from the child care center licensing board, West Virginia department of welfare. Licenses are issued based upon approval of the facility by the state department of health, state fire marshal's office and state department of welfare.~~

3.2.b. An application for a permit to operate a child care center shall be made in writing to the health officer, on a form prescribed by the ~~state department~~ division of health, signed by the applicant or his or her authorized agent and shall contain ~~such~~ information as may be requested by the health officer to enable him or her to determine that the facility and its operation is in compliance with the applicable provisions of ~~these regulations~~ 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 ~~said 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 ~~these regulations~~ this rule cannot be met.

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

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.

64 CSR 21

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

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

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

3.2.i. A permit to operate ~~shall expire~~ 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 ~~these regulations~~ this rule or any applicable law, rule or ordinance applicable thereto.

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 ~~these regulations~~ this rule and any orders, rules or instructions issued by the health officer.

3.2.m. Operational permits shall be posted in a conspicuous place within the child care center, and ~~said~~ 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 ~~state director of 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 ~~such~~ the hearing.

3.3.c. Notwithstanding the other provisions of ~~these regulations~~ 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 ~~such~~ the conditions, specifying the corrective

action to be taken and the time period in which ~~such~~ the action shall be completed. When ~~deemed~~ necessary, ~~such~~ 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 ~~such~~ additional inspections ~~as he deems necessary~~ needed to determine satisfactory compliance with the provisions of ~~these regulations~~ this rule and any orders, notices, instructions, or specifications issued pursuant ~~thereto~~ to this rule.

4.2. Any consecutive violation of the same item or items of ~~these regulations~~ this rule, may be considered as ~~just~~ 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 Requirements - Building.

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

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

~~6.3. New installation shall not be located in a basement or below ground level without the expressed written consent of the state director of health.~~

5.3. Floors, walls and ceiling shall be of easily cleanable construction.

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

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

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

~~6.8. All carpeting shall be of the type approved by the state fire marshal's office.~~

5.7. Carpeting shall not be used in toilet rooms or areas housing food service facilities. In family day care facilities: carpeting may be used in kitchen and dining areas provided it is easily cleanable and kept clean and in good repair. Carpets shall be securely attached or of a non-skid nature.

5.8. All painted surfaces shall be free of lead pigment ~~or~~ and other toxic materials.

5.9. ~~Child care center housing shall not provide less than~~ 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.

5.10. 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.

5.11. All plumbing shall meet the requirements of local plumbing codes or ordinances, or in the absence thereof, the ~~national plumbing~~ state building code.

5.12. Cross-connections and potential backsiphonage possibilities are prohibited.

5.13. Sewage and excreta disposal systems shall comply in full with ~~the state board of health~~ applicable small sewage and excreta disposal systems regulations rules.

5.14. Sewage and excreta disposal systems shall be kept in good repair and properly maintained and operated.

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

5.16. Hot and cold running water, with a minimum pressure of twenty (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 such water will be in direct contact with children, the temperature shall not exceed 120°F.

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

5.18. Drinking fountains shall be easily accessible to the children and the water pressure at ~~such~~ the fountains shall be properly regulated.

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

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

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

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

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

64 CSR 21

5.24. The child care center shall be ~~kept~~ free of insects and rodents at all times.

5.25. Only those insecticides and rodenticides approved by the ~~state department of health~~ U. S. Environmental Protection Agency shall be used in child care centers.

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

5.27. When not in constant use, ~~all such~~ garbage and refuse containers shall be covered with tight-fitting lids.

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

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

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

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

~~6.17.7. Disposal of garbage and refuse must be in compliance with the state board of health solid waste regulations.~~

5.32. Child care centers shall be equipped with approved heating units sufficient to provide ~~and maintain~~ a temperature of at least 68°F at floor level in all applicable rooms.

5.33. Unguarded open-face heaters are prohibited.

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

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

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

5.37. 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.

5.38. Lighting may be by either natural or artificial means or both.

5.39. All light bulbs and fluorescent tubes ~~must~~ shall be protected by effective shields.

5.40. Toilet rooms shall be provided and shall be easily accessible to children. Toilet rooms, flush toilets, toilet training equipment, and fixtures shall be cleaned and sanitized at least daily and when obviously soiled.

5.41. 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. 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.

