



March 26, 2024

Senator Dennis R. Lenz, Chair
Children, Families, Health, and Human Services Interim Committee
P.O. Box 201706
Helena, MT 59620-1706

c/o Maddie Krezowski, Interim Committee Staff Attorney
via Madelyn.Krezowski@legmt.gov

Dear Senator Lenz,

Pursuant to § 2-4-406(2), MCA, this letter serves as the response of the Department of Public Health and Human Services (the Department) to the Children, Families, Health, and Human Services Committee's (the Interim Committee) March 12, 2024 notice of formal objection to MAR Notice No. 37-1044 (Formal Objection Letter).

BACKGROUND AND INTRODUCTION

Montana faces a child care crisis. According to a recent study, as much as 60 percent of Montana's counties qualify as child care deserts, meaning many families do not have access to reliable and affordable child care. The shortage of child care options has kept more than 66,000 Montanans from fully working.

In the 2023 legislative session, the Legislature passed several laws to address the shortage of child care services facing Montana and Governor Greg Gianforte signed them into law. Those measures aimed to expand access to quality child care, including removing barriers to allow for more home-based providers to offer services, safely increasing capacity at child care centers, and supporting lower-income working families who need and use child care. Upon the enactment of these measures, the Department began working to implement the Legislature's will and finally deliver affordable and reliable child care solutions for Montana families.

In October 2023, the Department published notice that it intended to repeal the entirety of Title 37, chapter 95 of the Administrative Rules of Montana (ARM) and replace the chapter with an updated and streamlined package of regulations relating to the licensure and registration of child care facilities. The rulemaking was the culmination of two multi-year efforts undertaken by the Department:

- Implementing Governor Gianforte’s signature Red Tape Relief Initiative, the Department reviewed the existing child care rules to identify ways to expand access to safe, high-quality care for Montana families while reducing regulatory burden. The Department analyzed each child care rule to ensure it was necessary, easy to understand, and did not create undue burdens on providers.
- The Department engaged in a sustained, years-long process of outreach to, engagement of, and consultation with, stakeholders, members of the public, and members of the Interim Committee. This outreach process engaged over 700 child care stakeholders across Montana: current providers; those wishing to become licensed or registered; parents; fire and environmental safety professionals; and public and community health experts. The feedback included 627 responses to surveys, 125 focus group attendees, and 27 interviews.

As a result of these initiatives, the Department recognized that the existing rules are confusing, poorly arranged, discourage new entrants into the child care provider market, and were ultimately the result of years of layered administrative rule changes that did not consider the regulatory framework at large.¹ To address these issues, the Department chose to propose repealing all existing rules and undertake a comprehensive, total revision and reorganization of these rules. In addition to making the rules more user-friendly, the proposed rules package:

- Proposes graduated licensing or registration requirements that are tailored to the location in which child care is provided and the number of children in care;
- Reflects that each provider is unique, allowing eligible providers to apply for waivers of licensing or registration standards;
- Includes a new license category for school-age care (out-of-school-time) providers that considers the unique needs of serving school-age children;
- Removes requirements for duplicative inspections (i.e., if a facility has already been inspected by fire safety and public health officials, child care licensing will not require additional inspections);

¹ In August 2022, the Department published MAR Notice No. 37-994. This was a discrete proposed rules package that would have made changes necessary to bring child care immunization requirements into alignment with statutory changes from the 2021 Legislative session, align the child care immunization requirements with school immunization requirements, and recognized a religious exemption. The Interim Committee objected to 37-944 pursuant to §2-4-305(9), MCA, effectively delaying the adoption of the rules package.

In November 2022, the Department published MAR Notice No. 37-1020, a comprehensive proposed rules package intended to address the issues identified by the Department. The Interim Committee also objected to 37-1020 pursuant to §2-4-305(9), MCA, effectively delaying the adoption of the rules package.

- Incorporates legislative updates from the 2021 and 2023 sessions including updating child-to-staff ratios, increasing the number of children in care without needing to be licensed or registered, and offering military licensing reciprocity;
- Aligns child care licensing and registration requirements with federal Child Care Development Fund (CCDF) requirements; and
- Results in an approximately 20% reduction in content.

After the Department became aware that certain members of the Interim Committee had concerns about child care licensing, the longstanding role of government in such licensing, and the proposed revisions to the child care licensing and registration rules, it repeatedly sought feedback from members of the Children, Families, Health, and Human Services Interim Committee throughout 2023, including:

July 31, 2023: Following the 2023 Legislative session, the Department met with Chair Sen. Lenz and Rep. Carlson for a multi-hour work session to review draft child care rules and discuss legislative feedback.

August 11, 2023: Following legal review, legislator feedback was incorporated into an updated draft of the proposed rules. The draft explicitly noted the Department's rationale for changes made pursuant to legislators' feedback, as well as for requested changes that were rejected. This draft was provided to Chair Lenz and Rep. Carlson on August 11, 2023. The legislators did not respond or provide additional feedback, despite repeated requests from the Department. (Please see Attachment 1.)

November 13, 2023: The public hearing on the proposed rules package (MAR 37-1044) was held and no legislators from the Interim Committee provided testimony. A review of all written comments indicates no member of the Interim Committee has provided public comment on the proposed rules. Rep. Jedediah Hinkle and Rep. Dunwell, neither of whom are members of the Interim Committee, commented on the proposed rules.

November 13, 2023: Interim Committee member Rep. Yakawich left a voicemail for Tracy Moseman, Early Childhood and Family Support Division Administrator, to discuss the child care rules package. Ms. Moseman returned Rep. Yakawich's call and left a message. To date, Rep. Yakawich has not contacted Ms. Moseman to discuss the proposed rules.

November 16, 2023: During the Children, Families, Health, and Human Services Committee meeting held on this date, a majority of the Interim Committee objected to the rules package. The basis for some Interim Committee members' objection to MAR 37-1044 conflicted with the bases of other Interim Committee members' objections.

December 6, 2023: Interim Committee member Sen. Emrich had a phone conversation with Ms. Moseman to discuss the proposed rule changes related to the recognition of religious exemptions to child care vaccination requirements. He requested a follow up meeting with Ms. Moseman and me to discuss further. Sen. Emrich also requested that the Department provide to him information regarding the Department's regulatory proposals regarding religious exemptions.

December 7, 2023: Ms. Moseman emailed Sen. Emrich the documents he requested pertaining to religious exemptions. (Attachment 2.)

December 14, 2023: Sen. Emrich did not attend the meeting the Department had arranged with him to discuss the religious exemption proposal.

It is important to note that the above list of events only offers a glimpse into the Department's diligent efforts to collect and respond to legislators' feedback on the proposed rules package, MAR 37-1044. Other in-person meetings and phone conversations between legislators (both Interim Committee members and non-members), the Department, and other state staff occurred over the course of 2023.

RESPONSES TO INTERIM COMMITTEE OBJECTIONS

On March 12, 2024, the Interim Committee objected to MAR Notice No. 37-1044. In response, the Department now offers the following:

1. The proposed rules are not in substantial compliance with 2-4-305(6)(a), MCA, because definitions in proposed [N]ew Rule I and used throughout the proposed rulemaking are not consistent and are in conflict with the statutory definitions found in 52-2-703, MCA.

The Department disagrees. As the Montana Supreme Court has stated,

[w]e construe a statute by reading and interpreting the statute as a whole, without isolating specific terms from the context in which they are used by the Legislature. Statutory construction is a holistic endeavor and must account for the statute's text, language, structure, and object. We must also read and construe each statute as a whole so as to avoid an absurd result and to give effect to the purpose of the statute.

Totem Bevs., Inc. v. Great Falls-Cascade Cty. City-Cty. Bd. Of Health, 2019 MT 273, ¶ 14, 397 Mont. 527, 452 P.3d 923 (citation omitted). To resolve an asserted conflict between a regulation and a statute, a court will "consider whether the regulation 'engraft[s] additional and contradictory requirements on the statute,' or 'engraft[s] additional, noncontradictory requirements on the statute which were not envisioned by the legislature.'" *Id.* Regulations that are consistent with the statute "must also be reasonably necessary to effectuate the statute's purpose." *Id.*; see also *Gold Creek Cellular of Montana LP v. State Dep't of*

Revenue, 2013 MT 273, ¶ 12, 373 Mont. 71, 310 P.3d 533 (citing *Bell v. Dep't of Licensing*, 182 Mont. 21, 23, 594 P.2d 331, 333 (1979)); § 2-4-305(6), MCA. "When a department's regulation restricts a broad statutory exemption, that regulation is in direct conflict with the statute." *Gold Creek at ¶ 13*. In *Totem Beverages*, the Supreme Court reversed the invalidation of certain rules, concluding that the rules did not violate these standards, and finding "important" the "Legislature's directive" that the statute "be supervised and enforced by the department and the department's designees . . . and the Legislature's grant of rulemaking authority." *Totem Bevs.*, 2019 MT 273, ¶ 18 ("The Legislature clearly intended that the Department and local boards would address the details necessary for the Act's application and enforcement.").

Definition of "Child Care Center"

The Interim Committee specifically objected to the proposed regulatory definition of "child care center," contending that "the definitions conflict, in part, because the Department's definition excludes irregular care and impermissibly expands the definition of child care center to include day care provided on the premises or campus of a parent's employer, which is excepted from the definition of day care center in the statute." (Formal Objection Letter at 2.)

The statutory definition of "day care center" is "an out-of-home place in which day care is provided to 16 or more children on a regular or irregular basis." § 52-2-703(3)(a). The Interim Committee's contention that the omission of "irregular" from the definition of "child care center" means that the proposal is in conflict with the statute is wrong. To give meaning to these two different, but statutorily undefined, categories, the Department appropriately promulgated regulatory definitions.²

§ 52-2-703(3)(b), MCA, exempts from the definition of "day care center" a "place where day care is provided if a parent of a child for whom day care is provided remains on the premises." Proposed New Rule I(5) replicates the statutory definition and exemption, and clarifies that day care centers (facilities providing out-of-home care to 16 or more children) on the premise or campus of an employer who employs the parent would need to be licensed. The Interim Committee apparently objects to this clarification as being in conflict with the statutory exemption.³

² The Department notes that it is required to "adopt rules for day-care centers that provide day care on an irregular basis," § 52-2-704(2)(g), MCA, and "may" "issue a license to a person to receive children into a day-care center on an irregular basis if the person chooses to apply for licensure," § 52-2-704(3)(d), MCA.

³ Based on the Formal Objection Letter, the Committee does not object to the clarification that the exemption does not apply if the parent is a director/owner, staff member, or volunteer of the child care center.

§ 52-2-703, MCA (2000), was amended⁴ by House Bill 324 during the 57th Legislature amid concerns that unregulated “drop-in” care was being provided to the detriment of child safety: insufficient square footage per child; staff training requirements, including CPR and first aid training; and staff-to-child ratios. (57th Leg. Reg. Sess., Comm. on Human Services minutes, Jan. 24, 2001, at 17, 18.) Specifically, bill sponsor Representative Mangano stated that HB 324 was intended to address large centers that are taking in large numbers of children and were unlicensed, and that HB 324 would address the health and safety standards for children. (*Id.* at 19.)

Proposed New Rule I(5) directly addresses the concerns from the 57th Legislature – that is, unlicensed care skirting safety requirements – by clarifying that large-scale, employer-based child care facilities do need to be licensed. Child care in Montana continues to be a barrier for parents remaining at or returning to work. To address this challenge, some Montana employers are offering child care to their employees, with the facility located on the campus of the worksite.

§ 52-2-703(3)(b), MCA, excludes from the definition of day-care center a place where day care is provided if a parent of a child for whom day care is provided remains on the premises. The Department found it necessary to clarify this exception because a child’s attendance, as well as the presence of a child’s parent, may vary from week to week, or even day to day. This ever-changing precedent condition made it difficult for providers to determine if they needed to be licensed; this has been particularly true for employer-based facilities where the presence of one child whose parent is not working on-premises on one particular day could threaten the facility’s compliance. Proposed New Rule I(5) gives meaning to § 52-2-703(3)(b). The clarifying, noncontradictory proposed language of New Rule I was envisioned by the 57th Legislature, and is necessary to effectuate § 52-5-703(3).

Definition of “School-age Care”

The Interim Committee apparently objects to the proposed new category of “out-of-school time” child care facility, contending that it is in conflict with the statutory requirements, apparently because “school-age care” – proposed to mean “regularly scheduled care exclusively for school-age children during school-time hours, licensed by the department” – “could fall within the definition of ‘day-care center’ if care is provided for 16 or more children,” but “proposed new Rule II(3)(a)(i) provides that they have the option of being licensed despite the requirement in 52-2-721(1)(a), for all day-care centers that provide care on a regular basis to be licensed.” (Formal Objection Letter at 2.)

⁴ HB 324 added “irregular” to § 52-2-703, MCA, currently codified under (a), and added, “The term does not include a place where day care is provided if a parent of a child for whom day care is provided remains on the premises.” to new (b).

§ 52-2-703(17), MCA, defines school-age care as “an adult-supervised program that is provided for school-age children during nonschool hours.” The Legislature saw fit to define separately school-age care from day-care center care. Under statute, school-age care is categorized by the age of the children in care and the hours during which care is being provided. In comparison, day care centers are not limited by the age of the children being cared for nor by the hours in which care is provided. Because the Legislature saw fit to separate “school-aged care” from other types of child care, the Department proposed definitions that would give meaning to the statutory distinction.

Unspecified Objection to Other, Unidentified Proposed Definitions

The Interim Committee generally contends that it objects to “all definitions that are not consistent and are in conflict with the statutory definition found in 52-2-703, MCA, or for which the proposed rules provide exceptions or requirements that conflict with Title 52, chapter 2, part 7, MCA.” (Formal Objection Letter at 2.)

§ 2-4-406(1), MCA, requires the Interim Committee to make a “concise statement of the committee’s reasons for its action” when it sends a written objection to the agency that promulgated the rule. The Interim Committee has not met its statutory obligation with respect to this catchall objection, which leaves the Department without fair notice of what the Interim Committee’s objections are as they relate to other definitions proposed in New Rule I. The Department cannot be responsible for attempting to determine which proposed definitions the Interim Committee objects to and why.

2. The proposed rules are not in substantial compliance with 2-4-305(6)(b), MCA, because the rules are not reasonably necessary to effectuate the stated purpose of the statute under 52-2-702(2)(d)(ii), MCA, to promote “the availability and diversity of quality child-care services for all children and families that need such services[.]”

Regulations that are consistent with the statute must also be reasonably necessary to effectuate the statute’s purpose. § 2-4-305(6)(b), MCA; *Michels v. Dep’t of Social and Rehabilitation Servs.*, 187 Mont. 173, 177-78, 609 P.2d 271, 273 (1980).

The purpose of the Montana Child Care Act “is to assure that children requiring day care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.” § 52-2-702(1), MCA. The Legislature further specified its intent, tasking the Department with “promoting the availability and diversity of quality child-care services for all children and families that need such services[.]” *Id.* at § 52-2-702 (2)(d)(ii).

The Interim Committee vaguely asserts that the proposed rules are not necessary to effectuate the stated purpose of § 52-2-702(2)(d)(ii). The Interim Committee did not identify which of the proposed registration and licensing regulations are not reasonably

necessary to effectuate this purpose, nor did the Interim Committee even attempt to explain the rationale for its imprecise objection. As such, the Department is left guessing. To the extent that it is the Interim Committee's position that the proposed regulations create a one-size-fits-all approach to facilities — that is, requiring small, home-based providers to meet the same regulatory standards as large, out-of-home child care centers — the Department disagrees.

As noted above, MAR 37-1044 is the result of a years-long process that engaged over 700 child care stakeholders across Montana: current providers; those wishing to become licensed or registered; parents; fire and environmental safety professionals; and public and community health experts, among others. Based on their feedback, the proposed new rules impose graduated requirements depending on the size of the facility. In addition, MAR 37-1044 establishes clear distinctions between the requirements imposed on licensed child care facilities and those requirements imposed on registered facilities.

For example, licensed, out-of-home facilities are required to have a two-compartment sink as back-up in the event their dishwasher becomes inoperable; registered home-based providers are not subject to this regulation.⁵ Similarly, any licensed facilities using a two-compartment sink to handwash dishes must use the wash, rinse, and sanitize three-step process⁶:

All dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution, at a concentration indicated on the manufacturer's label, then rinsed with clear water separately, and then dipped/soaked in sanitizer solution in a separate compartment or container that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute. Dishes must be air dried before being stored.⁷

Registered home-based providers are not subject to this regulation.

The proposed child care licensing package would also allow the Department to approve innovative and creative child care models through a formal waiver process.⁸ The case-by-case waiver review process is the epitome of customizable licensing or registration options for eligible providers. It would allow the Department to support diverse and customized child care models while maintaining safety standards. The Department believes that demand for such models in Montana is great.

Balanced regulation based on the setting and number of children in care, along with a waiver process that would offer flexibility to providers, illustrate how the Department's

⁵ New Rule LVIII (4)(a).

⁶ *Id.* at (5).

⁷ *Id.* at (5)(a).

⁸ New Rule XIV.

proposed child care regulations implement the Legislature's edict of "promoting the availability and diversity of quality child-care services for all children and families that need such services[.]" § 52-2-702(2)(d)(ii), MCA.

The Department also proposed regulatory changes responsive to feedback received from the federal Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Care's (OCC's) July 2023 monitoring visit. States are required to comply with Child Care and Development Fund (CCDF) requirements as a condition of receiving these federal funds. CCDF regulations require Lead Agencies, such as the Department, to maintain compliance with all provisions of the Child Care and Development Block Grant Act, regulations, and the State's approved CCDF Plan during the administration of their program.⁹

After OCC's monitoring visit, the following areas of possible non-compliance were identified:

- Prevention/Response to Emergencies due to Food and Allergic Reactions in accordance with 45 CFR § 98.41(a)(1)(iv). The Lead Agency does not have requirements in place for the prevention of and response to emergencies due to food and allergic reactions for CCDF license-exempt FFN providers.
- Shaken Baby Syndrome, Abusive Head Trauma, and Child Maltreatment requirement in accordance with 45 CFR § 98.41(a)(1)(vi). The Lead Agency does not have requirements in place for the prevention of shaken baby syndrome and abusive head trauma for FFN providers.¹⁰

New Rule XXI addressed both of these possible non-compliance points to help ensure Montana remains eligible for nearly \$39,000,000 in federal funds needed to support healthy and safe child care options in Montana.

3. The proposed rules are not in substantial compliance with 2-4-305(6)(a), MCA, because the immunization requirements in the proposed rules misapply state law for exemptions and are also not in substantial compliance with 2-4-305(5), MCA, because the immunization requirements exceed the statutory rulemaking authority of the Department.

Statutory Rulemaking Authority for Vaccination Requirements

The Interim Committee contends that the Department does not have statutory authority to adopt rules setting immunization requirements for children receiving child care, except for requiring a single dose Haemophilus influenza type 'b' (Hib) and only for children attending a child care center. Stated differently, the Interim Committee argues the Department cannot require any vaccinations for children in family or group child care

⁹ Preliminary Notice of Possible Non-Compliance, pg. 1.

¹⁰ *Id.* at pg. 2.

facilities,¹¹ and may only require one dose of one vaccination for children attending facilities that care for 16 or more children.

The Department disagrees with this idiosyncratic interpretation of the Montana Child Care Act. The Interim Committee's argument does not acknowledge that the vaccination requirements in MAR 37-1044 are not new – they are long-standing requirements under ARM 37.95.140 that are applicable to all Montana day care facilities.¹² The Department notes that, to the best of its knowledge, there has been no legal challenge to the Department's statutory authority to impose such child care vaccination regulations, much less a successful challenge to that authority.

That fact is not surprising: The Department has clear statutory authority “to prescribe the conditions and publish the minimum standards upon which licenses and registration certificates are issued” and to “adopt rules for day-care facilities” consistent with the Montana Child Care Act. § 52-2-704(2)(e), (f). The Act, among other things, seeks to assure that children requiring day-care are provided with “security and safety,” and that parents “are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child-care facility.” § 52-2-702(1), (2)(d)(iv), MCA. Moreover, the Act recognizes that one area in which the Department may adopt standards for day care is “child care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children.” § 53-2-731(3). These provisions in the Act provide ample statutory authority for the longstanding child care vaccination regulations.

The specific authority with respect to day care/child care centers is not to the contrary. § 52-2-735 directs the Department to adopt rules for the “protection of children in day-care centers from the health hazards” of communicable diseases. The statute then states said rules “**must include** rules requiring children under 5 years of age to be immunized against Haemophilus influenza type ‘b’ (Hib) before being admitted for care in the facility,” unless exempt. (Emphasis added.) The use of the word “include” is instructive: the Department

¹¹ During the 68th Legislature, Committee member Rep. Carlson sponsored House Bill 954, A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING REQUIREMENTS FOR IMMUNIZATIONS 5 IN DAY-CARE FACILITIES; REQUIRING A DAY-CARE CENTER TO RECORD THE IMMUNIZATION 6 STATUS OF ENROLLED CHILDREN; PROHIBITING A FAMILY DAY-CARE HOME OR GROUP DAY-CARE 7 HOME FROM REQUIRING IMMUNIZATIONS PRIOR TO ENROLLMENT; REQUIRING A FAMILY DAY-CARE 8 HOME OR GROUP DAY-CARE HOME TO MAINTAIN IMMUNIZATION STATUS RECORDS FOR ENROLLED 9 CHILDREN; PROVIDING AN APPROPRIATION; AND AMENDING SECTION 52-2-735, MCA.”

Inter alia, HB 954 would have codified what the Committee is inappropriately attempting to do now through the formal objection process. HB 954 was referred to the House Human Services Standing Committee where it was unanimously tabled and where the bill ultimately died.

¹² Day care/child care facility vaccination requirements date back to at least 2000. In 2000, the Department proposed and then adopted child care rules that included vaccination requirements applicable to all Montana child care facilities. See MAR Notice 37-160, 2000 MAR 1573 at 1581-83 (June 30, 2000) (proposal notice, Rule VIII); 2000 MAR 2415 (Sept. 7, 2000) (adoption notice).

must adopt rules requiring children in day-care centers to be immunized for Hib, but the Department is not limited to only that requirement.

The Legislature clearly granted the Department administrative authority to set minimum safety and health standards for child care facilities in § 52-2-704. § 52-2-735 further defines the minimum standards for a defined category of facilities, but it is not exhaustive. Additional rules setting forth the health and safety standards for Montana child care facilities were necessary to effectuate the purpose of the Act and § 52-2-704 — ensuring that children in child care are provided with security, safety, and healthy child care facilities. The Department properly exercised its authority when it adopted rules requiring vaccines in accordance with ACIP recommendations.¹³

Especially in light of the longstanding nature of the Department's child care vaccination requirements, the Legislature is presumed to know of the Department's administrative interpretation of the Act; the Legislature's actions or lack of action on the subject has occurred with the backdrop of such interpretations. And it should be noted that all legislative efforts to expressly limit the Department's authority to impose child care vaccination requirements have failed.

Finally, it is important to note that the federal regulations governing the Child Care and Development Fund (CCDF) requires states, as a condition of receiving CCDF funds, to have health and safety requirements related, *inter alia*, to the prevention and control of infectious diseases, including immunizations. 45 CFR § 98.41(a)(1).

As part of their health and safety provisions in this area, [the Department] shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State, territorial, or tribal public health agency.

Id. at § 98.41(a)(1)(i)(A).

The Department knows of no state, territorial, or tribal public health agency that endorses a single dose of the Haemophilus influenza type 'b' vaccine as the exclusive adequate, age-appropriate vaccine recommendation. The Interim Committee's apparent position would threaten nearly \$39,000,000 in yearly CCDF awards, money that is used to provide support and access to safe and quality child care for hardworking Montana families. The Department cannot believe that the Interim Committee, much less the entire Legislature, would knowingly adopt an interpretation of the Department's statutory authority that

¹³ "Based upon disease epidemiology and burden, vaccine efficacy and effectiveness, vaccine safety, economic analyses and implementation, [the Advisory Committee on Immunization Practices] develops uniform guidance on the use of vaccines for effective control of vaccine-preventable diseases in the civilian population of the United States." State. of Reasonable Necessity, Mont. Admin. Reg. Not. 37-814, No. 21 (Nov. 9, 2017).

would jeopardize the receipt of tens of millions of dollars in federal funds to support access to affordable, quality child care in Montana – federal funds that the Legislature very recently incorporated into the Department’s budget and appropriations for child care.

Vaccination Requirement and the Proposed Religious Exemptions

After the conclusion of the 2021 Legislative Session, the Department assessed the child care vaccination requirements, in light of the enactment of SB 215, the Montana Religious Freedom Restoration Act (RFRA). Montana RFRA prohibits state action that substantially burdens a person’s exercise of religion, unless the action is essential to further a compelling state interest and is the least restrictive means of furthering that compelling governmental interest. Many religiously observant families object to certain childhood vaccines on religious grounds because such vaccines were developed using cell lines derived from aborted fetal tissue. Because the child care rules then (and now) do not provide any religious exemptions for staff members and provide opportunity for a religious exemption for only one childhood vaccine – while providing for medical exemptions – the Department concluded that the failure to provide for a religious exemption for families with a religious objection to any of the required vaccines likely violates Montana RFRA .The Department’s RFRA concerns led it to issue, on October 31, 2022, a notice of non-enforcement of the vaccination requirements if the failure to comply was a result of a religious objection. (See Attachment 3.)

During hearings, certain witnesses (and certain members of the Interim Committee) argued that the Legislature’s later consideration of, but failure to adopt, specific legislation on religious exemptions for child care vaccination requirements meant that the Legislature had reserved the issue for itself and that the Department lacked the statutory authority to establish, administratively, religious exemptions for the child care vaccination requirements. This argument ignores the fact that the Legislature adopted Montana RFRA in 2021, and that the Department is obligated to comply with it.

