

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

In the matter of the adoption	)	NOTICE OF PUBLIC
of Rules I through XXIX and	)	HEARING ON PROPOSED
amendment of ARM 37.95.102,	)	ADOPTION, AMENDMENT,
37.95.106, 37.95.108,	)	AND REPEAL
37.95.121, 37.95.132,	)	
37.95.139, 37.95.140,	)	
37.95.141, 37.95.214,	)	
37.95.215, 37.95.225,	)	
37.95.602, 37.95.610,	)	
37.95.611, 37.95.613,	)	
37.95.702, 37.95.705,	)	
37.95.706, 37.95.708 and	)	
37.95.1005 and the repeal of	)	
ARM 37.95.109, 37.95.618,	)	
37.95.620, 37.95.701, and	)	
37.95.907 pertaining to	)	
licensure of day care	)	
facilities	)	

TO: All Interested Persons

1. On January 12, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406) 444-5622; FAX (406) 444-1970; Email dphhslegal@mt.gov.

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

RULE I. DAY CARE FACILITIES: LICENSE OR REGISTRATION RENEWAL PROCEDURES (1) A licensed or registered day care provider will be sent notification at least 90 days prior to the expiration of the current license/registration certificate.

(a) The notice shall advise the provider that the current license/registration is expiring and shall inform the provider how to access the information needed to renew the certificate.

(b) the notice will also provide information on where and when to submit renewal information and will explain the

with a clean washable blanket or other suitable covering for his/her use while sleeping. Each infant's bedding shall be stored separate from bedding used by other infants.

(6) (8) All cries of infants shall be investigated.

AUTH: Sec. 52-2-704, and 52-2-735, MCA.

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

4. The rules 37.95.109, 37.95.618, 37.95.620, 37.95.701, and 37.95.907 as proposed to be repealed are on pages 37-23291, 37-23437, 37-23438, 37-23491, 37-23492, and 37-23536 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-503, MCA

IMP: Sec. 53-4-504, MCA

5. The proposed new rules and amendments to current rules are reasonable and necessary for the following reasons:

Rule I Day Care Facilities: License or Registration Renewal Procedures

This entire rule is new rule language. The rule defines and clarifies the program's license or registration renewal process. The process has previously been defined through department policy, but due to the Vainio Supreme Court decision, this information is now being implemented through rule.

The department also decided to put this process into rule, because the consequences for late or incomplete renewal applications can ultimately have financial impact to the provider. For example, a lapsed renewal can affect a provider's ability to receive state payment for families participating in the Best Beginnings Program and can affect the provider's ability to receive subsidies through the Child and Adult Food Program. Placing the requirements in the rule makes the information readily available to providers so they can verify their application is complete.

Rules II, VII, XI, XIV, XV, XXI, XXIII, XXV, XXVI, and XXIX

These rules are not new requirements, but are rules made up of language that was contained within several other areas throughout the existing rules. The department decided to put the language into individual rules with separate headings to make it easier for providers to locate the information. These newly split out rules address the following topics: staff records; the requirement of cooperating with the department and with department assessment; record keeping; licenses being required for each facility; the need to post the license or registration certificate; notification of facility address changes; ensuring that persons in the day care pose no threat to the children; and the need to supervise children at all times.

updated to reflect current national trends and current program structures.

It is critical that caregivers of school aged children be able to demonstrate knowledge about and competence with the social and emotional needs and development tasks of five to 12 year old children, be able to recognize and appropriately manage difficult behaviors and know how to implement a socially and cognitively enriching program. It is a shared belief between the Montana School's Out Project and other early care and education advocates that persons providing school aged care must possess the background and educational experience as specified in this proposed language in order to achieve these developmental goals for this age of children. The language as proposed is consistent with National Standards associated with school aged care programs.

Further, the Montana School's Out Project requested the department to adopt specification for site directors because many programs are housed at various school locations, but are operated singly by the school district or other community organization. The site coordinator is critical to the safe and proper implementation of the SAC program. All staff of SAC programs must have the appropriate hours of training and must be certified in CPR and first aid as any other child care professional in any other child care environment.

