

Bureau for Children and Families Policy

Division of Early Care and Education

# CHILD CARE PROVIDER REGULATION

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## Policies and Procedures Manual

WV Department of Health and Human Resources  
Bureau for Children and Families Policy  
Division of Early Care & Education  
350 Capitol Street, Room B-18  
Charleston, WV 25301-3704  
(304) 356-4619

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# CHAPTER 1: CHILD CARE PROGRAM GOALS AND DEFINITIONS

## **1.1 Program Description**

West Virginia DHHR is responsible for licensing and registering child care programs, and that license or certificate of registration serves as permission to legally operate a child care program. Child care services offers direct care and protection of infants, toddlers, preschool, and school-age children during a portion of a twenty-four (24) hour day inside or outside of the child's own home. Child care is generally provided to children under the age of thirteen (13). In some situations, such as special needs, physical or behavioral disorders, or the need for supervision for children under court supervision, a child care plan up to age eighteen (18), may be considered.

### **1.1.1 State Goals**

The primary goal of child care services is to provide experiences to children which will foster their healthy development while enabling their parents to participate in work or educational activities. Child care supplements the care and protection a child receives from his parents.

### **1.1.2 Federal Goals**

The federal Child Care & Development Fund, which provides the primary funding for the state's child care program, requires the state to develop a plan for operation of services. The state plan must address how federal funds will be utilized to address the federal goals for child care: to improve the affordability, availability, and quality of child care programs. Further information about how the state is addressing those goals is included in the West Virginia Child Care Plan which may be accessed through the Bureau for Children and Families web site at <https://dhhr.wv.gov/bcf/Childcare/Policy/Pages/default.aspx>.

## **1.2 Overview of Child Care Staff Responsibilities**

Child care services designed to make child care more affordable, more available and of higher quality are provided through multiple agencies. Program and regulatory Department staff from the Division of Early Care and Education and staff from the six Child Care Resource and Referral agencies contribute to the overall effectiveness of the program. Each of these entities has specific responsibilities and assignments.

### **1.2.1 Division of Early Care and Education – Program Managers**

The Division of Early Care & Education has three Program Managers that work under the general direction of the Division Director, who are responsible for overall administration of the child care program. The Program Manager for the child care center licensing unit and the Program Manager for the family child care regulatory unit work under the general direction of the Program Manager II and implement the following:

- A. Development and interpretation of policy and procedures for Division regulatory staff;
- B. Policy training and technical assistance on regulatory matters for the Division;

- C. Research and development of standards for child care programs and practices for regulatory staff;
- D. Promote quality, developmentally appropriate care in child care centers, family child care homes and family child care facilities and related programs including promotion of and assistance in accreditation; and
- E. Identify need for changes in state law and regulations.

### **1.2.2 Division of Early Care & Education – Child Care & Quality Initiatives Staff**

The State Division of Early Care & Education staff is responsible for overall administration of the child care program including:

- A. Management of federal and state funds;
- B. Coordination with other state and local early childhood programs;
- C. Development/implementation of quality initiatives;
- D. Establishes provider payment rates and income guidelines;
- E. Development of forms and computer support systems;
- F. Communication/collaboration with federal, state and local level agencies involved in child care or related early childhood programs;
- G. Legislative responsibility for program;
- H. Development of contracted services and monitoring;
- I. Case consultation upon request;
- J. Coordination of WV Pre-k program with Department of Education;
- K. Staffing the Advisory Council; and
- L. Establishes forms, policies and procedures for the WV Quality Rating and Improvement System.

### **1.2.3 Division of Early Care and Education – Child Care Center Licensing Staff (See Chapter 10)**

State child care center licensing staff is responsible under state law for the licensing and regulation of child care centers. This includes the investigation of complaints of standards, violations, and illegal operations for programs caring for 13 or more children. The following list indicates responsibilities of state child care center licensing staff that relates to child care:

- A. Recommend licensing, investigate and inspect child care centers and out-of-school time programs;
- B. Participate in Regional Child Care Collaboration Meetings;
- C. Educate child care providers about regulations and licensing procedures;
- D. Collaborate with early childhood professionals and programs;
- E. Promote quality, developmentally appropriate care in child care centers and related programs including identifying professional development needs, promotion of and assistance in accreditation;
- F. Enter all pertinent information regarding licensed child care centers into FACTS;
- G. Provide technical assistance to the child care community;

- H. Coordinate the licensing process with other regulatory agencies including the Resource & Referral Agencies, State Fire Marshal, Environmental Health, Pest Management, and CACFP;
- I. Identify need for changes in regulations.

#### **1.2.4 Division of Early Care and Education – Family Child Care Regulatory Specialists**

Child care regulatory specialists regulate informal and relative family child care homes, registered family child care homes, and family child care facilities. The following list indicates responsibilities of state family child care regulatory staff that relates to child care:

- A. Recommend licensure for:
  - Family Child Care Facilities caring for 7-12 children
  - Family Child Care Homes caring for 6 or fewer children
  - Informal and Relative Family Child Care Home caring for 3 or fewer children.
- B. Investigate and inspect family care homes;
- C. Participate in Regional Child Care Collaboration Meetings;
- D. Educate family child care providers about regulations and certification/approval procedures;
- E. Collaborate with early childhood professionals and programs;
- F. Promote quality, developmentally appropriate care in family child care facilities/homes, and identify professional development needs;
- G. Enter all pertinent information regarding family child care facilities/homes into FACTS;
- H. Provide technical assistance to the child care community;
- I. Coordinate the certification process with other regulatory agencies including Resource & Referral Agencies, State Fire Marshal, Environmental Health, Pest Management, and CACFP, and
- J. Identify need for changes in regulation.

#### **1.2.5 Child Care Resource and Referral Agencies (CCR&R)**

The Department of Health & Human Resources has contracted with community agencies to provide child care resource and referral services and to determine eligibility for subsidized child care services in all areas of the state. Parents not in need of financial assistance or services may contact the R&R agency for information about standards, how to select quality care, or referral to registered, licensed and approved facilities. Resource and Referral agencies are responsible for the following core services:

- A. Promoting consumer education and parental choice;
- B. Recruitment of child care providers;
- C. Assisting child care providers through support activities, training, provision of information regarding age appropriate care, and encouragement of practicing professional standards;
- D. Operation of the Traveling Resource and Information Library System (TRAILS);

- E. Eligibility Determination: Managing the subsidy certificate program using policies and forms required by the DHHR;
- F. Provide training and technical assistance to providers and the early care and education community;
- G. Consumer education;
- H. Work with community resources to improve the availability and quality of child care;
- I. Facilitate Regional Child Care Collaborative Meetings; and
- J. Operation of a grant program for family child care providers.

### **1.3 Cooperative Agreements between the DHHR and the CCR&R**

DHHR and CCR&R agencies enter written cooperative agreements regarding the exchange of information and on-going communication. The agreements are developed between Division staff, Regional Directors and the Executive Directors of the Resource and Referral agencies.

### **1.4 Regional Child Care Collaborative Meeting**

Each Resource and Referral Service Delivery Area facilitates the regional Child Care Collaboration Meeting four (4) times per year with designated WV DHHR/BCF/ECE Child Care Regulation Unit staff to strengthen the collaboration between the CCR&R and the ECE staff.

### **1.5 Definition of Program Terms**

The following definitions of program terms shall be used in interpreting child care program policy:

**1.5.1 Accreditation:** Certification by a qualified entity, generally nationally recognized, that a program meets accepted standards of excellence established for such programs.

**1.5.2 Adult:** An individual who is 18 years of age or older.

**1.5.3 Applicant:** Anyone who applies for or requests to be a child care provider.

**1.5.4 Approval:** Process by which DHHR approves a child care facility that is not required by law to be regulated which enables the service provider to participate in the child care subsidy certificate program or the regulation process of a Department operated child care service.

**1.5.5 Certificate of Licensure:** A certificate issued by the Secretary for a period of up to two years to a family child care facility upon compliance with the applicable rules promulgated by the Secretary.

**1.5.6 Certificate of Registration:** A statement issued by the Secretary for a period of up to two years to a family child care home upon compliance with the applicable rules promulgated by the Secretary.

**1.5.7 Child:** An individual who is: 1) under 13 years of age, 2) 13 to 18 years of age and is either under court supervision or is a child with special needs as defined in 1.5.12.

**1.5.8. Child Care Regulatory Staff:** Child Care Center Licensing Specialists and Family Child Care Regulatory Specialists.

**1.5.9. Child Care Resource and Referral Agency (CCR&R or R&R):** An agency under contract with the Department of Health and Human Resources to maintain provider resources, provide consumer education, manage the child care subsidy program, refer parents to available providers, and offer services to improve the quality of child care, such as provider training and technical assistance.

**1.5.10 Child Care Center:** A facility operated for the care of 13 or more children on a nonresidential basis for more than 30 days per year per child.

**1.5.11 Child Care Licensing Specialist:** Staff within the Division of Early Care and Education assigned the duties related to the regulation of child care centers and out-of-school time child care centers.

**1.5.12 Child with Special Needs:** One who experiences significant developmental delays or who has a diagnosed physical or mental condition which has a high probability of resulting in a significant developmental delay. Significant delay of 25% in one or more areas of development or a six (6) month delay in two (2) or more areas. Areas of development include: cognitive, speech/language, physical/motor, vision, hearing, psycho social, and self-help skills. Developmental delay is determined to by early intervention programs, specials education programs, or other multi-disciplinary teams.

**1.5.13 Department or DHHR:** West Virginia Department of Health and Human Resources.

**1.5.14 Emancipated Minor:** A child over the age of sixteen who has petitioned a court for emancipation and who has been declared by the court to be emancipated with all rights and duties of an adult; additionally all children who are now or were previously legally married.

**1.5.15 Facility:** A place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose.

**1.5.16 FACTS:** The Family and Children Tracking System (FACTS) is the management information system used to maintain child care information on families and providers, determine eligibility and process payments.

**1.5.17 Family:** One or more adults and children, if any, related by blood or law, and residing in the same household. Where adults other than spouses reside together, each shall be considered a separate family. Emancipated minors and children living under the care of individuals not legally responsible for their care shall be considered as separate families.

**1.5.18 Family Child Care Home:** A facility which is used to provide nonresidential child care for compensation in the provider's home. The provider may care for four to six children, including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age unless there are certain circumstances that allow for a temporary waiver.

**1.5.19 Family Child Care Facility:** Any facility which is used to provide nonresidential child care for compensation for seven (7) to twelve (12) children for four (4) or more hours per day, including children who are living in the household who are under six years of age. No more than four (4) of the total number of children may be under 24 months of age unless there are certain circumstances that allow for a temporary waiver.

**1.5.20 Family Child Care Regulatory Specialist:** Staff in the Division of Early Care and Education assigned the duties related to regulation of family child care homes and family child care facilities.

**1.5.21 Head of Household:** A natural parent, step-parent, or an individual acting in loco parentis, such as a relative or non-relative who has been granted custody or guardianship by a court of law or who has assumed full physical custody and responsibility for a child, with or without legal custody.

**1.5.22 Household:** A household consists of all individuals who live at the same address and share common kitchen facilities.

**1.5.23 Informal Family Child Care:** An informal family child care home provides care for three (3) or fewer children. At least one (1) child is not related to the provider. Informal child care providers are exempt from regulatory requirements, but may volunteer to register in order to receive federal child care or food program funding,

**1.5.25 Initial License:** A six-month license issued to an applicant establishing a new service found to be in compliance on initial review with regard to policy, procedure, organization, risk management, human resources, service environment and record-keeping regulations.

**1.5.26 Monitoring:** A method of evaluating a child care program that includes physical inspection of the facility and determination of compliance with applicable rules.

**1.5.27 Out of School Time:** A child care service that offers activities to children before and after school, on school holidays, when school is closed due to emergencies and on school calendar days set aside for teacher activities.

**1.5.28 Parent:** A parent by blood, marriage or adoption; or a legal guardian or other person standing in loco parentis, such as foster parents, grandparents, other relatives, and persons receiving TANF benefits for children only.

**1.5.29 Provisional license or registration:** A six-month license or certificate of registration awarded to family child care homes, family child care facilities or child care centers when the facility is not in compliance with the established rule but whose operation does not pose a significant risk to the rights, well-being, health and safety of a consumer.

**1.5.30 Refuse to Renew:** Refers to action taken at time of review or re-application when a provider fails to comply with requirements and a decision is reached not to issue a certificate of registration or a certificate of license.

**1.5.31 Registration:** A. Process by which a family child care home ~~self-certifies~~ is inspected for compliance with the promulgated rules. B. A process to gather information on out-of-school time programs.

**1.5.32 Relative Family Child Care:** A relative family child care home provides care only to children related to the caregiver. The caregiver must be a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle or adult sibling. Relative family child care homes are exempt from regulatory requirements but may volunteer to register in order to receive federal child care or food program funding.

**1.5.33 Revoke/revocation:** Negative action taken by terminating licensure or registration when a provider fails to maintain established requirements of child care.

**1.5.34 Service Provider:** Individuals who provide child care or other types of service to individual recipients.

**1.5.35 Variance:** A declaration that a rule may be accomplished in a manner different from the manner set forth in regulation.

**1.5.36 Waiver:** A declaration that a certain rule is inapplicable in a particular circumstance.

## **1.6 Child Care Subsidy Program Overview**

**1.6.1** West Virginia's subsidized child care program is a certificate system. Certificates authorize payment for parents in lieu of cash. Providers are paid directly upon receipt of an invoice called a request for payment. This system provides maximum opportunity for parental choice. In order to insure that parents are given a variety of child care options, Child Care Certificates may be used to purchase care at the following sites.

- A. Family Child Care Homes;
- B. Informal Family Child Care Providers who voluntarily register with the DHHR to care for three (3) or fewer children, at least one of whom is not related;

- C. Relative Family Child Care Providers who voluntarily register with the DHHR and provide care only to children related to the caregiver. The caregiver must be a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle or adult sibling;
- D. Family Child Care Facilities; or
- E. Child Care Centers.
- F. Out of School Time (OST) Centers.

### **1.6.2 General Payment Provisions of the Certificate System**

Since most child care providers in the state participate in the child care subsidy system, some background on how that payment system impacts the provision of child care services will be helpful to the regulatory staff. However, the responsibility for monitoring the child care provider's compliance to the Provider Service Agreement that enables them to participate in the child care certificate subsidy system is the responsibility of the Child Care Resource and Referral agencies. If the regulatory staff note activity that may be in violation of the Provider Service Agreement, this information should be communicated to the Division Program staff responsible for child care policy. The regulatory staff should be familiar with the following:

- 1) **Payment Rates and Definitions-** Rates for payment of child care services include a base rate for each type of care as well as incentive rates. Rates are based on a full day, which is defined as care for at least four (4) hours but less than eighteen (18) hours per day. Providers accepting certificates must agree to accept the applicable rate as full payment of care for up to an eighteen-hour period. However, a parent who leaves a child past the provider's established closing time may be charged a late fee provided all parents are expected to pay this fee and the parent has left a child past the time indicated on the child care certificate.
- 2) **Payment Limitations-** Payment to a provider for an individual child is limited to one full day in a twenty-four (24) hour period, and to no more than the total number of days in a calendar month. The total number of hours a child can remain in care shall not exceed 18 consecutive hours of care in a 24 hour period regardless if the child is with more than one provider for that particular day. (See exceptions in Child Care Subsidy Policy).
- 3) **Use of Substitutes-** When a family home provider uses a substitute, payment to the substitute provider and collection of the daily fee shall be the responsibility of the provider. The provider may claim days of care provided by the substitute on the payment form and pay the substitute upon receipt of payment, but the agency shall not provide direct payments to substitutes. Providers may not subcontract with another provider on a regular basis but may use substitutes on an infrequent basis for emergencies, planned vacation, professional development or sick leave. Substitutes in family child care homes shall be used for periods of not more than two consecutive weeks annually or more than an average of 8 hours weekly.



- 4) **Operation of Multiple Child Care Sites-** If a provider operates more than one site and a child attends both sites for part of each day, the provider shall submit one payment request for the hours of care provided at both sites. The child should be included on the payment request for the site which provides the majority of care. Also, if a child is signed out and signed back in with the provider in the same day, the provider will only be paid for one day or the actual hours of care if less than a full day.
- 5) **Eligibility for Provider's and/or Child Care Employee's Children**
- a) Payment may not be made to a provider to care for their own children. Child care center owners, family child care homes and family child care facility owners are therefore not eligible for subsidized child care assistance when their child attends their parent's facility.
  - b) Since the provider's own children are considered in the staff/child ratio in family child care homes and family child care facilities, family providers and facility operators are not eligible for subsidized child care for their own children while they care for other children. They also may not send their children to another caregiver in order to increase their own capacity.
  - c) Employees of child care centers who are financially eligible for subsidy may use their employer's child care center, as long as the employee does not supervise his or her own child. Although family child care facilities also have employees, due to the limited space and staffing levels in a family child care facility and the difficulties in insuring supervision will not fall on the parent, children of a family child care facility employee are not eligible to use the employer's child care facility. They may however, place their children with another provider.
  - d) Eligibility for employees of the provider in other business endeavors or any of the provider's household members' business endeavors: Children of persons employed by the provider or any of the provider's household members, with the exception of child care center employees meeting the criteria in Child Care Subsidy Policy may not select said provider as their child care provider.
- 6) **Monitoring Improper Payments in the Child Care Subsidy Program** - The Federal Improper Payments Act of 2002 has created special concern about overpayments and their recovery in all federally funded programs. An improper payment occurs when the funds go to the wrong recipient, the recipient receives the incorrect amount of funds, or the recipient obtains or uses the funds in an improper manner. By strengthening financial management controls so that Federal agencies can better detect and prevent improper payments, the Federal Government can better ensure that taxpayer dollars are spent wisely and efficiently.

Everyone involved in the administration of the child care subsidy program should understand what can be done to maintain program integrity; what constitutes

misrepresentation; what action should be taken in cases where misrepresentation is suspected; and the methods and procedures for performing these functions. Family Child Care Regulatory and Center Licensing Specialists should notify their direct supervisor and contact the local CCR&R when fraud or misuse of funds is suspected.

### **1.6.3 Certificate System Payment Rates**

Payment for child care is based on the type of care, age of child, special needs of individual children, hours of care, nontraditional hours, and accreditation status of the provider.

#### **1. Base rates are broken into four age categories:**

- a) Infants – children aged birth to 24 months.
- b) Toddlers – children aged 25 – 36 months.
- c) Preschoolers – children aged 37 – 59 months.
- d) School Age – children aged 60 months and over.

#### **2. In addition to the base rate, providers may be eligible to receive three types of rate supplements based on current child care payment rates. The Child Care Rate Structure is located on the ECE website under Policies & Regulations Appendix B <https://dhhr.wv.gov/bcf/ece/policies/Pages/default.aspx>:**

- a) The special needs supplement for children with documented special needs and children receiving services based on a CPS safety or treatment plan.
- b) The Tiered Reimbursement supplement, is based on the level of quality in a child care program. Registered family homes, child care facilities and child care centers may volunteer to document that they either meet higher quality standards or are nationally accredited. Programs that meet licensing standards are Tier 1 and receive base payment rates. Programs that meet Tier II standards receive extra rates daily and programs that are accredited Tier III receive extra rates per full day per child. Part days are converted to full days before the supplement is calculated. This amount is added for actual days of care only. Monthly rates do not apply to rate supplements.
- c) The shift differential rate supplement, which is based on the family's need for care during non-traditional work hours, is a daily per child rate and is available for all types of providers for any days of care that meet non-traditional criteria. Parents shall supply documentation of need for non-traditional child care hours at the time of application and each status check.
- d) Non-traditional child care hours are defined as: Approved care for four (4) hours 0 minutes, either before 6:00 am or after 7:00 pm Monday through Friday; Approved care for four (4) hours 0 minutes on a Saturday or Sunday; or Any 12 hour work/school shift or split shift which equals twelve or more care hours (including transportation) in a 24 hour period.

