

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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Health TITLE NUMBER: 64

CITE AUTHORITY W. Va. Code § 16-1-7

AMENDMENT TO AN EXISTING RULE: YES NO

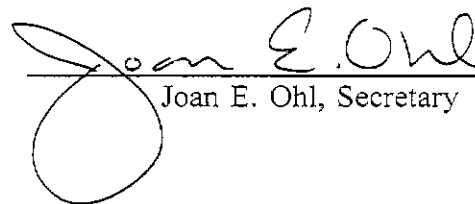
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Child Care Centers

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Joan E. Ohl, Secretary

5.80

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

**Modified Rule
As Approved by the
Legislative Rule-Making Review Committee**

**MODIFIED RULE - 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

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§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 repeals and replaces W. Va. Division of Health 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 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

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.

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

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

2.5. 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.

2.6. 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 director of the division of health or the executive officer of the local board of health or his or her lawful representative.

2.8. 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.

2.9. 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 or to be 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. A person shall not begin construction, extension, alteration, or

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modifications until the division has issued a permit for the construction.

3.1.b. The division shall not issue a permit for the construction, extension, alteration, or modification of a child care center until it receives 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 center construction, extension, alteration, or modification 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, extension, alteration, or modification of the child care center is satisfactory, it shall issue a permit. If the construction, extension, alteration, or modification 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 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. The applicant shall submit plans, specifications, and an application for a permit at least forty-five (45) days prior to the date that construction, extension, alteration, or modification 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. Prior to implementing a deviation from the approved plans and specifications, the applicant shall obtain written approval from the division.

3.2. Permit to Operate.

3.2.a. No person shall operate a child care center unless the person has in his or her possession a valid permit issued 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

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.

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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 applicant shall submit an application for a permit at least fifteen (15) days before the actual or proposed operation of the child care center is scheduled to begin.

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, are 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 subdivision 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 thirty first 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, the applicant shall submit an application for a permit to operate at least fifteen (15) days prior to the date of the proposed or actual change.

3.2.k. The health officer may suspend or revoke a permit if he or she finds 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. The health officer shall not reinstate a permit to operate until he or she determines by an inspection 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.

3.2.m. The operator shall post the operational permit 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

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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. When a health officer finds insanitary or other conditions which constitute an immediate substantial hazard to public health at a child care center, he or she may, without warning notice or a hearing, issue a written order to the operator. The order shall cite those conditions and shall specify the corrective action to be taken by the child care center and the time period in which the action shall be completed. When necessary, the order shall state that the permit to operate the child care center is immediately suspended.

§64-21-4. Inspections.

4.1. The health officer shall inspect each child care center 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. The health officer may consider any consecutive violation of the same item or items of this rule as cause for the immediate suspension of a permit to operate.

4.3. The operator shall post a copy of the inspection report 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 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, the 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. Carpeting 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 rooms used by children.

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 of screen doors shall be self-closing.

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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 their absence, the state building code.

5.6.b. Cross-connections and potential back siphonage 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 hand washing sink shall be located in the diaper changing area. In family day care facilities, a hand washing 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.

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

5.7.h. If provided, separate adult employee toilet rooms 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 toilet rooms shall meet the requirements of subdivisions 5.7.f and 5.7.g of this rule.

5.7.j. All toilet rooms 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 which are unsafe for children shall be fenced off or have natural barriers at least three (3) feet high to protect children. Unsafe areas may include, but are not limited to: steep grades; cliffs; open pits; swimming pools; high voltage boosters; propane gas tanks; streets; roads; driveways; railroad tracks; and parking lots.

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.

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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 complies with the division of health 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 and 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 Areas.

8.1. The child care center shall provide each child who takes a nap shall 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. The child care center shall provide separate cribs for infants who are not yet able to climb. 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 ($2 \frac{3}{8}$) inches, and crib sides shall be secure and high enough to prevent accidents.

8.3. The child care center shall provide individual sheets and covers for each child. Sheets and covers 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. Staff shall change children diapers or soiled underwear on a clean, safe, impervious, nonabsorbent surface which is used for no other purpose.

9.3. Staff shall clean the child's perineal (urinary and anal) area 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.

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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 a likelihood of the staff member transmitting the disease or condition to other persons. No person known or suspected of being affected with any such disease or condition shall be employed in any area or capacity in which there is a likelihood of the person transmitting the disease or condition to other persons. 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.

10.5.a. Spills of body fluids, which include urine, feces, blood, saliva, nasal discharge, eye discharge, and injury or tissue discharges, shall be cleaned up immediately.

