

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption of NEW)	NOTICE OF PUBLIC HEARING ON
RULES I through IV, the amendment)	PROPOSED ADOPTION,
of ARM 37.95.102, 37.95.103,)	AMENDMENT, AND REPEAL
37.95.106, 37.95.108, 37.95.117,)	
37.95.121, 37.95.127, 37.95.139,)	
37.95.141, 37.95.160, 37.95.161,)	
37.95.162, 37.95.172, 37.95.173,)	
37.95.183, 37.95.184, 37.95.602,)	
37.95.606, 37.95.622, 37.95.623,)	
37.95.703, 37.95.705, 37.95.706,)	
37.95.730, 37.95.1005, and the)	
repeal of ARM 37.95.145, 37.95.150,)	
37.95.166, and 37.95.174, pertaining)	
to the federal Child Care and)	
Development Block Grant)	
Reauthorization Act, disaster and)	
emergency planning, and health and)	
safety requirements for child care)	
facilities)	

TO: All Concerned Persons

1. On December 15, 2017, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 1, 2017, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I CHILD CARE FACILITIES: EMERGENCY DISASTER AND ACTION PLANS (1) All child care facilities must have a written emergency disaster plan. The plan for each structure used for child care must be developed in such a

way that the plan can be followed in the event of a natural or human-caused disaster, such as flood, fire, tornado, or responding to an intruder.

- (2) Emergency disaster plans must include:
 - (a) an emergency supply of blankets, water, food, and supplies;
 - (b) plans for evacuation, including identification of at least one off-site gathering point;
 - (c) plans for evacuation of nonmobile children and children with special health care needs;
 - (d) contingencies that address:
 - (i) children's individual needs; and
 - (ii) staff responsibilities;
 - (e) plans for reunification of children with their parents;
 - (f) plans for shelter in place and lock down; and
 - (g) plans for continuity of operation.
- (3) The facility must conduct eight emergency drills per year to include:
 - (a) six fire drills; and
 - (b) two other disaster drills that are likely to occur in the facility.
- (4) All emergency drills must be documented and include the following minimum information:
 - (a) who conducted the drill;
 - (b) date and time of drill;
 - (c) the number of adults and children present during the drill;
 - (d) the length of time to evacuate; and
 - (e) problems identified during the drill and corrective actions.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE II CHILD CARE FACILITIES: EARLY CHILDHOOD TEACHER ORIENTATION TRAINING (1) Each director, early childhood teacher, assistant teacher, and substitute must complete the department-approved early childhood teacher orientation training.

- (2) Within 30 days of hire, teacher orientation which includes the following training must be completed:
 - (a) current certification for infant, child, and adult CPR, infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting;
 - (b) prevention of sudden infant death syndrome and use of safe sleep practices;
 - (c) prevention of shaken baby syndrome and abusive head trauma;
 - (d) trainings listed in (a) through (c) must be completed before providing unsupervised care; and
 - (e) facilities that provide care exclusively to school age children are not required to take (b) and (c);
- (3) Within 90 days of hire, teacher orientation which includes the following training must be completed:
 - (a) prevention and control of infectious diseases, including immunization;

- (b) child development;
 - (c) administration of medication, consistent with standards for parental consent;
 - (d) prevention and response to emergencies due to food and allergic reactions;
 - (e) building and physical premises safety;
 - (f) emergency preparedness and response;
 - (g) proper handling, storage, and disposal of hazardous materials;
 - (h) appropriate disposal of toxic (biocontaminants) materials including effects such as blood, bodily fluids, and other infectious materials;
 - (i) transportation; and
 - (j) prevention and reporting of child abuse and neglect to proper state authorities.
- (4) Teacher orientation training shall be counted towards annual training described in ARM 37.95.162.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE III CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES

- (1) Each child care center shall have a director. The director is responsible for operation of the child care center at all times and shall ensure appropriate safety, supervision, protection, and guidance of the children.
- (2) The director must meet the following minimum requirements:
- (a) be at least 18 years of age;
 - (b) be current on the ECP Practitioner Registry;
 - (c) successfully completed teacher orientation as indicated in [NEW RULE II];
 - (d) have one of the following:
 - (i) current ECP Practitioner Registry level 4 or higher;
 - (ii) current ECP Practitioner Registry level 3, plus two years of experience in a licensed child care facility or Head Start;
 - (iii) current ECP Practitioner Registry level 2, plus three years of experience in a licensed child care facility or Head Start; or
 - (iv) a bachelor degree or higher in a non-child care field according to ECP criteria, plus completion of the 60-hour infant-toddler training and the 60 hour preschool course, or 120 hours of alternate training approved by the department.
- (3) The director is responsible for ensuring compliance with all applicable administrative rules within this chapter.
- (4) The director shall review every incident or accident causing injury to a child and document the appropriate corrective action taken to avoid a reoccurrence.
- (5) In the absence of the director, a staff member must be designated to oversee the operation of the center during the director's absence. The director or designee shall be in charge and physically available while children are in care, and shall ensure there is sufficient, qualified staff so that the care, wellbeing, health, and safety needs of children are met at all times.

(6) If the director will be absent from the center for more than 30 continuous days, the department shall be given written notice of the individual who has been appointed the designee. The designee must meet all the requirements of this rule.

(7) The owner of a child care center may serve as director if the owner meets the qualifications specified in this rule.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE IV GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES (1) All staff members and adult household members must:

- (a) meet immunization requirements pursuant to ARM 37.95.160;
 - (b) meet background check requirements pursuant to ARM 37.95.161; and
 - (c) sign a health attestation.
- (2) Directors and early childhood teachers must:
- (a) be at least 18 years old;
 - (b) complete facility overview training;
 - (c) be current on the ECP Practitioner Registry;
 - (d) have current certification for infant, child, and adult CPR, infant choking response, and standard first aid; CPR certification must be completed in a hands-on setting; and
 - (e) successfully complete required early childhood teacher orientation as outlined in [NEW RULE II].
- (3) Trainees must meet the requirements of (1), (2)(a), and (b) and:
- (a) shall not be left alone with children as outlined in [NEW RULE II](2); and
 - (b) shall not remain in this role for longer than 30 days.
- (4) Substitute teachers must meet all the requirements of this rule except for (2)(c).
- (5) Only directors, early childhood teachers, lead teachers, assistant teachers, trainees, and substitute teachers may provide direct care and count in ratios.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.95.102 DEFINITIONS (1) ~~"Aide" means a facility staff person who carries out assigned care-giving tasks under the direct supervision of a primary care-giver or director.~~

~~(2) "Care-giver" means a licensee, registrant, employee, aide, or volunteer who is responsible for the direct care and supervision of children in a day care facility.~~

(3) remains the same, but is renumbered (1).

(2) "Child care center" is the same as "Day-care center" as defined in 52-2-703, MCA.

(3) "Child care facility" is the same as "Day-care facility" as defined in 52-2-703, MCA. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider.

~~(4) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours is defined in 52-2-703, MCA. In addition to the definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.~~

~~(5) through (7) remain the same.~~

~~(8) "Department" means the Department of Public Health and Human Services provided for in 2-15-2201, MCA.~~

~~(9) through (11) remain the same, but are renumbered (8) through (10).~~

(11) "Early childhood assistant teacher (ECAT)" or "assistant teacher" means a facility staff member who carries out assigned care-giving and teaching tasks under the direct supervision of an early childhood lead teacher or center director.

