

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I and II and the amendment of	)	PROPOSED ADOPTION AND
ARM 37.95.102, 37.95.103,	)	AMENDMENT
37.95.106, 37.95.108, 37.95.115,	)	
37.95.117, 37.95.140, 37.95.160,	)	
37.95.163, 37.95.622, 37.95.702,	)	
37.95.703, 37.95.704, 37.95.718, and	)	
37.95.1005 pertaining to child care	)	
licensing	)	

TO: All Concerned Persons

1. On October 28, 2021, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82419567565>; meeting ID: 824 1956 7565; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 824 1956 7565. Find your local number: <https://mt-gov.zoom.us/j/82419567565>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 14, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I RELATIVE CARE EXEMPT (RCE) PROVIDERS: REQUIREMENTS AND PROCEDURES (1) The applicant shall provide relative care to a child as defined in ARM 37.95.102.

(2) The applicant and all adults who reside in the applicant's home must provide authorization for background checks pursuant to ARM 37.95.161.

(3) An application shall be denied for reasons identified in ARM 37.95.176 and for the following reasons:

(a) parent and provider reside at the same residence and the proposed caregiver is not an approved relative caregiver;

- (b) applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, or national origin of the parent or the child; or
- (c) the background check process has exceeded 90 days.
- (4) RCE providers must also meet the following requirements to be registered under this chapter:
  - (a) be 18 years of age or older;
  - (b) limit the care they provide to a period of less than 24 consecutive hours;
  - (c) may care for either a sibling group of any size or no more than two children from separate households;
  - (d) complete orientation approved by the department that includes health and safety training;
  - (e) complete a health and safety review course at least every three years;and
  - (f) complete pediatric first aid and CPR.
- (5) Care can only be provided in the child's home as defined in ARM 37.80.208.

AUTH: 52-2-704, MCA

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

- NEW RULE II IDENTIFYING AND PREVENTING SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA (1) In addition to all forms of prohibited discipline listed in ARM 37.95.606 and 37.95.715(4), shaking an infant or child of any age is strictly prohibited.
- (2) A child care facility must have a written policy on identifying and preventing shaken baby syndrome and abusive head trauma. The policy must include the following:
    - (a) how the child care facility will ensure all early childhood teachers and caregivers are knowledgeable about and able to recognize the signs and symptoms of shaken baby syndrome and abusive head trauma;
    - (b) procedures for coping with a crying, fussing, or distraught infant or child;and
    - (c) mandatory reporting of suspected child abuse and neglect as defined in ARM 37.95.171.
  - (3) All child care facility staff must sign an acknowledgement indicating that they have read, understood, and agree to follow the child care facility's policy outlined in (2).

AUTH: 52-2-704, MCA

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

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

- 37.95.102 DEFINITIONS (1) through (3) remain the same.
- (4) "Child care facility" is the same as "Day-care facility" as defined in 52-2-703, MCA. ~~In addition to the previous definitional language found at 52-2-703, MCA,~~

~~the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider.~~

(5) remains the same.

(6) "Day care center" means an out-of-home place in which day care is provided to ~~43~~ 16 or more children on a regular basis.

~~(7) "Day care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis, or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:~~

~~(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA; or~~

~~(b) any group facility established chiefly for educational purposes that limits its services to children who are three years of age or older. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider is defined in 52-2-703, MCA.~~

(8) "Delayed renewal application" means a renewal application which is submitted to the department prior to the certificate expiration date, ~~but is submitted~~ in an incomplete manner, resulting in a delay in the issuance of the certificate.

(9) through (15) remain the same.

(16) "Family child care facility" is the same as a "Family ~~child~~ day care home" as defined in 52-2-703, MCA. The department may refer to a family day-care home as a family child care home. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided exclusively for children under age two. For facilities providing care exclusively to children under age two, a family child care home means a place in which supplemental parental care is provided for up to four children under the age of two. No other children shall be in attendance.

(17) "Family, Friend, and Neighbor care (FFN)" is a child care provider type that provides care to no more than ~~two~~ four children from separate families or all children from a "sibling group." ~~Care may be in the child's home or the provider's home and registration is for payment purposes as provided in 52-2-713, MCA.~~

(18) through (48) remain the same.

