

**STATE OF MONTANA  
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

**LICENSING REQUIREMENTS  
FOR CHILD CARE CENTERS**

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**Department of Public Health & Human Services  
QAD – Licensure Bureau – Child Care Licensing  
PO Box 202953  
Helena Montana 59620-2953**

**(406) 444-2012**

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**The following rules are the minimum requirements that must be met by those child care facilities.**

**If you have questions about or do not understand any of the regulations we will be glad to assist you.**

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**Other Rules Governing Child Care Centers**

Fire Prevention and Investigation Bureau @ 444-2050  
Rules Regarding Child Care Centers (23.12.407) Included in this rulebook.

Health Policy and Services Division @ 444-2408  
Rules Regarding Child Care Centers (37.95.205 – 37.95.227) Included in this rulebook.

**Updated 2018**

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\* Revised/Added 2018

# GENERAL REQUIREMENTS

## 37.95.102 DEFINITIONS

- (1) "**ACIP**" means the Advisory Committee on Immunization Practices of the U.S. Public Health Service.
- (2) "**CPR**" means cardio-pulmonary resuscitation.
- (3) "**Child care center**" is the same as "Day-care center" as defined in 52-2-703, MCA.
- (4) "**Child care facility**" is the same as "**Day-care facility**" as defined in 52-2-703, MCA. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider.
- (5) "**Day care**" or "**child care**" is defined in 52-2-703, MCA. In addition to the definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.
- (6) "**Day care center**" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.
- (7) "**Day care facility**" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis, or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:
  - (a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day care facility is required to receive payments as provided in [52-2-713](#), MCA; or
  - (b) any group facility established chiefly for educational purposes that limits its services to children who are three years of age or older. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider.
- (8) "**Delayed renewal application**" means a renewal application which is submitted to the department prior to the certificate expiration date, but is submitted in an incomplete manner, resulting in a delay in the issuance of the certificate.
- (9) "**Director**" means the person designated on the center application or otherwise by written notice to the department as the person responsible for the daily operation of a day care center. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the facility.
- (10) "**DT vaccine**" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.
- (11) "**DTP vaccine**" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid, and acellular pertussis vaccine combined.
- (12) "**Early childhood assistant teacher (ECAT)**" or "**assistant teacher**" means a facility staff member who carries out assigned care-giving and teaching tasks under the direct supervision of an early childhood lead teacher or center director.
- (13) "**Early childhood lead teacher (ECLT)**" or "**lead teacher**" means a facility staff member who meets the requirements as outlined in ARM 37.95.622 and who regularly provides direct care and teaching to the children who attend the day care or child care facility.

- (14) "**Early childhood teacher (ECT)**" or "**teacher**" means a facility staff member who is responsible for the direct care, teaching, and supervision of children in a day care or child care facility. This term includes ECAT and ECLT.
- (15) "**Facility overview on-the-job training**" is an on-the-job training provided by the facility director or designee to orient a new staff member to facility-specific policies, procedures, and department requirements pertaining to their role.
- (16) "**Family child care facility**" is the same as a "**Family child care home**" as defined in 52-2-703, MCA. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided exclusively for children under age two. For facilities providing care exclusively to children under age two, a family child care home means a place in which supplemental parental care is provided for up to four children under the age of two. No other children shall be in attendance.
- (17) "**Family, Friend, and Neighbor care (FFN)**" is a child care provider type that provides care to no more than two children from separate families or all children from a "sibling group." Care may be in the child's home or the provider's home and registration is for payment purposes as provided in 52-2-713, MCA.
- (18) "**Group child care facility**" is the same as "**Group day-care home**" as defined in 52-2-703, MCA.
- (19) "**Group size**" means the number of children in a defined space.
- (20) "**Harm to children**" means harm to a child's health or welfare as defined in 41-3-102, MCA.
- (21) "**Health care provider**" means a licensed physician, a physician assistant-certified, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of the license.
- (22) "**Hep B vaccine**" means a vaccine containing Hepatitis B vaccine.
- (23) "**Hib vaccine**" means a vaccine immunizing against infection by Haemophilus influenza type B disease.
- (24) "**Infant**" means a child under 19 months of age.
- (25) "**Lapsed registration/license**" means:
- (a) an application for registration/licensing renewal which is received by the department after the registration/licensing expiration date;
  - (b) an application which is incomplete and results in a break-in-license span; or
  - (c) any break in the license/registration span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.
- (26) "**Local health authority**" means a local health officer, local department of health, or local board of health.
- (27) "**MMR vaccine**" means a live virus vaccine containing a combination of measles, mumps, and rubella vaccine.
- (28) "**Montana Early Childhood Project (ECP)**" is an integrated professional development system created to build a knowledgeable, competent, and stable early childhood workforce.
- (29) "**Montana ECP Practitioner Registry**" or "**Practitioner Registry**" is a statewide registry that is used to help develop and track a knowledgeable and skilled early childhood work force based on an individual's verified professional achievements.
- (30) "**Night care**" or "**non-traditional hours**" means care provided for a child between the hours of 8 p.m. and 5 a.m.
- (31) "**Nonprescription medication**" means any over the counter medication that is not specifically prescribed by a physician, but is recommended by a health care provider or a parent or guardian for a specific child.
- (32) "**Overlap care**" means care provided at a day care facility for children age three and older for the times before and after school and approved by the department for a designated period of time not to exceed three hours when the number of children in care may exceed the number of children registered for care on the registration certificate.
- (33) "**PCV vaccine**" means a vaccine containing pneumococcal conjugate vaccine.
- (34) "**Physician**" means a person licensed to practice medicine under Title 37, chapter 3, MCA.
- (35) "**Portable wading pool**" means a structure which contains water, is used for aquatic activities, and is less than 24 inches high.

- (36) "**Preschooler**" means a child between 36 months of age and the age the child will be when he or she initially enters a public or private school system.
- (37) "**Prescription medication**" means medication prescribed by a licensed health care provider for a specific person which may only be obtained through a pharmacy by prescription.
- (38) "**Primary care-giver**" means a facility staff person who meets the requirements as outlined in ARM 37.95.622 and who regularly provides direct care to the children who attend the day care facility.
- (39) "**Probationary license**" means a day care facility license or registration certificate whose status has been reduced for a specified period of time for a licensing violation and which will be reinstated to regular status upon successful completion of and compliance with remedial measures identified by the department to address specific deficiencies.
- (40) "**Provider**" means the applicant for license or registration, the licensee or registrant.
- (41) "**Provisional certificate**" means a registration or license status that is given to a day care provider, if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for a period of up to three months. A second three month certificate may be issued at the discretion of the day care licensing program manager.
- (42) "**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.
- (43) "**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.
- (44) "**Regular certificate**" means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, or group day care homes, or day care centers.
- (45) "**Relative care**" means the child is the brother, sister, first cousin, nephew, niece, grandchild, or great grandchild of the person providing child care and includes a child in a step, foster, or adoptive relationship.
- (46) "**Remote means of egress**" means escape routes in the day care which consist of two exits whose distance apart is equal to or greater than one half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.
- (47) "**Renewal registration/license**" means a registration or license certificate that has reached its expiration date and the holder of that registration/license desires to renew or continue operations allowed by the registration/license.
- (48) "**Restricted certificate**" means a restricted license or registration status assigned when it has been determined that the provider is unable to meet certain specific requirement criteria, but the provider is complying with an agreed upon plan of correction.
- (49) "**Safe sleep environment**" means an environment where an infant is placed in a safety-approved crib with a firm mattress and a firmly fitted sheet or a safety-approved play yard for all naps. For children one year of age or over, a nap mat may be used as long as compliance with ARM 37.95.1005 is met. The infant must be placed on their back and only a lightweight blanket is allowed with the infant. The infant should be dressed in safe garments and provided a smoke-free environment.
- (50) "**Sibling group**" means all children are from the same household. For the purposes of FFN, this can also include first cousins and foster children who are not blood related.
- (51) "**Staff member**" is a director, trainee, support staff, substitute, ECAT, ECLT, or ECT.
- (52) "**Substitute**" means any person not regularly employed by a child care facility who temporarily takes the place of an approved staff person, other than the director.
- (53) "**Supervision**" means the provider and all caregivers shall be able to see or hear the children at all times.
- (54) "**Supplemental parental care**" means the provision of day care by an adult other than a parent, guardian, or person in loco parentis on a regular basis for daily periods of less than 24 hours.
- (55) "**Support staff**" means a staff member of a child care facility who does not participate in a direct care-giving role and is not counted in ratios. Examples of support staff would be cooks, administrative staff, foster grandparents, or cleaning staff.

- (56) "**Toddler**" means a child who is 19 months of age to 36 months of age.
- (57) "**Trainee**" means a staff member who has been approved to work in a child care facility based on initial criteria but has not yet completed required training.
- (58) "**Vaccine**" means one of the following:
  - (a) if administered in the United States, an immunizing agent approved by the Bureau of Biologics, Food and Drug Administration, United States Public Health Services; or
  - (b) if administered outside the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM [37.114.708](#).
- (59) "**Varicella**" means an attenuated, live virus vaccine to prevent chicken pox disease.
- (60) "**Waiver**" means the department has approved an exception to a rule within this chapter.

### **37.95.104 DETERMINATION OF NEED FOR LICENSE OR REGISTRATION: COUNTING PROVIDER'S OWN CHILDREN**

- (1) The department shall, upon request or as its own action, make an initial count of children to determine whether an applicant or a provider is required to obtain a license or registration from the department.
- (2) Children of the provider's own household or children who are present in the home or facility only when their own parent is also present shall not be counted in determining whether supplemental parental care is being provided to other children.
- (3) If the initial count determines that supplemental parental care is being provided to three or more children, not counting those listed in (2), the provider shall be licensed or registered as a day care facility.

### **37.95.105 DETERMINATION OF NUMBER OF CHILDREN UNDER CARE: COUNTING PROVIDER'S AND OTHER CHILDREN**

- (1) The department shall make a separate count of children, apart from the initial licensure or registration determination count, to determine the type of license or registration required. The licensure or registration type count shall not include the provider's own children age six or over who attend school full time. The licensure or registration type count shall include all children, including the provider's own children under age six, who are present during hours when supplemental parental care is provided.
- (2) The licensure or registration count shall determine:
  - (a) whether the provider must be registered as a family day care home or group day care home, or licensed as a day care center;
  - (b) whether the day care facility is in compliance with applicable staff to child ratios;
  - (c) whether sufficient space is provided; and
  - (d) whether any other safety, health or program requirements or registration or licensure restriction requiring counting of children is affected or violated.

