

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **Senate Bill 407**

BY SENATORS TAKUBO, MARONEY, STOLLINGS, AND

PLYMALE

[Introduced January 29, 2018; Referred  
to the Committee on Health and Human Resources; and  
then to the Committee on Government Organization]

1 A BILL to amend and reenact §49-1-203 and §49-1-206 of the Code of West Virginia, 1931, as  
2 amended, all relating to modifying definitions related to licensing and approval of child  
3 care programs; and modifying definitions related to child advocacy, care, residential, and  
4 treatment programs.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

PART II – DEFINITIONS.

**§49-1-203. Definitions related, but not limited to, licensing and approval of programs.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to  
2 them that relate to, but are not limited to, licensing and approval of programs, except in those  
3 instances where a different meaning is provided or the context in which the word used clearly  
4 indicates that a different meaning is intended.

5 “Approval” means a finding by the Secretary of the Department of Health and Human  
6 Resources that a facility operated by the state has met the requirements of legislative rules  
7 promulgated for operation of that facility and that a certificate of approval or a certificate of  
8 operation has been issued.

9 “Certification of approval” or “certificate of operation” means a statement issued by the  
10 Secretary of the Department of Health and Human Resources that a facility meets all of the  
11 necessary requirements for operation.

12 “Certificate of license” means a statement issued by the Secretary of the Department of  
13 Health and Human Resources authorizing an individual, corporation, partnership, voluntary  
14 association, municipality, or county, or any agency thereof, to provide specified services for a  
15 limited period of time in accordance with the terms of the certificate.

16 “Certificate of registration” means a statement issued by the Secretary of the Department  
17 of Health and Human Resources to a family child care home, informal family child care home, or

18 relative family child care home ~~upon receipt of a self-certification statement of compliance with~~  
19 ~~the legislative rules promulgated pursuant to this chapter~~ to provide specified services for a limited  
20 period in accordance with the terms of the certificate.

21 “License” means the grant of official permission to a facility to engage in an activity which  
22 would otherwise be prohibited.

23 “Registration” means ~~the process by which~~ the grant of official permission to a family child  
24 care home, informal family child care home, or a relative family child care home ~~self-certifies~~  
25 ~~compliance~~ determined to be in compliance with the legislative rules promulgated pursuant to this  
26 chapter.

27 “Rule” means legislative rules promulgated by the Secretary of the Department of Health  
28 and Human Resources or a statement issued by the Secretary of the Department of Health and  
29 Human Resources of the standards to be applied in the various areas of child care.

30 “Variance” means a declaration that a rule may be accomplished in a manner different  
31 from the manner set forth in the rule.

32 “Waiver” means a declaration that a certain legislative rule is inapplicable in a particular  
33 circumstance.

**§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and treatment programs.**

1 When used in this chapter, terms defined in this section have the meanings ascribed to  
2 them that relate to, but are not limited to, child advocacy, care, residential, and treatment  
3 programs, except in those instances where a different meaning is provided or the context in which  
4 the word used clearly indicates that a different meaning is intended.

5 “Child Advocacy Center (CAC)” means a community-based organization that is a member  
6 in good standing with the West Virginia Child Abuse Network, Inc., as set forth in §49-3-101 of  
7 this code.

8 “Child care” means responsibilities assumed and services performed in relation to a child’s

9 physical, emotional, psychological, social, and personal needs and the consideration of the child's  
10 rights and entitlements, but does not include secure detention or incarceration under the  
11 jurisdiction of the Division of Juvenile Services pursuant to §49-2-901 *et seq.* of this code. It  
12 includes the provision of child care services or residential services.

13 "Child care center" means a facility maintained by the state or any county or municipality  
14 thereof, or any agency or facility maintained by an individual, firm, corporation, association, or  
15 organization, public or private for the care of 13 or more children for child care services in any  
16 setting, if the facility is open for more than 30 days per year per child.

17 "Child care services" means direct care and protection of children during a portion of a 24-  
18 hour day outside of the child's own home which provides experiences to children that foster their  
19 healthy development and education.

20 "Child placing agency" means a child welfare agency organized for the purpose of placing  
21 children in private family homes for foster care or for adoption. The function of a child placing  
22 agency may include the investigation and certification of foster family homes and foster family  
23 group homes as provided in this chapter. The function of a child placing agency may also include  
24 the supervision of children who are 16 or 17 years old and living in unlicensed residences.

25 "Child welfare agency" means any agency or facility maintained by the state or any county  
26 or municipality thereof, or any agency or facility maintained by an individual, firm, corporation,  
27 association, or organization, public or private, to receive children for care and maintenance or for  
28 placement in residential care facilities, including, without limitation, private homes or any facility  
29 that provides care for unmarried mothers and their children. A child welfare agency does not  
30 include juvenile detention facilities or juvenile correctional facilities operated by or under contract  
31 with the Division of Juvenile Services, pursuant to §49-2-901 *et seq.* of this code, nor any other  
32 facility operated by that division for the secure housing or holding of juveniles committed to its  
33 custody.