5.42. Toilet fixtures shall be sized so that they may be used by children without assistance, or Provided: step stools and/or modified toilet seats that are properly constructed for safety and cleanability which are safely constructed and can be cleaned easily may be used in lieu of ~~proper~~ specially sized toilet fixtures.

~~6.20.4. Toilet room shall not open directly into any room housing food service facilities.~~

~~6.20.5. Toilet room doors shall be self-closing.~~

~~6.20.6. Toilet room doors, if louvered for make up air, shall be screened with 16 mesh or finer screen, or the louver constructed in such a manner as to prevent the entrance of insects and vermin.~~

5.43. 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.

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

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

5.46. Adult employee restrooms shall meet requirements of Sections 5.43 through 5.44 of this rule.

5.47. All restrooms shall have a covered waste container.

5.48. 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. No child under age six (6) shall be left unsupervised while bathing. Soap and clean, individual washcloths and towels shall be provided for each child. Bathtubs and showers shall be equipped to prevent slipping.

5.49. ~~Diaper changing, if applicable, shall be done in an area where approved hand washing facilities are readily accessible.~~ 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.

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

~~5.50. Diaper changing shall be done in an area and on an approved surface provided with a clean cover prior to each use.~~ In day care centers, a handwashing sink must be located in the diaper changing area. In family day care facilities, a handwashing sink must be readily accessible to the diaper changing area. Handwashing sinks shall not be used for rinsing soiled diapers or clothing or for cleaning toilet training equipment.

~~5.51. Feces from soiled diapers shall be disposed of through the regular sewage disposal system.~~

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 must 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.

~~5.52. Soiled diapers, if reusable, shall be stored in nonabsorbent, easily cleanable covered containers with plastic liners. Said containers shall be emptied, cleaned and disinfected daily, or more often if conditions warrant. 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.~~

~~5.53. Soiled disposable diapers shall be stored in a nonabsorbent, easily cleanable covered container with a plastic liner. Said container shall be emptied, cleaned and disinfected daily or oftener. The plastic liner containing the diaper shall be disposed of along with garbage and refuse in a manner acceptable to the health officer. The child's perineal (urinary and anal) area shall be cleaned with disposable wipes. 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.~~

5.53.a 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.

5.53.b 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.

~~5.54. Toilet training chairs, where applicable, if used, shall be of easily cleanable construction and after each use shall be emptied into a toilet, and thoroughly cleaned and disinfected sanitized in a utility sink, after each use. Approved facilities for emptying, cleaning, and disinfecting toilet training chairs shall be provided and used.~~

5.55. 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. Poisons and other potentially hazardous items shall be inaccessible to children and stored in original containers, kept in locked cabinets. ~~Empty food containers shall not be used for storing of toxic materials, poisons, medicines, and similar items.~~

5.56. 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. Sandboxes shall be covered when not in use.

~~5.57. Outdoor activity areas shall be well drained, free of safety hazards, and shall be enclosed by a fence or other suitable barrier.~~ 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.

5.57.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.

5.57.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.

5.57.c In family day care facilities, all areas accessible to the outdoor play area determined to be unsafe, including, but not limited to, 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.

~~5.58. Supports for~~ Outdoor equipment used for climbing and similar play activities shall be installed to prevent tipping or collapse securely fastened to the ground. Swings, slides, and climbing equipment shall not be placed over, or immediately adjacent to, concrete, asphalt, brick, or similar hard surfaces.

~~5.59. Wading pools shall be~~ are prohibited unless they are an integral part of a swimming pool meeting the state board of health swimming pool and bathing place regulations which meets the division of health's rule, Swimming Pool and Bathing Beach, 64 CSR 16.

5.60. 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.

5.60.a. 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 machine-washed when contaminated.

5.60.b 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.

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

§64-21-6. Food Service Facilities.

6.1. ~~Food service facilities~~ Child care centers shall comply with the ~~state board~~ the division of health's rule, Food Service Sanitation Rules, 64 CSR 17, except as specified in Section 6.2 of this rule.

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

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

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

6.2.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 of the following methods:

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

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

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

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

6.2.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;

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

64 CSR 21

6.2.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;

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

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

6.2.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

6.2.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.

§64-21-7. Laundry.