Home-Based Child Care Facilities and Religious Exemptions

Finally, the Interim Committee objects to New Rule LXV because it “believes [New Rule LXV] misapplies state law for exemptions from vaccinations for registered day care providers by allowing certain providers to choose whether to accept exemptions and is therefore not in substantial compliance with 2-4-305(6)(a).” (Formal Objection Letter at 2.) Once again, the Interim Committee does not adequately set forth the basis of its objection – it does not specify if it objects because it believes all providers should have the choice of whether to enroll children with vaccination exemptions, or because it believes no providers should have that choice. Further, the Interim Committee does not identify which state law has allegedly been misapplied.

The Department proposed New Rule LXV so a home-based child care provider has the option as to whether it enrolls children who are not vaccinated in accordance with the

recommended minimum recommended immunization requirements. (New Rule LXIV.) Home-based providers would have to maintain policies and procedures to inform parents and guardians if the child care provider accepts children with exemptions from required vaccines. This proposal would give choice to families with medical or religious exemptions; allow for parental choice in any additional vaccines a parent may choose for their child; and give in-home providers the choice to set policies to align with the needs of their own households. Under the proposal, child care centers would not have the same flexibility because the concerns that led to the proposal to provide flexibility for in-home providers do not apply to child care centers. The Department believes that home-based business owners caring for mixed age groups are allowed autonomy in their choice to serve vaccination-exempt children; this will allow home-based providers to make choices for their own health and the health of their family members and the children in their care, who may not be old enough to be vaccinated. By contrast, child care centers are required to separate children by age group to protect younger children who may be more vulnerable to infectious disease and have not yet had the opportunity to be vaccinated.

The Department carefully weighed the needs of children receiving child care, of parents and guardians, and of small business owners who operate as home-based providers. Consistent with the analyses required by Montana RFRA, proposed Rule LXV balances the medical and religious autonomy of all.

SEPARATION OF POWERS

“In Montana each branch of government is equal, coordinate and independent, in that powers belonging to one branch may not be exercised by another.” *MEA-MFT v. McCulloch*, ¶28, 366 Mont. 266, 291 P.3d 1075 (citing *Powder River County v. State*, 2002 MT 259, ¶ 112, 312 Mont. 198, 60 P.3d 357). Article III, section 1 of the Montana Constitution divides the government into legislative, executive, and judicial branches, and provides that “[n]o person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.” Article V, section 1 of the Montana Constitution provides that the “legislative power is vested in a legislature consisting of a senate and a house of representatives.” During an interim when the Legislature is not in session, the Children, Families, Health, and Human Services Committee is an interim committee of the Legislature. It is empowered to sit as a committee and may act in its respective area of responsibility. § 5-5-202(1), (2)(c), MCA. The Interim Committee has the statutory authority to review administrative rules within its jurisdiction. § 5-5-215(1)(a), MCA.

However, Article VI, section 4 of the Montana Constitution provides that the “executive power is vested in the governor who shall see that the laws are faithfully executed.” The Legislature made the Department responsible for planning, implementing, and coordinating programs under the Montana Child Care Act, and specifically delegated

to the Department the responsibility to “prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued” to Montana child care facilities. § 52-2-704(1), (2)(e), MCA. The Children, Families, Health, and Human Services Committee is an interim committee of eight legislative members that, through its use of the objection process, is undermining the rulemaking authority granted to the Executive Branch and Department by the entire Legislature, making it difficult for the Department to address the child care shortage.

The Department has consistently acted in good faith to collaborate with Interim Committee members on this rules package. It is troubling that it does not appear we are able to reach an agreement with the Interim Committee on these rules so that the Department can fully execute the laws of our state. The Interim Committee has repeatedly leveraged the objection process without articulated justification, instead imposing its own implementation preferences. Furthermore, it has done so without regard for the Department’s repeated explanations of the reasons for the implementation choices made in the rules, its incorporation of legislator feedback, and for the supportive public comments presented by interested Montanans, most of whom are negatively impacted by the unnecessary and harmful delay of a modern, common sense, and long overdue rules package that reduces regulatory burden.

The Department has proposed child care regulations that are in substantial compliance with its statutory authority and obligations; that help expand access to affordable, quality child care; that help ensure Montana remains eligible for vital federal funds; that respect and protect religious liberty; and that are responsive to the over 700 stakeholders who participated in this rulemaking process. For these reasons and more, the Department requests that the Interim Committee withdraw its objection and the Formal Objection Letter, pursuant to § 2-4-406(2), MCA.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Brereton". The signature is stylized and cursive.

Charles T. Brereton
Director

Enclosures

Attachment 1

From: Moseman, Tracy <Tracy.Moseman@mt.gov>

Date: Friday, August 11, 2023 at 7:57 AM

To: Dennis.Lenz@mtleg.gov <dennis.lenz@mtleg.gov>, Carlson, Jennifer <Jennifer.Carlson@legmt.gov>

Cc: Brereton, Charlie <Charles.Brereton@mt.gov>, Johnston, Erica <Erica.Johnston@mt.gov>, Stannard, Paula <Paula.Stannard@mt.gov>, Sanders, Heidi <Heidi.Sanders@mt.gov>, Gerard, David <David.Gerard@mt.gov>

Subject: Draft ARM for day care facilities for review

Senator Lenz and Representative Carlson,

Thank you for meeting with us last week to walk through the draft ARM for the licensure of day care facilities. It is our goal to streamline the organization of the rules, remove unnecessary requirements while still maintaining health and safety standards for children in licensed and registered care, increase flexibilities and innovative strategies for providers, add a new licensing category for out of school time providers, and implement statutory changes from 2021 and 2023 legislation.

Attached you will find an updated draft of the rule package that includes edits and comments to address the discussion points from last week's meeting. To stay on schedule for our August 29th filing date, we ask for any comments to be returned by close of business on August 16th.

Thank you,

Tracy Moseman

Early Childhood and Family Support Division Administrator
Mt. Department of Public Health and Human Services
1625 11th Ave Helena, Mt. 59601
Helena, Mt. 59620
Office: (406) 444-6676
Cell-(406) 202-9465
Website: [Early Childhood and Family Support \(mt.gov\)](http://EarlyChildhoodandFamilySupport(mt.gov))

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 XCVII, and the repeal) PROPOSED ADOPTION AND
of ARM Title 37, chapter 95) REPEAL
pertaining to the licensure of day care)
facilities)

NEW RULE I GENERAL DEFINITIONS (1) "Applicant" means an individual or legal entity who has made a formal request for a child care license or registration.

(2) "Capacity" means the maximum number of children a facility is authorized by the department to have in care at any given time.

(3) "Child" is defined in 52-2-703, MCA, and means:

(a) a person under 13 years old; or

(b) a person with special needs, as defined by the department, who is under 18 years old or is 18 years old and a full-time student expected to complete an educational program by 19 years old.

(4) "Child care" has the same meaning as "day care," as defined in 52-2-703, MCA, and means licensed or registered child 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. The term does not include:

(a) school-age care, unless the provider opts to be licensed or registered.

(b) informal short term, drop-in child care provided on an unscheduled or on-demand basis while parents attend discrete activities like meetings, appointments, or leisure activities, unless the provider opts to be licensed or registered;

(c) recreational, creative, educational, or religious programs and camps operating at specific and limited times of the year;

(d) programs established chiefly for educational purposes that limit their services to children who are three years old or older, unless the provider opts to be licensed or registered;

(e) relative care, unless they opt to be registered; or

(f) Family, Friend, and Neighbor care, unless they opt to be registered.

(5) "Child care center" has the same meaning as "day-care center" as defined in 52-2-703, MCA, and means an out-of-home place in which child care is provided to 16 or more children on a regular basis. The term does not include a place where child care is provided if a parent of a child for whom child care is provided remains on the premises, unless the parent is a director/owner, staff member, support staff, or volunteer of the child care center, or unless the child care center is on the premises or campus of an employer who employs the parent.

(6) "Child care facility" has the same meaning as "day-care facility" as defined in 52-2-703, MCA.

(7) "Child Care Licensing (CCL)" is the program at the Montana Department of Public Health and Human Services that regulates and supports child care providers.

(9) "Continuous" means without interruptions, gaps, or stopping.

Commented [A1]: This is the statutory definition pursuant to Mont. Code Ann. 52-2-703(1).

Commented [A2]: This is intended to mean on the premises of the child care center itself - in the room with the children in care.

Commented [A3R2]: Review of the 2001 legislative history contextualizes that the statutory changes were designed to address drop-in child care facilities. There does not appear to have been any debate or discussion of employer child care facilities.

A parent being present can vary by day. A facility that enrolls children who do not have parents working on the premise would be required to be licensed.

(10) "Department" means the Montana Department of Public Health and Human Services.

(11) "Discrimination" means unjust or prejudicial treatment in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin, marital status, age, or physical or mental disability. Any determination of discrimination will be made by the Montana Human Rights Bureau.

(12) "Drop-in child care" means a child care facility which only provides care to children on an unscheduled or on-demand basis while parents/guardians attend discrete activities.

(13) "Family child care facility," or "family day care home" is defined in 52-2-703, MCA, and means a private residence or other structure in which child care is provided to three to eight children on a regular basis. A person who provides child care in a private residence for six or fewer children may opt to be registered as a family child care facility if that person receives child care subsidy payments as described in 52-2-713, MCA.

(14) "Family, Friend, and Neighbor (FFN)" means a child care provider who opts to be registered who can provide care for no more than six children from separate families or all children from a "sibling group."

(15) "Group child care facility" or "group day-care home" is defined in 52-2-703, MCA, and means a private residence or other structure in which child care is provided to nine to 15 children on a regular basis.

(16) "Group size" means the number of children in a defined space or intentionally grouped around an activity.

(17) "Harm to children" means harm to a child's health, safety, or welfare that falls within the definitions of child abuse or neglect in 41-3-102, MCA.

(18) "Infant" means a child through 11 months old.

(19) "Irregular" means periods of time less than six hours a day or for no more than three consecutive weeks.

(20) "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.

(21) "License" is defined in 52-2-703, MCA, and is required for child care centers and is optional for school-age care and drop-in child care facilities. License statuses include:

(a) "Probationary license" means a child care license with a status that has been reduced for a specified period of time based on 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.

(b) "Provisional license" means a license status that is given to a child care provider if the provider does not meet all the requirements, but is attempting to comply. This status can be granted for a period of up to three months, and may be renewed. This license status is used for current licensees who are renewing and for new providers after their pre-licensing inspection.

Commented [A4]: 49-2-312(2) generally prohibits discrimination based on vaccination status. However, the statute does not apply to child care facilities, thus HRB does not have authority over these complaints. See comment on page 49 for full legal explanation.

(c) "Regular license" means a license status that is given upon determination that the child care provider is meeting all requirements set forth for that specific type of licensed child care.

(d) "Revocation" or "revoked license" means an enforcement action by the department to close a child care facility and permanently remove the license.

(e) "Suspended license" means an enforcement action by the department to put a license on hold to protect the health, safety, or welfare of enrolled children or the public.

(22) "License exempt" means a Relative Care Exempt provider or FFN provider who opts to be registered.

(23) "Licensee," "owner," or "registered provider" means the legally responsible person or organization who holds a license or registration from the department.

(24) "Negative action" means denial, suspension, revocation, or modification of a license or registration.

(25) "Night care" or "non-traditional hours" means care provided for a child between the hours of 6 p.m. and 6 a.m.

(26) "Overlap care" means care provided at a child care facility for children three years and older, and approved by the department for a designated time period not to exceed three hours when the number of children in care may exceed the number of children on the license.

(27) "Parent" or "guardian" means birth parent, custodial parent, adoptive parent, foster parent, legal guardian, or those authorized by the parent or entity legally responsible for the welfare of the child.

(28) "Pre-inspection" means a child care licensing or registration inspection before a child care provider begins providing care. The pre-inspection ensures the applicant has the required components in place to be a licensed or registered child care facility, excluding FFNs and Relative Care Exempt providers.

(29) "Premises" means the private residence, facility, or other structure in which licensed or registered child care will be provided and the associated approved outdoor space.

(30) "Provider" means the applicant, the license holder, or registration holder.

(31) "Registration" is defined in 52-2-703, MCA, and is required for group child care facilities and family child care facilities. "Registration" also means department approval of a Relative Care Exempt provider or FFN provider who opts to be registered. Registration statuses include:

(a) "Probationary registration" means a child care registration that has been reduced for a specified period of time based on a registration 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.

(b) "Provisional registration" means a registration status that is given to a family or group child care provider if the provider does not meet all the requirements, but is attempting to comply. This status can be granted for a period of up to three months, and may be renewed. This registration status is used for current registration holders who are renewing and for new providers after their pre-registration inspection. This status does not apply for FFNs or RCEs Relative Exempt Care providers.

(c) "Regular registration" means a registration status that is given upon determination that a registered provider is meeting all requirements set forth for that specific type of registered child care.

(d) "Revocation" or "revoked registration" means an enforcement action by the department to close a child care facility and permanently remove the registration.

(e) "Suspended registration" means an enforcement action by the department to put a registration on hold to protect the health, safety, or welfare of enrolled children or the public.

(32) "Regular basis" is defined in 52-2-703, MCA, and means providing child care to children of separate families for any daily periods of less than 24 hours and for three or more consecutive weeks.

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

(34) "Relative care exempt (RCE) provider" means a relative care provider who opts to be registered by the department to receive payments to provide child care.

(35) "Renewal" is a process for providers to demonstrate ongoing compliance with licensing or registration requirements and the department to reissue a license or registration to continue operating a child care facility.

(36) "School-age care" means regularly scheduled care exclusively for school-age children during out-of-school-time hours, licensed by the department.

(37) "School-age child" means a child who is five years old or older.

(38) "Sibling group" means all children are from the same household.

(39) "Staff" refers to all persons who work or substitute in a child care facility, including directors, and count in child-to-staff ratio.

(40) "Supervision" means the provider and/or such staff as are necessary to maintain required child-to-staff ratios must be able to see or hear the children at all times.

(41) "Support staff" means a staff member of a child care provider who does not participate in a caregiving role and is not counted in child-to-staff ratios. Examples of support staff are cooks, administrative staff, or cleaning staff.

(41) "Technical assistance" means education, training, coaching, and other support provided by the department, its partners, or its contractors to child care providers and staff to assist in meeting licensing and registration requirements and enhancing quality of care.

(42) "Toddler" means a child who is 12 months old through 36 months old.

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

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

NEW RULE II TYPES OF LICENSES AND REGISTRATION (1) Montana has different types of child care licenses and registrations, which vary by the number of children in care, the care settings or facility type, and sometimes the ages of children in care. Providers have choice in selecting their license or registration category based on the benefits and requirements associated with each type of care.

Commented [A5]: Statutory definition pursuant to Mont. Code Ann. 52-2-703 (17)

Commented [A6]: This is a defined term for child care licensing. Care provided to children who are school-aged would not be called "school-age care" if not licensed.

(a) Child care can be provided in child care centers, group child care facilities, family child care facilities, school-age care facilities, drop-in child care facilities, FFN providers, and RCE providers.

(b) Each rule in this child care licensing chapter describes the types of child care to which it applies.

(i) When the rule refers to "all licensed child care facilities," that includes child care centers, school-age care facilities if they choose to be licensed, and drop-in child care facilities if they choose to be licensed.

(ii) When the rule refers to "all licensed and registered child care facilities," that means licensed child care centers, licensed school-age care facilities, licensed drop-in care facilities, registered group child care providers, registered family child care providers, and registered FFN providers.

(iii) RCEs are only included when specifically referenced in the rule.

(2) Any provider serving seven or more children on a regular basis must be licensed or registered.

(a) Child care centers must be licensed.

(i) Drop-in child care facilities and school-age care facilities have the option of being licensed.

(b) Group child care facilities serving nine to 15 children and family child care facilities serving seven or eight children must be registered.

(i) Providers serving three to six children have the option of registering as a family child care provider or as an FFN provider. Registration is required for providers receiving subsidy payments.

(ii) RCE and FFN providers have the option of being registered.

(3) Child care types are determined based on the following criteria:

(a) RCE providers provide care in a private residence for either a sibling group of any size or no more than two children from separate households.

(b) FFN providers provide care in a private residence either for a sibling group of any size or for no more than six children from separate households.

(c) Family child care facilities provide care in a private residence or other structure for three to eight children on a regular basis.

(d) Group child care facilities provide care in a private residence or other structure for nine to 15 children on a regular basis.

(e) Child care centers provide care in an out-of-home setting for 16 or more children on a regular basis.

(f) School-age care facilities provide care on a regular basis only to school-age children and during out-of-school-time hours.

(g) Drop-in child care facilities provide care for children in an out-of-home setting on an unscheduled or on-demand basis while parents attend discrete activities, like meetings, appointments, or leisure activities.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE III DETERMINING FACILITY TYPE AND COUNTING CHILDREN ON LICENSE OR REGISTRATION

(1) The facility type is determined by:

(a) the provider's application;

- (b) the license or registration capacity for the facility;
 - (c) the space designated for the facility;
 - (d) the number of staff members available to meet the child-to-staff ratio requirements; and
 - (e) whether any other safety, health, or program requirements are affected or violated.
- (2) Children of staff or owners who are present in the child care space during child care hours are included when counting children for license or registration type and capacity.
- (a) Children of owners who attend school full time will not be included when counting children.

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

- NEW RULE IV CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION (1) A licensed or registered child care facility may not provide care for more than the number of children permitted at any one time by its license or registration.
- (2) Child care centers and licensed drop-in child care facilities must meet the following requirements:
- (a) The child-to-staff ratio and maximum group size are:
 - (i) 4:1 for children newborn through 11 months old with a maximum group size of 12;
 - (ii) 6:1 for children 12 months through 23 months with a maximum group size of 12.
 - (iii) 8:1 for children two years old with a maximum group size of 16;
 - (iv) 10:1 for children three years through five years old with a maximum group size of 20; and
 - (v) 20:1 for children six years old and over with a maximum group size of 40.
 - (c) When children of different ages are mixed, the child-to-staff ratio and group size for the youngest child in the group must be maintained.
 - (d) Only the director, site directors, lead teachers, teachers, trainees, and substitutes may be counted as staff when determining the child-to-staff ratio.
 - (e) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.
- (3) Licensed school-age care providers must have a maximum child-to-staff ratio of 20:1 for children five years old and over with a maximum group size of 40.
- (a) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.
 - (b) School-age care providers may exceed the group size limitation during transportation
- (4) At nap time in licensed child care centers, the child-to-staff ratio may be doubled for children two years and over when the following conditions are met:
- (a) at least half the children are sleeping;
 - (b) another staff member is onsite in the center and is immediately available;
 - (c) the maximum group size and room capacity are not exceeded; and

(d) the staff member responsible for direct supervision of the napping children is not a trainee.

(5) Family and group child care facilities must meet the following staffing requirements:

(a) Family and group child care facilities serving mixed age groups may use an 8:1 child-to-staff ratio, with no more than three children under two years old.

(i) Any time there are more than three children under two years old in a program serving mixed age groups, there must be at least two staff members present with the group of children.

(ii) During approved overlap care times, family and group child care facilities may use a 10:1 child-to-staff ratio.

(b) Family and group child care facilities serving solely children under two years old must use a 4:1 child-to-staff ratio.

(c) There must be sufficient staff so that an adult is always present and supervising all children.

(6) Overlap care may be approved by the department for family child care and group child care facilities in situations, such as before and after school, when the number of children in care over three years old exceeds the licensed capacity for a short period of time. Overlap care must meet the following requirements:

(a) overlap care for children under three years old is not permitted;

(b) overlap care must not exceed three hours total in any day;

(c) group child care facilities may care for up to four additional children during the approved overlap time;

(d) family child care facilities may care for up to two additional children during the approved overlap time;

(e) child care facilities providing two shifts of 12-hour care may be granted three hours of overlap care for each 12 hours of continuous care; and

(f) facilities wanting to provide overlap care must submit a written plan to CCL which includes the specific hours in which the overlap will occur, proof of insurance to care for the total number of children, and documentation of square footage sufficient to care for the total number of children.

(i) A facility must not provide overlap care until it has received written approval of this plan from CCL.

(7) Children must be supervised at all times.

(8) Staff providing direct care must be responsible for protection, supervision, and guidance of children through active involvement or direct observation.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE V LICENSE OR REGISTRATION APPLICATION (1) Any individual, agency, or group may apply for a license or registration to operate a child care facility. Applications may be obtained from the Department of Public Health and Human Services, Early Childhood and Family Support Division, Child Care Licensing Program, P.O. Box 4210, Helena, MT 59620-4210 or at <https://dphhs.mt.gov/ecfsd/childcare/childcarelicensing>.

(2) Applications for a license or registration by American Indians residing on American Indian reservations must follow the requirements of 52-2-722, MCA.

(3) The Department will determine whether or not a license or registration will be issued within 30 days of receipt of the application.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE VI RCE AND FFN APPLICATION REQUIREMENTS

(1) RCE and FFN providers must meet the following requirements to be registered under this chapter:

- (a) be 18 years old or older;
- (b) limit the care they provide to a period of less than 24 consecutive hours;
- (c) have satisfactory background check results for the applicant. If care is provided in the applicant's home, all adults who reside there must also have satisfactory background check results;
- (d) complete orientation approved by the department that includes health and safety training; and
- (e) complete a department-approved health and safety review course at least every three years.

(2) In addition to the requirements in (1), FFN providers must hold current certification for infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting.

(3) For payment purposes, subsidized care provided in a child's home can only be paid to approved FFN and RCE providers, pursuant to ARM 37.80.208.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE VII ISSUING A LICENSE OR REGISTRATION (1) The department must conduct a pre-inspection with all child care center, school-age care, drop-in child care, group child care, and family child care license or registration applicants before the applicant can care for children.

(a) FFN and RCE providers are not subject to pre-inspection requirements.

(2) The department will issue a 90-day provisional license or registration following successful pre-inspection. The facility can begin caring for children under the provisional license or registration.

(3) The department will observe the facility during the provisional license or registration period while children are in care to assess compliance with requirements before removing the provisional status.

(4) The department will issue a regular license or registration after the observation and any required compliance measures. The department issues regular licenses and registrations for a period of one year.

(5) The department must recognize the status of and may not require a state license or registration for a facility that is licensed as a child care facility by a branch of the United States armed forces, including the United States coast guard.

AUTH: 52-2-704, MCA

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

Commented [A7]: CCDF requires annual inspections pursuant to 45 CFR 98.42(b)(2)(i)(B), and name-based background checks are also required annually.

NEW RULE VIII RENEWING A LICENSE OR REGISTRATION (1) A child care provider must submit an application for renewal at least 60 days prior to expiration of the license or registration.

(2) Provided a complete renewal application is filed timely, the expiring license or registration will remain in effect until the department makes a determination on the renewal application.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE IX LICENSE OR REGISTRATION APPLICATION DENIAL

(1) A child care license or registration application must be denied if:

(a) the application process has exceeded 90 days from the date the application is received because the applicant has not submitted all required materials to the department;

(b) the applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, age, marital status, mental or physical disability, or national origin of the parent/guardian or the child; or

(c) background check results include offenses on the part of the applicant for which the application must be denied.

~~(2) An applicant for RCE or FFN license exempt registration must be denied if the parent/guardian and provider reside at the same residence, but the proposed care provider is not an approved relative care provider as defined in [NEW RULE 4(34)].~~

AUTH: 52-2-704, MCA

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

NEW RULE X TECHNICAL ASSISTANCE (1) The department provides the following licensing and registration support:

(a) assistance to current and prospective providers to understand and meet licensing and registration requirements;

(b) consultation with child care providers on enrichment experiences for children, proper environment, and nutrition; and

(c) referral services and technical assistance to child care providers for staff training and development. Technical assistance may be concurrent with other department actions.

AUTH: 52-2-704, MCA

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

NEW RULE XI LICENSE OR REGISTRATION ASSIGNMENT (1) A license or registration is valid only for the licensee or registered provider and premises for which it was issued. A license or registration may not be sold, assigned, or transferred.

(2) Separate licenses or registrations are required for child care facilities maintained on separate premises, even when operated by the same provider.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-721, 52-2-723, 52-2-731, MCA

NEW RULE XII FACILITIES INSPECTIONS (1) The department may inspect the conditions and qualifications of licensed or registered child care facilities or applicants during child care business hours.

- (a) The department may conduct unannounced inspections of licensed or registered child care facilities .
- (b) The department must schedule inspections for FFN providers.
- (2) The department is responsible for inspecting child care facilities in addition to those inspections required by the local health authority and/or local or state fire marshal inspections.
- (3) The department must visit and inspect all licensed and registered child care facilities except RCE providers annually.
- (4) RCE providers and RCE applicants are not subject to any annual inspection or pre-inspection requirements.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE XIII REQUIREMENTS FOR FACILITIES OPERATING WITH JOINT PROGRAMS (1) A child care facility operating in connection with another activity unrelated to child care must meet the following requirements:

- (a) have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services;
- (b) children attending the child care facility must not come in contact with other persons unrelated to child care in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety, and well-being of the children in child care; and
- (c) if multiple programs, including multiple child care facilities in the same commercial building, increase the number of people regularly in the building to 16 or more children, the child care facility must comply with all fire, safety, and sanitation requirements for licensed child care facilities.
- (2) Persons or organizations may be licensed or registered for more than one child care facility.
 - (a) If the child care facility is located in a private single-family living structure, the department will issue only one registration or license for child care in the structure and premises.
 - (b) If more than one child care facility exists in one retail or commercial structure, the department will grant individual licenses to each facility.
 - (c) Multi-family structures, such as an apartment building or duplex, may house multiple child care facilities so long as each is individually licensed or registered and meets the requirements of (1)(a) and (b) above.
- (3) A provider may be licensed or registered to provide care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program.

(a) If the facility is licensed or registered as a child care facility and serves as a foster care home, the department's Child and Family Services Division (CFSD) and Early Childhood and Family Support Division (ECFSD) must both approve the dual license or registration.