### **37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING**

- (1) Any individual, agency, or group may apply for a license to operate a day care center, or may apply for a registration certificate to operate a family day care home or a group day care home. Applications may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953.
- (2) Applications for a license or registration certificate by Indians residing on Indian reservations must follow the requirements of [52-2-722](#), MCA.
- (3) Before a regular child care center license may be granted, the applicant must have the following:
  - (a) an annual approved inspection report from the state fire marshal or the fire marshal's official designee indicating the fire safety rules have been met;
  - (b) an annual approved inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities in accordance with ARM [37.95.128](#), [37.95.139](#), [37.95.140](#), and [37.95.205](#) through [37.95.227](#);
  - (c) proof of current fire and liability insurance coverage for the day care center;

- (d) a schedule of daily activities;
  - (e) a sample weekly menu;
  - (f) a signed health attestation for each staff member who has direct contact with the children in care;
  - (g) meet background check requirements pursuant to ARM [37.95.161](#) on the provider and staff, over age 18;
  - (h) list of each staff person's legal name, position, age, residential and mailing addresses, and telephone numbers;
  - (i) a written emergency disaster plan for all buildings used for child care services in accordance with ARM [37.95.124](#); and
  - (j) such other information which may be requested by the department to determine compliance with the licensing requirements.
- (4) Before a regular group or family child care facility registration certificate may be granted, the applicant must have the following:
- (a) a health attestation for each staff member who has direct contact with the children in care;
  - (b) proof of current fire and liability insurance coverage for the provision of day care in the home;
  - (c) a criminal background and child and adult protective services check on the provider or staff member over age 18 and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;
  - (d) a written emergency disaster plan in accordance with ARM [37.95.124](#). For registration certificate renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and
  - (e) any such other information which may be requested by the department.
- (5) Applications for renewal shall be made by the provider at least 30 days prior to expiration of the license or registration certificate.
- (6) A day care facility may not provide care for more than the number of children permitted at any one time by its day care license or registration certificate.
- (7) Any individual, group, or other agency may request that the department determine whether a facility should be licensed or registered according to law. Referral may be either in writing or by telephone.
- (8) After receiving a written request from a director, any provision of a rule within this chapter may be waived at the discretion of the department where the department has the authority to do so and if the department determines that the health and safety to the children in care is not diminished. The written request must:
- (a) include the basis for request such as significant hardship to facility;
  - (b) propose an alternative that is consistent with best practices in early childhood standards; and
  - (c) demonstrate that the alternative will meet the intent of the rule.

### **37.95.108 CHILD CARE FACILITIES, REGISTRATION, AND LICENSING PROCEDURES**

- (1) The department may investigate and inspect the conditions and qualifications of any child care facility or any person seeking or holding a license or registration.
- (2) A family or group child care facility must be registered. A child care center must be licensed.
- (3) Licensing, registration, and inspection of child care facilities are the responsibility of the department with the exception of the required local health authority and state fire marshal inspections.
- (4) A registrant or licensee shall not discriminate in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin, or disability. Any determination of discrimination will be made by the Montana Human Rights Commission.
- (5) A prospective child care facility will be inspected by a licensing worker prior to approval. If the applicant meets the requirements for licensure the department will issue a license or registration to the applicant.
- (6) The department may not issue a provisional registration or license to any child care facility which does not have current public liability insurance and fire insurance.
- (7) Regular registration certificates and licenses are issued from the department's Quality Assurance Division licensure bureau for periods up to three years.



### **37.95.115 DAY CARE PARENT INFORMATION**

- (1) The following written information shall be made available to all parents:
  - (a) a typical daily schedule of activities;
  - (b) admission requirements, enrollment procedures, hours of operation;
  - (c) frequency and type of meals and snacks served;
  - (d) fees and payment plan;
  - (e) regulations concerning sick children;
  - (f) transportation and trip arrangements;
  - (g) discipline policies; and
  - (h) department day care licensing requirements.
- (2) Day care facility shall post a copy of the facility registration or license and the phone number of state and local quality assurance division offices in a conspicuous place. Parents should be encouraged to contact the division if they have questions regarding the license or the day care regulations.
- (3) The licensee or registrant shall allow custodial and non-custodial parental access as well as access by legal guardians to the facility at any time during which child day care services are provided, unless there is a current court order preventing parent-child contact.

### **37.95.117 CHILD CARE FACILITIES, JOINT PROGRAMS**

- (1) Any day care facility which operates a day care program in connection with another non-day care program on the same premises must have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services.
- (2) Children attending the facility for day care shall not come in contact with other persons who are receiving care in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety and well being of the children in day care.
- (3) If multiple programs, including multiple day care programs or facilities in the same building, increase the number of people regularly in the building to more than 12 individuals, all fire, safety and sanitation requirements which may be impacted must be complied with by the day care facility.
- (4) Persons, corporations or organizations may be licensed or registered for more than one day care facility if facility sites, staff, and space are completely separate from one another.
  - (a) If the day care facility is housed in a private single-family living structure, the structure can only obtain one registration or license.
  - (b) If the multiple program day care facility is in a non-residential structure, and is owned by the same entity or person it will be licensed as a center and will be required to meet all center regulations.
  - (c) If more than one day care program exists in one retail or commercial structure, and there are separate owners or entities of each program, the department will grant individual registrations or licenses.
  - (d) If the day care facility is contained in a multi-family structure, such as an apartment building, the structure will be allowed to house multiple day care facilities that meet the requirements of (1) and (2) above.
  - (e) If the facility is licensed or registered as a day care facility, but also serves as a foster care home, the department's child and family services (CFS) regional administrator and quality assurance division (QAD) must approve the dual license or registration.

### **37.95.121 CHILD CARE FACILITIES: SAFETY REQUIREMENTS**

- (1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children. Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.
- (2) No extension cord will be used as permanent wiring. All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent electrocution.
- (3) Any pet or animal, present at the facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider is responsible for

maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The provider must make reasonable efforts to keep stray animals off the premises.

- (4) Guns must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.
- (5) The indoor and outdoor play areas must be clean, reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.
- (6) Any outdoor play area must be maintained free from hazards such as wells, machinery, and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four feet high without any holes or spaces greater than four inches in diameter or natural barriers to restrict children from these areas.
  - (a) Outdoor play areas shall be designed so that all parts are always visible and easily supervised by staff.
- (7) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.
- (8) Toys and objects with a diameter of less than one inch (2.5 centimeters), objects with removable parts that have a diameter of less than one inch (2.5 centimeters), plastic bags, Styrofoam objects, and balloons must not be accessible to children who are still placing objects in their mouths.
- (9) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. Recommended ground covers under these items include sand, fine gravel, or woodchips with a depth of the ground cover being at least six inches.
- (10) Trampolines are prohibited for use by children in care. Trampolines on facility premises must be inaccessible to children in care.
- (11) The Emergency Montana Poison Control Center number, 1 (800) 222-1222 must be posted at all telephone locations at the day care facility.
- (12) Use of waterbeds, water mattresses, gel pads, or sheepskin covers for children's sleeping surface is prohibited.
- (13) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.
  - (a) All facilities must have two accessible exits on each level. The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions.
  - (b) If the day care provider chooses to lock the facility door to prevent unauthorized access to the facility or to prevent a child from escaping, the facility shall have no lock or fastening device which prevents free escape from the interior.
  - (c) The locking device must not require a key, a tool, or special knowledge or effort to open the door from the inside.
  - (d) The locked door must be easily opened with one motion from the inside of the facility.
  - (e) Installation of locking devices may not prohibit access by parents. A facility may not utilize locking devices in a manner to prevent unannounced access by authorized individuals, including parents. If a lock is used, the provider must make adequate provision to allow authorized persons unannounced access to the facility and must provide authorized personnel including parents with information on how to gain access.
  - (f) Exit doors, windows, and their opening hardware must be maintained in good repair at all times.
- (14) Bathtubs, buckets, and other water receptacles must be emptied immediately after use.

### **37.95.124 CHILD CARE FACILITIES: EMERGENCY DISASTER AND ACTION PLANS**

- (1) All child care facilities must have a written emergency disaster plan. The plan for each structure used for child care must be developed in such a way that the plan can be followed in the event of a natural or human-caused disaster, such as flood, fire, tornado, or responding to an intruder.

- (2) Emergency disaster plans must include:
  - (a) an emergency supply of blankets, water, food, and supplies;
  - (b) plans for evacuation, including identification of at least one off-site gathering point;
  - (c) plans for evacuation of nonmobile children and children with special health care needs;
  - (d) contingencies that address:
    - (i) children's individual needs; and
    - (ii) staff responsibilities;
  - (e) plans for reunification of children with their parents;
  - (f) plans for shelter in place and lock down; and
  - (g) plans for continuity of operation.
- (3) The facility must conduct ten emergency drills per year to include:
  - (a) eight fire drills; and
  - (b) two other disaster drills that are likely to occur in the facility.
  - (4) All emergency drills must be documented and include the following minimum information:
    - (a) who conducted the drill;
    - (b) date and time of drill;
    - (c) the number of adults and children present during the drill;
    - (d) the length of time to evacuate; and
    - (e) problems identified during the drill and corrective actions.

### **37.95.126 DAY CARE FACILITIES, SMOKE-FREE ENVIRONMENT**

- (1) Children shall be afforded a smoke-free environment during all day care hours, whether indoors or outdoors.
- (2) The registrant or other licensee shall ensure that no smoking occurs within the facility while children are in care.

### **37.95.127 CHILD CARE FACILITIES: SWIMMING**

- (1) Children may not be allowed to use a swimming pool, spa, or other water feature unless it and the surrounding area are constructed and operated in accordance with ARM Title 37, chapter 115, subchapters 1 through 22.
- (2) Portable wading pools, as defined in ARM Title 37, chapter 115, subchapters 1 through 22, are permitted in day care facilities.
  - (a) When children are utilizing a portable wading pool, an approved care-giver shall always be present and actively supervising.
  - (b) If the portable wading pool is filled with water and will sit unused for any period of time prior to use by day care children, the care-giver shall equip the wading pool with a barrier to prevent a young child's unsupervised access.
    - (i) A barrier refers to a fence, a wall, or gate or screen that locks.
  - (c) Portable wading pools must be emptied after the day's use and sanitized.
- (3) Children shall 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.
- (4) Ponds shall be fenced to prevent access to children.
- (5) All in ground and above ground swimming pools located in the outdoor play space area or accessible to children must be fenced with a locked gate. The fence shall be at least five feet high and come within 3 1/2 inches of the ground. The fence shall be constructed to discourage climbing. Exit and entrance points shall have self-closing, positive latching gates with locking devices a minimum of 55 inches from the ground. The child care building wall shall not constitute one side of the fence unless there are no openings in the wall. When children are swimming, supervision must include at all times at least one person currently certified in red cross advanced life saving or an equivalent certificate by a recognized

organization. This person shall not be counted in the staff-child ratio. One person with a life guard training certificate is required for each group of 25 or fewer children.

- (a) Each swimming pool more than six feet in width, length or diameter shall be provided with a ring buoy and rope and either a throw line or a shepherd's hook. Such equipment shall be of sufficient length to reach the center of the pool from the edge of the pool and shall be safely and conveniently stored for immediate access.
- (b) All pool pumping equipment shall be screened to prevent access and injury.
- (6) Swimming pool safety rules shall be posted near the swimming pool.
- (7) The staff-child ratio shall be maintained whenever children participate in swimming activities, including swimming instruction.