34 "Community based" means a facility, program, or service located near the child's home or

35 family and involving community participation in planning, operation, and evaluation and which  
36 may include, but is not limited to, medical, educational, vocational, social, and psychological  
37 guidance, training, special education, counseling, substance abuse, and any other treatment or  
38 rehabilitation services.

39 “Community-based juvenile probation sanctions” means any of a continuum of  
40 nonresidential accountability measures, programs, and sanctions in response to a technical  
41 violation of probation, as part of a system of community-based juvenile probation sanctions and  
42 incentives, that may include, but are not limited to:

- 43 (A) Electronic monitoring;
- 44 (B) Drug and alcohol screening, testing, or monitoring;
- 45 (C) Youth reporting centers;
- 46 (D) Reporting and supervision requirements;
- 47 (E) Community service; and
- 48 (F) Rehabilitative interventions such as family counseling, substance abuse treatment,  
49 restorative justice programs, and behavioral or mental health treatment.

50 “Community services” means nonresidential prevention or intervention services or  
51 programs that are intended to reduce delinquency and future court involvement.

52 “Evidence-based practices” means policies, procedures, programs, and practices  
53 demonstrated by research to reliably produce reductions in the likelihood of reoffending.

54 “Facility” means a place or residence, including personnel, structures, grounds, and  
55 equipment used for the care of a child or children on a residential or other basis for any number  
56 of hours a day in any shelter or structure maintained for that purpose. Facility does not include  
57 any juvenile detention facility or juvenile correctional facility operated by or under contract with  
58 the Division of Juvenile Services for the secure housing or holding of juveniles committed to its  
59 custody.

60 “Family child care facility” means any facility which is used to provide nonresidential child

61 care services for compensation for seven to 12 children, including children who are living in the  
62 household, who are under six years of age. ~~No more than four of the total number of children may~~  
63 ~~be under twenty-four months of age~~ A facility may be in a provider's residence or a separate  
64 building.

65 "Family child care home" means a facility which is used to provide nonresidential child  
66 care services for compensation in a provider's residence. The provider may care for four to six  
67 children at one time, including children who are living in the household, who are under six years  
68 of age. ~~No more than two of the total number of children may be under twenty-four months of age~~

69 "Family resource network" means:

70 (A) A local community organization charged with service coordination, needs and resource  
71 assessment, planning, community mobilization, and evaluation, and which has met the following  
72 criteria:

73 (i) Agreeing to a single governing entity;

74 (ii) Agreeing to engage in activities to improve service systems for children and families  
75 within the community;

76 (iii) Addressing a geographic area of a county or two or more contiguous counties;

77 (iv) Having nonproviders, which include family representatives and other members who  
78 are not employees of publicly funded agencies, as the majority of the members of the governing  
79 body, and having family representatives as the majority of the nonproviders;

80 (v) Having representatives of local service agencies, including, but not limited to, the public  
81 health department, the behavioral health center, the local health and human resources agency,  
82 and the county school district, on the governing body; and

83 (vi) Accepting principles consistent with the cabinet's mission as part of its philosophy.

84 (B) A family resource network may not provide direct services, which means to provide  
85 programs or services directly to children and families.

86 "Family support", for the purposes of §49-2-601 *et seq.* of this code, means goods and

87 services needed by families to care for their family members with developmental disabilities and  
88 to enjoy a quality of life comparable to other community members.

89 “Family support program” means a coordinated system of family support services  
90 administered by the Department of Health and Human Resources through contracts with  
91 behavioral health agencies throughout the state.

92 “Foster family home” means a private residence which is used for the care on a residential  
93 basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult  
94 member of the household.

95 “Health care and treatment” means:

96 (A) Developmental screening;

97 (B) Mental health screening;

98 (C) Mental health treatment;

99 (D) Ordinary and necessary medical and dental examination and treatment;

100 (E) Preventive care including ordinary immunizations, tuberculin testing, and well-child  
101 care; and

102 (F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and  
103 treatment does not include an abortion.

104 “Home-based family preservation services” means services dispensed by the ~~Division of~~  
105 ~~Human Services~~ Department of Health and Human Resources or by another person, association,  
106 or group who has contracted with that division to dispense services when those services are  
107 intended to stabilize and maintain the natural or surrogate family in order to prevent the placement  
108 of children in substitute care. There are two types of home-based family preservation services  
109 and they are as follows:

110 (A) Intensive, short-term intervention of four to six weeks; and

111 (B) Home-based, longer-term after care following intensive intervention.

112 “Informal family child care” means a home that is used to provide nonresidential child care

113 services for compensation for three or fewer children, including children who are living in the  
114 household who are under six years of age. Care is given in the provider's own home to at least  
115 one child who is not related to the caregiver.

116 "Nonsecure facility" means any public or private residential facility not characterized by  
117 construction fixtures designed to physically restrict the movements and activities of individuals  
118 held in lawful custody in that facility and which provides its residents access to the surrounding  
119 community with supervision.