Rule XXI Day Care Centers, School Aged Child Care: Notice of Current Address

It is very important that as facilities change locations, that the department be notified timely of this happening. This rule has been separated out to assist providers in easily locating the information:

Rule XXII Day Care Facilities: Protection of Children from Person Charged with Crime Involving Children, Violence or Drugs

This rule contains existing requirements from ARM 37.97.109, which is being repealed because it is broken out into separate rules with separate headings. The existing rule prohibits any caregiver charged with a crime involving children or violence or any felony drug offense from providing care or being present in the facility pending the outcome of the trial. The new rule also prohibits volunteers, support staff, or other adults residing in the facility or staying in the facility on a regular or frequent basis from providing care or being present in the facility pending the outcome of the trial.

Rule XXIV Day Care Facilities: Requiring Physical, Psychological, Psychiatric, or Chemical Dependency Evaluation

New Rule XXIV provides that the department may require an examination of a staff person, volunteer, or person residing at

the facility or regularly or frequently staying at the facility in cases where the department has reasonable belief that the person has engaged in behaviors that may place others at risk.

Rule XXVII Day Care Facilities: Health Habits

Section (8) sets out specific hand washing requirements to meet the standards recently reviewed by the American Academy of Pediatrics and the American Public Health Association. Hand washing is the most important way to reduce the spread of infection.

Rule XXVIII Day Care Facilities: First Aid Requirements

Adds language requiring that a provider adopt and follow first aid policies consistent with American Red Cross recommendations and which establish procedures for dealing with medical emergencies. There has been much controversy regarding Syrup of Ipecac. The American Academy of Pediatrics publicly denounced the use of Ipecac in home first aid kits. However, in discussing the issue with the Regional Poison Control Center in Denver, because of Montana's rural nature and the potential for long transport times, they are recommending that first aid kits contain Ipecac, so long as the substance may only be used under poison control or medical direction.

ARM 37.95.102 Definitions

Several definition sections were renumbered only in order to accommodate the addition of other definitions in alphabetical order.

The department is providing definitions of the following terms to assist providers in understanding the substantive rule provisions: "Aides", "CPR", "Delayed Renewal Application", "Director", "Lapsed Registration/License", "Nonprovider Staff", "Nonprescription Medication", "Nonteaching Director", "Primary Caregiver", "Prescription Medication", "Probationary License", "Remote Means of Egress", "Renewal Registration/License", "School Age Child Care Facility", "Substitute", "Teaching Director", and "Varicella".

The department has made slight grammatical changes in the following definition section and subsection to make them more understandable: (13)(a) and (45).

ARM 37.95.106 Day Care Facilities: Registration or Licensing

The department is removing "Application" from the heading of the existing rule.

The department is adding the proposed language to make the rule consistent with the statute and allow groups or organizations to run a day care program limited to 6 to 12 children.

Section (3) specifies the differences in submission requirements for a program issued a one year license certificate (center) vs. a program who is granted an extended certificate.

Subsection (3)(i) clarifies that all buildings in which child care is provided must have a written fire and emergency evacuation plan.

Section (4) identifies the requirements that apply for a one year regular certificate.

ARM 37.95.108 Day Care Facilities, Registration and Licensing Procedures

Section (7) provides criteria for issuance of a 3 year license or registration certificate, and for a 2-year license or registration, and clarifies that a provider must be in operation at least one year before he can be considered for issuance of an extended license/registration.

ARM 37.95.109 Caregiver Qualifications for All Day Care Facilities

This rule is being repealed because it has been broken out into new rules with separate headings to make the information easier to find or because provisions were redundant with other rule sections.

ARM 37.95.121 Safety Requirements

Section (2) is being stricken because the department is proposing new rules with regard to medication administration. See [RULE XVIII].

Section (3) extends the requirement that an animal be in good health to center based programs. Previous language pertained only to home programs.