### **37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS FOR CHILDREN UNDER AGE TWO**

- (1) A day care facility must have on file a health record form, provided by the department, concerning any special health risks that would affect other children. This must be obtained and kept on file by the provider prior to residence or enrollment of any child under age two at the day care facility. The health record form must be signed by:
  - (a) a physician licensed to practice medicine in Montana pursuant to Title 37, chapter 3, MCA; or
  - (b) a physician assistant-certified licensed to practice in Montana and practicing under a utilization plan approved by the board of medical examiners; or
  - (c) a person licensed in Montana as a professional nurse and recognized by the board of nursing as a nurse practitioner or clinical nurse specialist; or
  - (d) a naturopathic physician licensed under Title 37, chapter 26, MCA.

### **37.95.132 TRANSPORTATION**

- (1) The provider shall obtain written consent from the parents for any transportation provided.
- (2) The operator of the vehicle shall be at least 18 years of age and possess a valid Montana driver's license.
- (3) The passenger doors on the vehicle must be locked whenever the vehicle is in motion.
- (4) With the exception of public transportation that is not required by law to be equipped with safety restraints, no vehicle shall 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. Each child shall have a safety restraint. Children shall not share a safety seat or a safety restraint.
- (5) Children under four years of age may not be transported in a vehicle which does not provide age appropriate safety restraints or in a vehicle which cannot accommodate a car seat or a booster seat in a manner that conforms with National Highway Transportation Safety Administration recommendations.
- (6) Children shall never be left unattended in a vehicle.
- (7) The back of pickup trucks must not be used to transport children.
- (8) Facilities providing transportation for children under six years of age or children six years of age but weighing less than 60 pounds shall comply with the following requirements:
  - (a) all vehicles shall be equipped with children's car seats or booster seats that meet federal Department of Transportation recommendations for the age and weight of the child being transported;
  - (b) car seats or booster seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts which are secured within the vehicle according to factory assembly;
  - (c) there shall be no more than one child in each car seat;
  - (d) there shall be one adult in addition to the driver for each four children under age two being transported; and
  - (e) an adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parents to receive the child.

(9) No child shall be left unattended in a vehicle.

### **37.95.139 CHILD CARE FACILITIES: HEALTH CARE REQUIREMENTS**

- (1) The parents of each child admitted to the day care facility shall provide the name of the physician or health care facility the parent wishes to have called in case of an emergency.
- (2) If, while in care, a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.
- (3) The director, owner, manager, or person in charge of the day care facility must designate a staff member to check daily the health status of each child immediately upon that child's entry into the day care facility, and to exclude any child showing symptoms of illness, under the following guidelines:
  - (a) Children must be without fever of 101 f $\mu$ F or greater for 24 hours before they return to the day care facility, except that children with immunization-related fevers need not be excluded if they are able to participate in the routine of the day care facility;
  - (b) Children must be without vomiting and diarrhea for 24 hours before they return to the day care facility. Vomiting includes two or more episodes in the previous 24 hours. Diarrhea is defined as an increased number of stools, increased water in the stool, and/or decreased form to the stool that cannot be contained by a diaper or clothing;
  - (c) Children with any of the bacterial infections listed below must be treated with antibiotics for 24 hours before they return to the day care center:
    - (i) strep throat;
    - (ii) scarlet fever;
    - (iii) impetigo;
    - (iv) bacterial conjunctivitis (pinkeye); and
    - (v) skin infections such as draining burn or infected wounds or hangnails;
  - (d) Generalized rashes, including those covering multiple parts of the body, must be evaluated by a health care provider to determine their cause before the child can return to the day care facility;
  - (e) Children with chickenpox may not be admitted to the day care facility until their sores dry up, which usually takes five to seven days. Day care providers must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents;
  - (f) Children who are jaundiced must be excluded until a health care provider evaluates the cause and authorizes the child to return to the day care facility;
  - (g) Children with symptoms of severe illness, such as uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, poor food or fluid intake, or a seizure, must be evaluated by a health care provider before they may return to the day care facility;
  - (h) A child need not be excluded for a discharge from the nose which is not accompanied by a fever.
- (4) If a child develops symptoms of illness while at the day care facility and after the parent or guardian has left, the day care facility must do the following:
  - (a) isolate the child immediately from other children in a room or area segregated for that purpose;
  - (b) contact and inform the parent or guardian as soon as possible about the illness and request the parent or guardian to pick up the child;
  - (c) report each case of suspected communicable disease the same day by telephone to the local health authority, or as soon as possible thereafter if no contact can be made the same day.
- (5) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If a reportable communicable disease is suspected, the provider shall inform a health officer. No child shall be readmitted after an absence until the reason for the absence is known and there is assurance that the child's return will not harm that child or the other children. Disease charts that identify the reportable diseases are available from the department.
- (6) The day care facility may readmit a child excluded for illness whenever, in its discretion:
  - (a) the child either shows no symptoms of illness;
  - (b) the child has been free of fever, vomiting, or diarrhea for 24 hours; or
  - (c) the child has been on antibiotics for at least 24 hours for bacterial infections.

- (7) The parent or guardian may also provide the day care facility with a signed certification of health from a licensed physician, except that the following restrictions must be followed:
- (a) If a child is excluded for shigellosis or salmonella, the child may not be readmitted until the child has no diarrhea or fever, the child's parent or guardian produces documentation that two stools, taken at least 24 hours apart, are negative for shigellosis or salmonella, and the local health authority has given written approval for the child to be readmitted to the day care facility;
  - (b) If a child is excluded for hepatitis A virus infection, the child shall remain excluded until either one week after onset of illness or jaundice, if the symptoms are mild, or until immune globulin has been administered to appropriate children and staff in the day care facility as directed by the local health authority.
- (8) The facility must have a plan for preventing and responding to emergencies due to food and allergic reactions.

### 37.95.140 IMMUNIZATION

- (1) Before a child may attend a Montana day care facility, that facility must be provided with the documentation required by (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, varicella, hepatitis B, pneumococcal, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (7):

<u>Age at Entry</u>	<u>Number of Doses-Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	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 of age	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 of age	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 of age	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 of age	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 of age	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 of age	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

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

- (2) Hib and PCV vaccines are not required or recommended for children five years of age and older.
- (3) Doses of MMR and varicella vaccines, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age 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 of age 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 of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM [37.114.715](#) that exempt 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) Immunization history must be recorded on the Montana certificate of immunization form (HES-101) provided by the department or on a physician- or clinic-provided immunization record, which must include:
  - (a) the name of the physician or clinic;
  - (b) the name and birth date of the child; and
  - (c) the date and type of immunization.
- (6) In order to continue to attend a day care facility, a child must continue to be immunized on the schedule described in (1) and must be immediately excluded from attendance in the day care facility if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the day care facility a record of medical exemption or a conditional enrollment form which indicates that no vaccine dose is past due.
- (7) A child may initially conditionally attend a 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) a form prescribed by the department documenting the child's conditional immunization status is on file at the day care facility and is attached to the department's Montana certificate of immunization (HES-101); 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.
- (8) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member, or volunteer contracts any of the diseases for which this rule requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility until the local health authority indicates to the day care facility that the outbreak is over.
- (9) The day care facility must maintain a written record of immunization status of each staff member, enrolled child, and each child of a staff member who resides at the day care facility. The facility must

make those records available during normal working hours to representatives of the department or the local health authority.

- (10) A child under five years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement. A claim of exemption on religious grounds must be notarized and maintained on an Affidavit of Exemption on Religious Grounds form (HES-113) provided by the department.
- (11) A child is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization otherwise required by (1) of this rule is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the physician. It is preferred, but not mandatory, that a physician's medical exemption be recorded on HES-101, and medical exemption documentation must include:
  - (a) which specific immunization is contraindicated;
  - (b) the period of time during which the immunization is contraindicated;
  - (c) the reasons for the medical contraindication; and
  - (d) when deemed necessary by a physician, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab.

#### **37.95.141 CHILD CARE FACILITIES: RECORDS**

- (1) The facility must keep a daily attendance record of the children for whom care is provided.
- (2) The facility must have a master list of the name, address, and phone number of all children in their care and their parents.
- (3) If medications are administered at the facility, the facility must maintain a medication administration log.
- (4) Prior to a child being enrolled or entered into a child care facility, the following information, signed by the parent or guardian, must be on file:
  - (a) written information on each child explaining any special needs of the child, including allergies;
  - (b) a release or authorization of persons allowed to pick up the child;
  - (c) necessary medical forms, including all medication authorization and administration logs, signed and updated immunization records, and the names of emergency contact persons; and
  - (d) an emergency consent form. This form must accompany staff when children are away from the child care site for activities.
- (5) A record of each emergency drill conducted pursuant to ARM [37.95.124](#) must be on file.
- (6) The facility must maintain incident and injury reports which include the date, time of day, nature of the injury or incident, treatment or remediation, and whether the parent was notified for any injury or incident that occurs in the facility. If an injury requires the use of first aid or medical attention, the facility must provide a copy to the parent and keep a copy signed by the parent in the child's file.
- (7) The information supplied in (4) and (5) must be maintained on forms provided by the department and must be signed by the parent or guardian.

#### **37.95.146 DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE**

- (1) The registration certificate or license is not transferable to another operator or site.
- (2) A license or registration is valid only for the person and premises for which it was issued. A license or registration may not be sold, assigned, or transferred.
- (3) Upon discontinuance of the operation or upon transfer of ownership of the facility, the license or registration certificate must be physically returned to the department within ten working days.

#### **37.95.149 DAY CARE FACILITIES: LICENSE FOR EACH PREMISES**

- (1) Separate registration certificates and licenses shall be required for programs maintained on separate premises, even when operated by the same provider.



**37.95.153 DAY CARE FACILITIES: NOTICE OF CHANGES**

- (1) The department must be notified of any changes, including changes in staff, changes in the category of children in day care, or changes to the day care property, that would affect the terms of the registration or licensure.

**37.95.154 DAY CARE FACILITIES: COOPERATION WITH THE DEPARTMENT AND DEPARTMENT ACCESS**

- (1) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary and any time children are in care.

**37.95.155 DAY CARE FACILITIES: RECORDS**

- (1) The provider shall maintain all policies, records, and reports that are required by the department. These policies must be reviewed and updated annually by the facility.
- (2) The department must be given access to all records and an opportunity to copy the records whenever children are in care.

**37.95.156 DAY CARE CENTERS: CONFIDENTIALITY REQUIREMENTS**

- (1) The provider and all staff and volunteers shall maintain personal information about the child and the child's family as confidential.

**37.95.160 CHILD CARE FACILITIES: STAFF RECORDS**

- (1) The director must maintain records regarding each staff member, according to their role type, which include:
  - (a) verification of CPR and first aid training;
  - (b) a copy of the release of information for background checks;
  - (c) health statement and contact information; and
  - (d) immunization records that establish compliance with ARM [37.95.184](#).