10.5.b. Surfaces soiled by spills of vomit, urine, feces, blood or blood-containing body fluids or by spills due to 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.

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 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 used 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:

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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 local health department having jurisdiction over the county in which the center is located, 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.

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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 and refuse container 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 changing a diaper 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, non-diapered children are cared for shall be cleaned weekly and when soiled. The use of soft, non-washable 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 in accordance with the applicable staff/child ratios set forth in the division of human services rules, 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. The minimum contents of the kit 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. Staff shall take a first aid kit on all trips away from the facility.

§64-21-17. Sewage System.

17.1. Sewage and excreta disposal systems shall comply with the division of health's rule, Sewage Systems, 64 CSR 9.

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 their original containers.

§64-21-19. Water Supply.

19.1. Potable water shall be provided from an approved source in sufficient quantity to meet the needs of the center.

19.1.a. If the center is served by a public water system, it shall be in compliance with the division of health's rule, Public Water Systems, 64 CSR 3.

19.1.b. If the center is not served by a public water system, the water supply shall be approved by the health officer.

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 utility sinks, lavatories, and at all hand washing, bathing, dish washing, and laundry facilities. 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 CSR 21

§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.

17ET

1 Bill-Health, Child

(By Delegate(s) Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

2

3

[Introduced March 3, 1997; referred to the
Committee on Health and Human Resources then
the Judiciary.]

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10 A BILL to amend and reenact section one, article five,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of health to promulgate a
14 legislative rule relating to child care centers.

15 *Be it enacted by the Legislature of West Virginia:*

16 That section one, article five, chapter sixty-four of
17 the code of West Virginia, one thousand nine hundred
18 thirty-one, as amended, be amended and reenacted, to read
19 as follows:

20 ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
21 HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-5-1. State board of health; division of health.

23 (a) The legislative rules rule filed in the state

1 register on the thirty-first day of July, one thousand nine
2 hundred ninety-five, authorized under the authority of
3 section two-a, article five-a, chapter sixteen of this
4 code, relating to the division of health (cancer registry,
5 64 CSR 68), ~~are~~ is authorized.

6 (b) The legislative ~~rules~~ rule filed in the state
7 register on the thirty-first day of July, one thousand nine
8 hundred ninety-five, authorized under the authority of
9 section seven, article one, chapter sixteen of this code,
10 modified by the division of health to meet the objections
11 of the legislative rule-making review committee and refiled
12 in the state register on the sixth day of December, one
13 thousand nine hundred ninety-five, relating to the division
14 of health (standards for local boards of health, 64 CSR
15 73), ~~are~~ is authorized.

16 (c) The legislative ~~rules~~ rule filed in the state
17 register on the fourth day of August, one thousand nine
18 hundred ninety-five, authorized under the authority of
19 section eight, article three-c, chapter sixteen of this
20 code, modified by the division of health to meet the
21 objections of the legislative rule-making review committee
22 and refiled in the state register on the twenty-third day
23 of January, one thousand nine hundred ninety-six, relating

1 to the division of health (AIDS-related medical testing and
2 confidentiality, 64 CSR 64), ~~are~~ is authorized.

3 (d) The legislative ~~rules~~ rule filed in the state
4 register on the fourth day of January, one thousand nine
5 hundred ninety-six, authorized under the authority of
6 section five, ~~article five-c~~, chapter sixteen of this code,
7 modified by the division of health to meet the objections
8 of the legislative rule-making review committee and refiled
9 in the state register on the twenty-third day of January,
10 one thousand nine hundred ninety-six, relating to the
11 division of health (personal care home licensure, 64 CSR
12 14), ~~are~~ is authorized with the amendments set forth below:

13 "On page nine, section 4.3.1.d, after the word
14 'provisions' by inserting the words 'in policy';

15 "On page nine, section 4.3.1.d, by striking out the
16 following: 'The provisions may be in the form of a bond, a
17 property lien, or other form of guaranty acceptable to the
18 secretary. The guaranty shall be in the amount of three
19 hundred dollars (\$300) per resident or ten thousand dollars
20 (\$10,000), whichever is greater.' and inserting in lieu
21 thereof the following: 'If the owner does not provide
22 continuing care to all residents during this thirty (30)
23 day period, any expenses incurred by the Department to

1 provide continuing resident care (i.e., food, staff, etc.)
2 during this thirty (30) day period, is the responsibility
3 of the owner.';

