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**RULES AND REGULATIONS  
FOR  
DROP-IN CHILD CARE FACILITIES  
RULE #6**

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**RiverStone Board of Health**

**Yellowstone City-County Health Department  
dba RiverStone Health**

**RiverStone Health  
123 S. 27<sup>th</sup> St.  
Billings, MT 59101**

**Adopted March 2014**

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## Preamble

Yellowstone City-County Health Department d.b.a. RiverStone Health, is a multi-jurisdictional service district created under an interlocal agreement among the City of Billings, Montana (“Billings”), the City of Laurel, Montana (“Laurel”), and Yellowstone County, Montana (the “County”), for the purpose of providing a higher level of service than is available through local governments forming such a district and to provide services that are not available through the governments forming such a district. The interlocal agreement creates a City-County Board of Health (the **Board**) which possesses the powers, duties, obligations, and responsibilities granted to local boards of health under Montana Code Annotated § 50-2-101 *et seq.* (“Health Department Functions”). That power includes the authority to appoint a local Health Officer (the **Health Officer**) who possesses the powers and duties enumerated under Montana Code Annotated §50-2-118.

The provisions of Montana Code Annotated §50-2-116 permit the **Board** to adopt rules for control of communicable diseases, for the removal of filth which might affect public health; and to abate nuisances affecting public health and safety or conditions of public health importance.

- (a) standards to ensure sanitation and safety in facilities to protect public health and safety;
- (b) registration of facilities;
- (c) procedures for enforcement of the laws and rules relating to facilities, including the implementation of plans of correction; and
- (d) fees that reflect and may not exceed the actual costs incurred for registration, inspection, enforcement, training, and administration.

At a public hearing and public comment duly held on March 27, 2014, the **Board** found that:

- (a) statutory authority under Montana Code Annotated §50-2-116 permit the **Board** to adopt rules for control of communicable diseases independent of DPHHS;
- (b) there are health and safety risks associated with **Drop-in child care facilities**;
- (c) safe and sanitary conditions in **Drop-in child care facilities** are necessary for the prevention of the transmission of communicable diseases; and
- (d) implementing the provisions of this Rule #6 protects the public health, safety, and welfare by setting forth minimum standards for **Drop-in child care facilities** in Yellowstone County.

Therefore the **Board** adopts the following Rule #6.

## Purpose of Regulations

The purpose of this regulation is to prevent conditions and practices which endanger public health in unlicensed **Drop-in child care facilities**.

### Section 1 – Authority and Scope of Rules

- (1) Authority for this regulation is provided for in Montana Code Annotated §50-2-116 under which a local health board may adopt rules for control of communicable diseases, for the removal of filth which might affect public health; and to abate nuisances affecting public health and safety or conditions of public health importance.
- (2) **Registration** of a **Drop-in child care facility** is not to be construed as being a license that may be required by other offices or agencies in Yellowstone County or by the State of Montana.
- (3) The **Board** may require the **Operator**, through the **Registration** process, verification of compliance, or the ability to comply with other agencies, districts or laws, rules or regulations, where deemed pertinent by the **Board** to protect the **Operator's** interests.

### Section 2 – Effective Date

- (1) Provisions established under this rule shall become effective as of March 27, 2014.

### Section 3 – Definitions

- (1) **“Board”** means the RiverStone Board of Health.
- (2) **“CPR”** means cardio-pulmonary resuscitation.
- (3) **“Critical violation”** means a high-risk **Violation** in health, sanitation or water/wastewater that can adversely affect public health, or does not sufficiently prevent the spread of communicable disease.
- (4) **“Day care”** or **“child care”** means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a **Regular basis** for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. In addition to the definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA.
- (5) **“Drop-in child care facility”** means a facility that meets all of the following criteria:

- (A) It is not licensed or registered by the State of Montana;
  - (B) it offers unscheduled care where the parent/guardian is not on the same **Premises** on an irregular basis not defined in ARM 37.95.102; and
  - (C) it has the primary function of providing care to children ages 0-6 years.
- (6) **“Health care provider”** means a licensed physician, a physician assistant-certified, a nurse practitioner or a naturopathic physician practicing within the scope of their license.
  - (7) **“Health Officer”** means the legally established authority as designated by the **Board** or representative thereof.
  - (8) **“Infant”** means a child under the age of 24 months of age.
  - (9) **“License”** means a written document issued by the Department of Public Health and Human Services Quality Assurance Division.
  - (10) **“Operator”** means the person responsible for the daily operation of the **Drop-in child care facility**.
  - (11) **“Premises”** means the **Drop-in child care facility** and the property immediately adjacent to it used for activities related to the care of children.
  - (12) **“Public water supply system”** means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.
  - (13) **“Public wastewater system”** means a system of collection, transportation, treatment, or disposal of sewage that serves 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year.
  - (14) **“Registration”** means the process whereby the **Board** or its designee maintains a record of all **Drop-in child care facilities**, promulgates rules and requires the **Operator** of a **Drop-in child care facility** to certify compliance with the promulgated rules.
  - (15) **“Registration certificate”** means a written instrument issued by the **Board** to publically document that the **Operator** has certified to the **Board** compliance with this rule. The **Registration certificate** is non-transferrable.
  - (16) **“Regular basis”** means providing day care to children of separate families for any daily periods of less than 24 hours and within three or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance four or more days a week of six hours a day or more.
  - (17) **“Violation”** means any failure to comply with this Rule #6.

#### **Section 4 – State Licensing or Registration by RiverStone Health Required**

- (1) **Drop-in child care facilities** must comply with one of the following:
  - (A) **License** through Department of Public Health and Human Services Quality Assurance Division and operate in compliance with Administrative Rules of Montana, Title 37, Chapter 95, Subchapter 1105; or
  - (B) obtain a **Registration certificate** by registering with RiverStone Health as an unlicensed **Drop-in child care facility** and comply with the rules of this regulation for any number of children in care.
- (2) **Drop-in child care facilities** that choose not to **License** must have an inspection annually by RiverStone Health.
  - (A) The **Drop-in child care facility** shall pay the fee allowed by MCA 52-2-735(5) per inspection.
  - (B) If the **Board** or its designee determines that the **Drop-in child care facility** complies with all the requirements in this regulation, and the **Drop-in child care facility** has paid all fees, a certificate will be issued to the **Drop-in child care facility** valid through the end of the calendar year.
  - (C) The **Drop-in child care facility** shall post the certificate in a location visible to the public.

#### **Section 5 – Water, Wastewater and Solid Waste Disposal**

- (1) A **Drop-in child care facility** shall provide an adequate supply of potable water.
- (2) The water supply system must be either:
  - (A) A **Public water supply system** approved by the Department of Environmental Quality; or
  - (B) a non-public water supply system which meets the requirements of Food and Consumer Safety (FCS) circular 1-2012 when:
    - (I) modifications are made to the water system; or
    - (II) the local health authority determines compliance with FCS circular 1-2012 is necessary to meet the requirements of this subchapter.
  - (C) A non-public water supply system must:
    - (I) test for total coliform and fecal coliform before opening, at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31. Results must be negative for total coliform and fecal coliform; and

- (II) test for nitrate before opening, and every three years.  
Nitrate levels may not exceed 10mg/L.
  - (III) ensure water test(s) are analyzed at a certified laboratory;
  - (IV) maintain sampling result records onsite for at least 2 years and make them available for review; and
  - (V) take corrective action as needed to ensure the water is safe to drink.
- (3) A **Drop-in child care facility** shall provide an adequate wastewater disposal system.
- (A) The wastewater system must be either:
    - (I) A **Public wastewater system** approved by the Department of Environmental Quality; or
    - (II) a wastewater treatment and disposal system constructed and operated in accordance to applicable state and local laws.
  - (B) The Public or non-public wastewater system must be repaired or replaced if:
    - (I) The system fails to accept, treat, or dispose of wastewater as designed;
    - (II) effluent from the wastewater system contaminates a potable water supply or state waters;
    - (III) the wastewater system is subjected to mechanical failure, including electrical outage, or collapse or breakage of a septic tank, lead line or drain field line; and
    - (IV) extensions, alterations, replacement, or repair of any wastewater system must be done in accordance with applicable state and local laws.
- (4) If deficiencies are found during inspection a **Violation** will be assessed. The deficiencies that will result in **Critical violations** include the following:
- (A) Adequate and safe water supply; and
  - (B) proper sewage disposal.
- (5) A **Drop-in child care facility** must provide adequate solid waste disposal by:
- (A) Removing solid waste at least once weekly;
  - (B) storing solid waste in a covered receptacle on an impermeable, cleanable surface; and
  - (C) storing it in a way that does not attract pests and animals.