Sections (4) through (13) are renumbered.

The proposed change to (11) adds the National Poison Control Center as the number for whom day care providers should call if an accidental poisoning occurs. It is the department's understanding that a person who calls this number will be automatically routed to their respective regional poison control center. By using the National number, day care providers will be connected with the appropriate center whatever that number may be. Providers will only need to know one basic number.

The changes are being proposed to (13)(a) through (d) due to concerns expressed by day care providers involving personal safety. Specifically, providers were worried that by failing to lock their doors, they would be leaving themselves and the

children vulnerable to entry by persons who could cause them harm. The original rule was established to (1) allow unobstructed exiting in the event of a fire and (2), to allow unlimited parental access. However, based upon interactions with providers, the department has come to understand the overriding safety concerns. The language as proposed is the department's attempt to allow providers to feel safe within their own homes while making sure there is a means for exiting - in the event of a fire or other emergent condition - and unlimited means for parents to access their children.

ARM 37.95.132 Transportation

This rule, as amended, will require a provider to have a valid Montana driver's license, rather than a license from any state. It also requires that any person transporting children possess current CPR and first aid certificate since the person providing transportation may be the only adult overseeing the child while being transported. It also provides that providers shall place the child in an age appropriate child restraint seat which meets federal department of transportation recommendations.

The language in (2)(b) is being proposed to bring the rule into compliance with the National Highway Transportation Safety Administration's guidelines for transportation of children.

The changes in section (7) and subsection (7)(a) make the language consistent with 2003 Laws of Montana, Chapter 407, which was passed in 2003.

ARM 37.95.139 Day Care Facilities, Health Care Requirements

The rule strikes requirements pertaining to tuberculosis which the Centers for Disease Control and Prevention no longer recommends since it does not offer any significant degree of safety to public health and adds unnecessary cost to the day care operation.

ARM 37.95.140 Immunization

The Department is proposing the additional language in (1) in order to specify the differences in immunization schedule between children under the age of two and those who are five and older. Section (4) breaks out the schedule for children aged five and older.

Also the department is adding the requirement that children receive the Varicella vaccine by 19 months of age as a condition of continued attendance in day care. According to the American Academy of Pediatrics (AAP), "Varicella is very contagious and can occur in a high proportion of susceptible children in an institutionalized setting. All healthy children one year of age or older who lack a reliable history of varicella should be immunized."

Also according to the AAP, "The majority of cases (approximately 85%) occur among children less than five years of age. The highest age specific incidence of varicella is among children one through four years of age, who account for 39% of all cases. The age distribution is probably a result of earlier exposure to VZV in preschool and child care settings."

For these reasons, the department proposes to add the requirement that children attending day care be immunized with Varicella by 19 months of age.

Sections (5) through (14) are renumbered only.

This division has had a change in title, and the language in (14) reflects that change. The stricken language deals with a rule that no longer applies.

#### ARM 37.95.141 Records

The proposed language in (3) and (5) specifies that providers maintain records of medication administration and records of fire drills conducted. The additions here are simply added to make sure that proper documentation is secured. Other changes are grammatical.

For ease and consistency, the department has developed appropriate forms for compliance with these areas, which will be required in order to ensure that the same categories of information are consistently gathered.

#### ARM 37.95.214 Food Preparation and Handling and ARM 37.95.215 Nutrition

Changes to these rules are made to update the language with the new division titles, as well as to make grammatical corrections.

#### ARM 37.95.225 Water Supply System

Existing language is being stricken and replaced with new language. This is being done to update the language with the correct DEQ standards and the EPA guidelines for water supply systems.

#### ARM 37.95.602 Day Care Centers, Program Requirements

Most day care programs develop a schedule of activities or implement a curriculum without the direct involvement of parents. Parents are typically informed of activities and curriculum areas, but don't technically "approve" each and every activity. As the department examined this rule, it was felt that while parental consent to activities is critical, supervision of these activities is far more important. Safety