4 On page seventeen, section 4.10.4, by striking out the
5 word 'State' and inserting in lieu thereof the word
6 'Secretary';

7 On page seventeen, section 4.10.4, after the words
8 'for each of the residents' by inserting the words
9 'affected by the waiver request,';

10 On page twenty-four, section 5.8.2, after the words
11 'an additional' by striking out the words 'direct care' and
12 inserting in lieu thereof the words 'personal care';

13 On page twenty-four, section 5.8.2, after the word
14 'day' by striking out the words 'and evening shifts' and
15 inserting in lieu thereof the word 'shift';

16 On page twenty-four in section 5.8.2, after the words
17 'to have' by striking out the words 'no more than';

18 On page twenty-four in section 5.8.2, after the words
19 'two (2)' by inserting the words 'or more';

20 On page twenty-four, line sixty-seven, by striking out
21 the words 'no more than';

22 On page twenty-four, section 5.8.2, after
23 'residents.' by inserting the following sentence: 'At a

1 minimum, an additional personal care staff will be
2 available on the evening shift for each fifteen (15)
3 residents identified on their functional needs assessment
4 to have no more than two (2) or more of the above care
5 "needs.";

6 On page twenty-four, section 5.8.2, after the words
7 'An additional' by striking out the word 'employee' and
8 inserting in lieu thereof the words 'personal care staff';

9 On page twenty-four, section 5.8.2, after the word
10 'with' by striking out the words 'one (1)' and inserting in
11 lieu thereof the words 'two (2)';

12 On page twenty-seven, section 6.1.7, after the words
13 'valid for' by striking out the words 'six (6) months' and
14 inserting in lieu thereof the words 'one (1) year';

15 On page thirty-five, section 7.3.9, after the words
16 'personal care home' by striking out the words 'in need of
17 nursing services as specified in this rule' and inserting
18 the following: 'The frequency with which a registered
19 professional nurse shall provide services to the personal
20 care home not providing limited and intermittent nursing
21 services shall be based upon the needs of the residents,
22 but not less than weekly.';

23 On page thirty-five, subsection 7.3.9, after the word

1 'Section' by striking out the number '13' and inserting in
2 lieu thereof the number '12';

3 On page thirty-five, section 7.3.9, after the words
4 'professional registered nurse.' by striking out the
5 following: 'The frequency with which a registered
6 professional nurse shall provide services to the personal
7 care home not providing limited and intermittent nursing
8 services shall be based upon the needs of the residents.'

9 On page fifty-four, section 11.3.1, by striking out
10 the sentence 'Existing and newly constructed buildings to
11 be offered, maintained, and operated as personal care homes
12 shall provide for accessibility in their entirety to
13 individuals with a physical disability.' and inserting in
14 lieu thereof the sentence 'Those personal care homes
15 housing any resident with a physical disability shall
16 provide access to areas used in common by all residents as
17 well as to the resident's personal area.';

18 On page fifty-five, section 11.3.8, in the second
19 sentence, after the word 'widths' by inserting the words
20 'for new construction';

21 On page fifty-five, section 11.3.10, after the words
22 'shall have a' by striking out the word 'central';

23 On page fifty-five, section 11.3.10, after the word

1 'weather' by striking out the following: 'Individual room
2 units known as 'through the wall heating and cooling units'
3 are acceptable.';

4 On page fifty-five, section 11.3.17, after the word
5 'residents.' by adding the following: 'However, if
6 existing facilities cannot comply with the janitor closet
7 requirement on each floor, the facility must demonstrate a
8 sanitary means of disposal of wastewater in an area that is
9 not a resident sleeping area.';

10 On page fifty-seven, section 11.4.10, at the beginning
11 of the first sentence, by striking out the word 'The' and
12 inserting in lieu thereof the words 'In new facilities
13 the';

14 On page fifty-seven, section 11.4.10, after the word
15 'area.' at the end of subsection ten by adding the
16 following sentence: 'In existing facilities residents'
17 rooms shall have an outside exposure through a vertical
18 transparent window. In existing facilities rooms extending
19 below ground level shall be allowed only if approved by the
20 Secretary.';

21 On page fifty-eight, section 11.5.2, after the word
22 'every' by striking out the words 'four (4)' and inserting
23 in lieu thereof the words 'five (5)';

1 On page fifty-eight, section 11.5.3, after the word
2 'per' by striking out the words 'five (5)' and inserting in
3 lieu thereof the words 'ten (10)';

4 On page fifty-eight, section 11.5.3, after the word
5 'residents.' by striking out the following sentence: 'If
6 the facility can show a process that functions well for
7 residents, upon application, the secretary will grant a
8 waiver of this requirement.'