## **1.7. Child Care Resource and Referral Provider Orientation for Family Child Care Providers**

### **1.7.1 Use of Providers in Other Counties by Subsidy Clients**

When a parent selects a family child care provider in another county, the R&R in the provider's county of residence should complete enrollment for funding and forward the necessary payment information to the parent's worker. Registration and monitoring shall be done by a family child care regulatory specialist covering the provider's home county. Client intake and payment will be completed by the R&R agency operating in the client's home county.

### **1.8 Provider Resources**

CCR&R and DHHR staff share a responsibility for resource development to increase and improve the availability of child care services. It is important to develop and maintain an adequate number of providers in order to offer choices to parents. While an R&R agency may conduct recruitment campaigns, the family child care regulatory specialist and the licensing specialist is responsible for regulation of providers and shall inform providers of their ability or potential to accept referrals of additional children. All child care regulatory staff shall provide support and technical assistance to parties interested in providing child care and refer providers to other resources, as needed.

On a state level, the State Division of Early Care and Education has implemented initiatives designed to increase the availability of child care. Both CCR&R and DHHR staff are encouraged to work with other early childhood programs to coordinate resources.

The development of a strong foundation for child care requires the development of resources. A strong foundation will enable local communities and the state to better accommodate growing child care demands and fluctuations in demand. Therefore, it is important to coordinate DHHR child care services with existing programs operated by both the public and private sector.

#### **1.8.1 Kindergarten**

Kindergarten attendance is mandatory and public kindergarten classes, funded by the State Department of Education and County Boards of Education, are available to all children.

#### **1.8.2 Head Start and Early Head Start**

Head Start, Title 1 and Pre-School Special Needs programs are operated through county school system and/or non-profit agencies. They offer excellent services for pre-school and children with special needs. These programs receive federal and/or state funds for services provided. They generally operate part time and do not meet the child care needs of working parents. They have typically not been eligible to participate in the child care

certificate system. Many Head Start and Early Head Start programs are required to be licensed as child care centers due to the number of hours they operate; some offer services for working parents either before or after normal Head Start hours. In these instances, licensed Head Start facilities can receive child care subsidies for care during extended hours that are not eligible for federal Head Start reimbursement.

In recent years, the Federal Administration for Children and Families has encouraged Head Start to collaborate with child care programs in order to offer full-day, full-year services, blending and braiding funds in programs that offer the quality of Head Start with child care's longer hours of services. In order to encourage such blending of resources, child care and Head Start resources may be used jointly in some situations. If a Head Start program enters into an agreement with a licensed child care center to pay for enhancements to a child care program to provide additional services (family support, health and safety, teacher certification, curricula or equipment) needed to meet higher standards under Head Start Performance Standards or WV Pre-K requirements, then the center may continue to receive child care reimbursement for eligible children. Parent co-payment will continue to be deducted from the center's payment regardless of Head Start policy on collection of fees.

In order to facilitate child care's participation in the Early Head Start program and assist families and children, child care programs that are participating in the Early Head Start program or contracting with Head Start may continue receiving child care payments during the hours considered as Early Head Start, if certain conditions are met.

### **1.8.3 West Virginia Pre-K Program**

In order to facilitate child care's participation in the WV Pre-k program and assist families and children, licensed child care centers that are participating in the WV Pre-k program or contracting with Head Start may continue receiving child care payments during the hours considered as WV Pre-k, if certain conditions are met.

### **1.8.4 Grants**

Grants may be available, depending on the availability of federal and state funds, to assist child care providers with start-up costs, meeting regulatory requirements, and/or improving the quality of care. Priority for grants typically is to providers participating in the subsidy system.

Family Child Care providers who cannot afford the cost of complying with health and safety standards may be referred to the grant programs sponsored by the CCR&R agency. Grants may be available for providers for a variety of needs, including start up assistance to meet health and safety requirements, pay operating permits, attend training or become accredited. While federal rules will not allow grant funds to be used for major improvements, grants may be approved for minor remodeling to meet health and safety requirements. Each R&R has individual grant application policy and procedures. In addition, the R&R agency sets limits for grant amounts and covered items and may establish policies that require repayment of grant funds if the home closes within two years of receiving funds for a capital improvement. A provider will complete an

application form and will be notified in writing of the disposition of the grant. All applications are confidential and are retained in the R&R agency for three years.

#### **1.8.5 Child and Adult Care Food Program**

The Child and Adult Care Food Program (CACFP) is an important resource for child care providers. The program not only reimburses providers for meals served to children but completes on-site inspections and supplies nutrition training. Child care Regulatory staff will be responsible for informing new providers about the Child & Adult Care Food Program.

#### **1.8.6 Cooperative Agreements**

The Division of Early Care and Education and the CCR&R agency enters into a cooperative agreement with the sponsor(s) of the CACFP in their area of operation. The cooperative agreement should include exchange of information, and resolution of problems which may arise. The cooperative agreement will help assure a good working relationship between agencies for the benefit of child care providers, parents, and children. The agreement should be discussed periodically and at any time problems arise. Information shall be shared among agencies, as legally permitted, particularly when there is an investigation for suspected fraud.

#### **1.8.7 Exchange of Information**

In order to maintain confidentiality, payment forms are not shared unless the sponsoring agency wishes to obtain them directly from the providers. By signing the child care application, the parent agrees that information may be released to the Child & Adult Care Food Program. Therefore, child care staff can provide the agency with names and number of children open or closed in the home of each provider who participates in the program. It then becomes the Child & Adult Care Food Program sponsoring agency's responsibility to obtain other necessary information directly from the provider and parent. The child care regulatory staff shall insure that the CACFP is notified of changes that occur with providers that impacts participation with the program, such as change in location or revocation of registration or license.

#### **1.8.8 Regulation of CACFP Providers**

Family home child care providers interested in receiving CACFP reimbursements must volunteer to register.

## **CHAPTER 2: PROVIDER REGULATION: GENERAL PROVISIONS**

### **2.0 Legal Authority**

Provider regulation is governed by both state and federal law.

### **2.1 Federal Regulations**

Federal regulations require the state to establish basic health and safety requirements for all providers receiving child care funds. Those programs receiving child care funds which are not required to be regulated by state law, shall agree to regulation through Child Care Provider Services Agreements in order to meet federal requirements and participate in the certificate program.

### **2.2 West Virginia Human Services Law**

WV Code §49-2-121, charges DHHR with the responsibility to assure proper and appropriate child care is given and maintained. It further grants the power to promulgate rules governing child care services, establishes penalties for failure to comply with rules, sets conditions for regulation, and establishes requirements for supervision, monitoring, and investigations.

**2.2.1** Regulatory supervision is required by WV Code, Chapter §49-2-116.

**2.2.2** Supervision is to ascertain compliance with the rules and is conducted through regular monitoring, visits, documentation, evaluation, and reporting.

**2.2.3** Child care centers are regulated and monitored by child care center licensing specialists in the Division of Early Care and Education (See Chapter 10).

**2.2.4** Family child care regulatory specialists are responsible for regulating all types of family child care, including registered informal and relative family child care, registered family child care homes, and licensed family child care facilities.

### **2.3 Ethics**

Child Care Regulatory Staff are to act in a professional manner, abide by the National Association of Social Work (NASW) Code of Ethics, the National Association of Regulatory Agencies (NARA) Code of Ethics and are expected to treat providers as professionals. Regulatory staff that hold an active social work license are required to have on file a signed and dated statement that they have read, understand and abide by the NASW Code of Ethics. All Regulatory specialists are to have on file a signed and dated statement that they have read, understand, and will abide by the NARA Code of Ethics.

### **2.4 Dual Providers [For Family Child Care]**

Occasionally, an applicant providing family child care may also be providing other home-based care services. The demand placed on a provider who serves dual client populations may often

become excessive, reducing the level of service to all clients and disrupting the provider's household.

**2.4.1** A person shall not be approved as a family child care provider when the person is already providing another home based service for the Department, another agency or privately, unless a special approval is granted, using the Dual Provider Waiver Process. The Dual Provider Waiver will be evaluated as changes occur, or as needed.

**2.4.2** If the provider is providing another service for the Department, then the dual provider form shall be completed and written approval obtained from both program supervisors and staff. It is not necessary for the Family Child Care Regulatory Specialist to consult with an outside agency when the provider is engaged in home-based services for another agency or privately but needs to consult with the Supervisor to make the determination. All other child care policies and regulations apply.

**2.4.3** Before agreeing to these arrangements, the worker(s) and supervisor(s) of both programs should evaluate all aspects of the situation to determine that this is indeed the best possible arrangement in view of the ages and needs of the children and adults.

## **2.5 Inspection and Investigation (Also see Chapters for Each Provider Type)**

### **2.5.1 Onsite Inspections**

On-site inspections are required prior to issuing a license or certificate for all child care programs. During on-site inspections, Child Care Regulatory Unit staff shall have access to all aspects of the home, facility, or center in order to complete a reasonable inspection. This means that DHHR staff may observe anything within sight during the visit, have access to all household members, additional staff, and children in care and may ask the provider to demonstrate compliance with specific items not within sight of the Child Care Regulatory Staff.

If the child care provider has achieved Tier II or Tier III status in the Tiered Reimbursement System, any non-compliance with the observable standards will be reported to the State QRIS Coordinator.

## **2.6 Overview of On-Site Visits**

**2.6.1** Initial visits for the purpose of evaluation and assessment should be scheduled. The Child Care Regulatory staff or designee must contact the provider by telephone when a scheduled visit needs to be postponed or canceled.

**2.6.2** Subsequent monitoring visits may be announced or unannounced.

**2.6.3** All contacts with providers are to be recorded in FACTS within five (5) business days.

**2.6.4** During an on-site visit, the Child Care Regulatory staff shall first review the application and note any changes, then complete the evaluation tool specified for the particular type of provider being inspected.

**2.6.5** The checklist must also be entered in FACTS with the “Checklist Date” corresponding with the date of the monitoring visit.

**2.6.6 Quarterly Targeted Monitoring On-site Inspection and Review** – An assigned Licensing Specialist will conduct random sample monitoring of specific areas of the regulations at the direction of the unit Program Manager. A written report will be sent to the center director within 30 days of the on-site visit noting if non-compliance was identified. This notice will be placed in the FACTS file cabinet, a contact recorded, and the notice emailed to the Licensing Specialist assigned to the center. The Licensing Specialist assigned to Target Monitoring will compile quarterly reports of the targeted monitoring.

## **2.7 Serious Occurrence Visit - Procedure**

When a provider reports a serious occurrence to Child Care Regulatory staff, the Child Care Regulatory staff must determine if the occurrence falls within a category of appropriate licensing regulation as listed below:

Child Care Licensing 78-1: 3.58.a. – 3.58.g.  
 Family Facility 78-18: 3.16 & 23.1.a. – 23.1.b.4.  
 Family Home 78-19: 10.1.a.2. & 19.2.  
 Informal & Relative Care: 78-20: 16.2.  
 Out-of-School Time Centers 78-21: 3.35 – 3.35.g.

If the serious occurrence reported falls within the licensing regulations set forth above, the following procedure is to be followed by the Child Care Regulatory staff:

- a.** Immediately following receipt of a serious occurrence from provider a Contact must be entered in FACTS.
- b.** The serious occurrence report will be reviewed with the Supervisor and/or Program Manager to determine if a monitoring visit is required.
- c.** A monitoring visit should take place within five (5) to ten (10) business days of receipt of the serious occurrence report.
- d.** Following the monitoring visit a Contact must be entered in FACTS within five (5) business days.
  - 1.** If noncompliance was identified during the monitoring visit(s), a Corrective Action Plan and Notification of Regulatory Status is issued.

## **2.8 Annual Unannounced Monitoring Visits For All Provider Types**

Annual unannounced monitoring visits shall be made to all registered family child care home providers, family child care facilities, licensed child care centers, and out-of-school time centers. Visits must be unannounced. The unannounced monitoring visits during the renewal year should be conducted at least 6 months following the scheduled recertification/renewal review.



## **2.9 Negative Action for Child Care Services**

Child Care Regulatory staff are to notify the Program Manager when serious occurrences, incidents, license revocation, license non-renewal, or provider closure may involve the news media, social media, or other areas of WVDHHR.

If the home or facility is not in compliance with registration or licensing requirements or WV Code §49-2-121, the family child care regulatory specialist shall take one of the following actions:

### **2.9.1 Denial of Registration or License**

**2.9.1.1** Provider does not submit a completed application

**2.9.1.2** Provider is not present at initial visit

**2.9.1.3** Provider had any previous Corrective Action Plan that has not been corrected

### **2.9.2 Issue a Provisional Certificate of Registration or License**

**2.9.2.1** If the provider needs more than 30 days to correct a deficiency that does not place children at risk of harm or if there are a number of issues that the Regulatory staff deems warrant stronger action, a provisional license or certificate is recommended (Program Manager or Supervisor has final approval of recommendation).

**2.9.2.2** Provisional certificates/licenses expire six (6) months from the date of issuance and shall not be consecutively reissued.

**2.9.2.3** At the end of the six-month provisional period, the provider must either be eligible for a regular license or certificate of registration or be closed.

**2.9.2.4** A Corrective Action Plan and a Notification of Provider Regulatory Status must accompany the issuance of a Provisional Certificate of Registration or License;

**2.9.2.5** Refuse to Renew a Registration or License

**2.9.2.6** If a provider fails to comply with a corrective action plan, fails to submit a completed renewal application or is in default with Worker's Compensation and/or Unemployment Compensation.

### **2.9.3 Place limitations on the License or Certificate of Registration**

**2.9.3.1** Limits may be placed on a license or certificate based on findings of insufficient space, inadequate sleeping areas, provision of other services, or other reasons as indicated on a corrective action plan.

**2.9.3.2** A notification must accompany the certificate or license and the certificate or license must list the limitations placed upon

#### **2.9.4 Revoke the License or Certificate of Registration**

**2.9.4.1** If the provider has a number of areas of non-compliance that are not easily corrected, or has deficiencies that place children at risk of immediate harm, or if the provider demonstrates, by a history of non-compliance, an inability to operate in compliance with standards.

**2.9.4.2** The provider must receive a Provider Notification citing specific reasons for the revocation, and if necessary, including a statement that future applications shall be denied.

**2.9.4.3** Child Care Regulatory staff notify the R&R agency when the Certificate of Registration or license is issued with limitation or conditions, or if the registration or license is revoked

**2.9.4.4** The provider may reapply if the areas of non-compliance are corrected, but the site must be inspected and compliance confirmed before the child care certificate or license is issued (See Chapter 15 Special Circumstances);

#### **2.10 Waiver and Variance Requests and Hearings**

WV Code §49-2-122 allows the WVDHHR to grant a waiver or variance if the health, safety or well-being of a child would not be endangered by granting it, provided that such requirements are not contradictory to state code.

- A. The provider must submit the request for a waiver or variance in writing, must cite the specific requirement for the waiver or variance, and address all of the requirements outlined in the registration requirements.

##### **2.10.1 Considerations in Granting Waivers or Variances**

Child Care Regulatory staff must consult with the Child Care Supervisors and/or Program Managers in considering a waiver or variance. The following questions need to be considered by all Regulatory staff when presented with a waiver or variance request:

- A. Is there a rule that prohibits the waiver?
- B. Would the health and safety of a child be negatively impacted?
- C. Does the rule not apply in this case or is it not fair in this case?
- D. Is there a precedent for this? If so, is this request being treated in the same manner? If not, what are the implications for setting a precedent?

- E. Is the request within the authority of the child care regulatory staff? Regulatory staff cannot waive requirements within WV Code or federal law or requirements of other agencies or entities, such as the Fire Marshall, Division of Environmental Health or the Department of Agriculture.
- F. Is consultation with program or legal staff needed?

### **2.10.2 Notification of Decision on Waivers and Variances**

All Child Care Regulatory staff shall notify the provider with a notification letter of the decision with regard to the waiver or variance. The written decision shall include the following:

- A. Conditions applied to the approval of the request;
- B. A time frame for the existence of the waiver or variance;
- C. The date at which the waiver or variance was reviewed; or
- D. Reason for denying the request.

### **2.10.3 Waiver Committee**

Waiver and variances for child care not associated with a CIB shall use the waiver committee established by the Division of Early Care and Education. The waiver committee shall consist of the following DHHR staff:

**2.10.3.1** Family Child Care program managers and supervisors

**2.10.3.2** Child Care Center program managers and licensing unit

**2.10.3.3** If a decision on a waiver or variance cannot be reached the waiver or variance will be brought to ECE management for consideration.

**2.10.4 Hearings** – See Chapter 13

### **2.11 Request for Voluntary Closure**

If a provider is in compliance with all child care regulations and requests voluntary closure, the notification letter should state that the certificate of registration or license is no longer valid.

## **CHAPTER 3: FAMILY CHILD CARE AND CHILD CARE CENTER PROVIDER REGULATION: COMPLAINT INVESTIGATIONS AND PROCEDURES**

### **3.0 Complaint Investigations and Procedures**

Complaints about a variety of issues and situations may be received on child care providers from parents and the general public.

### **3.1 Who Handles Complaints?**

#### **3.1.1 Child Care Complaints**

Regulatory complaints about child care programs shall be referred to the appropriate Specialist. CCR&R workers who receive a complaint of standards violations with regard to a child care program shall refer the complainant to the appropriate specialist and inform the complainant that they may also enter their complaint at <https://dhhr.wv.gov/bcf/ece/policies/Pages/default.aspx> - The CCR&R worker shall also request the provider and complainant's names and phone numbers and e-mail the information to the appropriate specialist indicating that this person would like to file a complaint. Child or adult abuse and neglect shall be referred to the Institutional Investigations Unit (IIU) using the Adult/Child Abuse Hotline at 1-800-352-6513. The complainant should be encouraged to also contact CPS or APS.

### **3.2 Family Child Care Complaint Process**

Family Child Care Regulatory Specialists shall investigate complaints of non-compliance with requirements in registered family child care homes, licensed family child care facilities, informal family child care homes, and relative family child care homes. The regulatory specialist taking the complaint must first determine if the allegation relates to a regulation.

#### **3.2.1 Complaints Not Related to Regulation**

If the allegation is not in violation of a standard or requirement, the regulatory specialist shall explain this to the complainant and advise him/her to discuss the issue with the provider. The regulatory specialist shall discuss complaints that are not related to regulations or policy with the provider and give any relevant technical assistance for addressing the issues. An example of this type of complaint would be concerns about private pay rates.

#### **3.2.2 Noncompliance with Regulation Complaints**

Complaints regarding violation of or noncompliance with standards shall be investigated in the following manner:

**3.2.2.1** Although the identity of the complainant may be kept confidential, the regulatory specialist must tell the complainant that there is no guarantee of anonymity if the investigation results in a hearing or court action.

**3.2.2.2** The investigation is to begin within five (5) working days and a conclusion date targeted for thirty (30) days after onset of the investigation. The nature of the complaint

will determine the response time to the complaint and what methods of investigation are used.

**3.2.2.3** The investigation may include, but is not limited to, record review, review of related documents, observation, interview of witnesses and interview of collateral contacts. The investigation generally includes an unannounced on-site visit.

**3.2.2.4** The nature of the complaint will help the Family Child Care Regulatory Specialist determine how much information should be shared with the provider at the beginning of the investigation. In most cases, the provider may be informed of the general nature of the complaint.

**3.2.2.5** If the Family Child Care Regulatory Specialist believes it will change the outcome of the investigation or put another person at risk, the provider may be told an investigation is being conducted, but the content of the complaint will be shared at a later time or at the outcome of the investigation.

**3.2.2.6** A formal interview with a child is to be used as part of the investigation only if the child can provide information which cannot be obtained through other means or is necessary to support a fact which is used to determine the validity of the allegation. Family Child Care Regulatory Specialists should not interview the child alone and must inform the parent/guardian of the child that an interview is planned or took place. Informal discussions with a child that occur as a normal part of the specialist's on-site visit are not precluded.