~~7.1. In day care centers, laundry, if done on the premises shall be done in a separate room designed for that particular purpose. may not be done in children's activity areas or in food preparation, service or storage areas.~~

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

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

~~7.4. Washing machines shall be installed so that no backsiphonage possibilities exist.~~

7.5. Clean laundry shall be stored in such a manner ~~so as not to become~~ to protect it from being soiled or contaminated prior to use.

~~7.6. Laundry shall be done in wash water having a temperature of at least 140°F. A chemical sanitizer shall be added to the rinse water and the laundry air dried; or if the laundry is done by automatic/mechanical washer and dryer, washing shall be accomplished at a temperature of 140°F or higher and the laundry tumble dried at 160°F or higher until dried. Laundry shall be: mechanically washed and dried; or mechanically washed, rinsed in a chemical sanitizing solution, and air-dried.~~

§64-21-8. Bedding and Sleeping Area.

~~9.1. Individual cribs or cots, mattresses and bedding shall be provided for each child. (See department of welfare standards.)~~

~~9.2. Bedding shall be kept clean and sanitary at all times.~~

64 CSR 21

~~9.3. If mattresses are used, mattress pads and water-proof covers shall be required.~~

~~9.4. Individual bedding shall be changed once per week or more often if necessary.~~

~~9.5. Cribs, cots, or mattresses shall be a minimum of twenty four (24) inches apart on all sides while in use.~~

~~9.6. Double decker beds are prohibited.~~

~~9.7. Each child's bedding shall be properly identified and used only for that particular child.~~

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 a water-proof cover shall be used.

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. Safety.

9.1. All necessary precautions shall be taken to insure an accident-free environment for the children. ~~Such precautions shall include, but not be limited to the following:~~

9.2. Children shall be ~~closely~~ supervised at all times, indoors and out, in accordance with the division of human resources staff/child ratios for Family Day Care Facilities and Day Care Centers.

9.3. 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.

9.4. 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, an approved disinfectant, sterile cotton and gauze bandages, and adhesive tape; 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.

§64-21-10. Animals.

10.1. ~~With the following limitations, Animals may be~~ are permitted on child care premises.

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

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

~~10.4. If animals are kept indoors at night, the area in which they are kept shall be maintained at a minimum temperature of sixty (60) degrees Fahrenheit.~~

~~10.5. Animals kept indoors shall be kept in the children's activity room or other areas approved by the health officer.~~

10.6. ~~Aquariums shall be permitted. Provided: Aquariums are~~ shall be under the supervision of the child care staff, ~~are~~ located in the activity areas and ~~are~~ kept out of reach of children.

~~11.1.6. Dogs and cats may be~~ are permitted. ~~Provided:~~

a. ~~There is only one dog or one cat per child care center;~~

10.7. ~~The dog is at least six (6) months old and the cat at least three (3) months old, and both are~~ Dogs and cats shall be currently vaccinated against rabies, distemper, hepatitis, and leptospirosis.

10.8. In day care centers, the outdoor quartering areas of the dog or cat is dogs and cats shall be complete and separate from children's outdoor activities areas.

10.8.a Indoor animal quarters and litter boxes may not be located in food preparation, storage, or serving areas.

10.9. 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.

§64-21-11. Employee Health Requirements.

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

11.2. Staff members shall wash their hands thoroughly in an approved lavatory before

starting work, after diaper changing activity, and otherwise as often as ~~may be~~ necessary to remove soil and prevent contamination.

11.2.a 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.

11.3. No staff member shall resume work after visiting the toilet room without first washing ~~their~~ his or her hands.

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

11.5. Smoking is prohibited in children's living and activity areas.

11.6. 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 ~~such the persons~~ staff member transmitting disease to other persons; and no person known or suspected of being affected with any ~~such~~ disease or condition shall be employed in any ~~such~~ area or capacity. In family day care facilities, appropriate measures shall be taken to assure that non-staff household members do not directly or indirectly transmit diseases to the staff or the children.

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

~~§64-21-13. Repeal of Former Regulations.~~

~~All regulations, previously adopted by the state board of health, which are in conflict with the provisions of these regulations, are hereby repealed.~~

~~§64-21-14. Severability.~~

~~If any provisions of these rules or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or the application of these rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.~~

~~§64-21-12. Penalty for Violating Provisions of Regulations.~~

12.1. Any person who violates any provision of ~~these regulations~~ this rule ~~shall be~~ 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.