9 On page sixty-one, section 11.13.3.a, at the beginning
10 of the first sentence, by striking out the word 'Outlets'
11 and inserting in lieu thereof the words 'In new facilities
12 electrical outlets';

13 On page sixty-one, section 11.13.3.a, after the word
14 'walls;' by inserting a period and the words 'In existing
15 facilities electrical outlets to meet the needs of the
16 residents shall be provided;';

17 On page sixty-six, section 12.2.5.a, after the word
18 'services' by striking out the words 'through daily contact
19 with the home and visits to the residents at least eight
20 (8) hours a week'; and inserting in lieu thereof the words
21 'to residents';

22 On page sixty-six, by striking out section 12.2.5.d;

23 And,

1 By relettering the remaining subdivisions."
2 (e) The legislative rule filed in the state register
3 on the thirtieth day of August, one thousand nine hundred
4 ninety-six, authorized under the authority of section
5 seven, article one, chapter sixteen, of this code, modified
6 by the division of health to meet the objections of the
7 legislative rule-making review committee and refiled in the
8 state register on the twenty-sixth day of February, one
9 thousand nine hundred ninety-seven, relating to the
10 division of health (child care centers, 64 CSR 21), is
11 authorized.

12
13 NOTE: The purpose of this bill is to authorize the
14 Division of Health to promulgate a legislative rule
15 relating to Child Care Centers.

16
17 Strike-throughs indicate language that would be
18 stricken from the present law, and underscoring indicates
19 new language that would be added.

Senate Bill No. 180

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on Health and Human Resources; and
then to the Committee on the Judiciary.]

A BILL to amend and reenact section one, article five,
chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the division of health to promulgate a
legislative rule relating to child care centers.

Be it enacted by the Legislature of West Virginia:

That section one, article five, chapter sixty-four of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, be amended and reenacted, to read
as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND
HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. State board of health; division of health.

(a) The legislative ~~rules~~ rule filed in the state

1 register on the thirty-first day of July, one thousand nine
2 hundred ninety-five, authorized under the authority of
3 section two-a, article five-a, chapter sixteen of this
4 code, relating to the division of health (cancer registry,
5 64 CSR 68), ~~are~~ is authorized.

6 (b) The legislative ~~rules~~ rule filed in the state
7 register on the thirty-first day of July, one thousand nine
8 hundred ninety-five, authorized under the authority of
9 section seven, article one, chapter sixteen of this code,
10 modified by the division of health to meet the objections
11 of the legislative rule-making review committee and refiled
12 in the state register on the sixth day of December, one
13 thousand nine hundred ninety-five, relating to the division
14 of health (standards for local boards of health, 64 CSR
15 73), ~~are~~ is authorized.

16 (c) The legislative ~~rules~~ rule filed in the state
17 register on the fourth day of August, one thousand nine
18 hundred ninety-five, authorized under the authority of
19 section eight, article three-c, chapter sixteen of this
20 code, modified by the division of health to meet the
21 objections of the legislative rule-making review committee
22 and refiled in the state register on the twenty-third day
23 of January, one thousand nine hundred ninety-six, relating

1 to the division of health (AIDS-related medical testing and
2 confidentiality, 64 CSR 64), ~~are~~ is authorized.

3 (d) The legislative ~~rules~~ rule filed in the state
4 register on the fourth day of January, one thousand nine
5 hundred ninety-six, authorized under the authority of
6 section five, article five-c, chapter sixteen of this code,
7 modified by the division of health to meet the objections
8 of the legislative rule-making review committee and refiled
9 in the state register on the twenty-third day of January,
10 one thousand nine hundred ninety-six, relating to the
11 division of health (personal care home licensure, 64 CSR
12 14), ~~are~~ is authorized with the amendments set forth below:

13 "On page nine, section 4.3.1.d, after the word
14 'provisions' by inserting the words 'in policy';

15 On page nine, section 4.3.1.d, by striking out the
16 following: 'The provisions may be in the form of a bond, a
17 property lien, or other form of guaranty acceptable to the
18 secretary. The guaranty shall be in the amount of three
19 hundred dollars (\$300) per resident or ten thousand dollars
20 (\$10,000), whichever is greater.' and inserting in lieu
21 thereof the following: 'If the owner does not provide
22 continuing care to all residents during this thirty (30)
23 day period, any expenses incurred by the Department to