**3.2.2.7** At the end of the investigation, the Family Child Care Regulatory Specialist must determine, in an objective manner, if the complaint is substantiated, if other non-compliance areas are found, and if there are areas in which the provider needs technical assistance. The Child Care Regulatory Specialist shall discuss his/her findings with the provider at the completion of the investigation.

**3.2.2.8** The investigation is to be entered into FACTS. A Complaint Investigation Summary worksheet is to be completed and imported into the FACTS I/R file cabinet. A corrective action plan is completed if noncompliance has been identified. The provider shall also be informed that substantiated complaints become a part of the public record and are made available to parents upon request. The provider shall be mailed a copy of the Complaint Investigation Summary Worksheet, Notification of Provider Regulatory Status, and a Corrective Action Plan, if appropriate.

### **3.3 Complaint Intake Process**

When a complaint is received, the Family Child Care Regulatory Specialist shall complete the following steps:

**3.3.1** Obtain information from the complainant, including the complainant's name, relationship to the provider and contact information.

**3.3.2** Inform the complainant that, although the Department will attempt to ensure anonymity if the reporter wished to remain anonymous, in a non-abuse or neglect complaint, there is no guarantee that his identity will remain concealed, should there be a resulting administrative or judicial action.

**3.3.3** Obtain as much specific information about the complaint as is possible from the complainant, including names and addresses of any other individuals involved, names and addresses of potential witnesses, time frames, and location.

**3.3.4** Determine if the complaint has been made to any other person or agency and if any action was taken;

**3.3.5** Determine if the complaint is within the authority of the Family Child Care Regulatory Specialist. If not, determine if the complainant can be directed to any other person or agency;

**3.3.6** Determine if the information indicates a non-compliance, illegal operation, violation of WV Code §49-2-121, an area for concern warranting further investigation, and/or there is a need to refer the information to Child or Adult Protective Services. If a complaint needs to be referred to CPS/APS staff for possible investigation, it is done immediately;

**3.3.7** Enter information on the Information and Referral screens in FACTS and, for providers with a FACTS record, make a note in the contact screen.

### **3.4 Complaint Investigation Procedures**

Family Child Care Regulatory Specialists shall investigate complaints using the following guidelines. The worker shall:

**3.4.1** Begin complaint investigations within five (5) days of receipt of the complaint. If a complaint is received that indicates children's health or safety is at risk, but it is not a CPS/APS referral, then the complaint investigation should begin within 24 hours. Example: A caller states that when he picked his son up from child care, the provider indicated that the water company had shut off the water this date for non-payment. This is a health risk, but unlikely to be a CPS issue. Therefore, the investigation should begin when the complaint is received. If it is not possible for the Family Child Care Regulatory Specialist to make an unannounced visit, then a telephone call to the provider can be made. This does not eliminate the need for a field visit to the provider. A follow-up visit should occur within 24 hours.

**3.4.2** Conduct a search in FACTS for the provider. The complainant may not know if the provider is registered, informal or operating illegally;

**3.4.3** If the provider is an illegal operation, the Family Child Care Regulatory Specialist completes the following steps:

**3.4.3.1** Contacts the unregistered provider by telephone to discuss the law, the number of children served and the registration process.

**3.4.3.2** Mails a registration packet to the provider.

**3.4.3.3** When a telephone number is not available, the Family Child Care Regulatory Specialist visits the home to discuss registration. The Family Child Care Regulatory Specialist may enter the home or facility uninvited only after two unsuccessful attempts to bring the home or facility into compliance. Uninvited entry to the home or facility may only be made with a law enforcement officer present.

**3.4.3.4** If the illegal operation is confirmed or suspected and the provider does not register, a notification is sent informing the provider in writing that she is in violation of §49-2-116(f) and must cease operation or reduce the number of children served to less than four.

**3.4.3.5** As there is no legal mandate for informal or relative providers to register, no action shall be taken if the operation is found to be a relative caring only for related children or if the caregiver has no more than three children in care including the caregiver's own children under the age of six.

**3.4.4** The Family Child Care Regulatory Specialist shall determine how the investigation should proceed. Most complaint investigations begin with an unannounced on-site visit, but there are times when this may not be necessary or critical situations where it is necessary to contact the provider immediately in order to prevent harm to children.

**3.4.5** The Specialist shall inform the provider that a complaint has been made and an investigation is being conducted. Typically, a provider can be informed face-to-face at the beginning of the investigation that a complaint has been received and it is the responsibility of the Family Child Care Regulatory Specialist to investigate. It is not necessary to disclose the nature of the complaint at the beginning of the investigation, if to do so would interfere with fact finding or compromise safety. Assure the provider that she will have input into the investigation and will be given a summary of the findings. There may be certain situations where Family Child Care Regulatory Specialists may need to gather information before informing the provider, either due to the worker's inability to reach the provider, or to determine if the complaint is valid and warrants further investigation;

**3.4.6** The specialist gathers information which confirms or refutes that a violation or non-compliance has occurred. Information gathering tools usually include the following items:

**3.4.6.1** Interviews with the provider, parents, neighbors, or children;

**3.4.6.2** Records review – both the WVDHHR records and the provider's records. Records review may also include R&R and CACFP records;

**3.4.6.3** Statement verification; and

**3.4.6.4** Documentation of observations. Written observations should contain detailed, factual, non-judgmental descriptions. The documentation should not include opinions.

**3.4.7** Once information is gathered, the specialist shall discuss the complaint and findings, if necessary, with the child care supervisor or DHHR staff of other programs involved with the home.

**3.4.8** The next step is to determine if negative action is indicated or technical assistance should be offered to the provider.

**3.4.9** The specialist should then discuss the findings with the provider.

**3.4.10** Provide a Complaint Investigation Summary Worksheet with the findings of the investigation and any negative action in a Corrective Action Plan along with a Notification of Regulatory Status.

**3.4.11** If the license or registration is denied or revoked, the specialist shall immediately send a copy of the Provider Notification to the CCR&R Agency, who then cancels the Provider Services Agreement and notifies families using the provider. (For guidance on complaint management, the child care regulatory specialist may wish to consult The 2000 Edition of the NARA Licensing Curriculum, or its update).

### **3.5 Special Circumstances – Child Abuse and Neglect Allegations**

Child Protective Services staff is responsible for investigating allegations of child abuse and neglect in Informal and Relative Family Child Care Homes. The Institutional Investigations Unit is responsible for investigating allegations of child abuse and neglect in registered family child care homes, licensed family child care facilities and child care centers. If requested, Family Child Care Regulatory Specialist may assist CPS and/or IIU with interviewing children. However, to maintain impartiality or the ability to conduct regulatory activity prior to the end of the CPS and/or IIU investigation, Family Child Care Regulatory Specialists who work with the provider should have a very limited role in the investigation. DHHR and CCR&R Child Care staff may be involved in following up with families and providers in the following circumstances:

#### **3.5.1 Informal and Relative Family Child Care Home Providers:**

**3.5.1.1** If CPS finds serious problems prior to completion of the investigation in a family child care home, the Family Child Care Regulatory Specialist and CCR&R staff, where applicable, shall notify parents that an investigation is underway which could result in negative action. The children must be removed from care until the investigation is complete. If the provider cares for subsidized children, the CCR&R worker shall provide assistance to parents with alternate child care arrangements. The family child care regulatory specialist shall make the provider unavailable in FACTS so that no new children may be linked until the conclusion of the investigation.

**3.5.1.2** If an abuse or neglect allegation is substantiated in a registered family child care home, the Family Child Care Regulatory Specialist shall revoke registration via the Provider Notification and the CCR&R worker cancels the Provider Services Agreement if applicable.



### **3.5.2 Registered Family Child Care Homes and Licensed Child Care Facilities – Regulatory Specialists shall take the following steps during an IIU investigation.**

If IIU finds serious problems prior to substantiation or completion of the investigation in a facility or home located in the provider's home where the owner/operator or household member is involved, the Family Child Care Regulatory Specialists, the Regulatory Child Care Supervisor and the Program Manager shall discuss the situation to determine whether or not to remove children pending the outcome of the investigation. The Family Child Care Regulatory Specialist will notify the child care provider stating that the operation of the home or facility will be temporally suspended until the investigation is completed. No staff, household member, or owner/operator under investigation in a family child care home or facility shall have contact with children until the investigation is complete. Upon completion of the investigation, any staff person determined to have abused or neglected children, including the operator or owner, shall no longer care for children or have any contact with children in care. Failure to take appropriate action to safeguard children in the home or facility shall result in revocation of the license or registration.

DHHR and CCR&R staff, where applicable, shall notify parents that an investigation is underway that could result in negative action. The children must be removed from care until the investigation is complete. The CCR&R worker shall provide assistance to parents with alternate child care arrangements. If an abuse or neglect allegation is substantiated against a household member or the owner/operator in a facility located in the provider's home, the Family Child Care Regulatory Specialist shall revoke the Certificate or License.

### **3.6. Parental Requests for Complaint Record**

If a parent requests a list of substantiated complaints on a child care provider, the local DHHR or R&R Child Care staff shall supply the requested information. Information shall be available in FACTS which lists standards violations as well as corrective action taken and completed. When a request for the information is made, the R&R or DHHR Child Care Worker shall print a history of non-compliance report from the FACTS record and provide information to the parent based on the results of that report. The History of Non-compliance Report may be sorted by dates or by concerns identified during licensing review, monitoring visits or as a result of an investigation or a complaint investigation. However, due to the confidential nature of Child Protective Service records, information on CPS complaints may not be made available.

### **3.7. Child Care Center Complaint Process**

**3.7.1. Allegations of Violation of Standards or Illegal Operations** – The Licensing Specialist shall investigate complaints regarding a violation of child care center regulation by a child care center or complaints regarding an illegal operation of a child care center. Licensing Specialists are expected to return all calls to complainants within one working day.

**3.7.2. How Complaints Are Received** – Complaints are accepted through various levels of communication including telephone calls, email, written letters and face-to-face contact. Complaints may come from parents, professionals, child care staff and the general public.

Similar complaints about a center may be received from different parties within the same timeframe. The Licensing Specialist will compile the information into one Information and Referral Intake (Intake). If more than one Intake (duplicate) has already been opened for each complaint made, one Intake will be chosen to include all the complaints. In each duplicate Intake the complainant name will be listed as a Collateral and an entry made in Contacts. The duplicate Intake Outcome screens need to indicate the Intake number where information can be located. The duplicate Intakes are then sent for approval to close.

**3.7.3. Third Party Complaints** - Third party complaints, persons registering a complaint on the behalf of another without any firsthand knowledge of the incident(s), may be investigated if the Licensing Specialist is able to gain a sufficient amount of information to pursue an investigation.

Anonymous complaints will be accepted if the Licensing Specialist is able to speak directly with the complainant or if the complaint is received in writing. Anonymous complaints will be investigated if there is enough information to follow through with an investigation. If there is not enough information to follow through with an investigation, the Specialist will place a contact in the FACTS record and then request to staff it with the Program Manager.

**3.7.4. Allegations of Child Abuse or Neglect** – The DHHR Institutional Investigation Unit (IIU) investigate complaints of alleged child abuse or neglect in a child care setting. Refer to the revised Investigations Involving Institutional Investigative Unit (IIU) Licensed Child Care Centers/Licensed Family Child Care Facilities/Registered Family Child Care Homes policy for further information (<https://dhhr.wv.gov/bcf/ece/policies/Pages/default.aspx>).

**3.7.5. Complaint Procedures** – The Licensing Specialist determines the nature of the complaint through the assessment of whether the complaint is a non-compliance with child care center regulation, if the complaint needs to be referred to CPS (IIU via Hotline) or needs to be directed to another agency or department.

If the allegation is not in violation of a requirement and is not abuse/neglect, explain this to the complainant and advise to discuss the issue with the child care center director. The Licensing Specialist may discuss complaints that are not related to regulations with the center And give any relevant technical assistance for addressing the issues.

Complaints regarding non-compliance with regulation shall be investigated in the following manner:

**3.7.5.1. Timeline** - The investigation is to begin within five (5) working days of the Licensing Specialist receiving the complaint. A conclusion date is to be targeted for thirty (30) days after onset of the investigation. The nature of the complaint will determine the response time to the complaint and what methods of investigation are used. The Licensing Specialist should plan how the investigation needs to proceed and what information needs to be collected after speaking with the complainant and/or reviewing the complaint intake.

The Licensing Specialist needs to request a staffing with the Program Manager if a complaint investigation is going to require more than thirty (30) days to conclude.

**3.7.5.2. Original Source** - The Licensing Specialist needs to interview the original source of the complaint if possible. Although the identity of the complainant may be kept confidential, the Licensing Specialist must inform the complainant there is no guarantee of anonymity if the investigation results in a hearing or court action. As the investigation proceeds, it may be necessary to contact the complainant for follow-up information or clarification.

Should the complainant request information regarding the outcome of the complaint, the Licensing Specialist will:

- Explain the timeline for investigation
- Explain that findings of the investigation are public information and complainant may request a History of Noncompliance Report
- Make a Contact in the Investigation record

**3.7.5.3. Internal Record Review** – The Licensing Specialist needs to be familiar with the history of the center and therefore an internal record review may be necessary. The internal record review includes a FACTS and hard copy review of documentation not included in FACTS. Hard copy documentation is located in the main files housed at the Diamond Building. The Unit Secretary can provide assistance with requested information.

**3.7.5.4. On-site** - The investigation includes at least one on-site visit and is conducted as an unannounced visit. The licensing specialist may determine that additional staff are to conduct the investigation. The investigation may include, but is not limited to, review of, child(ren)'s records, staff records, incident reports, sign-in/sign-out sheets, lesson plans, daily activity schedule, video recordings, observation, interview of witnesses and interview of collateral contacts. The Licensing Specialist will request a confidential space for interviews.

**3.7.6. Informing the Director** - The nature of the complaint will help the Licensing Specialist determine how much information should be disclosed to the center director at the beginning of the investigation. If the Licensing Specialist believes sharing such information may change the outcome of the investigation or put a child and/or adult at risk, the center director may be told an investigation is being conducted, but the content of the complaint will be shared at a later time or at the completion of the investigation.-The content of the complaint can be shared with the center director:

1. Following any necessary interviews (in the event a staff/collateral is not available at the time of the visit).
2. Prior to completing the exit conference.
3. Prior to completion of the investigation.

**3.7.6.1. Interviews** - Any time the Licensing Specialist conducts an interview with a center staff person or collateral whether face-to-face or by other means, the Licensing Specialist is to identify themselves and provide contact information. The Licensing Specialist will

explain the interview is for the purpose of establishing the facts related to a complaint. If the staff person requests the center director or other staff be present for the interview, the Licensing Specialist will note the request and use their discretion that a third person be present. Otherwise, an interview with staff takes place without other staff persons present. If the staff person or collateral declines to be interviewed, the Licensing Specialist makes a note and provides contact information. Reference NARA Interview Guide (Forms update)

An interview with a child is not to be conducted as part of the investigation unless:

- A. The child can provide information that cannot be obtained through other means;
- B. The child can provide information that will support a fact used to determine the validity of an allegation

The Licensing Specialist must inform the parent/guardian of any child that an interview is planned or took place. It is not necessary for the Specialist to inform parents when brief, informal discussions take place with a child during the normal course of a review or monitoring visit.

**3.7.6.2. Discussion of Findings** - The Licensing Specialist will discuss the finding(s) with the center director at the completion of the investigation. If the complaint involves the director and the complaint is substantiated, then a discussion needs to be held with the owner or executive director if different from the director. This discussion can take place on site, or via telephone, and should be conducted prior to writing the final summary of the investigation. This will provide the center director, owner or executive director the opportunity to provide additional information and/or discuss agreement or disagreement with the findings.

**3.7.7 Determination** - At the end of the investigation, the Licensing Specialist must determine, in an objective manner, if the complaint is substantiated, if other non-compliance areas are found, and if there are areas in which the center needs technical assistance. If needed, the Licensing Specialist shall discuss the finding(s) with the Program Manager. If the Licensing Specialist is recommending negative action, the Program Manager must concur before notice is sent to the child care center.

**3.7.8. IIU Investigations of Abuse or Neglect** - Upon receipt of the IIU Intake, the Licensing Specialist will initiate a complaint investigation Intake within five (5) working days. The nature of the complaint investigation will be based off the allegations made in the IIU Intake. There are times when the Licensing Specialist and the IIU investigator arrange to conduct investigations at the same time. It is important for the Investigator and the Specialist to develop their own conclusions based on their roles and the different laws under which each operate. The Licensing Specialist needs to coordinate with the IIU investigator so that contacts with the center will not interfere with the IIU investigation.

When IIU notifies Licensing that a complaint is not accepted for investigation, the Licensing Specialist will review the IIU Intake for allegations of noncompliance of licensing regulations. If allegations indicate noncompliance, the Licensing Specialist will open a complaint

investigation Intake. A monitoring visit should be conducted if the allegations on the IIU Intake do not clearly indicate noncompliance.

When IIU notifies Licensing that it is conducting an investigation in a child care center, the Licensing Specialist needs to determine if a specific staff person or persons are named. If a staff person is alleged to have sexually abused or otherwise injured a child, the Licensing Specialist is to notify the center that the staff person must not be present at the center pending the investigation outcome. IIU may inform the Licensing Specialist prior to writing the IIU report that no finding will be made against a staff person. At that time, the Licensing Specialist may contact the center to inform the director or owner that the staff person is now permitted on the premises.

**3.7.9 Concluding the Investigation** – A Complaint Investigation Summary Worksheet is prepared by the Licensing Specialist and sent to the child care center director/owner. If a violation is recognized and corrected within the timeframe of the investigation, it is noted on the Summary form and Corrective Action Plan as achieved. The Licensing Specialist will complete a Notification of Provider Regulatory Status as a cover letter for the Summary.

If necessary, a Corrective Action Plan will be developed with the center to address noncompliance identified during the investigation. The Corrective Action Plan should be sent at the same time as the Complaint Summary. The Licensing Specialist must do a follow up monitoring visit to the Corrective Action Plan to ensure compliance has been achieved. Any time a Corrective Action Plan is generated, the plan must include the signature page which the designated center staff is to sign and return to the Licensing Specialist with supporting documentation.

### **3.7.10 FACTS Documentation**

- 1) Contacts – As part of the investigation and documentation of the investigation in FACTS, enter individual contacts within 3 working days of receipt of the contact for:
  - a. Visits
  - b. Interviews – each interview must be a separate contact
  - c. Emails
  - d. Phone calls
  - e. Texts
- 2) Written documentation is also imported into the I/R FACTS file cabinet (not in the provider File Cabinet) including:
  - a. Complaint Investigation Summary Worksheet
  - b. Corrective Action Plan
  - c. Notification Letter
  - d. Any documentation related and applicable to the investigation (i.e. pictures, written statements, timesheets, schedules, etc.)

## **CHAPTER 4: PROVIDER REGULATION: BACKGROUND CHECKS**

#### 4.0 Background Checks

According to West Virginia Code, §49-2-114, the background of regulated providers shall be assessed. This assessment includes a check of criminal records and a check of protective services records related to any history of child or adult abuse or neglect.

#### 4.1 Criminal History Background Check

As a result of the 2018 Rule Revision, the criminal background check process is now being completed through WV CARES. The provider is responsible for setting up accounts and processes to verify staff fitness determination of eligibility results as required by WV CARES. All results must be maintained in each employee file. The following registration process is given to providers to assist in obtaining background check information:

**Step 1: Set Up an Administrative Account** - Contact WV CARES by phone at 304-558-2018 or email at wvcares@wv.gov to set up an administrative account. The individual that sets up the administrative account is the individual responsible for creating the user account for their child care program (family child care home provider, family child care facility owner/operator, child care center director or Out-of-School Time director).

If emailing WV CARES to set up an administrative account, put in the subject line: **Set Up Administration Account**, then in the body of the email include the **provider's full name**. This email will generate a return email that will give you directions to take the online training for the WV CARES system. Only the individual listed on the administrative account is responsible for completing the online training.