120 "Nonviolent misdemeanor offense" means a misdemeanor offense that does not include  
121 any of the following:

122 (A) An act resulting in bodily injury or death;

123 (B) The use of a weapon in the commission of the offense;

124 (C) A domestic abuse offense involving a significant or likely risk of harm to a family  
125 member or household member;

126 (D) A criminal sexual conduct offense; or

127 (E) Any offense for driving under the influence of alcohol or drugs.

128 "Out-of-home placement" means a post-adjudication placement in a foster family home,  
129 group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment  
130 facility, staff secure facility, hardware secure facility, detention facility, or other residential  
131 placement other than placement in the home of a parent, custodian, or guardian.

132 "Out-of-school time" means a child care service which offers activities to children before  
133 and after school, on school holidays, when school is closed due to emergencies, and on school  
134 calendar days set aside for teacher activities.

135 "Placement" means any temporary or permanent placement of a child who is in the  
136 custody of the state in any foster home, group home, or other facility or residence.

137 "Pre-adjudicatory community supervision" means supervision provided to a youth prior to  
138 adjudication, for a period of supervision up to one year for an alleged status or delinquency

139 offense.

140 “Regional family support council” means the council established by the regional family  
141 support agency to carry out the responsibilities specified in §49-2-601 *et seq.* of this code.

142 “Relative family child care” means a home that provides nonresidential child care services  
143 only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt,  
144 uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care. Care is given  
145 in the provider’s home.

146 “Residential services” means child care which includes the provision of nighttime shelter  
147 and the personal discipline and supervision of a child by guardians, custodians, or other persons  
148 or entities on a continuing or temporary basis. It may include care ~~and/or~~ or treatment, or both,  
149 for transitioning adults. Residential services does not include or apply to any juvenile detention  
150 facility or juvenile correctional facility operated by the Division of Juvenile Services, created  
151 pursuant to this chapter, for the secure housing or holding of juveniles committed to its custody.

152 “Risk and needs assessment” means a validated, standardized actuarial tool which  
153 identifies specific risk factors that increase the likelihood of reoffending and the factors that, when  
154 properly addressed, can reduce the likelihood of reoffending.

155 “Secure facility” means any public or private residential facility which includes construction  
156 fixtures designed to physically restrict the movements and activities of juveniles or other  
157 individuals held in lawful custody in such facility.

158 “Staff secure facility” means any public or private residential facility characterized by staff  
159 restrictions of the movements and activities of individuals held in lawful custody in such facility,  
160 and which limits its residents’ access to the surrounding community, but is not characterized by  
161 construction fixtures designed to physically restrict the movements and activities of residents.

162 “Standardized screener” means a brief, validated nondiagnostic inventory or questionnaire  
163 designed to identify juveniles in need of further assessment for medical, substance abuse,  
164 emotional, psychological, behavioral, or educational issues, or other conditions.

165 “State family support council” means the council established by the Department of Health  
166 and Human Resources pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities  
167 specified in §49-2-1 *et seq.* of this code.

168 “Time-limited reunification services” means individual, group, and family counseling,  
169 inpatient, residential, or outpatient substance abuse treatment services, mental health services,  
170 assistance to address domestic violence, services designed to provide temporary child care, and  
171 therapeutic services for families, including crisis nurseries and transportation to or from those  
172 services, provided during 15 of the most recent 22 months a child or juvenile has been in foster  
173 care, as determined by the earlier date of the first judicial finding that the child is subjected to  
174 abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

175 “Technical violation” means an act that violates the terms or conditions of probation or a  
176 court order that does not constitute a new delinquent offense.

177 “Truancy diversion specialist” means a school-based probation officer or truancy social  
178 worker within a school or schools who, among other responsibilities, identifies truants and the  
179 causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior  
180 to court involvement.

NOTE: The purpose of this bill is to revise the department definitions for family child care homes and family child care informal and relative family child care homes which currently allows these providers to self-certify compliance with 78 CSR 19 and 78 CSR 20. Due to the reauthorization of the Child Care and Development Block Grant, self-certification is now disallowed. All providers must now be inspected and found compliant with applicable rules before being issued a certificate.

The current definitions of both a family child care home and a family child care facility within this code restricts the number of children under 24 months permitted to be in child care at the same time. While the restriction ensured a small group size in a setting with minimal staff, the revision will allow families with larger sibling groups with close age range and foster children sharing a foster parent to utilize the same child care provider.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

By striking out the title and substituting therefor a new title, to read as follows:

**Senate Bill 407**—A BILL to amend and reenact §49-1-203 and §49-1-206 of the Code of West Virginia, 1931, as amended, all relating to modifying definitions related to licensing and approval of child care programs; modifying definitions related to child advocacy, care, residential, and treatment programs; eliminating ability for family child care homes, informal family child care homes or relative family child care homes to self-certify compliance with legislative rules; eliminating statutory caps on the number of children under 24 months of age in family child care facilities and family child care homes; and making technical corrections.