1 provide continuing resident care (i.e., food, staff, etc.)
2 during this thirty (30) day period, is the responsibility
3 of the owner.';

4 On page seventeen, section 4.10.4, by striking out the
5 word 'State' and inserting in lieu thereof the word
6 'Secretary';

7 On page seventeen, section 4.10.4, after the words
8 'for each of the residents' by inserting the words
9 'affected by the waiver request,';

10 On page twenty-four, section 5.8.2, after the words
11 'an additional' by striking out the words 'direct care' and
12 inserting in lieu thereof the words 'personal care';

13 On page twenty-four, section 5.8.2, after the word
14 'day' by striking out the words 'and evening shifts' and
15 inserting in lieu thereof the word 'shift';

16 On page twenty-four in section 5.8.2, after the words
17 'to have' by striking out the words 'no more than';

18 On page twenty-four in section 5.8.2, after the words
19 'two (2)' by inserting the words 'or more';

20 On page twenty-four, line sixty-seven, by striking out
21 the words 'no more than';

22 On page twenty-four, section 5.8.2, after
23 'residents.' by inserting the following sentence: 'At a

1 minimum, an additional personal care staff will be
2 available on the evening shift for each fifteen (15)
3 residents identified on their functional needs assessment
4 to have no more than two (2) or more of the above care
5 needs.';

6 On page twenty-four, section 5.8.2, after the words
7 'An additional' by striking out the word 'employee' and
8 inserting in lieu thereof the words 'personal care staff';

9 On page twenty-four, section 5.8.2, after the word
10 'with' by striking out the words 'one (1)' and inserting in
11 lieu thereof the words 'two (2)';

12 On page twenty-seven, section 6.1.7, after the words
13 'valid for' by striking out the words 'six (6) months' and
14 inserting in lieu thereof the words 'one (1) year';

15 On page thirty-five, section 7.3.9, after the words
16 'personal care home' by striking out the words 'in need of
17 nursing services as specified in this rule' and inserting
18 the following: 'The frequency with which a registered
19 professional nurse shall provide services to the personal
20 care home not providing limited and intermittent nursing
21 services shall be based upon the needs of the residents,
22 but not less than weekly.';

23 On page thirty-five, subsection 7.3.9, after the word

1 'Section' by striking out the number '13' and inserting in
2 lieu thereof the number '12';

3 On page thirty-five, section 7.3.9, after the words
4 'professional registered nurse.' by striking out the
5 following: 'The frequency with which a registered
6 professional nurse shall provide services to the personal
7 care home not providing limited and intermittent nursing
8 services shall be based upon the needs of the residents.'

9 On page fifty-four, section 11.3.1, by striking out
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11 be offered, maintained, and operated as personal care homes
12 shall provide for accessibility in their entirety to
13 individuals with a physical disability.' and inserting in
14 lieu thereof the sentence 'Those personal care homes
15 housing any resident with a physical disability shall
16 provide access to areas used in common by all residents as
17 well as to the resident's personal area.';

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19 sentence, after the word 'widths' by inserting the words
20 'for new construction';

21 On page fifty-five, section 11.3.10, after the words
22 'shall have a' by striking out the word 'central';

23 On page fifty-five, section 11.3.10, after the word

1 'weather' by striking out the following: 'Individual room
2 units known as 'through the wall heating and cooling units'
3 are acceptable.';

4 On page fifty-five, section 11.3.17, after the word
5 'residents.' by adding the following: 'However, if
6 existing facilities cannot comply with the janitor closet
7 requirement on each floor, the facility must demonstrate a
8 sanitary means of disposal of wastewater in an area that is
9 not a resident sleeping area.';

10 On page fifty-seven, section 11.4.10, at the beginning
11 of the first sentence, by striking out the word 'The' and
12 inserting in lieu thereof the words 'In new facilities
13 the';

14 On page fifty-seven, section 11.4.10, after the word
15 'area.' at the end of subsection ten by adding the
16 following sentence: 'In existing facilities residents'
17 rooms shall have an outside exposure through a vertical
18 transparent window. In existing facilities rooms extending
19 below ground level shall be allowed only if approved by the
20 Secretary.';

21 On page fifty-eight, section 11.5.2, after the word
22 'every' by striking out the words 'four (4)' and inserting
23 in lieu thereof the words 'five (5)';

1 On page fifty-eight, section 11.5.3, after the word
2 'per' by striking out the words 'five (5)' and inserting in
3 lieu thereof the words 'ten (10)';

4 On page fifty-eight, section 11.5.3, after the word
5 'residents.' by striking out the following sentence: 'If
6 the facility can show a process that functions well for
7 residents, upon application, the secretary will grant a
8 waiver of this requirement.'