12.2. Each day's failure to comply with any applicable provision of ~~these regulations~~ this rule constitutes a separate offense.

64 CSR 21

§64-21-13. 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.

§64-64-14. Severability. -- The provisions of this rule are severable. If any provision of this rule is held invalid, the remaining provisions remain in effect.

**Discussion of Public Comments Received
Concerning the Proposed Rule
Child Care Centers
64 CSR 21**

This proposed rule amends the Division of Health's rule for Child Care Centers, 64 CSR 21, in order to incorporate standards for family day care facilities - a new class of day care facility created by the 1996 Legislature in House Bill 4170. Certification standards for family day care facilities are also being proposed in the Division of Human Resources' rule 78 CSR 18, Certification Requirements for Family Day Care Facilities.

A public comment period was held from July 29, 1996 to August 28, 1996. The comments received are summarized and discussed below. Minor stylistic changes and correction of typographical, grammatical and format errors are not documented. Some revisions have necessitated renumbering. Comments and discussion are keyed to the version of the rule offered for public comment.

Changes were made in the following sections to clarify specific requirements and for consistency: Definitions (2.5.a, 2.6), General Requirements - Building (5.7, 5.25, 5.29, 5.32, 5.41, 5.42, 5.49, 5.50, 5.51, 5.52, 5.53, 5.54, 5.55, 5.57, 5.58), Food Service Facilities (6.2.c), Laundry (7.1), Bedding and Sleeping Area (8.5), Safety (9.2), Animals (10.3, 10.4, 10.5, 10.7, 10.8, 10.8.a), and Employee Health Requirements (11.7).

General Comments

1. Some of the commentators expressed a concern that there was a conflict in some sections between this rule and the Division of Human Resources' rule. Representatives from the respective offices met to discuss these concerns. As a result, changes were made to the following sections: General Requirements - Building (5.7, 5.10, 5.16, 5.32, 5.48, 5.55, 5.56, 5.57, 5.58), Safety (9.3, 9.4), and Animals (10.3).

Concurrently with the development of this proposed rule, the Division of Human Services has developed and offered for public comment a new rule, Family Day Care Facility Certification Requirements (78 CSR 18), for this new type of facility. Both rules were offered for public comment to the same groups and in the same manner. Some of the proposed modifications to the Division of Health's Child Care rule (64 CSR 21) discussed in this document involved moving standards from the proposed Division of Human Service's Family Day Care Facility rule (78 CSR 18) into the Division of Human Service's rule, which was revised to cross reference the Division of Health's rule. The Department believes that since concerned parties were given opportunity to comment on both rule that these changes, although perhaps unusual, are within the bounds of the rule-development process.

The purpose of these changes was to eliminate conflicting or confusing rules between the two Divisions, to ensure that appropriate safeguards are in place, and to avoid duplication and over regulation.

Specific Comments

5.9 **Comment:** Define "storage" or add "shelving space" to this section.

Response: This is adequately covered by "Useable floor space". Each situation will have to be judged individually; all possibilities cannot be included in a rule.

5.10 **Comment:** Define "adequate ventilation".

Response: Section 5.10 states "... approved ventilation ...". This is standard terminology in the existing rule and in many other environmental health rules and has not previously presented a problem.

5.16 **Comment:** Set a maximum safe temperature on the hot water provided to sinks to prevent burns to children.

Response: Agreed. Requirement added.

5.34 **Comment:** Allow use of new natural gas, clean burning stoves that do not require venting.

Response: Venting of all gas-fired heating devices is considered necessary to assure a safe environment.

5.40 **Comment:** Recommend allowing toilet rooms that are not fully enclosed, but allow for privacy and for monitoring by staff.

Response: Agreed. However, no change in the rule is necessary. There is no requirement in the rule as written for toilet rooms to be fully enclosed.

5.40 **Comment:** Require that restrooms be cleaned and sanitized daily or more often if necessary.

Response: Agreed. Rule rewritten accordingly.

5.41. **Comment:** Recommend that separate toilet facilities for each sex be provided for children who are six years of age or older, per National Environmental Health Association guidelines for child care centers..

Response: Agreed that this requirement should be added, but shall apply to day care centers only, not family day care facilities. Rule rewritten accordingly.

5.42 **Comments:** Require child sized toilet room fixtures.