**Step 2: WV CARES Online Training** - The provider will then be sent via email information to register for the WV CARES online training. This initial email will provide instructions on accessing the online training and a username and a temporary password. The provider will also receive the Preferred Payment Method Registration form which is attached to the email. The form is completed, and directions are given how to pay WV CARES \$20 for themselves and each household member 18 years of age and older that requires prints. The \$20.00 pays for the prescreening completed by WV CARES. The provider will need to enter themselves and all household members 18 years of age and older into the spread sheet that is available in the WV CARES online system.

**Step 3: Set up An Escrow Account with IdentGO/IDEMIA** - The provider will also need to set up an escrow account with IdentGO/IDEMIA. The provider will need to have \$34.50 for each person required to be fingerprinted in the escrow account. The process to set up this escrow account may take five weeks to be completed. Should you have questions about the IdentGO/IDEMIA escrow account, call the IdentGO/IDEMIA Billing Department at 1-877-512-6962.

**Step 4: Schedule an Appointment with IdentGO/IDEMIA to be Fingerprinted** - Once the WV CARES pre-screening is completed; the provider will need to schedule an appointment to be fingerprinted at a IdentGO/IDEMIA site. The last page of the application/pre-screening process contains a link that providers can use to access the IdentGO/IDEMIA website. Once they have an appointment scheduled with

IdentoGO/IDEMIA, the provider will need to go back into the WV CARES system and enter the Identogo/IDEMIA appointment details and submit the WV CARES application.

Criminal History Record Background Checks shall be followed for criminal background investigations on child care providers, adult family members, and staff unless otherwise indicated by this policy or promulgated rule.

**4.1.1.** CIB information must be entered in the appropriate provider section in FACTS. This is completed by WV DHHR Regulatory staff.

**4.1.2** Applicants and other household members are required to follow the WV CARES process for background checks.

## **4.2 Sexual Offender Checks**

During the screening process at the time the provider applies with WV CARES, a link is provided to the West Virginia Sex Offender registry and the National Sex Offender registry. The provider completes the sex offender registry background check for all operators, staff, household members over age 18, and volunteers.

## **4.3 Overview- Family Child Care**

All providers, employees, and household members must complete an authorization for CPS/APS background check and WV CARES complete criminal history background check on all future employees or household residents and volunteers. Information must be submitted to the Family Child Care Regulatory Specialist within five (5) days of employment.

**4.3.1.** No home or facility, shall be considered for registration, licensure, or approval if the provider, a member of the provider's household, owner/operator, or an employee is an active recipient of child or adult protective services or, in most cases, has a history of substantiated abuse or neglect. Substantiated abuse shall include situations in which "maltreatment" is determined as the result of an investigation conducted by DHHR protective services staff.

**4.3.1.1** During the renewal application process and if a complaint or any other information is received that gives reasonable cause to do so, a check of the child/adult abuse history and the criminal history of an applicant and any adult household member is to be completed, but is not prohibited.

**4.3.1.2** In all types of home-based care, if an investigation determines that maltreatment occurred by the provider or a household member, the home/facility shall not be registered/licensed/approved.

**4.3.1.3** However, if the protective service case is closed and the household member/offending child is no longer in the home and has no access to children in care, the home/facility may be registered/licensed/approved upon joint approval of the Child Care Program Manager, Child Care Supervisor and the Supervisor of the related program, i.e. CPS, APS, Youth Services. The manner in which information is shared between the Child Care Specialist and CPS is to be agreed upon by the supervisor for each program.

**4.3.1.4** In situations where a family child care facility employee signs a statement indicating there is no history of abuse or neglect and a history is found, the Family Child Care Regulatory Specialist shall inform the facility or program director that the employee's signed statement does not match the results of the background check. The details of the background check cannot be disclosed due to confidentiality. Action for revocation, denial of an application or approval, and cancellation of the Provider Services Agreement shall be taken if a program continues to employ the individual.

**4.3.1.5** In situations where maltreatment has been substantiated on a provider or household member for CPS/APS, the provider will need to contact the CPS/APS Supervisor for potential resolution. The CPS/APS Supervisor may discuss the finding with the provider. The Family Child Care Regulatory Specialist will not discuss the findings and will have no further contact with the providers until the finding is resolved.

#### **4.3.1.6 Protective Services Background Checks Procedures**

The protective services background check shall be conducted on all child care providers and on their adult household members and staff.

**4.3.1.6.1** The persons listed above must submit the Authorization and Release for Protective Services Background Check (ECE-CC-8A) as part of the family child care home application.

**4.3.1.6.2** Family Child Care Regulatory Specialist child care regulatory specialists shall review local DHHR office records and search FACTS for a CPS/APS history for each adult household member over 18 years of age and any staff. The search shall include the maiden name and all married names.

**4.3.1.6.3** The manner in which information is shared between the family child care regulatory specialist and CPS is to be agreed upon by the supervisor of each program.

**4.3.1.6.4** During the 76th Session of the WV Legislature, Legislators removed language from proposed family child care rules that would have allowed waivers of abuse and neglect histories. Based on legislative intent, no home or facility shall be considered for licensure, registration or approval if the provider or a current member of the provider's household is an active recipient of child or adult protective services or has a history of substantiated abuse or neglect.

**4.3.1.6.5** In addition, if the search reveals that a provider's child under 18 years of age has a record of violence or sex offenses, the home shall not be registered or approved.

**4.3.2 Waiver for Background Finding** – All waivers concerning criminal background checks are completed through WV CARES.

## **4.4. Overview – Child Care Centers**



Child care center personnel and volunteers must submit to background checks pursuant to [§49-2-114]. The child care center owner/director is responsible for assuring that all child care staff and volunteers have on file at the center criminal history background checks, State Police Sexual Offender Registry checks and Department Protective Service background checks. An initial license will not be issued if the private owner and director do not meet regulatory requirements for a background check.

**4.4.2. Protective Services Check** – A protective services record check is required on all potential staff members to ensure that the center hires no staff member that has substantiated history of abuse or neglect of children or vulnerable adults. All center owners/directors, center personnel and volunteers will complete for submission an Authorization and Release for Protective Services Background Check form (Form 10). An initial license for a new center will not be issued until the protective services check(s) are complete and the form(s) has been returned.

**4.4.3. Waiver for Background Finding** – All waivers concerning criminal background checks are completed through WV CARES. Any employee with a finding of substantiated abuse and/or neglect of a child or vulnerable adult may request a waiver/variance. The employee requesting a waiver/variance should first verify with the county that originated the decision that the finding(s) cannot be overturned.

## **CHAPTER 5: PROVIDER REGULATION: COMMUNICATION WITH PROVIDERS, DEPARTMENT STAFF AND CCR&Rs**

### **5.0 Overview**

Communication with clients, providers, and agency staff is one of the basic functions of both CCR&R and DHHR staff. Program goals cannot be met without clear, effective and professional communication.

### **5.1 Communication between the CCR&R and the Department**

#### **5.1.1 Overview**

Throughout the Child Care Regulatory Policy there are specific circumstances noted which require communication between the CCR&R and the Department Child Care Regulatory staff. When any information received or action taken by the CCR&R requires a change in the provider type or provider record, the Child Care Regulatory staff must be notified. Likewise, the CCR&R staff must be notified when the Child Care Regulatory staff takes action that affects or should affect the Provider Services Agreement. E-mail communications should be copied to the appropriate Division program staff and, if pertinent to the provider status, saved to the Provider Record in FACTS.

#### **5.1.2 Notice to Child Care Resource and Referral Agencies.**

Child Care Regulatory staff shall send a notice of negative action via-e-mail to the R&R agency, if the provider is enrolled and has a Provider Services Agreement. The following guidelines shall be used by the Child Care Regulatory Specialists and the CCR&R workers to coordinate terminating payment and closing a provider record when negative regulatory action is taken:

**5.1.2.1** Generally, the regulatory staff will give the provider 13 days before the negative action is effective when issuing a notice of denial of application or revocation of certificate and/or license. This allows the CCR&R the ability to send out notices and help parents locate a new provider (also see Chapter 13). The notice that the CCR&R issues to the parents notifying them that regulatory action is being taken must include the information that the provider has the right to appeal that action. The CCR&R notice will direct the parent to seek further information regarding the provider's intent to appeal from the provider;

**5.1.2.2** If the provider has serious areas of non-compliance and there is notification of immediate revocation, the child care regulatory staff must inform the CCR&R worker immediately. In making this decision, the family child care regulatory specialist shall confer with the Child Care Supervisor, and the licensing specialist shall confer with the Program Manager. Consideration needs to be given to the immediate risk of harm to children in care. The CCR&R will include the last date of payment for the provider in the

Provider Notice. The CCR&R must unlink all children from the provider record before the regulatory staff will be able to close the record in FACTS.

**5.1.2.3** If a child care provider or facility contacts the CCR&R to request closure, the CCR&R shall send a notice to the appropriate Child Care Regulatory staff via-email.

## **5.2 Communication with Child Care Regulatory Staff**

As child care providers move between types of care and apply for the appropriate registrations or licenses, it is important that Family Child Care Regulatory Specialists and Licensing Specialists keep each other informed. To encourage information sharing, the following procedures are in place:

### **5.2.1 Documentation in FACTS**

Patterns of non-compliance shall be documented in FACTS. While the agency cannot refuse to accept an application, the application can be denied based on documented evidence of a history of non-compliance as any type of child care provider.

**5.2.1.1** The Child Care Regulatory staff shall document the serious issues in FACTS and put a statement on the closure screen that starts with the word “ALERT”.

### **5.2.2 FACTS Searches**

All Child Care Regulatory Unit staff shall conduct a search in FACTS on all active and closed provider cases prior to opening a new provider/facility/center to check for a documented history of non-compliance.

### **5.2.3 Transitioning between Types of Care**

**5.2.3.1** If a provider/facility/center applies to change the type of care status, and the change in type of care would result in switching from Family Child Care Regulatory Specialist to licensing staff, or vice versa, a joint visit to the facility/center shall be conducted.

**5.2.3.2** When changing provider types:

#### **A. Open a New Provider File:**

Informal to Registered, Child Care Facility to Child Care Center, Center to Facility, Registered Family Child Care to Facility, etc. The Child Care Regulatory staff must open a new provider file in FACTS and associate the old provider file to the new. Under no circumstances should Child Care Regulatory staff change the provider type from one type to another. Doing so does not preserve the provider’s history and impacts Federal reporting requirements.

#### **B. Open Date for Change in Provider Type:**

Providers who are switching types, and who receive subsidy reimbursements should always have an open date of the first day of the following month. For example, if an informal family child care provider completes a packet to change status to a Registered/Subsidized Family Child Care on August 16th, the Family Child Care

Regulatory staff should open the new record with a date of September 1st. Changing provider types in the middle of the month interferes with payment processing and the monthly payment rate, as the monthly billing cannot be split between the two different types.

### **5.3 Communications with Providers**

#### **5.3.1 Written Notification**

Child Care Regulatory staff are required to provide written notification of any decisions reached with regard to the regulatory status of a provider using forms provided in FACTS or individualized letters with copies saved to FACTS. The Notice of Provider Regulatory Status is to be used with all registered and licensed providers. Any non-compliance should be communicated using the Child Care Corrective Action Plan. Notices should be sent whenever the Child Care Regulatory staff:

- 5.3.1.1** Approves an application for any type of care or issues/renews a certificate of registration or a license;
- 5.3.1.2** Denies a provider application;
- 5.3.1.3** Refuses to renew a certificate of registration, license or approval;
- 5.3.1.4** Revokes registration, licensure or approval is revoked;
- 5.3.1.5** Makes a decision on a waiver or variance;
- 5.3.1.6** Places a limit on a certificate of registration or license;
- 5.3.1.7** Reduces a certificate of registration or license to provisional status;
- 5.3.1.8** Issues corrective action;
- 5.3.1.9** Provides follow-up on the results of an investigation;
- 5.3.1.10** Determines the provider has/has not met the terms of the corrective action plan;  
or
- 5.3.1.11** Takes any other action or makes a determination that impacts the regulatory status of the provider.

#### **5.3.2 Technical Assistance**

The West Virginia Department of Health and Human Resources has a responsibility, within fiscal limitations, to provide training and education for the improvement of child care programs. This responsibility is largely met through contracted services which the provider can access. The child care regulatory staff contributes by offering guidance to providers in

meeting requirements and improving the quality of their care. Child Care Regulatory staff may offer technical assistance by:

**5.3.2.1** Explaining to the provider what is required for a successful application;

**5.3.2.2** Helping the provider understand the rationale for a specific requirement;

**5.3.2.3** Identifying a training need. The Child Care Regulatory staff can direct the provider to the CCR&R agency to obtain the training or to find where other training can be obtained. Child care regulatory staff can also help the CCR&R agencies know training is needed on a particular subject for more than one provider;

**5.3.2.4** Helping the provider determine the best way to meet a requirement that has been identified for corrective action;

**5.3.2.5** Informing the provider if funding is available to help meet health and safety requirements or improve quality;

**5.3.2.6** Providing information on current issues in child care; and

**5.3.2.7** Providing information on agencies and community programs that may help the provider in the operation of a child care business.

### **5.3.3 Provider Identification Number**

When the Child Care Regulatory staff sends an initial written notice of approval to a child care provider, the Child Care Regulatory staff person shall write the 8-digit FACTS identification number on the notice (300.....). Providers need this number to apply for direct deposit.

## **CHAPTER 6: PROVIDER REGULATION AND REGISTRATION: INFORMAL AND RELATIVE FAMILY CHILD CARE**

### **6.0 Informal and Relative Family Child Care**

This Chapter addresses two of the three types of family child care homes (See Chapter 1, Definitions):

1. Informal family child care homes which provide care for three (3) or fewer children; and
2. Relative family child care homes which provide care only to related children;

All types of family child care are home-based care provided for a portion of the day in a private family home for compensation. The home must be inhabited by the person providing care, and the provider's hours of operation may not exceed eighteen (18) hours in a 24-hour period. The provider is required to have at a minimum six (6) hours rest time with no child care children. WV Code, Chapter §49-2-113(g) allows relative and informal family child care to be voluntarily registered.

### **6.1 Informal and Relative Family Child Care Registration Process**

Informal and relative providers must meet the Department's Informal and Relative Family Child Care Registration Requirements in order to participate in the child care certificate system and may voluntarily register in order to participate in the Child and Adult Food Program.

#### **6.1.1 Applicants Not Participating in the Child Care Certificate System**

- A. Applicants not participating in the child care subsidy/certificate program do not go through the payment enrollment process at the CCR&R office, but apply directly to DHHR. These providers are referred to in FACTS as "Relative Family Child Care – Unsubsidized" and "Informal Family Child Care-Unsubsidized".
- B. Persons not attending provider payment enrollment because they do not participate in the child care subsidy/certificate system must return all of the forms listed in section 7.1.2.A. to the family child care regulatory specialist.
- C. The Application to Operate a Family Child Care Home shall be stamped with the date received by the family child care regulatory specialist. A Provider Services Agreement is not necessary for providers who do not receive subsidy payments.
- D. DHHR family child care regulatory specialists have 60 days from receipt of the application to approve or deny ~~on~~ the application for anyone not participating in the subsidy/certificate system.

#### **6.1.2 Applicants Participating in the Child Care Certificate System**

### **A. Payment Enrollment/Orientation for Informal/Relative Providers**

Upon receipt of a certificate to operate issued by a DHHR Regulatory Specialist, informal and relative providers can enroll in child care subsidy/certificate system training. Informal and relative providers wishing to participate in the child care subsidy/certificate system must attend payment enrollment orientation offered through the CCR&R agency. and must register with DHHR within 30 days if they wish to participate in the child care certificate program. During enrollment, the informal/relative provider receives orientation regarding participation in the child care certificate system, requirements for an informal or relative family child care home and basic health and safety training, which will fulfill the requirement for two hours of health and safety training. Informal and relative providers wishing to participate in the child care subsidy/certificate system must attend payment enrollment orientation training offered through the CCR&R agency. During enrollment, the informal/relative provider receives orientation regarding participation in the child care certificate system. Informal and relative providers receive the following child care forms:

#### **A. Forms**

Informal and relative providers receive the following child care forms:

- 1) Informal and Relative Family Child Care Home Registration Requirements.
- 2) Application to Operate a Family Child Care Home.
- 3) Two (2) or more Authorizations for Protective Services Background Check.
- 4) Emergency Information forms.
- 5) Child Care and Responsible Pet Ownership.
- 6) Pet Acknowledgement Form, if there are pets in the home.
- 7) Tax Identification Form.
- 8) Statement of Good Health.
- 9) Family Child Care Provider Training Record.
- 10) Fire Escape Plan.
- 11) Emergency Phone List.
- 12) Two or more Medication Permission Slip.
- 13) Two or more Periodicity Schedule.
- 14) Incident Report Form.

### **B. Completion of Forms**

- 1) Applicants complete the Application to Operate a Registered, the Tax Identification Form (W-9).
- 2) The applicant submits the application directly to the Regulatory Unit Secretary. Attachments include:
  - a) A copy of the Statement of Good Health.
  - b) Signed Authorizations for CPS/APS Background Checks for all adults in the household.

### **6.1.3 Information Packet**

When an individual makes inquiry about registration as an informal or relative family child care home, an Informal/Relative Family Child Care Information Packet will be sent to the individual. Potential providers will be directed to the website, mailed, or given the information packet. The information packet will consist of:

**6.1.3.1** Informal and relative Family Child Care Home Registration Requirements. Rules are also available at

<https://dhhr.wv.gov/bcf/ece/policies/Documents/Informal%20and%20Relative%20Family%20Child%20Care%20Home%20Regulations.pdf>

**6.1.3.2** Application Packet

### **6.1.4 Return of Letter of Intent**

After the provider completes and returns the Letter of Intent to the WV DHHR/Division of Early Care and Education, an application packet will be mailed to the potential provider.

### **6.1.5 Application Packet**

Informal and relative providers receive the following child care forms:

- 1) Informal and Relative Family Child Care Home Registration Requirements
- 2) Application to Operate a Family Child Care Home
- 3) Two (2) or more Authorizations for Protective Services Background Check
- 4) Information on registering with WV CARES
- 5) W-9 Tax Identification Form

Once the application is returned to the supervisor, the supervisor will scan the application and mail the original forms to the appropriate Family Child Care Regulatory Specialist.

The Regulatory unit secretary will mail the following documents to the potential provider:

- 1) Statement of Good Health
- 2) Fire Escape Plan
- 3) Emergency Phone Number List
- 4) Emergency Plan (two copies)

## **6.2 Family Child Care Regulatory Specialist Procedures**

Once the required forms are received by the Family Child Care Regulatory Specialist, the Specialist has 30 days from the date of the completed application to review the information submitted for completeness and compliance. Pages 2 and 3 of the Application must be completed and signed by the provider, and the complete criminal history background check must be complete for an application to be considered complete.

## **6.3. Inspection and Investigation**

### **6.3.1 On-Site Inspection**



Family Child Care Regulatory Specialists complete on-site inspections of informal and relative family child care homes at the time of the initial application and renewal application. However, on-site inspection is required at any point a complaint is received regarding all provider types or information becomes available that warrants an on-site investigation.

### **6.3.2 Background Checks**

Fingerprints shall be completed on any providers/household members through the WV CARES system.

## **6.4 Department Action on Initial Application for Registration**

### **6.4.1 Initial Requests for Registration**

Family Child Care Regulatory Specialists shall review the Application for Registration, complete a check of APS and CPS records, conduct a search in FACTS on all active and closed provider files prior to opening a new provider file in FACTS, and shall take one of the following actions:

**6.4.1.1.** Schedule and complete an onsite inspection using the Checklist.

**6.4.1.2** Approve the application and issue a Regular Certificate of Registration. The effective date for the certificate will be the date the on-site inspection is completed. A certificate is issued for a period of up to two (2) years;

**6.4.1.3** Approve the application with a corrective action plan. There is no provision in state law for informal and relative providers to receive a provisional certificate of registration.