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

NEW RULE XIV WAIVERS AND PILOT PROJECTS (1) New and renewal license or registration applications may include written requests to waive any provision of a rule within the child care licensing chapter. The department and its partner agencies (e.g., local public health departments) may grant waivers if the department determines that the health and safety of the children in care are not diminished. The written request must:

- (a) include the basis for request, such as significant hardship to provider or facility;
 - (b) propose an alternative that is consistent with best practices in early childhood or school-age care; and
 - (c) demonstrate that the alternative will meet the intent of the rule.
- (2) Proposals for innovative pilot projects will be considered by the department upon written request. The department may grant an extended provisional license or registration for approved projects that meet all criteria for provisional license or registration status. Projects must not be implemented without prior written approval from the department. The department reserves the right to revoke such extended provisional licenses or registrations.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE XV PROGRAMMING DEFINITIONS (1) "Guidance approach" means the use of direction to resolve mistaken behavior without punishment.

- (2) "Positive child guidance" means age-appropriate, non-punitive methods used to redirect a child to achieve a desired behavior.
- (3) "Programming" means the activities, schedules, and curriculum of a child care facility.
- (4) "Punishment" means any form of discipline that causes pain, discomfort, humiliation, shame, or fear, including name-calling, spanking, slapping, pinching, pulling, and hitting with an object.
- (5) "Screen time" means time during which content on a mobile phone, tablet, computer, television, or other device can be viewed.

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

NEW RULE XVI GENERAL PROGRAMMING REQUIREMENTS (1) Child care centers, group child care facilities, family child care facilities, and licensed drop-in child care facilities must have a written plan of daily activities and routines. Programming must:

(a) be flexible to accommodate the ages and needs of individual children and the group. Both active and passive learning experiences, and outdoor play each day except when precluded by weather, must be provided under direct supervision;

~~(b) include diverse experiences during the day for each child with opportunity for quiet and active experiences, and experience with different types of equipment, and materials;~~

~~(c) include developmentally appropriate activities for the children which foster sound social, intellectual, emotional, and physical growth including:~~

~~(i) opportunities for individual and small group activities;~~

~~(ii) time and opportunity for creative experiences for children through art, music, books, and stories, and dramatic play;~~

~~(iii) outdoor play each day except when precluded by weather; and~~

~~(iv) 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. Staff are required to secure a release from parents/guardians before children are taken on field trips;~~

~~(d) ensure facilities maintain sufficient quantity and quality of materials and equipment to permit multiple use of the same item by several children;~~

~~(e) ensure facilities provide play equipment and materials that include items from each of the following six categories:~~

~~(i) dramatic role playing;~~

~~(ii) cognitive development;~~

~~(iii) visual development;~~

~~(iv) auditory development;~~

~~(v) tactile development; and~~

~~(vi) large muscle development;~~

~~(f) ensure facilities provide durable, safe, clean, and child-sized furniture or furniture adapted for children's use;~~

~~(g) ensure facilities provide storage shelves for children at their own level;~~

and

~~(hc) limit screen time.~~

~~(2) School age care facilities must provide:~~

~~(a) a sufficient quantity and variety of age-appropriate arts and crafts supplies, construction materials, music and sound devices, table games, books, and gross motor materials such as balls and jump ropes;~~

~~(b) materials that:~~

~~(i) promote imagination and creativity;~~

~~(ii) promote communication and literacy skills;~~

~~(iii) encourage social skill development;~~

~~(iv) promote numeracy, math, and spatial ability;~~

~~(v) encourage discovery, exploration, and reasoning; and~~

~~(vi) promote learning skills.~~

~~(32) Child care centers, group child care providers, family child care providers, and licensed drop-in child care providers offering night care must meet the following criteria in addition to compliance with other requirements:~~

~~(a) develop plans for staff, equipment, and space which will provide for the personal safety and emotional and physical care of children away from their families at night. ;and~~

Commented [A8]: These were included to reflect national best practices, but CCL proposes removing these requirements from licensing and moving them into the quality initiative.

Commented [A9]: Same rationale as above.

~~(b) special attention is given by the staff to provide for a transition into this type of care appropriate to the child's emotional needs.~~

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-722, 52-2-723, 52-2-724, 52-2-731, , , MCA

NEW RULE XVII INFANT AND TODDLER ACTIVITY REQUIREMENTS

(1) Child care centers, group child care facilities, family child care facilities, and licensed drop-in child care facilities that provide care for children under 36 months old must have a written plan of daily activities and routines that ensures:

(a) a child who is awake must not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, highchair, or other apparatus;

~~(b) each child has individual personal contact with the same adult on a regular daily basis at least once each hour during nonsleeping hours;~~

~~(c) children are taken outside for some period during each day in good weather; and~~

(~~eb~~) each infant can maintain the infant's own pattern of sleeping and waking periods according to instructions from the parents/guardians.

AUTH: 52-2-704, MCA

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

NEW RULE XVIII POSITIVE CHILD GUIDANCE (1) All staff of licensed and registered child care facilities must use guidance approaches appropriate to the child's age and developmental level to help children resolve conflicts, manage transitions, engage in challenging situations, or express feelings, needs, and wants.

(a) Positive child guidance should include forming positive adult-child relationships, clear direction, showing positive alternatives, redirection, and setting expectations and clear limits that foster the child's ability to self-regulate

(b) All staff must model appropriate behaviors for children.

(2) All child care staff are prohibited from using abusive or physical punishment, including:

(a) spanking or other forms of physical punishment;

(b) shaking an infant or child of any age;

(c) any punishment or discipline that is humiliating, shaming, frightening, or otherwise damaging to the child or their family; or

(d) punishment for any toilet training issue.

(3) Parental or guardian permission does not allow for the use of any physical punishments or other approaches to discipline listed in (2).

AUTH: 52-2-704, 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, 53-2-211, 53-2-212, 53-4-611, MCA

NEW RULE XIX ADMINISTRATIVE DEFINITIONS (1) "Abusive head trauma" means a preventable and severe form of physical child abuse that results in an injury to the brain of a child caused by violent shaking and/or blunt impact.

(2) "Expulsion" or "expel" means terminating the enrollment of a child.

Commented [A10]: Same as above.

(3) "Shaken baby syndrome" is a preventable, severe form of physical child abuse resulting from violently shaking an infant by the shoulders, arms, or legs, and which may result from both shaking alone or from shaking with impact.

(4) "Suspension" means reducing the amount of time a child may be in attendance, either by requiring the child to stop attending for a particular period of time or reducing the number of days or hours a child may attend. Requiring a child to attend the facility in a special place away from the other children in the regular group setting is included in this definition.

(5) "Volunteer" means any person who is not compensated with employment pay or benefits.

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

NEW RULE XX EMERGENCY COMMUNICATION (1) Each licensed and registered child care facility must have:

- (a) a working telephone;
- (b) telephone numbers of emergency services and the Emergency Montana Poison Control Center (800) 222-1222 posted where they are visible to staff; and
- (c) emergency contact information for each child easily accessible to staff in a location that maintains privacy for families.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-734, 52-2-735, MCA

NEW RULE XXI POLICY REQUIREMENTS (1) All licensed child care providers and registered group and family child care providers must adopt and follow written policies for first aid consistent with recommendations from Caring for Our Children: National Health and Safety Performance Standards, Guidelines for Early Care and Education Programs. These must include:

- (a) procedures for handling medical emergencies;
- (b) a plan for preventing and responding to emergencies due to food and allergic reactions;
- (c) a plan for providing cardiopulmonary resuscitation (CPR) in a timely manner;
- (d) directions to complete an incident or injury report:
 - (i) If the incident only requires onsite first aid, a copy of the report must be provided to the parents/guardians of the children involved, and a copy retained on file at the child care facility.
 - (ii) If the incident requires emergency services, hospitalization, or medical treatment, a copy of the report must be provided to the parents/guardians of the children involved, and a copy retained on file at the child care facility. The provider must inform also CCL within 24 hours of the incident.
- (e) directions for calling parents/guardians or someone else designated as responsible for the child when a child is sick or injured; and
- (f) a medication administration policy which must include:
 - (i) types of medication which may be administered; and

(ii) medication administration procedures for each child, including the route of medication administration, the amount of medication given, and the times when medication is to be administered.

(2) All licensed child care facilities and registered group and family child care facilities must have a written emergency disaster plan for each structure in which child care is provided. Emergency disaster plans must include:

(a) plans for evacuation, including identification of at least one off-site gathering point;

(b) plans to address children's individual needs, including mobility and special health care needs;

(c) staff responsibilities;

(d) plans for communicating with parents/guardians and reunifying children with their parents/guardians;

(e) plans to shelter in place and lock down; and

(f) plans for continuity of operations.

(3) All licensed child care providers and registered group and family child care providers serving children under two years old must develop a written policy that describes the practices used to promote a safe sleep environment. All child care staff must sign an acknowledgement indicating that they read and understand the facility's safe sleeping policy.

(4) All licensed child care facilities and registered group and family child care facilities must have a written policy on identifying and preventing shaken baby syndrome and abusive head trauma. The policy must include:

(a) how the child care provider will ensure all staff are knowledgeable about and able to recognize the signs and symptoms of shaken baby syndrome and abusive head trauma;

(b) procedures for coping with a crying, fussing, or distraught infant or child;

and

(c) mandatory reporting of suspected child abuse and neglect.

(5) All licensed child care facilities and registered group and family child care facilities must have a written expulsion and suspension policy.

(6) If providing any transportation, the licensed child care provider and registered group and family child care provider must develop a written transportation policy that outlines safe transport practices.

(7) If providing any opportunity for children to use swimming pools or be near other bodies of water, the licensed child care provider and registered group and family child care provider must develop a written water safety policy that outlines safe supervision practices for children in and around water.

(8) FFN providers have limited policy documentation requirements. FFNs must provide written health and safety standards to parents/guardians and the department relating to:

(a) managing infectious disease;

(b) safe sleep practices, if caring for children under two years old;

(c) medication administration;

(d) food and allergy emergencies;

(e) shaken baby syndrome and abusive head trauma;

(f) emergency preparedness;

(g) transportation safety, if applicable;

(h) expulsion and suspension; and

- (i) mandatory reporting of suspected child abuse and neglect.
- (9) If a child care provider obtains a waiver of any rule in this subchapter approved by the department, the program must develop a written alternative plan that includes policies and procedures to maintain compliance.
- (10) All policies must be reviewed and updated annually by the program.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-734, 52-2-735, MCA

NEW RULE XXII RECORD RETENTION (1) Licensed and registered child care providers may maintain records in paper or electronic format, with the exception of the state-issued emergency contact and consent form, which needs to be in paper form. The department must be able to easily access such records. Records may be stored on-site or in the facility's administrative office.

- (a) The provider must make records available during normal working hours to representatives of the department.
- (2) Upon request, the provider must make records that pertain to their child available to parents/guardians.
- (3) All records that the department requires the provider to maintain must be kept for three years, unless otherwise provided by law.

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

NEW RULE XXIII PROGRAM RECORDS (1) Licensed and registered child care providers must maintain the following records as applicable to the program type:

- (a) All child care licensed and registered child care providers must maintain:
 - (i) a copy of the current license or registration, inspection reports by department staff, and correction plans for deficiencies;
 - (ii) documentation that any vehicle used for transportation of children while in care is registered and insured in accordance with state law;
 - (iii) results of well-water tests and lead paint tests, as applicable;
 - (iv) documentation that the facility complies with sewer requirements of this chapter;
 - (v) a log of fire extinguisher and smoke detector checks;
 - (vi) a medication administration log if medications are administered at the facility; and
 - (vii) a real-time attendance record of the children in care.
- (b) All licensed child care providers and registered group and family child care providers must maintain:
 - (i) proof of current fire and liability insurance coverage for the provision of child care in the facility;
 - (ii) a record of each emergency drill conducted;
 - (iii) a master list of the names, addresses, and phone numbers of all children in care and their parents/guardians;

(iv) for any injury or incident that occurs in the facility, reports which include the date, time of day, nature of the injury or incident, treatment or remediation, and whether the parents/guardians were notified; and

(v) written menu records.

(c) Licensed child care providers must maintain:

(i) an annual inspection report from the state fire marshal or the fire marshal's official designee indicating the fire safety rules have been met; and

(ii) an annual inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities.

(2) If a child care provider obtains a waiver from any rule in this subchapter, a copy of the alternate plan and its approval by the department must be on file.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 52-2-732, MCA

NEW RULE XXIV CHILDREN'S RECORDS (1) All child care staff and volunteers must maintain personal information about a child and the child's family as confidential.

(2) All licensed and registered child care providers must have the following information prior to a child being enrolled in a child care facility. Forms must be signed by the parent or guardian:

(a) Written health information explaining any special medical needs of the child, including allergies, and a health care and medication plan if medication for chronic health conditions is required.

(i) Child care providers administering medications must have necessary medical documentation, including medication authorizations, the name of a health care provider to be contacted in event of an emergency, and the prescription, if required.

(b) Authorization of persons allowed to pick up the child.

(c) An emergency contact and consent form. Once children are enrolled, this form must accompany staff when children are away from the child care site for activities.

(3) All licensed and registered child care providers must maintain the following records related to enrolled children:

(a) the names, addresses, and phone numbers of children and their parents/guardians;

(b) a medication administration log if medications are administered to children at the facility;

(c) for any injury or incident that occurs in the facility, documentation which includes the date, time of day, nature of the injury or incident, treatment or remediation, and whether the parents/guardians were notified;

(d) written parent/guardian permission to swaddle children under three months old, if desired by the parents/guardians;

(e) for children 12 to 18 months old who are placed on a cot or mat, a signed statement indicating that the parents/guardians have given permission for their child to be placed on a cot or mat;

(f) special dietary instructions written by parents/guardians;

- (g) written consent from the parents/guardians for any transportation provided; and
- (h) updated immunization record.
- (4) Children's records must be reviewed and updated as necessary, but not less frequently than once per year.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-735, 52-2-736,
MCA

NEW RULE XXV STAFF RECORDS (1) If a licensed or registered child care provider employs staff, the provider must maintain the following records for each staff member:

- (a) contact information; and
- (b) acknowledgement of and agreement to follow program policies for:
 - (i) identifying and preventing shaken baby syndrome and abusive head trauma;
 - (ii) mandatory reporting; and
 - (iii) safe sleep, if the program provides care for children under two years old.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 52-2-732, MCA

NEW RULE XXVI FAMILY ACCESS TO INFORMATION (1) Before a child is enrolled at any licensed child care facility or registered group or family child care facility, the following information must be made available to all parents/guardians:

- (a) a typical daily schedule of activities;
 - (b) admission requirements, enrollment procedures, and hours of operations;
 - (c) frequency and type of meals and snacks served;
 - (d) fees and payment plan;
 - (e) regulations concerning sick children;
 - (f) transportation and trip arrangements, if applicable;
 - (g) positive child guidance policy; and
 - (h) expulsion and suspension policy.
- (2) All child care facilities must post a copy of the facility license or registration and the phone number of state and local Early Childhood and Family Support Division offices in a place where parents/guardians can see them. Parents/guardians should be encouraged to contact the division if they have questions regarding the license or registration or child care regulations.
- (3) All child care facilities must allow custodial parents, non-custodial parents, and legal guardians access to the facility at any time during which child care is provided, unless there is a current court order preventing parent-child contact.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-723, 52-2-731, 52-2-732, 52-2-735, 52-2-736,
MCA

NEW RULE XXVII NOTIFICATIONS TO THE DEPARTMENT (1) Within ten days of the change, providers must notify the department of any changes that would

affect the terms of the license or registration, including changes in staff, temporary or permanent closures, change in ownership of the program, changes in the category of license or registration based on the number and ages of children in child care, change to the business or mailing address, or changes to the child care property.

(3) All staff and owners of licensed and registered child care facilities are mandatory reporters of suspected child abuse and neglect as defined in 41-3-201, MCA. Any child care staff member or owner who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter to the department's child abuse hotline at (866) 820-5437. The staff member or owner must make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

(4) All licensed and registered child care providers must report to CCL the following events involving the child care facility, regardless of whether it occurs on or away from the premises within 24 hours:

- (a) 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;
- (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, if the death 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;
- (j) fire involving the fire department; and
- (k) any environmental danger or other hazard at the facility that the provider is aware of that could affect the health, welfare, or safety of children in care.

AUTH: 52-2-704, MCA

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

NEW RULE XXVIII SAFETY AND FACILITIES DEFINITIONS (1) "Bodies of water" means rivers, streams, ponds, ditches, fountains, and other water sources into which a child can step.

(2) "Crib" means a bed that is designed to provide a sleeping environment for children under two years old that meets U.S. Consumer Product Safety Commission requirements.

(3) "Exit" means the point (door or window) that allows people inside the facility to leave and move to the outside of the facility.

(4) "Firm sleep surface" means a crib mattress or a cradleboard.

(5) "Means of egress" means a continuous and unobstructed path from any point inside a facility to a safe place outside of the facility.

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

(7) "Remote means of egress" means 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.

(8) "Safe sleep environment" means an environment where a child under 12 months old is placed on a firm sleep surface with no incline and no items in the sleeping environment other than a pacifier, and a child 12 months old or older is placed on a firm sleep surface or on a cot or mat. A safe sleep environment does not include waterbeds, water mattresses, gel pads, or sheepskin covers.

(9) "Sauna" means a small room or structure used for hot-air or steam baths.

(10) "Spa" means a hot tub or similar large tub of hot water.

(11) "Transportation" means any time a child is transported in a motor vehicle.

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

NEW RULE XXIX HAZARDS (1) All licensed and registered child care providers are responsible for keeping hazardous materials and objects inaccessible to children in care, including personal property of staff and licensee.

(2) Cleaning materials, flammable liquids, aerosol cans, and other toxic materials must be kept in their original containers and in a place inaccessible to children. They must not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children when used.

(3) Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.

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

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are easily cleanable and reasonably clean;

(c) the building and grounds are reasonably free of insects, rodents, and other vermin;

(d) the building and grounds are reasonably neat and free from the accumulation of dirt, rubbish, or other health and safety hazards;

(e) all rooms must be dry, well ventilated, and well lit; and

(f) the children attending the facility must not be exposed to paint containing lead in excess of .0009%.

(5) During business hours, any guns stored on the premises of a child care facility must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.

(6) Electrical outlets must be tamper-resistant or covered in areas occupied by children under five years old, and exposed light sockets must be suitably protected to prevent electrocution.

(7) Toys, play equipment, and any other equipment used by the children must be sturdy and free from rough edges, sharp corners, splinters, and must be kept in good repair.

(8) Choking hazards must not be accessible to children who are still placing objects in their mouths, including:

(a) toys and objects with a diameter of less than one inch (2.5 centimeters) and objects with removable parts that have a diameter of less than one inch (2.5 centimeters);

(b) plastic bags;

(c) Styrofoam objects; and

(d) balloons.

(9) Full-size trampolines, ball pits, and other inflatable play structures are prohibited for use by children in care and, if they exist on the premises, must be inaccessible to children in care.

(a) Mini trampolines are permitted when used according to manufacturer's specifications, by one child at a time, and with supervision.

(10) Bathtubs, buckets, water tables for play, and other water receptacles must be emptied immediately after use.

(11) Guardrails, gates, or protective barriers must be installed along open-sided walking surfaces including stairs, ramps, and landings, where there is more than a 36-inch vertical distance to fall.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXX ANIMALS (1) Any pet or domesticated animal present at any licensed or registered child care facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and either pose no safety threat to children or adults, or be kept separate from children, families, and staff.

(2) Staff must closely supervise all interactions between children and animals and instruct children on safe behavior when near animals.

(3) The program is responsible for:

(a) maintaining the animal's vaccinations and vaccination records; and

(b) making vaccination records available to the department upon request.

(4) The child care provider must make reasonable efforts to keep stray animals off the premises.

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

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXI BUILDING REQUIREMENTS RELATED TO EXITS (1) In an emergency, all occupants must be able to escape from a child care facility in a safe and timely manner.

(a) Doorways, aisle ways, corridors, and stairs must be clear of any obstruction.

(i) Gates or guards at the top and bottom of stairways are allowed if they have latching devices that are easily opened by adults in case of emergency.

(ii) Sleeping equipment must be arranged to permit easy access to every child and unobstructed means of egress.

(2) All facilities must have two exits that create remote means of egress on each level that is used for child care.

(a) All nap rooms must have at least two means of egress.

(b) Exits/means of egress must meet the following requirements:

(i) one exit must be a door that is at least 32 inches wide and 80-inches tall; and

(ii) the second exit may be a window that provides a clear opening of at least 20 inches in width or 24 inches in height and 5.7 square feet in area. The bottom of the exit must not be more than 44 inches above the floor.

(3) Exit doors, windows, and their opening hardware must be maintained in good repair.

(4) If a child care provider chooses to lock exterior facility doors to prevent unauthorized access to the facility or to prevent a child from escaping, the lock:

(a) may not prevent free escape from the interior;

(b) must be easily opened with one motion from the inside of the facility; and

(c) may not prohibit access by parents/guardians. A facility may not use locking devices to prevent unannounced access by authorized individuals, including parents/guardians. If a lock is used, the provider must make adequate provision to allow authorized persons unannounced access to the facility and must provide authorized persons with information about how to gain access.

(5) Children must be able to open every closet door from the inside without a key, a tool, or special knowledge or effort.

(6) Every bathroom door must be designed to permit opening of the locked door from the outside in an emergency. The opening device must be readily accessible.

(7) This rule applies to all licensed and registered child care facilities except RCE facilities.

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

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXII INDOOR SPACE REQUIREMENTS

(1) All licensed and registered child care providers except RCE providers must ensure there is at least 35 square feet of usable floor space per child who will be in a room at any one time. A provider may request a waiver from this rule with an alternate plan, such as when limited indoor space is offset by sheltered outdoor space.

(2) Calculation of the required minimum 35 square feet of space per child must exclude food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, shelving, and other storage spaces.

(3) When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child must be provided except for:

(a) when large group activities, such as educational assemblies, occur; and

(b) periods when children are using their rest equipment.

(4) During sleep periods, the area must be sufficient to provide spacing between the children using sleep equipment.

(5) The equipment and furniture arrangement must permit unobstructed floor area sufficient to allow play appropriate for each group of children in care.

Commented [A11]: This comes from International Building Code, which encompasses International Fire Code. These requirements cannot be amended. Buildings that have been constructed according to code and have passed inspection should be in compliance with these regulations.

Also, people may care for up to 6 children without needing to be licensed or registered and would therefore not be subject to regulations.

Commented [A12]: 35 square feet is the current requirement in ARM; this proposed rule does not change the required square footage. National best practice has increased to 42 square feet, and the Department decided to retain the more conservative square footage.

Note: Waivers are available under the proposed rules, meaning CCL will work with providers seeking licensing and registration when alternative arrangements can be made to adequately address the space requirements.

(6) In licensed child care facilities that include infants and toddlers, play areas for infants must be separate from play areas used by children over two years old, or not be used for any children over two years old while being used for children under two years old. Sleeping areas must be separate from play areas.

(7) A licensed child care facility must have space, furniture, and equipment to provide for support functions, such as storage, food preparation, custodial services, laundry, and administrative office functions.

(8) Facilities that use shared spaces should care for children in the licensed/registered, dedicated space most of the time.

(9) Family and group child care providers must not use third stories in private homes for child care purposes; such stories must be barricaded or locked to prevent entry by children. The use of second or higher stories in commercial or apartment buildings is subject to fire and building code requirements.

AUTH: 52-2-704, , MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE XXXIII OUTDOOR SPACE REQUIREMENTS (1) Outdoor play space must contain a minimum of 75 square feet of usable space per child accessing the play space at any given time. A provider may request a waiver from this rule if a facility does not have enough outdoor play space to accommodate all enrolled children at one time with an alternate plan such as:

(a) offsetting limited outdoor space with indoor space not included in indoor space calculations, such as a gym, permitting an equivalent activity program; or

(b) offsetting limited outdoor or unfenced space with the availability or use of a nearby school playground, parks, or other safe outdoor play areas.

(2) Outdoor play areas at all child care facilities must be surrounded by a fence or natural barrier that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter.

(a) If a provider submits an alternative plan for outdoor space that includes space not completely surrounded by a fence, the provider must include, in the plan, details about supervision to maintain safety.

(3) Any outdoor play area must be maintained free from health and safety hazards ~~such as wells, machinery, and animal waste.~~

(4) Provisions must be made for both sunny and shady activity areas.

(5) Outdoor areas must be designed or monitored so that all parts are always visible, allowing for direct supervision by child care staff.

(6) All licensed and registered child care providers except RCE providers must anchor outdoor equipment, such as a climbing apparatus, slides, and swings, firmly, and place in a safe location according to manufacturer's specifications.

(7) All licensed ~~and registered~~ child care providers ~~except RCE and FFN providers~~ must maintain ground cover under outdoor equipment, which must be a shock-absorbing surface as defined by the U.S. Consumer Product Safety Commission, or with a minimum of six inches of sand, fine gravel, or woodchips.

(a) School-age care facilities operating on school premises or utilizing other inspected outdoor space must follow the outdoor equipment requirements of the premises and are not subject to additional licensing requirements.

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

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-734, 52-2-735, 52-2-736, MCA

NEW RULE XXXIV FIRE SAFETY REQUIREMENTS (1) Licensed child care facilities must meet International Fire Code requirements to open and operate as a child care facility. New child care center, school-age care, or drop-in care providers should consult with their local jurisdiction or state fire marshal before selecting a facility.

(2) Licensed child care providers must provide CCL an annual inspection report from the state or local jurisdiction fire marshal indicating the fire safety rules have been met.

(a) Providers using a commercial or public space that receive an annual fire safety inspection, such as a school, do not need a separate inspection. The child care provider is responsible for providing a copy of the inspection reports to CCL.