(12) "Early childhood lead teacher (ECLT)" or "lead teacher" means a facility staff member who meets the requirements as outlined in ARM 37.95.622 and who regularly provides direct care and teaching to the children who attend the day care or child care facility.

(13) "Early childhood teacher (ECT)" or "teacher" means a facility staff member who is responsible for the direct care, teaching, and supervision of children in a day care or child care facility. This term includes ECAT and ECLT.

(14) "Facility overview training" is a training provided by the facility director or designee to orient a new staff member to facility-specific policies, procedures, and department requirements pertaining to their role.

~~(12) "Family day care home" means a private residence in which day care is provided to three to six children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided exclusively for children under age two. For facilities providing care exclusively to children under age two, family day care home means a place in which supplemental parental care is provided for up to four children under the age of two. No other children shall be in attendance.~~

(15) "Family child care facility" is the same as a "Family child care home" as defined in 52-2-703, MCA. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided exclusively for children under age two. For facilities providing care exclusively to children under

age two, a family child care home means a place in which supplemental parental care is provided for up to four children under the age of two. No other children shall be in attendance.

(16) "Family, Friend, and Neighbor care (FFN)" is a child care provider type that provides care to no more than two children from separate families or all children from a "sibling group." Care may be in the child's home or the provider's home and registration is for payment purposes as provided in 52-2-713, MCA.

~~(13) "Group day care home" means a private residence or other structure in which day care is provided to seven to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to seven to 12 children with no more than six children under two years of age, unless care is provided exclusively for children under age two. For facilities providing care exclusively for children under age two, group day care home means a place in which supplemental parental care is provided for up to eight children under age two. No other children shall be in attendance.~~

~~(a) Facilities caring exclusively for children under age two shall maintain a staff/infant ratio of one caregiver for each four infants in attendance.~~

~~(b) Facilities may not provide care to more than three children under the age of two years while also caring for children over two years of age when only one caregiver is present.~~

(17) "Group child care facility" is the same as "Group day-care home" as defined in 52-2-703, MCA.

(18) "Group size" means the number of children in a defined space.

(14) through (18) remain the same, but are renumbered (19) through (23).

~~(19) "License" means a written document issued by the department that the license holder has complied with the applicable standards and rules for day care centers.~~

(20) and (21) remain the same, but are renumbered (24) and (25).

(26) "Montana Early Childhood Project (ECP)" is an integrated professional development system created to build a knowledgeable, competent, and stable early childhood workforce.

(27) "Montana ECP Practitioner Registry" is an early childhood professional recognition system and career path in Montana.

~~(22) (28) "Night care" means care provided for a child between the hours of 7 8 p.m. and 7 5 a.m. during which the parents desire a child to sleep.~~

(23) remains the same, but is renumbered (30).

~~(24) "Nonprovider staff" means a staff person of a day care facility who does not participate in a care-giving role.~~

(25) remains the same, but is renumbered (29).

(26) through (35) remain the same, but are renumbered (31) through (40).

~~(36) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of Title 52, chapter 2, part 7, MCA.~~

~~(37) "Registration" means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or a group day care home to certify compliance with the prescribed standards and promulgated rules.~~

~~(38) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this rule and the applicable standards for family day care home and group day care homes.~~

~~(39) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within three or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance four or more days a week for six hours a day or more.~~

~~(40) remains the same, but is renumbered (41).~~

~~(41) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.~~

~~(a) The term includes the status of a child described above in a step or adoptive relationship.~~

(42) "Relative care" means the child is the brother, sister, first cousin, nephew, niece, grandchild, or great grandchild of the person providing child care and includes a child in a step, foster, or adoptive relationship.

~~(42) through (45) remain the same, but are renumbered (43) through (46).~~

~~(46) "School age child" means a person who is at least five years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full time student expected to complete an educational program by 19 years of age.~~

(47) "Sibling group" means all children are from the same household. For the purposes of FFN, this can also include first cousins and foster children who are not blood related.

(48) "Staff member" is a director, trainee, support staff, substitute, ECAT, ECLT, or ECT.

~~(47) through (49) remain the same, but are renumbered (49) through (51).~~

(52) "Support staff" means a staff member of a child care facility who does not participate in a direct care-giving role and is not counted in ratios. Examples of support staff would be cooks, administrative staff, foster grandparents, or cleaning staff.

~~(50) remains the same, but is renumbered (53).~~

(54) "Trainee" means a staff member who has been approved to work in a child care facility based on initial criteria but has not yet completed required training.

~~(51) and (52) remain the same, but are renumbered (55) and (56).~~

~~(53) "Volunteer" means any person who enters into service voluntarily, but who when in service is subject to discipline and regulations like any other employee.~~

(57) "Waiver" means the department has approved an exception to a rule within this chapter.

AUTH: 52-2-704, 53-4-212, 53-4-503, MCA;

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.103 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION FAMILY, FRIEND, AND NEIGHBOR (FFN) AND RELATIVE CARE PROVIDER (RCP): REQUIREMENTS AND PROCEDURES (1) The applicant and all adults who reside in the applicant's home must provide authorization for ~~criminal, FBI, state and national sexual/violent offender registry, and child protective services~~ background checks for the period of time from the present date back to the date of the individual's 18th birthday pursuant to ARM 37.95.161(1).

(2) If the background checks reveal any of the following, the application will be denied:

- ~~(a) Child Protective Services (CPS) substantiation against the applicant or other adult in the household, or an open CPS case against the applicant or adult in the household;~~
- ~~(b) conviction of a crime involving sex;~~
- ~~(c) conviction of a crime involving violence;~~
- ~~(d) conviction of a crime involving drugs;~~
- ~~(e) conviction of driving under the influence (DUI) within three years of the application date (applies only to the applicant, not the other adults in the household);~~
- ~~(f) conviction of child endangerment;~~
- ~~(g) conviction of a crime involving a weapon, including firearms or knives;~~
- ~~(h) conviction of any crime that bears upon the applicant's fitness to have responsibility for the safety and well-being of children; and~~
- ~~(i) pending charges by a law enforcement agency for a crime that would otherwise be a disqualifying record, if convicted.~~

An application must be denied for reasons identified in ARM 37.95.176.

(3) An application will also be denied for the following reasons:

- ~~(a) applicant fails to provide all necessary documentation needed to determine eligibility within the 30-day time limit;~~
- ~~(b) remains the same, but is renumbered (a).~~
- ~~(c) applicant's statement of health form reveals the applicant or other adult in the household has an ongoing illness that bears upon the applicant's ability to have responsibility for the safety and well-being of children;~~
- ~~(d) and (e) remain the same, but are renumbered (b) and (c).~~

(4) Legally certified FFN providers must also meet the following requirements to be certified registered under this chapter:

- ~~(a) remains the same.~~
- ~~(b) within 60 calendar days of approval, attend a training or orientation session provided or approved by the department that includes health and safety issues;~~
- ~~(c) (b) limit the care they provide to a period of less than 24 consecutive hours in any day;~~
- ~~(d) (c) care for no more than two children at a time, unless the children are from the same household. If the children are from separate households, then a legally certified provider may care for no more than two children may care for either a sibling group of any size or no more than two unrelated children;~~
- (d) attend orientation approved by the department that includes health and safety training;

(e) ~~must provide appropriate verification of the attestations and other requirements in this rule upon request from the department. The department may deny eligibility based upon inaccuracy or falsification of such attestations, and/or failure to fulfill the other requirements of this rule. Prior to and during certification, the department may also require disclosure to parents of information known to the department involving any acts of the provider bearing on the provider's ability to safely care for children~~ hold current certification for infant, child and adult CPR, infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting; and

(f) ~~only legally certified providers may transport children while in their care~~ complete at least eight hours of approved annual training per year. This training must include health and safety training.