**6.4.1.4** Deny the application and provide written notification via the Provider Notification of Provider Regulatory Status. The notification shall indicate the reason(s) for the denial and shall cite specific requirements that are not met or specific items on the application that are not accurate or complete. In some situations, the denial notice shall indicate that further applications will be denied a certificate of registration. Such situations include the following:

- 1) An applicant has intentionally provided false information which would hide a potential risk of harm to children in care.
- 2) The application or a background check reveals convictions of violent crimes against the person, or history of adult/child abuse, or incidents of serious maltreatment of children or adults.
- 3) The FACTS search reveals a history of non-compliance issues that cannot be corrected and for which a waiver cannot be considered.
- 4) A FACTS documented history of chronic multiple non-compliance issues as any type of child care provider may be used as the basis for the denial of any future application for any other type of care. Family Child Care Regulatory Specialists shall consult with their supervisors before taking this action.

**6.4.1.5** Once action is taken on the application, the Family Child Care Regulatory Specialist completes all the necessary screens in FACTS. For a provider who receives certificate funds, the Child Care Regulatory Staff shall notify the CCR&R of the action taken on the application and a copy of the Tax Identification Form (W-9) is made with the original sent to the Bureau for Children and Families, Office of Finance.

#### **6.4.2 Special Circumstances with Initial Application**

If this applicant wishes to participate in the child care subsidy system, the applicant will not receive a Provider Services Agreement without first receiving a Certificate of Registration. If the type of care transition results in a change from family child care regulatory specialist to licensing staff or vice versa – a joint visit to the home/facility/center shall be conducted.

### **6.5 Renewal Applications**

Registered Informal and Relative Family Child Care Providers must renew their registrations at least every two years or sooner, based on the time period approved on the current certificate of registration.

#### **6.5.1 Renewal Application Procedure**

The following procedures are in place for Registration Renewal Applications:

##### **6.5.1.1 Notice to Providers to Renew Registration**

A certificate of registration is valid for a period of up to two years. Sixty (60) days prior to the expiration of a Regular Certificate of Registration, the family child care regulatory specialist shall send a renewal application packet to the provider. The packet shall include the following:

- 1) Notification of Provider Regulatory Status indicating due date of the renewal package;
- 2) Statement of Good Health;
- 3) Application to Operate a Family Child Care Home;
- 4) Authorization and Release for Protective Services Background Check.

##### **6.5.1.2 Time Frames for Renewals**

The Notification Letter shall indicate that the provider needs to return the completed renewal application within 30 days. An application must be returned and an on-site inspection must be completed prior to the expiration date of the current certificate to allow for a continuous period of registration without gaps in dates.

**Reminder:** Many providers offer care for private pay children, as well as those receiving child care subsidy certificates. Those children must be considered when determining whether or not the provider is required to be registered.

##### **6.5.1.3 Tracking and Data Entry**

When the renewal packet is returned, the Family Child Care Regulatory Specialist shall:

- 1) Stamp the date of receipt on the Application.

- 2) Review the FACTS and paper record for any information which would aid in making a decision on the application. This shall include checks of CPS and APS records and training records.
- 3) Update information in FACTS, including changes in household members.
- 4) Enter documents in document tracking, complete an on-site inspection, and update the status screen to reflect renewal of the registration certificate.

## **6.5.2 Departmental Action on Renewal Applications for Registration**

### **6.5.2.1 Possible Actions**

Child Care Regulatory Staff have sixty (60) days from receipt of the renewal application to take one of the following actions:

- 1) Approve the application and issue a Regular Certificate of Registration to either operate an Informal or Relative Family Child Care Home, whichever is appropriate. The certificate may be reissued for a period of two years or set at less than two years. The effective date for the certificate will be the date immediately following the expiration of the previous regular Certificate of Registration; or
- 2) Approve the application and issue a Corrective Action Plan; or
- 3) Refuse to renew and provide written notification via the Notification of Provider Regulatory Status. The letter must indicate the reason for the denial and cite specific requirements that are not met, specific conditions previously placed upon the applicant not met, or specific items of the application that are not accurate or complete.

### **6.5.2.2 Notifications to CCR&R Agencies**

Once a decision is reached on a provider's application, the family child care regulatory specialist shall:

- 1) Notify the CCR&R that a renewal application was not returned and coordinate closing the provider record. Payment may continue for 13 days beyond the expiration of the certificate of registration to allow time for the CCR&R to send notices and help parents locate other child care arrangements before the certificate of registration expires.

## **6.6 Annual Evaluation of Compliance with Family Child Care Registration Requirements**

Annual monitoring visits shall be made to all registered family child care providers and all family child care facilities. Visits may be announced or unannounced. Family child care regulatory specialists completing these visits will exceed the state legal requirements for monitoring of no less than five (5) percent of the total number of registered informal, relative and family child care homes.

## **6.7 Negative Action**

If the informal or relative family child care home is not in compliance with health and safety requirements as found on the checklist, then the family child care regulatory specialist issues one of the following:

**6.7.1** A Corrective Action Plan accompanied by a Notification of Provider Registration Status;  
or

**6.7.2** A Notification of Provider Registration Status denying approval, and sends a copy to the CCR&R agency

**6.8 Invalid Application**

An incomplete or unsigned application is invalid and is not considered. When an application is determined to be invalid, the applicant shall be notified in writing by the Licensing Specialist using a Notification of Provider Regulatory Status letter stating the required information can be submitted within a designated time frame. If the applicant must reapply the invalid application is returned along with the letter. The designated time frame is not to exceed 30 days from the date of original submission.

## **CHAPTER 7: PROVIDER REGULATION: REGISTERED FAMILY CHILD CARE HOME**

### **7.0 Family Child Care Home Registration Process**

Persons caring for four (4) to six (6) children (including their own children under the age of six), are required by state law to register with DHHR to be considered a legally operating family child care home. In addition, any person may voluntarily register to be a family child care home, if no more than six (6) children will be cared for at any one time.

### **7.1 Child Care Provider Orientation**

Orientation components are intended to collect information necessary to facilitate registration of child care providers, and to provide information on topics such as regulatory requirements and other pertinent information.

The orientation process should be completed at a local CCR&R office. Orientations should be held at regularly scheduled intervals of no less than twice monthly.

All Registered Family Child Care Providers are required to attend orientation at the local CCR&R office.

#### **7.1.1 Orientation Procedures**

**7.1.1.1** When a request to provide services is received from a potential Registered Family Child Care applicant, the CCR&R worker or the Child Care Regulatory Specialist will direct the potential provider to contact the local CCR&R office.

### **7.2 During Orientation:**

**7.2.1** The discussion shall also cover special regulatory concerns such as the provision of foster care or adult care and WV CARES background check requirements.

**7.2.2** The CCR&R shall also discuss the mandated reporting of child abuse and neglect and West Virginia Birth to Three referrals.

**7.2.3** The CCR&R shall discuss the importance of Responsible Pet Ownership and advise that a Child Care and Responsible Pet Ownership Booklet and Pet Acknowledgement Form will be included in their initial packets.

**7.2.4** Resource Information for Providers: The CCR&R shall present child care providers with information on the following topics:

**7.2.4.a** Setting up Child Care Records: The CCR&R shall inform the provider that it is their responsibility to maintain their own business records. Records shall be kept on both the provider and the child care children and contain:

**Provider's Record:**

1. Providers medical form
2. Pet Acknowledgement Form.
3. Family Child Care Provider Training Record or proof of training attendance.
4. Fire Escape Plan.
5. Emergency Phone List.
6. Emergency Plan
7. Provider Services Agreement, if applicable
8. WV CARES Fitness Determination Letter for all household members 18 years of age and older.
9. Signed Authorization & Release for Protective Services Record Check for all household members 18 years of age and older.

**Children's Record:**

1. Emergency Information Forms. The provider shall require a completed and notarized form before a child is placed in the provider's care.
2. Child Health Assessment Forms:
  - a. The provider is required to keep current medical information on each child placed for care who has not yet reached a sixth (6<sup>th</sup>) birthday
  - b. The provider shall inform the parent that care will be terminated if the medical form is not returned.
  - c. Providers must notify the CCR&R agency when the parent does not return the form(s) within thirty (30) days of placement so that the R&R worker may send 13-day closure notices.
3. Emergency Information/Permission Form.
4. Medication Permission Slips if needed.
5. Child Care Certificate, if applicable.

Other forms to have on hand:

1. Periodicity Schedule, to give to parents.
2. Incident Report Form, to complete and return in the event of an accident.
3. Business and billing records.
4. File for correspondence from or to agencies, parents, etc.

**7.2.5 Information on Working with Parents:**

The CCR&R shall emphasize the importance of communication and cooperation between the provider and parents:

**7.2.5.a** A provider must accept responsibility for operation of her business, including dealing with a parent's failure to meet her expectations and rules.

**7.2.5.b** The provider retains the option of terminating services if parents fail to cooperate.

**7.2.5.c** Providers are encouraged to establish written rules or develop a handbook so parents are fully aware of the provider's expectations.

**7.2.6** Taxes:

**7.2.6.a** The provider is responsible for paying Social Security and Federal and State taxes.

**7.2.6.b** The CCR&R shall inform providers that they are self-employed.

**7.2.6.c** Providers shall be advised to contact their state, local, and city tax departments to ensure compliance with all law and regulations, as well as to obtain information on withholding and business taxes.

**7.2.7** Child and Adult Care Food Program:

**7.2.7.a** The CCR&R include information on local sponsors of the federally funded program in the application packet.

**7.2.8** Zoning:

**7.2.8.a** At the time of orientation, the CCR&R will advise potential providers to contact their local zoning boards to ensure compliance. The Child Care Regulatory Specialist assigned to the provider case shall provide specific zoning information and contacts to the provider at the time of the initial home visit, if applicable, by area.

**7.2.9** Birth to Three:

**7.2.9.a** The CCR&R shall provide information on WV Birth to Three. Birth to Three is a statewide system of services and supports for children under age three who have a delay in their development, or may be at risk of having a delay, and their family. The Department of Health and Human Resources, through the Bureau for Public Health and the Office of Maternal, Child and Family Health, WV Birth to Three, as the lead agency for Part C of the Individuals with Disabilities Education Act (IDEA), assures that family centered, community based services are available to all eligible children and families.

**7.2.10** During the orientation the CCR&R will inform the participants that if they have committed fraud with the Child Care Subsidy System or have a repayment agreement with the Child Care Subsidy System; they may not be eligible for Child Care Subsidy Payments.

**7.3 Completion of Orientation**

**7.3.1** The CCR&R will provide the following documents for the potential providers to complete at the orientation session.

1. Child Care Provider Information
2. Application To Operate
3. Provider Tax Information Reporting Form
4. Authorization and Release for Protective Services Records Check (1 for each adult household member)

**7.3.2** The following forms will be given to the potential provider at the orientation to take home to complete before the visit from the Family Child Care Regulatory Specialist.

1. Fire Escape Plan
2. Child Care Provider Medical Report
3. Child Care Attendance Sheet (6)
4. Child and Adult Care Food Program information
5. Return envelope addressed to Child Care Supervisor
6. WV Birth to Three information
7. Emergency Information Permission Forms (6)
8. Child Health Assessments (6)
9. Immunization and Periodicity Schedule (6)
10. Emergency Phone Number List
11. Incident Report Form
12. Medication Permission Slip (6)
13. Pet Acknowledgement Form
14. Child Care Responsible Pet Ownership
15. Provider Training Record
16. Guide to Family Child Care
17. Family Child Care Regulations

**7.3.3** Packet Three – To be given to the provider at the time of initial home visit:

1. First Aid Item List
2. Child Care Providers: Your Guide to Crib Standards
3. Sample Daily Schedule
4. Sample Parent Contract
5. Home Playground Safety Brochure “Is Your Home Playground A Safe Place to Play?”

Packet may include the following local information, if applicable:

1. Provider Association Information
2. Local Food Program Flyers/Information
3. Local Small Business Groups Information
4. Local or State Tax Information



5. Any other information or handouts the CCR&R has been instructed to or chooses to share with providers.

**7.3.4** The CCR&R will briefly name some of the services offered at the Child Care Resource & Referral Agencies, such as trainings, grants, TRAILS van, etc. Potential providers will be instructed to contact their local CCR&R for more information.

**7.3.5** The CCR&R will collect the initial forms

**7.3.5.b** Scan the documents and email to the regulatory unit secretary for family child care regulations.

**7.3.5.c** Mail the original documents to the regulatory unit secretary for family child care regulations.

#### **7.4 Assignment of Potential Providers**

**7.4.1** The family child care supervisor will assign the potential provider to a family child care regulatory specialist.

**7.4.2** The Family child care regulatory specialist will contact the potential provider to introduce themselves and see if they have completed the WV CARES process.

**7.4.3** Once the family child care regulatory specialist receives the information from the potential provider that the criminal history background check has been completed, a home inspection can be scheduled. The family child care regulatory specialist will open a FACTS file and scan the application into the FACTS file cabinet. The family child care regulatory specialist has thirty (30) days from the date of the complete application to approve or deny the application. All sections, including the Market Rate Survey information and the criminal history background check, must be completed to have a complete application.

#### **7.4.4 On-site Inspection of Home**

The family child care regulatory specialist will take the following forms to the initial home inspection:

- 1) Child Care Attendance Sheets (6 copies)
- 2) Emergency Information Permission Forms (6 copies)
- 3) Medication Permission Slip (6 copies)
- 4) Incident Report (2 copies)

#### **7.5 Departmental Actions on Initial Application for Registration**

**7.5.1** Family child care regulatory specialists shall review the application for registration, complete a check of APS and CPS records, conduct a search in FACTS on all active and closed cases prior to opening a new case in FACTS, and shall take one of the following actions:

**7.5.1.a** Approve the application and issue an Initial Certificate of Registration. An Initial Certificate of Registration is issued if the applicant returns a completed application and has self-certified that all requirements are met. The effective date for the certificate will be the date the application was received. A certificate can be issued for a period of up to two (2) years;

**7.5.1.b** Approve the application and issue a Provisional Certificate of Registration. A provisional certificate is issued for six (6) months. While a Provisional Certificate may be issued for several reasons, two (2) specific situations have been identified that could result in issuance of a Provisional Certificate of Registration with the initial application. Those situations include the following:

**7.5.1.b.1** The Registration Requirements allow a provider three (3) months from the date of registration to obtain approved training in first aid. If the applicant indicates non-compliance with this requirement, then a Provisional Certificate of Registration is to be issued along with a corrective action plan.

**7.5.1.c** Deny the application and provide written notification via the Provider Notification of Provider Regulatory Status. The notification shall indicate the reason(s) for the denial and shall cite specific requirements that are not met or specific items on the application that are not accurate or complete. In some situations, the denial notice shall indicate that further applications will be denied a certificate of registration. Such situations include the following:

**7.5.1.c.1** An applicant has intentionally provided false information which would hide a potential risk of harm to children in care;

**7.5.1.c.2** The letter of determination deems the potential provider or household member as ineligible to provide child care services.

**7.5.1.c.3** The FACTS search reveals a history of non-compliance issues that cannot be corrected and for which a waiver cannot be considered.

**7.5.1.c.4** A FACTS documented history of chronic multiple non-compliance issues as any type of child care provider may be used as the basis for the denial of any future application for any other type of care. Child Care Regulatory Specialist shall consult with their supervisors before taking this action.

**7.5.2** Once action is taken on the application, the family child care regulatory specialist completes all the necessary screens in FACTS, and send to the family child care supervisor for approval.

**7.5.3** The family child care supervisor will notify the regulatory unit secretary and the family child care specialist when the provider has been approved to provide child care services. The family child care regulatory specialist shall notify the CCR&R of the action

taken on the application and forward a copy of the Tax Identification Form (W-9). The original Tax Identification Form (W-9) will be sent to the Bureau for Children and Families, Office of Finance.

## **7.6 Special Circumstances with Initial Application**

**7.6.1** If an initial application is received from an applicant who has had a certificate of registration revoked or any other type of regulatory license revoked, the application cannot be approved without a prior on-site inspection.

**7.6.2** If the type of care transition results in a change from family child care regulatory specialists to licensing staff or vice versa – a joint visit to the home/facility/center shall be conducted.

## **7.7 Yearly Review for Registered Family Child Care Homes**

Family child care regulatory specialist are not required to check all items on the checklist for annual mid-certification monitoring inspections based on the following guidelines:

**7.7.1** The specialist shall use the full checklist if there are material changes in the provider's child care environment, e.g. addition of a pool, shift of child care to the basement, serious remodeling of the home, addition of outdoor play equipment, etc.

**7.7.2** Registered providers shall comply with all issues contained in the full checklist.

## **7.8 Renewal Applications**

**7.8.1** Registered Family Child Care Providers must renew their registrations at least every two years, or sooner, based on the time period indicated on the current certificate of registration. The following procedures are in place for Registration Renewal Applications:

### **7.8.1.1** Notice to Providers to Renew Registration

A certificate of registration is valid for a period of up to two years. Sixty (60) days prior to the expiration of a Regular Certificate of Registration, the Regulatory Unit Secretary shall send a renewal application packet to the provider. The packet shall include the following:

**7.8.1.1.a** Notification of Provider Regulatory Status, indicating due date of the renewal package;

**7.8.1.1.b** Child Care Provider Medical Report;

**7.8.1.1.c** Information on Child Care Provider;

**7.8.1.1.d** Application to Operate a Family Child Care Home;

**7.8.1.1.e ECE-CC-8A: Authorization and Release for Protective Services Background Check.**

**7.8.2 Time Frames for Renewals**

The Notification Letter shall indicate that the provider needs to return the completed renewal application within 30 days. An application and on-site inspection must be returned prior to the expiration date of the current certificate to allow for a continuous period of registration without any gaps in dates.

**7.8.3 Tracking and Data Entry**

**7.8.3.1** Stamp the date of receipt on the Application and, review the FACTS and paper record for any information which would aid in making a decision on the application. This shall include checks of CPS and APS records and training records.

**7.8.3.2** Information shall be updated in FACTS, including changes in household, market rates, and compliance with regulations.

**7.8.3.3** Documents shall be entered in document tracking, on-site inspection must occur before the\_status screen is updated to reflect renewal of the registration certificate.

**7.8.4 Departmental Action on Renewal Applications for Registration**

The family child care regulatory specialist has sixty (60) days from receipt of the renewal application to take one of the following actions:

**7.8.4.1** Approve the application and issue a Regular Certificate of Registration. A Regular Certificate of Registration is issued if the applicant returns a completed application and all requirements are met. The certificate may be issued for a period of two years or another period less than two years. The effective date for the certificate will be the date immediately following the expiration of the previous regular Certificate of Registration; or

**7.8.4.2** Approve the application and issue a Provisional Certificate of Registration. A Provisional Certificate must be accompanied by a Corrective Action Plan and should only be issued for minor non-compliance which does not affect the health and safety of children in care; or

**7.8.4.3** Refuse to renew and provide written notification via the Notification of Provider Regulatory Status (~~DAY-0503~~). The regulatory specialist must indicate the reason for the denial and cite specific requirements that are not met, specific conditions previously placed upon the applicant not met, or specific items of the application that are not accurate or complete.

**7.8.5 Notifications to CCR&R Agencies**

Once a decision is reached on a provider's application, the DHHR child care regulatory specialist shall:

**7.8.5.1** Notify the CCR&R that a renewal application was not returned and coordinate closing the provider record. Payment may continue for 13 days beyond the expiration of the certificate of registration to allow time for the CCR&R to send notices and help parents locate other child care arrangements.

**7.9 Invalid Application**

An incomplete or unsigned application is invalid and is not considered. When an application is determined to be invalid, the applicant shall be notified in writing by the Licensing Specialist using a Notification of Provider Regulatory Status letter stating the required information can be submitted within a designated time frame. If the applicant must reapply the invalid application is returned along with the letter. The designated time frame is not to exceed 30 days from the date of original submission.