(3) Group child care, family child care, and FFN providers must meet fire safety requirements by:

- (a) having a fire extinguisher that:
 - (i) is easily accessible on each floor level that is used by the child care;
 - (ii) has a minimum level of extinguisher classification of 2A10BC with a hose; and
 - (iii) is installed and maintained in accordance with manufacturer's specifications;
- (b) having operational UL smoke alarms on each floor of the facility that is used for child care that are:
 - (i) installed in accordance with the manufacturer's specifications;
 - (ii) installed in front of the doors to stairways, in corridors of all floors, and in all rooms where children sleep; and
 - (iii) tested at least once a month to ensure that they are operating correctly and replaced every ten years;
- (c) ensuring all wood burning stoves meet building codes and have a protective enclosure if used during the hours of care;
- (d) not using portable electric or unvented fuel-fired heating devices, and ensuring all radiators, if too hot to touch, have a protective enclosure; and
- (e) using extension cords according to manufacturer's specifications and not using an extension cord as permanent wiring.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXV EMERGENCY AND DISASTER PREPARATION (1) All licensed and registered child care providers 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 or emergency.

(2) All licensed child care providers and registered group and family child care providers must conduct eight emergency drills per year, including six fire drills, and two other disaster drills. Providers should identify problems that occurred during the drill and define corrective actions.

(3) FFN providers must conduct at least two disaster drills per year, including one fire drill and one other disaster drill.

(4) All emergency drills must be documented and include the following minimum information:

- (a) who conducted the drill;
- (b) date and time of the drill;
- (c) the number of adults and children present during the drill; and
- (d) the length of time to evacuate.

(5) All licensed and registered child care facilities must have an emergency disaster kit including an emergency supply of blankets, water, food, and supplies.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE XXXVI SAFETY AROUND BODIES OF WATER (1) All licensed and registered child care providers except RCE providers must ensure all in-ground and above-ground swimming pools located in the outdoor play space area or accessible to children are surrounded by a fence that is least five feet high with a locked gate to prevent access to children. The fence must come within 3 ½ inches of the ground and be constructed to discourage climbing. Exit and entrance points must have self-closing, positive latching gates with locking devices a minimum of 55 inches from the ground. The child care building wall must not constitute one side of the fence unless there are no openings in the wall.

(2) Children must not be permitted in hot tubs, spas, or saunas.

(a) Hot tubs must have bolted and securely locked covers.

(b) Spas and saunas must be inaccessible to children.

(3) Ponds and other bodies of water on child care premises must be surrounded by a fence that is at least five feet high to prevent access by children.

(4) Portable wading pools are permitted. If the portable wading pool is filled with water and will sit unused for any period of time prior to use by children, the program must equip the wading pool with a fence, wall, gate, or screen that locks to prevent unsupervised access by children.

(5) When children are swimming or in any body of water, children must be continuously supervised with the following requirements:

(a) Children under 36 months old must have 1:1 supervision and always be either in direct contact or within arm's reach of the supervising adult who must be in the water.

(b) Children ages three to five years old must be supervised using 4:1 child-to-staff ratio. Children must be within arm's reach of the supervising adult who must be in the water.

(6) When children of any age are swimming in a pool or in a body of water without a lifeguard, a staff member with an advanced lifesaving or an equivalent certificate by a recognized organization must continuously supervise children. This staff member must not be counted in the child-to-staff ratio. One person with an advanced lifesaving or an equivalent certificate is required for each group of 25 or fewer children.

(a) A staff member must continuously supervise children using a portable wading pool.

(7) Each swimming pool more than six feet in width, length, or diameter must be equipped with an easily accessible ring buoy and rope and either a throw line or a shepherd's hook of sufficient length to reach the center of the pool from the edge of the pool.

(8) Swimming pool safety rules must be posted near the swimming pool.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, 52-2-735, MCA

NEW RULE XXXVII TRANSPORTATION SAFETY (1) If providing any transportation, all licensed child care providers and registered group and family child care providers must:

(a) obtain written consent from the parents/guardians for any transportation provided; and

(b) develop a written transportation policy that outlines safe transport practices. The plan must describe how children are transported to and from the program, in an emergency, and on field trips. The plan must also address the safety and supervision of children who walk and who arrive by public transportation once they arrive on the child care premises. The plan must include any special arrangements for children with disabilities.

(2) All licensed and registered child care providers providing transportation for children of any age must ensure:

(a) that the operator of the vehicle transporting children be at least 18 years old and possess a valid Montana driver's license;

(b) that the passenger doors on the vehicle transporting children be locked whenever the vehicle is in motion;

(c) with the exception of public transportation that is not required by law to be equipped with safety restraints, that no vehicle begin moving until all children are seated and secured in age and weight-appropriate safety restraints, which must remain fastened at all times the vehicle is in motion;

(d) that all car seats and booster seats be used according to National Highway Traffic Safety Administration standards; and

(e) that children never be left unattended in a vehicle.

(3) All licensed and registered child care providers providing transportation for children under six years old must ensure that an adult accompanies each child to and from the vehicle to the child's home or the home authorized by the parents/guardians to receive the child.

(4) Providers using school buses must comply with the school bus regulations defined in ARM 10.7.110(3) through (5) and ARM 10.64.301.

AUTH: 52-2-704, MCA

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

NEW RULE XXXVIII SLEEPING (1) In all licensed and registered child care facilities except school-age care programs, there must be adequate opportunities for sleep periods during the day in a safe sleep environment suited to individual needs.

(2) In all licensed and registered child care facilities except school-age care programs, each child must have age-appropriate rest equipment and supervision that create a safe sleep environment, meaning:

- (a) for infants:
 - (i) each infant must be provided with a firm sleep surface;
 - (ii) if an infant sleeps in a crib, a firm mattress must be covered by a tight-fitting sheet. Mattresses must fit snugly to prevent the infant from being caught between the mattress and crib siderail;
 - (iii) unless the parents/guardians have 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 while sleeping;
 - (iv) no items are allowed in the crib when an infant is laid down for sleep except for a pacifier that does not include a string;
 - (v) sleep sacks and similar safe sleep clothing may be used if the item does not restrict the infant's arms;
 - (vi) infants under three months old may only be swaddled with written parent/guardian permission on file with the program;
 - (vii) infants over three months old or able to roll over must not be swaddled;
- and
 - (viii) when cribs are used, infants must be continuously supervised through sight or hearing, including proper use of audio or video monitors;
 - (A) In a licensed child care center, a staff member who is not a trainee must remain with children while they are sleeping.
 - (b) for toddlers 12 through 36 months old:
 - (i) children 12 to 18 months old who are placed on a cot or mat must have a signed permission statement in the file indicating that parents/guardians have given permission for their child to be placed on a cot or mat;
 - (ii) toddlers may be provided a clean washable blanket or other suitable covering for their use while sleeping; and
 - (iii) when cots and mats are used, toddlers must be continuously supervised through sight or hearing, including proper use of audio or video monitors.
 - (A) In a licensed child care center, a staff member who is not a trainee must remain with children while they are sleeping.
 - (3) All cries of children during sleep times must be investigated.
 - (4) Any facility providing night care must have a supervision plan which involves practices where no child is left unattended. Staff must be in the immediate vicinity and on the same floor level of sleeping children to adequately hear and respond to the children if they wake up and to respond to any emergency.
 - (5) Children of any age must not be allowed to sleep in a car seat, infant swing, bouncy seat, or other infant apparatus.
 - (6) Sleeping equipment must be thoroughly cleansed before assignment to another child.
 - (7) Crib mattresses must be waterproof and easily sanitized.
 - (8) 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.
 - (9) Each child's bedding must be stored separately.
 - (10) Cribs must be made of durable, cleanable, nontoxic material, and have secure latching devices.
 - (11) All cribs must meet the requirements as specified by the U.S. Consumer Product Safety Commission.
 - (12) Cribs, cots, or mats must be spaced to allow for easy access to each infant and toddler, adequate ventilation, and easy exit.

(13) The use of stackable cribs for infants is permitted until the infants reach one year old or weigh 26 pounds, whichever comes first. Licensed child care providers and registered group and family child care providers must develop a policy that describes the practices to be used to promote a safe sleeping environment when children are sleeping.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXIX MEDICAL HEALTH DEFINITIONS (1) "CPR" means cardiopulmonary resuscitation.

(2) "Health care provider" means a person who is licensed, certified, or otherwise authorized by any U.S. state or by Canada to provide health care and who meets the additional qualifying criteria specified in 20-5-405, MCA.

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

(4) "Medication" includes "prescription medication" and "over-the-counter medication" as defined in this rule.

(5) "Over-the-counter medication" means any medication, ointment, or cream that is topical or oral and is not specifically prescribed by a health care provider, but is recommended by a health care provider or a parent or guardian for a specific child.

(6) "Physician" means a person licensed to practice medicine in any jurisdiction in the United States or Canada and who holds a degree as a doctor of medicine or of osteopathy.

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

(8) "Supplement" means vitamins, herbals, and other topical or oral substances that are not regulated by the U.S. Food and Drug Administration.

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

NEW RULE XL MEDICATION ADMINISTRATION (1) No child care staff of any type of licensed or registered child care provider may administer any medication or supplement to a child without the written authorization of a parent or guardian. The authorization must include the child's name, duration of the authorization, dosage instructions (amount and time), and the signature of the child's parent or guardian.

(2) Any medication or supplement brought into the facility for use by a specific child must be labeled with the following information:

(a) the date range and duration of use;

(b) the child's first and last name;

(c) the expiration date and specific, legible instructions for administration and storage (i.e., the manufacturer's instructions); and

(d) the name of the health care provider, parent, or guardian who made the recommendation.

(3) Any prescription medication brought into the facility by the parent or legal guardian of a child must be kept in the original container labeled by a pharmacist with the date the prescription was filled.

(4) All medications and supplements for children and staff must be kept in a location inaccessible to children.

(5) All medications for children and staff, refrigerated or unrefrigerated, must:

(a) have child-protective caps;

(b) be kept in an orderly fashion; and

(c) be stored away from food and at proper temperatures.

(6) Medication and supplements must not be used beyond the date of expiration. Expired medication and supplements must be properly disposed of or removed from the child care facility.

(7) If an emergency arises and the parent or guardian of the child is unavailable, child care staff may administer medication to a child if either:

(a) a health care provider provides a written authorization containing the child's name, dates for which the authorization is applicable, dosage instructions, and the health care provider's signature; or

(b) a health care provider, emergency service provider, or 911 responder verbally directs the child care staff to immediately administer a medicine to the child, in which case the child must then be transported to a health care facility or a health care provider for follow up care within a reasonable time by the child's parent or guardian or by child care staff.

(8) Child care staff may not give medication to a child in a manner that is inconsistent with the container instructions on dosage or frequency unless directed to do so by a health care provider as provided in 52-2-736, MCA.

(9) If the child care provider elects to administer medication or supplements to children, the provider must maintain a medication administration log with the time, date, and dosage each time the medication is administered to an individual child.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-732, 52-2-733, 52-2-736, MCA

NEW RULE XLI MANAGEMENT OF ILLNESS (1) All licensed and registered child care providers must designate a staff member to check daily the health status of each child immediately upon that child's entry into the child care facility.

(2) All licensed and registered child care providers must exclude any child or staff member with an illness until symptoms have resolved, adequate treatment has been received, or a health care provider states that the person is noninfectious. The following symptoms or illnesses require exclusion:

(a) a fever of 100.4°F that is accompanied by behavior change or other symptoms;

(b) diarrhea;

(c) vomiting more than two times in the previous 24 hours;

(d) mouth sores with drooling, if unable to contain drool, unless a health care provider states that it is a noninfectious condition;

(e) a rash with fever or behavioral change or a rash that is quickly spreading, unless a health care provider states that it is a noninfectious condition;

(f) active tuberculosis, until a health care provider states that the person is noninfectious and can return;

(g) group A strep pharyngitis (strep throat) until the person appears well and at least 12 hours after beginning appropriate antimicrobial therapy;

(h) impetigo, until treatment is initiated and if lesions on exposed skin are covered with a waterproof dressing;

(i) head lice, scabies, or ringworm, until treatment is started. Children and staff can remain in the child care setting until the end of the day;

(j) chickenpox (varicella), until sores have dried or crusted. Child care providers must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents/guardians;

(k) rubella, until seven days after the rash appears;

(l) pertussis, until five days after antibiotic treatment was initiated;

(m) mumps, until five days after onset of parotid gland swelling;

(n) measles, until four days after onset of rash;

(o) hepatitis A, until one week after onset of illness or as directed by the local health authority;

(p) shigellosis, salmonella, or E. coli, until a local health authority clears the person for readmission; or

(q) if the child is unable to participate in activities or needs care from staff that compromises the health or safety of other children.

(3) Children and staff must be excluded from all child care facilities, and a health care provider must evaluate the conditions to ensure the person's return will not harm that person or the other people, when a child or staff:

(a) has symptoms of severe illness, such as fever with behavior change, lethargy, uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, persistent crying, poor food or fluid intake, progressive rash with any other symptoms, or a seizure; or

(b) has persistent abdominal pain for two or more hours, or intermittent abdominal pain associated with fever, dehydration, or other signs or symptoms of illness.

(4) A child or staff member does not need to be excluded, but a child's parents/guardians should be notified of new onset, for minor illnesses or symptoms including:

(a) a runny nose or cough not accompanied by a fever;

(b) pinkeye or other eye discharge not accompanied by fever;

(c) fever without behavior change for people aged four months and older, including children with immunization-related fevers; or

(d) rash without behavior change or fever and that is not quickly spreading.

(5) If a child develops symptoms of any illness other than those included in (2) or (3) while at the child care facility and after the parents/guardians have left, the child care provider must:

(a) isolate the child immediately from other children in a room or area segregated for that purpose; and

(b) contact and inform the parents/guardians as soon as possible about the illness and request they pick up the child.

(6) Disease charts that identify reportable diseases are available from the department. A child care provider must notify the local health authority, on the same day or as soon as possible if no contact can be made the same day, if:

- (a) a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care;
- (b) a child is absent and a reportable communicable disease is suspected; or
- (c) there is an outbreak of any reportable communicable disease detected in a child care facility.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-735, MCA

NEW RULE XLII FIRST AID (1) All child care facilities must maintain a complete, well-stocked, portable first aid kit. The first aid kit must accompany staff and children on trips away from the facility and must contain:

- (a) sterile, absorbent bandages;
 - (b) antiseptic wipes or product to clean wounds and hands;
 - (c) a cold pack;
 - (d) tape and a variety of adhesive bandages;
 - (e) tweezers and scissors; and
 - (f) disposable single use gloves.
- (2) Child care staff must take appropriate precautions to minimize the risk of any child suffering sunburn, heat stroke, or receiving insect bites. Children under six months old should be kept out of direct sunlight.
- (a) Sunscreen must be applied to children over six months old when outdoor conditions dictate.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-736, MCA

NEW RULE XLIII ENVIRONMENTAL HEALTH DEFINITIONS (1) "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.

(2) "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.

(3) "Smoke-free environment" means no smoking, vaping, or use of e-cigarettes.

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

NEW RULE XLIV HEALTH RULES INCLUDED IN INSPECTION BY PUBLIC HEALTH AUTHORITIES (1) Licensed child care providers must provide to CCL an annual training or inspection certificate from their local health authority, except:

(a) Providers using a commercial or public space that receive an annual public health inspection, such as a school, do not need a separate inspection. The child care provider is responsible for providing a copy to CCL.

(2) Child care facilities requiring a public health inspection may request a waiver of any of the environmental health rules in this subchapter. Child care providers will submit a written plan to CCL describing an alternative approach with respect to the rule from which they are seeking a waiver, and how this approach supports child and staff health and safety.

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

NEW RULE XLV SMOKE-FREE ENVIRONMENT (1) All licensed and registered child care providers except RCE providers must provide and ensure a smoke-free and tobacco-free environment for children, ensuring there will be no smoking or use of vapor, tobacco, or alternative nicotine products other than cessation products indoors during child care hours, or outdoors while children are outdoors.

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

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

NEW RULE XLVI OUTDOOR AIR QUALITY (1) All licensed and registered child care providers except RCE providers must reference the guidelines in ARM 37.111.827 to determine local air quality conditions and whether to cancel outdoor activities.

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

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

NEW RULE XLVII INDOOR AIR QUALITY (1) Centralized ventilation systems and air filters in child care facilities, excluding RCEs, must be properly maintained.

(2) Licensed child care facilities must ensure that the temperature is maintained at a minimum of 65°F in the areas used for child care.

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

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

NEW RULE XLVIII HAND HYGIENE (1) Staff, volunteers, and children in all licensed and registered child care facilities, excluding RCEs, must learn and follow good handwashing practices at the following times:

(a) before and after:

- (i) preparing or handling food or beverages, eating, or feeding a child;
- (ii) giving medication or applying a medical ointment or cream; and
- (iii) diapering;

(b) after:

- (i) using the toilet or helping a child use a toilet;

- (ii) handling bodily fluid (mucous, blood, vomit) from sneezing, wiping and blowing noses, or from mouths or from sores;
 - (iii) handling animals or cleaning up animal waste;
 - (iv) cleaning or handling the garbage; and
 - (v) applying sunscreen and/or insect repellent.
- (2) All licensed child care providers and registered group and family child care providers must provide soap and disposable or single-use towels or other hand-drying devices at all hand washing sinks. Common-use cloth towels are prohibited.
- (3) All licensed child care providers must post handwashing signs in all food preparation, hand washing, diapering, and toileting areas.

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

NEW RULE XLIX BATHROOM HYGIENE (1) Licensed child care facilities must provide lavatories (sinks), water closets (toilets), and urinals in the ratio of the number of each to the number of individuals using them, including children, staff, and volunteers, as follows:

- (a) lavatories (sinks): 1:15;
 - (b) water closets (toilets): 1:15; and
 - (c) for urinals, substitute half of the number of toilets required, if over 20 males.
- (2) All licensed and registered child care facilities must provide toilet tissue next to all toilets.
- (3) Hand sinks in all licensed and registered child care facilities must have water at a temperature of at least 100°F and not more than 120°F.
- (4) In licensed and registered child care facilities where toothbrushing is an activity, toothbrushes must be managed in a way that avoids contamination.

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

NEW RULE L SOLID WASTE MANAGEMENT (1) All licensed and registered child care providers must ensure that solid waste is safely stored and disposed of.

- (a) Store all solid waste between removals in containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof.
- (b) Clean all solid waste containers frequently.
- (c) Store solid waste containers in a way that prevents the containers from being tipped, protects them from deterioration, and allows easy cleaning below and around them.
- (d) Remove solid waste at least weekly.

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

NEW RULE LI LAUNDRY AND CLOTHING (1) All licensed and registered child care providers must ensure that children's wet or soiled clothing is changed

promptly. Facilities must have a supply of spare clothing to allow at least one change per day. Soiled clothing must be placed in a sealed bag and returned to the parent or guardian.

(2) Licensed and registered child care providers must ensure that soiled laundry does not endanger the health of children by:

(a) refraining from storing soiled laundry in a dining, food preparation, or food storage room;

(b) ensuring soiled laundry is not accessible to children;

(c) providing sufficient space for sorting and storing clean and soiled laundry so clean and soiled laundry do not contact the same surface or each other; and

(d) laundering bedding whenever it is soiled.

(3) Staff working with infants in licensed child care facilities must ensure clothing worn to and from work is covered by or replaced with a clean, comfortable, nonirritating, and washable smock or similar clothing.

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

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

NEW RULE LII SANITATION (1) All licensed and registered child care providers must:

(a) provide sanitary drinking facilities for each child;

(b) clean and sanitize their toys routinely. Toys must be cleaned and sanitized in a solution containing one tablespoon of unscented household bleach to one gallon of water, and then either washed through the sanitizing cycle of the dish washer or rinsed with clean hot water, and then air dried;

(c) use cleaning products in accordance with the manufacturer's instructions;

(d) keep cleaning devices for toilets and urinals, sinks, and tubs separate from each other, and do not use such cleaning devices for any other purpose; and

(e) store cleaning compounds, pesticides, and cleaning devices for toilet bowls, toilet seats, or urinals separately and out of the reach of children. Cleaning compounds must be disposed of in accordance with the manufacturer's instructions.

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

NEW RULE LIII DIAPERING (1) All licensed child care providers and registered group and family child care providers that care for children requiring diapers must:

(a) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas;

(b) ensure diapering and toileting areas contain a wash basin that is separate from that used for food preparation;

(c) have available a sufficient supply of clean, dry diapers, and change diapers as frequently as needed. Disposable diapers, a commercial diaper service, or reusable cloth diapers supplied by the child's family may be used;

(d) use soft, absorbent, disposable towels, or clean reusable towels which have been laundered between each use for cleaning the child;

(e) keep safety pins out of reach of children;

(f) not leave children being diapered unattended on a surface from which they might fall;

(g) specifically label all toilet articles for each child. Each item must be separated and kept in a sanitary condition;

(h) clean surfaces after each diapering and change the pad or disposable sheeting (if used). Sanitize surfaces using a solution of one tablespoon of unscented household bleach to one gallon of water, rinse with clean water, and air dry;

(i) store soiled disposable diapers in easily cleanable or lined receptacles with tight-fitting lids in an area inaccessible to children; and empty, clean, and wash the receptacles once per day or more often as needed. Soiled disposable diapers must be disposed of immediately into an outside trash disposal or discarded indoors in a way that is inaccessible to children until outside disposal is possible;

(j) place soiled reusable cloth diapers in a labeled container with a tight-fitting lid provided by a commercial diaper service, or in a sealed waterproof bag or container for removal from the facility by an individual child's family. Soiled cloth diapers should be sent home with the child at the end of each day. The containers or sealed diaper bags of soiled cloth diapers should not be accessible to any child; and

(k) ensure the hands of the diapered child are washed after changing.

(2) Toilet training must only be initiated when the child is ready and in consultation with the child's parents or guardian. There must not be a routine attempt to toilet train children under 18 months old.

AUTH: 52-2-735, MCA

IMP: 52-2-735, MCA

NEW RULE LIV BATHING (1) If bathing is necessary, licensed child care providers and registered group and family child care providers must:

(a) directly supervise children when being bathed;

(b) sanitize bathing materials after bathing each child;

(c) use nonallergenic soap; and

(d) make sure children cannot turn on hot water while being bathed. Water supply to bathing area must not exceed 120°F.

(2) Bathing facilities must be separate from food service, food preparation, and play or sleeping areas.

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

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

NEW RULE LV WATER SUPPLY SYSTEM (1) All child care facilities must provide an adequate and potable supply of water that is connected to a public water supply system in accordance with 75-6-102, MCA.

(2) If the child care facility uses a nonpublic water system source, the program must:

(a) have the water source tested prior to operation and at least once each January and once each June for the total coliform bacteria and fecal coliform or E. coli bacteria;

(b) provide laboratory test results to the department as part of the licensing and registration or license/registration renewal process; and

(c) take corrective action as needed to ensure the water is safe to drink.

(3) Prior to operation, the water source of all licensed child care facilities must be tested to determine that the maximum contamination levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded, and documentation of testing must be retained on the premises for 24 months from the date of the test.

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

NEW RULE LVI SEWAGE SYSTEM (1) All child care facilities must have an adequate and safe sewage system.

- (2) The child care facility must:
- (a) be connected to a public sewage system in accordance with 75-6-102, MCA; or
 - (b) if a nonpublic system is used, retain documentation that it has complied with sewage disposal requirements adopted by the local board of health in the jurisdiction in which the child care facility is located as well as documentation of any necessary sewage system repairs or replacement.

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

NEW RULE LVII SWIMMING POOL SANITATION (1) All licensed child care providers and registered group and family child care providers must allow children to only use swimming pools that are maintained in accordance with ARM 37.115.102, 37.115.103, and 37.115.106.

(2) Licensed child care providers and registered group and family child care providers using a portable wading pool must add one tablespoon household bleach to 100 gallons of water to the pool on the day of use, drain, clean, and refill it with fresh water daily and as otherwise needed. Bleach must be added any time the pool is refilled.

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

NEW RULE LVIII FOOD PREPARATION AND HANDLING (1) At a minimum, all licensed child care providers and registered group and family child care providers must:

- (a) cook food to the proper temperatures:
 - (i) chicken, poultry, stuffed foods, and leftovers to 165°F;
 - (ii) ground meats (including fish, e.g., fish sticks) to 155°F;
 - (iii) eggs, whole cuts of pork and fish to 145°F; and
 - (iv) vegetables and fruits for hot holding to 135°F;
- (b) hold hot food prior to serving and after cooking at 135°F or hotter;
- (c) keep cold food at or below 41°F;
- (d) use milk and other dairy products that are pasteurized;
- (e) require that hands be properly washed, and single use gloves, tongs, single use napkins, utensils, or deli tissues be used to handle food; and

- (f) ensure no people with open wounds or communicable diseases handle food or food utensils.
- (2) Licensed child care providers must at a minimum:
 - (a) obtain food from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and not use home canned foods;
 - (b) dispose of food that has been in family-style service containers, on the table, or in the service area after the meal; and
 - (c) manage food that is not served family-style in the following way:
 - (i) cool food and place in the refrigerator within two hours of the meal; and
 - (ii) reheat food to 165°F within one hour prior to meal service and do not mix with new batches of food.
- (3) All licensed child care providers and registered group and family child care providers must ensure that a probe type thermometer is available in the facility to check food temperatures and that the thermometer is calibrated and used following the manufacturer's specifications.
- (4) If using a domestic style dishwasher, all licensed child care providers and registered group and family child care providers must use the heat option to dry the dishes.
 - (a) Licensed child care facilities must provide at least a two-compartment sink as a backup in the event the dishwasher becomes inoperable.
- (5) If any licensed child care facility uses a two-compartment sink to hand-wash dishes, the provider must use the wash, rinse, and sanitize three-step process:
 - (a) All dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution, at a concentration indicated on the manufacturer's label, then rinsed with clear water separately, and then dipped/soaked in sanitizer solution in a separate compartment or container that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute. Dishes must be air dried before being stored.

