SENATE BILL NO. 285

INTRODUCED BY D. LENZ

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING ADMINISTRATIVE RULES GOVERNING THE LICENSURE OF DAY-CARE FACILITIES; REVISING CERTAIN RULES TO APPLY ONLY TO DAY-CARE CENTERS; REVISING DEFINITIONS; REVISING RULE LANGUAGE TO MATCH STATUTORY LANGUAGE; REMOVING REFERENCES TO SCHOOL-AGE CARE FROM THE CHILD-CARE RULES; DIRECTING THE AMENDMENTS OF ARM 37.96.101, ARM 37.96.102, ARM 37.96.106, ARM 37.96.108, ARM 37.96.111, ARM 37.96.202, ARM 37.96.205, ARM 37.96.402, ARM 37.96.403, ARM 37.96.404, ARM 37.96.407, ARM 37.96.408, ARM 37.96.409, ARM 37.96.410, ARM 37.96.413, ARM 37.96.414, ARM 37.96.415, ARM 37.96.601, ARM 37.96.602, ARM 37.96.603, ARM 37.96.607, ARM 37.96.608, ARM 37.96.609, ARM 37.96.612, ARM 37.96.613, ARM 37.96.614, ARM 37.96.615, ARM 37.96.618, ARM 37.96.619, ARM 37.96.620, ARM 37.96.623, ARM 37.96.624, ARM 37.96.704, ARM 37.96.705, ARM 37.96.708, ARM 37.96.801, ARM 37.96.802, ARM 37.96.805, ARM 37.96.809, ARM 37.96.902, ARM 37.96.907, ARM 37.96.915, ARM 37.96.1002, AND ARM 37.96.1004; REPEALING ARM 37.96.806, ARM 37.96.901, ARM 37.96.903, ARM 37.96.904, ARM 37.96.908, ARM 37.96.909, AND ARM 37.96.910; AND PROVIDING AN EFFECTIVE DATE.”

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Department to amend rule.** (1) The department of public health and human services shall amend Title 37, chapter 96, ARM, so the rule language matches the statutory definitions in 52-2-703, MCA, by changing all references in rule from:

(a) "child care center" to "day-care center";

(b) "child care facility" to "day-care facility";

(c) "family child care facility" to "family day-care home"; and

(d) "group child care facility" to "group day-care home".

(2) The department of public health and human services shall renumber the rule in [section 19] so

that the rule is grouped with the other rules that are generally applicable to all types of day-care facilities.

NEW SECTION. **Section 2.** The Department of Public Health and Human Services shall amend ARM 37.96.101 to read:

"37.96.101 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~~ has the meaning provided 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 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 care for children provided on an unscheduled or on-demand basis while parents attend discrete activities such as 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)~~(4) "Child Care Licensing (CCL)" is the program at the Montana Department of Public Health and Human Services that regulates and supports child care providers.

~~(8) "Continuous" means without interruptions, gaps, or stopping.~~

~~(9)~~(5) "Department" means the Montana Department of Public Health and Human Services.

(6) "Director" means the person designated as the person responsible for the daily operation of a licensed day-care center. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the center.

~~(10)~~(7) "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.

~~(11)~~(8) "Drop-in child care" means a ~~child care~~ day-care facility which only provides care to children on an unscheduled or on-demand basis while parents/guardians attend discrete activities.

~~(12) "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 desires to receive child care subsidy payments as described in 52-2-713, MCA.~~

~~(13)~~(9) "Family, Friend, and Neighbor ~~(FFN)~~ provider" or "FFN provider" means a child care provider who can provide regular care for no more than six children from separate families or all children from a "sibling group" and who opts to be registered.

~~(14) "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.~~

~~(15) "Group size" means the number of children in a defined space or intentionally grouped around an~~

~~activity.~~

~~(16)~~(10) "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.

~~(17)~~(11) "Infant" means a child through 11 months old.

~~(18)~~(12) "Irregular" means periods of time less than six hours a day or for no more than three consecutive weeks at a time.

~~(19)~~(13) "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 registration/license span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.

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

~~(20)~~(15) "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~~ six 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.

(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.

~~(21)~~(16) "Licensee," "owner," or "registered provider" means the legally responsible person or organization who holds a license or registration from the department.