(49) "Safe sleep environment" means an environment where an infant is placed in a safety-approved crib with a firm mattress and a firmly fitted sheet or a

safety-approved play yard for all naps. For children one year of age or over, a nap mat may be used ~~as long as compliance~~ only when compliant with ARM 37.95.1005 ~~is met~~. The infant must be placed on their back and only a lightweight blanket is allowed with the infant. The infant should be dressed in safe garments and provided a smoke-free environment.

(50) through (60) remain the same.

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

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.103 FAMILY, FRIEND, AND NEIGHBOR (FFN) AND RELATIVE CARE EXEMPT (RCE) PROVIDERS: REQUIREMENTS AND PROCEDURES

(1) through (3) remain the same.

(4) FFN providers must also meet the following requirements to be registered under this chapter:

(a) and (b) remain the same.

(c) may care for either a sibling group of any size or no more than ~~two~~ four unrelated children;

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

(e) hold current certification for infant, child, and adult CPR, infant choking response, and ~~standard~~ pediatric first aid. CPR certification must be completed in a hands-on setting;

(f) through (5) remain the same.

~~(6) FFN providers must meet the applicable requirements of ARM 37.95.115, 37.95.121, 37.95.124, 37.95.126, 37.95.127, 37.95.171, 37.95.172, 37.95.182, 37.95.184, 37.95.706, 37.95.708, 37.95.1001, 37.95.1003, 37.95.1005, 37.95.1011, 37.95.1015, and 37.95.1016.~~

~~(7) RCE providers are exempt from (4)(e) and (f), (5), and (6).~~

(6) Care can only be provided in the child's home as defined in ARM 37.80.208. If care is provided in the child's home, monitoring the home as outlined in (5) applies.

(7) An FFN is required to have day care parent information as listed in ARM 37.95.115.

(8) An FFN must follow the health and safety requirements at the child care location as outlined in:

(a) facility safety requirements defined in ARM 37.95.121;

(b) emergency disaster and action plan defined in ARM 37.95.124;

(c) a smoke-free environment defined in ARM 37.95.126;

(d) swimming as defined in ARM 37.95.127;

(e) fire safety as defined in ARM 37.95.706; and

(f) other health requirements outlined in ARM 37.95.708.

(9) An FFN is a mandatory reporter of suspected child abuse and neglect as defined in ARM 37.95.171 and required to supervise children at all times as defined in ARM 37.95.172.

(10) An FFN is required to store and administer medication as outlined in ARM 37.95.182 and follow health habits as outlined in ARM 37.95.184.

(11) An FFN must follow infant and toddler health and safety requirements as outlined in:

(a) diapering and toilet training in ARM 37.95.1001;

(b) feeding in ARM 37.95.1003;

(c) sleeping in ARM 37.95.1005;

(d) activities in ARM 37.95.1011;

(e) outdoor activities in ARM 37.95.1015; and

(f) equipment standards in ARM 37.95.1016.

AUTH: 52-2-704, MCA

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

37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING

(1) Any individual, agency, or group may apply for a license to operate a child care center, or may apply for a registration certificate to operate a family child care facility or a group child care facility. Applications may be obtained from the Department of Public Health and Human Services, ~~Quality Assurance Division, Licensure Bureau, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953~~ Early Childhood and Family Support Division, Child Care Licensing Program, P.O. Box 4210, Helena, MT 59620-4210 or at <https://dphhs.mt.gov/ecfsd/childcare/childcarelicensing>.

(2) through (8) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 53-4-504, 53-4-507, MCA

37.95.108 CHILD CARE FACILITIES, REGISTRATION, AND LICENSING PROCEDURES (1) through (5) remain the same.

(6) The department may not issue a provisional registration or license to any child care facility ~~which~~ that does not have current public liability insurance and fire insurance.

(7) Regular registration certificates and licenses are issued from the department's ~~Quality Assurance Division licensure bureau~~ for periods up to three years.

AUTH: 52-2-704, MCA

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

37.95.115 DAY CARE PARENT INFORMATION (1) remains the same.

(2) A day care facility shall post a copy of the facility registration or license and the phone number of state and local ~~quality assurance division~~ Early Childhood and Family Support Division offices in a conspicuous place. Parents should be encouraged to contact the division if they have questions regarding the license or the day care regulations.

(3) remains the same.

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

37.95.117 CHILD CARE FACILITIES, JOINT PROGRAMS (1) Any day care facility ~~which~~ that operates a day care program in connection with another non-day care program on the same premises must have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services.