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

NEW RULE LIX NUTRITION AND FOOD SERVICE DEFINITIONS

- (1) "CACFP" means the Child and Adult Care Food Program as designated in section 17 of the National School Lunch Act as amended (codified at 42 USC 1766 and effective as of December 13, 2010).
- (2) "Nutritious meals and snacks" means quality and quantity of food that meets the USDA CACFP guidelines in 7 CFR 226.20 as of February 7, 2022.
- (3) "USDA" means the United States Department of Agriculture.

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

- #### NEW RULE LX NUTRITION REQUIREMENTS
- (1) All licensed child care providers and registered group and family child care providers must:
 - (a) provide nutritious meals and snacks to children in such quality and quantity to meet the USDA CACFP recommended dietary allowances for children of

each age or have a policy stating that parents/guardians are required to send food for meals and/or snacks;

- (b) serve meals and snacks at standard times, to ensure that:
 - (i) children in care for five to ten daytime hours are offered at least one meal and two snacks or two meals and one snack. Children must be offered a midmorning snack if they are not offered breakfast at the child care facility less than 2 1/2 hours before lunch;
 - (ii) children in care for a continuous period of ten hours or more must be provided at least one meal every six hours and one snack between meals. The six-hours requirement does not apply during the hours that the child is sleeping when night care is provided;
 - (iii) children receiving night care are offered dinner and/or breakfast, and a bedtime snack; and
 - (iv) children in care for fewer than five hours are offered one snack every 2 1/2 hours;
- (c) for each child with nutritional therapeutic needs, request and carefully follow written special dietary instructions from either the child's parents/guardians or health care provider. Food brought from home for special dietary purposes must be carefully labeled with the child's name;
- (d) plan menus in advance, post menus for parents/guardians, and serve meals and snacks in accordance with the planned menus;
- (e) supervise children if they prepare food and while they eat;
- (f) ensure that drinking water is freely available and offered at regular intervals to all children; and
- (g) retain written menu records and any special dietary instructions.

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

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXI INFANT FEEDING (1) All licensed and registered child care providers must provide an individualized diet and feeding schedule according to a written plan submitted by the parents/guardians. A change of diet and schedule must be noted on each infant's daily diet and feeding schedule.

(a) Licensed child care providers must post each infant's diet and schedule in an area clearly visible to the center's infant care staff.

(2) A day's supply of breast milk in nursing bottles or formula must:

(a) require no more preparation than dilution with water and must be provided by the parents/guardians, unless an alternative agreement is reached between the parents/guardians and child care provider that ensures the infant's nutritional needs are sufficiently met; and

(b) be clearly labeled with each infant's name and date and be immediately refrigerated.

(3) Special dietary foods that infants require must be prepared by the parents/guardians.

(4) Bottles must be prepared in a sanitary food preparation sink or other sink separated by at least six feet from diapering and bathroom areas.

(5) Bottles must not be propped. Children too young to sit in high chairs must be held in a semi-sitting position for all bottle feedings.

(a) Infants must not be allowed to lie on their backs when drinking from a bottle or spill-proof cup (sippy cup).

(b) Infants who show a preference for holding their own bottles may do so if the infant is still held for the bottle feeding and the infant remains in a semi-sitting or upright position.

(6) If the parents/guardians are unable to bring sufficient or usable formula or breast milk, the program may use commercially prepared and packaged formula.

(7) Older infants must be provided suitable foods which encourage freedom in self-feeding.

(8) Bottles must be refrigerated immediately if not used, and contents discarded if not used within 24 hours.

(9) Bottles and nipples must be cleaned and sanitized using generally accepted means of sanitation.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

NEW RULE LXII FOOD SERVICE EQUIPMENT (1) All licensed and registered child care providers must provide one piece of age-appropriate feeding equipment for every four infants or toddlers. This includes safe high chairs, baby feeding tables, booster seats, and child-size tables and chairs. These types of equipment must be used in accordance with the manufacturer's specifications.

(2) Portable high chairs that hook onto tables are not allowed in any licensed or registered child care facility.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, MCA

NEW RULE LXIII IMMUNIZATION DEFINITIONS (1) "ACIP" means the Advisory Committee on Immunization Practices, which provides advice to the U.S. Centers for Disease Control and Prevention on routine administration of vaccines to pediatric and adult populations.

(2) "Adequate documentation" means documentation which meets the specifications set forth in [NEW RULE LXVI].

(3) "CLIA" means the federal clinical laboratory improvement amendments of 1988.

(4) "Conditional attendance" means that children are allowed to attend child care on a conditional basis until they meet the requirements of an established vaccination schedule.

(5) "Conditional Attendance Form (HES 103)" means the form used by parents or guardians and health care providers to allow children to attend child care on a conditional basis until they meet vaccination requirements on a set schedule.

(6) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids.

(7) "DTP vaccine" and "DTAP vaccine" mean vaccines 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.

- (8) "Hep B vaccine" means a vaccine containing Hepatitis B vaccine.
- (9) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.
- (10) "Immunization information system" means a confidential, computerized, population-based system managed and maintained by the department that collects and consolidates vaccination data from vaccine providers.
- (11) "Medical exemption" means a vaccination exemption from a health care provider indicating that the physical condition of the child is such that one or more vaccinations would endanger their life or health or is medically contraindicated.
- (12) "Medical Exemption Statement Form (HES 101A)" means the form provided by the department to document a medical exemption(s) from one or more vaccinations.
- (13) "MMR vaccine" means a vaccine containing a combination of measles, mumps, and rubella vaccines.
- (14) "Montana Certificate of Immunization Form (HES 101)" means the form provided by the department to consolidate immunization history.
- (15) "MR vaccine" means a vaccine containing a combination of measles and rubella vaccines.
- (16) "Official vaccination record" means a standard electronic or paper record that is maintained by the department, by another state's principal health agency, or by a healthcare provider to record the vaccination status of a child, and includes the following:
- (a) child's legal name;
 - (b) birthdate;
 - (c) sex; and
 - (d) vaccination date (month, day, and year) by vaccine type, or, in the case of a postsecondary record, the month and year of vaccine administration.
- (17) "PCV vaccine" means a vaccine containing pneumococcal conjugate vaccine.
- (18) "Polio vaccine" means a trivalent polio vaccine.
- (19) "Religious exemption" means a vaccination exemption based on an affidavit of exemption on religious grounds attesting that receipt of a vaccine or vaccines is contrary to an individual's religious belief, observance, or practice.
- (20) "Religious exemption form" means a ~~notarized~~ an affidavit of exemption on religious grounds from vaccine administration.
- (21) "Td vaccine" means a vaccine containing tetanus and diphtheria toxoids.
- (22) "Tdap vaccine" means a vaccine containing tetanus and diphtheria toxoids, and acellular pertussis.
- (23) "Vaccine" means:
- (a) if administered in the United States, an immunizing agent recommended by ACIP and licensed by the U.S. Food and Drug Administration; or
 - (b) if administered outside of 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 37.114.708.
- (24) "Varicella vaccine" means an attenuated, live virus vaccine to prevent chicken pox disease.

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, 53-4-611, MCA

NEW RULE LXIV MINIMUM CHILD IMMUNIZATION REQUIREMENTS

(1) Children attending all licensed and registered Montana child care facilities are required to be immunized against certain diseases. Minimum child immunization requirements apply to children in all child care facilities with exceptions described in [NEW RULE LXV]. Before a child may attend any licensed or registered Montana child care program, a program must be provided with documentation that the child has been vaccinated, as required for the child's age group, against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, varicella, hepatitis B, pneumococcal disease (pneumonia), and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (5) or has a medical or religious exemption:

<u>Age at Entry</u>	<u>Number of Doses – Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months old	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine 1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months old	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months old	2 doses of polio vaccine 3 doses of DTP vaccine 2 or 3 doses of Hib vaccine* 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months old	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine 3 or 4 doses of Hib vaccine* 2 doses of Hep B vaccine 4 doses of PCV vaccine*
by 19 months old	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine

Commented [A13]: CCDF requires that DPHHS ensure that children receiving services under the CCDF are age-appropriately immunized based on the latest recommendations for childhood immunizations. This immunization schedule was adopted based on ACIP recommendations.

Hepatitis B is transmitted through percutaneous (i.e., puncture through the skin) or mucosal (i.e., direct contact with mucous membranes) exposure to infectious blood or body fluids. HepB is highly infectious, can be transmitted in the absence of visible blood, and remains viable on environmental surfaces for at least seven days. Accordingly, ACIP recommends that all infants should receive the HepB vaccine series as part of the recommended childhood immunization schedule, beginning at birth.

	3 or 4 doses of Hib vaccine*
	3 doses of Hep B vaccine
	4 doses of PCV vaccine*
by 6 years old	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
by 12 years old	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(*) varies depending on vaccine type used or the ACIP catch-up schedule.

(2) Hib and PCV vaccines are not required or recommended for children five years old and older.

(3) Doses of MMR and varicella vaccines, to be acceptable under this rule, must be given no earlier than 12 months old, and a child who received a dose prior to 12 months old must be revaccinated; however, vaccine doses given up to four days before the minimum interval or age are counted as valid. Live vaccines not administered at the same visit must be separated by at least four weeks.

(4) Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(a) a child less than seven years old must be administered four or more doses of DTP or DTaP vaccine, at least one dose of which must be given after the fourth birthday;

(b) DT vaccine administered to a child less than seven years old is acceptable for purposes of this rule only if accompanied by a medical or religious exemption exempting the child from pertussis vaccination; and

(c) a child seven years old or older who has not completed the requirement in (1) must receive additional doses of Tdap vaccine or Td vaccine to become current in accordance with the ACIP schedule.

(5) A child may initially conditionally attend a child care facility if:

(a) the child has received at least one dose of each of the vaccines required for the child's age;

(b) documentation of the child's conditional immunization status is on file at the child care facility; and

(c) the child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

(6) Children attending licensed school-age care facilities serving only school-age children must meet the minimum student immunization requirements defined in ARM 37.114.702 and 20-5-403, MCA.

(7) Children in a sibling group receiving care from a registered FFN in their home are not subject to the immunization requirements, provided there are no unrelated children also receiving care.

(8) Children receiving care through registered RCE providers are not subject to vaccination requirements.

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

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

NEW RULE LXV EXEMPTIONS FROM VACCINATION (1) A child is exempt from receiving the required vaccinations when the requirements of any of the following are met:

(a) Medical exemption: A child is not required to have any vaccinations which are medically contraindicated. A written and signed statement from a health care provider that a vaccination otherwise required by [NEW RULE LXIV] is medically contraindicated will exempt a child from those vaccination requirements as deemed necessary by the health care provider. It is preferred, but not mandatory, that a health care provider's medical exemption be recorded on HES-101A. Medical exemption documentation must include:

(i) which specific vaccination is contraindicated;
(ii) the period of time during which the vaccination is contraindicated;
(iii) the reasons for the medical contraindication; and
(iv) when deemed necessary by a health care provider, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab.

(b) Religious exemption: A child seeking to attend a child care program is not required to be vaccinated if the child's parent or guardian attests that vaccination is contrary to their religious belief, observance, or practice. An exemption on religious grounds must be ~~notarized and~~ maintained on an Affidavit of Exemption on Religious Grounds Form (HES-113) prescribed by the department.

(i) A certificate of religious exemption is required only for the required vaccines listed in [NEW RULE LXIV].

(c) A child experiencing homelessness or a child in foster care is exempt from required vaccinations outlined in [NEW RULE LXIV(1)] for a 30-day grace period beginning the first day the child attends a child care program as verified on the sign-in/sign-out records.

(i) The child experiencing homelessness must meet the definition in 42 U.S.C. 11434a (2).

(ii) A child is in foster care when the foster care environment meets ARM 37.50.101(4).

(iii) A child must meet the vaccination requirement for conditional enrollment outlined in [NEW RULE LXIV(6)] before the end of the 30-day period.

(iv) A child may not be granted consecutive grace periods.

(2) Family child care providers, group child care providers, and registered FFN providers may choose whether to enroll children who have a medical or religious exemption to the minimum immunization schedule included in [NEW RULE LXIV(1)]. These providers must have written policies and procedures to notify the parents/guardians of prospective and enrolled children of this choice.

(a) These policies will be made publicly available to families prior to enrolling their children with a child care provider.

(b) Policies must be submitted to CCL.

Commented [A14]: Section (2) of HB 702 (codified at 49-2-312) provides that "this section" (barring discrimination on the basis of vaccination status) "does not apply to vaccination requirements set forth for . . . day-care facilities pursuant to Title 52, chapter 2, part 7." "Day-care facility" is an umbrella term which is statutorily defined and "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." Mont. Code Ann. § 52-2-703(4).

Commented [A15R14]: Current rule recognizes that children whose medical conditions contraindicate immunization are exempt from meeting immunization requirements before attending child care in Montana. The regulations do not require providers to enroll medically exempt children.

(3) School-age care facilities serving only school-age children must accept ~~public~~ school vaccination exemptions, including medical exemption statements from ARM 37.114.715 and religious exemptions defined in ARM 37.114.716.

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

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

NEW RULE LXVI REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS

(1) All licensed and registered child care providers must have received completed immunization documentation, in accordance with this rule, before any child can be enrolled into a child care facility. The child care provider must maintain a record of immunization status for each enrolled child, and any child of a staff member who resides at the child care facility, with respect only to the vaccines, number of doses, and timing set forth in [NEW RULE LXIV]. The provider must make those records available during normal working hours to representatives of the department or the local health authority.

(2) The following are considered adequate documentation of vaccination for the purposes of this subchapter:

(a) a record from any local health department in the United States, signed by a local health officer or nurse;

(b) a certificate signed by a local health officer or nurse;

(c) any official immunization record, if information has been recorded and signed by a physician, physician's designee, local health officer, or that officer's designee; or an official report from the statewide immunization information system, or a health care provider's medical record system;

(d) immunization recorded on a form approved by the U.S. government;

(e) any state's official parent-maintained immunization record;

(f) an international certificate of vaccination on a form approved by the World Health Organization; or

(g) in the case of a vaccine administered outside of the United States, a record of the vaccination signed by an official of the principal public health agency of the country where the vaccination occurred.

(3) Vaccine administration data may not be filled out by a parent, guardian, or other person unless they are a health care provider, health department official, or person otherwise authorized to do so by this subchapter.

(4) The following are considered adequate documentation in lieu of receiving required vaccines:

(a) the conditional enrollment form prescribed by the department;

(b) a medical exemption;

(c) a religious exemption; or

(d) documentation of immunity from varicella, measles, mumps, or rubella by laboratory evidence or diagnosis/verification of disease by physician, nurse practitioner, or physician's assistant. The tests must indicate serological evidence of immunity and must be performed by a CLIA-certified lab. A copy of the test results must be attached to the child's official immunization record.

(5) Parents or legal guardians of students attending public school must provide a written parental statement that the required immunization is on file with the child's school. Parents/guardians of these students do not have to provide other immunization documentation to school-age care facilities.

(6) Students in school-age care facilities not attending public school must provide immunization documentation aligned with ARM 37.114.703.

AUTH: 20-5-407, 52-2-704, 52-2-735, MCA

IMP: 20-5-402, 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXVII EXAMINATION AND AUDIT OF OFFICIAL CHILD IMMUNIZATION RECORDS (1) The department and local health authority representatives have the right to audit and verify child vaccination records maintained by licensed and registered child care providers to determine compliance with vaccination requirements.

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

IMP: 52-2-704, 52-2-732, 52-2-733, 52-2-735, MCA

NEW RULE LXVIII IMMUNIZATION STATUS AS CONDITION OF ATTENDANCE (1) In order to continue to attend a licensed or registered child care facility, a child must continue to be vaccinated on the schedule described in [NEW RULE LXIV(1)] and must be immediately excluded from attendance if the child:

- (a) is not vaccinated on that schedule with all of the required vaccines;
- (b) does not have on file at the child care program a record of medical exemption, religious exemption, a conditional enrollment form which indicates that no vaccine dose is past due; or
- (c) does not meet the exemption for a child experiencing homelessness or a child in the foster system.

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

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

NEW RULE LXIX QUALIFICATIONS AND TRAINING DEFINITIONS

(1) "Director" means the person designated as the person responsible for the daily operation of a child care facility. 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.

(2) "Lead teacher" means the lead staff person in charge of a child or group of children who implements facility activities.

(3) "On-the-job training" is training provided by the director or designee, during business hours, to educate new staff members on facility and provider-specific policies, procedures, and department requirements pertaining to their role.

(4) "Orientation training" means initial required training to educate new staff.

(5) "Practitioner Registry" is a statewide registry that is used to help develop and track a knowledgeable and skilled child care workforce based on an individual's verified professional achievements.

(6) "Site director" means the person who plans and implements child care services at one site of a multi-site program under the oversight of the director.

(7) "Staff" refers to all persons who work or substitute in a child care facility and count in the child-to-staff ratio during hours when children are or may be present, excluding licensees or registration holders.

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

(9) "Teacher" means a program staff member who carries out assigned caregiving and teaching tasks under the guidance and oversight of a lead teacher or program director.

(10) "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.

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

NEW RULE LXX DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

(1) All facilities except RCEs must have a director.

(a) For the purposes of this rule, FFN providers are considered a director.

(2) A director and their program staff are responsible for the health, safety, supervision, protection, and guidance of the children in care. The director is responsible for operating the child care program at all times.

(3) A director must demonstrate knowledge and ability to carry out day-to-day operations and is responsible for being on-site at the facility, unless there is a site director, designated staff member, or substitute filling the on-site role.

(4) Directors must meet the following qualifications:

(a) be at least 18 years old;

(b) meet background check requirements set forth in [NEW RULE LXXXIII];

(c) be current on the practitioner registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training; and

(f) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the director responsibilities for the licensed or registered facility type, subject to approval through the practitioner registry or to department approval.

(5) If the director will be absent from the facility for more than 30 continuous days, the director must notify the department in writing of the individual who has been appointed as the designee. The appointed designee must meet all the requirements of this rule.

(6) The director must ensure compliance with all applicable administrative rules within this chapter.

(7) The director or designee must 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.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXI SITE DIRECTOR RESPONSIBILITIES AND

QUALIFICATIONS (1) Site director is an optional role. Providers may employ site directors when they have multiple facilities in geographically dispersed locations. An

individual may only serve as a site director at one location or site. Site directors plan and implement facility services under the oversight of the director/owner.

(2) Site directors must meet the following qualifications:

- (a) be at least 18 years old;
- (b) meet background check requirements set forth in [NEW RULE LXXXIII];
- (c) be current on the practitioner registry;
- (d) have current CPR and pediatric first aid certification;
- (e) successfully complete orientation training;
- (f) complete on-the-job training; and
- (g) have a combination of education, training, other licensing, or experience

in working with children to demonstrate an ability to fulfill the site director responsibilities for the licensed or registered facility type, subject to approval through the practitioner registry or to department approval.

(3) The site director is responsible for being on-site during the facility's operating hours and providing regular supervision and mentoring of lead teachers, teachers, substitutes, support staff, and volunteers.

(4) One person may be the director and site director.

(5) A site director may also serve as a lead teacher.

(6) The director absence requirements in [NEW RULE LXXI] apply to site directors.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXII LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS

(1) Lead teacher is an optional role.

(2) Lead teachers are responsible for facility activity planning and delivery.

(3) A lead teacher must:

- (a) be at least 18 years old;
- (b) meet background check requirements set forth in [NEW RULE LXXXIII];
- (c) complete on-the-job training;
- (d) be current on the practitioner registry;
- (e) have current CPR and pediatric first aid certification;
- (f) successfully complete required orientation training; and
- (g) have a combination of education, training, other licensing, or experience

in working with children to demonstrate an ability to fulfill the lead teacher responsibilities for the licensed or registered facility type, subject to approval through the practitioner registry or to department approval.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXIII TEACHER RESPONSIBILITIES AND QUALIFICATIONS

(1) Teacher is an optional role.

(2) Teachers help a lead teacher or director provide instructional support to children and implement developmentally appropriate programming.

(3) Teachers must:

(a) receive oversight and guidance from a lead teacher, site director, or director;

- (b) be at least 16 years old;
- (c) meet background check requirements set forth in [NEW RULE LXXXIII];
- (d) complete on-the-job training;
- (e) be current on the practitioner registry;
- (f) have current CPR and pediatric first aid certification; and
- (g) successfully complete required orientation training.

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

NEW RULE LXXIV SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS (1) Substitutes must:

- (a) meet background check requirements set forth in [NEW RULE LXXXIII];
- (b) meet the age requirement for the role for which they are substituting;
- (c) complete on-the-job training;
- (d) be current on the practitioner registry;
- (e) have current CPR and pediatric first aid certification; and
- (f) successfully complete required orientation training.

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

NEW RULE LXXV TRAINEE RESPONSIBILITIES AND QUALIFICATIONS

- (1) Trainees must:
- (a) meet background check requirements set forth in [NEW RULE LXXXIII];
 - (b) be at least 16 years old;
 - (c) not be left alone with children until they complete the required 30-day orientation training;
 - (d) receive oversight and guidance from an onsite lead teacher, site director, or director; and
 - (e) not remain in this role for longer than 90 days.

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

NEW RULE LXXVI SUPPORT STAFF QUALIFICATIONS (1) Support staff who do not provide direct care for children must:

- (a) meet background check requirements set forth in [NEW RULE LXXXIII];
- and
- (b) complete on-the-job training.
- (2) Support staff do not count toward compliance with required child-to-staff ratios.

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

NEW RULE LXXVII VOLUNTEER QUALIFICATIONS (1) Volunteers may include a parent or guardian helping on a field trip, special guest presenters, or a

parent or guardian, family member, or community member helping with a cultural celebration, or other activity. Volunteers:

- (a) must be at least 15 years old;
- (b) not count toward compliance with required child-to-staff ratios; and
- (c) must meet background check requirements set forth in [NEW RULE LXXXIII] if they will have unsupervised access to children.

AUTH: 52-2-704, MCA

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

NEW RULE LXXVIII ORIENTATION TRAINING (1) All staff and owners included in child-to-staff ratios must complete department-approved orientation training. Orientation training includes 30-day and 90-day training requirements.

(2) Within 30 days of hire and before providing unsupervised care to children, the following training is required:

(a) infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting. Alternatively, staff can provide verification of current infant, child, and adult CPR, infant choking response, and pediatric first aid certification from the American Heart Association, American Red Cross, or other CCL-approved entity;

(b) if the child care license or registration permits care for infants, prevention of sudden infant death syndrome and use of safe sleep practices;

(c) if the child care license or registration permits care for infants or toddlers, prevention of shaken baby syndrome and abusive head trauma.

(3) The staff and owners of licensed and registered child care facilities providing care exclusively to school-age children are not required to take infant CPR, infant choking response, sudden infant death syndrome, safe sleep, and shaken baby syndrome training.

(4) Within 90 days of hire, the following orientation training is required:

(a) prevention and control of infectious diseases, including immunization;

(b) child development;

(c) administration of medication, consistent with standards for parental/guardian 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 blood, bodily fluids, and other infectious materials;

(i) transportation; and

(j) recognizing and mandatory reporting of child abuse and neglect to proper state authorities.

(5) Orientation training will be counted toward annual training requirements.

AUTH: 52-2-704, MCA

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

NEW RULE LXXIX ANNUAL TRAINING (1) All staff and owners working more than 500 hours annually at any licensed or registered child care facility must successfully complete required annual training as defined in the practitioner registry.

(a) Staff and owners of licensed child care centers, and registered group and family child care facility must complete 16 hours of annual training.

(b) Staff and owners of licensed school-age care or registered FFN providers must complete eight hours of annual training.

(2) The training must be approved through the Practitioner Registry.

(3) Education and training must relate to the Montana Early Care and Education Knowledge Base.

AUTH: 52-2-704, MCA

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

NEW RULE LXXX HEALTH AND SAFETY REFRESHER COURSE (1) All staff required to complete orientation training, including RCE and FFN providers, must complete a department-approved health and safety refresher course at least every three years. The health and safety review course will count toward the annual training required in [NEW RULE LXXX].

AUTH: 52-2-704, MCA

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

NEW RULE LXXXI BACKGROUND CHECK DEFINITIONS (1) "May deny crime" means a crime that gives the department the ability to determine that a background check result is unsatisfactory, and an individual is not eligible to work or be present in a child care facility.

(2) "Must deny crime" means a crime that requires the department to determine that a background check result is unsatisfactory, and an individual is not eligible to work or be present in a child care facility.

(3) "Satisfactory results of background checks" means that the results do not include any conviction, pending charge, or child abuse or neglect determination from a state's child protective agency that the department has determined makes an individual ineligible to work in a child care program.

(4) "Unsatisfactory results of background checks" means that the results include a conviction, pending charge, or child abuse or neglect determination from a state's child protective agency that is a must deny or may deny crime or offense.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXII FINGERPRINT AND BACKGROUND CHECKS

(1) The following individuals must provide satisfactory results of background checks prior to approval of any license or registration, or staff approval:

(a) child care directors, owners, site directors, lead teachers, teachers, substitutes, trainees, support staff, and volunteers who have unsupervised contact with children; and

(b) any adult residing in the child care facility, or other adult who regularly or frequently stays in the facility, unless care is being provided in the home of a child or children who belong to the same sibling group.

(i) In the case of a FFN provider caring for children from more than one sibling group in a child's home, all adults residing in the home must have satisfactory results of a background check.