~~(22)~~(17) "Negative action" means denial, suspension, revocation, or modification of a license or registration.

~~(23) "Night care" or "non-traditional hours" means care provided for a child between the hours of 6 p.m. and 6 a.m.~~

(18) "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.

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

~~(24)~~(20) "Overlap care" means care provided at a registered family or group ~~child care facility~~ day-care home 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 registration.

~~(25) "Parent" or "guardian" means birth parent, custodial parent, adoptive parent, foster parent, legal guardian, or an individual authorized to act with respect to a child by the parent or entity legally responsible for the welfare of the child.~~

(21) "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.

~~(26)~~(22) "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~~ day-care facility, excluding FFNs and Relative Care Exempt providers.

~~(27)~~(23) "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.

~~(28)~~(24) "Provider" means the applicant, the license holder, or registration holder.

~~(29)~~(25) "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 preregistration inspection. This status does not apply with respect to FFN or RCE (Relative Care Exempt) 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.

~~(30)~~(26) "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 at a time.

~~(31)~~(27) "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.\

~~(32)~~(28) "Relative care exempt ~~(RCE)~~ provider" or "RCE provider" means a person who is related by blood or marriage as defined in 52-2-703(15), MCA, who is providing relative care and who opts to be registered by the department to receive payments to provide child care.

~~(33)~~(29) "Renewal" is a process for providers to demonstrate ongoing compliance with licensing or registration requirements and for the department to reissue a license or registration to continue operating a ~~child care~~ day-care facility.

~~(34) "School-age care" means regularly scheduled care exclusively for school-age children during out-of-school-time hours, licensed by the department.~~

~~(35) "School-age child" means a child who is five years old or older.~~

~~(36)~~(30) "Sibling group" means all children are from the same household.

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

~~(37) "Staff" refers to all persons who work or substitute in a child care facility, including directors, and count in child-to-staff ratio.~~

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

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

~~(38)~~(34) "Supervision" means the provider ~~and/or such~~ and any staff ~~as~~ who are necessary to maintain required child-to-staff ratios. The provider and staff must be able to see or hear the children at all times.

~~(39)~~(35) "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.

(36) "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.

~~(40)~~(37) "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.

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

~~(41)~~(39) "Toddler" means a child who is 12 months old through 36 months old.

~~(42)~~(40) "Waiver" means the department has approved an exception to a rule within this chapter."

NEW SECTION. **Section 3.** The Department of Public Health and Human Services shall amend ARM 37.96.102 to read:

"37.96.102 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 a choice in selecting their license or registration category based on the benefits and requirements associated with each type of care.

(a) Child care can be provided in ~~child care~~ day-care centers, group ~~child care facilities~~ day-care homes, family ~~child care facilities~~ day-care homes, ~~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~~ day-care facilities," that includes ~~child care~~ day-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~~ day-care facilities," that means licensed ~~child care~~ day-care centers, ~~licensed school-age care facilities,~~ licensed drop-in care facilities, registered group ~~child care providers~~ day-care homes, registered family ~~child care providers~~ day-care homes, and registered FFN providers.

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

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

(a) RCE providers provide care in a private residence either for a sibling group of any size or for 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~~ day-care homes provide care in a private residence or other structure for three to eight children on a regular basis.

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

(e) ~~Child care~~ Day-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 schoolage children and during out-~~

~~of-school-time hours.~~

~~(g)~~ (f) 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~~.

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

(a) ~~Child care~~ Day-care centers must be licensed.

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

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

~~(i)~~ (d) Providers serving three to six children have the option of registering as a family ~~child care provider~~ day-care home or as an FFN provider. Registration is required for providers who receive or wish to receive subsidy payments.

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

NEW SECTION. **Section 4.** The Department of Public Health and Human Services shall amend ARM 37.96.106 to read:

"37.96.106 CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION (1) A licensed or registered ~~child care~~ day-care facility may not provide care for more than the number of children permitted by its license or registration at any one time.

(2) ~~Child care~~ Day-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.

(b) 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.

(c) Only the director, site directors, lead teachers, teachers, substitutes, and trainees may be counted as staff when determining the child-to-staff ratio.

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

(3) At nap time in licensed ~~child care~~ day-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.