(2) remains the same.

(3) If multiple programs, including multiple day care programs or facilities in the same building, increase the number of people regularly in the building to more than 12 individuals, all fire, safety, and sanitation requirements ~~which~~ that may be impacted must be complied with by the day care facility.

(4) Persons, corporations or organizations may be licensed or registered for more than one day care facility if facility sites, staff, and space are completely separate from one another.

(a) through (d) remain the same.

(e) If the facility is licensed or registered as a day care facility, ~~but also and~~ serves as a foster care home, the department's child and family services (CFS) regional administrator and ~~quality assurance division (QAD)~~ Early Childhood and Family Support Division (ECFSD) must both approve the dual license or registration.

AUTH: 52-2-704, 53-4-503, MCA  
IMP: 52-2-731, 53-4-504, MCA

37.95.140 IMMUNIZATION (1) through (10) remain the same.

(11) A child is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization otherwise required by (1) ~~of this rule~~ is medically contraindicated will exempt a child from those immunization requirements as deemed necessary by the physician. It is preferred, but not mandatory, that a physician's medical exemption be recorded on HES-101, ~~and~~ Medical exemption documentation must include:

(a) through (d) remain the same.

(12) A child experiencing homelessness or a child in foster care is exempt from required immunizations outlined in (1) for a 30-day grace period beginning the first day the child attends a child care facility as verified on the sign-in/sign-out records.

(a) The child experiencing homelessness must meet the definition in Section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. 11434a) (98.2).

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

(c) A child must meet the immunization requirement for conditional enrollment outlined in (7) before the end of the 30-day period.

(d) A child may not be granted grace periods consecutively.

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

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

37.95.160 CHILD CARE FACILITIES: STAFF RECORDS (1) The director must maintain records regarding each staff member, according to their role type, which include:

- (a) verification of CPR and pediatric first aid training;
- (b) remains the same.
- (c) health statement and contact information; ~~and~~
- (d) immunization records that establish compliance with ARM 37.95.184- ;

and

(e) acknowledgement of and agreement to follow the child care facility's policy on identifying and preventing shaken baby syndrome and abusive head trauma.

AUTH: 52-2-704, MCA

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

37.95.163 CHILD CARE FACILITIES: EARLY CHILDHOOD TEACHER ORIENTATION TRAINING (1) remains the same.

(2) Within 30 days of hire, ~~teacher orientation which includes~~ the following training must be completed as part of teacher orientation:

(a) current certification for infant, child, and adult CPR, infant choking response, and ~~standard~~ pediatric first aid. CPR certification must be completed in a hands-on setting;

(b) through (e) remain the same.

(3) Within 90 days of hire, ~~teacher orientation which includes~~ the following training must be completed as part of teacher orientation:

(a) through (4) remain the same.

AUTH: 52-2-704, MCA

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

37.95.622 CHILD CARE CENTERS: STAFFING QUALIFICATIONS

(1) remains the same.

(2) An early childhood lead teacher must meet the following requirements:

(a) through (c) remain the same.

(d) have current certification for infant, child, and adult CPR, ~~and~~ infant choking response, and ~~standard~~ pediatric first aid. CPR certification must be completed in a hands-on setting;

(e) through (6) remain the same.

AUTH: 52-2-704, MCA

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

37.95.702 GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING AND ADDITIONAL REQUIREMENTS (1) Except for approved overlap

care, there shall be at least two caregivers caring for the children at all times when there are more than ~~six~~ eight children present at the home.

(2) through (6) remain the same.

AUTH: 52-2-704, MCA

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

37.95.703 GROUP AND FAMILY CHILD CARE FACILITIES: DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS (1) remains the same.

(2) The director must meet the following requirements:

(a) through (f) remain the same.

(g) have current certification for infant, child, and adult CPR, infant choking response, and ~~standard~~ pediatric first aid. CPR must be completed in a hands-on setting; and

(h) through (6) remain the same.

AUTH: 52-2-704, MCA

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

37.95.704 GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES (1) remains the same.

(2) Directors and early childhood teachers must:

(a) through (c) remain the same.

(d) have current certification for infant, child, and adult CPR, infant choking response, and ~~standard~~ pediatric first aid; CPR certification must be completed in a hands-on setting; and

(e) through (5) remain the same.