## **CHAPTER 8: PROVIDER REGULATION: FAMILY CHILD CARE FACILITY**

### **8.0. Definition of Family Child Care Facility**

A family child care facility serves groups of seven (7) to twelve (12) children for four (4) or more hours per day. The provider may care for no more than four (4) children under the age of 24 months not more than twelve (12) children in total, including children residing in the home under the age six (6) years. Care may be in the operator's home or in a separate building that is not inhabited by the provider.

### **8.1. Regulation of Family Child Care Facilities**

Family child care facilities in West Virginia shall be licensed prior to accepting more than six (6) children. A Certificate of Licensure may be issued to a family child care facility only when it meets the requirements of DHHR, the State Fire Marshal's Office, and the Bureau of Public Health. The purpose of licensure is to ensure the protection and care of children in family child care facilities, as defined in Chapter 49 of the West Virginia Human Services Law. Regular licensure extends for a period of up to twenty-four (24) months and initial and provisional licensure extends for six (6) months. Family child care facilities shall be licensed prior to acceptance of children and enrollment for funding and shall be monitored annually. Assessment for licensure is the responsibility of the family child care regulatory specialists.

### **8.2 Family Child Care Facility Certificate of Licensure Process**

#### **8.2.1 Family Child Care Facility Information Packet**

When an individual makes inquiry about licensure as a family child care facility, the family child care regulatory specialist or the CCR&R shall direct the potential provider to the website or provide a Family Child Care Facility Information Packet. The packet may be mailed or given to providers who go into local DHHR or CCR&R offices. The information packet consists of:

**8.2.1.1** Family Child Care Facility Licensing Requirements. Rules are also available <https://dhhr.wv.gov/bcf/ece/policies/Documents/Facility%20Regulations.pdf>

**8.2.1.2** Family Child Care Facility Information Form;

**8.2.1.3** Letter of Intent;

**8.2.1.4** Other information on topics of interest to a provider.

#### **8.2.2 Return of Letter of Intent**

The potential child care provider reviews the facility information packet. After the provider completes and returns the Letter of Intent to the WV DHHR/Division of Early Care & Education regulatory unit secretary, and an application packet will be mailed to the potential provider.

### **8.2.3 Application Packet**

An application packet will contain:

- Child Care Provider Information
- Application to Operate
- W-9 Provider Tax Information Reporting Form
- Authorization and Release for Protective Services Record Check (1 for each adult household member and all employees)

Once the application is returned to the regulatory unit secretary, the regulatory unit secretary will scan the application and email forms to the appropriate Family Child Care Regulatory Supervisor. The original forms will remain at the Diamond Building for permanent filing.

The family child care regulatory specialist will mail the following documents to the potential provider:

- Child Care Provider Medical Report
- Fire Escape Plan
- Emergency Phone Number List
- Emergency Plan (two copies)

Once the family child care regulatory specialist receives information from the potential provider that the criminal history background check has been completed, a visit can be scheduled. The family child care regulatory specialist will open a #300 for the provider and scan the letter of intent and initial application into the FACTS file cabinet.

### **8.3 Background Checks**

- All employees must complete an authorization for CPS/APS background check and WV CARES complete criminal history background check on all future employees or household residents and volunteers. Information must be submitted to the family child care regulatory specialist within five (5) days of employment.

### **8.4 On-Site Inspection**

The Family Child Care Facility must obtain permits to operate from the Fire Marshal, Bureau of Public Health, and Office of Pest Management before submitting their application. An on-site visit shall be made by DHHR family child care regulatory specialist within 30 days of the receipt of a completed application to determine compliance with the requirements of Legislative Rule 78CSR18. All sections, including the Market Rate Survey information and the criminal history background check, must be complete.

### **8.5 Action on Applications**

All actions regarding regulation of a Family Child Care Facility shall be in writing. Within 60 days of receipt of the complete application, the DHHR family child care regulatory specialist shall provide a written decision to the family child care facility and issue one of the following.

### **8.6 Initial License**

An initial six-month license shall be issued to an applicant establishing a new service found to be in compliance on initial review with regard to administrative policies and procedures, organization,

risk management in terms of liability coverage, personnel, physical environment, health and fire safety inspections and record keeping regulations. Since the initial inspection is generally completed prior to acceptance of children, a full evaluation is not possible. For example, child medical forms and emergency forms would not be on file and workers could not determine if the facility were actually operating according to the facility's plan or legislative rules.

### **8.7 Regular License**

If the facility meets all applicable standards after the initial certificate period, the family child care regulatory specialist shall notify the owner/operator and provide a regular Certificate of License to Operate a Family Child Care Facility for a period of up to two years. Typically, the regular certificate of license is issued:

- After the initial six-month license if the facility is determined to comply with the rules;
- Upon an application for renewal if the facility is determined to comply with the rule.

If a family child care provider has been in good standing with a regular registration with no major non-compliance and/or substantiated I&R for at least six months, the facility can be issued a regular license, instead of the initial six month license.

**8.7.1 Regular License (Less than two-year period)** - A regular certificate of license may be issued for periods of less than two years at the discretion of the child care specialist. Reasons to issue a shorter license include but are not limited to situations such as the following:

**8.7.1.1 Seasonal issues** – Seasonal issues would include a lack of approved heating source during summer months or lack of approved water safety requirements during winter months. A worker could issue a short-term regular license based on a plan to be in compliance when the season changes.

**8.7.1.2 Movement from an initial to a regular license** - If the full inspection is not completed at the end of an initial license, staff should not issue a full two-year license, as that makes it more than two years for another full inspection. An 18-month license makes full inspections two years apart.

**8.7.1.3 Movement from a provisional to a regular license** - There are several reasons to issue a short-term regular license when a provisional license ends. If the provider has made substantial progress during the provisional period but minor concerns remain, a shorter regular license of up to six months or less may be preferred. In order to assure that the facility continues to maintain compliance, a shorter licensing period may be used. Also, if a full inspection is not completed, then it would result in a period of 2 ½ years between inspections. An 18-month license would make the full inspection two years apart.

### **8.8 Provisional License**

A provisional license may be issued when an owner/operator is not in compliance with the rule and compliance will take longer than 30 days, but only if continuing operation does not pose a



significant risk to the rights, well-being, health and safety of children. A provisional certificate of license expires within six months of date of issuance and shall not be consecutively reissued unless the only violation(s) are from the State Fire Marshall, who recommends a provisional license be issued. Otherwise, at the end of the six-month provisional period, the facility must either be eligible for a regular license or have its license revoked. In issuing a provisional license, the family child care regulatory specialist shall:

Notify the owner/operator to complete a Corrective Action Plan within thirty (30) days from the date the notification is mailed, or the license may be revoked or application denied. The family child care regulatory specialist shall assist the operator in completion of the CAP by discussing possible solutions that appropriately address the issues. Upon receipt of the corrective action plan, the family child care regulatory specialist shall notify the operator and provide a provisional six-month (6) Certificate of License to Operate a Family Child Care Facility.

If the owner/operator does not complete the corrective action plan within the specified time, the family child care regulatory specialist shall revoke the license/deny the application/refuse to renew the license to operate a Family Child Care Facility, whichever applies.

## **8.9 Issue a Corrective Action Plan**

**8.9.1.** Corrective action plans are issued for non-compliance that may be corrected typically within 30 days. Longer periods may be given for non-critical items in which stronger action is not considered necessary.

**8.9.2** The corrective action plan and a Provider Notification shall be completed in FACTS and copies sent to the provider;

## **8.10 Annual Evaluation of Compliance with Family Child Care Registration Requirements**

Annual monitoring visits shall be made to all registered family child care providers and all family child care facilities. Visits may be announced or unannounced. Family child care regulatory specialists completing these visits will exceed the state legal requirements for monitoring of no less than five (5) percent of the total number of registered informal, relative and family child care homes.

## **8.11 Denial of License**

If there are serious areas of noncompliance with regulations that place a child at risk, the family child care regulatory specialist shall notify the operator that the Facility application is denied. The owner/operator may submit a new application when the violations are corrected. In some cases, the owner/operator will be unable to correct the areas of noncompliance, i.e. convictions of violent crimes against the person, history of child abuse, and should be notified that no application to operate a family child care facility will be approved.

**8.11.1.** A FACTS documented history of chronic multiple non-compliance issues as any type of child care provider may be used as the basis for the denial of any future application

for any other type of care. Child Care Regulatory Specialist shall consult with their supervisors before taking this action.

### **8.12 Invalid Application**

An incomplete or unsigned application is invalid and is not considered. When an application is determined to be invalid, the applicant shall be notified in writing by the Licensing Specialist using a Notification of Provider Regulatory Status letter stating the required information can be submitted within a designated time frame. If the applicant must reapply the invalid application is returned along with the letter. The designated time frame is not to exceed 30 days from the date of original submission.

### **8.13 Hearings**

If the family child care facility owner/operator disagrees with any negative action, the owner/operator may request a hearing in writing within 30 days from receipt of the letter per Chapter 49. Requests for hearing should be submitted to the DHHR Hearings Officer.

### **8.14 Penalty**

Any family child care facility that operates without licensure is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500). Staff may refer the illegal operation to the local Prosecuting Attorney and/or the DHHR Regional Attorney.

### **8.15 Referrals**

When a family child care facility is licensed, the family child care regulatory specialist shall notify the CCR&R agency that the Facility is licensed and is eligible for referrals. When a license is not renewed or revoked, the R&R agency should be notified, so they can discontinue payment and cancel the provider service agreement.

### **8.16 Child Care Facility Complaint Process**

#### **8.16.1 Standards Violations:**

The family child care regulatory specialist shall investigate complaints of standards violations against the child care facility.

If the family child care facility is in violation of standards, a time-limited corrective action plan shall be implemented and a provisional license issued if necessary. A provisional license should only be issued if corrective action will take more than 30 days or there are multiple issues that merit stronger regulatory action.

If a child care facility is determined to be serving more than twelve children at one time, then the facility must immediately reduce the number. If the owner/operator is interested, information shall be provided regarding becoming a child care center and a referral made to the Child Care Licensing Unit in the Division of Early Care and Education.

#### **8.16.2 Illegal Operations**

The family child care regulatory specialist shall investigate all complaints regarding unlicensed family child care facilities caring for seven (7) to twelve (12) children.

The family child care regulatory specialist shall make an unannounced visit to determine the number of children in care.

The family child care regulatory specialist shall discuss the law and the licensure process and shall work with the provider toward licensure or a reduction of the number of children in care. The family child care regulatory specialist shall give the provider the Family Child Care Facility Information packet, the Application to Operate a Family Child Care Facility and a copy of the regulations. The provider must reduce the number of children present at one time to no more than six if the provider can be registered as a family child care home. The provider must reduce to less than four children if she cannot or will not meet registration requirements.

A follow-up visit shall be made within two (2) to four (4) weeks to determine compliance with regulations. If a provider continues to operate illegally, the DHHR family child care regulatory specialist shall inform the owner/operator in writing that they may be found guilty of a misdemeanor and be subject to a fine of not more than \$500.00. Staff shall notify the Office of the Prosecuting Attorney or the Regional DHHR Attorney in writing when an operator fails to comply with licensing requirements.

### **8.16.3 Child Abuse and Neglect Allegations**

The Institutional Investigations Unit (IIU) is responsible for investigating allegations of child abuse and neglect in facilities. If requested, child care regulatory staff may assist IIU with interviewing children. However, to maintain impartiality, child care regulatory staff who work with the provider should have a very limited role in the investigation. Regulatory Specialists shall take the following steps during an IIU investigation.

No staff, household member, or owner/operator under investigation in a family child care facility shall have contact with children until the investigation is complete. Upon completion of the investigation, any staff person determined to have abused or neglected children, including the operator or owner, shall no longer care for children or have any contact with children in care. Failure to take appropriate action to safeguard children in the facility shall result in revocation of the license.

If IIU finds serious problems prior to substantiation or completion of the investigation in a facility located in the provider's home where the owner/operator or household member is involved, the IIU worker and family child care regulatory specialists as well as both supervisors (Child Care Regional Supervisor and IIU Supervisor) shall discuss the situation to determine whether or not to remove children pending the outcome of the investigation. DHHR and CCR&R staff, where applicable, shall notify parents that an investigation is underway that could result in negative action. The children must be removed from care until the investigation is complete. The CCR&R worker shall provide assistance to parents with alternate child care arrangements. If an abuse or neglect allegation is substantiated against a household member or the owner/operator in a facility located in the provider's home, the family child care regulatory specialist shall revoke the Certificate of Licensure.

## CHAPTER 9: PROVIDER REGULATION: CHILD CARE CENTER

### 9.0 Definition of Child Care Center

A facility maintained by the state or any county or municipality thereof, or any agency or facility operated by an individual, firm, corporation, association or organization, public or private, for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child. (See Child Care Center Regulations 78CSR1 for the exceptions to this definition).

### 9.1 Legal Authority

Child Care Licensing regulation is governed by [§49-2-113]  
<http://code.wvlegislature.gov/49-2-113/>

### 9.2 Regulation of Child Care Centers

Child care settings in West Virginia must be licensed unless excluded by state code [§49-2-113] The purpose of regulation is to ensure the protection and care of children in child care settings.

West Virginia Code Chapter 49 Article 2-113, charges DHHR with the responsibility to assure proper and appropriate child care is given and maintained. It further grants the power to promulgate rules governing child care, establishes penalties for failure to comply with rules, sets conditions for regulation, and establishes requirements for supervision, monitoring, and investigation.

Supervision by the Department of licensees is required by [§49-2-119]<sup>2</sup> Supervision is to ascertain compliance with the rules and is conducted through regular monitoring, visits, documentation, evaluation and reporting.

The Child Care Center Licensing Unit in the Division of Early Care and Education has the responsibility for licensing child care centers. The Mission Statement of the Unit is: To protect the health, safety and well-being of children in child care settings through technical assistance, inspection and enforcement of the state law and licensing regulations. Staff of the Licensing Unit adheres to the NARA Code of Ethics <https://www.naralicensing.org/assets/docs/Policy/nara%20code%20of%20ethics.pdf> and view the early care and education and school age care systems as professional fields.

Licensed Child Care Centers include traditional child care centers, some Head Start programs and some Out of School time programs. A license can be issued to a child care center only when it meets the requirements of the licensing rule, State Fire Marshal's Office, Bureau of Public Health, and other entities, as required. A child care center must not operate prior to being issued a license.

The Program Manager is responsible for directing the activity of the unit and approving regulatory action on behalf of the Secretary. Generally, Licensing Specialists recommend and proceed with

issuance on routine matters and therefore, must use knowledgeable, professional judgment on a daily basis.

### **9.3 Types of Licenses**

Licensing is the process by which a government agency regulates the otherwise prohibited activities. Licensing requires the applicant to comply with established health, safety, program and staffing rules to operate a program. The license specifies terms and conditions under which centers are permitted to operate. The child care center operators shall follow the Child Care Center Licensing Regulations as a condition of licensure. Child care centers must be licensed prior to operation.

**9.3.1 Initial** – An initial six-month license shall be issued to an applicant establishing a new service found to be in compliance on initial review with regard to policy, procedure, organization, risk management, human resources, service environment and record keeping regulations.

**9.3.2 Provisional** – A provisional license may be issued when a licensee is not in compliance with this rule but does not pose a significant risk to children. It shall expire not more than six months from date of issuance, and not be consecutively reissued unless the provisional recommendation is that of the State Fire Marshal.

**9.3.3 Regular** – A regular license is effective for a period up to two years from the date of issuance. If a center is new and has had an initial license, a regular license will be issued and valid for up to eighteen (18) months.

**9.3.4 Less Than Two (2) Year Regular License and Two-Year Licensing Period** – A regular license may be issued for periods of less than two years at the discretion of the Secretary of DHHR. The Licensing Unit acts as the Secretary's designee. One of the following conditions should be met when issuing a less than two-year license:

- 1) The center's provisional license will expire and the center has made sufficient progress for the license to be issued, but has not fully complied and needs closely monitored for 6 months;
- 2) The Department is taking negative action and cannot issue a provisional license, but needs to issue a license to provide time to complete the negative action;
- 3) Other circumstances may arise requiring an exception to this; if such a circumstance arises, it will need to be staffed with the Program Manager.

Licensing Specialists are not to change the two-year licensing cycle for a center without prior approval from the Program Manager. If a center has a change in ownership but uses the same Federal Employer Identification Number (FEIN), it is not necessary to open a new record in FACTS, but the change must be documented. When the change of ownership also includes a change in the FEIN, the Licensing Specialist is to open a new center record in FACTS (following procedures for initial applicant) and close the previous center. Instances where an initial license is granted prior to the start of the program, i.e., summer camps, Pre-K, a change

in the two-year licensing cycle may be considered. This will allow for the two-year license expiration to occur when the program is in operation.

#### **9.4 Negative Enforcement Actions on Licenses**

There are several forms of negative action the Department may take on a child care center license:

- 1) denying a license, placing limits or conditions on a license;
- 2) making the license provisional;
- 3) refusing to renew a license;
- 4) revoking a license;
- 5) issuing an emergency closure order.

Negative action may be taken if the center materially violates the terms or conditions of the license issued or fails to maintain the established requirements of child care. Negative action is taken when positive enforcement steps such as a Corrective Action Plan or technical assistance have not been effective.

When the Department takes negative action, the applicant or licensee has the right to appeal the decision through an administrative hearing process with the Office of the Inspector General Board of Review. When any of the negative actions listed in 10.4.2-10.4.5 is issued, the provider right to appeal page of the Notification of Provider Regulatory Status Request For A Conference Regarding the Proposed Action Taken on Your Application is included as part of the notification letter. Requests for appeal are prepared by the Licensing Specialist and forwarded to the Board of Review using the form prescribed by the Board of Review. See Section 13.7 for Preparing for a Hearing.

Negative enforcement actions on a license may result in:

**9.4.1 Limitations on the Conditions of a License** – The Secretary may place certain conditions on a license as described in [§49-2-115(h)].

**9.4.2 Provisional License** – A provisional license may be issued when the center is not in compliance with the regulations, but the non-compliance issues do not pose a significant risk to the rights, well-being, health or safety of the children in care, but could if the non-compliance continues. A provisional license should also be considered when the center shows a pattern of repeated violations over a period of time or if there is a pattern of inability or unwillingness to achieve compliance. Issuing a provisional license or changing the status of a license from regular to provisional, may precede a refusal to renew the license or result in license revocation. The provisional status should indicate an increased level of monitoring on the part of the Licensing Specialist, so progress toward compliance with the rules is achieved. The provisional license shall expire no more than six (6) months from issuance and may not be consecutively reissued, unless recommended by the Fire Marshal.

The Licensing Specialist must receive the approval of the Program Manager prior to the provisional license being issued, with the exception of cases based solely on a provisional recommendation by the Fire Marshal. The record documenting the justification for the provisional license needs to be completed in FACTS before the Program Manager will approve

its issuance. If the license is modified to provisional status, the Licensing-Specialist will provide written notification of noncompliance issues which explains the rationale for prohibiting the issuance of a regular license.

**9.4.3 Revocation** – The repeal or annulment of a child care center’s license is a revocation. If it is determined that a provider is unable or unwilling to comply with the purposes set forth in [§49-2-113] then a revocation of the center’s license may be considered. A review of the center will take place 13 days prior to sending a non-renewal, revocation, or closure notification to the provider. In requesting to revoke a license, the Licensing Specialist will:

**9.4.3.1** Submit a written report to the Program Manager outlining the reasons the revocation is being considered, what steps were taken to assist the provider in correcting the concerns, and the center’s reply/response to the assistance. All documentation relevant to the situation including correspondence, contacts, investigation records and Corrective Action Plans must be complete and recorded in FACTS.

**9.4.3.2** The Program Manager will review the documentation and, if approved, will inform the Division Director and the Bureau for Children and Families management of the intent to revoke the provider’s license.

The Program Manager or assigned Licensing Specialist will notify the provider verbally and in writing of the decision to revoke the license. The Licensing Specialist will also inform the DHHR Regional Director, Local Health Department, the State Fire Marshal, the Resource and Referral Agency and the Child and Adult Food Program (CAFP).