~~(4) 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.~~

~~(5)~~(4) Family and group ~~child care facilities~~ day-care homes must meet the following staffing requirements:

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

~~(i)~~ (b) 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.

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

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

~~(6)~~(5) Overlap care may be approved by the department for family ~~child care~~ and group ~~child care facilities~~ day-care homes 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)~~(c) ~~Child care facilities~~ Day-care facilities providing two shifts of 12-hour care may be granted three hours of overlap care for each 12 hours of continuous care.

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

~~(g)~~(e) 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~~ adequate space to care for the total number of children.

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

~~(7)~~(6) Children must be supervised at all times.

~~(8)~~(7) Staff providing direct care must be responsible for protection, supervision, and guidance of children through active involvement or direct observation."

NEW SECTION. **Section 5.** The Department of Public Health and Humans Services shall amend ARM 37.96.108 to read:

"37.96.108 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)~~(b) have satisfactory results of background checks for the applicant as set forth in ARM 37.96.1001. If care is provided in the applicant's home, all adults who reside there must also have satisfactory results of background checks;

~~(d)~~(c) complete orientation approved by the department that includes health and safety training; and

~~(e)~~(d) 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 FFN and RCE providers, pursuant to ARM 37.80.208."

NEW SECTION. **Section 6.** The Department of Public Health and Human Services shall amend ARM 37.96.111 to read:

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

~~(a)~~(b) 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 completion of any required compliance measures. The department issues regular licenses and registrations for a period of ~~one year~~ up to three years.

(5) The department will recognize the status of, and will 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."

NEW SECTION. **Section 7.** The Department of Public Health and Humans Services shall amend ARM 37.96.202 to read:

"37.96.202 DAY-CARE CENTER GENERAL PROGRAMMING REQUIREMENTS (1) ~~Child care~~ Day-care centers~~, group child care facilities, family child care facilities, and licensed dropin 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) ensure facilities provide durable, safe, clean, and child-sized furniture or furniture adapted for children's use; and

(c) limit screen time.

(2) ~~Child care centers, group child care providers, family child care providers, and licensed drop-in child care providers~~ Day-care centers offering night care ~~must meet the following criteria~~ shall develop plans for staff, equipment, and space that will provide for the personal safety and emotional and physical care of children away from their families at night 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~~."

NEW SECTION. **Section 8.** The Department of Public Health and Human Services shall amend ARM 37.96.205 to read:

"37.96.205 DAY-CARE CENTER INFANT AND TODDLER ACTIVITIES ~~(1) Child care~~ Day-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; and~~

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

NEW SECTION. **Section 9.** The Department of Public Health and Human Services shall amend ARM 37.96.402 to read:

"37.96.402 DAY-CARE CENTER HAZARDS (1) All licensed ~~and registered child care providers~~ day-care centers 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) (a) 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)~~ (b) 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."

NEW SECTION. **Section 10.** The Department of Public Health and Human Services shall amend ARM 37.96.403 to read:

"37.96.403 DAY-CARE CENTER ANIMALS (1) Any pet or domesticated animal present at any licensed ~~or registered child care facility~~ day-care center, 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."

NEW SECTION. **Section 11.** The Department of Public Health and Human Services shall amend ARM 37.96.404 to read:

"37.96.404 DAY-CARE CENTER BUILDING REQUIREMENTS RELATED TO EXITS (1) (a) In an emergency, all occupants must be able to escape from a ~~child care facility~~ day-care center in a safe and timely manner.

~~(a)~~ (b) 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.~~"

NEW SECTION. **Section 12.** The Department of Public Health and Human Services shall amend ARM 37.96.407 to read:

"37.96.407 DAY-CARE CENTER INDOOR SPACE REQUIREMENTS (1) All licensed ~~and registered child care providers, except RCE providers,~~ day-care centers 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.

(6) In licensed ~~child care facilities~~ day-care centers 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~~ day-care center 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~~ licensed,

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.~~"

NEW SECTION. **Section 13.** The Department of Public Health and Human Services shall amend ARM 37.96.408 to read:

"37.96.408 DAY-CARE CENTER OUTDOOR SPACE REQUIREMENTS (1) ~~Outdoor play space must contain a minimum of~~ All licensed day-care centers must ensure there is at least 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) (a) Outdoor play areas at all ~~child care facilities~~ day-care centers 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)~~ (b) 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.