AUTH: 52-2-704, MCA

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

37.95.718 GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP (1) through (3) remain the same.

(4) Overlap care may be approved by the department in situations, such as before and after school, when the number of children in care over three years of age would exceed, for a short period of time, the registered capacity.

(a) and (b) remain the same.

(c) Group day care facilities may be approved to provide overlap care for up to four additional children during the approved overlap time if there are at least two care-givers providing direct care at any time there are more than ~~eight~~ ten children being cared for at the facility.

(d) through (i) remain the same.

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

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

37.95.1005 INFANT AND TODDLER, SLEEPING (1) through (3) remain the same.

(4) Cribs must be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs must have no more than 2 and 3/8 inches of space between the vertical slats. No later than December 28, 2012, all cribs must meet the requirements for full-size baby cribs and non-full-size baby cribs as specified by the Consumer Product Safety Commission at 16 CFR Part 1219 (2011) and 16 CFR Part 1220 (2011), incorporated by these references. A copy of the requirements for full-size baby cribs and non-full-size baby cribs is available at <http://www.dphhs.mt.gov/earlychildhood/cribrequirements.shtml>, or by contacting the Montana Child Care Licensing Program at P.O. Box 202953, Helena, Montana 59620; Phone: (406) 444-2012 <https://www.cpsc.gov>.

(5) through (11) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to adopt New Rule I and New Rule II and proposes to amend ARM 37.95.102, 37.95.103, 37.95.106, 37.95.108, 37.95.115, 37.95.117, 37.95.140, 37.95.160, 37.95.163, 37.95.622, 37.95.702, 37.95.703, 37.95.704, 37.95.718, and 37.95.1005. The department proposes the adoption and amendment of the referenced rules to align with federal regulations in 45 CFR Part 98, meet changes from Senate Bill (SB) 142 as enacted by the 67th Legislature of the State of Montana, and clarify division and address changes.

The department proposes to amend each of the referenced rules as necessary to correct grammar and punctuation, to remove text duplicative of current statutory language, or to clarify rule meaning where necessary. The department believes these changes will make the rules easier to understand.

### NEW RULE I

The department proposes to add a new rule for RCE providers. The department believes a separate RCE provider rule will make the requirements easier to understand.

### NEW RULE II

The department proposes to add a new rule to meet federal regulations, 45 CFR Part 98, 98.41(a)(1). This federal regulation requires that child care facility staff have health and safety training on prevention of shaken baby syndrome, abusive head trauma, and child maltreatment. Child care facility staff are required to take a training course on shaken baby syndrome, but this may not ensure the prevention of shaken baby syndrome, abusive head trauma, and child maltreatment.

Therefore, the department proposes to require a child care facility to have a written policy on identifying and preventing shaken baby syndrome and abusive head

trauma and to have procedures on how to cope with a crying, fussing, or distraught infant or child.

The department proposes child care facility staff would be required to read, understand, and agree to these policies. The department believes these steps will allow both the child care facility and staff to plan on how to deal with a possible frustrating situation to prevent a shaken baby and recognize when a child may have experienced head trauma.

The department proposes to prohibit the shaking of an infant or child. The department intends to add this specific language to ensure the safety of all children in a child care setting.

#### ARM 37.95.102

The department proposes to change the number of children for whom a day care center can provide child care. The number of children changed with SB 142.

The department proposes to remove language in child care facility and day care facility definitions to align the definitions for day care facility in 52-2-703, MCA. The department uses the term "child care facility" interchangeably with day care facility.

The department proposes to change the number of children for whom a Family, Friend, and Neighbor (FFN) license can provide child care. The department believes this increase will help to address lack of child care in Montana.

#### ARM 37.95.103

The department proposes to change ARM 37.95.103 to only include requirements for FFN providers. The list of requirements for an FFN provider has been listed out individually for ease of understanding.

The department proposes to change the number of children for whom an FFN license can provide child care. The department believes this increase will help to address lack of child care in Montana.

The department proposes to change the current requirement of first aid to pediatric first aid for FFN providers. Federal regulations, 45 CFR Part 98, 98.41(a)(1), require child care facility staff take pediatric first aid as a health and safety requirement. The current rule lists first aid as a general course, which may only include first aid for adults. The department proposes to require pediatric first aid to clarify this inconsistency.