(5) ~~Legally certified providers are not eligible to be reimbursed for child care services provided while home schooling~~ The department may investigate and inspect the conditions and qualifications of any FFN provider and the home that care is provided in.

(6) FFN providers must meet the applicable requirements of ARM 37.95.115, 37.95.121, 37.95.126, 37.95.127, 37.95.171, 37.95.172, 37.95.182, 37.95.184, 37.95.706, 37.95.708, 37.95.1001, 37.95.1003, 37.95.1005, 37.95.1011, 37.95.1015, 37.95.1016, and [NEW RULE I].

(7) Relative care providers are exempt from (4)(e) and (f), (5), and (6).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731 MCA

37.95.106 DAY CHILD CARE FACILITIES, REGISTRATION, OR LICENSING (1) and (2) remain the same.

(3) ~~Before a regular one-year child care center license without provisions or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter~~ the applicant must have the following:

(a) through (e) remain the same.

(f) a signed DPHHS personal statement of health statement for licensure form for each ~~caregiver, aide, or volunteer~~ staff member who has direct contact with the children in care;

(g) ~~a criminal background and child and adult protective services check~~ meet background check requirements pursuant to ARM 37.95.161 on the provider or and staff, including care-givers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(h) remains the same.

(i) a written fire and emergency evacuation disaster plan for all buildings used for child care services in accordance with [NEW RULE I]. ~~For license renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and~~

(j) remains the same.

(4) Before a regular ~~one-year~~ group or family child care facility registration certificate may be granted, ~~the following shall be submitted by the applicant at the time of application and annually thereafter~~ the applicant must have the following:

(a) a DPHHS ~~personal statement of health form~~ attestation for each ~~care-giver, aide, or volunteer~~ staff member who has direct contact with the children in care;

(b) remains the same.

(c) a criminal background and child and adult protective services check on the provider or ~~staff member over age 18, including care-givers-aides, volunteers, kitchen and custodial staff,~~ and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(d) a ~~written fire and emergency evacuation~~ disaster plan in accordance with [NEW RULE I]. ~~For registration certificate renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and~~

(e) remains the same.

(5) through (7) remain the same.

(8) After receiving a written request from a director, any provision of a rule within this chapter may be waived at the discretion of the department where the department has the authority to do so and if the department determines that the health and safety to the children in care is not diminished. The written request must:

(a) include the basis for request such as significant hardship to facility;

(b) propose an alternative that is consistent with best practices in early childhood standards; and

(c) demonstrate that the alternative will meet the intent of the rule.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 53-4-504, 53-4-507, MCA

37.95.108 DAY CHILD CARE FACILITIES, REGISTRATION, AND LICENSING PROCEDURES (1) The department may investigate and inspect the conditions and qualifications of any day child care facility or any person seeking or holding a license or registration.

(2) A family ~~day or group child~~ care ~~home or group day care home~~ facility must be registered. A day child care center must be licensed.

(3) Licensing, registration, and inspection of ~~family day care homes, group day care homes, and centers~~ child care facilities are the responsibility of the department with the exception of the required local health authority and state fire marshal inspections. ~~Licensing and issuing certificates of registration are delegated to the supervisor of the day care licensing program.~~

(4) remains the same.

(5) ~~Within 30 days of receipt of the signed and completed application forms, the department will evaluate the application for registration or licensure based upon the requirements found in these rules.~~

~~(a) A prospective family day care home or group day care home that meets all requirements as evidenced by the application shall be issued a registration certificate. The registration certificate may be provisional, restricted, or regular.~~

~~(b) A prospective day child care center facility will be visited and the program and facility inspected by a licensing worker within 30 days of receipt of the completed application prior to approval. If the applicant meets the requirements for licensure the department will issue a license or registration to the applicant. The license may be either provisional or regular.~~

~~(6) A provisional registration certificate or license may be issued for a period of up to three months when the day care facility does not meet all of the requirements if the facility is attempting to comply. A second three month provisional certificate or license may be issued in special circumstances, at the discretion of the program supervisor, the total length of time of issuance not to exceed six months.~~

~~(a) A plan for full compliance with requirements for registration or licensure must be submitted by the day care facility to the department before issuance of a provisional certificate or license.~~

~~(b) Written notification of the granting of a provisional certificate or license by the department must be made to the licensee, or registrant specifying the reason, duration, and conditions for continuing or terminating the provisional certificate or license.~~

~~(c) The department may not issue a provisional license to any day care center which has not been approved by the state fire marshal and the public health authorities.~~

~~(d) The department may not issue a provisional certificate registration or license to any day child care facility which does not have current public liability insurance and fire insurance.~~

~~(7) Regular registration certificates and licenses are issued from the department's Quality Assurance Division licensure bureau for periods up to three years.~~

~~(a) A three year license or registration may be offered to any provider who has not received a notice of deficiency during a current on site inspection.~~

~~(b) A two year license/registration may be offered to a provider who has five or fewer deficiencies in areas of the rules that the department determines do not significantly affect or threaten the health and safety of any child attending the facility.~~

~~(c) A provider who has been in operation less than one year is not eligible for an extended license/registration.~~

~~(8) The department, after written notice to the applicant, licensee or registrant, may deny, suspend, restrict, revoke, or reduce to a provisional status a registration certificate or license upon finding that the applicant has not met the requirements for licensure or registration set forth in these rules.~~

~~(9) Suspension or revocation may be immediate if:~~

~~(a) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation reveals that there are reasonable grounds to believe that a child in the facility may be in danger of harm;~~

~~(b) the department requests and is denied access to the licensed or registered facility;~~

~~(c) the provider has made any misrepresentations to the department, either negligently or intentionally, regarding any information requested on the application form or necessary for registration or licensing purposes;~~

~~(d) the provider, a member of the provider's household or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM 37.95.1016.~~

~~(e) through a child care licensing investigation, it is determined that the provider, provider staff or member of the provider's household has violated a licensing regulation which results in the harm to a child as defined in 41-3-102, MCA; or~~

~~(f) information received from law enforcement and tribal law enforcement indicating the provider has caused physical, sexual, or emotional harm to a child.~~

~~(10) The provider shall maintain all policies, records, and reports that are required by the department. These policies, records, and reports must be reviewed and updated annually.~~

~~(11) The registration certificate or license is not transferable to another operator or site.~~

~~(12) The department must be notified of any changes that would affect the terms of the registration or licensure.~~

~~(13) Separate registration certificates and licenses shall be required for programs maintained on separate premises even when operated by the same provider.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

37.95.117 DAY CHILD CARE FACILITIES, JOINT PROGRAMS (1) through (3) remain the same.

~~(a) multiple day care group homes which are currently operating under a "double group" registration within a single structure will have three years or until September 30, 2003, to either upgrade to center status and meet all center requirements, or relinquish one group registration and limit the number of children accordingly.~~

(4) remains the same.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-731, 53-4-504, MCA

37.95.121 CHILD CARE FACILITIES: SAFETY REQUIREMENTS

(1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children. Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.

(2) through (13) remain the same.