(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~~ day-care centers 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 ~~child care providers~~ day-care centers 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.~~"

NEW SECTION. **Section 14.** The Department of Public Health and Human Services shall amend ARM 37.96.409 to read:

"37.96.409 DAY-CARE CENTER FIRE SAFETY REQUIREMENTS (1) ~~Licensed child care facilities~~ All licensed day-care centers must meet International Fire Code requirements to open and operate as a ~~child care facility~~ day-care center. New ~~child care center, school-age care, or drop-in care providers~~ day-care centers should consult with their local jurisdiction or state fire marshal before selecting a facility.

(2) Licensed ~~child care providers~~ day-care centers 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 the 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 or in accordance with the manufacturer's instructions;~~

~~(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 the manufacturer's specifications and not using extension cords to supply electricity to equipment or appliances that are fixed in place.~~"

NEW SECTION. **Section 15.** The Department of Public Health and Human Services shall amend ARM 37.96.410 to read:

"37.96.410 DAY-CARE CENTER EMERGENCY AND DISASTER PREPARATION (1) All licensed ~~and registered child care providers~~ day-care centers 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~~ day-care centers 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 take corrective actions.

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

~~(4)~~(3) 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)~~(4) All licensed ~~and registered child care facilities~~ day-care centers must have an emergency disaster kit including an emergency supply of blankets, water, food, and supplies."

NEW SECTION. **Section 16.** The Department of Public Health and Human Services shall amend

ARM 37.96.413 to read:

"37.96.413 DAY-CARE CENTER SAFETY AROUND BODIES OF WATER (1) All licensed ~~and registered child care providers except RCE providers~~ day-care centers 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 1/2 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 consistent 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) (a) 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)~~ (b) 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."

NEW SECTION. **Section 17.** The Department of Public Health and Human Services shall amend ARM 37.96.414 to read:

"37.96.414 DAY-CARE CENTER TRANSPORTATION SAFETY (1) If providing any transportation, all licensed ~~child care providers and registered group and family child care providers~~ day-care centers 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 or 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~~ day-care centers 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 unsupervised in a vehicle.

(3) All licensed ~~and registered child care providers~~ day-care centers 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."

NEW SECTION. **Section 18.** The Department of Public Health and Human Services shall amend ARM 37.96.415 to read:

"37.96.415 DAY-CARE CENTER SLEEPING (1) In all licensed ~~and registered child care facilities, except those used by school-age care programs,~~ day-care centers, 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,~~ day-care centers, 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~~.~~ ; and

~~(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)~~ (3) In a licensed ~~child care~~ day-care center, a staff member who is not a trainee must remain with children while they are sleeping.

~~(3)~~ (4) All cries of children during sleep times must be investigated.

~~(4)~~ (5) 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)~~ (6) Children of any age must not be allowed to sleep in a car seat, infant swing, bouncy seat, or other infant apparatus.

~~(6)~~ (7) Sleeping equipment must be thoroughly cleansed before assignment to another child.

~~(7)~~ (8) Crib mattresses must be waterproof and easily sanitized.

~~(8)~~ (9) 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)~~ (10) Each child's bedding must be stored separately.

~~(10)~~ (11) Cribs must be made of durable, cleanable, nontoxic material, and have secure latching devices.

~~(11)~~ (12) All cribs must meet the requirements as specified by the U.S. Consumer Product Safety Commission.

~~(12)~~ (13) Cribs, cots, or mats must be spaced to allow for easy access to each infant and toddler, adequate ventilation, and easy exit.

~~(13)~~ (14) The use of stackable cribs for infants is permitted until the infants reach one year old or weigh

26 pounds, whichever comes first.

~~(14)~~ (15) Licensed ~~child care providers and registered group and family child care providers~~ day-care centers must develop a policy that describes the practices to be used to promote a safe sleeping environment when children are sleeping."