Response: In order to avoid over regulation and excessive cost, the rule does allow child sized fixtures, but also allows step stools, modified toilet seats, and toilet training chairs.

5.49 **Comment:** Require that infants wear clothing to keep their hands out of diapers.

Response: Agree that clothing over infants' diapers is an excellent recommendation, but would be too restrictive as a requirement.

5.50 **Comment:** Specify three (3) feet as the maximum number of feet from the diaper changing area that the hand wash sink may be located.

Response: Rule as written is sufficient, requiring hand wash sink to be "... located in the diaper changing area".

5.53 **Comment:** Require, or at least recommend, that staff wear gloves when diapering a child.

Response: Agree in principle, but as a requirement would be too restrictive and costly. Proper handwashing is a safe alternative.

5.58 **Comment:** Require shock absorbing surfacing under climbing equipment and require that playgrounds and playground equipment comply with the Consumer Product Safety Commission's recommendations.

Response: There are several standards available on the safety of playgrounds and playground equipment. These standards should be used as recommendations or guidelines to determine compliance with 5.56 which requires that all equipment be "... free of safety hazards ...". A requirement was added to 5.58 prohibiting placement of this type of equipment over concrete, asphalt, etc.

5.59. **Comment:** In family day care facilities, what are the requirements for use of the operator's personal backyard pool?

Response: The pool must meet the requirements of 64 CSR 16, as stated in section 5.59.

5.60. **Comment:** Require that mouthed toys be cleaned and sanitized after each, and all toys be of cleanable construction and cleaned daily or as necessary.

Response: Agreed. Rule rewritten accordingly.

5.60 **Comment:** Require that painting and repairs be conducted when children are not present.

Response: Adding this requirement may place an undue restriction on facilities. This issue may best be addressed through section 5.55, regarding keeping poisons inaccessible to children, through 5.60, which requires the center be kept neat and orderly.

6.0 **Comment:** Prohibit microwave heating of infants' bottles.

Response: This issue should be covered by the staff training requirements of the Division of Human Resources' certification rule.

6.2 **Comment:** Recommend that family day care facilities comply with the Food Service

Sanitation Rule, 64 CSR 17, except for a change in the requirements for the dishwashing facilities.

Response: In addition to requirements for dishwashing facilities, there are many sections of 64 CSR 17 that would be difficult for a home setting to comply with. Full compliance with 64 CSR 17 would be too restrictive for family day care facilities. Public health concerns are addressed in the rule as written.

6.2.h. **Comment:** Define thoroughly cooked; for example, "Cook until all juices from the meat flows clear." Or specify internal temperatures.

Response: "Thoroughly cooked" would commonly be interpreted to mean that meat shall be cooked until juices are clear, not pink or bloody. Specific temperatures can be provided during staff training.

10.3 **Comment:** Prohibit reptiles; many carry salmonella.

Response: Too restrictive, especially considering the many types of reptiles. This issue can best be addressed by assuring that the staff and children follow good hygienic practices and handwashing procedures as stated in the rule.

10.8.a **Comment:** How can a litter box be located out of reach of children and still be accessible to animals?

Response: Agreed. Restriction on litter boxes changed to apply to food preparation, storage, or serving areas.

11.2.a **Comment:** Require that children's hands must be washed after using the toilet and before eating.

Response: Agreed. Requirement added.

11.6 **Comment:** Concern raised over the health of other household members in family day care facilities.

Response: Section 11.6 amended to require that appropriate measures be taken to assure that the children and the staff are not affected by ill household members.

11.7 **Comment:** Food handler cards should not be required since many counties have dropped this requirement.

Response: Section rewritten to comply with current rules regarding permits for food service workers.

Commenters
Proposed Rule - Child Care Centers, 64 CSR 21
Division of Health, Department of Health and Human Resources

Christian, Clarence T., R.S. - District Sanitarian, Beckley District Office
Lincoln County Health Department - Francis W. Holton, R.S., Sanitarian
Monongalia County Health Department - Arthur W. Adams, Director, Environmental Health
Division
Putnam County Health Department - Margaret York, RS
Thompson, Lemoine K., R.S. - Hardy County Health Department
Wyoming County Opportunity Council, John Eric Smith



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

M E M O R A N D U M

DATE: 8-16-96

TO: Ronald K. Forren, R.S., Director
Office of Environmental Health Services

FROM: Clarence T. Christian, R.S., District Sanitarian *etc/jh*
Beckley District Office

RE: Proposed Revised Child Care Center Rule 64 CSR 21

I would like to make the following comments and recommendation:

*How can you require food handler cards when many counties do not require the cards?