(14) Bathtubs, buckets, and other water receptacles must be emptied immediately after use.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 52-2-735, MCA

37.95.127 DAY CHILD CARE FACILITIES: SWIMMING (1) through (3) remain the same.

~~(4) Bathtubs, buckets, and other water receptacles shall be emptied immediately after use.~~

(5) through (8) remain the same, but are renumbered (4) through (7).

AUTH: 52-2-704, MCA

IMP: 52-2-731, 52-2-735, MCA

37.95.139 DAY CHILD CARE FACILITIES: HEALTH CARE REQUIREMENTS (1) through (7) remain the same.

(8) The facility must have a plan for preventing and responding to emergencies due to food and allergic reactions.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

37.95.141 CHILD CARE FACILITIES: RECORDS (1) The facility shall must keep a daily attendance record of the children for whom care is provided.

(2) The facility shall must have a master list of the name, address, and phone number of all children in their care and their parents.

(3) If medications are administered at the facility, the facility shall must maintain a medication administration log.

~~(4) All records of the facility shall be made available to the department upon request.~~

~~(5)~~ (4) Prior to a child being enrolled or entered into a day child care facility, the following information, signed by the parent or guardian, must be on file:

(a) and (b) remain the same.

(c) necessary medical forms, including all medication authorization and administration logs, signed and updated immunization records, and the names of emergency contact persons; and

(d) an emergency consent form. This form must accompany staff when children are away from the day child care site for activities; and

~~(e) (5) a record of each fire emergency drill conducted pursuant to ARM 37.95.706 [NEW RULE I], including who conducted the drill, when the drill took place, how many adults and children were present, the time of day the drill occurred and how long it took to evacuate must be on file.~~

(6) The facility must maintain incident and injury reports which include the date, time of day, nature of the injury or incident, treatment or remediation, and whether the parent was notified for any injury or incident that occurs in the facility. If an injury requires the use of first aid or medical attention, the facility must provide a copy to the parent and keep a copy signed by the parent in the child's file.

~~(6) (7)~~ The information supplied in ~~(4) (5)(a) through (d) and (5)~~ must be maintained on forms provided by the department and must be signed by the parent or guardian.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-731, 52-2-732, 52-2-736, MCA

37.95.160 DAY CHILD CARE FACILITIES: STAFF RECORDS (1)

The ~~provider~~ director shall must maintain records regarding each ~~care-giver~~ staff member, according to their role type, which include:

(a) ~~a record of training and verifiable experience~~ verification of CPR and first aid training;

(b) ~~results of a criminal and protective services background check~~ a copy of the release of information for background checks;

(c) ~~personal statement of health~~ statement and contact information and ~~verification of CPR and first aid~~; and

(d) immunization records that establish compliance with

ARM ~~37.95.140~~ 37.95.184.

~~(2) The facility shall maintain a current list of staff that specifies each staff person's legal name, position, age, residential and mailing addresses, and phone numbers.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-732, MCA

37.95.161 DAY CHILD CARE FACILITIES: CRIMINAL BACKGROUND

CHECKS (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each day child care provider, on all staff members over the age of 18, including care-giver, administrative staff, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day child care facility or who stays in the day child care facility regularly or frequently.

(2) through (6) remain the same.

~~(7) An annual name based criminal records check for all providers, all staff, including caregivers, administrative staff, aides, volunteers, kitchen and custodial staff, and persons residing in the day care facility, is required for relicensure.~~

(8) and (9) remain the same, but are renumbered (7) and (8).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.162 DAY CHILD CARE FACILITIES: REQUIRED ANNUAL

TRAINING (1) ~~The provider and all care-givers~~ All directors, early childhood teachers, and assistant teachers, at any day child care facility must each verify that they have successfully completed complete a minimum of at least eight hours of continuing education annually, unless otherwise specified in these rules, within the 12 months prior to license/registration expiration or the license/registration anniversary date annual training required to be current on the ECP Practitioner Registry.

(2) The training may be obtained from ~~through the department or other department approved professional child care education and development programs offered:~~

(a) ~~by national, state, or local child care organizations sponsors approved through the Montana professional development approval system;~~

(b) ~~by institutions of higher education that are regionally accredited; or~~

(c) ~~through the successful completion of college-level course work in early childhood areas, education, or child development.~~

(3) ~~Approved~~ Education and training must relate to the Montana Early Care and Education Knowledge Base and must fall within the following categories:

(a) through (k) remain the same.

(4) ~~With the exception of volunteers, any~~ Any person who provides care to children in a day child care facility for ~~at least~~ less than 460 500 hours a year is not required to ~~successfully complete eight hours of approved education or training annually~~ annual training or be current on the ECP Practitioner Registry.

(5) Teachers and assistant teachers at facilities that provide care exclusively to school-age children must complete at least eight hours of continuing education annually and are not required to be on the Practitioner Registry.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.172 DAY CHILD CARE FACILITIES: SUPERVISION AT ALL TIMES

(1) ~~Care-givers~~ Children must be supervised ~~children~~ at all times.

(2) The provider, director, and all ~~care-givers~~ teachers and assistant teachers ~~shall~~ must be responsible for direct care, protection, supervision, and guidance of children through active involvement or direct observation.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.173 DAY CHILD CARE FACILITIES FACILITY: PROTECTION OF CHILDREN FROM A PERSON CHARGED WITH A CRIME INVOLVING CHILDREN, VIOLENCE, OR DRUGS

(1) A ~~Any care-giver, volunteer, support staff person member;~~ or other adult residing in the day child care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense, or awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.183 DAY CHILD CARE FACILITIES: FIRST AID REQUIREMENTS

(1) remains the same.

(2) A first aid kit must be kept on site at all times and must ~~at a minimum~~ contain:

~~(a) unexpired syrup of ipecac (one ounce bottle) which may be administered only upon directive from the Emergency Montana Poison Control Center or upon directive of the local emergency service program (i.e., 911 operator, local hospital, or physician);~~

~~(b) through (e) remain the same, but are renumbered (a) through (d).~~

~~(f) the toll free number for the Emergency Montana Poison Control Center, 1 (800) 222-1222;~~

~~(g) (e) disposable single use gloves;~~

~~(h) (3) the The director or designee, owner, or manager, or person in charge of the day child care facility shall must take appropriate precautions to minimize the risk of any child suffering sunburn and to minimize the risk of any child contracting West Nile virus; and .~~

~~(3) (4) Each day care provider facility is responsible for notifying the department of any environmental danger or other hazard on the facility property that the provider is aware of that could affect the health, welfare, or safety of children in care.~~

~~(4) remains the same, but is renumbered (5).~~

~~(5) (6) The provider shall facility must submit a report to the appropriate local office of the department Child Care Licensing Program (CCLP) within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the children involved, and a copy retained on file at the day care facility. following types of occurrences:~~

~~(a) lost or missing child or an incident involving a child being left alone;~~

~~(b) suspected maltreatment of a child;~~

~~(c) suspected sexual, physical, or emotional abuse by staff, other children, family members, or other adults while they are on the premises;~~

~~(d) injuries to children requiring medical or dental care;~~

~~(e) illness or injuries requiring hospitalization or emergency treatment;~~

~~(f) mental health emergencies;~~

~~(g) health and safety emergencies involving parents, guardians, and visitors to the program;~~

~~(h) death of a child or staff member, including a death that was the result of a serious illness or injury that occurred on the premises of the child care facility, even if the death occurred outside of the child care facility;~~

~~(i) the presence of a threatening individual who attempts or succeeds in gaining entrance to the child care facility; or~~

~~(j) fire involving the child care facility or on the premises.~~

~~(6) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.~~

~~(7) A copy of the report shall be provided to the parents of the children involved, and a copy retained on file at the child care facility.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.184 DAY CHILD CARE FACILITIES: HEALTH HABITS (1) Good health habits, such as washing hands, must be taught during everyday activities. The caregivers staff members must ensure that each child washes his their hands:
(a) through (3) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.602 DAY CHILD CARE CENTERS, PROGRAM REQUIREMENTS

(1) The program conducted in a day child care center must shall be written and must provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth, and well being. Both active and passive learning experiences must shall be provided under direct adult supervision.