NEW SECTION. **Section 19.** The Department of Public Health and Human Services shall amend ARM 37.96.601 to read:

"37.96.601 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.~~"

NEW SECTION. **Section 20.** The Department of Public Health and Human Services shall amend ARM 37.96.602 to read:

"37.96.602 HEALTH RULES INCLUDED IN INSPECTION BY PUBLIC HEALTH AUTHORITIES (1) (a) Licensed ~~child care providers~~ day-care centers must provide to CCL an annual training or inspection certificate from their local health authority, except:

~~(a)~~ (b) 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~~ Day-care centers 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."

NEW SECTION. **Section 21.** The Department of Public Health and Human Services shall amend ARM 37.96.603 to read:

"37.96.603 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."

NEW SECTION. **Section 22.** The Department of Public Health and Human Services shall amend ARM 37.96.607 to read:

"37.96.607 INDOOR AIR QUALITY (1) Centralized ventilation systems and air filters in ~~child care facilities, excluding RCEs,~~ day-care centers must be properly maintained.

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

NEW SECTION. **Section 23.** The Department of Public Health and Human Services shall amend ARM 37.96.608 to read:

"37.96.608 DAY-CARE CENTER HAND HYGIENE (1) Staff, volunteers, and children in all licensed ~~and registered child care facilities, excluding RCEs,~~ day-care centers 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~~ day-care centers 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~~ day-care centers must post hand washing signs in all food preparation, hand washing, diapering, and toileting areas."

NEW SECTION. **Section 24.** The Department of Public Health and Human Services shall amend ARM 37.96.609 to read:

"37.96.609 DAY-CARE CENTER BATHROOM HYGIENE (1) Licensed ~~child care facilities~~ day-care centers 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~~ day-care centers must provide toilet tissue next to all toilets.

(3) Hand sinks in all licensed ~~and registered child care facilities~~ day-care centers 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~~ day-care centers where tooth brushing is an activity, toothbrushes must be managed in a way that avoids contamination."

NEW SECTION. **Section 25.** The Department of Public Health and Human Services shall amend ARM 37.96.612 to read:

"37.96.612 DAY-CARE CENTER SOLID WASTE MANAGEMENT ~~(1)~~ All licensed ~~and registered child care providers~~ day-care centers must ensure that solid waste is safely stored and disposed of. Providers must:

~~(a)~~(1) ~~Store~~ store all solid waste between removals in containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof~~.~~ ;

~~(b)~~(2) ~~Clean~~ clean all solid waste containers frequently~~.~~ ;

~~(c)~~(3) ~~Store~~ 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~~.~~ ; and

~~(d)~~(4) ~~Remove~~ remove solid waste at least weekly."

NEW SECTION. **Section 26.** The Department of Public Health and Human Services shall amend ARM 37.96.613 to read:

"37.96.613 DAY-CARE CENTER LAUNDRY AND CLOTHING (1) All licensed ~~and registered child care providers~~ day-care centers 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~~ day-care centers 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~~ day-care centers must ensure clothing worn to and from work is covered by or replaced with a clean, comfortable, nonirritating, and washable smock or similar clothing."

NEW SECTION. **Section 27.** The Department of Public Health and Human Services shall amend ARM 37.96.614 to read:

"37.96.614 DAY-CARE CENTER SANITATION ~~(1)~~ All licensed ~~and registered child care providers~~ day-care centers must:

~~(a)~~ (1) provide sanitary drinking facilities for each child;

~~(b)~~ (2) 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)~~ (3) use cleaning products in accordance with the manufacturer's instructions;

~~(d)~~ (4) 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)~~ (5) 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."

NEW SECTION. **Section 28.** The Department of Public Health and Human Services shall amend ARM 37.96.615 to read:

"37.96.615 DAY-CARE CENTER DIAPERING (1) All licensed ~~child care providers and registered group and family child care providers~~ day-care centers 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."

NEW SECTION. **Section 29.** The Department of Public Health and Human Services shall amend ARM 37.96.618 to read:

"37.96.618 DAY-CARE CENTER BATHING (1) If bathing is necessary, licensed ~~child care providers and registered group or family child care providers~~ day-care centers must:

(a) directly supervise children when being bathed;

(b) sanitize bathing materials after bathing each child;

(c) use non allergenic 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."

NEW SECTION. **Section 30.** The Department of Public Health and Human Services shall amend ARM 37.96.619 to read:

"37.96.619 DAY-CARE CENTER WATER SUPPLY SYSTEM (1) All ~~child care facilities~~ licensed day-care centers 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~~ day-care center 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~~ day-care centers 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."