**37.95.161 CHILD CARE FACILITIES: CRIMINAL BACKGROUND CHECKS**

- (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each child care provider, on all staff members over the age of 18, and all persons over the age of 18 residing in the child care facility or who stays in the child care facility regularly or frequently.
- (2) If the provider, staff member, volunteer, or resident has always lived in Montana, a Montana based criminal background check will be conducted based upon a name based criminal records check.
- (3) If the provider, staff member, volunteer, resident of the facility, or any person who regularly or frequently stays in the facility, has lived outside of Montana for any portion of the previous five years, that person must submit a completed fingerprint card so that a fingerprint based criminal records check can be requested.
- (4) If an applicant has lived in states other than Montana, a check will be made of the violent offender and criminal history registries if this information is available for states in which the applicant has lived.
- (5) If after 45 days, the department has been unable to obtain results of a criminal records check for an applicant who has lived in Montana for at least five years, the applicant must sign an affidavit attesting

to his lack of criminal history or to the details of existing criminal history. The affidavit will be accepted in lieu of receipt of results from a criminal history check.

- (6) An applicant who has not lived in Montana for at least five years cannot be licensed without receipt of results of a criminal records check from every state in which the applicant has lived since the age of 18.
- (7) Persons formerly licensed as day care providers will be treated as new applicants if the former provider has not been licensed for a period of more than one year or if the provider has lived out-of-state for any period of time since being licensed in Montana.
- (8) A name based check for criminal records will be used for applicants who have lived in Montana since the expiration of their previous license or registration if it has been less than one year since the expiration of the license.

### **37.95.162 CHILD CARE FACILITIES: REQUIRED ANNUAL TRAINING**

- (1) All directors, early childhood teachers, and assistant teachers, at any child care facility must successfully complete annual training required to be current on the ECP Practitioner Registry.
- (2) The training must be approved through MTECP in one of three ways:
  - (a) sponsors verified through the Montana professional development system;
  - (b) institutions of higher education that are regionally accredited; or
  - (c) successful completion of college-level course work in early childhood, education, or child development.
- (3) Education and training must relate to the Montana Early Care and Education Knowledge Base and must fall within the following categories:
  - (a) personal attributes/characteristics;
  - (b) health, safety, and nutrition which may include training on prevention of sudden infant death syndrome (SIDS) and medication administration;
  - (c) child growth and development;
  - (d) environmental design;
  - (e) child guidance;
  - (f) family and community partnerships;
  - (g) program management;
  - (h) curriculum;
  - (i) observation and assessment;
  - (j) professionalism; or
  - (k) cultural and developmental diversity.
- (4) A substitute who provides care to children in a child care facility for less than 500 hours a year is not required to complete annual training or be current on the ECP Practitioner Registry.
- (5) ECTs at facilities that provide care exclusively to school-age children must complete at least eight hours of continuing education annually and are not required to be on the ECP Practitioner Registry.

### **37.95.163 CHILD CARE FACILITIES: EARLY CHILDHOOD TEACHER ORIENTATION TRAINING**

- (1) Each director, early childhood teacher, assistant teacher, and substitute must complete the department-approved early childhood teacher orientation training.
- (2) Within 30 days of hire, teacher orientation which includes the following training must be completed:
  - (a) current certification for infant, child, and adult CPR, infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting;
  - (b) prevention of sudden infant death syndrome and use of safe sleep practices;
  - (c) prevention of shaken baby syndrome and abusive head trauma;
  - (d) trainings listed in (a) through (c) must be completed before providing unsupervised care; and
  - (e) facilities that provide care exclusively to school age children are not required to take (b) and (c);
- (3) Within 90 days of hire, teacher orientation which includes the following training must be completed:
  - (a) prevention and control of infectious diseases, including immunization;
  - (b) child development;

- (c) administration of medication, consistent with standards for parental consent;
  - (d) prevention and response to emergencies due to food and allergic reactions;
  - (e) building and physical premises safety;
  - (f) emergency preparedness and response;
  - (g) proper handling, storage, and disposal of hazardous materials;
  - (h) appropriate disposal of toxic (biocontaminants) materials including effects such as blood, bodily fluids, and other infectious materials;
  - (i) transportation; and
  - (j) prevention and reporting of child abuse and neglect to proper state authorities.
- (4) Teacher orientation training shall be counted towards annual training described in ARM [37.95.162](#).

#### **37.95.165 DAY CARE FACILITIES: NOTICE OF CURRENT ADDRESS**

- (1) The provider shall provide the department with any change in the provider's mailing address within ten days of the change.

#### **37.95.168 DAY CARE FACILITIES: REQUIRING EXAMINATIONS**

- (1) The department may require an applicant, a provider, a staff person, a volunteer, or any person living in the day care facility or staying in the day care facility on a regular or frequent basis, to undergo a physical, psychological, psychiatric, or chemical dependency evaluation if the department determines such an evaluation is relevant to the department's reasonable belief that the person has engaged in behaviors that may place children or other adults at risk of harm.

#### **37.95.171 DAY CARE FACILITIES: MANDATED REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT**

- (1) The director, assistant director or any staff member of the day care facility who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter promptly to the department child abuse hotline at 1 (866) 820-5437. The day care provider or staff member shall make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

#### **37.95.172 CHILD CARE FACILITIES: SUPERVISION AT ALL TIMES**

- (1) Children must be supervised at all times.
- (2) The provider, director, and all ECTs must be responsible for direct care, protection, supervision, and guidance of children through active involvement or direct observation.

#### **37.95.173 CHILD CARE FACILITIES: PROTECTION OF CHILDREN FROM A PERSON CHARGED WITH A CRIME INVOLVING CHILDREN, VIOLENCE, OR DRUGS**

- (1) Any staff member or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense, or awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

### **37.95.175 DAY CARE FACILITIES: REAPPLICATION AFTER SUSPENSION OF REVOCATION**

- (1) However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within one year of the denial or revocation.
- (2) If the suspension or revocation is contested and upheld after a fair hearing, the reapplication may not be made until one year after the date of the decision of the hearing officer.

### **37.95.176 DAY CARE FACILITIES: NEGATIVE LICENSING ACTION**

- (1) After written notice to the applicant, licensee, or registrant, the department shall deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a registration certificate or license upon finding that:
  - (a) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a serious crime, such as but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;
  - (b) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a crime pertaining to children or families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact;
  - (c) the applicant, licensee, registrant, or member of the applicant's, licensee's, or registrant's household has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, 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 of delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs;
  - (d) the applicant, licensee, registrant, or member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.
- (2) The department, after written notice to the applicant, licensee, or registrant may deny, suspend, or revoke a registration certificate license or registration certification or may restrict or reduce to a provisional, or probationary status a registration certificate license or registration certification upon a finding that:
  - (a) the applicant, licensee, registrant, or member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;
  - (b) the day care is not in compliance with fire safety standards imposed by these rules, or by the state fire marshal or other authority having jurisdiction;
  - (c) the day care has not met or is no longer meeting the requirements for licensure or registration set forth in these rules;
  - (d) the provider has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the provider is obligated to disclose to the department, regarding any aspect of the day care or its operations;
  - (e) the provider, any staff member, volunteer, or any person residing in the day care or anyone staying in the facility on a frequent or regular basis has been named as the perpetrator in a substantiated report of abuse or neglect;

- (f) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation by the department, or by a law enforcement agency determines that there is probable cause to believe that a child in the facility may be in danger of harm;
  - (g) the provider or any staff member has failed to report an incident of suspected abuse or neglect of any child to the department as required by [41-3-201](#) , MCA, within 24 hours of receiving information pertaining to the incident;
  - (h) the results of a psychological or medical examination provided reasonable grounds for the department to believe that the provider, any staff member, or volunteer in the day care is not an appropriate caretaker for a child;
  - (i) the provider, any staff member, or any volunteer, may pose any risk or threat to the safety or welfare of a child in the day care;
  - (j) the day care has failed to protect the health, welfare, or safety of a child, or the day care presents a reasonably foreseeable serious hazard to the health, safety, or welfare of a child;
  - (k) a director, care-giver, volunteer, or adult residing in the facility or staying in the facility on a regular or frequent basis has violated a licensing regulation which resulted in harm to a child as defined in [41-3-102](#) , MCA or knowingly allowed harm to occur to a child as defined in [41-3-102](#) , MCA, whether or not that person was prosecuted or convicted of child abuse or neglect; or
  - (l) a day care license or registration may be suspended, restricted, or revoked at the discretion of the department if the licensee's child is removed from the licensee by the department.
- (3) Suspension or revocation may be immediate upon a determination by the department that public health, safety, or welfare imperatively requires emergency action. Such a determination may be based on findings including, but not limited to the following situations:
- (a) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation reveals that there are reasonable grounds to believe that a child in the facility may be in danger of harm;
  - (b) the department requests and is denied access to the licensed or registered facility;
  - (c) the provider has made any material misrepresentation to the department, either negligently or intentionally, regarding any information requested on the application form or necessary for registration or licensing purposes;
  - (d) the provider, a member of the provider's household, or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM [37.95.1016](#); or
  - (e) through a child care licensing investigation, it is determined that the provider, provider's staff, or member of the provider's household has violated a licensing regulation that has resulted in harm to a child which falls within the definitions of child abuse and neglect set out in [41-3-102](#) , MCA, whether or not a criminal prosecution is initiated.
- (4) If a licensee is placed on a probationary or other provisional status, the department shall notify all parents and guardians of all children attending the facility of the status of the license, the basis for the reduced status and the time period for which the license is reduced. The department may do so by personal notice, by written notice, or by posting notice on the day care license, which is required to be posted in plain view at the facility.
- (5) If a license or registration certificate has been denied to an applicant, or negative licensing action is proposed against a license or registration certificate based upon a conviction identified in (1) (a) through (d) or (2) (a) , and the applicant, licensee, or registrant requests a fair hearing and establishes by clear and convincing evidence that the convicted person has been sufficiently rehabilitated to warrant the public trust, the department may issue the license or registration certificate or may withdraw the proposed negative licensing action.

### **37.95.181 DAY CARE FACILITIES: MEDICATION ADMINISTRATION**

- (1) No day care employee, owner, or operator may administer any medication to a child without the written authorization of the parents including the child's name, date or dates for which the authorization is applicable, dosage instructions, and the signature of the child's parent or guardian.

- (2) If an emergency arises and the parents or guardian of the child is unavailable, an employee, owner, or operator may administer medicine to a child if:
  - (a) a medical practitioner provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the medical provider's signature; or
  - (b) a medical practitioner, emergency service provider, or 911 responder verbally directs the employee, owner, or operator of the day care facility to immediately administer a medicine to the child, in which case the child must then be transported to a health care facility or a medical practitioner for follow up care within a reasonable time by the child's parent or guardian or by an employee, owner, or operator of the day care facility.
- (3) An employee, owner, or operator of a day care facility may not give medication to a child in a manner that is inconsistent with the container instructions on dosage or frequency unless directed to do so by a medical provider as provided in [52-2-736](#), MCA.
- (4) If the provider/facility elects to administer medication to children, the provider/facility must maintain the following documentation on site:
  - (a) A medication record which includes:
    - (i) the written authorization of the parents for the care-giver to administer medication;
    - (ii) the prescription by a health care provider if required; and
    - (iii) a medication administration log.
  - (b) A written medication administration policy which includes at a minimum:
    - (i) types of medication which may be administered; and
    - (ii) medication administration procedures to be followed, including the route of medication administration, the amount of medication given, and the times when medication is to be administered; and
  - (c) A health care and medication plan for children who may have special health care needs or those requiring medication for chronic health conditions which has been approved by a health care provider licensed in Montana.