**Section 6 – Health**

- (1) A **Drop-in child care facility** shall safeguard children's health against infectious disease by:
- (A) Obtaining information from the parent/guardian that includes:
    - (I) Contact information for the child's **Health care provider**;
    - (II) allergen information;
    - (III) a general health statement that says that the child is in relatively good health and has been free from communicable diseases and the symptoms listed in Section 6(1)(B) for at least 24 hours prior to drop off;
    - (IV) emergency contact information for parent/guardians; and
    - (V) proof of immunization current for child's age must be onsite upon 2<sup>nd</sup> visit.
  - (B) Excluding children from the **Drop-in child care facility** if they have the following symptoms upon arrival, during attendance, or in the 24 hours prior to arrival as indicated in the general health statement from the parent/guardian:
    - (I) A fever greater than 101F;
    - (II) vomiting;
    - (III) diarrhea; or
    - (IV) a bacterial infection such as strep throat, scarlet fever, impetigo, conjunctivitis, or a skin infection unless on antibiotics for 24 hours prior.
    - (V) Chickenpox with active sores;
    - (VI) jaundice; or
    - (VII) uncontrollable coughs and sneezes, difficulty breathing, stiff neck, poor food or fluid intake, or other signs of severe or contagious illness.
  - (C) Only admitting children immunized appropriately for their age as per ARM 37.95.140 unless a medical exemption signed by a **Health care provider** is supplied.
  - (D) Reviewing health and contact information to ensure it is kept current.
  - (E) Maintaining a record for at least a year containing the following:
    - (I) The child's name;
    - (II) the parent/guardian's name;
    - (III) the parent/guardian's phone number;
    - (IV) the parent/guardian's mailing address;
    - (V) dates and hours of attendance; and
    - (VI) pertinent medical information such as allergies, medications, chronic diseases etc.



- (2) If children develop symptoms of illness while at the **Drop-in child care facility**, they must be isolated from other children in an area other than the kitchen and the parent/guardian immediately contacted to come retrieve their child.
- (3) Only medications supplied by the parent/guardian with written consent may be administered by **Drop-in child care facility** staff. Medications must be in their original packaging, labeled with the child's name, and have instructions for administration stored with the medication. Medications must be securely stored where children cannot access them.
- (4) At least one **Drop-in child care facility** staff member certified in First Aid and **CPR** must be onsite during all hours of operation.
  - (A) Documentation of this certification must be onsite.
- (5) Emergency numbers must be posted by the phone:
  - (A) Poison Control;
  - (B) fire;
  - (C) police; and
  - (D) 911 or local hospitals.
- (6) **Drop-in child care facility** staff health must be ensured by:
  - (A) Excluding staff with symptoms listed in Section 6(1)(B) above; and
  - (B) having records onsite that demonstrate staff members have current tetanus and MMR vaccinations.
- (7) A first aid kit must be maintained on site and contain the following at minimum:
  - (A) Sterile bandages;
  - (B) a cold pack;
  - (C) scissors;
  - (D) tape and band-aids;
  - (E) tweezers;
  - (F) disposable gloves; and
  - (G) poison control number posted with the kit.
- (8) If deficiencies are found during inspection a **Violation** will be assessed. The deficiencies that will result in **Critical violations** include the following:
  - (A) exclusion or isolation of ill children and staff;
  - (B) onsite **CPR**/First Aid certified staff;
  - (C) proper medication administration and storage;
  - (D) immunized children and staff;
  - (E) handling and cleaning of laundry; and
  - (F) sufficiently stocked first aid kit.

## **Section 7 – General Safety**

- (1) The building must be in compliance with all applicable building and fire codes.
- (2) A child to staff ratio must be maintained at all times:
  - (A) 10:1 for children four years and over;
  - (B) 8:1 for children between 2 and 3 years; and
  - (C) 4:1 for children 0 to two years.
- (3) All toys and equipment must be age appropriate, maintained in a safe condition, and pose no hazard to the children in care.
- (4) All outdoor play areas must be free of hazards with securely anchored play equipment and six inches of ground cover under all equipment with fall-zones of impact.
- (5) Water at children's hand sinks must be between 100-120 degrees Fahrenheit.
- (6) Cleaning supplies and all other chemicals must be labeled and kept in a locked storage device or locked storage unit.
- (7) Potentially dangerous items (including but not limited to tools and sharps) must be kept out of children's reach.