#### ARM 37.95.106

The department proposes to remove the address for the Quality Assurance Division (QAD). Applications are available online for any interested individual, agency, or group. The Child Care Licensing Program is now part of the Early Childhood and Family Support Division (ECFSD).

ARM 37.95.108, 37.95.115, and 37.95.117

The department proposes to remove the reference to the QAD. The Child Care Licensing Program is now part of the ECFSD.

ARM 37.95.140

The department proposes to add a 30-day grace period as to immunizations for children experiencing homelessness and children in foster care. Federal regulations, 45 CFR Part 98, 98.41(a)(1)(i)(C), require a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

ARM 37.95.160

The department proposes to change requirements to child care facility staff records. The department proposes to change the first aid training requirement to pediatric first aid training. This will align with ARM 37.95.103, 37.95.622, 37.95.703, and 37.95.704. The department proposes to add acknowledgment of and agreement to follow a child care facility's policy identifying and preventing shaken baby syndrome and abusive head trauma. This will align with proposed New Rule II.

ARM 37.95.163

The department proposes to change the current requirement of first aid to pediatric first aid. Federal regulations, 45 CFR Part 98, 98.41(a)(1), require child care facility staff take pediatric first aid as a health and safety requirement. The current rule lists first aid as a general course, which may only include first aid for adults. The department proposes to require pediatric first aid to clarify this inconsistency.

ARM 37.95.622

The department proposes to change the current requirement of first aid to pediatric first aid for child care center facility staff. Federal regulations, 45 CFR Part 98, 98.41(a)(1), require child care facility staff take pediatric first aid as a health and safety requirement. The current rule lists first aid as a general course, which may only include first aid for adults. The department proposes to require pediatric first aid to clarify this inconsistency.

ARM 37.95.703 and 37.95.704

The department proposes to change the current requirement of first aid to pediatric first aid for family and group home facility staff. Federal regulations, 45 CFR Part 98, 98.41(a)(1), require child care facility staff take pediatric first aid as a health and safety requirement. The current rule lists first aid as a general course, which may only include first aid for adults. The department proposes to require pediatric first aid to clarify this inconsistency.

ARM 37.95.718

The department proposes to change the number of children a group day care home can provide child care for. The number of children increased from eight to ten, following changes from SB 142.

ARM 37.95.1005

The department proposes to remove the address for the Child Care Licensing Program. Requirements for full-size baby cribs and non-full-size baby cribs can be found on the Consumer Product Safety Commission's website.

Fiscal Impact

The department does not anticipate any fiscal impact associated with these proposed rule adoptions and amendments.

The department intends for the proposed adoptions and amendments to be effective retroactively to October 1, 2021.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 5, 2021.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on September 27, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will significantly and directly impact small businesses.

As of June 2021, there were a total of 1,041 child care providers in Montana. This includes 274 licensed child care centers, 205 licensed family providers, 394 licensed

group providers, 37 Family, Friend, and Neighbor (FFN) providers, and 131 Relative Care Exempt (RCE) providers.

As of June 2021, there was a licensed capacity of 19,921 children that could be served by licensed child care centers, family providers, and group providers. The number of children served by FFN and RCE providers varies with each family served.

Child care providers are small business owners. The proposed licensed capacity increases may have a fiscal impact for a child care provider. A child care provider decides on how many children to provide child care for, up to the licensed capacity of the child care provider type. Since a child care provider can determine the number of children he or she provides care for, the small business could increase revenue by providing care for an increased number of children.

There may be a negative impact if a current child care center is participating in the Best Beginnings STARS to Quality Program. The impact only applies to a small number of child care centers. For a negative impact to occur, the child care center must be STAR 2 to STAR 5 level and will now meet criteria for a group day care home rather than a child care center. This would affect a child care center currently licensed to serve 13 to 16 children. Annually, the decrease in incentive monies could be as follows:

- 1) STAR Level 2: \$1,500
- 2) STAR Level 3: \$2,000
- 3) STAR Level 4: \$2,500
- 4) STAR Level 5: \$3,500

The proposed change to training will not have a fiscal impact because there will not be an increase in the cost for training. A first aid course is currently a required course for some child care facility staff. The focus of the course will change but not the cost.

/s/ Heidi Sanders  
Heidi Sanders  
Rule Reviewer

/s/ Adam Meier  
Adam Meier, Director  
Public Health and Human Services

Certified to the Secretary of State September 28, 2021.