



Department of Public Health and Human Services

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Steve Bullock, Governor

Richard H. Opper, Director

August 14, 2015

Todd Seib, PhD, R.S.
Missoula City-County Health Dept.
Environmental Health
301 West Alder Street
Missoula, MT 59802-4123

Re: Memo to Licensed Daycare Centers dated June 23, 2015

Dear Dr. Seib,

The Department's Child Care Licensing Program provided me a copy of the referenced memo to review. The memo informs daycare centers that these centers are subject to the 2013 Food Code because "the daycare regulations adopt the state food code by reference."

Please be advised that the administrative rule that adopted the state food code for daycare centers (ARM 37.95.214) adopted the food code that was in effect on the date on which the Department proposed that administrative rule for adoption. The Department has not amended the rule to adopt the 2013 Food Code. The confusion arises because ARM 37.95.214 does not specify the year of the food code in effect at that time, inviting the conclusion that any change made to the state food code automatically applies to daycare centers by virtue of the words "adopts and incorporates." However, such a conclusion is incorrect. It is incorrect because basic rule-making principles mandate that the affected public for any particular rule has to have notice of the substance of what is being proposed and an opportunity to comment on same.

The Child Care Licensing Program may look at the 2013 Food Code and may propose changes to ARM 37.95.214. However, until ARM 37.95.214 is amended, the state food code that applies to daycare centers continues to be the food code in effect on the date ARM 37.95.214 was proposed. Daycare centers are not required to comply with the 2013 Food Code.

If there are questions regarding the content of this letter, please let me know. Thank you.

Sincerely,

Susan Callaghan
Attorney

cc: Stephanie Goetz, DPHHS (Child Care Licensing)
Ed Evanson, DPHHS