~~(2) Each Center will have a director. The director shall have a bachelor's degree in a related field plus one year experience in child day care or child development associate certification (CDA) or three years experience in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, the director must meet the qualification of a primary caregiver.~~

~~(3)~~ (2) The requirement in (1) must shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation, reviews the written daily program, and confirms the program is based upon the criteria below:

(a) through (c) remain the same.

(d) the center provides experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people to further expand the exposure and experiences of the children. ~~Care-givers~~ Early childhood teachers are required to secure a release from parents before children are taken on field trips;

(e) and (f) remain the same.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.606 DAY CHILD CARE CENTERS, DISCIPLINE (1) ~~Care-givers~~ Early childhood teachers shall must use appropriate forms of discipline. Physical punishment, including spanking or other forms of corporal punishment, is strictly prohibited in day child care facilities. Discipline ~~shall~~ must include positive guidance, redirection, and the setting of clear limits that foster the child's ability to become self-disciplined.

(2) through (4) remain the same.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.622 DAY CHILD CARE CENTERS: STAFFING QUALIFICATIONS

(1) All providers, staff members, and volunteers at a day care center must be:

(a) ~~able to demonstrate they are physically, emotionally, and mentally capable of performing the essential functions of the position with or without reasonable accommodations~~ meet immunization requirements pursuant to ARM 37.95.184;

(b) ~~free of communicable disease~~ have appropriate background checks pursuant to ARM 37.95.161; and

(c) ~~immunized in compliance with ARM 37.95.140; and~~ sign a health attestation.

(d) ~~able to demonstrate they are of good moral character.~~

(2) ~~Each Center will have a director. The director shall have a bachelor's degree in a related field plus one year experience in child day care or child development associate certification (CDA) or three years experience in a licensed or registered day care facility. If the director also acts as a caregiver, or conducts in-service training, the director must meet the qualification of a primary caregiver.~~

(3) ~~A center director must obtain 15 hours of approved education or training on an annual basis.~~

(4) (2) ~~A primary care-giver~~ An early childhood lead teacher must meet the following requirements:

(a) ~~remains the same.~~

(b) ~~have sufficient language skills to communicate with children and adults~~ complete facility overview training;

(c) ~~have at least one day of on the job orientation~~ be current on the ECP Practitioner Registry; and

(d) ~~receive a minimum of at least eight hours of documented continuing education annually as provided in ARM 37.95.162; and~~ have current certification for infant, child, and adult CPR and infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting;

(e) ~~have the following training and experience: successfully complete required early childhood teacher orientation as indicated in [NEW RULE II]; and~~

(f) ~~have the following training and experience:~~

(i) ~~two years of experience in an early childhood program such as a day-care center, a family or group day care home~~ licensed or registered child care facility, or Head Start, plus 32 hours of ECP training ~~early headstart, or another recognized preschool program; or~~

(ii) ~~child development associate credential; or~~ level 2 or higher on the ECP Practitioner Registry.

(iii) ~~a bachelor of arts or an associate degree in education or a related field;~~

(f) ~~hold a current course completion card in infant, child and adult CPR and infant choking response; and~~

(g) ~~be currently certified in standard first aid.~~

(5) ~~Course completion as indicated in (4)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.~~

- ~~(6) (3) An aide early childhood assistant teacher must be directly supervised by a primary care-giver and shall be at least 16 years of age and must:~~
- ~~(a) have sufficient language skills to communicate with children and adults be supervised by an early childhood lead teacher or director; and~~
 - ~~(b) have at least one day of on-the-job orientation be at least 16 years old; and~~
 - ~~(c) successfully complete a minimum of at least eight hours of verified education or training annually as required in ARM 37.95.162 meet the requirements of (2)(b) through (e).~~
- ~~(4) Substitute teachers must meet the requirements in (1) through (3) with the exception of (2)(c).~~
- ~~(5) A trainee must meet the requirements in (1) and (3)(a) and (b) and may not remain in this role for longer than 30 days.~~
- ~~(6) Only directors, early childhood teachers, assistant teachers, trainees, and substitute teachers may provide direct care.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.623 DAY CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS

- (1) The child-to-staff ratio and maximum group size for a day child care center are is:
- (a) 4:1 for children zero months through 23 months with a maximum group size of 12;
 - (b) 8:1 for children two years through three years with a maximum group size of 16;
 - (c) 10:1 for children four years through five years with a maximum group size of 24; and
 - (d) 14:1 for six years and over with a maximum group size of 32.
- (2) remains the same.
- (3) Only the day care center director, primary caregivers early childhood lead teachers, assistant teachers, trainees, and aides substitute teachers may be counted as staff when determining the staff ratio.
- (4) Group sizes must be maintained except for mealtimes, or periods when children are using their rest equipment, or when large group activities, such as educational assemblies, occur.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-723, 52-2-731, MCA

37.95.703 GROUP AND FAMILY DAY CHILD CARE HOMES FACILITIES: PROVIDER DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

- (1) The provider and all persons responsible for children in the day care home must:
- ~~(a) be at least 18 years of age;~~
 - ~~(b) demonstrate they are physically, emotionally, and mentally capable of performing the essential function of their position with or without reasonable accommodations;~~

~~(c) be free of communicable disease;~~
~~(d) have met the immunization requirements of ARM 37.95.140; and~~
~~(e) demonstrate they are of good moral character~~ Each facility must have a director. The director is responsible for operation of the child care facility at all times and must ensure appropriate safety, supervision, protection, and guidance of the children.

~~(2) The provider and all staff, including care-givers, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal background check, a completed child protective services check, and a statement of health. For those persons who are considered caregivers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. The director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the care-giver providing care~~ The director must meet the following requirements:

(a) be at least 18 years of age;
(b) be immunized pursuant to ARM 37.95.160;
(c) sign a health attestation;
(d) meet background check requirements of ARM 37.95.161;
(e) successfully complete an approved new director orientation such as program essentials;
(f) be current on the Montana ECP Practitioner Registry;
(g) have current certification for infant, child, and adult CPR, infant choking response, and standard first aid. CPR must be completed in a hands-on setting; and
(h) successfully complete required early childhood teacher orientation as indicated in [NEW RULE II].

~~(3) The provider, or an approved care-giver designated by the provider, shall be responsible for the direct care, protection, supervision, and guidance of the children through active involvement or observation in group and family day care facilities~~ In the absence of the director, a staff member must be designated to oversee the operation of the facility. The director or designee must be in charge and physically available while children are present, and must ensure there are sufficient, qualified, and approved staff so that the care, wellbeing, health and safety needs of children are met at all times.