### **Section 8 – Food Safety**

- (1) All **Drop-in child care facilities** located in Yellowstone County that prepare or vend food onsite must comply with Administrative Rules of Montana, Title 37, Chapter 110, Subchapter 2 as authorized by MCA Title 50, Chapter 50, concerning Food Service Establishments with the exceptions noted in (2) below.
- (2) The following residential equipment may be used in place of commercial equipment if they meet the listed criteria:
  - (A) Refrigerators able to hold 41F or lower;
  - (B) freezers able to keep food frozen;
  - (C) dishwashers able to provide a sanitizing cycle capable of reducing pathogens by 99.9% through an uninterrupted heated dry cycle, heated rinse cycle, or chemical sanitizing cycle with 50-100ppm chlorine;
  - (D) cooking and heating equipment able to achieve required food temperatures and comply with building codes;
  - (E) a designated hand sink separate from that used for the bathrooms, bathing, and diapering is required; and
  - (F) a three-compartment sink or dishwasher is not required if a two-compartment sink is available with an extra bin large enough to sanitize dishes that are washed manually.

### **Section 9 – Cleaning and Sanitizing**

- (1) Bathrooms must be cleaned daily with a germicidal cleaner.

- (2) All general surfaces such as tables and chairs must be sanitized daily with 50-100ppm chlorine or other chemical approved by the **Board** or its designee.
- (3) All toys, play surfaces, and manipulatives must be sanitized at least once weekly with a solution of ¼ cup bleach to 1 gallon of water, be rinsed and then air dried. If these items are mouthed, they must be pulled from use and sanitized as described before they can be used again.
- (4) If nap mats are available, they must be cleanable and non-absorbent and sanitized after each use with a solution of ¼ cup bleach to 1 gallon of water.
- (5) If any blankets, pillows, or other bedding items are used onsite, they must be washed after use by one child and before use by another child. If they are washed onsite, they must be laundered in a machine able to reach a 140F initial wash temperature and tumbled dry in a heated cycle, or sent out to a professional laundry service.
- (6) Surfaces in the **Drop-in child care facility** must be easily cleanable and in good repair. Areas that are subject to high-moisture or constant cleaning must be non-absorbent and able to hold up under normal use and required cleaning.
- (7) If deficiencies are found during inspection a **Violation** will be assessed. The deficiencies that will result in **Critical violations** include the following:
  - (A) Cleaning and sanitizing of toys, surfaces, and facility;
  - (B) safe food service; adequate hand washing; and
  - (C) approved diapering procedure or area.

### Section 10 – Diapering and Infant Care

- (1) If cribs are used, they must be cleaned and sanitized after use by one child and before use by another child, and the sheets and blankets changed.
- (2) The approved diapering procedure must be followed:
  - (A) Diapers must be appropriately discarded in a diaper pail, a covered receptacle with a plastic lining that is inaccessible to children or wrapped in plastic bag taken directly outside to the dumpster;
  - (B) hands must be adequately washed at a designated hand sink that is not used for food service. It must be stocked with soap, paper towels, and hot and cold running water;
  - (C) the diapering station must be sanitized after each use with a solution of ¼ cup bleach to a gallon of water; and
  - (D) the diapering station must be cleanable and non-absorbent, and not pose a safety risk to the child.

### Section 11 – Swimming and Wading Pools

- (1) Any swimming pools and swimming areas utilized by a **Drop-in child care facility** located in Yellowstone County must comply with Administrative Rules

of Montana, Title 37, Chapter 115, Subchapters 1-22 as authorized by MCA Title 50, Chapter 53, concerning Public Swimming Pools and Swimming Areas.

- (2) Portable wading pools as defined in ARM 37.95.102 are permitted in the **Drop-in child care facility**.
  - (A) When children are utilizing a portable wading pool an approved caregiver must always be present and actively supervising.
  - (B) If the portable wading pool is filled with water and will sit unused for any period of time prior to use by day care children the caregiver shall equip the wading pool with a barrier to prevent a young child's unsupervised access.
    - (I) A barrier refers to a fence, a wall, or a gate that locks.
  - (C) Portable wading pools must be emptied after the day's use.
- (3) In the event that a portable wading pool as defined in ARM 37.95.102 is used the **Drop-in child care facility** must:
  - (A) drain, clean, sanitize using a solution of ¼ cup bleach to 1 gallon of water, refill with fresh water daily, refill with fresh water as needed; and
  - (B) add one tablespoon of household bleach to 100 gallons of water to the pool on the day of use. Bleach must be added any time the pool is drained and refilled.

### Section 12 – Inspections

- (1) A **Drop-in child care facility** must allow the **Board** or its designee access during reasonable hours to assess compliance with this rule.
- (2) The **Board** or its designee shall inspect **Drop-in child care facility** at least once per year.