(2) The following background checks are required prior to working in a child care facility and annually thereafter, with the exception of national background checks, which are required every five years:

(a) a fingerprint background check by the Montana Department of Justice (DOJ) and Federal Bureau of Investigation; and

(b) the national Sexual Offender Registry from the National Criminal Information Center (NCIC);

(i) fingerprints must be processed by a trained individual within a certified fingerprinting agency. Results will be transmitted electronically to the department by DOJ;

(b) a check of the Montana Sex Offender Registry;

(c) a child protective services check for Montana and any state where the individual has resided in the preceding five years; and

(d) a name-based criminal records check for Montana and any state where the individual has resided in the preceding five years.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE LXXXIII BACKGROUND CHECK RESULTS THAT MUST RESULT IN THE DENIAL OF AN APPLICANT

(1) After written notice to the applicant, licensee, or registration holder, the department must deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a license or registration upon finding that any person requiring a background check has been convicted of a crime that must make an individual ineligible to work in a child care facility. These crimes are felonies and misdemeanors that are direct crimes against a person's physical or emotional well-being. Convictions for the following crimes must make an individual ineligible to work or be present in a child care facility:

(a) a serious crime, such as homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, robbery, or arson; or

(b) a crime pertaining to children or families, including child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXIV BACKGROUND CHECK RESULTS THAT MAY RESULT IN THE DENIAL OF AN APPLICANT

(1) After written notice to the

applicant, licensee, or registered provider, the department may deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a license or registration upon finding that any person requiring a background check has been convicted of a crime that may make an individual ineligible to work in a child care facility. These ~~crimes are misdemeanors that~~ are direct crimes against a person's physical or emotional well-being. Conviction or determination of the following may make an individual ineligible to work or be present in a child care facility:

- (a) a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, prostitution, burglary, or a crime involving an abuse of the public trust;
- (b) being named as a perpetrator in a substantiated report of abuse or neglect;
- (c) being named as a perpetrator in a **founded** report of abuse or neglect, although this cannot be the sole basis for denial;
- (d) abuse, neglect, or exploitation of an elderly person or a person with a developmental disability; or
- (e) a felony conviction for a drug-related offense within the previous five years, including distribution or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXV OFFENSES AND INVESTIGATIONS THAT ARE PENDING RESOLUTION

(1) Any staff member, support staff, trainee, volunteer, or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime that will potentially make them ineligible to work in a child care facility must not provide care or be present in the facility when children in care are on the premises pending the resolution of the charges.

(a) Child care providers must notify the CCL program within 48 hours if any charges are filed against of any staff member, support staff, trainee, volunteer, or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, that will potentially make them ineligible to work in a child care facility.

(2) Any staff member, support staff, trainee, volunteer, or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, who is subject to an investigation by CFSD may be ineligible to be present in the child care facility when children in care are on the premises.

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

NEW RULE LXXXVI PROCESS TO REQUEST ADMINISTRATIVE RECONSIDERATION OF BACKGROUND CHECK RESULTS AND DEPARTMENT DETERMINATION (1) If an unsatisfactory background check occurs based upon a

Commented [A16]: 41-3-205(n) exception allows for disclosure of reports to child care licensing background check of individuals for licensing or registration

Commented [A17]: Crosswalked with ARM 37.47.602. The proposed rule gives the Department more discretion in tailoring a CCL response in the event of a provider, staff member, or someone in the provider's home is subject to a CSED investigation.

conviction or determination identified in [NEW RULE LXXXIV] or [NEW RULE LXXXV], the staff applicant in conjunction with the license or registration holder, if different, may submit additional information to correct any inaccuracies or errors in the background check results.

(2) The staff applicant, in conjunction with the license or registration holder, if different, may request an administrative reconsideration of a denial based on a may-deny background check finding. The requester and license or registration holder must establish that the person has been sufficiently rehabilitated to warrant the public trust and not pose a risk to children.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXVII COMPLAINTS AND INVESTIGATIONS (1) Any individual, group, or other agency may submit a written complaint against a child care facility or provider. The complainant's personal information is not public information.

(2) Any individual, group, or other agency may request that the department determine whether a child care facility should be licensed or registered according to law. Referral may be either in writing or by telephone.

(3) An authorized representative of the department may inspect a facility and property without prior notice to the owner or staff of the program whenever the department considers it necessary and when children are in care.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE LXXXVIII LICENSING OR REGISTRATION CORRECTIVE ACTION (1) At the department's discretion, when a program is not in compliance with this chapter or Title 52, chapter 2, part 7, MCA, a corrective action plan may be required.

(2) The department will apply progressive corrective actions in plans based on:

- (a) the scope and severity of non-compliance;
- (b) the potential threat or actual harm to the health, safety, and well-being of the children in care;
- (c) the number of times the licensee or registration holder has not complied rules in this chapter or under Title 52, chapter 2, part 7, MCA; and
- (d) mitigating and aggravating factors.

(3) The department's corrective action plan includes:

- (a) a description of non-compliance and the rule or law that was violated;
- (b) the date by which the finding of non-compliance must be corrected; and
- (c) information about other licensing or registration actions that may be imposed if compliance does not occur by the required date.

(4) The provider must submit response within ten business days of receiving the corrective action plan, including a statement from the provider regarding the proposed plan to comply with the rule or law.

(5) The provider may submit additional information as to why the provider believes non-compliance did not occur.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, MCA

NEW RULE LXXXIX TIME PERIOD FOR CORRECTING NON-COMPLIANCE (1) The length of time a licensee or registered provider has to make corrections will be determined by the department, which must consider:

- (a) the scope and severity of non-compliance;
- (b) the potential threat or actual harm to the health, safety, and well-being of the children in care;
- (c) the number of times the licensee or registration holder has not complied with rules in this chapter or under Title 52, chapter 2, part 7, MCA; and
- (d) mitigating and aggravating factors.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XC DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OF A LICENSE OR REGISTRATION (1) The department, after written notice to the applicant or provider may deny, suspend, revoke, or modify a license or registration.

- (a) The department may modify a license or registration by restricting or reducing it to a provisional or probationary status.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XCI VIOLATIONS THAT MAY RESULT IN NEGATIVE LICENSING OR REGISTRATION ACTION (1) The department may deny, suspend, or revoke a license or registration, or take another action such as requiring an individual be excluded from a facility, when:

- (a) the provider, any staff member, support staff, trainee, volunteer, or any person residing or staying in the child care facility on a frequent or regular basis has been named as the perpetrator in a substantiated report of abuse or neglect;
- (b) the licensee/registered provider, staff member, support staff, trainee, volunteer, or any person residing or staying in the child care facility on a frequent or regular basis are disqualified under the child care licensing background check rules;
- (c) the department requests and is denied access to the licensed or registered facility;
- (d) the child care program has not met or is no longer meeting the requirements for licensure or registration set forth in these rules;
- (e) the program has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the provider is obligated to disclose to the department, regarding any aspect of the child care facility or its operations;

(f) through a CCL investigation, it is determined that the owner/director, staff member, trainee, support staff, volunteer, or adult residing in the facility or staying in the facility on a regular or frequent basis has violated a CCL regulation that has resulted in child abuse or neglect pursuant to 41-3-102, MCA, whether or not a criminal prosecution is initiated or that person was prosecuted or convicted of child abuse or neglect;

(g) upon referral of suspected child abuse or neglect regarding an operating child care facility, the initial investigation by the department or law enforcement determines that there is probable cause to believe that a child in the facility may be in danger of harm;

(h) the provider or any staff member has failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(i) the provider or any staff member, trainee, support staff, volunteer, or adult residing in the facility or staying in the facility may pose any risk or threat to the safety or welfare of a child in the child care program;

(j) the child care provider has failed to protect the health, welfare, or safety of a child, or the child care facility presents a reasonably foreseeable serious hazard to the health, safety, or welfare of a child; or

(l) the licensee's or registered provider's child is removed from the licensee or registered provider by the Child and Family Services Division.

(2) Suspension or revocation may be immediate upon a determination by the department that public health, safety, or welfare imperatively requires emergency action.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XCII NOTICE OF LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION

(1) The department must provide written notification to a licensee, registered provider, or applicant of a denial, suspension, or revocation.

(2) The licensee, registered provider, or applicant has the right to request an administrative hearing regarding the denial, suspension, revocation, or modification of a license or registration. The department notice will include information on hearing rights and how to request a hearing.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, MCA

NEW RULE XCIII ISSUING A PROBATIONARY LICENSE OR REGISTRATION (1) When the department issues a probationary license or registration, the licensee, registered provider, or owner must:

(a) provide the parents and guardians of enrolled children notice of the probationary license or registration in a department-approved format within five working days of the licensee, registered provider, or owner receiving the probationary license or registration;

- (b) provide documentation to the department that parents or guardians of enrolled children have been notified within seven working days of the licensee, registered provider, or owner receiving the probationary license or registration;
- (c) inform parents or guardians of probationary status before enrolling new children; and
- (d) post documentation of the probationary license or registration.

AUTH: 52-2-704, 52-2-741, MCA
IMP: 52-2-741, MCA

NEW RULE XCIV PROVIDING UNLICENSED OR UNREGISTERED CARE

(1) If the department determines a person is providing unlicensed or unregistered care ~~and is not a license-exempt FFN or RCE provider~~ when a license or registration is required, the department will send a notice including:

- (a) the department's basis for determining unlicensed or unregistered child care is being provided when a license or registration is required;
- (b) how to respond to the department;
- (c) the law that requires child care to be licensed or registered;
- (d) that unlicensed or unregistered child care must stop being provided;
- (e) the consequences of providing unlicensed or unregistered care and the penalties that may be imposed; and
- (f) how to apply for a license or registration and the benefits of licensure or registration.

(2) If the department finds that a facility ~~that requires a license or registration is being or has been operated without a license or registration is providing unlicensed or unregistered care when a license or registration is required~~, it will take steps pursuant to 52-2-741, MCA.

AUTH: 52-2-704, 52-2-741, MCA
IMP: 52-2-741, MCA

NEW RULE XCV REAPPLICATION AFTER DENIAL, SUSPENSION, OR REVOCATION

(1) Applicants who have been denied due to an incomplete application may reapply for a license or registration immediately.

(2) Individuals or legal entities that have had a child care license or registration suspended may not reapply for licensure or registration within one year of the suspension.

(3) If the suspension is contested and upheld after an administrative hearing, the reapplication may not be made until one year after the date of the final agency decision.

(4) Individuals or legal entities that have had a child care license or registration revoked are permanently ineligible for licensure, registration, or a staff position at a child care facility.

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

Commented [A18]: Clarified language to address concern of HB 556 being reflected.

NEW RULE XCVI FAIR HEARING (1) An applicant, licensee, or registered provider who is subject to a negative licensing action is entitled to a fair hearing in accordance with ARM 37.5.103.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

4. The department proposes to repeal the following rules:

37.95.102 DEFINITIONS

AUTH: 52-2-704, 53-4-212, 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, 53-4-611, MCA

37.95.103 FAMILY, FRIEND, AND NEIGHBOR (FFN) PROVIDERS: REQUIREMENTS AND PROCEDURES

AUTH: 52-2-704, MCA

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

37.95.104 DETERMINATION OF NEED FOR LICENSE OR REGISTRATION: COUNTING PROVIDER'S OWN CHILDREN

AUTH: 52-2-704, MCA

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

37.95.105 DETERMINATION OF NUMBER OF CHILDREN UNDER CARE: COUNTING PROVIDER'S AND OTHER CHILDREN

AUTH: 52-2-704, MCA

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

37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

37.95.108 CHILD CARE FACILITIES, REGISTRATION, AND LICENSING PROCEDURES

AUTH: 52-2-704, MCA

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

37.95.110 RELATIVE CARE EXEMPT (RCE) PROVIDERS: REQUIREMENTS AND PROCEDURES

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731,
MCA

37.95.115 DAY CARE PARENT INFORMATION

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

37.95.117 CHILD CARE FACILITIES, JOINT PROGRAMS

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

37.95.121 CHILD CARE FACILITIES: SAFETY REQUIREMENTS

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

37.95.124 CHILD CARE FACILITIES: EMERGENCY DISASTER AND
ACTION PLANS

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

37.95.126 DAY CARE FACILITIES, SMOKE-FREE ENVIRONMENT

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

37.95.127 CHILD CARE FACILITIES: SWIMMING

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

37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH
RISKS FOR CHILDREN UNDER AGE TWO

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

37.95.132 TRANSPORTATION

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

37.95.139 CHILD CARE FACILITIES: HEALTH CARE REQUIREMENTS

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

37.95.140 IMMUNIZATION

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

37.95.141 CHILD CARE FACILITIES: RECORDS

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

37.95.146 DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE

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

37.95.149 DAY CARE FACILITIES: LICENSE FOR EACH PREMISES

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

37.95.153 DAY CARE FACILITIES: NOTICE OF CHANGES

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

37.95.154 DAY CARE FACILITIES: COOPERATION WITH THE DEPARTMENT AND DEPARTMENT ACCESS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-732, 52-2-733, MCA

37.95.155 DAY CARE FACILITIES: RECORDS

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

37.95.156 DAY CARE CENTERS: CONFIDENTIALITY REQUIREMENTS

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

37.95.160 CHILD CARE FACILITIES: STAFF RECORDS

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

37.95.161 CHILD CARE FACILITIES: FINGERPRINT AND BACKGROUND CHECK REQUIREMENTS

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

37.95.162 CHILD CARE FACILITIES: REQUIRED ANNUAL TRAINING

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

37.95.163 CHILD CARE FACILITIES: EARLY CHILDHOOD TEACHER ORIENTATION TRAINING

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

37.95.165 DAY CARE FACILITIES: NOTICE OF CURRENT ADDRESS

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

37.95.168 DAY CARE FACILITIES: REQUIRING EXAMINATIONS

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

37.95.169 IDENTIFYING AND PREVENTING SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA

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

37.95.171 DAY CARE FACILITIES: MANDATED REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT

AUTH: 52-2-704, MCA
IMP: 41-3-102, 52-2-704, MCA

37.95.172 CHILD CARE FACILITIES: SUPERVISION AT ALL TIMES

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

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

AUTH: 52-2-704, MCA

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

37.95.175 DAY CARE FACILITIES: REAPPLICATION AFTER
SUSPENSION OF REVOCATION

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

37.95.176 DAY CARE FACILITIES: NEGATIVE LICENSING ACTION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

37.95.181 DAY CARE FACILITIES: MEDICATION ADMINISTRATION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, 52-2-736, MCA

37.95.182 DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF
MEDICATION

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

37.95.183 CHILD CARE FACILITIES: FIRST AID REQUIREMENTS

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

37.95.184 CHILD CARE FACILITIES: HEALTH HABITS

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

37.95.205 SOLID WASTE

AUTH: 52-2-735, 53-4-406, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.206 LAUNDRY

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.207 GENERAL HOUSEKEEPING

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING
CRIBS OR DIAPERS

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

37.95.214 FOOD PREPARATION AND HANDLING

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA
IMP: 52-2-704, 52-2-735, 53-4-506, MCA

37.95.215 NUTRITION

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-506, MCA

37.95.225 WATER SUPPLY SYSTEM

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-506, MCA

37.95.226 SEWAGE SYSTEM

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.227 SWIMMING POOLS

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.602 CHILD CARE CENTERS, PROGRAM REQUIREMENTS

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 CHILD CARE CENTERS, GUIDANCE AND DISCIPLINE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.610 DAY CARE CENTERS, SPACE

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

37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

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

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

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

37.95.619 DAY CARE CENTERS, NIGHT CARE

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 CHILD CARE CENTERS: STAFFING QUALIFICATIONS

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

AUTH: 52-2-704, MCA

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

37.95.624 CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES

AUTH: 52-2-704, MCA

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

37.95.640 DAY CARE CENTERS, LICENSING SERVICES PROVIDED

AUTH: 52-2-704, MCA

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

37.95.702 GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING AND ADDITIONAL REQUIREMENTS

AUTH: 52-2-704, MCA

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

37.95.703 GROUP AND FAMILY CHILD CARE FACILITIES: DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

AUTH: 52-2-704, MCA

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

37.95.704 GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES

AUTH: 52-2-704, MCA

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

37.95.705 GROUP AND FAMILY CHILD CARE FACILITIES: BUILDING REQUIREMENTS

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 CHILD CARE FACILITIES: FIRE SAFETY REQUIREMENTS

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

37.95.708 GROUP AND FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS

AUTH: 52-2-704, 52-2-735, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-504, MCA

37.95.711 GROUP AND FAMILY DAY CARE FACILITY NUTRITION

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

37.95.715 GROUP AND FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-731, 53-4-504, MCA

37.95.718 GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP

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

37.95.720 GROUP AND FAMILY DAY CARE HOMES, EQUIPMENT

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-731, 53-4-504, MCA

37.95.730 GROUP CHILD CARE AND FAMILY CHILD CARE FACILITIES: REGISTRATION SERVICES PROVIDED

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-733, MCA

37.95.1001 INFANT'S AND TODDLER'S DIAPERING AND TOILET TRAINING

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

37.95.1002 INFANT'S AND TODDLER'S WET OR SOILED CLOTHING

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

37.95.1003 INFANT'S AND TODDLER'S FEEDING

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

37.95.1004 INFANT'S AND TODDLER'S, BATHING

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

37.95.1005 INFANT AND TODDLER, SLEEPING

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

37.95.1011 INFANT'S AND TODDLER'S, ACTIVITIES

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

37.95.1015 INFANT'S AND TODDLER'S, OUTDOOR ACTIVITIES

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

37.95.1016 INFANT'S AND TODDLER'S, EQUIPMENT

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

37.95.1021 INFANT'S AND TODDLER'S, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS

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

37.95.1101 DEFINITIONS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, MCA

37.95.1105 APPLICANT REQUIREMENTS FOR DROP-IN DAY CARE CENTERS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, MCA

37.95.1110 DROP-IN DAY CARE CENTER PLAN OF OPERATION

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-724, 52-2-731, MCA

37.95.1120 DROP-IN DAY CARE CENTER SPACE REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

37.95.1130 EMERGENCY CARDS AND HEALTH HISTORY FORMS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-731, MCA

37.95.1140 EMERGENCY SAFETY REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, 52-2-734, MCA

37.95.1150 MATERIALS AND EQUIPMENT

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

37.95.1160 FOOD SERVICE

AUTH: 52-2-704, MCA
IMP: 52-2-702, MCA

37.95.1170 STAFFING QUALIFICATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-731, MCA

37.95.1180 CARE OF INFANTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to repeal the entirety of ARM Title 37, chapter 95, and create an updated, restructured child care licensing schema under a new chapter. In accordance with the Gianforte administration's commitment to expanding access to quality and affordable child care for Montana families, the department intends for these changes to remove unnecessary regulatory barriers for licensed and registered child care providers in Montana. The proposed rule repeals and restructuring will decrease barriers and increase capacity for quality and affordable child care, address stakeholder requests for increased clarity and consistency, meet the guidelines of Governor Gianforte's Red Tape Relief/Regulatory Reform Initiative (RRI), and comply with legislation passed during the 2021 and 2023 Sessions of the Montana Legislature. Throughout this process, the department also carefully balanced its obligations to ensure the health and safety of children in care with the elimination of unnecessary regulatory burdens.

The department conducted a comprehensive child care licensing assessment to determine how we can make child care licensing work better for providers and families. The information we learned through this process informed the regulation improvements in this rule change package. The assessment engaged a multitude of diverse stakeholders to understand the strengths and gaps in the current child care licensing schema. Robust engagement occurred through a contractor-led assessment process, in which more than 700 child care facility owners and staff, parents, employers, state and local agency partners (fire, environmental health, public health), legislators, and interested parties provided input on the rules through surveys, interviews, and focus groups from September 2021 through April 2022. Engagement also occurred through business-process improvement job shadowing and site visits, detailed rule review meetings with state agency partners, and a work group of school-age care providers. In summary, the proposed rule repeals and restructuring are largely informed by feedback from relevant stakeholders and other interested parties.

Additionally, the department reviewed and applied the RRI criteria to each existing rule, evaluating if each rule serves a legitimate purpose, is not redundant, creates the lowest burden possible to meet the need, and is clear in language and intent.

Overall Structure

The structure of the proposed rule changes is a wholesale re-organization of the child care licensing rules in ARM Title 37, chapter 95. The department recognizes that the current organization by provider type has created confusion and duplication. To remedy this, the proposed rules will be re-organized by topic and will clarify within each new rule the applicability to types of providers or facilities. The proposed rule subchapters are:

1. General
2. Program Activities
3. Administrative
4. Safety and Facilities

5. Medical Health
6. Environmental Health
7. Nutrition and Food Service
8. Immunizations
9. Staff Qualifications and Training
10. Background Checks
11. Enforcement

Rules Repealed

The department proposes to repeal ARM 37.95.104, 37.95.128, and 37.95.168.

- The content from ARM 37.95.104 has been simplified and streamlined in proposed NEW RULE III.
- ARM 37.95.128 creates unnecessary administrative burden for families and providers. The elimination of this rule will result in less required paperwork before a child may be enrolled in child care, and less paperwork that providers will have to store and maintain after enrollment. This rule is also duplicative as the same information is already contained in a standard medical form required by current ARM 37.95.141 and proposed NEW RULE XXIV.
- ARM 37.95.168 creates the potential for inappropriate intrusions into the private medical information of child care staff by the department.

The department proposes to repeal ARM 37.95.101, 37.95.102, 37.95.103, 37.95.105, 37.95.106, 37.95.108, 37.95.110, 37.95.114, 37.95.121, 37.95.146, 37.95.149, 37.95.172, 37.95.623, 37.95.640, 37.95.102, 37.95.718, 37.95.730, and 37.95.1105.

NEW RULE I: GENERAL DEFINITIONS

The department proposes to adopt a new general definitions regulation that is substantially similar to current ARM 37.95.102. The department intends this new rule would help ensure clarity throughout the entire chapter, reflect additional topical areas, and increase readability and useability. To ease readability and understanding, the department also proposes moving some of the definitions currently in ARM 37.95.102 to the beginnings of the new, proposed subchapters when the terms relate exclusively to the topic of a subchapter.

The department intends this new structure to be more user-friendly by providing one location for general, commonly used definitions, as well as discrete, topic-specific definitions.

NEW RULE II: TYPES OF LICENSES AND REGISTRATION

The proposed rule would combine and condense provisions from ARM 37.95.103, 37.95.108, 37.95.110, and 37.95.1105. This proposed rule is intended to provide a clear understanding about the types of child care programs that exist in Montana. This includes increased clarity in terms of what types of programs are required to be licensed, have the option to be licensed, are required to be registered, or have the

option to be registered. The intent of this proposed rule is to improve understanding among providers and families about the options and requirements for a child care license or registration. This would help new child care programs decide what kind of licensure or registration is required for their business, help current providers know what is expected of them to maintain licensure or registration, and help parents make informed decisions about what kind of child care program is the best fit for their children.

NEW RULE III: DETERMINE NEED FOR LICENSING AND CHILDREN IN CARE

The department proposes to combine and condense ARM 37.95.104 and 37.95.105, to streamline the explanation about how children are counted when determining the type of license or registration for which a provider should apply. The proposed new rule reflects changes in HB 556 from the 2023 Legislative Session. The proposed rule also contains new language that would clarify how a provider's own children are counted when determining the number of children in care.

NEW RULE IV: CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION

The department proposes to combine and condense ARM 37.95.103, 37.95.106, 37.95.172, 37.95.623, 37.95.702, and 37.95.718, all related to the child-to-staff ratios, ages of children in care, program type, and the timing of child care provided. The proposed new rule aligns with HB 422 from the 2023 Legislative session, with increasingly higher ratios and larger group sizes for older children in child care centers and in school-age care facilities. These proposed increases are warranted because older children require less assistance with basic tasks and can understand rules related to safety. The proposed rule would simplify the explanation of family and group child care program staff requirements, including for overlap care.

NEW RULE V: LICENSE OR REGISTRATION APPLICATION

The department proposes to include some provisions from ARM 37.95.106 in the proposed rule. This proposed rule would make information about how to apply for a child care license or registration very clear and easy to find. This rule further clarifies the Department will determine whether or not a license or registration will be issued within 30 days of receipt of the application.

NEW RULE VI: RCE and FFN APPLICATION REQUIREMENTS

The proposed rule would combine content from ARM 37.95.103 and 37.95.110. The proposed rule would provide a clear, concise explanation of the requirements for prospective Relative Care Exempt (RCE) and Family, Friend, and Neighbor (FFN) providers before application for registration.

NEW RULE VII: ISSUING A LICENSE OR REGISTRATION

The proposed rule would combine some provisions from ARM 37.95.108 with additional detail to provide a clear step-by-step process on how a child care license or registration is issued. This proposed rule would better notify applicants of the department's licensing/registration process and its obligations to applicants.

NEW RULE VIII: RENEWING A LICENSE OR REGISTRATION

This proposed rule would clarify content from ARM 37.95.106, to provide clear information on license and registration renewal in a logical place—after the proposed rule on issuance of a new license or registration. The intent is for providers to have a roadmap of the licensing and registration processes in rule using a sequential order. The proposed rule would require renewal applications to be submitted 60 days before the current license or registration expires to allow sufficient time for the renewal application to be processed. The proposed rule would also ensure providers retain a full license or registration to allow for continuity of services if the department delays processing the renewal application.

NEW RULE IX: LICENSE OR REGISTRATION APPLICATION DENIAL

This proposed rule would clarify content from ARM 37.95.103 and provide straightforward information in one rule on why certain new or renewal applications must be denied, to promote clarity and understanding.

NEW RULE X: TECHNICAL ASSISTANCE

The department proposes to combine content from ARM 37.95.640 and 37.95.730, to centrally highlight the department's responsibilities to provide licensing and registration support to providers.

NEW RULE XI: LICENSE OR REGISTRATION ASSIGNMENT

This proposed rule would combine content from ARM 37.95.146 and 37.95.149, to provide concise, condensed language on license and registration assignment.

NEW RULE XII: PROGRAM INSPECTIONS

This proposed rule would update content from ARM 37.95.103, 37.95.108, 37.95.640, and 37.95.730, to provide one rule about department inspections of licensed child care programs and registered FFN programs. The proposed rule clarifies that inspections can only occur during child care business hours. In addition to promoting clarity, these proposed changes are necessary to balance the department's responsibility to ensure child care programs are safe with providers' privacy, especially those who provide child care in their homes. This proposed change is in response to feedback received by the department that home-based facilities thought the current rule was unclear and allowed the department to inspect homes at any time, day or night.