~~(4) The provider shall attend a basic day care orientation or its equivalent provided or approved by the department within the first 60 days of certification. This orientation must include the following areas:~~

~~(a) health;~~
~~(b) safety;~~
~~(c) child development/well being;~~
~~(d) discipline/guidance;~~
~~(e) nutrition/food safety; or~~
~~(f) business aspects of a child care business~~ If the director will be absent from the facility for more than 30 continuous days, the department must be given written notice of the individual who has been appointed the designee. The appointed designee must meet all the requirements of this rule.

~~(5) Orientation training does not count toward the required eight hours of approved education or training education as specified in (6) The director must ensure compliance with all applicable administrative rules.~~

~~(6) The provider and all care-givers must annually verify that they have met the training requirements set out in ARM 37.95.162 The director must review every incident or accident causing injury to a child and document the appropriate corrective action taken to avoid a reoccurrence.~~

~~(7) The provider must hold current course completion cards in CPR for infant, child, and adult CPR; infant choking response; and standard first aid. Course completion means direct instruction which includes the practice and demonstrated applications of CPR methods as taught by instructors from accredited entities.~~

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.705 GROUP AND FAMILY DAY CHILD CARE HOMES FACILITIES:
BUILDING REQUIREMENTS (1) ~~The day care home~~ Each facility must have a minimum of 35 square feet per child of indoor play and learning space per child, not including food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, and storage shelving spaces, as well as 75 square feet per child of outdoor play space per child.

~~(2) Every story of the day care facility that is used for day care purposes must have at least two remotely located means of egress as defined in ARM 37.95.102(42). All areas used for day care purposes must have at least one door for egress that is at least 34 inches wide and must also have at least one other means of egress that provides a clear opening of at least 20 inches in width, 24 inches in height and 5.7 sq. feet in area. The bottom of the opening shall not be more than 44 inches above the floor. If windows are used for rescue or exiting purposes, the provider shall have a written and feasible evacuation plan. All exits must be unobstructed at all times~~ Each level of the facility used for child care purposes must have at least two means of emergency egress.

(a) One egress must be a door that is at least 32 inches wide and 80 inches tall.

(b) The second egress may be a window that provides a clear opening of at least 20 inches in width and 5.7 sq. feet in area. The bottom of the exit must not be more than 44 inches above the floor.

(c) All identified means of egress must be unobstructed at all times.

~~(3) Remotely located means of egress from each room as required in (2) are not required in buildings protected throughout by an approved, automatic residential sprinkling system, or where the room or space has a door leading directly to the outside of the building~~ All nap rooms must have at least two egresses, which meet the requirements of (2).

~~(4) If basements are used for day care purposes:~~

~~(a) in facilities newly licensed on or after the effective date of these rules or for which there is a change in ownership on or after the effective date of these rules~~

~~each designated area for children's activities must have two means of egress that are remote from each other unless:~~

~~(i) the basement areas are protected by an approved, automatic residential sprinkler system; or~~

~~(ii) if the basement area contains an approved sprinkling system, then the area is only required to have direct egress from the basement. If children are sleeping in the basement area, then the requirements of (5) apply.~~

~~(b) the basement must be dry, well ventilated, warm and well lighted All rooms must be dry, well ventilated, and well lit.~~

~~(5) All rooms used for napping by children must have at least two means of escape, at least one of which shall be a door or a stairway providing a means of unobstructed travel to the outside of the building at street or ground level to the public way. The second means of escape may be a window which meets the egress requirements of (2).~~

~~(6) (5) Third stories in dwellings must not be used for day child care purposes and must be barricaded or locked to prevent entry by children.~~

~~(7) through (9) remain the same, but are renumbered (6) through (8).~~

~~(10) (9) Protective receptacle covers must be installed on e Electrical outlets must be tamper resistant or covered in all areas occupied by children under five years of age.~~

~~(11) The home building and grounds used by children must be maintained to ensure the following:~~

~~(a) through (d) remain the same.~~

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.706 GROUP AND FAMILY DAY CHILD CARE HOMES, FACILITIES: FIRE SAFETY REQUIREMENTS (1) In an emergency, all occupants of the day child care facility must be able to escape from the home or building in a safe and timely manner.

(2) A fire extinguisher must be easily accessible on each floor level. ~~The have a minimum level of extinguisher classification is of 2A10BC.~~ Fire extinguishers shall and be mounted near outside exit doors.

(3) All day child care facilities must have operating UL smoke detecting devices alarms on each floor of the facility, installed in accordance with the manufacturer's specifications. Smoke ~~detectors~~ alarms must be installed in front of the doors to stairways, and in corridors of all floors, ~~occupied by the day care.~~ Smoke detectors must be installed and in any all rooms in which where children sleep. If individual battery-operated smoke detectors are used, the following maintenance is required:

~~(a) (4) s~~Smoke detectors alarms must be tested at least once a month to ensure that they are operating correctly ~~and have new operating batteries installed at least once each calendar year;~~ and must be replaced every 10 years.

~~(b) the placement and number of detectors in a home or building must be adequate to awaken all sleeping occupants.~~

~~(4)~~ (5) All wood burning stoves must meet building codes for the installation and use of such stoves. If used during the hours of care, the stove must be provided with have a protective enclosure.

~~(5)~~ (6) No portable electric or unvented fuel-fired heating devices are allowed. All radiators, if too hot to touch, must be provided with have a protective enclosure.

~~(6)~~ (7) A minimum of eight fire drills must be conducted annually, at least one month apart as weather permits. Records, including who conducted the drill, when the drill took place, how many adults and children were present during the drill, the time of day the drill occurred, and how long it took to evacuate everyone must be maintained at the facility and made available for review The facility must post an evacuation plan and maintain the fire safety record as defined in [NEW RULE I].

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.730 GROUP DAY CHILD CARE AND FAMILY DAY CHILD CARE HOMES FACILITIES; REGISTRATION SERVICES PROVIDED (1) and (2) remain the same.

(3) The department will visit and inspect ~~at least 20% of all registered family and group day child care homes facilities and group day care homes~~ annually.

AUTH: 52-2-704, MCA

IMP: 52-2-731, 52-2-733, MCA

37.95.1005 INFANT'S AND TODDLER'S, SLEEPING (1) There ~~shall~~ must be adequate opportunities for sleep periods during the day suited to the infant's and toddler's individual needs.

(2) Unless the parent has provided medical documentation from a health care provider ordering otherwise, infants ~~shall~~ must be placed on their back and on a firm surface to reduce the risk of Sudden Infant Death Syndrome (SIDS).

(3) Each infant ~~shall~~ must be provided with a crib or play pen for sleeping. At the discretion of the parent and provider, a cot or mat may be used once a child turns one year of age as long as a safe sleep environment is provided. Children one year of age through 18 months who are placed on a mat must have a signed permission statement in the file indicating that the parent has given permission for their child to be placed on a mat. In addition, ~~a caregiver~~ an early childhood teacher must remain with the child while they are sleeping.

(a) Infants and toddlers ~~shall~~ must not be routinely allowed to sleep in a car seat, infant swing, or other infant apparatus.

(b) remains the same.

(4) Cribs ~~shall~~ must be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs ~~shall~~ must have no more than 2 and 3/8 inches of space between the vertical slats. No later than December 28, 2012, all cribs must meet the requirements for full-size baby cribs and non-full-size baby cribs as specified by the Consumer Product Safety Commission at 16 CFR Part 1219 (2011)

and 16 CFR Part 1220 (2011), incorporated by these references. A copy of the requirements for full-size baby cribs and non-full-size baby cribs is available at <http://www.dphhs.mt.gov/earlychildhood/cribrequirements.shtml>, or by contacting the Montana Child Care Licensing Program at P.O. Box 202953, Helena, Montana 59620; Phone: (406) 444-2012.