### Section 13– Closure

- (1) The **Health Officer** may close a **Drop-in child care facility** under the following conditions:
  - (A) If a disease outbreak is likely associated with the **Drop-in child care facility** and the **Health Officer** deems that closure is necessary to protect public health and/or correct the circumstances contributing to the outbreak;
  - (B) if a **Violation** which creates an imminent or present danger to public health is not corrected immediately to the satisfaction of the **Health Officer**;
  - (C) when a follow-up inspection yields two or more of the same **Critical violations** noted on a previous inspection, and the establishment has

been notified, closure may be a consequence of noncompliance as described in Section 13(2);

- (D) when the **Drop-in child care facility** has not been inspected for compliance, or denies for its designee access to do so; or
  - (E) when the **Drop-in child care facility** has not obtained a State of Montana **License** or a valid certificate from the **Board**.
- (2) Before the **Health Officer** closes a **Drop-in child care facility** the **Board** or its designee shall notify the **Operator** in writing that it may be closed to the public and a closure notice placed at each customer entrance if compliance is not met at the a follow-up inspection to be conducted within 10 working days.
- (3) When the **Health Officer** closes a **Drop-in child care facility** for any reason:
- (A) The **Board** or its designee must deliver a written explanation of the reasons for closure and a copy of any pertinent inspection forms to the **Operator** or person in charge;
  - (B) the closure order is effective upon delivery of the notice, and no children may be admitted. The **Board** or its designee may require the **Operator** to notify parent/guardians of children currently in care to come get them;
  - (C) a conspicuous notice of closure must be posted at each customer entrance; and
  - (D) no person, except under the direction of the **Health Officer**, may remove or alter the notice of closure.
- (4) When a **Drop-in child care facility** has been closed, it may be reopened after 24 hours if:
- (A) The **Operator** submits a written plan of correction to demonstrate there is no imminent health and safety risk(s) to the public, specifying the corrections to be made and time limits for their completion;
  - (B) the **Board** or its designee approves the plan of correction;
  - (C) the **Board** or its designee inspects the establishment and makes a determination that the approved plan of correction is being followed; and
  - (D) the notice of closure previously posted is removed by, or under the direction of, the **Health Officer**.

#### **Section 14 – Severability**

- (1) If any provision of this rule is held invalid, all other valid provisions remain in effect.

## Section 15 – Variance

- (1) An **Operator** may request a variance to waive or modify requirements of this subchapter by petitioning the **Board**. An application for a variance must contain:
  - (A) A statement of the proposed variance from the chapter's requirement, citing the relevant rule numbers; and
  - (B) a rationale explaining how the potential public health hazards addressed by the relevant rules will be alternately addressed by the proposal.
- (2) The **Board** may grant a variance by modifying or waiving the requirements of this rule if, in the opinion of the **Board**, a health hazard will not result from the variance.
- (3) The failure to continuously demonstrate compliance with a variance or modification may result in closure.
- (4) The **Board** reserves the right to deny or revoke a variance if in its judgment, the granting or continuation of the variance will adversely affect public health, safety and welfare or create a potential health risk.

## Section 16 – Violations, Penalties, and Enforcement


- (1) Any registration certificate granted under this rule which is based upon, or is issued in reliance upon, any misrepresentation or failure to make a material fact or circumstance known, or that have been known, by the **Operator** or his or her agent, shall be void.
- (2) Any person who violates any provision of this rule or any provision of any regulation adopted by the **Board** pursuant to the authority granted by this regulation, shall, be subject to applicable civil and criminal penalties as described in Montana Code Annotated §§52-2-741.

## Section 17 – Conflict of Ordinances

- (1) In any case where a provision of this rule is found to be in conflict with a provision of any zoning, building, fire, safety, or health regulation or code of Yellowstone County, or any municipality within Yellowstone County, existing on the effective date of this regulation, the provision which, in the judgment of the **Health Officer**, establishes the higher standard for the protection of the health and safety of the people, shall prevail.

- (2) In any case where a provision of this rule is found to be in conflict with a provision of any other ordinance or code in Yellowstone County, or any municipality within Yellowstone County, on the effective date of this regulation, the provisions of this regulation shall be deemed to prevail and such other provisions of any ordinances or codes are hereby declared to be superseded to the extent that they may be found in conflict with this rule.
- (3) If any Section, paragraph, sentence, clause or phrase of this rule should be declared invalid for any reason, such invalidity shall not affect the remaining portions of this rule, which shall remain in full force and effect, and to this end. The provisions of this rule are hereby declared to be severable.

Passed and adopted by the **Board** this 27<sup>th</sup> day of March, 2014.

  
Board Secretary ~~Secretary~~ Vice-Chair

Attest:

  
Board Chair