NEW SECTION. **Section 31.** The Department of Public Health and Human Services shall amend ARM 37.96.620 to read:

"37.96.620 DAY-CARE CENTER SEWAGE SYSTEM (1) All ~~child care facilities~~ licensed day-care centers must have an adequate and safe sewage system.

(2) The ~~child care facility~~ day-care center 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~~ day-care center is located as well as documentation of any necessary sewage system repairs or replacement."

NEW SECTION. **Section 32.** The Department of Public Health and Human Services shall amend ARM 37.96.623 to read:

"37.96.623 DAY-CARE CENTER SWIMMING POOL SANITATION (1) All licensed ~~child care providers and registered group and family child care providers~~ day-care centers 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~~ day-care centers 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."

NEW SECTION. **Section 33.** The Department of Public Health and Human Services shall amend ARM 37.96.624 to read:

"37.96.624 DAY-CARE CENTER FOOD PREPARATION AND HANDLING (1) At a minimum, all licensed ~~child care providers and registered group and family child care providers~~ day-care centers 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~~ day-care centers 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~~ day-care centers 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~~ day-care centers must use the heat option to dry the dishes.

~~(a)~~(5) Licensed ~~child care facilities~~ day-care centers must provide at least a two-compartment sink as a backup in the event the dishwasher becomes inoperable.

~~(5)~~(a) If any licensed ~~child care facility~~ day-care center uses a two-compartment sink to handwash dishes, the provider must use the wash, rinse, and sanitize three-step process.

~~(a)~~(b) 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."

NEW SECTION. **Section 34.** The Department of Public Health and Human Services shall amend ARM 37.96.704 to read:

"37.96.704 DAY-CARE CENTER NUTRITION REQUIREMENTS ~~(1)~~ All licensed ~~child care providers and registered group and family child care providers~~ day-care centers must:

~~(a)~~(1) 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)~~(2) serve meals and snacks at standard times, to ensure that:

~~(i)~~ (a) 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 ~~mid-morning~~ mid-morning snack if they are not offered breakfast at the child care facility less than 2 1/2 hours before lunch;

~~(ii)~~ (b) 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)~~ (c) children receiving night care are offered dinner and/or breakfast, and a bedtime snack; and

~~(iv)~~ (d) children in care for fewer than five hours are offered one snack every 2 1/2 hours;

~~(c)~~(3) 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)~~(4) plan menus in advance, post menus for parents/guardians, and serve meals and snacks in accordance with the planned menus;

~~(e)~~(5) supervise children if they prepare food and while they eat;

~~(f)~~(6) ensure that drinking water is freely available and offered at regular intervals to all children; and

~~(g)~~(7) retain written menu records and any special dietary instructions."

NEW SECTION. **Section 35.** The Department of Public Health and Human Services shall amend ARM 37.96.705 to read:

"37.96.705 DAY-CARE CENTER INFANT FEEDING (1) (a) All licensed ~~and registered child care providers~~ day-care centers must provide an individualized diet and feeding schedule for infants 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)~~ (b) Licensed ~~child care providers~~ day-care centers 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."

NEW SECTION. **Section 36.** The Department of Public Health and Human Services shall amend ARM 37.96.708 to read:

"37.96.708 DAY-CARE CENTER FOOD SERVICE EQUIPMENT (1) All licensed ~~and registered child care providers~~ day-care centers 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~~ day-care center."

NEW SECTION. **Section 37.** The Department of Public Health and Human Services shall amend ARM 37.96.801 to read:

"37.96.801 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)~~(1) "Adequate documentation" means ~~documentation which meets the specifications set forth in[NEW RULE LXVI].~~ :

(a) with regard to vaccination:

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

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

(iii) 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;

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

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

(vi) an international certificate of vaccination on a form approved by the world health organization; or

(vii) 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; or

(b) in lieu of receiving required vaccines:

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

(ii) a medical exemption;

(iii) a religious exemption; or

(iv) documentation of immunity from varicella, measles, mumps, or rubella by laboratory evidence or diagnosis/verification of disease by a 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 immunization record.

~~(3)~~(2) "CLIA" means the federal clinical laboratory improvement amendments of 1988.

