

This document includes a draft version of new rules, rule changes, and preliminary interpretive guidelines that pertain to the most frequently asked questions. This document is intended for training purposes only and is not an official copy from the Secretary of State. This document does not include all rules or all changes and may contain minor errors.

### NEW RULE I (37.95.124) 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 ten emergency drills per year to include:

- (a) eight 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.

#### **Interpretation:**

What are the provider's emergency disaster and action plans? Do they practice?

- Written Plans on-site for evacuation, shelter in place, and responding to intruder? Are the plans appropriate for all children served?
- Emergency supplies on site?
- How are staff trained on plans? CCL may question staff to determine their level of understanding.
- Are drills conducted and recorded?

**37.95.162 CHILD CARE FACILITIES: REQUIRED ANNUAL TRAINING** (1) All directors, early childhood teachers, and assistant teachers, at any child care facility must successfully complete annual training required to be current on the ECP Practitioner Registry.

(2) The training must be approved through MTECP in one of three ways:

(a) sponsors verified through the Montana professional development system;

(b) successful completion of college-level course work in early childhood education, or child development by institutions of higher education that are regionally accredited; or

(c) individual request.

(3) 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) A substitute who provides care to children in a child care facility for less than 500 hours a year is not required to complete 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.

#### **Interpretation:**

- Early Childhood Teachers (ECTs) for family/group and center child care facilities must be current on the practitioner registry. This will mean 16 hours of training per year. Highschool diploma/GED/Hi-Set or training plan also required. High school students will be considered on a training plan. Visit <https://www.mtecp.org> for more information.
- Substitutes who work less than 500 hrs/yr are exempt from registry participation.
- School age exemption from registry participation; required to have 8 hours annual training.

**NEW RULE II (37.95.163) 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 (bio-contaminants) 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.

**Interpretation:**

- CPR/FA and Infant Safety Essentials within 30 days of hire and before being left alone with children. (Programs that serve only ages 5 and up will not need Infant Safety Essentials.)
- All other teacher orientation classes as listed on CCT.org must be complete within 90 days of hire.
- Early Childhood Teachers (ECTs) that took the 3-hour health & safety training in 2016 have met this requirement.

**NEW RULE III (37.95.621) 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;
    - (iv) a bachelor degree or higher in any field, 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; or

(v) a combination of education and experience may be considered. This option must be approved by the CCLP manager.

(3) The director must complete a program management essentials course within 60 days of becoming a director.

(4) The director is responsible for ensuring compliance with all applicable administrative rules within this chapter.

(5) The director or other authorized staff person shall review every incident or accident causing injury to a child, resulting in medical or dental care, and document the appropriate corrective action taken to avoid a reoccurrence.

(6) 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.

(7) 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.

(8) 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

### 37.95.623 CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS AND GROUP SIZES

(1) The child-to-staff ratio and maximum group size for a child care center are:

- (a) 4:1 for children newborn 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 with a maximum group size of 24; and
- (d) 14:1 for five years and over with a maximum group size of 32.

(2) When children of different ages are mixed, the ratio and group size for the youngest child in the group must be maintained.

(3) Only the director, early childhood lead teachers, assistant teachers, trainees, and substitute teachers may be counted as staff when determining the staff ratio.

(4) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.

#### **Interpretation:**

- How many hours a day are group sizes maintained? (Activity schedules and curriculum.)
- How does the facility differentiate space for groups?
- How does the facility assign teaching staff to groups?

### 37.95.622 CHILD CARE CENTERS: STAFFING QUALIFICATION AND RESPONSIBILITIES

- (1) All staff members must:
  - (a) meet immunization requirements pursuant to ARM 37.95.184;
  - (b) have appropriate background checks pursuant to ARM 37.95.161; and
  - (c) sign a health attestation.
- (2) An early childhood lead teacher must meet the following requirements:
  - (a) able to demonstrate they are physically, emotionally, and mentally capable of performing the essential functions of the position with or without reasonable accommodations;
  - (b) complete facility overview on-the-job training;
  - (c) be current on the ECP Practitioner Registry;
  - (d) 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) 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 licensed or registered child care facility, or Head Start, plus 32 hours of ECP training; or
    - (ii) level 2 or higher on the ECP Practitioner Registry.
- (3) An early childhood assistant teacher must:
  - (a) receive oversight and guidance from an onsite ECLT or director;
  - (b) be at least 16 years old; and
  - (c) 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.

#### **Interpretation:**

- Are new staff given training on the policies and procedures of the facility? This may be demonstrated by an employee policy handbook signed by staff or a facility overview checklist. A sample checklist will be posted to CCL website and ECSB.
- Are there any “trainees” on the staff list? If so, are they directly supervised by an approved ECT?
- Do ECAT know who is the ECLT that is overseeing them?
- How often is ECLT checking in and reviewing lesson plans?

### 37.95.1005 INFANT AND TODDLER, SLEEPING

(1) There 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 must be placed on their back and on a firm surface with no incline to reduce the risk of Sudden Infant Death Syndrome (SIDS).

(3) Each infant 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. When cots or mats are used, an early childhood teacher must remain with the child while they are sleeping.

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

(b) Cot or mat surfaces may be of plastic or canvas or other material, which can be cleaned with detergent solution and allowed to air dry.

(4) Cribs must be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs 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) Mattresses must fit snugly to prevent the infant from being caught between the mattress and crib side rail. Crib mattresses must be waterproof and easily sanitized. Cribs, cots, or mats must be thoroughly cleansed before assignment to another infant or toddler.