### **37.95.182 DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF MEDICATION**

- (1) Any prescription medication brought into the facility by the parent, legal guardian, or responsible relative of a child shall be dated and shall be kept in the original container labeled by a pharmacist with the following information:
  - (a) child's first and last names;
  - (b) the date the prescription was filled;
  - (c) the name of the health care provider who wrote the prescription; and
  - (d) the medication's expiration date, and specific legible instructions for administration, storage, and disposal (i.e., the manufacturer's instruction or prescription label) .
- (2) Any nonprescription medication brought into the facility for use by a specific child shall be labeled with the following information:
  - (a) the date;
  - (b) the child's first and last names;
  - (c) specific, legible instructions for administration and storage (i.e., the manufacturer's instructions) ;  
and
  - (d) the name of the health care provider, parent, or guardian who made the recommendation.
- (3) All medications, refrigerated or unrefrigerated, shall:
  - (a) have child-protective caps;
  - (b) be kept in an orderly fashion;
  - (c) be stored away from food at the proper temperatures; and
  - (d) kept in a location inaccessible to children or kept in a locked box.

### **37.95.183 CHILD CARE FACILITIES: FIRST AID REQUIREMENTS**

- (1) Each provider shall adopt and follow written policies for first aid consistent with recommendations from the American Red Cross. These policies must include but are not limited to:
  - (a) procedures for handling medical emergencies, including calling the Emergency Montana Poison Control center at 1 (800) 222-1222 when a child is suspected of having ingested any poisonous or toxic substance; and
  - (b) directions for calling parents or someone else designated as responsible for the child when a child is sick or injured.
- (2) A first aid kit must be kept on site at all times and must contain:
  - (a) sterile, absorbent bandages;
  - (b) a cold pack;
  - (c) tape and a variety of band-aids;
  - (d) tweezers and scissors;
  - (e) disposable single use gloves.
- (3) The director or designee, owner, or manager must take appropriate precautions to minimize the risk of any child suffering sunburn and to minimize the risk of any child contracting West Nile virus.
- (4) Each facility is responsible for notifying the department of any environmental danger or other hazard on the facility property that the provider is aware of that could affect the health, welfare, or safety of children in care.
- (5) A portable first aid kit containing at least the items listed in (2) must accompany staff and children on trips away from the facility.
- (6) The facility must submit a report to the Child Care Licensing Program (CCLP) within 24 hours after the following events, involving the child care facility, occur on or away from the premises:
  - (a) lost or missing child or an incident involving a child being left alone;
  - (b) suspected maltreatment of a child;
  - (c) suspected sexual, physical, or emotional abuse by staff, other children, family members, or other adults;
  - (d) injuries to children requiring medical or dental care;
  - (e) illness or injuries requiring hospitalization or emergency treatment;
  - (f) mental health emergencies;
  - (g) health and safety emergencies involving parents, guardians, and visitors to the program;
  - (h) death of a child or staff member, including a death that was the result of a serious illness or injury that occurred on the premises of the child care facility, even if the death occurred outside of the child care facility;
  - (i) the presence of a threatening individual who attempts or succeeds in gaining entrance to the child care facility; or
  - (j) fire involving the fire department.
- (7) A copy of the report shall be provided to the parents of the children involved, and a copy retained on file at the child care facility.

### **37.95.184 CHILD CARE FACILITIES: HEALTH HABITS**

- (1) Good health habits, such as washing hands, must be taught during everyday activities. The staff members must ensure that each child washes their hands:
  - (a) before eating;
  - (b) before participating in food preparation activities; and
  - (c) after using the toilet.
- (2) Every employee, volunteer, or resident at a day care facility must:
  - (a) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101°F or greater, or if the person exhibits any of the symptoms outlined in ARM [37.95.139](#)(4) for which a child would be excluded;
  - (b) wash their hands and exposed portions of their arms with a cleaning compound in a sink by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds

and thoroughly rinsing with clear water, paying particular attention to the areas underneath the fingernails and between the fingers, at the following times:

- (i) after touching bare human body parts other than clean hands and clean exposed portions of arms;
  - (ii) after using the toilet;
  - (iii) after every diapering;
  - (iv) after coughing, sneezing, or using a handkerchief or disposable tissue;
  - (v) immediately before engaging in food preparation and before feeding any child;
  - (vi) during food preparation as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; and
  - (vii) after engaging in other activities that contaminate the hands; and
- (c) provide documentation of at least one dose of Tdap vaccine, and for all adults born in 1957 or after, one dose of MMR vaccine unless they have a medical contraindication to the vaccines or laboratory evidence of immunity to each of the three diseases.
- (3) If a child has an accident causing wet or soiled clothes, the child must be changed promptly.

## **SPECIFIC REQUIREMENTS**

### **37.95.602 CHILD CARE CENTERS, PROGRAM REQUIREMENTS**

- (1) The program conducted in a child care center must be written and must provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth, and well being. Both active and passive learning experiences must be provided under direct adult supervision.
- (2) The requirement in (1) must be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation, reviews the written daily program, and confirms the program is based upon the criteria below:
  - (a) the center maintains an ongoing process of parent-staff cooperation in development and modification of program goals;
  - (b) the center provides a diversity of experiences during the day for each child with opportunity for quiet and active experiences, group and individual activities, the exercise of choice, and experience with different types of equipment, and materials;
  - (c) the center provides developmentally appropriate opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of the child's own clothing, and assisting in planning activities;
  - (d) the center provides experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people to further expand the exposure and experiences of the children. Early childhood teachers are required to secure a release from parents before children are taken on field trips;
  - (e) the center provides learning experiences for the children regarding the value of food in relation to growth and development; and
  - (f) the center provides opportunities for children to develop language skills and to improve readiness for reading and writing by regularly exposing the children to books, drama, poetry, music, and other forms of expression.

### **37.95.606 CHILD CARE CENTERS, GUIDANCE AND DISCIPLINE**

- (1) Early childhood teachers must use appropriate forms of guidance and discipline. Physical punishment, including spanking or other forms of corporal punishment, is strictly prohibited in child care facilities.



Discipline must include positive guidance, redirection, and the setting of clear limits that foster the child's ability to become self-disciplined. In addition, all staff must model appropriate behaviors for children in the facility.

- (2) Any punishment or discipline which is humiliating, shaming, frightening, or otherwise damaging is strictly prohibited.
- (3) Parental or guardian permission does not allow for the use of any punishments listed in (1) or (2) above.
- (4) The provider is responsible for ensuring that each care-giver participates in an in-service training session regarding discipline and guidance techniques appropriate for children.

### **37.95.610 DAY CARE CENTERS, SPACE**

- (1) A day care center must have sufficient indoor and outdoor space for the number and ages of children in care.
- (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) In facilities licensed after June 2, 2006, this requirement shall be deemed to have been satisfied if each designated area for children's activities contains a minimum of 35 square feet of usable floor space per child that will be in the room at any one time, as calculated in (2).
- (4) When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child shall be provided except for:
  - (a) periods when children are using their rest equipment; or
  - (b) when large group activities, such as educational assemblies, occur.
- (5) During sleep periods, the area must be sufficient to provide spacing between the children using sleep equipment.
- (6) The equipment and furniture arrangement must permit unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care, as well as arrangements of any sleeping equipment used which permit easy access to every child and unobstructed exits.
- (7) Outdoor play areas at the facility must be surrounded by a fence that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter. Outdoor areas must be designed so that all parts are always visible to allow for direct supervision by child care staff.
- (8) The center may obtain an exception from the department from the requirements of this rule for the following reasons:
  - (a) limited outdoor space is offset by a greater amount of indoor space, such as a gym, permitting an equivalent activity program;
  - (b) limited indoor space is offset by sheltered outdoor space where climate permits reliance on outdoor space for activities normally conducted indoors; or
  - (c) limited outdoor or unfenced space is offset by the availability or use of an adjacent school playground, nearby parks, or other safe outdoor play area.

### **37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE**

- (1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions and to provide for the reasonable comfort and convenience of staff and parents.
- (2) This requirement shall be deemed to have been satisfied if the center has appropriate storage and work areas adjacent to the area of use, to accommodate the following functions if these are conducted on the premises:
  - (a) administrative office functions, record storage, meeting arrangements for staff or for parent conference offering privacy of conversation;
  - (b) food preparation and serving;
  - (c) custodial services;
  - (d) laundry;
  - (e) rest area for staff relief periods; and
  - (f) storage of program materials and manipulative toys to be used and rotated at different times during the year.

### **37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT**

- (1) The amount and variety of materials and equipment available, and their arrangement and use, must be appropriate to the developmental needs of the children in care. This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the selection, arrangement and use of materials and equipment, based on the criteria:
  - (a) Centers shall maintain a housekeeping area, table activities (manipulative toys) area, block building area, library or other quiet area, and a creative arts area. Arrangement of these areas shall be such that quiet and active zones are separated and not conflicting;
  - (b) The quantity and quality of materials and equipment shall be sufficient to permit multiple use of the same item by several children so excessive competition and long waits are avoided;
  - (c) Materials and equipment shall be of sufficient quantity and quality to provide for a variety of experiences and appeal to the individual interests of the children in care;
  - (d) Furniture shall be durable, safe, clean, and be child size or appropriately adapted for children's use;
  - (e) Storage shelves shall be provided to children at their level.
- (2) Play equipment and materials must include items from each of the following six categories:
  - (a) dramatic role playing;
  - (b) cognitive development;
  - (c) visual development;
  - (d) auditory development;
  - (e) tactile development; and
  - (f) large-muscle development.
- (3) High chairs, when used, must have a wide base and a safety strap.
- (4) Each child, shall have clean, sanitized and age-appropriate rest equipment. Seasonably appropriate covering, such as sheets or blankets, for a crib, cot, bed, or mat must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized.
- (5) Each facility must have a working telephone.
- (6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and the Emergency Montana Poison Control Center (1 (800) 222-1222) must be posted by each telephone.

### **37.95.619 DAY CARE CENTERS, NIGHT CARE**

- (1) A day care center offering night care must develop plans for program, staff, equipment and space which will provide appropriately for the personal safety and emotional and physical care of children away from their families at night.
- (2) This requirement shall be deemed to have been met if:
  - (a) special attention is given by the caregiver and the parents to provide for a transition into this type of care appropriate to the child's emotional needs;
  - (b) a selection of toys for quiet activities which can be used with minimal adult supervision is provided for children prior to bedtime;
  - (c) bathing facilities, comfortable beds or cots, and complete bedding, are provided;
  - (d) staff are available to assist children during eating and pre-bedtime hours and during the morning period when dressing;
  - (e) during sleeping hours, staff are awake, in the immediate vicinity, and on the same floor level of sleeping children in order to provide for the needs of children and respond to any emergency; and
  - (f) at appropriate times a nutritious dinner and/or breakfast is served to children and a bedtime snack is offered.