*Why require hair restraints in a family day care facility?

*Why is the immersion temperature so low (100 °F) for family day care facilities? Is this sanitization temperature science-based?

*Section 9.2 repeats the statement "with the requirements".

*Do not allow the 65°F to 68°F temperature - too cold for adults let alone children.

*The requirement for sanitization of dishes washed in a home-type, domestic dishwasher, also must be sanitized by one of the approved methods.

Thank you for considering my comments.

Attachment

CTC/jh

BUREAU FOR PUBLIC HEALTH
Office of Environmental Health Services
BECKLEY DISTRICT OFFICE
103 North Kanawha Street, Bair Building, Suite 200
Beckley, West Virginia 25801
Telephone (304) 256-6666 FAX (304) 256-6672

LINCOLN COUNTY HEALTH DEPARTMENT

ENVIRONMENTAL HEALTH SERVICES

P.O. BOX 527

HAMLIN, WV 25523-0527

PHONE 824-3330

August 9, 1996

Linda Jones
Environmental Health Services
815 Quarrier Street Suite 415
Charleston, WV 25301

RE: Comments on New Child Care Center Regulations

Dear Linda,

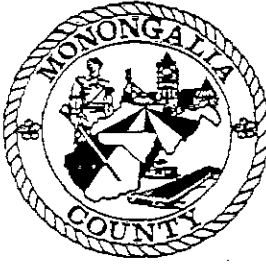
I have the following comments on the new child care center regulations.

1. I observed a conflict between the regulations concerning cold holding temperature. 78 CSR 18 6.4.i gives a temperature of 45 degrees while CSR 64 21 gives a temperature of 41 degrees. I think that the temperature should be at 41 degrees and that both sets of regulations should include this information.
2. The definition of hot water is not included in both set of regulations. 78 CSR 18 6.1.i defines the temperature as 110 degrees while 64 CSR 21 5.16 just says hot water. I believe that both sets of regulations should contain the temperature requirement so that the sanitarians can enforce the issue if the need arises.
3. There is a conflict in the requirement for the room temperature. 78 CSR 18 requirement is less than what is in 64 CSR 21. The temperature needs to be the same in both set of regulations.
4. Whether the minimum of storage needs to be added or else add "serving space" to 64 CSR 21 5.16 and 78 CSR 18 6.1.i.

While I feel that most of these comments will be resolved before the final release of the regulations, I felt it necessary to advise you of my thoughts on the issues.

For any questions or additional information concerning this matter please feel free to contact me in my office at 824-3330.

Sincerely,
Francis W. Holton
Francis W. Holton, R.S.
Sanitarian
Lincoln County Health Department



Monongalia County Health Department

453 Van Voorhis Road, Morgantown, WV 26505-3408
Phone 304/598-5100 FAX 304/598-5599

RECEIVED

AUG 22 1996

REGULATORY DEVELOPMENT

19 August 1996

Kay Howard
Regulatory Development
Dept. of Health & Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

Dear Ms. Howard:

Enclosed you will find a memorandum addressed to me, from a staff member who researched the proposed Child Care Center Rule 64 CSR 21. Concerns stated in the memorandum echo similar concerns voiced by the rest of our environmental health staff.

These comments and concerns are from the perspective of the sanitarian who must inspect and enforce child care center regulations to protect the children placed in the care of these facilities. Suggestions made in the memo would help to eliminate weaknesses in the proposed Rule.

Thank you for your consideration of these issues.

Sincerely,

Arthur W. Adams, Director
Environmental Health Division

AWA/djw

Enclosure

cc: Don Forren

MEMORANDUM

TO: Arthur Adams, Director
Environmental Health Division

FROM: J.D. Hathaway, R.S.

DATE: August 16, 1996

RE: Proposed Revised Child Care Center Rule 64 CSR 21

I have to go on record that I am not in favor of the creation of family day care facilities. While I am not well informed about the social problems their creation seeks to address, I am quite familiar with the regulatory aspects of the child care industry. I foresee a regulatory nightmare.