~~(4)~~(3) "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)~~(4) "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)~~(5) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids.

~~(7)~~(6) "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)~~(7) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

~~(10)~~(8) "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)~~(9) "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~~ attesting that the physical condition or medical circumstances of the child seeking a medical exemption indicate that some or all of the required immunizations are not considered safe. The medical exemption statement must indicate the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization.

~~(12)~~(10) "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)~~(11) "MMR vaccine" means a vaccine containing a combination of measles, mumps, and rubella vaccines.

~~(14)~~(12) "Montana Certificate of Immunization Form (HES 101)" means the form provided by the department to consolidate immunization history.

~~(15)~~(13) "MR vaccine" means a vaccine containing a combination of measles and rubella vaccines.

~~(16)~~(14) "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) birth date;

(c) sex; and

(d) vaccination date (month, day, and year) by vaccine type, or, in the case of a post secondary record, the month and year of vaccine administration.

~~(17)~~(15) "PCV vaccine" means a vaccine containing pneumococcal conjugate vaccine.

~~(18)~~(16) "Polio vaccine" means a trivalent polio vaccine.

~~(19)~~(17) "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)~~(18) "Religious exemption form" means an affidavit of exemption on religious grounds from vaccine administration.

~~(21)~~(19) "Td vaccine" means a vaccine containing tetanus and diphtheria toxoids.

~~(22)~~(20) "Tdap vaccine" means a vaccine containing tetanus and diphtheria toxoids, and acellular pertussis.

~~(23)~~(21) "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)~~(22) "Varicella vaccine" means an attenuated, live virus vaccine to prevent chicken pox disease."

NEW SECTION. **Section 38.** The Department of Public Health and Human Services shall amend ARM 37.96.802 to read:

"37.96.802 MINIMUM CHILD IMMUNIZATION REQUIREMENTS (1) Children attending all licensed and registered Montana ~~child care~~ day-care facilities are required to be immunized against certain diseases. Minimum child immunization requirements apply to children in all ~~child care~~ day-care facilities with exceptions described in ARM 37.96.805. 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:

Age at Entry	Number of Doses - Vaccine Type
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
	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~~

1

(*) 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~~ day-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~~ day-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)~~(6) Children in a sibling group receiving care from a registered FFN in the children's home are not subject to the immunization requirements, provided there are no unrelated children also receiving care.

~~(8)~~(7) Children receiving care through registered RCE providers are not subject to ~~vaccination~~ the immunization requirements.

(8) Children receiving care from a licensed drop-in child care facility are not subject to the immunization requirements."

NEW SECTION. **Section 39.** The Department of Public Health and Human Services shall amend ARM 37.96.805 to read:

"37.96.805 EXEMPTIONS FROM VACCINATION ~~(1)~~ A child is exempt from receiving the required vaccinations when the requirements of any of the following are met:

~~(a)~~(1) 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 ARM 37.96.802 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)~~(a) which specific vaccination is contraindicated;

~~(ii)~~(b) the period of time during which the vaccination is contraindicated;

~~(iii)~~(c) the reasons for the medical contraindication; and

~~(iv)~~(d) 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)~~(2) (a) 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 maintained on an Affidavit of Exemption on Religious Grounds Form (HES-113) prescribed by the department.

~~(i)~~(b) A certificate of religious exemption is required only for the required vaccines listed in ARM 37.96.802.

~~(c)~~(3) A child experiencing homelessness or a child in foster care is exempt from required vaccinations outlined in ARM 37.96.802(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)~~(a) The child experiencing homelessness must meet the definition in 42 U.S.C. 11434a (2).

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

~~(iii)~~(c) A child must meet the vaccination requirement for conditional enrollment outlined in ARM 37.96.802(5) before the end of the 30-day period.

~~(iv)~~(d) 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 available upon request to families prior to enrolling their children with a child care provider.~~

~~(b) Policies must be submitted to CCL.~~

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

NEW SECTION. **Section 40.** The Department of Public Health and Human Services shall amend ARM 37.96.809 to read:

"37.96.809 EXAMINATION AND AUDIT OF OFFICIAL CHILD IMMUNIZATION RECORDS ~~(1)~~ The department ~~and local health authority representatives have~~ has the right to audit and verify child vaccination records maintained by licensed and registered child care providers to determine compliance with vaccination requirements. The provider and the department must maintain the confidentiality of any child vaccination records reviewed."