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

(7) All pillows, quilts, comforters, heavy blankets, sheepskins, bumper pads, stuffed toys, and other soft products must be removed from the crib and play pen when an infant is laid down for sleep.

(a) Blankets of any weight must be removed when infants 12 months of age or under are laid down for sleep.

(b) Sleep sacks and similar safe sleep clothing may be used if the item does not restrict the infant's arms.

(c) Infants under 3 months of age may only be swaddled if medical documentation from a health care provider is on file at the facility.

(d) Infants over 3 months of age must not be swaddled.

(8) Toddlers must be provided a clean washable blanket or other suitable covering for their use while sleeping. Each child's bedding must be stored separate from bedding used by other children.

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

(10) 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.

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

### 37.95.102 DEFINITIONS

(1) "CPR" means cardio-pulmonary resuscitation.

(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" 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) "Day care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

(6) "Day care facility" means a person, association or place, incorporated or unincorporated, that provides day care on a regular basis or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:

(a) A person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA; or

(b) Any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older. 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 2 children from another home being cared for by the same provider.

(7) "Delayed renewal application" means a renewal application which is submitted to the department prior to the certificate expiration date, but is submitted in an incomplete manner, resulting in a delay in the issuance of the certificate.

(8) "Director" means the person designated on the center application or otherwise by written notice to the department as the person responsible for the daily operation of a day care center. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the facility.

(9) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

(10) "DTP vaccine" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid and acellular pertussis vaccine combined.

(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 on-the-job training" is an on-the-job 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.

(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.

(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.

(19) "Harm to children" means harm to a child's health or welfare as defined in 41-3-102, MCA.

(20) "Health care provider" means a licensed physician, a physician assistant-certified, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of the license.

(21) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

(22) "Infant" means a child under 19 months of age.

(23) "Lapsed registration/license" means

(a) an application for registration/licensing renewal which is received by the department after the registration/licensing expiration date.;

(b) an application which is incomplete and results in a break-in-license span; or  
(c) any break in the license/registration span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.

(24) "Local health authority" means a local health officer, local department of health, or local board of health.

(25) "MMR vaccine" means a live virus vaccine containing a combination of measles, mumps, and rubella vaccine.

(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" or "Practitioner Registry" is a statewide registry that is used to help develop and track a knowledgeable and skilled early childhood work force based on an individual's verified professional achievements.

(28) "Night care" or "non-traditional hours" means care provided for a child between the hours of 8 p.m. and 5 a.m.

(29) "Nonprescription medication" means any over the counter medication that is not specifically prescribed by a physician, but is recommended by a health care provider or a parent or guardian for a specific child.

(30) "Overlap care" means care provided at a day care facility for children age 3 and older for the times before and after school and approved by the department for a designated period of time not to exceed 3 hours when the number of children in care may exceed the number of children registered for care on the registration certificate.

(31) "Physician" means a person licensed to practice medicine under Title 37, chapter 3, MCA.

(32) "Portable wading pool" means a structure, which contains water, is used for aquatic activities, and is less than 24 inches high.

(33) "Preschooler" means a child between 36 months of age and the age the child will be when he or she initially enters a public or private school system.

(34) "Prescription medication" means medication prescribed by a licensed health care provider for a specific person which may only be obtained through a pharmacy by prescription.

(35) "Primary Caregiver" means a facility staff person who meets the requirements as outlined in 37.95.622 and who regularly provides direct care to the children who attend the day care facility.

(36) "Probationary license" means a day care facility license or registration certificate whose status has been reduced for a specified period of time for a licensing violation and which will be reinstated to regular status upon successful completion of and compliance with remedial measures identified by the department to address specific deficiencies.

(37) "Provider" means the applicant for license or registration, the licensee or registrant.

(38) "Provisional certificate" means a registration or license status that is given to a day care provider, if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for a period of up to 3 months. A second 3 month certificate may be issued at the discretion of the day care licensing program manager.

(39) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

(40) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.

(41) "Regular certificate" means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, or group day care homes, or day care centers.

(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.

(43) "Remote means of egress" means escape routes in the day care which consist of two exits whose distance apart is equal to or greater than one half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.

(44) "Renewal registration/license" means a registration or license certificate that has reached its expiration date and the holder of that registration/license desires to renew or continue operations allowed by the registration/license.

(45) "Restricted certificate" means a restricted license or registration status assigned when it has been determined that the provider is unable to meet certain specific requirement criteria, but the provider is complying with an agreed upon plan of correction.

(45) "Safe sleep environment" means an environment where an infant is placed in a safety-approved crib with a firm mattress and a firmly fitted sheet or a safety-approved play yard for all naps. For children on year of age or over, a nap mat may be used as long as compliance with ARM 37.95.1005 is met. The infant must be placed on their back and only a light-weight blanket is allowed with the infant. The infant should be dressed in safe garments and provided a smoke-free environment

(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.

(49) "Substitute" means any person not regularly employed by a child care facility who temporarily takes the place of an approved staff person, other than the director.

(50) "Supervision" means the provider and all care-givers shall be able to see or hear the children at all times.

(51) "Supplemental parental care" means the provision of day care by an adult other than a parent, guardian, or person in loco parent's on a regular basis for daily periods of less than 24 hours.

(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.

(53) "Toddler" means a child who is 19 months of age to 36 months of age.

(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) "Vaccine" means one of the following:

(a) If administered in the United States, an immunizing agent approved by the bureau of biologics, food and drug administration, United States public health services; or

(b) If administered outside the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 16.28.704.

(52) "Varicella" means an attenuated, live virus vaccine to prevent chicken pox disease.

(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.

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