**9.4.4 Injunction** – In cases where serious harm to children in care may result, injunctive relief may be sought against a child care center [§49-2-120(c)].

**9.4.5 Emergency Closure Order** – [§49-2-118] authorizes the Secretary to issue an order of closure terminating operation of the child care center. Situations that may warrant involuntary closure of a center may include but are not limited to, imminent danger to children served by the center, willful failure to comply with a Corrective Action Plan, or the health and/or well-being of children is compromised.

Involuntary closure will occur when there is imminent danger to children in care. The Licensing-Specialist shall inform the Program Manager of the situation and provide a written summary of the circumstances warranting a closure. A supervisory decision shall be made regarding the need for closure. The Program Manager will seek the assistance of the Assistant Attorney General assigned to the Bureau. The Assistant Attorney General prepares a closure order and the program manager then informs the Secretary’s office and seeks approval.

If imminent danger is determined to exist, the Licensing Specialist shall implement appropriate crisis intervention methods to remove the children from danger. Requesting the center director or staff in charge to contact parents to come and pick up their children is an appropriate method of crisis intervention.

Notification will be made by the Program Manager to: Bureau Management and Bureau Communications. Notification will be made by the Licensing Specialist to: State Fire Marshal, Health Department, Resource & Referral Agency, CACFP, and Licensing Unit Secretary.

### **9.5. Voluntary Closure of a Center**

When the owner/director of a center decides to close, he or she should notify the Licensing Specialist in writing of the plan at least thirty (30) days before the closing date. The written statement of closure should include the date the center/program will close, the reason for closure, specific arrangements for closing and a valid telephone number and contact address.

The Licensing Specialist will:

- 1) Notify the Program Manager of the provider's decision to close
- 2) Inform the Regional Director of the Resource and Referral Agency of the closing and request all clients be closed in FACTS
- 3) Inform the Child and Adult Food Program, Health Department and Fire Marshal
- 4) Close the center in FACTS
- 5) Notify the unit secretary
- 6) Send a Notification of Regulatory Status (DAY-0503) to the provider notifying that the license is no longer valid.

### **9.6. Inquiry to Open/Operate a Center**

When inquiries are made to the main Division office for applying for a license to operate a child care center, the licensing unit secretary will mail a Child Care Center Information Packet to the potential applicant within five (5) business days or provide the website information for downloading the packet at <https://dhhr.wv.gov/bcf/ece/Pages/Child-Care-Centers-.aspx>. The licensing secretary will also guide the inquirer to the appropriate licensing specialist to answer any further questions.

When a person makes inquiry to a Licensing Specialist, the licensing process should be briefly explained including the necessary steps to begin and the Needs Assessment and Letter of Intent forms. Any child care regulatory staff receiving an initial inquiry will forward the information to the unit secretary for tracking on the Child Care Center Information Packet and Initial Application Log.

**9.6.1. Information Packet and Letter of Intent** - The Information Packet directs the inquirer to return a completed Needs Assessment and Letter of Intent to the department unit secretary for processing. The unit secretary will email the completed Letter of Intent and Needs Assessment to the appropriate Licensing Specialist.

**9.6.2. Building or Purchasing a Center** - There are times when a potential applicant has begun the process of building or purchasing a center without first contacting the licensing unit. The Licensing Specialist can provide technical assistance including the time frame expected to approve an initial application. The Licensing Specialist will need to inform the unit secretary to send a Child Care Center Information Packet.



**9.6.3. Fire Marshal, Health Department, the Department of Agriculture and the Insurance Commission** – The Licensing Specialist refers the inquirer to the Secretary of State, State Fire Marshal, their local health department, the Regulatory and Environmental Affairs division with the Department of Agriculture (for information and guidance regarding the Integrated Pest Management Plan), and the Insurance Commission. Each office has specific regulations that must be met before a license to operate a child care center can be issued by the Secretary of the West Virginia Department of Health and Human Resources. Inspections need to be scheduled by the inquirer with the Fire Marshal and local health department for the desired location of the child care center.

### **9.7. Application for Initial License**

Every person, firm, organization, institution, or agency desiring to establish or operate a child care center shall apply for licensure on the appropriate initial application and shall file the application for an initial license with the department at the address listed on the cover page of the application.

An initial application shall be valid only for the owner and address specified on the application. If an application is incomplete, it will not be considered filed pursuant to [§49-2-114(a)] Any application date-stamped ‘received’ that has been found to be submitted without complete and/or accurate information must be amended to reflect completion and accuracy of information.

The Licensing Specialist will review and evaluate the application. Review of the application will determine if the applicant has supplied all the required information. Evaluation of the application will determine if the applicant has represented an understanding of conducting a child care business. The evaluation will also determine if any information submitted indicates issues that can be addressed by the Licensing Specialist as technical assistance, before the license is issued. Upon completion of the review and evaluation process, the Initial Application and all supporting documents submitted will be recorded into FACTS Document Tracking and scanned into the FACTS File Cabinet by the Licensing Specialist.

**9.7.1. Receipt of Initial License Application by Unit Secretary** - When an Application for License is received by the department, the department unit secretary will stamp the date received by the child care center licensing unit and will log it. Once logged, the unit secretary will mail the application to the appropriate licensing specialist.

**9.7.2. Timeline for Decision Issue/Not Issue a License** – All actions regarding regulation of a child care center shall be in writing. Within sixty (60) days of receipt of a complete application, Licensing Specialist shall provide a written decision to the child care center and issue or deny a license. If an application is received with missing information, the Licensing Specialist is to request, in writing, the missing information within 5 to 10 working days.

### **9.7.3. Invalid and Withdrawn Applications**

**9.7.3.1. Invalid Application** – An incomplete or unsigned application is invalid and is not considered. When an application is determined to be invalid, the applicant shall be notified in writing by the Licensing Specialist using a Notification of Provider Regulatory Status letter stating the required information can be submitted within a designated time frame. If

the applicant must reapply the invalid application is returned along with the letter. The designated time frame is not to exceed 30 days from the date of original submission.

**9.7.3.2. Withdrawn Application** - Should the applicant not submit the missing information within the designated timeframe, the application will be considered withdrawn from consideration. The Licensing Specialist will notify the applicant in writing using a Notification of Provider Regulatory Status letter that the application has been withdrawn from consideration. The original incomplete application should be mailed back to the applicant with the notification letter.

## **9.8. Types of Inspections**

The Licensing Specialist shall investigate and inspect the center to determine if the requirements of the WV Code and the Licensing Regulations are met. The conclusion of any on-site visit should include an exit discussion with the director or person-in-charge. The Licensing Specialist shall provide a written report to the applicant/licensee within established time frames after each inspection.

**9.8.1. Initial On-Site Inspections and Reviews** – Pursuant to [§49-2-114(c)] onsite inspections are required prior to issuing a license for child care centers. The initial licensing inspection will be comprehensive. Each requirement that is applicable to beginning operation is to be reviewed. The objective of this inspection is to gather and examine all information, documentation and facts necessary to make an informed and responsible decision on license issuance or refusal. During onsite inspections, Licensing Specialists shall have access to all aspects of the program in order to complete a reasonable inspection.

**A. Overview of Onsite Visit for Initial License** – Initial visits for the purpose of evaluation and assessment should be scheduled. The Licensing Specialist must contact the provider when a scheduled visit needs to be postponed or cancelled. The submitted application must be reviewed and evaluated prior to the first on-site inspection. A technical assistance visit can be completed prior to the submission of an initial application.

**B. Steps to Take When Conducting an Initial Inspection -**

- 1) Schedule initial inspection with owner/operator
- 2) Interview the applicant
- 3) Review lease agreements or interview other individuals responsible for the facility
- 4) Obtain facts and documentation as appropriate (i.e. college transcripts, professional licenses, credentials)
- 5) Observe and assess physical plant and equipment
- 6) Determine the square footage capacity by measurement of each useable activity space if all equipment and furnishings are in place. If equipment and furnishings are not in place an additional visit will be necessary before a capacity can be determined. Separate computations will be made for space that is designated for infants and toddlers and space designated for school age children or summer recreation camp programs. The capacity for the

license needs to reflect the approved ages and capacity for children under the age of two years and the number of children over the age of two years to 13 years. The license may also reflect a capacity computed for summer recreation camp programs. The number of qualified staff for infants and toddlers is to be factored into the computation for the capacity in that age group and may be used in the computation for other age groups. It is best if the owner/director accompanies the measurement of space.

- 7) Determine group size(s) for outdoor activity area(s); the outdoor space may reflect separate computations for centers that have designated areas for different groups. Outdoor space must also be computed to determine the number of children permitted in the space at any given time. An initial license should not be requested for a center whose outdoor space is not ready for use or in compliance with regulation. If the center wishes to use an alternate space, the licensing specialist must provide written approval and document this in FACTS.
- 8) The licensing specialist is to place the measurements for each room/space measured into the FACTS contact for the date of the measurement. The total square footage of useable space is to be placed on the application checklist screen also. As centers change space or equipment that could impact space, a new measurement must be taken and changes reflected in the record and on the license as needed.
- 9) Confirm and verify references
- 10) Determine if any previous information about the director/owner is in FACTS by conducting a Household/Staff Member search
- 11) Conduct exit conference with applicant
- 12) Complete the FACTS record ensuring that the general information screens, tax screen, service administration screen, application checklist screen (with square footage noted), persons screen, contacts, and license status screen are complete.
- 13) Complete the FACTS Child Care Checklist screen entering items reviewed on the In Compliance and Not Applicable Sections ONLY with relevant comments. A Corrective Action Plan is not issued for an Initial License. If health and safety noncompliance(s) are observed, the Initial License cannot be issued.

**9.8.2. Review of the Initial License** - Once the initial 6 month license has been issued, it is necessary to conduct an unannounced monitoring visit to the program towards the end of the first 6 months to ensure the program is fully compliant and a regular license can be issued.

**9.8.3. Monitoring Inspections and Reviews** – An unannounced annual monitoring inspection must be completed during each calendar year including the year the license expires. During the unannounced annual monitoring inspection a differential monitoring can be used.

In the year that the renewal application is not due, the monitoring inspection is unannounced. During a monitoring inspection, noncompliance issues may be noted and a need for negative action may be indicated. The monitoring inspection is to be followed by a written report of

the inspection to the director within ten (10) working days of the on-site inspection. The standard Notification of Provider Regulatory Status is used. The Licensing Specialist is to issue a Corrective Action Plan regarding the identified noncompliance and should accompany the written report or notification. The Licensing Specialist is to complete a Contact in FACTS regarding the monitoring inspection.

**9.8.4. Quarterly Targeted Monitoring On-site Inspection and Review** – An assigned Licensing Specialist will conduct random sample monitoring of specific areas of the regulations at the direction of the unit Program Manager. A written report will be sent to the center director within 30 days of the on-site visit noting if non-compliance was identified. This notice will be placed in the FACTS file cabinet, a contact recorded, and the notice emailed to the Licensing Specialist assigned to the center. The Licensing Specialist assigned to Target Monitoring will compile quarterly reports of the targeted monitoring.

**9.8.5. Licensing Renewal Inspection and Review** – The unit secretary will mail out renewal applications to centers ninety (90) days of license expiration. The renewal applications will contain the checklist for the child care regulations. This checklist is intended to assist the providers in preparing for the license review and should not be submitted with the renewal application. The inspection occurs after the center submits a completed renewal application and prior to the license expiration date. The review should be conducted no sooner than sixty (60) days and no later than 30 days prior to the license expiration. Special circumstances related to time frames may be discussed with the Program Manager.

**9.8.5.1.** The Licensing Specialist assesses the application for completeness prior to the scheduled licensing renewal inspection. If an application is incomplete, it will not be considered to be filed. An application which is date-stamped received but has been submitted without complete and/or accurate information must be corrected with such information before licensure. The licensing specialist will contact the provider to explain the items that need to be submitted. Failure to submit the required information/documentation, may result in non-renewal of the license.

**9.8.5.2.** Within fourteen (14) days of license expiration, the Licensing Specialist will verify the program's status with Workers Compensation and Unemployment payments. The Licensing specialist will log onto Workers Compensation and Unemployment to verify that the center is in good standing. Click on <http://ucemployers.workforcewv.org/bep/ucwcdef/psig/login.htm>:

- 1) Unemployment, employers, and default accounts.
- 2) It will ask for a user name (dhhr) and password (dhhr).
- 3) Using the FEIN number, which can be found in FACTS, the name of the center, etc., search the website for the center.
- 4) If there is no matching record, the center is current.
- 5) If there is a matching record, the center is in arrears default and the following steps need to be taken:
  - a) Provide written notification indicating nonrenewal of license will be sent fourteen (14) days prior to license expiration.

- b) If a provider is determined to be in default at anytime during the 2 year license cycle, a notice will be sent as notification that the license will be revoked within fourteen (14) days.
- c) Written notification is to be e-mailed to the appropriate resource and referral agency.

**9.8.5.3.** Work tools the Licensing Specialist may need on the day of the visit include: any pending Corrective Action Plan, Children's Record Checklist, Employee Records Checklist, tape or rolling measure and technical assistance information.

**9.8.5.4.** The Licensing Specialist schedules an on-site visit to evaluate the center for a renewal license. This is done as a courtesy so that the center director may have the personnel necessary to operate the center while engaging with the Licensing Specialist. During an on-site visit, the Specialist will do the following:

- a) determine compliance with child care licensing regulations using the Regulation Checklist;
- b) determine the status of the application;
- c) determine any changes in the program, facility or capacity;
- d) establish effective dates of the license.
- e) provide applicable technical assistance
- f) conduct an exit interview summarizing identified noncompliances, answer provider questions, discuss license recommendation, and any other pertinent identified/discussed items during the review.

**9.8.5.5.** A modified process may be developed for completing renewal inspections for licensed Head Start centers. This modified process will need to allow for the access to the Federal review of the grantee and the annual self-assessment of health and safety checklist the site completes. If this review does not give indication of non-compliance, then the on-site renewal inspection will use an abbreviated format for Head Start centers.

**9.8.5.6.** Upon site visit completion, the Licensing specialist holds an exit interview with the director/owner and reviews the requirements/checklist and specific noncompliance issues identified during the visit.

**9.8.5.6.1.** The Licensing Specialist explains what the license recommendation will be or that all of the information collected needs to be reviewed and evaluated prior to a final decision on a license recommendation. If the Licensing Specialist cannot determine at the time of the exit interview what the license recommendation will be, a follow-up either by telephone or in person must take place within 10 working days to inform the director of the recommendation. A final license determination will be made by the program manager. The licensing specialist cannot make a determination on the type of license to be issued.

**9.8.5.7.** The director/owner may indicate or agree to certain actions that will correct violations during the exit interview process. This information will be included in the Corrective Action Plan (see below). The director/owner acknowledges the findings during the visit by signing the last page of the checklist. The checklist signature page is signed and dated by both the Licensing Specialist and the owner/director; the director may make

a copy of the signature page for the center's record if requested. The signature page is scanned into the provider FACTS file cabinet.

**9.8.5.8.** Written notification of the license renewal using the Notification of Provider Regulatory Status Letter including the Child Care Corrective Action Plan, if needed, is to be sent to the center director prior to the license expiration. Although the Licensing Specialist has the option of sending a directed plan of action to the center, center directors should be encouraged to create their own plans to come into compliance with the cited noncompliance issues. It is recommended that a center-initiated Plan for Correction be submitted to the Licensing Specialist. If the Plan for Correction is not acceptable, the center will be directed to revise and resubmit. Once the Plan for Correction is approved, the Licensing Specialist will follow up by the time frames indicated on the CAP.

**9.8.6. Amended License Application and Review** - The licensee must make application to amend the center's license. There is a separate application for an amended license which must be submitted and reviewed. The Licensing Specialist will conduct an on-site visit if the amendment includes any change to the physical site or an increase in capacity, or a change in capacity for infants/toddlers, preschool age children or school age children. There may be some changes to the center's program that may also require an on-site inspection. Amending a license should not result in a different licensing time frame.

**9.8.7. FACTS Data Input for Inspections** - In FACTS, a Contact screen (Addendum 6) is completed noting the on-site visit/inspection. The license needs to be entered for approval prior to the current license expiration. The Licensing Specialist makes recommendations to the Program Manager for the issuance of a license. This is done by completing the status screen in FACTS and submitting it for approval. The License is completed in FACTS and placed in the FACTS file cabinet of the provider record. The Program Manager approves the FACTS entry.

Square footage measurements taken at the time of initial review, renewal review, and/or amended review shall be entered as a FACTS contact. The information should include the room/area measured (both indoor and outdoor), the square footage for each room/area, and the calculated capacity of 35 square feet per child. Any time the square footage changes, a contact must be made in FACTS to explain the change.

**9.8.8. Issuance of the License and Final Approval of the License by the Program Manager**  
The Licensing Specialist must consult with a Program Manager prior to issuing a Provisional license with the exception of a provisional issued by the Fire Marshal. The Program Manager must approve the issuance of an Initial or a Provisional License prior to the Licensing Specialist informing the licensing unit secretary that the license is ready for mailing. The licensing unit secretary will mail the license to the center along with a cover letter. The licensing unit secretary places a copy of both the letter and license in the provider's file.

## **9.9 File Maintenance**

Hard files for each child care center or licensed program are kept centrally at the Diamond Building. Licensing Specialists are responsible for forwarding all information, including

correspondence, monitoring visits, complaint investigations, license reviews, and licenses, to the licensing unit secretary after documenting in FACTS. All hard files should contain the following:

- Checklists for the current two-year licensing period; others can be discarded
- Most recent Administrative Policies and Procedures; outdated versions can be discarded
- Most recent Parent Handbook; outdated versions can be discarded
- Maintain the body of application in sequential order with the most recent on top; maintain all floor plans
- Maintain all correspondence from the center or outside collateral concerning the center
- Maintain correspondence to the center from Licensing with the exceptions of notices for renewal previous to the current two-year licensing cycle
- One copy of each license notice and license
- If the center is in the process of negative action, do not purge any documents less than seven (7) years old
- The initial application and current application always remain with the file. These applications are not purged. All other applications can be archived unless a process of negative action is taking place.

The Licensing Unit secretary maintains the file records and a schedule for the archiving of center files. Licensing Specialists will aid the secretary by preparing files for archiving according to that schedule. For further details, refer to the Record Retention & Disposal 13.2.

### **9.10 Preparing for a Hearing**

If the decision being appealed is based upon an investigation, the Licensing Specialist must prepare a detailed investigation summary for legal or program review.

Detailed summaries include: timeline, interviewees with their statement summaries, records or documents reviewed, information from those documents that contributed to the findings, times and dates of observations, what was observed and the response of the owner/director or staff to the investigation.

If the hearing concerns the appeal of a revocation or non-renewal, the Licensing Specialist will prepare a similar detailed summary that includes a timeline of progressive steps (with results, if any) taken with the center prior to the decision to take the negative action.

Any contact with the center after the director/owner has requested a hearing should be coordinated through the Program Manager and/or regional attorney that will assist the Licensing Specialist with the hearing. The attorney may direct any further contact or may advise that the Specialist can proceed with contact. Any activity or contact with the center after the negative action is appealed is to be recorded in the record as soon after the contact as is possible.

### **9.11 Freedom of Information Act (FOIA) Requests**

The State statute on public records, known as the [Freedom of Information Act](#) was enacted for the express purpose of providing full and complete information to all persons about the workings of government and the acts of those who represent them as public officials and employees. The Act applies to all State, county and municipal officers, governing bodies, agencies, departments, boards

and commissions, and any other bodies created or primarily funded by State or local authority, unless their enabling statute specifically exempts them from its provisions. The records covered by the Act include virtually all documents and information retained by a public body, regardless of their form.