(5) remains the same.

(6) Cribs, cots, or mats ~~shall~~ must be spaced to allow for easy access to each infant and toddler, adequate ventilation, and easy exit. Aisles between cribs or cots ~~shall~~ must be kept free of obstructions while cribs or cots are occupied. The use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first.

(7) All pillows, quilts, comforters, heavy blankets, sheepskins, bumper pads, stuffed toys, and other soft products ~~shall~~ must be removed from the crib and play pen.

(a) remains the same.

(8) Each infant and toddler ~~shall~~ must have been provided by the parent with a clean washable blanket or other suitable covering for ~~his~~ their use while sleeping. Each infant's and toddler's bedding ~~shall~~ must be stored separate from bedding used by other children.

(9) All cries of infants and toddlers ~~shall~~ must be investigated.

~~(10) The licensee or registrant of facilities licensed/registered after the enactment of these rules must receive training in an approved safe sleep curriculum before being granted approval for children under age two. Any caregiver who provides care to children under age two must receive training in an approved safe sleep curriculum within 60 days of hire. Caregivers who have not received the safe sleep training shall be supervised by an individual who has successfully completed the approved safe sleep curriculum in order for the caregiver to provide care to children under age two. Facilities licensed or registered before the effective date of these rules will have until July 31, 2013 to complete this training.~~

~~(11) Providers~~ The facility must develop a written policy that describes the practices to be used to promote a safe sleep environment when children under age two are napping or sleeping.

~~(12) (11) All caregivers shall~~ early childhood teachers must sign an acknowledgement indicating that they have read and understood the ~~provider's~~ facility's policy outlined in ~~(11) (10)~~.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

5. The department proposes to repeal the following rules:

37.95.145 DAY CARE FACILITIES: LICENSE OR REGISTRATION RENEWAL PROCEDURES is found on page 37-23317 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, 52-2-722, 52-2-725, MCA

37.95.150 DAY CARE FACILITIES: LICENSE OR REGISTRATION CERTIFICATE TO BE POSTED is found on page 37-23321 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA
IMP: 52-2-703, 52-2-704, 52-2-721, MCA

37.95.166 DAY CARE FACILITIES: STAFF APPROVAL is found on page 37-23329 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.174 DAY CARE FACILITIES: NO THREAT FROM PERSONS IN CONTACT WITH CHILDREN is found on page 37-23334 of the Administrative Rules of Montana.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to adopt NEW RULES I, II, III, and IV, amend ARM 37.95.102, 37.95.103, 37.95.106, 37.95.108, 37.95.117, 37.95.121, 37.95.127, 37.95.139, 37.95.141, 37.95.160, 37.95.161, 37.95.162, 37.95.172, 37.95.173, 37.95.183, 37.95.184, 37.95.602, 37.95.606, 37.95.622, 37.95.623, 37.95.703, 37.95.705, 37.95.706, 37.95.730, and 37.95.1005; and repeal ARM 37.95.145, 37.95.150, 37.95.166, and 37.95.174, pertaining to licensing requirements for child care facilities.

As a result of the Child Care and Development Block Grant Reauthorization Act (Act), the U.S. Office of Child Care has directed states to implement new requirements for purposes of continued funding. These requirements focus on child care health and safety in addition to improving the quality of care that children receive. There are 10 required health and safety areas that must be met. Currently, requirements are in place for the majority of these areas. However, there are some requirements that need to be implemented in order to meet the areas identified within the Act. States are required to have the areas identified within the Act by September 2016. Montana was issued a waiver extending the implementation date to February 28, 2018.

The department is also proposing regulations surrounding preparation for disasters and emergencies. Currently, the regulations do not require child care facilities to plan for a natural disaster or other emergency. As such, many facilities in Montana most likely would not be prepared if a natural disaster or other emergency occurred.

According to the "Save Our Children 2012" report, 94 percent of American children live in communities at risk of natural disasters. In the first half of 2012, the federal government declared 17 major disasters in as many states.

Department staff conducted significant research concerning emergency preparedness. The department reviewed recommendations and guidelines established through the American Academy of Pediatrics (AAP), the National Resource Center for Health and Safety in Child Care (NRCHSCC), and Save the Children, a national organization that advocates for protection of children from harm. The department's Child Care Licensing Program (CCLP) reviewed a tool developed by the department's Early Childhood Services Bureau (ECSB) entitled "Your Inventory for Keeping Everyone Safe (YIKES)" which has been implemented through the department's Quality Rating System. As a result, approximately 78 Montana child care providers now have an emergency and evacuation plan in place. The proposed requirements are modeled after the NRCHSCC and YIKES. The department also consulted with the State Fire Marshal's office regarding fire drills.

The department also is proposing changes to several regulations related to first aid and injuries or incidents. Although these requirements are not directly related to emergency planning and evacuation, they do pertain to the health and safety of the children and they are consistent with the requirements identified in the research the department conducted.

In addition to the proposed changes pertaining to emergency procedures and disaster preparedness, the department is also implementing additional revisions in the areas of rule numbering, grammar and spelling, and consistent terminology. Punctuation is being amended to comply with administrative rule formatting requirements.

Regarding Adoption of NEW RULES I through IV:

NEW RULE I

Proposed NEW RULE I requires all facilities to have emergency procedures and evacuation plans in place in the event of a natural disaster or emergency. This rule requires licensees or registrants to participate in training to assist them in developing the required plan. Also, the rule requires all employees to be trained on the facility's emergency procedures and evacuation plan. To ensure that the employees and children are prepared for executing the plan, eight emergency drills will be required. Consistent with current licensing requirements, the proposed rule requires six fire drills. The other two emergency drills must simulate disasters identified in the facility's emergency procedures and evacuation plan. As well, the rule will require all employees to be trained on the facility's emergency procedures and evacuation plan.

NEW RULE II

Proposed NEW RULE II requires all early childhood teachers to complete early childhood teacher orientation. Safe sleep training, shaken baby syndrome and abusive head trauma training, infant, child, and adult CPR and first aid training will

be required for new teachers within 30 days of hire and before providing unsupervised care. Other training as identified by the Act will be required within 90 days of hire. Except for CPR and first aid, this training is offered online currently at no cost. The training will count towards annual training.

NEW RULE III

Proposed NEW RULE III outlines center director qualifications and responsibilities. Director qualifications were previously combined with ARM 37.95.622 regarding staffing qualifications and responsibilities. A separate rule is needed to provide clarity and further understanding of the director's responsibilities. In addition, center director qualifications have changed to line up with ECP Practitioner Registry levels.

NEW RULE IV

Proposed NEW RULE IV outlines group and family child care staffing qualifications and responsibilities. These qualifications were previously combined with ARM 37.95.703 which has been changed to group and family child care director responsibilities and qualifications. A separate rule was needed to provide clarity and further understanding of staff qualifications and line up with ECP Practitioner Registry levels.

Regarding the amendment of ARM 37.95.102, 37.95.103, 37.95.106, 37.95.108, 37.95.117, 37.95.121, 37.95.127, 37.95.139, 37.95.141, 37.95.160, 37.95.161, 37.95.162, 37.95.172, 37.95.173, 37.95.183, 37.95.184, 37.95.602, 37.65.606, 37.95.622, 37.95.623, 37.95.703, 37.95.705, 37.95.706, 37.95.730, 37.95.1005:

ARM 37.95.102

The department proposes to change and define new role types. The terms "aide," "caregiver," "primary caregiver," "non-provider staff," and "volunteer" are being removed and replaced with early childhood teacher-based terms and to add value and professionalism to the early childhood career path.