The proposed revised rule imposes the same standards on family day care facilities that are required of child care centers (except for kitchen facilities). While I agree that this would be desirable, it seems likely that operating a family day care facility in a personal residence will be very difficult if not impossible. A family day care facility located outside the home will just be a traditional child care center operating with a substandard kitchen.

The complexity of conducting inspections in a personal residence will be overwhelming. Take for example the requirement of 35 square feet of activity area per child. Will this area include furniture, such as beds, sofas and end tables, or will it exclude them? (Over half the square footage in my home is taken up with furniture.) And what about the operator who has home canned goods in the refrigerator for "personal use"? These are just two examples of such questions.

I think that combining these two types of facilities under the same regulation is not practicable. There should be separate regulations developed for each type of facility.

The following are recommendations regarding specific areas of the proposed regulations that I have hoped would be considered in the decision-making process. I believe these recommendations are consistent with the proposed regulations.

Toilet Requirements:

1. It would be nice to resolve the issue of whether or not separate restrooms are required for each sex. Many child care operators have been forced to provide separate facilities, but they nevertheless continue to allow both sexes to use the same restroom. The National Environmental Health Association (NEHA) recommends that "private toilet facilities should be provided for males and females who are

six years of age or older."¹ Personally, I see no need for separate facilities for younger children.

2. Another issue I'd like to see addressed is whether or not it is necessary to fully enclose the restroom in a child care facility. Some child care facilities have expressed the desire to use an "open" restroom. This type of restroom has low walls and no door. Privacy is still afforded to the children by the restroom enclosure and privacy stalls, but they can still be easily monitored. This allows adults to assist the child as needed. It provides for monitoring of the worker as well. I support allowing this type of restroom facility.

3. Require that restrooms be cleaned and sanitized daily or more often if necessary.

4. Require tempered water at hand sinks. Or set a maximum safe temperature on the hot water provided to the sink. I've found several facilities with water hot enough to cause serious burns.

5. Why not just require child-sized fixtures? Or at least hand sinks mounted at child height.

Disease Control:

1. Require that children's hands must be washed after using the restroom and before eating.

2. Require that infants wear clothing. This helps keep hands out of diapers.

3. Require that mouthed toys be cleaned and sanitized after each use.

4. Require all toys to be of cleanable construction and cleaned daily or as necessary.

5. Require (or at least recommend) the use of gloves in the diaper changing process.

6. Specify the maximum number of feet from the diaper changing area to the hand sink. Use recommendations built into the diaper

7. Exclude reptiles as pets. Many popular kinds of pet reptiles carry salmonella.

8. In family day care facilities, what about the health of household members living there?

Safety:

1. There should be a requirement for shock absorbing surfacing under climbing equipment.² According to a study published in 1990

by the Consumer Product Safety Commission, the majority of injuries to children treated in U.S. hospital emergency rooms were the result of falls from playground equipment.

2. Require that playgrounds and playground equipment comply with the Consumer Product Safety Commission's recommendations for public playground safety.

3. Require that painting and repairs be conducted when children are not present.

4. Prohibit microwave heating of infants bottles.

5. Can children in family day care facilities use the operator's personal backyard pool? Is a lifeguard required? Would this pool have to meet the swimming pool regulations and design standards?

Building:

1. Define "adequate ventilation." Statements like this usually require a sickness or injury to occur before they are enforceable.

COMMENTS ON THE PROPOSED REVISED
CHILD CARE CENTER RULE 64 CSR 21

MARGARET YORK, RS
PUTNAM COUNTY HEALTH DEPARTMENT

1. 64-21-4.1. The revised rule has not changed the required inspection frequency from once every six months. However, in the proposed Certification Requirements the inspection rate is once a year.
2. 64-21-5.32. There is an editor's note that an alternate temperature ranch of 65 degrees to 68 degrees is under consideration. I highly recommend that the persons suggesting this reduction spend this winter with the thermostat at 65 degrees before a definite decision is made.
3. 64-21-6.20.4. I am interpreting this to be an elimination due to repetition and that this is still enforceable under the Food Service Regulations.
4. 64-21-5.59. There is a conflict between this rule and those proposed in the family day care facility, which allows the fill & drain wading pools. I agree that these types of pools should be prohibited.
5. 64-21-6.2. I feel that this section and the following sections should read as follows:

6.2. Family day care facilities shall comply with the division of health's rule, Food Sanitation Rules, 64 CSR 17, with the following exceptions:

6.2.a. Dish washing facilities shall be provided and methods utilized to effectively remove food soil and grease. Large equipment and utensils too large to be cleaned in sink compartments, dishes, utensils and equipment shall be washed in an automatic dishwasher, or washed in a hot detergent solution, rinsed free of detergent and abrasives, and sanitized by one of the following methods:

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

6.2.a.2. Immersion for at least one (1) minute in water at a temperature of at least 75 (75) degrees Fahrenheit and containing fifty (50) Parts per million of available chlorine (approximately one (1) tablespoon liquid household bleach per gallon of water); or

6.2.a.3 Immersion in a clean solution containing any other approved chemical sanitizing agent.

RECEIVED

HARDY COUNTY HEALTH DEPARTMENT AUG 13 1996

MOOREFIELD, WEST VIRGINIA 26836
(304) 538-6355

REGULATORY DEVELOPMENT

August 12, 1996

Regulatory Development
ATTN: Kay Howard
Dept of Health & Human Services
Capitol Complex--Building 3, Room 265
Charleston, WV 25305

Dear Ms. Howard:

Enclosed please find my comments regarding the revised legislative rule for Child Care Centers (64 CSR 21) and Certification Requirements for Family Day Care Facilities (78 CSR 18).

64 CSR 21

There is a need for a definition for the "division of health" which expands this entity to include local health units in a manner similar to the definition for "health officer". In most cases where the term division of health is used in this rule the service or function will be performed by a local health entity. The present wording implies that these functions will be performed at the state level.

Section 5.53: The second sentence lacks clarity. It appears that "to keep it covered" should not be part of that sentence.

Section 6.2.c.1: "100 degrees" has to be a misprint.

Section 9.2: Eliminate one of the "with the requirements".

Section 10.9: Last sentence--how can a litter box be located out of reach of children and still be accessible to animals?

Section 11.7: Change food handler to food service worker.

There are some conflicts (temperatures, times, and concentrations) between Section 6.4, Food Service, 78 CSR 18 and Section 4, Food Service Facilities, 64 CSR 21. Since 64 CSR 21 has precedence over food service requirements would it not be practical to just state in 78 CSR 18 that the food service must meet the requirements of 64 CSR 21. It is almost impossible to have 2 separate regulations say exactly the same thing. Even if they can both say exactly the same at the outset, a change in 64 CSR 21 requirements would necessitate a change and possible revision of 78 CSR 18.

Sincerely,

Lemoine K. Thompson, R.S.
Lemoine K. Thompson, R.S.

John Eric Smith
Wyoming County Opportunity Council, Inc
Resource and Referral Program
P.O. Box 1509
Océaña, WV 24870

August 19, 1996

Kay Howard
Regulatory Development
Department of Health & Human Resources
Capitol Complex - Building 3, Room 265
Charleston, WV 25305

Dear Kay,

Here are a few suggestions that you might want to consider for the regulations governing the new Child Care Centers, 64 CSR 21. Thank you for considering these suggestions.

Ref. 5.34 What about the new Natural Gas, Clean Burning stoves that do not have to be vented. They burn at about 98 % efficiency. This needs to be addressed.

Ref. 5.48 If children are going to stay overnight, then night time fire escape plans should be addressed; outside meeting place, flashlight beside child's bed, flashlight beside caregivers bed, smoke and carbon monoxide detectors.

Ref. 6.2h Define thoroughly cooked. Specific internal temperature for how long? Will it follow the health departments codes? Maybe an example would be: Cook until all juices from the meat flows clear. One would still have to worry about cross contamination from improper handling of the meet through the cooking process and other foods coming into contact with the contaminated surfaces.

Ref. Any Health and Safety Regulation. Any home that has natural gas burning devices or other gas, should be required to have a carbon monoxide detector in the home when caring for any children.

Ref. First Aid Kits. First Aid Kits should be required to have gauze bandages and dressings not cotton. Cotton sticks to wounds and contaminates it further. Please refer to any Red Cross First Aid book for a reference to a properly equipped first aid kit for the home.

RECEIVED

AUG 21 1996

REGULATORY DEVELOPMENT