NEW RULE XIII: REQUIREMENTS FOR FACILITIES OPERATING WITH JOINT PROGRAMS

This proposed rule uses content from ARM 37.95.117 and would clarify how a child care facility can be located in a building with another program not related to the child care program.

NEW RULE XIV: WAIVERS AND PILOT PROJECTS

This proposed rule includes requirements from ARM 37.95.106, regarding waivers, and clarifies that the department and its partner agencies, like local public health departments, can grant waivers to any child care licensing rule if health and safety of children can be ensured. The proposed rule would also add a new option for providers to develop innovative pilot projects under a provisional license to test new, innovative approaches to child care delivery. These proposed changes provide

needed regulatory flexibility to pilot projects while still providing for the safety and well-being of children attending these programs.

Programming

The department proposes to repeal ARM 37.95.106, 37.95.169, 37.95.602, 37.95.606, 37.95.613, 37.95.619, 37.95.715, 37.95.718, 37.95.720, 37.95.1011, 37.95.1015, 37.95.1021, 37.95.1110, 37.95.1150, and 37.95.1180.

NEW RULE XV: PROGRAMMING DEFINITIONS

The department proposes to add content-specific definitions. In the proposed rule, some definitions have been added to reflect additional topical areas included in rules that would be compiled in a new subchapter on programming. These proposed organizational and substantive changes would increase useability of the rules by providing clear definitions of the terms used in the proposed rules on child care programming.

NEW RULE XVI: GENERAL PROGRAMMING REQUIREMENTS

The department proposes to combine, remove, and condense content from ARM 37.95.106, 37.95.602, 37.95.613, 37.95.715, 37.95.720, 37.95.1110, and 37.95.1150, focusing on requirements related to daily activities, equipment, and materials to support child development. The proposed rule would remove some of the specificity of current ARM 37.95.715 ~~and add separate requirements for the newly created category of school-age child care programs.~~ This would provide guidance on programming that is age-appropriate and allow for flexibility to align with provider preferences while maintaining quality for children in care. The proposed rule ~~would maintain but~~ streamline core requirements that ensure child development and safety.

NEW RULE XVII: INFANT AND TODDLER ACTIVITY REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.1011, 37.95.1015, and 37.95.1180 that relates to activity and programming requirements specific to infants and toddlers. The proposed rule would remove unnecessary detail to reduce burden and increase flexibility for providers. Bringing these requirements into a single rule would make it easier for providers and families to identify requirements for the youngest children in care. The proposed rule would maintain but streamline core requirements that ensure child development and safety.

NEW RULE XVIII: POSITIVE CHILD GUIDANCE

The department proposes to combine and condense content from ARM 37.95.169, 37.95.606, 37.95.715, and 37.95.1110, related to child guidance and discipline. The proposed rule would use the language and description of positive child guidance, which is an updated term for positive discipline, and maintain prohibitions against abusive physical or emotional punishment. This would give providers more clarity on best practices associated with positive child guidance and would give parents assurance that no abusive punishment will be used.

Administrative

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.115, 37.95.121, 37.95.124, 37.95.139, 37.95.140, 37.95.153, 37.95.155, 37.95.156,

37.95.160, 37.95.165, 37.95.169, 37.95.171, 37.95.183, 37.95.184, 37.95.613, 37.95.622, 37.95.702, 37.95.703, 37.95.704, 37.95.708, 37.95.711, 37.95.1110, 37.95.1130, and 37.95.1140.

The department proposes to repeal ARM 37.95.140 to align with SB 215, and to include documentation of religious exemptions as a type of child record that providers must keep.

The department proposes to repeal ARM 37.95.160, 37.95.184, 37.95.622, 37.95.703, and 37.95.704, to remove staff vaccination requirements and to align child care staff vaccination requirements with vaccination requirements for staff in public school settings.

NEW RULE XIX: ADMINISTRATIVE HEALTH DEFINITIONS

The department proposes to add a definitions rule specific to terms used in the rules on administrative requirements. In the proposed rule, the definitions of some terms would be added to reflect the use of these specialized administrative terms. This would increase readability and useability of the new subchapter by providing providers, staff, and families with clear definitions of the terms used in the administrative rules, collected in one place.

NEW RULE XX: EMERGENCY COMMUNICATION

The department proposes to combine content from ARM 37.95.103, 37.95.121, 37.95.183, 37.95.613, 37.95.708, and 37.95.1140, related to emergency communication. The proposed rule would collapse duplicative content from each of the current rules into one rule. This would make it easier for providers to immediately identify the requirements associated with emergency communication.

NEW RULE XXI: POLICY REQUIREMENTS

The department proposes to combine content from ARM 37.95.103, 37.95.124, 37.95.139, 37.95.155, 37.95.169, 37.95.171, 37.95.183, and 37.95.1140, on the policies that each type of provider is required to maintain. The proposed rule would collapse duplicative content from each of the current rules, without change, into one rule. It would also add policy requirements specific to licensed school-age care facilities and registered FFN providers. This would offer clarity to providers to ensure all necessary policies are identified and in place, and provide families with a clear and concise list of policies they should expect a licensed or registered child care provider to have. The proposed rule would maintain but streamline core policy requirements that ensure health and safety of children in care.

NEW RULE XXII: RECORD RETENTION

The department proposes to repeal ARM 37.95.155 and replace it with NEW RULE XXII to clarify how long and in what format providers are required to maintain records. The proposed rule would add the option for electronic files/records and make clear that department representatives only have the authority to request access to records during regular business hours. This would give providers more flexibility in how they maintain records and decrease the burden that comes from uncertainty about record retention formats and the duration of their record retention

obligation. It would also make clear that the department cannot make onerous records requests.

NEW RULE XXIII: PROGRAM RECORDS

The department proposes to combine content from ARM 37.95.106, 37.95.141, 37.95.702, 37.95.711, and 37.95.1110, related to recordkeeping about the program and facility. The proposed rule would add detail to clarify which records are required of all licensed and registered providers, which are required only of licensed providers, and which are required only of providers with 16 or more children receiving care. This would give providers a clear checklist of records they are required to keep and will decrease the burden associated with determining the applicable requirements and maintaining the required records. The proposed rule would maintain but streamline core required records that ensure the health and safety of children in care and the safety of the facility.

NEW RULE XXIV: CHILDREN'S RECORDS

The department proposes to combine and condense content from ARM 37.95.139, 37.95.141, 37.95.156, 37.95.184, 37.95.411, 37.95.702, 37.95.703, and 37.95.1130, on recordkeeping about children in care. This would collapse duplicative content from each of the current rules into one rule. It would also integrate records related to safe sleep into general recordkeeping. This proposal would give providers a clear checklist of records they are required to keep and decrease the burden on providers and families of having to complete more paperwork or at a higher frequency than is necessary. The proposed rule would maintain but streamline core required records that ensure the health and safety of the children in care.

NEW RULE XXV: STAFF RECORDS

The department proposes to combine and condense content from ARM 37.95.106, 37.95.160, 37.95.169, 37.95.184, 37.95.1005, and 37.95.1110, on recordkeeping about staff training and responsibilities. The proposed rule would remove requirements for records related to health statements and immunizations, as the department proposes to eliminate these requirements. This would decrease the burden on staff and providers to ensure that staff meet all requirements and streamline staff requirements by aligning child care staff requirements with staff requirements applicable in public school settings. Based on feedback from the assessment of child care providers and staff, the department believes that streamlining staff record requirements would decrease the burden on child care programs to obtain and maintain such records, and on new staff hires to provide detailed and personal information to the child care programs. The department believes that this may increase interest in child care staff positions, support provider recruitment and retention efforts, and ultimately increase the overall labor pool for child care.

NEW RULE XXVI: FAMILY ACCESS TO INFORMATION

The department proposes to combine and condense content from ARM 37.95.103, 37.95.115, 37.95.141, and 37.95.183, pertaining to how families can access program and child-specific information, as well as to the facility itself. The proposed rule would clarify which information is required to be made available to parents and at what times. This would give providers and parents a clear and shared

understanding related to communication. Providing parents with the child care program's policies on the listed topics prior to enrollment would help them make informed decisions in choosing a child care program.

NEW RULE XXVII: NOTIFICATIONS TO THE DEPARTMENT

The department proposes to combine and condense ARM 37.95.103, 37.95.153, 37.95.165, 37.95.171, and 37.95.183, related to situations in which the department must be contacted by the provider. The proposed rule would provide clarifications in language and combine content that is identical across several current rules. This would give providers a clear and simple list of reporting requirements, decreasing uncertainty and unnecessary reporting and/or paperwork.

Safety and Facilities

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.121, 37.95.124, 37.95.127, 37.95.132, 37.95.205, 37.95.207, 37.95.210, 37.95.610, 37.95.611, 37.95.613, 37.95.705, 37.95.706, 37.95.718, 37.95.720, 37.95.1005, 37.95.1015, 37.95.1016, 37.95.1021, 37.95.1105, 37.95.1110, 37.95.1120, 37.95.1140, and 37.95.1180.

NEW RULE XXVIII: SAFETY AND FACILITIES DEFINITIONS

The department proposes to add content-specific definitions, so that the grouping of proposed rules on safety and facilities would have definitions of terms that are specific to such topics. Some new definitions have been proposed specific to these topical areas. This would increase the readability and useability of the rules by giving providers, staff, and families clear definitions of the terms dealing with safety and facilities issues.

NEW RULE XXIX: HAZARDS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.207, 37.95.705, and 37.95.1110, related to minimizing safety hazards in and around child care facilities. The proposed rule would collapse content that is identical across several current rules into one rule. The proposed changes would clarify that safety standards as they relate to firearms specifically are applicable during business hours and add guidelines for guardrails on tall platforms (decks, stairs). This reorganization would give providers a single location to assess whether their facility has any hazard concerns, which may reduce the burden of uncertainty around specific safety requirements. The proposed rule would maintain but streamline safety standards for children in care.

NEW RULE XXX: ANIMALS

The department proposes to combine content from ARM 37.95.121 and 37.95.1110, on the presence of animals in a child care facility. The proposed rule would provide clear guidance on how to include domesticated animals at facilities. This would give in-home providers more flexibility to include pets and other domesticated animals in their child care programs. The proposed rule would maintain but streamline requirements to protect the safety of children in care.

NEW RULE XXXI: BUILDING REQUIREMENTS RELATED TO EXITS

The department proposes to combine and condense content from ARM 37.95.121, 37.95.610, 37.95.705, and 37.95.1110, related to exits and egress. The proposed rule would clarify content that is similar, but not identical, across several current rules and align building exit and egress requirements with international fire and building codes. New content is proposed to make it explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would standardize building requirements across all provider types and decrease confusion about exits and egresses. It would also support increased capacity for providers residing in different types of residential settings. The proposed rule would support but streamline core fire safety and building code requirements.

NEW RULE XXXII: INDOOR SPACE REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.610, 37.95.611, 37.95.705, 37.95.1021, 37.95.1120, and 37.95.1180, related to indoor space requirements. The proposed rule would combine content that is identical across several rules, eliminating redundancy, and reduce regulations of how indoor space may be used. The proposed rule would add flexibility for programs in shared spaces to utilize some indoor space on an infrequent basis (like a school gym or library). It also would make explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would increase flexibility for many types of providers in shared spaces as well as for providers residing in different types of residential settings. These changes are being proposed with the goal of increasing overall child care capacity and diversity. The proposed rule would maintain but streamline core safety requirements of indoor spaces.

NEW RULE XXXIII: OUTDOOR SPACE REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.610, 37.95.1015, and 37.95.1120, on the requirements for outdoor space. The proposed rule would clarify content that is similar, but not identical, across multiple current rules. The proposed rule would add flexibility to requirements for utilizing shared outdoor space if that space meets alternative, but equally rigorous, safety standards. This would give school-age care facilities and programs interested in different types of outdoor education more flexibility in meeting outdoor space requirements. It would also support programs in urban settings without access to private outdoor space in utilizing public outdoor space to meet requirements. These changes are intended to increase overall child care capacity and diversity. The proposed rule would maintain but streamline core safety standards for outdoor spaces.

NEW RULE XXXIV: FIRE SAFETY REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.121, 37.95.706, and 37.95.1110, related to fire safety. The proposed rule would clarify content that is similar, but not identical, across several current rules. The proposed rule would clarify the role of the fire marshal in inspecting child care facilities with 16 or more children. This would decrease confusion among providers about fire safety requirements and increase consistency in expectations across all provider types, which could improve overall safety of

children and staff. The proposed rule would maintain but streamline core fire safety standards.

NEW RULE XXXV: EMERGENCY AND DISASTER PREPARATION

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.124, and 37.95.1140 related to emergency preparedness. The proposed rule would combine content that is similar, but not identical, across several current rules and add detail to clarify and align requirements for registered FFN providers with federal requirements. This would decrease burden on providers by providing a checklist of plans and actions necessary for emergency preparedness, improving overall safety of children and staff.

NEW RULE XXXVI: SAFETY AROUND BODIES OF WATER

The department proposes to combine and condense content from ARM 37.95.103 and 37.95.127, related to safety around swimming pools and other bodies of water. The proposed rule would remove confusing language and detail supervision requirements for children around swimming pools and other bodies of water. The proposed rule would provide the strongest supervision requirements for the youngest children, who are unable to swim or touch the bottom of most bodies of water and lessen the requirements for older children. This would give school-age care facilities more flexibility to take children on field trips involving water bodies without jeopardizing child safety.

NEW RULE XXXVII: TRANSPORTATION SAFETY

The department proposes to repeal ARM 37.95.132 and replace it with NEW RULE XXXVII to reduce unnecessary and redundant detail, and to add detail that aligns with the needs of school-age care providers. The proposed rule would consolidate requirements related to child seats and restraints, and overall safe driving practices. It also would clarify how providers may use school buses for program-related transportation. This would decrease the burden of an overly prescriptive rule and give school-age care providers the option to utilize various forms of transportation, which could increase overall child care capacity for school-age children.

NEW RULE XXXVIII: SLEEPING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.210, 37.95.613, 37.95.619, 37.95.718, 37.95.720, 37.95.1005, 37.95.1016, 37.95.1105, and 37.95.1110, on safe sleep environments. The proposed rule would combine content that is similar, but not identical, across several rules and reduce redundancy. The proposed rule would use the definition of firm sleep surface proposed in another proposed rule, which includes cradleboards. This proposed rule would provide a single, clear location for all sleep requirements and guidance, which could improve the safety of children while in a sleep environment by using a simple, clear definition of a safe sleep environment. It is also intended to support a culturally sensitive approach to safe sleep by clarifying when and how a firm sleep surface, including cradleboards, can be used. The proposed rule would maintain but streamline core sleep safety standards.

Managing the Health of Children in Care

The department proposes to repeal ARM 37.95.103, 37.95.181, 37.95.182, 37.95.183, 37.95.184, 37.95.1015, and 37.95.1110.

NEW RULE XXXIX: MEDICAL HEALTH DEFINITIONS

The department proposes to organize the definition of terms specific to medical and health issues in this proposed rule, so that the definition of such terms is located, in the same new subchapter, with the rules that address such issues and topics. To offer providers greater clarity, some additional terms would be defined in this proposed rule. The department expects that the grouping of the definitions with the related issues and topics would increase the readability and useability of the rules.

NEW RULE XL: MEDICATION ADMINISTRATION

The department proposes to combine and condense content in ARM 37.95.103, 37.95.181, 37.95.182, and 37.95.1110, related to the handling, storage, and administration of medications. The proposed rule would combine content that is similar, but not identical, across a number of current rules and remove the redundancy in the current rules. This would give providers and parents a single location for all requirements related to medication, which could improve child safety through better medication management. The proposed rule would maintain but streamline core medication safety standards.

NEW RULE XLI: MANAGEMENT OF ILLNESS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.139, 37.95.184, and 37.95.1110, related to the management of illnesses in children and staff. The proposed rule would update many exclusion and inclusion criteria (when a child must be sent home because of illness and when they can stay or return to child care) to align with current standards from the American Academy of Pediatrics. It would also align exclusion requirements with HB 702 passed in the 2021 legislative session, which barred discrimination based on immunization status. HB 702 excludes from the bar on discrimination vaccination requirements set forth for day care facilities pursuant to Title 52, chapter 2, part 7, MCA (Montana Child Care Act). However, other child care rules that do not constitute "vaccination requirements" are subject to HB 702's bar on vaccination status discrimination. Current ARM 37.95.140(8) makes distinctions between people based on their vaccination status, and the proposed rule would remove this distinction, to align with HB 702. This would decrease burden on families due to fewer illnesses now requiring full exclusion from child care, and give providers more flexibility in how they manage day-to-day illnesses. The proposed rule also clarifies the appropriate communication pathways in the event of a communicable disease outbreak, which could decrease overall impact on child care availability by increasing timely communication among child care providers, families, and the local health authority. The proposed rule would not increase health risks to children.

NEW RULE XLII: FIRST AID

The department proposes to combine and condense content from ARM 37.95.183, 37.95.1015, and 37.95.1110, on required first aid supplies and procedures. The proposed rule includes only content from existing rules that directly relates to first aid; no new requirements are being proposed. However, the proposed

reorganization of the requirements into one rule would give providers and families a clear understanding of how first aid is to be administered in child care settings.

Environmental Health

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.126, 37.95.184, 37.95.205, 37.95.206, 37.95.207, 37.95.210, 37.95.214, 37.95.225, 37.95.226, 37.95.227, 37.95.708, 37.95.1001, 37.95.1002, 37.95.1004, 37.95.1021, 37.95.1110, and 37.95.1180.

NEW RULE XLIII: ENVIRONMENTAL HEALTH DEFINITIONS

The department proposes to group definitions related to environmental health in this proposed rule, immediately before the substantive rules on environmental health, in a new subchapter on environmental health. In the proposed rule, some definitions of new terms have been proposed. The proposed reorganization is intended to increase readability and useability.

NEW RULE XLIV: HEALTH RULES INCLUDED IN INSPECTION BY PUBLIC HEALTH AUTHORITIES

The department proposes to repeal content from ARM 37.95.106 related to the role of public health authorities in inspecting licensed child care programs of 16 or more children and proposes to create NEW RULE XLIV. The proposed rule does not include the list of rules that fall under environmental health or the current requirement for multiple, duplicative inspections when a child care program utilizes a space that is independently subject to public health inspections. This proposed change would decrease the burden on any child care program operating in a shared space and clarify the role of public health inspections for licensed child care centers and other providers with 16 or more children.

NEW RULE XLV: SMOKE-FREE ENVIRONMENT

The department proposes to combine content from ARM 37.95.103 and 37.95.126, related to smoke-free environments. The proposed rule would add vapor product use to the list of prohibited activities while children are in care. This would clarify for child care providers and staff that all child care facilities must be completely smoke-free, which could improve overall child health, while not arbitrarily prohibiting adult use of tobacco, nicotine, and vapor products outside of child care hours.

NEW RULE XLVI: OUTDOOR AIR QUALITY

The department proposes to add a rule on outdoor air quality standards that would align with public health requirements applicable to public schools (ARM 37.111.827). The proposed rule would require providers to follow outdoor air quality guidelines to determine when and where outdoor activities should occur. This would protect children from the negative impacts of smoke and other outdoor air pollutants by giving providers and staff clear guidelines about when exposure to outdoor air would be harmful, which could improve overall child health.

NEW RULE XLVII: INDOOR AIR QUALITY

The department proposes to add a rule related to indoor air quality and to integrate content from ARM 37.95.207 related to indoor air. The proposed rule is a simplified version of public school requirements related to indoor air quality (ARM 37.111.826)

and includes air temperature as well. Based on updated information about how to decrease the likelihood of communicable disease and allergens indoors, the department believes that buildings with centralized HVAC systems should maintain minimum cleanliness standards. This proposed rule would protect children from airborne pathogens and allergens, which could improve overall child health.

NEW RULE XLVIII: HAND HYGIENE

The department proposes to combine and condense content from ARM 37.95.103, 37.95.184, 37.95.207, 37.95.708, and 37.95.1110, on handwashing. The proposed rule would decrease the number of regulations on hand washing and focus on the desired outcome, which is consistent hand washing before and after key activities. This should decrease the burden of following overly detailed rules, which could increase compliance and, thus, improve the overall health of children. The proposed rule would maintain but streamline protections for child health.

NEW RULE XLIX: BATHROOM HYGIENE

The department proposes to combine and condense content from ARM 37.95.103, 37.95.207, 37.95.210, 37.95.214, 37.95.708, and 37.95.1001, related to maintaining clean bathrooms and bathroom routines. The proposed rule would combine content that is similar, but not identical, across multiple current rules. It also separates out proposed requirements on bathrooms from content on diapering (proposed NEW RULE LIII). This would decrease the burden on providers to maintain specific bathroom configurations and instead focus on the desired outcome, which is the avoidance of illness related to poor hygiene. The proposed rule would maintain protections for child health.

NEW RULE L: SOLID WASTE MANAGEMENT

The department proposes to combine and condense content from ARM 37.95.103, 37.95.205, 37.95.210, 37.95.708, 37.95.1001, and 37.95.1002, related to solid waste management. The proposed rule would reduce the requirements about how to dispose of solid waste, and focus instead on the desired outcome, which is the avoidance of contamination from solid waste. The proposed rule would decrease the regulatory burden on providers, while maintaining and streamlining protections for child health.

NEW RULE LI: LAUNDRY AND CLOTHING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.206, 37.95.210, 37.95.708, 37.95.184, 37.95.1002, 37.95.1021, 37.95.1110, and 37.95.1180, on laundry and soiled clothing. The proposed rule would reduce the number of current requirements, and focus on the desired outcome, which is clean laundry that is not contaminated by soiled laundry and, thus, does not present a health hazard to children. This proposed rule would decrease the current burden on child care providers to comply with very specific regulatory requirements like the temperature of hot water.

NEW RULE LII: SANITATION

The department proposes to combine and condense content from ARM 37.95.207 and 37.95.708, related to sanitizing surfaces in a child care facility. The proposed

rule would eliminate many of the detailed requirements of ARM 37.95.207, and add clarifying language to other requirements.

NEW RULE LIII: DIAPERING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.210, 37.95.1001, and 37.95.1180. The proposed rule would not adopt many of the detailed requirements in ARM 37.95.1001, but maintain most required diapering practices. The proposed rule would also clarify and simplify requirements related to handling cloth diapers. This would decrease the burden on child care providers to ensure that they are meeting all diaper-related sanitation requirements, and increase family choice by giving such providers guidance on accepting and utilizing cloth diapers.

NEW RULE LIV: BATHING

The department proposes to combine and condense content from ARM 37.95.207, 37.95.210, and 37.95.1004, related to bathing children. The proposed rule would combine requirements for bathing into one location and provide clarity to child care providers in meeting bathing requirements.

NEW RULE LV: WATER SUPPLY SYSTEM

The department proposes to combine and condense content from ARM 37.95.103, 37.95.225, and 37.95.708, related to water systems. The proposed rule is not substantially different from ARM 37.95.225, but would omit duplicative requirements from other current rules. This proposed rule would provide clarity on water system requirements for child care facilities.

NEW RULE LVI: SEWAGE SYSTEM

The department proposes to combine and condense content from ARM 37.95.103, 37.95.225, 37.95.226, and 37.95.708, related to sewage systems. The proposed rule is not substantially different from ARM 37.95.226, but would omit duplicative requirements from other current rules. This proposed rule would provide clarity on sewage system requirements for child care facilities.

NEW RULE LVII: SWIMMING POOL SANITATION

The department proposes to adopt this proposed rule to clarify swimming pool sanitation requirements. The proposed rule mirrors other, existing public health rules, providing common sense alignment.

NEW RULE LVIII: FOOD PREPARATION AND HANDLING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.214, and 37.95.708, on preparing and handling food. The proposed rule would decrease the overall specificity of the current rules, and align with ARM 37.95.708. This proposed rule would decrease burden on child care providers to maintain equipment in a specific way, and instead focus on the desired outcome, which is the avoidance of food-borne illness or other food-related challenges. The proposed rule would maintain but streamline core food safety requirements that maintain child health and well-being.

Nutrition and Food Service

The department proposes to repeal ARM 37.95.102, 37.95.103, 37.95.215, 37.95.711, 37.95.720, 37.95.1003, 37.95.1016, 37.95.1021, 37.95.1105, 37.95.1160, and 37.95.1180.

NEW RULE LIX: NUTRITION AND FOOD SERVICE DEFINITIONS

The department proposes to group definitions related to nutrition and food service health in this proposed rule, immediately before the substantive rules on these subjects, in a new subchapter on the subjects. In the proposed rule, some new definitions have been proposed. The intent of this proposed reorganization is to increase readability and useability of the rule chapter by providing clear definitions immediately before the rules in which the terms are used.

NEW RULE LX: NUTRITION REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.215, 37.95.619, 37.95.711, and 37.95.1160, related to nutrition. The proposed rule would decrease the overall specificity and detail of the current rules, and align with ARM 37.95.711. Currently this rule falls within the local health authority subchapter; the new structure and content makes it clear that local health authority staff are not responsible for overseeing these requirements.

NEW RULE LXI: INFANT FEEDING

The department proposes to condense and combine content from ARM 37.95.103, 37.95.1003, 37.95.1021, and 37.95.1180, related to infant feeding. The proposed rule would combine content that is similar, but not identical, across multiple current rules, and align with ARM 37.95.1003. The proposed rule is being updated to reflect current best practices related to infant feeding. This would decrease the burden on child care providers to make decisions about how they manage infant feeding, which could increase overall child care capacity for infants by improving providers' comfort with serving this population.

NEW RULE LXII: FOOD SERVICE EQUIPMENT

The department proposes to combine and condense content from ARM 37.95.103, 37.95.163, 37.95.720, 37.95.1003, 37.95.1016, and 37.95.1105, related to equipment for meal times. The proposed rule would combine content that is similar, but not identical, across multiple current rules, and add safety details about chairs that hook onto counters. This would decrease the burden on providers by providing a single location for these requirements.