The department proposes to add the term "child care" as an alternative to "day care" as the prior term is more relevant. To align with other rules that are not changing now, "day care" will remain in the definitions until which time "child care" can replace "day care" in all rules.

New terms used in these rules have been proposed and defined. It is proposed that definitions be revised or added to promote continuity.

ARM 37.95.103

The department proposes that Legally Certified Providers be changed to Family, Friend, and Neighbor (FFN). The new provisions within the Act require states to conduct annual inspection on child care facilities. Language has been added to give the department authority to conduct annual inspections. Since the department will be conducting annual visits, it is proposed that background check requirements and denial conditions are in accordance with background check requirements for other facility types.

ARM 37.95.106

Proposed amendments to this rule specify that the emergency procedures and evacuation plan is required only upon initial application. This is necessary because this plan will not change annually, so it is not necessary to submit a plan every renewal year. The department is proposing to update the number of emergency drills to be consistent with the requirements in NEW RULE I.

ARM 37.95.108

The new provisions within the Act require states to conduct pre-inspections inspections on child care facilities. Language has been added to give the department authority to conduct annual inspections.

Sections (8) through (13) have been removed as the same language also exists in other sections within this same chapter.

ARM 37.95.117

The department proposes to remove (3)(a) as the reference to the date within this rule is no longer applicable.

ARM 37.95.121

The new provisions within the Act require states to have requirements for handling and storage of hazardous materials and the appropriate disposal of bio-contaminants. The current regulations address handling and storage but do not provide guidelines for disposal. The department proposes to add language that addresses the disposal of bio-contaminants under (1).

The department proposes to move language about emptying bathtubs, buckets, and other water receptacles from ARM 37.95.127 to (14) in this rule. This rule is currently listed under the "Day Care Facilities Swimming" rule and it would be more appropriate under "Safety Requirements."

ARM 37.95.127

The department is proposing to move (4) to ARM 37.95.121. Sections (5) through (8) have been renumbered.

ARM 37.95.139

The new provisions within the Act require states to have requirements for the prevention of and response to emergencies due to food and allergic reactions. The department proposes to add language under (8) in order to meet this requirement.

ARM 37.95.141

The department proposes to strike language from this rule and add a reference to NEW RULE I. This is necessary because of the department's other proposed changes. The department is proposing to renumber (5)(e) because the provision in this subsection does not pertain to the section where it is located.

The department has added the requirement for maintaining an injury report. Rule language specifying injury report content is addressed under ARM 37.95.183. The department must include a reference in this rule to notify licensed and regulated child care facilities that injury reports are considered a required record.

The department proposes to remove (4) as the language in this rule is repetitive of other rules in this same chapter.

The department is requiring child care facilities to use department forms under (5)(a) through (d). Use and maintenance of these forms help ensure compliance with health and safety requirements.

ARM 37.95.160

The department is proposing to reword (1) for clarity and remove (2) as the department has access to this information through the employee paperwork. The department is also updating other ARM references.

ARM 37.95.161

The department is proposing to reword (1) for clarity and remove (7) as the language in this rule is repetitive of other rules in this same chapter.

ARM 37.95.162

The department is proposing to revise language to provide clarity and align with ECP Practitioner Registry levels.

ARM 37.95.172

The department proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.173

The department proposes to align terminology with changes as listed in definitions.

ARM 37.95.183

The department proposes to remove (2)(a) because syrup of ipecac is no longer recommended or available for purchase.

The department proposes to renumber (2)(h) because the provision in this subsection did not pertain to the current section.

The current language for (5) does not clearly state who must be notified in the event of a serious incident. The department proposes language to clarify that a report must be made to the Child Care Licensing Program. Also added to (5), is additional clarification on incidents that must be reported, who should receive the report, and how it should be maintained.

The department proposes to add updated language to (6) to meet current best practices according to the National Resource Center for Health and Safety in Child

Care. The updated language also provides additional specifications on what is required.

Sections (3) through (5) have been renumbered as (4) through (8).

ARM 37.95.184

The department proposes to change the term "caregivers" to "staff members" in (1) as it is more appropriate for the intent of this rule.

ARM 37.95.602

The department proposes to remove (2) as the proposed revision to the language exists in another section within this same chapter.

Section (3) has been renumbered as (2). (3)(d) has been changed to align terminology with changes in role types as listed in definitions.

ARM 37.95.606

The department proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.622

The department proposes that center staff responsibilities and qualifications are identified separately from center director qualifications and responsibilities which have been moved to [NEW RULE III]. A separate rule was created to provide clarity and further understanding of director qualifications and responsibilities and line up with ECP Practitioner Registry levels.

The department also proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.623

The new provisions within the Act require states to have requirements for group sizes. The department met with a work group to discuss options for group sizes. Through consensus, it was determined the best option was to align group sizes with age groups used to determine ratios. The proposed changes are necessary in order to meet the Act requirements.

The department also proposes to align terminology with changes in role types as listed in definitions.

ARM 37.95.703

The department proposes that group and family child care director responsibilities and qualifications are identified separately from other staff qualifications and responsibilities which have been moved to NEW RULE IV. A separate rule was needed to provide clarity and further understanding of director qualifications and responsibilities and line up with ECP Practitioner Registry levels.

ARM 37.95.705

The new provisions within the Act require states to have requirements about electrical hazards. There is currently language about electrical outlets under this rule. This language does not reflect current trends which allow for use of tamper resistant (TR) outlets to be used instead of outlet covers. The department proposes to remove the language under that section and add revised language that includes additional acceptable practices. The department is also proposing to revise language to provide clarity.

ARM 37.95.706

The department is proposing to revise language to provide clarity and to update the number of emergency drills to be consistent with the requirements in NEW RULE I.

ARM 37.95.730

The new provisions within the Act require states to conduct annual inspections for all child care facilities. Language has been added to give the department authority to conduct annual inspections.

ARM 37.95.1005

The language in (10) is being struck as training on safe sleep will be addressed under ARM 37.95.162.

The department proposes to align terminology with changes in role types as listed in definitions.

Sections (11) and (12) have been renumbered as (10) and (11) for numerical ordering.

Regarding the repeal of ARM 37.95.145, 37.95.150, 37.95.166, and 37.95.174:

ARM 37.95.145

The department proposes to repeal as the language in this rule is repetitive of other rules in this same chapter.

ARM 37.95.150

The department is proposing to remove this rule as there is another rule with the same language within this same chapter.

ARM 37.95.166

The department proposes to repeal as the language in this rule is repetitive of other rules in this same chapter.

ARM 37.95.174

The department proposes to repeal as the language in this rule has been incorporated in NEW RULE III.

FISCAL IMPACT

The department believes that there is no fiscal impact related to the proposed rulemaking as described and contemplated by 2-4-302(1)(c), MCA, because the department is not adopting or increasing or decreasing monetary amounts.

Proposed changes will require additional resources in the form of increased travel time. There will be an increase in the number of inspections, more training development - managed through ECSB, additional information tracking, and data base enhancements. Currently, CCLP is not approved to receive additional staffing; however, the Act requires that these rules be implemented. Therefore, the CCLP work duties will be shifted to accommodate the Act.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 22, 2017.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 13, 2017.