### **37.95.622 CHILD CARE CENTERS: STAFFING QUALIFICATIONS**

- (1) All staff members must:
  - (a) meet immunization requirements pursuant to ARM [37.95.184](#);
  - (b) have appropriate background checks pursuant to ARM [37.95.161](#); and
  - (c) sign a health attestation.
- (2) An early childhood lead teacher must meet the following requirements:
  - (a) be at least 18 years of age;
  - (b) complete facility overview on-the-job training;

- (c) be current on the ECP Practitioner Registry;
- (d) have current certification for infant, child, and adult CPR and infant choking response, and standard first aid. CPR certification must be completed in a hands-on setting;
- (e) successfully complete required early childhood teacher orientation as indicated in [37.95.163](#); and
- (f) have the following training and experience:
  - (i) two years of experience in an early childhood program such as a licensed or registered child care facility, or Head Start, plus 32 hours of ECP training; or
  - (ii) level 2 or higher on the ECP Practitioner Registry.
- (3) An early childhood assistant teacher must:
  - (a) receive oversight and guidance from an onsite ECLT or director;
  - (b) be at least 16 years old; and
  - (c) meet the requirements of (2)(b) through (e).
- (4) Substitute teachers must meet the requirements in (1) through (3) with the exception of (2)(c).
- (5) A trainee must meet the requirements in (1) and (3)(a) and (b) and may not remain in this role for longer than 30 days.
- (6) Only directors, early childhood teachers, assistant teachers, trainees, and substitute teachers may provide direct care.

### **37.95.623 CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS**

- (1) The child-to-staff ratio and maximum group size for a child care center are:
  - (a) 4:1 for children newborn through 23 months with a maximum group size of 12;
  - (b) 8:1 for children two years through three years with a maximum group size of 16;
  - (c) 10:1 for children four years with a maximum group size of 24; and
  - (d) 14:1 for five years and over with a maximum group size of 32.
- (2) When children of different ages are mixed, the ratio and group size for the youngest child in the group must be maintained.
- (3) Only the director, early childhood lead teachers, assistant teachers, trainees, and substitute teachers may be counted as staff when determining the staff ratio.
- (4) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.

### **37.95.624 CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES**

- (1) Each child care center shall have a director. The director is responsible for operation of the child care center at all times and shall ensure appropriate safety, supervision, protection, and guidance of the children.
- (2) The director must meet the following minimum requirements:
  - (a) be at least 18 years of age;
  - (b) be current on the ECP Practitioner Registry;
  - (c) successfully completed teacher orientation as indicated in ARM [37.95.163](#);
  - (d) have one of the following:
    - (i) current ECP Practitioner Registry level 4 or higher;
    - (ii) current ECP Practitioner Registry level 3, plus two years of experience in a licensed child care facility or Head Start;
    - (iii) current ECP Practitioner Registry level 2, plus three years of experience in a licensed child care facility or Head Start;
    - (iv) a bachelor degree or higher in any field, plus completion of the 60 hour infant-toddler training and the 60 hour preschool course, or 120 hours of alternate training approved by the department; or
    - (v) a combination of education and experience may be considered. This option must be approved by the CCLP manager.
- (3) The director must complete the program management essentials course within 60 days of becoming a director or successfully complete an approved new director orientation such as program essentials.
- (4) The director is responsible for ensuring compliance with all applicable administrative rules within this chapter.

- (5) The director or other authorized staff person shall review every incident or accident causing injury to a child, resulting in medical or dental care, and document the appropriate corrective action taken to avoid a reoccurrence.
- (6) In the absence of the director, a staff member must be designated to oversee the operation of the center during the director's absence. The director or designee shall be in charge and physically available while children are in care, and shall ensure there is sufficient, qualified staff so that the care, wellbeing, health, and safety needs of children are met at all times.
- (7) If the director will be absent from the center for more than 30 continuous days, the department shall be given written notice of the individual who has been appointed the designee. The designee must meet all the requirements of this rule.
- (8) The owner of a child care center may serve as director if the owner meets the qualifications specified in this rule.

#### **37.95.640 DAY CARE CENTERS, LICENSING SERVICES PROVIDED**

- (1) The department will provide the following:
  - (a) assistance to the applicant to meet licensing requirements;
  - (b) referral services concerning child problems;
  - (c) consultation to the day care center in providing enrichment experiences for the children, proper environment and nutrition; and
  - (d) technical assistance to day care centers for staff training.
- (2) The department or its authorized representative shall make periodic unannounced visits to all licensed day care centers to ensure continued compliance with licensing requirements.

## **INFANT REQUIREMENTS**

#### **37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS FOR CHILDREN UNDER AGE TWO**

- (1) A day care facility must have on file a health record form, provided by the department, concerning any special health risks that would affect other children. This must be obtained and kept on file by the provider prior to residence or enrollment of any child under age two at the day care facility. The health record form must be signed by:
  - (a) a physician licensed to practice medicine in Montana pursuant to Title 37, chapter 3, MCA; or
  - (b) a physician assistant-certified licensed to practice in Montana and practicing under a utilization plan approved by the board of medical examiners; or
  - (c) a person licensed in Montana as a professional nurse and recognized by the board of nursing as a nurse practitioner or clinical nurse specialist; or
  - (d) a naturopathic physician licensed under Title 37, chapter 26, MCA.

#### **37.95.1001 INFANT'S AND TODDLER'S DIAPERING AND TOILET TRAINING**

- (1) A sufficient supply of clean, dry diapers shall be available and diapers shall be changed as frequently as needed. Disposable diapers, a commercial diaper service, or reusable diapers supplied by the child's family may be used. If nondisposable diapers are used, the facility may launder the diapers using a germicidal process approved by the state or local health department. In the absence of such a process, the facility may not launder nondisposable diapers of enrolled children.
- (2) Soiled reusable diapers shall be placed into separate cleanable covered containers provided with waterproof liners prior to transport to laundry, parent, or acceptable disposal. These containers shall be emptied, cleaned and disinfected daily. Soiled disposable diapers shall be

disposed of immediately into an outside trash disposal or put in a securely tied plastic bag and discarded indoors until outside disposal is possible. Reusable diapers shall be removed from the facility daily.

- (3) Diaper-changing surfaces shall be cleaned after each use by washing or by changing a pad or disposable sheeting and sanitized or covered for reuse.
- (4) Soft, absorbent, disposable towels, or clean reusable towels which have been laundered between each use shall be used for cleaning the child.
- (5) Safety pins shall be kept out of reach of infants and toddlers.
- (6) Infants and toddlers shall not be left unattended on a surface from which they might fall.
- (7) All toilet articles shall be specifically labeled for each infant and toddler. Each item must be separated and kept in a sanitary condition.
- (8) Diapering and toileting areas shall contain a wash basin that is separate from that used for food preparation.
- (9) Toilet training shall be initiated when the toddler is ready and in consultation with the toddler's parents or placement agency. There shall be no routine attempt to toilet train children under the age of 18 months.

#### **37.95.1002 INFANT'S AND TODDLER'S WET OR SOILED CLOTHING**

- (1) Wet or soiled clothing shall be changed promptly. Spare clothing shall be available in the event that a child's clothing becomes wet or soiled and it is the responsibility of the parent or guardian to care for the wet or soiled clothing. The clothing shall be placed in a sealed bag and returned to the parent or guardian.

#### **37.95.1003 INFANT'S AND TODDLER'S FEEDING**

- (1) An individualized diet and feeding schedule shall be provided according to a written plan submitted by the parents or by the infant's physician with the knowledge and consent of the parents, guardian, or placement agency. A change of diet and schedule shall be noted on each infant's daily diet and feeding schedule.
- (2) A day's supply of formula or breast milk in nursing bottles or formula requiring no more preparation than dilution with water shall be provided by the parents, unless an alternative agreement is reached between the parents and provider ensuring that the infant's nutritional needs are sufficiently met. Bottles of formula or breast milk shall be clearly labeled with each infant's name and date and immediately refrigerated. After use bottles shall be thoroughly rinsed before returning to the parent at the end of the day. Special dietary foods required by infants and toddlers shall be prepared by the parents.
- (3) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings.
  - (a) Infants and toddlers who use a bottle shall not be allowed to lie on their backs when drinking from the bottle.
  - (b) Older infants and toddlers shall be provided age-appropriate feeding equipment when being fed. This includes safe high chairs, baby feeding tables, booster seats, and child-size tables and chairs. Use of these types of equipment must be used in accordance with the manufacturer's instructions and must be appropriate for the age of the child using the equipment.
  - (c) Infants six months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant.

- (d) Bottles and spill-proof cups (sippy cups) must be taken from the infant or toddler when they finish feeding, when the bottle or cup is empty, and while they are sleeping.
- (4) If the parent is unable to bring sufficient or usable formula or breast milk, the facility may use commercially prepared and packaged formulas. Older infants and toddlers shall be provided suitable foods which encourage freedom in self-feeding. Unused food shall be stored in the original container and kept separate from other foodstuffs. Dry cereal, cookies, crackers, breads, and similar foods shall be stored in clean, covered containers.
- (5) If the container in which the formula was purchased does not include a sanitized bottle and nipple, then transfer of ready-to-feed formula from the bulk container to the bottle and nipple feeding unit must be done in a sanitary manner in the kitchen. Bottles filled on the premises of the facility should be refrigerated immediately if not used and contents discarded if not used within 12 hours.
- (6) If bottles and nipples are to be used by the facility, they must be cleaned and sanitized using generally accepted means of sanitation such as washing in a dishwasher or by washing in hot water, rinsing, and boiling for one minute.

#### **37.95.1004 INFANT'S AND TODDLER'S, BATHING**

- (1) Bathing shall not be done routinely by the facility but if required:
  - (a) infants and toddlers must be directly supervised when being bathed;
  - (b) bathing materials shall be sanitized after bathing an infant or toddler;
  - (c) nonallergenic soap shall be used;
  - (d) arrangements shall be made so the infant or toddler cannot turn on hot water while being bathed. Water supply to bathing area will not be over 120°F; and
  - (e) the bathing area shall be out of drafts and provisions should be made so the infant or toddler may be completely dried after a bath.

#### **37.95.1005 INFANT AND TODDLER, SLEEPING**

- (1) There must be adequate opportunities for sleep periods during the day suited to the infant's and toddler's individual needs.
- (2) Unless the parent has provided medical documentation from a health care provider ordering otherwise, infants must be placed on their back and on a firm surface with no incline to reduce the risk of Sudden Infant Death Syndrome (SIDS).
- (3) Each infant must be provided with a crib or play pen for sleeping. At the discretion of the parent and provider, a cot or mat may be used once a child turns one year of age as long as a safe sleep environment is provided. Children one year of age through 18 months who are placed on a mat must have a signed permission statement in the file indicating that the parent has given permission for their child to be placed on a mat. When cots and mats are used, an early childhood teacher must remain with the child while they are sleeping.
  - (a) Infants and toddlers must not be allowed to sleep in a car seat, infant swing, or other infant apparatus.
  - (b) Cot or mat surfaces may be of plastic or canvas or other material which can be cleaned with detergent solution and allowed to air dry.
- (4) Cribs must be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs must have no more than 2 and 3/8 inches of space between the vertical slats. No later than December 28, 2012, all cribs must meet the requirements for full-size baby cribs and non-full-size baby cribs as specified by the Consumer Product Safety Commission at 16 CFR Part 1219 (2011) and 16 CFR Part 1220 (2011), incorporated by these references. A copy of the requirements for full-size baby cribs and non-full-size baby cribs is available at

<http://www.dphhs.mt.gov/earlychildhood/cribrequirements.shtml>,

or by contacting the Montana Child Care Licensing Program at P.O. Box 202953, Helena, Montana 59620; Phone: (406) 444-2012.