Immunizations

The department proposes to repeal ARM 37.95.102, 37.95.140, and 37.95.1130 and remove staff immunization requirements from repealed ARM 37.95.160, 37.95.184, 37.95.622, 37.95.703, and 37.95.704.

NEW RULE LXIII: IMMUNIZATION DEFINITIONS

The department proposes to adopt the definitions in ARM 37.95.102 and add some additional definitions in this proposed rule, so that all terms related to immunizations are defined in this proposed rule, immediately adjacent to the proposed rules on immunizations. The department proposes to align the definitions of these vaccination terms with those used in ARM 37.114.701 through 37.114.799:

Immunization of School Children. Aligning such terms and exemptions with the terms and exemptions applicable to schools allows for consistency for a parent or guardian as the child transitions from a child care facility to school, ease of understanding, and gives a parent or guardian the same exemption options allowed in K-12 schools. This would also increase the readability and useability of the rules by providing clear definitions of the terms used in this specific topical area.

NEW RULE LXIV: MINIMUM CHILD IMMUNIZATION REQUIREMENTS

The department proposes to align immunization requirements for school-age care providers with **public** school regulations (ARM 37.114.703) and to clarify minimum vaccination requirements and exemptions applicable to FFN providers and RCE providers. The department proposes to clarify that there are no additional vaccine requirements for a child care program outside of the vaccines listed in proposed NEW RULE LXIV. This provides clarity as to the minimum requirements for children attending child care and allows for parental choice in any additional vaccines. It also offers clarity for providers and families on the minimum immunization requirements for a child in different types of child care settings.

NEW RULE LXV: EXEMPTIONS FROM VACCINATION

The department proposes to update its regulatory provisions on vaccine exemptions. The department proposes to add a religious exemption for all vaccines. It also proposes to clarify the requirements and applicability of medical exemptions. The department further proposes to clarify that vaccine records for children at a child care program are limited to child immunizations under the vaccine schedule listed in the proposed rule. The department proposes adding language that a home-based child care provider (FFN, family, and group child care facilities) has the option about whether they enroll children who are not vaccinated in accordance with the schedule in the proposed rule. Home-based providers would have to maintain policies and procedures to inform parents and guardians if the child care provider accepts children with exemptions from required vaccines. This, thus, would give choice to families with medical or religious exemptions; ensure compliance of the current and proposed vaccination requirement with SB 215 from the 2021 Montana legislative session; allow for parental choice in any additional vaccines a parent may choose for their child; simplify the documentation requirements for a parent or guardian because the same document could be used when a child who is not yet school-age transitions into a school setting; and give in-home providers the choice to set different policies to align with the needs of their own households. Ultimately, a parent or guardian would determine the child care setting that best suits the needs of their child(ren). If the parent or guardian is informed of the child care provider's vaccination policy, they can make the best decision for their child(ren). Under the proposal, child care centers would not have the same flexibility (1) in order to ensure there are child care settings supporting parents' and guardians' needs and choices regarding vaccinations; and (2) because the concerns that led to the proposal to provide flexibility for in-home providers do not apply to child care centers. Home-based business owners caring for mixed age groups are allowed autonomy in their choice to serve vaccination-exempt children; this will allow home-based providers to make choices for their own health and the health of their family members and the children in their care, who may not be old enough to be vaccinated. In contrast, child care centers are required to separate children by age group to protect younger

children who have not yet had the opportunity to be vaccinated. The department will ~~create an online maintain a~~ list of providers by vaccination policy type ~~so families can make the best choices for the care of their children.~~

NEW RULE LXVI: REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS

The department proposes to align vaccination documentation requirements with ARM 37.114.703: Requirements for Adequate Documentation of Immunization Status, which applies to immunization of school children. The proposed rule would clarify the acceptable forms of documentation and remove the requirement that school-age children attending public school provide immunization documentation to school-age care providers. This would simplify the documentation requirements for a parent or guardian and make it easier for school-age care providers to verify immunization status, which reduces burden on those child care providers and could increase overall capacity. The department believes these changes are necessary to simplify documentation requirements for parents and guardians because the same document could be used when a child who is in child care transitions into a school setting.

NEW RULE LXVII: EXAMINATION AND AUDIT OF OFFICIAL CHILD IMMUNIZATION RECORDS

The department proposes to add a rule clarifying that the department and local health authority representatives can audit child immunization records. This proposed requirement would align with federal requirements that child immunization records are verified during the annual inspection process.

NEW RULE LXVIII: IMMUNIZATION STATUS AS A CONDITION OF ATTENDANCE

The department proposes to clarify the immunization statuses that allow children to continue to attend a licensed or registered child care facility. The proposed rule adds language related to religious exemptions. This aligns with SB 215 from the 2021 Montana legislative session and the changes made through NEW RULES LXIV, LXV, and LXVI. This would additionally provide clear and concise standards for child care providers and parents.

Staff Qualifications and Training.

The department proposes to repeal ARM 37.95.102, 37.95.103, 37.95.162, 37.95.163, 37.95.622, 37.95.624, 37.95.703, 37.95.704, and 37.95.1170

NEW RULE LXIX: QUALIFICATION AND TRAINING DEFINITIONS

The proposed rule would edit, add, and delete definitions from ARM 37.95.102, related to staff qualifications and training. These proposed definitions would align with the proposed rules on child care staff and training, including the new licensing track for school-age care providers with its focus on caring for school-age children, in comparison with the current terminology focused primarily on early childhood educators.

NEW RULE LXX: DIRECTOR OR OWNER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.624, 37.95.703, and 37.95.1170, to consolidate director or owner responsibilities and qualifications into one rule. The proposed rule would include streamlined qualifications allowing for increased diversity in this role, which is needed to accommodate the broad array of professionals and program settings. This proposed change responds to feedback provided by stakeholders through the child care licensing assessment process. It would allow individuals with elementary teacher licenses, 35 years of experience but no college degree, significant background in Montessori education, or with many other combinations of education, skills, and experience to meet the requirements to serve in the role as the director or owner of a child care facility. This is important and necessary to grow Montana's child care system and workforce, which is essential to increase its child care capacity.

NEW RULE LXXI: SITE DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would add site director as a new staff role, which supports multi-site providers, including school-age care providers. Through the child care licensing assessment process, stakeholders conveyed to the department that this role was needed to accurately represent their staffing models. The education, training, other licensure, and experience qualifications for the role of site director would follow the model established in NEW RULE LXXI with respect to the required qualifications of a child care program owner or director. This proposed rule is further designed to support a diverse, qualified child care workforce and to expand Montana's child care capacity.

NEW RULE LXXII: LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.622, 37.95.704, and 37.95.1170, to consolidate lead teacher responsibilities and qualifications in one rule. The proposed rule changes the title of the position from "early childhood lead teacher" to "lead teacher," to incorporate the different needs of all lead teachers, including school-age care program lead teachers who would not care for children in early childhood. As with NEW RULE LXXII, the education, training, other licensure, and experience qualifications for the role of lead teacher would follow the model established in NEW RULE LXXI with respect to the required qualifications of a child care program owner or director. As there, this proposed rule is further designed to support a diverse, qualified child care workforce and expand Montana's child care capacity.

NEW RULE LXXIII: TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.622 and 37.95.704, to consolidate teacher responsibilities and qualifications in one rule. The proposed rule would provide a consistent qualifying age for this role of 16. As with NEW RULE LXXIV, the proposed rule would remove "early childhood" from the title of the role to be inclusive of teachers in school-age care facilities.

NEW RULE LXXIV: SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS

This proposed rule would incorporate content from ARM 37.95.162 and 37.95.622, in modified form, to provide a consolidated and concise rule for substitutes across all staff roles.

NEW RULE LXXV: TRAINEE RESPONSIBILITIES AND QUALIFICATIONS

This proposed rule would incorporate content from ARM 37.95.622 and 37.95.704, in modified form, to provide a consolidated and concise rule for trainees. The proposed rule would extend the time a staff member can be a trainee from 30 to 90 days in order to allow more time to complete required trainings. This change is proposed in response to child care licensing assessment findings.

NEW RULE LXXVI: SUPPORT STAFF QUALIFICATIONS

The proposed rule would add new requirements related to support staff. The proposed rule would clarify and ease understanding of required qualifications for support staff, as well as align with federal regulatory requirements.

NEW RULE LXXVII: VOLUNTEER QUALIFICATIONS

The proposed rule would add new requirements related to volunteers. It would clarify qualifications for volunteers, aligning them with federal regulatory requirements. The feedback provided by child care programs during the child care licensing assessment process indicated a need for clarity about volunteer roles and responsibilities; the proposed rule is intended to provide the requested clarification.

NEW RULE LXXVIII: ORIENTATION TRAINING

The proposed rule would incorporate content from ARM 37.95.163, in modified form, and provide concise information on who is required to complete orientation training, when, and what the training must cover.

NEW RULE LXXIX: ANNUAL TRAINING

The proposed rule would incorporate requirements from ARM 37.95.162. It would clarify and streamline annual training requirements for staff with respect to each child care license or registration type. The proposed changes are intended to support a broader diversity of annual training options aligned with providers' specific needs, including training focused on school-age children or more advanced training options for experienced educators.

NEW RULE LXXX: HEALTH AND SAFETY REFRESHER COURSE

The proposed rule incorporates content from ARM 37.95.162, in modified form, to clean up and clarify current rule language.

Background Checks

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.108, 37.95.110, 37.95.161, 37.95.173, 37.95.176, 37.95.704, and 37.95.1110.

NEW RULE LXXXI: BACKGROUND CHECK DEFINITIONS

The department proposes to group definitions related to background checks in this proposed rule, immediately before the substantive rules on background checks, in a new subchapter on the subject. In the proposed rule, some new definitions have been proposed. The intent of this proposed reorganization of definitions is to increase readability and useability of the rules by offering providers, staff, and families clear definitions of the terms used in connection with background checks immediately before the rules in which the terms are used.

NEW RULE LXXXII: FINGERPRINT AND BACKGROUND CHECKS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.110, 37.95.161, and 37.95.704, related to background checks for all adults in child care facilities. The proposed rule would clarify who is required to receive a background check and the frequency of each type of required background check. This would streamline expectations and timelines for new staff hires and staff renewals, which may decrease the burden of hiring and retaining staff. These proposed changes align with the child care licensing assessment findings, and would ensure that the state requirements are aligned with federal regulatory requirements.

NEW RULE LXXXIII: BACKGROUND CHECK RESULTS THAT MUST RESULT IN THE DENIAL OF AN APPLICANT

The department proposes to clarify the background check results that must lead to a determination that an individual is ineligible to be employed or present in a child care setting. The proposed rule does not include two crimes – prostitution and burglary – that are currently listed in ARM 37.95.176, but do not meet the federal definition of crimes for which an application must be denied, and includes two new crimes – arson and misdemeanor partner/family member assault when the victim is a minor. This proposed change would align the state's rules with the federal regulatory requirements that felony and serious misdemeanor crimes impacting a victim's physical or emotional well-being constitute crimes that must make an individual ineligible to work or be present in a child care facility. These proposed changes would align the state regulations with the minimum federal requirements.

NEW RULE LXXXIV: BACKGROUND CHECK RESULTS THAT MAY RESULT IN THE DENIAL OF AN APPLICANT

The department proposes to clarify when/whether background check results permit the department discretion in determining if an individual is ineligible to be employed or present in a child care setting. The proposed rule would add two crimes – prostitution and burglary -- and would add being named in a founded report of child abuse or neglect. The proposed rule would clarify that being named a perpetrator in a founded report of child abuse or neglect cannot be the sole reason for denying an application based on the background check. The addition of prostitution and burglary would align with federal requirements that misdemeanor crimes impacting a victim's physical or emotional well-being could make an individual ineligible to work or be present in a child care facility. These proposed changes, thus, align the state regulations with the minimum federal requirements, while also providing the state discretion to evaluate each case on an individual basis before denying someone employment.

NEW RULE LXXXV: OFFENSES THAT ARE PENDING RESOLUTION

The department proposes to clarify that an individual charged with a crime that must make them ineligible to be present in a child care facility under the proposed rule, must be excluded from the child care facility, during the times child care is being provided, pending the resolution of the criminal charges. The proposed rule would clarify existing language in ARM 37.95.173, and provide increased clarity for providers and individuals in their households regarding pending criminal cases. The department believes that the proposed changes are necessary to balance the

department's responsibility to help ensure children are safe in child care facilities with the understanding that criminal charges are not an adjudication of guilt. The department also believes the proposed exclusion requirement during child care hours protects children without arbitrarily excluding a person from a place where it is otherwise lawful for them to be.

NEW RULE LXXXVI: PROCESS TO REQUEST ADMINISTRATIVE RECONSIDERATION OF BACKGROUND CHECK RESULTS AND DEPARTMENT DETERMINATION

The department proposes to clarify and ease the process for requesting a correction of inaccurate background check results. The proposed rule would explain the difference between requesting correction of inaccurate information and requesting a reconsideration based on evidence of rehabilitation from crimes that otherwise result in a determination of ineligibility due to a may deny background check finding. These proposed changes are intended to clarify, for providers and staff, who can request reconsideration, which may streamline the staff hiring process. It would also protect staff privacy by giving staff more of a role in requesting a reconsideration. Considering ongoing child care workforce shortages, the department also believes these changes are necessary to prevent situations where an otherwise qualified child care applicant is not hired because of inaccurate criminal justice information, or where the applicant has been rehabilitated.

Investigations, Corrective and Negative Licensing Actions

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.108, 37.95.154, 37.95.176, and 37.95.730.

NEW RULE LXXXVII: COMPLAINTS AND INVESTIGATIONS

The proposed rule would incorporate content from ARM 37.95.103, 37.95.106, 37.95.108, 37.95.154, and 37.95.730, in modified form, to provide one location in which to establish complaint and investigation processes. Having one concise rule should make the process more understandable and establish clear guidelines for providers and the department.

NEW RULE LXXVIII: LICENSING OR REGISTRATION CORRECTIVE ACTION

The department proposes this new rule to provide clarity on the corrective action process. These proposed changes are intended to give notice to child care providers on corrective action plan content, and on the process by which providers could submit additional information to the department in the event of a contested deficiency. These proposed changes would also provide an opportunity for child care providers and the department to collaborate and resolve alleged violations early in the process, preventing the elimination of critical child care slots.

NEW RULE LXXXIX: TIME PERIOD FOR CORRECTING A VIOLATION

This proposed rule would establish the basis on which the department would determine the time period for correcting a licensure or registration violation.

NEW RULE XC: DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OF A LICENSE OR REGISTRATION

The proposed rule would adopt text from ARM 37.95.176 to establish the process for denying, suspending, revoking, or modifying a child care license or registration. The proposed rule supports RRI through shorter, clearer, easier-to-locate rules.

NEW RULE XCI: VIOLATIONS THAT MAY RESULT IN NEGATIVE LICENSING OR REGISTRATION ACTION

The proposed rule would adopt language from ARM 37.95.176 and provide clarity on the violations that can result in negative licensure or registration action. The current rule is substantively similar, but is drafted in a way that causes confusion. The proposed rule does not include duplicative violations, reducing the length and increasing the readability of the rule.

NEW RULE XCII: NOTICE OF LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION

This proposed rule would provide clear notice that denial, suspension, or revocation of a license or registration is an adverse department action and that affected licensees, registered providers, or applicants have the right to an administrative hearing and appeal procedures.

NEW RULE XCIII: ISSUING A PROBATIONARY LICENSE OR REGISTRATION

The proposed rule would update ARM 37.95.176(4), creating one rule about probationary licenses. The proposed rule would also shift the notification requirements from the department to the child care provider, which would support provider-family relationships.

NEW RULE XCIV: PROVIDING UNLICENSED CARE

This proposed rule would clearly establish the roles and responsibilities of the department with respect to an unlicensed provider that is not license-exempt (is operating illegally). Under the proposed rule, CCL staff would be able to send a notice to the illegally operating provider, support the provider in becoming licensed, and notify the department attorney, county attorney, or attorney general, as necessary to address any continued wrongdoing. CCL staff cannot take additional steps beyond those outlined in 52-2-741, MCA.

NEW RULE XCV: REAPPLICATION AFTER DENIAL, SUSPENSION, OR REVOCATION

The proposed rule would adopt, in modified form, content from ARM 37.95.175, to clarify whether and when applicants, licensees, and registered provider can reapply for a license or registration after a negative action. It would allow reapplication to occur immediately if the denial is a result of incomplete information, changing the current requirement of a year suspension prior to any action on a reapplication. The department believes that the current rule arbitrarily precludes, among other things, applicants denied a license or registration due to incomplete information from reapplying for a year after denial. This proposed change is needed to remove a punitive exclusion when the applicant has not done anything wrong. The new rule would also separate the consequences of suspension from those of revocation, which are currently combined, as well as eliminate an unnecessary barrier to offering needed child care services.

NEW RULE XCVI: FAIR HEARING

This proposed new rule would clarify the fair hearing process for an applicant, licensee, or registered provider.

Fiscal Impact

The department does not anticipate any fiscal impact associated with these proposed rule amendments.

6. The department intends to adopt the new rules effective upon the day after the date of publication of the adoption notice.

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: Kassie Thompson, 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 2, 2022.

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. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

12. The bill sponsor contact requirements of 2-4-302, MCA, ~~do not apply~~ have been met.

13. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will significantly and directly impact small businesses.

The department believes the proposed rules offer options to child care providers as small businesses to increase revenue and increase the number of child care providers in Montana. A child care provider, as a small business, can determine the number of children served up to the child care program's approved capacity. The department proposes an increase in the child-to-staff ratio and maximum capacity for school-age children. The department proposes to add flexibility to space, both indoor and outdoor, to encourage new and diverse child care provider options to families in Montana.

Commented [A19]: This is a placeholder and what the Notice will say upon filing. Notice will be provided pursuant to 2-4-302.

Attachment 2

From: Moseman, Tracy <Tracy.Moseman@mt.gov>
Date: Thursday, December 7, 2023 at 3:00 PM
To: Emrich, Daniel <Daniel.Emrich@legmt.gov>
Cc: Brereton, Charlie <Charles.Brereton@mt.gov>
Subject: Child Care Licensing Rules Follow Up

Senator Emrich,

It was great to visit with you yesterday. I have included the items we discussed.

- The 2023-8-10 CCL Proposed Rule Revisions and comments draft includes red lined additions and language removal per discussions from Representative Carlson and Senator Lenz. In addition, you will see comments that show areas where changes were requested, but the department responded with the rationale for keeping the language as originally written. This was shared with Representative Carlson and Senator Lenz for their review following the meeting.
- The Child Care Licensing Rule Benefits 12/23 document was sent to Representative Yakawich as a summary of benefits of the proposed rule package as a request from a conversation between he and Director Brereton. Of note, this is a summary document, so it does not include the many individual updates (i.e. removal of a registered dietitian to review menus for centers)
- I spoke with Phoebe and she is seeking time on calendars for Director Brereton, you and I to connect as follow up.

Please let me know if you have questions,

Tracy Moseman

Early Childhood and Family Support Division Administrator
Mt. Department of Public Health and Human Services
1625 11th Ave Helena, Mt. 59601
Helena, Mt. 59620
Office: (406) 444-6676
Cell-(406) 202-9465
Website: [Early Childhood and Family Support \(mt.gov\)](http://Early Childhood and Family Support (mt.gov))



KEY HIGHLIGHTS OF THE PROPOSED CHILD CARE LICENSING PACKAGE:

- The department applied Governor Gianforte’s Red Tape Relief Initiative criteria to the rule rewrite to ensure each rule served a purpose, was not redundant, created the least burden possible, and was clear in language and intent resulting in a 20% reduction in content.
- The rule rewrite reorganized the rules topically to make the chapter as accessible and user-friendly as possible for providers, licensors, and families. For example, fire requirements are currently found in five sections of ARM, and the proposed rules would move them all into Safety and Facilities. The rewrite proposes the rule be organized as follows:
 - 1) General
 - 2) Program Activities
 - 3) Administrative
 - 4) Safety and Facilities
 - 5) Medical Health
 - 6) Environmental Health
 - 7) Nutrition and Food Service
 - 8) Immunizations
 - 9) Staff Qualifications and Training
 - 10) Background Checks
 - 11) Support and Enforcement
- The new rule package allows for providers to apply for waivers to licensing standards, providing the department more flexibility to grant licenses in specific situations. Public comment agreed, noting it could lead to innovation and partnerships in local communities.
- The new rule package adds a licensing category for school-age care providers (out of school-time) that considers the unique needs of serving school age children. With the addition of the licensing category for school-age care, providers can safely increase their staff to child ratio, allow school age children an option for care beyond traditional childcare settings with younger children, and access the Best Beginnings Subsidy. The department received only support from public comments.
- The new rule package incorporates legislative updates from the 2021 and 2023 sessions including immunizations, ratios, increases the number of children in care without being licensed/registered, and military licensing reciprocity. 2021 legislation incorporated into the updated rules includes SB 215 and HB 702 which both impact immunization requirements. 2023 legislation includes HB 556 which allows for six or



fewer children to be in care without the provider being registered/licensed, HB 422 which increases staff/child ratios, HB 336 which provides for licensing reciprocity with the military, and HB 715 which removes the notary requirement for religious exemption forms.

- The new rule package aligns child care licensing with CCDF requirements. This ensures all child care providers can choose to accept the Best Beginnings Subsidy and have this optional revenue for their small business.
- The new rule package reduces the need for multiple duplicate inspections (i.e. fire, health department) to comply with licensing.
- The new rule package reduces requirements for in home providers, reducing the burden of unnecessary requirements for small in home providers.
- The new rule package has been through a lengthy legal review to ensure alignment with state laws and federal requirements.
- The new rule package outlines the department provides licensing and registration technical assistance to providers. Public comment supported this, noting a provider can expect support to meet licensing requirements.
- The new rule package outlines the pathways for alternative type of child care provider, a Family, Friend, and Neighbor (FFN). A FFN provider offers a simplified process that could meet the needs of local community.
- The new rule package adds the qualifying age, 16 years old, to work at a child care facility. Public comment supported the opportunity for workforce and mentoring expansion.

ADDITIONAL BACKGROUND:

Applying the Red Tape Relief Initiative, the rule package received substantial stakeholder input:

- Stakeholder feedback from 627 surveys, 126 focus group attendees and 27 interviews guided the Department in the development of the updated rule package.
- Feedback from 122 written and oral public comments overwhelmingly applauded the work at reducing requirements, streamlining the rules for providers, and improved navigation by topics.



Attachment 3

Department of Public Health and Human Services

Early Childhood & Family Support Division ♦ 1625 11th Ave ♦ Helena, MT 59601 ♦ (406) 444-0957

Greg Gianforte, Governor

Charles T. Brereton, Director

DATE: October 31, 2022

AGENCY: Department of Public Health and Human Services
Early Childhood & Family Support Division
Childcare Licensing Program

SUBJECT: Enforcement discretion regarding immunization requirements for licensed and registered childcare providers
Administrative Rules of Montana (ARM) 37.95.141
Montana Religious Freedom Restoration Act, §§ 27-33-101 through 105, MCA

ACTION: Notice of Enforcement Discretion

SUMMARY:

This notification is to inform the public that the Department of Public Health and Human Services (the Department) is exercising its discretion in how it enforces the immunization requirements for licensed and registered childcare programs. As a matter of enforcement discretion, the Early Childhood & Family Support Division (ECFSD), through its Childcare Licensing Program, will not pursue negative licensing actions against licensed and registered childcare facilities for noncompliance with the administrative rules only recognizing a religious exemption to immunization against Haemophilus influenza type B, and will not deny licensure or registration to an applicant which will not enforce immunization requirements against individuals/families who attest to objection to such requirements on the basis of religious belief.

DATES:

This Notification of Enforcement Discretion is effective immediately and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Tracy Moseman, ECFSD Administrator
Tracy.Moseman@mt.gov
(406) 444-6676

SUPPLEMENTARY INFORMATION:

Background

The Department through its Childcare Licensing Program is responsible for enforcing the Administrative Rules of Montana (ARM) with regards to certain immunizations for children in licensed and registered childcare settings. (See ARM 37.95.140, 141.). During the 2021 Montana Legislative Session, Senate Bill 215 (SB 215), establishing the Montana Religious Freedom Restoration Act (RFRA), was passed and signed into law, protecting the free exercise of religion. To comply with RFRA in childcare settings, the Department proposed amendments to ARM 37.95.140 under rules notice 37-

994 to recognize religious exemption from immunization requirements in certain childcare settings. On August 29, 2022, the Children, Families, Health, and Human Services Interim Committee, having oversight of administrative rules proposed by the Department, informally objected to the rules necessary for compliance with RFRA, temporarily preventing the Department from adopting the proposed rules.

Because the Department has not yet been able to amend its childcare regulations to recognize religious exemptions to the vaccination requirements due in part to the requirements set forth by House Bill 447 (HB 447), to ensure compliance with RFRA, the Department issues this Notice of Enforcement Discretion to allow childcare providers the option of accepting documented exemptions from required immunizations based on the sincerely held religious beliefs of the parents. The Department Affidavit of Exemption on Religious Grounds (form HES-113) can be used by parents to document the religious exemption.

Should providers choose to accept such exemptions, they should notify all parents of children attending the childcare facility. Providers should also notify the Department of acceptance. The Department will exercise its discretion and will not take enforcement action against any childcare provider that enrolls children who have not received one or more of the vaccines listed in ARM 37.95.140 because of sincerely held religious belief(s). This exercise of enforcement discretion will continue until further notice.

Who/What is Covered

This Notice applies to all licensed and registered childcare providers in the State of Montana when such entities are, in good faith, accepting exemptions from immunizations due to sincerely held religious beliefs by parents seeking childcare for their children.

/s/Charles T. Brereton

Charles T. Brereton
Director