9 On page sixty-one, section 11.13.3.a, at the beginning
10 of the first sentence, by striking out the word 'Outlets'
11 and inserting in lieu thereof the words 'In new facilities
12 electrical outlets';

13 On page sixty-one, section 11.13.3.a, after the word
14 'walls;' by inserting a period and the words 'In existing
15 facilities electrical outlets to meet the needs of the
16 residents shall be provided;';

17 On page sixty-six, section 12.2.5.a, after the word
18 'services' by striking out the words 'through daily contact
19 with the home and visits to the residents at least eight
20 (8) hours a week'; and inserting in lieu thereof the words
21 'to residents';

22 On page sixty-six, by striking out section 12.2.5.d;

23 And,

1 By relettering the remaining subdivisions."

2 (e) The legislative rule filed in the state register
3 on the thirtieth day of August, one thousand nine hundred
4 ninety-six, authorized under the authority of section
5 seven, article one, chapter sixteen, of this code, modified
6 by the division of health to meet the objections of the
7 legislative rule-making review committee and refiled in the
8 state register on the twenty-sixth day of February, one
9 thousand nine hundred ninety-seven, relating to the
10 division of health (child care centers, 64 CSR 21), is
11 authorized.

12

13 NOTE: The purpose of this bill is to authorize the
14 Division of Health to promulgate a legislative rule
15 relating to Child Care Centers.

16

17 Strike-throughs indicate language that would be
18 stricken from the present law, and underscoring indicates
19 new language that would be added.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Child Care Centers, 64CSR21

PERTINENT DATES

Filed for public comment: July 29, 1996
Public comment period ended: August 28, 1996
Filed following public comment period: August 30, 1996
Filed LRMRC: August 30, 1996
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the provisions of the substantive amendments. Many of the amendments to the proposed rule are technical in nature to bring a fairly old rule into conformity with the current style of rule format. It establishes environmental health requirements for the construction and operation of child care centers.

Section 2 defines terms. It has been amended by adding definitions for the following terms: "day care center"; "disinfect"; and "family day care facility". The term "child care center" has been redefined.

Section 5 relates to general building requirements. The requirement that the written consent of the Director be obtained prior to locating a new installation in a basement or below ground level has been deleted. Some of the requirements regarding toilet rooms have been deleted, while requirements have been added regarding bathing facilities.

Section 6 relates to activity areas and equipment. Numerous requirements regarding outdoor play spaces have been added including a requirement that usable outdoor play space of 75 square feet per child be provided.

Section 7 relates to animals. Restrictions regarding the age and number of dogs and cats which may be on the premises have been deleted.

Section 8 relating to bedding and sleeping areas has been rewritten to be more specific.

Section 9 relating to diaper changing and toilet training has been completely rewritten to be more specific .

Section 10 relates to employee health. New provisions have been added requiring employees to employ universal precautions for protection from disease and infection.

Section 11 requires child care centers to comply with the Division of Health Rule, Food Service Sanitation Rules. This section has been amended to allow family day care facilities to use an on-site kitchen if it meet the specified requirements.

Section 13 relates to hand washing. It has been amended to specify the times when a child's hands must be washed.

Section 14 relates to housekeeping and sanitation. Requirements have been added regarding the cleaning of toys and toilet facilities.

Section 15 currently requires day care centers to have a laundry room. It has been amended to eliminate that prohibition and instead to prohibit laundry from being done in children's activity areas or in food preparation, service or storage areas.

Section 16 relates to safety. It has been amended to reference applicable rules on staff/child ratios, to require child-proof railings or barriers on elevated platforms such as balconies, to require railings and safety gates on stairways and to specify the minimum contents of a first aid kit.

Section 19 relates to the water supply. It has been amended to provide that where water will be in direct contact with children, the temperature shall not exceed 120 degrees Fahrenheit.

Section 21 provides for administrative due process and references the applicable rule.

Section 22 is an unnecessary severability section.

AUTHORITY

Statutory authority: W.Va. Code, §16-1-7, which provides, in part, as follows:

The secretary of the department of health and human resources shall

have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof... Such rules and regulations shall include, but not be limited to, the regulation of:

...(6) Other health-related matters which the department of health is authorized to supervise, and for which the rule-making authority has not been otherwise assigned...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.