NEW SECTION. **Section 41.** The Department of Public Health and Human Services shall amend ARM 37.96.902 to read:

"37.96.902 DAY-CARE CENTER 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)~~(1) A licensed day-care center must have a director. ~~A~~ The 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)~~(2) 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)~~(3) Directors must meet the following qualifications:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth ARM 37.96.1001;

(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)~~(4) 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)~~(5) The director must ensure compliance with all applicable administrative rules within this chapter.

~~(7)~~(6) 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."

NEW SECTION. **Section 42.** The Department of Public Health and Human Services shall amend ARM 37.96.907 to read:

"37.96.907 TEACHER, SUBSTITUTE, TRAINEE, AND SUPPORT STAFF 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.~~

(1) The roles of teacher, substitute, trainee, and support staff are all optional roles.

~~(3)~~(2) Teachers must:

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

~~(b)~~(a) be at least 16 years old;

~~(c)~~(b) have satisfactory results of background checks as set forth in ARM 37.96.1001;

~~(d)~~(c) complete on-the-job training;

~~(e)~~(d) be current on the Practitioner Registry;

~~(f)~~(e) have current CPR and pediatric first aid certification; and

~~(g)~~(f) successfully complete required orientation training.

(3) Substitutes must:

(a) have satisfactory results of background checks as set forth in ARM 37.96.1001;

(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.

(4) Trainees must:

(a) have satisfactory results of background checks as set forth in ARM 37.96.1001;

(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.

(5) Support staff who do not provide direct care for children must:

(a) have satisfactory results of background checks as set forth in ARM 37.96.1001; and

(b) complete on-the-job training.

(6) Support staff do not count toward compliance with required child-to-staff ratios."

NEW SECTION. **Section 43.** The Department of Public Heath and Human Services shall amend ARM 37.96.915 to read:

"37.96.915 ANNUAL TRAINING (1) All staff and owners working more than 500 hours annually at any licensed or registered ~~child care~~ day-care facility must successfully complete required annual training as defined in the Practitioner Registry.

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

(b) ~~Staff and owners of licensed school-age care or registered~~ 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~~ Childhood Education Knowledge Base resource developed by the Early Childhood Services Bureau in conjunction with other agencies and professional organizations."

NEW SECTION. **Section 44.** The Department of Public Health and Human Services shall amend ARM 37.96.1002 to read:

"37.96.1002 FINGERPRINT AND BACKGROUND CHECKS (1) (a) Except as provided in subsections (1)(b) and (1)(b)(i), fingerprint and background checks are required for individuals employed by or associated with day-care facilities. The following individuals must provide satisfactory results of background checks prior to approval of any license or registration, or staff approval:

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

~~(b)~~ (ii) any adult residing in the ~~child care~~ day-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)~~ (b) 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~~ day-care facility and ~~annually~~ AT LEAST every five years 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;~~

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

(d) a child protective services check for Montana and any state where the individual has resided in the preceding five years; and

(e) a name-based criminal records check for Montana and any state where the individual has resided in the preceding five years.

(3) Fingerprints must be processed by a trained individual within a certified fingerprinting agency. Results will be transmitted electronically to the department by DOJ."

NEW SECTION. **Section 45.** The Department of Public Health and Human Services shall amend ARM 37.96.1004 to read:

"37.96.1004 BACKGROUND CHECKS 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 who is required to have a background check has been convicted of a crime that may make an individual ineligible to work in a ~~child care~~ day-care facility. These 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~~ day-care facility:

~~(a)~~ (1) 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)~~ (2) 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)~~(3) abuse, neglect, or exploitation of an elderly person or a person with a developmental disability; or

~~(e)~~(4) 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."

NEW SECTION. **Section 46. Repealer.** ARM 37.96.806, ARM 37.96.901, ARM 37.96.903, ARM 37.96.904, ARM 37.96.908, ARM 39.67.909, and ARM 37.96.910 are repealed.

NEW SECTION. **Section 47. Effective date.** [This act] is effective on [the first day following the date of final adjournment of the 69th regular legislative session].

- END -