Public records are available to every person for inspection or copying when there has been a request made to the custodian, and when they are not specifically exempted from disclosure. There is no statutory requirement that the request be in writing; however whenever possible, a written request is advisable in order to avoid misunderstandings regarding the timing and scope of the request, and to ensure that the information sought is stated "with reasonable specificity," as required by W. Va. Code § 29B-1-3(d). The custodian must respond within five (5) working days by either granting the request or giving written reasons for its denial. Citizens may be charged a reasonable fee for the costs of copying records.

When the Licensing Specialist receives a request for records under the FOIA, the request needs to be forwarded to the Program Manager. The Program Manager will forward the request to the Assistant Attorney General for the Bureau with a copy to the Program Manager II and ECE Director. The Program Manager and the Licensing Specialist will compile the requested information from the FACTS record and the hard file, make a copy of the material, review and redact as needed, then make another copy of the material with the redactions. It is then given to the Assistant Attorney General for forwarding to the requestor. The Attorney General will compose a cover letter and indicate to the requestor how to submit payment for the copy.

Requests believed to exceed five (5) days to fulfill will require an extension. The extension will be requested through the Assistant Attorney General with the WV DHHR Bureau for Children & Families.

Information to be redacted in the record includes, but may not be limited to children's names, social security numbers, tax identification numbers, financial account numbers, criminal history background check results, abuse and neglect background check results.

There are times when the FOIA request includes a request for all Department records related to the subject. The Licensing unit only provides the portion of information that is related to regulatory activity even though we may have access to other types of Department information. The Assistant Attorney General will be responsible for collecting the information required from other units or Bureaus. This includes IIU investigations. The FOIA request and preparation of the record needs to be recorded in FACTS when it is regarding a specific provider. The hard copy of the request and the hard copy of the Assistant Attorney General's response is filed in the hard file.

### **9.12 Waiver and Variance Process**

A variance or waiver to regulation must be submitted in writing to the Department. Typically, the request is sent to the center's Licensing Specialist by the center director or licensee. The specialist needs to review the written request to determine if sufficient information has been provided and then needs to present the request at the next unit meeting. The Specialist needs to make a recommendation with justification of why the request should be granted or denied. After unit discussion, the Program Manager will approve, request further information, deny or determine that



further review by the Division director is required. The Licensing Specialist must provide a written response to the request after a decision has been made and must document the request and decision in the FACTS record within fourteen (14) working days.

## **CHAPTER 10: PROVIDER REGULATION: Out-of-School Time Registration**

### **10.0 Out-of-School Time Registration**

Not all Out-of-School Time programs must be licensed, but per [§49-2-113(h)] all Out of School Time programs must register with the Department. This registration is not a licensing process. Out-of-School Time programs are to complete the Out-of-School Time Registration and submit the completed form to the Division. To register a program, the assigned Registration for OST programs is to occur annually. Therefore, upon initial registration, a registration number will be assigned each program and the program will only need to submit changes and updates in the years following the initial registration.

**10.0.1 Registration of Exempt Out-of-School Time Programs** – The Out-of-School Time Registration form will be submitted to the Division of Early Care and Education for processing. After review of the Registration form, the assigned staff member will determine if the program is exempt or nonexempt from child care licensing.

Should a program be determined to be exempt from licensing, the program is sent an Out-of-School Time Confirmation Letter noting that the program is exempt from licensing, with the program's registered identification number and information regarding the requirement for annual registration.

The initial information from the Out-of-School Time Registration form for the exempt program will be added to the Out-of-School Time Program Registry.

**10.0.2 Licensing of Non-Exempt Out-of-School Time Programs** – Should an Out-of-School Time Program be determined to be nonexempt from child care licensing, an Out-of-School Time Confirmation Letter will be sent to the child care licensing unit secretary via email and copied to the Program Manager with a request for the child care licensing unit secretary to mail the confirmation letter, a Market Rate Survey and an Initial License Application to the program for completion. The Out-of-School Time Registration Form will serve as the Letter of Intent. Once the assigned Licensing Specialist is notified, the procedures for licensing a program are followed.

**10.0.3 Annual Registration of Exempt and Non-Exempt Out-of-School Time Programs** – All Out-of-School Time programs must register on an annual basis whether exempt or nonexempt.

**10.0.3.1 Exempt Out-of-School Time Programs** – The assigned staff member within the Division will notify in writing (either via email or mail) sixty (60) days prior that it is time for annual registration of the program. The letter or email will include the link for the program to download the registration form (<https://dhhr.wv.gov/bcf/Childcare/Pages/default.aspx>). Once the program has completed the form, it will be returned to the Division to update program information in the Out-of-School Time Registry.

**10.0.3.2 Nonexempt Out-of-School Time Programs** – When an Out-of-School Time program is found to be nonexempt, the licensing specialist will have the program update the registration form during an annual monitoring inspection. The licensing specialist will then submit the completed registration form to the assigned staff member to update program information in the Out-of-School Time Registry.

During those years when a nonexempt Out-of-School Time program is to renew their license, the registration form will be included with the renewal application. The program will submit the completed registration form at the same time the renewal packet is submitted. The licensing specialist will submit the completed registration form to the assigned staff member to update program information in the Out-of-School Time Registry.

## **CHAPTER 11: CORRECTIVE ACTION PLANS FOR CHILD CARE PROVIDERS**

### **11.0 Overview: Reasons for Issuing a Corrective Action Plan**

A Corrective Action Plan is used for the following reasons:

- A.** A minor non-compliance exists, which usually can be corrected within 30 – 90 days, does not present risk of harm and does not require placement on a provisional certificate or license.
- B.** A provisional certificate of registration or license is issued. A corrective action plan shall be issued that cites specific requirements and describes action necessary to restore or issue the regular certificate of registration or license. If more than one requirement is cited, deadlines for corrections to be made may vary.
- C.** A complaint investigation or CPS investigation identifies non-compliances or areas of concern. This type of corrective action plan usually falls within A or B above.

### **11.1 Elements of a Corrective Action Plan**

A corrective action plan states how the provider will correct the violation(s), how the provider will assure it will not re-occur, and who is responsible for implementing and monitoring the plan.

A corrective action plan must contain the following information:

- A.** A citation indicating the identified noncompliance;
- B.** The description of the identified noncompliance;
- C.** The start date for the corrective action;
- D.** The date for completion or monitoring the noncompliance based on the seriousness of the violation;

The Plan for Correction – a statement given by the provider during an inspection as to how the correction will be accomplished to meet compliance. The status of the plan for correction, the person responsible for monitoring the plan for correction, and the information is entered into the Corrective Action Plan screens Plan for Correction tab. When the provider submits a plan for correction after an inspection, the plan is imported into the FACTS provider file cabinet and entered as a Contact.

### **11.2 Procedures for Corrective Action for Child Care Regulatory Staff**

#### **11.2.1 Procedures During Evaluation**

During on-site evaluations, the child care regulatory staff should complete the appropriate checklist.

The child care regulatory staff will need to note the corrective action to be taken on the comments section of the checklist.

When a noncompliance is identified that requires corrective action, verbal notification is to be given to the provider during the visit. Verbal notification should include identification of the specific noncompliance noted and a discussion of methods for correction. If a number of methods for correction exist, the provider and regulatory specialist shall discuss and jointly agree on the alternative that best meets the needs of the children and the provider.

Written notification of the identified noncompliance is to be done using the Corrective Action Plan (CAP). The CAP is to be sent to the provider within ten (10) working days of the verbal notification. The noncompliance to be corrected is to be listed with a date for the completion, not to exceed ninety (90) days from receipt of the verbal notification. Longer time frames may be permitted with supervisory approval.

#### **Child Care Center:**

- (A) If the required corrections have not been made within the timeframe set by the child care licensing specialist in conjunction with the provider, the Licensing Specialist and Program Manager will determine if negative action is warranted.

#### **Family Child Care:**

- (A) If the required changes have not been made within the time frame set by the family child care regulatory specialist in conjunction with the provider, the provider shall be notified in writing, advising the provider of the Department's intention to close the home within thirteen (13) days.
- (B) Family child care regulatory specialists should notify their local CCR&R of the impending closure.
- (C) If the provider makes the required corrections within the thirteen (13) days prior to closure, the regulatory specialist should cancel the closure notice in writing and notify the CCR&R of such cancellation.

#### **11.2.2 FACTS Data Entry**

The checklist and the corrective action are placed in FACTS and the child care regulatory staff sends a copy of the Corrective Action Plan along with a notification to the provider within ten (10) working days.

#### **11.2.3 Areas of Concern**

The Corrective Action Plan also contains language to indicate that the worker has identified an area of concern with regard to a condition/activity not covered in the rules. An area of concern is not a non-compliance issue and cannot be enforced as such. Areas of concern are handled by provision of technical assistance.

#### **11.2.4 Agreement on Action**

Corrective action can be discussed with the provider and an acceptable resolution meeting the requirement(s) can be reached. The child care regulatory staff has the authority to make final decisions on the proposed resolution.

### **11.2.5 Alternative Actions**

There are times when the Corrective Action Plan needs to state an alternative action and/or temporary resolution by the provider during the time the correction is being made to ensure a safe environment.

### **11.2.6 Follow-Up on Corrective Action**

Child care regulatory staff must follow up on Corrective Action Plans to determine if the noncompliance has been achieved by the due date on the plan. Failure to comply with the plan may result in a denial or revocation of the license or certificate of registration.

## **CHAPTER 12: ADMINISTRATIVE HEARINGS**

### **12.0 Overview**

The West Virginia Public Welfare Law and subsequent administrative actions have guaranteed an applicant for or a recipient of Social Services the right to a hearing concerning an action taken by the Department.

### **12.1 Grievances**

Family child care providers and family child care facility and center licensees have the right to file a grievance. A grievance is any complaint by a client or recipient of services of the agency who is receiving special services with regard to:

1. His/her treatment by agency personnel, (a worker or supervisor), or
2. Any other concern about his/her situation as related to the service programs of the agency which the client or recipient of services would like to have resolved.

Grievances by providers of service are different from grievances by clients of the agency in that they relate to the agency's decision not to use the service a person is willing to offer. By way of example:

1. The grievance would usually relate to the agency's decision not to enter into a Provider Service Agreement or contract because it does not meet Department standards;
2. Another group it would pertain to would be those who provide service to clients of the Department of Human Services in their own homes; e.g., in home day or chore service.

Individuals or families who apply to become providers of service should be afforded the opportunity to initiate a grievance hearing at any point in their contact with the agency should they feel a situation is not being understood and assessed fairly by the worker.

### **12.2 Fair Hearings**

Grievances should not be confused with the client's or recipient of services right to appeal his/her exclusion from or inclusion in a service program against his/her will or the agency's failure to take into account the recipient's choice of service. Procedures regarding the client's or recipients of services right to this type of Fair Hearing is explained in Chapter 700 of the Common Chapters Manual.

Every child care client and provider has the right to request a hearing concerning actions taken by the Department or CCR&R workers. The State Board of Review is designated by State Law as the body through which a client or provider may present his/her case to a higher authority. The State Hearing Officer is an impartial official who has not been directly involved in any determination of the action in question.

### **12.3 Reasons for Hearings**

Any action which is considered a negative action on the licensure or registration of a child care provider can be a cause for a hearing request. Reasons for hearings fall generally into four categories: denial, conditions placed on the license or registration, revocation, and delay.

**12.3.1 Denial** – Any time a provider or licensee claims he or she was excluded from providing or receiving services, including:

**12.3.1.1** Denial of the right to apply.

**12.3.1.2** Denial of certificate of registration or license.

**12.3.1.3** Denial of opportunity to correct non-compliance.

**12.3.1.4** Denial of benefits due to race, color or national origin, age, sex, religious creed, political beliefs, or disability.

**12.3.2 Conditions** – Any time the level of service is reduced or limited.

**12.3.3 Revocation** – Any time licensure or registration is discontinued by an action of the Department.

**12.3.4 Delay** – Any inaction or failure to abide by established timeframes to approve/deny a provider's application.

## **12.4 Adequate and Timely Notice of Decisions**

Adequate notice of a decision affecting benefits are mailed or provided in writing in a face-to-face contact, to the applicant. Child Care Resource and Referral agencies are required to provide notice at least thirteen (13) days before the effective date of any action or decision which may be adverse to the recipients of child care assistance and to the provider or licensee regarding participation in the child care subsidy program. The regulatory actions taken by the Department do not require a 13-day notice, but typically will follow the same notification period so that families may have time to arrange for another child care provider if necessary, and allow time for the provider or licensee to formulate a plan in response to the notice. In certain situations, immediate closure of the child care service may be necessary to protect the health and safety of the children.

### **12.4.1 Required Notice Information**

The notice must include the following information:

**12.4.1.1** The action or proposed action to be taken.

**12.4.1.2** The reasons for the action provided in terms readily understandable by the provider/licensee, including if the Department has determined that children are at risk of harm or if the Department has determined the provider is unable or unwilling to be compliant with regulation.

**12.4.1.3** Citation of relevant code and/or regulation supporting the action taken or proposed.

## **12.5 Pre-Hearing Conferences**



Any person requesting a hearing shall have the right to a pre-hearing conference with the Program Manager or Family Child Care Regulatory Supervisor and child care regulatory staff person involved in the decision making process on the child care service provider's case. Pre-hearing conferences are encouraged and there must be good cause for the Program Manager or Supervisor not to offer one, as some issues can be resolved in this manner without proceeding to a hearing. At no time shall the applicant be discouraged from pursuing the right to a fair hearing.

#### **12.5.1 Release of Information**

Regulatory notices are public record and the licensee or registrant has a right to any and all regulatory documents that pertain to the license or registration. Certain work documents are not included in this category and the child care regulatory staff should consult with the Department's legal representation if there is a question as to what may be released.

#### **12.5.2 Time Limits for Requesting and Scheduling a Hearing or Pre-Hearing Conference**

Applicants shall be allowed 30 days from the date of the notification letter to request a hearing or pre-hearing conference. The request should be in writing, but a verbal request is to be honored and documented. The Program Manager should offer and schedule the pre-hearing conference as early as is convenient for the provider and the Department.

If, after 30 days, no response has been received from the applicant/provider/licensee, the negative action is considered concluded.

### **12.6 Procedures for Handling Request for a Hearing**

Requests should be made in writing, using the hearing request form included with the notification letter. However, verbal requests are to be honored and documented.

A pre-hearing conference shall be offered, and scheduled, if accepted.

The worker shall submit a (IG-BR-29) Hearing/Grievance Record Information Form, copy of the notification of negative action sent to the client, and copy of the client letter requesting a hearing regarding decision. The documentation should be scanned and emailed to the Board of Review within 48 hours of the hearing request.

### **12.7 Hearing Preparation**

If the licensee/registrant has indicated that legal representation has been obtained, the Program Manager must notify and include in the hearing preparation the Department's legal representative.

The hearings officer will mail notice of the hearing to both parties. The hearings officer may include instructions for submitting exhibits, documents, and other records pertaining to the case. The hearings officer may request copies be provided to the BOR and the provider. The worker should keep a copy of all documents given to BOR and provider supporting the Department's decision.

Before attending the hearing, the worker should put evidence in chronological order. Evidence should be clear and concise, and show what actions were taken in the case, and when, step by step.

The child care regulatory staff must be familiar with child care regulation and rationale relevant to the decision and be able to cite regulation, law and policy, if applicable.

### **12.8 During the Hearing**

Be punctual, professional, and prepared. Never make the hearings officer wait.

The Department has the right to request that witnesses be removed from the room so that testimony will not be tainted.

The hearings officer will discuss the procedures at the beginning of the hearing. The Department will present first, as the agency bears the burden of proof for the action taken. Always address the hearings officer and speak clearly and loudly enough for the tape recorder.

If the provider is not being represented by legal counsel, then the child care regulatory staff will also proceed without legal counsel. If the provider indicated that legal counsel would not be present, but then does bring legal counsel, the Department staff is to request a continuance so that the Department's legal representative may also be present.

If there is not legal representation, the Department staff will follow the instruction of the Hearing Examiner in proceeding; most likely that will include a statement such as: "My name is \_\_\_\_\_. I work for \_\_\_\_\_. I have worked for the Department for \_\_\_\_\_ years/months/days." The worker should also introduce any witnesses for the Department.

Present the case using exhibits and witnesses as needed. If the agency or staff made an error, admit it.

Once the Department is finished, the client or provider who filed the hearing request will have the opportunity to present their evidence.

The provider may also choose to cross-examine the Department. The child care regulatory staff should answer questions directly, but do not answer questions on which there is no personal knowledge or on actions not taken.

The child care regulatory staff should object to any misrepresentations by the provider – if the provider makes a statement that the staff knows is false or is a misstatement, make sure that it is addressed when the staff cross-examines the provider. The staff will also have the opportunity to present rebuttal testimony.

Closing statements – the Department may make a closing statement summarizing the Department's position and requesting that the Department's decision be upheld.

The hearings officer may then end the hearing and render a decision within 90 days.

The hearings office will render a decision within 90 days.

Both the Department and the licensee/registrant have the right to appeal the hearings officer's decision.

### **12.9 Denial or Dismissal of Hearing**

Hearings may be denied or dismissed if either of the following occurs:

Withdrawal – The Hearing Officer may dismiss a request for hearing if the client or provider withdraws the request in writing.

Abandonment – The Hearing Officer may dismiss a request for a hearing if the client or provider fails to appear at a scheduled hearing without good cause.

The request for a hearing is based solely upon policy or regulation and is not based on an action by the Department that is a negative or unfair action.

## CHAPTER 13: RECORDING PROCEDURES

### 13.0 Introduction

Information on providers shall be recorded in FACTS and on forms prescribed by the State Division of Early Care and Education. DHHR shall maintain records related to provider regulation in DHHR files. All significant contacts made with providers are to be entered into the FACTS record.

### 13.1 Filing Procedures

Provider files shall be saved to FACTS. If a form is created or completed by the DHHR staff or R&R staff then it shall be imported into the FACTS file cabinet. All paper documents shall be noted in Document Tracking, maintained.

#### Family Child Care Provider File

##### A. Narrative Block

- 1) ECE-CC-7 Information on Child Care Provider
- 2) ECE-CC-8 Application to Operate a Child Care Home
- 3) ECE-CC-9 Family Child Care Registration Checklist
- 4) DAY-0577 Certificate of Registration (Must be saved in FACTS)
- 5) ECE-CC-15 Application to Operate a Family Child Care Facility
- 6) ECE-CC-16A Family Child Care Facility Checklist
- 7) DAY-0576 Statement of License (Must be stored in FACTS)
- 8) ECE-CC-33 Disaster Planning Form
- 9) ECE-CC-10J Pet Acknowledgement Form

##### B. Legal Block

- 1) DAY-0546 Child Care Provider Services Agreement (original)
- 2) W-9 Provider Tax Identification Reporting Form

##### C. Training Block

- 1) CPR/First Aid Verification
- 2) Pre-Service Training
- 3) Professional Development Certificates or WV STARS Training Transcript

##### D. Correspondence Block

- 1) DAY-0503 Notification of Provider Regulatory Status
- 2) DAY-0618 Notification of Provider Approval Status
- 3) ECE-CC-10F Provider Notices to Agency
- 4) All correspondence with or about provider

#### Child Care Center Licensing Provider File

- A. Correspondence
- B. Monitoring
- C. Complaint
- D. Renewal
- E. Licenses
- F. Initial Application

### **13.2 Record Retention and Disposal**

The current Retention and Disposal Schedule indicates that child care services provider records shall be retained for seven years after closure. However, if any litigation, claim, negotiation, audit, disallowance action, or any other action involving the record has been started before the end of the seven year retention period, the record shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the seven year period, whichever is later.

Case records pertaining to ongoing or completed fraud investigations shall be retained until seven years after the conclusion of the investigation and the resolution of any action that arises from it.

Case records which have met the required retention period shall be destroyed. Destruction of case records will be accomplished by shredding. Document destruction will be suspended immediately, upon any indication of an official investigation or when a lawsuit is filed or appears imminent.

#### **Applies To:**

Child Care Centers, Out of School Time, Family Child Care Facilities and Family Child Care Homes  
Programs with an initial, regular license or certification