- (5) Mattresses must fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses must be waterproof and easily sanitized. Cribs, cots, or mats must be thoroughly cleansed before assignment to another infant or toddler.
- (6) Cribs, cots, or mats must be spaced to allow for easy access to each infant and toddler, adequate ventilation, and easy exit. Aisles between cribs or cots must be kept free of obstructions while cribs or cots are occupied. The use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first.
- (7) All pillows, quilts, comforters, heavy blankets, sheepskins, bumper pads, stuffed toys, and other soft products must be removed from the crib and play pen when an infant is laid down for sleep.
  - (a) Blankets of any weight must be removed when infants 12 months of age or under are laid down for sleep.
  - (b) Sleep sacks and similar safe sleep clothing may be used if the item does not restrict the infant's arms.
  - (c) Infants under 3 months of age may only be swaddled if medical documentation from a health care provider is on file at the facility.
  - (d) Infants over 3 months of age must not be swaddled.
- (8) Toddlers must be provided a clean washable blanket or other suitable covering for their use while sleeping. Each child's bedding shall be stored separate from bedding used by other children.
- (9) All cries of infants and toddlers shall be investigated.
- (10) The facility must develop a written policy that describes the practices to be used to promote a safe sleep environment when children under age two are napping or sleeping.
- (11) All early childhood teachers must sign an acknowledgement indicating that they have read and understood the facility's policy outlined in (10).

### **37.95.1011 INFANT'S AND TODDLER'S, ACTIVITIES**

- (1) All infants shall have ample opportunity during each day for freedom of movement, such as creeping or crawling or rolling in a safe, clean, open, uncluttered area.
- (2) An infant or toddler who is awake shall not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, or highchair.
- (3) Each infant and toddler shall have individual personal contact and attention by the same adult on a regular daily basis at least once each hour during nonsleeping hours. Examples of personal contact and attention include being held, rocked, taken on walks inside and outside the center, talked to, and played with.
  - (a) There shall be sufficient staff so that an adult is always present and supervising.
- (4) There shall be provisions for the infant and toddler to safely explore and investigate the environment. There shall be both stimulation and time for quiet activity. Infants and toddlers shall be taken outside for some period during each day in good weather.
- (5) Each infant and toddler shall be allowed to maintain the child's own pattern of sleeping and waking period according to instructions from the parents.

### **37.95.1015 INFANT'S AND TODDLER'S, OUTDOOR ACTIVITIES**

- (1) Infants and toddlers shall be protected from draft and prolonged exposure to direct sunlight. With the parent's written permission, sun screen shall be applied to children over six months old when outdoor conditions dictate.
- (2) There must be an outdoor play area on the facility property. The play area must be fenced in accordance with ARM [37.95.121](#) and free of hazards which are dangerous to the health and safety of the children. Every time an infant or toddler is outdoors, they must be supervised by a caregiver.
- (3) Adequate protection against insects shall be provided.
- (4) Provision shall be made for both sunny and shady activity areas.

### **37.95.1016 INFANT'S AND TODDLER'S, EQUIPMENT**

- (1) Age-appropriate feeding equipment shall be provided 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 instructions and must be appropriate for the age of the child using the equipment. Portable high chairs that hook onto tables are prohibited.
- (2) The facility shall provide adequate and safe equipment such as cribs, swings, playpens, and adult rocking chairs. All equipment must meet current federal safety regulations.

### **37.95.1021 INFANT'S AND TODDLER'S, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS**

- (1) Day care centers shall post each infant's diet and schedule in an area clearly visible to the center's infant care staff.
- (2) Individual storage space for clothing and other personal items shall be provided and labeled for each infant and toddler.
- (3) Each infant shall be assigned a caregiver who is routinely responsible for that infant. There shall be sufficient staff so that an adult is always present and directly supervising infants.
- (4) Clothing worn to and from work by the day care center staff members shall be covered by or replaced with clean comfortable nonirritating washable smock or similar clothing.
- (5) Play areas for infants shall be separate from play areas used by children over two years of age, or not be used for any children over age two while being used for infants. Sleeping areas shall be separate from play areas.



# FIRE SAFETY

## 23.12.407 CERTIFICATE OF APPROVAL FOR DAY CARE CENTERS FOR 13 OR MORE CHILDREN

- (1) Any applicant for a license from the Department of Public Health and Human Services to operate a day care center for 13 or more children under Title 52, chapter 2, MCA, must obtain a certificate of approval from the state fire marshal in accordance with this rule.
- (2) To obtain a certificate of approval, the applicant shall contact the state fire marshal setting forth the following information:
  - (a) name and address of applicant;
  - (b) location of proposed day care center; and
  - (c) number of children for which proposed day care center will provide care.
- (3) Upon receipt of an application for certificate of approval, the fire marshal or a representative shall conduct an inspection of the proposed day care center.
- (4) Day care centers shall comply with the fire code.
- (5) Day care centers shall also comply with the following additional requirements:
  - (a) A single, fixed space heater (wood, coal or fuel oil) may be used, provided it is properly installed and surrounded by a suitable barrier to prevent contact by children and is so located as to not obstruct egress. Installation shall be in accordance with the Uniform Mechanical Code.
  - (b) Portable unvented oil-fueled heating appliances are prohibited.
  - (c) No extension cords shall be used in lieu of permanent wiring. All appliance and lamp cords shall be suitably protected to prevent pulling or chewing by children.
  - (d) All unused electrical receptacles shall be properly capped.
  - (e) Every closet door latch shall be fixed so that the door is capable of being opened by a child inside the closet.
  - (f) Every bathroom door lock shall be installed to permit the locked door to be opened from the outside.
  - (g) In sleeping rooms, windows having a minimum of 5.7 square feet of clear, unobstructed opening shall be readily accessible for rescue or fire suppression. Windows shall be capable of being opened from the inside without the use of tools or special knowledge. Clear opening shall not be less than 20 inches in width or 24 inches in height. The bottom of the window shall not be more than 44 inches from the floor.
  - (h) Every day care center shall provide operational smoke alarms or smoke detectors in locations designated by the FPIS or chief fire official. Smoke alarms shall be tested at least every 30 days and a log of such tests maintained on the premises. Smoke detectors connected to a fire alarm system shall be tested in accordance with the IFC.
  - (i) Portable fire extinguishers shall be installed and maintained in accordance with IFC Section 906.
  - (j) A telephone shall be provided for emergency notification. Emergency phone numbers shall be posted in close proximity to the telephone.
  - (k) House numbers, no less than 4 inches in height, shall be placed in such a position as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background.
  - (l) Space under stairwells shall not be used for storage of any kind except as permitted by the IFC.

- (6) If the proposed day care center is in compliance with these rules, the fire marshal shall issue a certificate of approval. If the center is not in compliance, the fire marshal shall issue a notice of corrective action needed to bring the center into compliance. Additional inspections may be conducted as needed until compliance is achieved.
- (7) For the purposes of this rule, the definitions contained in [52-2-703](#), MCA, are applicable.
- (8) Inspection of any day care facility shall be done upon receipt of a request from the Department of Public Health and Human Services or as a part of an inspection performed by a fire department under other provisions of state law. Findings of any inspection conducted at the request of the Department of Public Health and Human Services shall be reported to that department.

## **PUBLIC HEALTH REQUIREMENTS**

### **37.95.205 SOLID WASTE**

- (1) In order to ensure that solid waste is safely stored and disposed of, a day care center must:
  - (a) store all solid waste between collections in containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof;
  - (b) clean all solid waste containers frequently;
  - (c) utilize exterior collection stands for the containers referred to in (a) above which prevent the containers from being tipped, protect them from deterioration, and allow easy cleaning below and around them;
  - (d) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to a solid waste facility approved by the department in a covered vehicle or covered containers.

### **37.95.206 LAUNDRY**

- (1) In order to ensure that soiled laundry does not endanger the health of children, a day care center must:
  - (a) refrain from storing soiled laundry in a dining, food preparation, or food storage room, and ensure that such soiled laundry is not accessible to children;
  - (b) provide sufficient space for sorting and storing clean and soiled laundry so that clean and soiled laundry do not contact the same surface or each other;
  - (c) machine wash all laundry at a minimum initial water temperature of 140EF and a minimum time of eight minutes, and dry all laundry in a hot air tumble dryer vented to the outside of the building;
  - (d) in regard to bedding:
    - (i) launder bedding whenever it is soiled and air it out periodically to prevent mildew; and
    - (ii) assure that bedding assigned to one child is not used by another until it is laundered;
  - (e) handle reusable diapers as prescribed in ARM [37.95.210](#).

### **37.95.207 GENERAL HOUSEKEEPING**

- (1) As general housekeeping measures, a day care center must ensure that:

- (a) its building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;
- (b) its floors, walls, ceilings, furnishings, and other equipment are easily cleanable and are kept clean;
- (c) soap and disposable towels or other hand-drying devices are always available at all hand washing sinks. Common-use cloth towels are prohibited;
- (d) toilet tissue is provided next to all toilets;
- (e) the temperature is maintained at a minimum of 65EF in the areas used for day care;
- (f) at the end of each week of use, or more frequently as needed, toys are cleaned and sanitized in a solution containing 1/4 cup household bleach to one gallon of water or a comparable sanitizing solution, air dried after sanitizing, rinsed with clean water and air dried;
- (g) hand sinks and bathing facilities are provided with water at a temperature of at least 100EF and not more than 120EF;
- (h) cleaners used in cleaning bathtubs, showers, sinks, urinals, toilet bowls, toilet seats and floors, contain fungicide or germicide;
- (i) cleaning devices for toilets, sinks, and tubs are kept separate from each other, and cleaning devices used on toilet bowls, toilet seats, or urinals, are not used for any other purpose and are kept out of the reach of children;
- (j) dry dust mops and dry dust cloths are not used; and
- (k) cleaning compounds and pesticides are stored separately and out of the reach of children, used, and disposed of in accordance with the manufacturer's instructions.

#### **37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING CRIBS OR DIAPERS**

- (1) If a day care center cares for children requiring cribs or diapers, it must:
  - (a) ensure that cribs, playpens, and toys used by those children are made of washable, nontoxic materials and are kept clean and sanitized with a solution containing 1/4 cup household bleach to one gallon water or equivalent sanitizing solution, air dried, rinsed with clean water and air dried. This must be done daily;
  - (b) either provide separate cribs for each such child, or launder bedding in accordance with ARM [37.95.206\(4\)](#) ;
  - (c) have adequate facilities to bathe such children when necessary that are separate from food service, food preparation, and play or sleeping areas;
  - (d) handle diapers in the following manner:
    - (i) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas;
    - (ii) after each diapering, thoroughly clean and sanitize the diapering area, using a solution of 1/4 cup household bleach to one gallon water or an equivalent sanitizing solution, air dry, rinse with clean water and air dry;
    - (iii) store soiled 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;
    - (iv) refrain from dipping soiled diapers in a toilet, although fecal contents of diapers may be shaken into a toilet;
    - (v) ensure that all staff members who diaper children wash their hands immediately after each diapering following the procedures outlined in ARM [37.95.221\(7\)](#) (c) . The hands of the diapered infant must also be washed; and

- (vi) equip diapering and toilet areas with a hand washing sink that is separated by at least six feet from the infant food preparation area, hand washing sink, and equipment used for food preparation, except if the provider submits to the local health authority a written plan which describes an alternative means that does not have the potential to cause adverse health effects.
- (e) request parents to provide a supply of clean clothes adequate to allow at least one change per day and adequate diapers for a day's use;
- (f) allow the use of nondisposable diapers. If nondisposable diapers are used, they must be handled in accordance with the following, in addition to the requirements of (d) :
  - (i) Soiled diapers for each child must be placed in a plastic sack designated for that child, which in turn must be placed in a non-permeable, covered container and either picked up by a diaper service or commercial laundry or sent home the same day with the parent in the plastic sack;
  - (ii) Soiled diapers must either be laundered by a commercial laundry or diaper service, or at another site removed from the day care facility;
  - (iii) If a diaper service or commercial laundry is used, soiled diapers must be picked up by the service or laundry at least twice weekly; and
  - (iv) Soiled cloth diapers may not be rinsed on site.

#### **37.95.214 FOOD PREPARATION AND HANDLING**

- (1) The department adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, with exceptions, which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.
- (2) A day care center must comply with all requirements set for food service establishments in ARM Title 37, chapter 110, subchapter 2, with the exceptions noted in this rule.
- (3) A domestic style dishwasher may only be used if it is equipped with a heating element and the following conditions are met:
  - (a) The dishwasher:
    - (i) is capable of washing and sanitizing all dishware, utensils and food service equipment normally used for the preparation and service of a meal in one cycle;
    - (ii) must have water at a temperature of at least 165EF when it enters the machine, if it uses hot water for sanitization;
    - (iii) if it uses a heat cycle with a heating element for sanitization, it must be allowed to run through the entire cycle before it is opened;
  - (b) At least a two compartment sink is provided as a backup facility in the event the dishwasher becomes inoperable; and
  - (c) If the two compartment sink is used, all dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label, and sanitized in the second compartment by immersion in any chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75EF for one minute, and air drying before being stored.
- (4) ARM [37.110.220](#) and [37.110.221](#) do not apply to a day care center. Instead, a day care center must provide lavatories, water closets, and urinals in the ratio of the number of each to the number of individuals using them taking into account children, staff, and volunteers as follows:

Water Closets

Urinals

Lavatories

Male 1:20      Female 1:20      If over 20 males, may substitute 1/2  
the number of toilets required      1:60

May combine male and female unless fixture requirement exceeds two

- (5) ARM [37.110.232](#)(2) through (6) do not apply to a day care center. The food preparation area may be used as a family kitchen.
- (6) ARM [37.110.238](#) does not apply to a day care center, i.e., licensure as a food service establishment is not required.
- (7) ARM [37.110.239](#) does not apply to a day care center, since each day care center is already subject to the inspection and training requirements of [53-4-506](#), MCA.
- (8) Food must be obtained from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and no home canned foods may be used.
- (9) Potentially hazardous foods must be maintained at an internal temperature under 45EF or over 140EF. A food (stem) thermometer must be available to measure these temperatures.
- (10) Food that has been in family-style service containers, on the table, or in the service area must be disposed of after the meal.
- (11) Ground beef must be cooked to a minimum internal temperature of 155EF and have clear juices and a uniform brown color with no pink.
- (12) The department adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, which sets forth requirements for food service establishments. Copies of these rules may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

**37.95.215 NUTRITION**

- (1) The department adopts and incorporates by reference 7 CFR 226.19 and 226.20, containing meal requirements for day care facilities participating in the Child and Adult Care Food Program of the US Department of Agriculture, Food and Nutrition Service. A copy of 7 CFR 226.19 and 226.20 may be obtained from the department's nutrition consultant, Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.
- (2) Each day care center must do the following, with the exception noted in (4) :
  - (a) serve meals and snacks which meet the requirements for meals contained in 7 CFR 226.19 and 226.20, including the following:
    - (i) Breakfast for children who are between one and 12 years old must include one serving of fruit, vegetable, or 100% fruit or vegetable juice, one serving of enriched bread or bread alternate, and one serving of fluid milk;
    - (ii) Lunch and supper for children who are between one and 12 years old must include one serving of meat or meat alternate, two vegetables or two fruits or one vegetable and one fruit, one serving of bread or bread alternate, and one serving of fluid milk;
    - (iii) Snacks for children who are between one and 12 years old must include two of the following four food components: meat or meat alternate, fruit or vegetable or 100% fruit or vegetable juice, bread or bread alternate, or fluid milk;
    - (iv) Serving sizes must be appropriate to the child's age as outlined in 7 CFR 226.19 and 226.20; and

- (v) The specific nutritional requirements for children under one year old as outlined in 7 CFR 226.19 and 226.20 must be followed;
- (b) serve meals and snacks on, at a minimum, the following schedule to children in attendance:
  - (i) snacks at mid-morning and mid-afternoon;
  - (ii) lunch; and
  - (iii) breakfast, before 9:00 am, or supper if a child is being cared for in the center at the normal time for those meals and has not otherwise received them;
- (c) ensure that each bottle-fed infant from newborn to one year of age is held upright during bottle feedings until the child is able to hold the bottle, and that bottles are not propped;
- (d) for each child with nutritional therapeutic needs, request and carefully follow special dietary instructions, in writing, from either the child's parent or guardian, or a physician or registered dietitian, if the parent/guardian fails to or cannot provide such instructions. Food brought from home for special dietary purposes must be carefully labeled with the child's name;
- (e) plan menus at least two weeks in advance, date and post the menus where parents/guardians can see them, and serve meals and snacks in accordance with the posted menus, with the exception that a menu change may be made so long as it is posted before parents arrive to check in children on the date of service;
- (f) provide supervision to children while they eat and assist the children to eat, if necessary;
- (g) offer drinking water at regular intervals to infants and toddlers and ensure that drinking water is freely available to all children; and
- (h) keep on file at the day care center written menu records and special dietary instructions for infants and children for one year following the date of the meal service.
- (3) If a day care center does not participate in the department's child care food program, the center must do the following in addition to meeting the requirements contained in (2) :
  - (a) obtain guidance materials from the department about child care food program meal requirements and adhere to the recommendations therein; and
  - (b) within one year after it begins operation, and once annually thereafter, ensure that a registered dietitian evaluates the nutritional adequacy of its meals and their compliance with this rule, and that the dietitian makes a written report, to be retained on file at the day care center, containing the following information, with a copy to the department:
    - (i) findings and recommendations pertaining to the nutritional adequacy of food served to the children;
    - (ii) an assessment of management of meals, and any infant or therapeutic diets;
    - (iii) date of the evaluation; and
    - (iv) evaluator's signature and dietitian registration number.
- (4) If a parent sends food with a child for consumption at the day care center, the center need not provide meals or snacks for the child to the extent that food is provided by the parent for that meal or snack, but is required to do the following:
  - (a) provide the child with a meal or snack meeting the requirements of (2) whenever the parent has not provided food for that meal or snack;
  - (b) post a copy of the meal requirements referred to in (2) (a) in an area where it will be readily seen by parents; and
  - (c) at least annually, provide each parent who has ever sent food to the center for consumption by a child a copy of the meal requirements referred to in (2) (a).

### **37.95.225 WATER SUPPLY SYSTEM**

- (1) A day care facility shall provide an adequate and potable supply of water:
  - (a) connected to a public water supply system approved by department of environmental quality; or
  - (b) if the day care facility utilizes a nonpublic water system source:
    - (i) the facility must have the water source tested prior to beginning operation and at least once each January and once each June for the total coliform bacteria and fecal coliform or E. Coli bacteria; and
    - (ii) must provide laboratory tests results to the department as part of the licensing or relicensing process; and
    - (iii) the day care facility shall take corrective action as needed to ensure the water is safe to drink.
  - (c) prior to beginning operation, the water 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
  - (d) documentation of testing must be retained on the premises for 24 months from the date of the test.
- (2) The day care facility shall have an adequate and safe sewage system.
  - (a) For sewage to be safely disposed of, the home must:
    - (i) connect to a public sewage system approved by the Department of Environmental Quality; or
    - (ii) if a nonpublic system is used, the day care facility must provide documentation that it has complied with sewage disposal requirements that have been adopted by the local board of health in the jurisdiction in which the day care facility is located; and
    - (iii) repair or replace the sewage system whenever:
      - (A) it fails to accept sewage at the rate of application;
      - (B) seepage of effluent from or ponding of effluent on or around the system occurs;
      - (C) contamination of a potable water supply or state waters is traced to the system; or
      - (D) a mechanical failure occurs.

### **37.95.226 SEWAGE SYSTEM**

- (1) The department hereby adopts and incorporates by reference ARM Title 17, chapter 38, subchapter 1, which provides standards for on site subsurface wastewater treatment systems. A copy may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety, P.O. Box 202951, Helena, MT 59620-2951.
- (2) In order to ensure sewage is completely and safely disposed of, a day care center must:
  - (a) connect to a public sewage system meeting the requirements of ARM Title 17, chapter 38, subchapter 1; or
  - (b) if the day care center is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including children, staff, and residents; and an adequate public sewage system is not available; utilize a non-public system whose construction and use meet the standards for such systems set by the local board of health and the construction and operation standards contained in ARM Title 17, chapter 38, subchapter 1, and incorporated by reference in (1) of this rule, with the proviso that the size of the system be determined using a rate of 20 gallons per day per child and per staff member attending the day care center, plus 75 gallons per day per resident.

- (3) A day care center must replace or repair a failed system as defined by ARM [17.36.903](#)(6) or the local health code.

### **37.95.227 SWIMMING POOLS**

- (1) In regard to swimming, a day care center must:
- (a) allow children to use only a swimming pool which is constructed and operated in accordance with ARM Title 37, chapter 115, subchapters 1 through 22 and in accordance with ARM [37.95.127](#);
  - (b) provide and utilize each day the pool is used a chlorine test kit to ensure that the required chlorine residual is present in the pool at all times; or
  - (c) in the event that a portable wading pool, as defined in ARM [37.95.102](#), is used, 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 refill it with fresh water when needed. Bleach must be added any time the pool is refilled and drained.

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