

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2059

By Delegate W. Clark

[Introduced February 12, 2025; referred
to the Committee on Education then Finance]

1 A BILL to amend and reenact §49-2-113, §49-2-114, §49-2-115, §49-2-115a, §49-2-116, §49-2-
2 117, §49-2-118, §49-2-119, §49-2-120, §49-2-121, §49-2-122, and §49-2-123 of the Code
3 of West Virginia, 1931, as amended; and to amend said code by adding thereto a new
4 section, designated §49-2-1007, relating to the transfer of childcare services from the
5 Department of Human Services to West Virginia State Board of Education; providing for
6 the implementation of Early Childhood Education Centers; providing for funding; and
7 providing for certification.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN._

§49-2-113. Residential child-care centers; licensure, certification, approval, and registration; requirements.

1 (a) Any person, corporation, or child welfare agency, other than a state agency, which
2 operates a residential child-care center shall obtain a license from the ~~department~~ West Virginia
3 State Board of Education.

4 (b) Any residential child-care facility, day-care center, or any child-placing agency operated
5 by the state shall obtain approval of its operations from the ~~secretary~~ West Virginia State Board of
6 Education.

7 (c) Any family day-care facility which operates in this state, including family day-care
8 facilities approved by the department for receipt of funding, shall obtain a statement of certification
9 from the ~~department~~ West Virginia State Board of Education.

10 (d) Every family day-care home which operates in this state, including family day-care
11 homes approved by the ~~department~~ West Virginia State Board of Education for receipt of funding,
12 shall obtain a certificate of registration from the ~~department~~ West Virginia State Board of
13 Education. The facilities and placing agencies shall maintain the same standards of care
14 applicable to licensed facilities, centers, or placing agencies of the same category.

15 (e) This section does not apply to:

(1) A kindergarten, preschool, or school education program which is operated by a public school or which is accredited by the West Virginia Department of Education or any other kindergarten, preschool, or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services, or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding 30 days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence, or testing;

(5) Persons providing family day care solely for children related to them;

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through 12th grade students when the program is monitored by the West Virginia Department of Education;

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national congressionally chartered organization or is an out-of-school time, summer recreation camp, or day camp program operated by a county parks and recreation commission, boards, and municipalities and meets all of the following requirements:

(A) The program is located in a facility that meets all fire and health codes;

(B) The program performs state and federal background checks on all volunteers and staff;

(C) The program's primary source of funding is not from fees for service except for

programs operated by county parks and recreation commissions, boards, and municipalities; and

(D) The program has a formalized monitoring system in place; or

(9) Any kindergarten, preschool, or school education program which is operated by a private, parochial, or church school that is recognized by the West Virginia Department of Education under Policy 2330.

(f) The ~~secretary~~ West Virginia State Board of Education is authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child-care home or relative family child-care home may voluntarily register and obtain a certificate of registration from the ~~department~~ West Virginia State Board of Education.

(h) All facilities or programs that provide out-of-school time care shall register with the ~~department~~ West Virginia State Board of Education upon commencement of operations and on an annual basis thereafter. The ~~department~~ West Virginia State Board of Education shall obtain information such as the name of the facility or program, the description of the services provided, and any other information relevant to the determination by the ~~department~~ West Virginia State Board of Education as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child-care service that is licensed or receives a certificate of registration shall have a written plan for evacuation in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the child-care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and ensuring family reunification;

(C) Procedures to address the needs of individual children including children with special

needs;

(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management officials; and

(F) A program to ensure that appropriate staff are familiar with the components of the plan.

(2) A child-care service shall update the evacuation plan by December 31 of each year. If a child-care service fails to update the plan, no action shall be taken against the child-care services license or registration until notice is provided and the child-care service is given 30 days after the receipt of notice to provide an updated plan.

(3) A child-care service shall retain an updated copy of the plan for evacuation and shall provide notice of the plan and notification that a copy of the plan will be provided upon request to any parent, custodian, or guardian of each child at the time of the child's enrollment in the child-care service and when the plan is updated.

(4) All child-care centers and family child-care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

(j) A residential child-care center which has entered into a contract with the ~~department~~ West Virginia State Board of Education to provide services to a certain number of foster children, shall accept any foster child who meets the residential child-care center's program criteria, if the residential child-care center has not met its maximum capacity as provided for in the contract. Any residential child-care center which has entered into a contract with the ~~department~~ West Virginia State Board of Education may not discharge any child in its program, except as provided in the contract, including that if the youth does not meet the residential treatment level and target population, the provider shall request a MDT and work toward an alternative placement.

§49-2-114. Application for license or approval.

(a) Any person or corporation or any governmental agency intending to act as a child

welfare agency shall apply for a license, approval or registration certificate to operate child care facilities regulated by this chapter. Applications for licensure, approval or registration shall be made separately for each child care facility to be licensed, approved, certified or registered.

(b) The ~~secretary~~ West Virginia State Board of Education shall prescribe by legislative rule forms and reasonable application procedures including, but not limited to, fingerprinting of applicants and other persons responsible for the care of children for submission to the State Police and, if necessary, to the Federal Bureau of Investigation for criminal history record checks.

(c) Before issuing a license, or approval, the ~~secretary~~ West Virginia State Board of Education shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants, review of the facilities emergency evacuation plan and consideration of the proposed plan for child care from intake to discharge.

(d) Before a home registration is granted, the ~~secretary~~ West Virginia State Board of Education shall make inquiry as to the facility, program and persons responsible for the care of children. The inquiry shall include self-certification by the prospective home of compliance with standards including, but not limited to:

- (1) Physical and mental health of persons present in the home while children are in care;
- (2) Criminal and child abuse or neglect history of persons present in the home while children are in care;
- (3) Discipline;
- (4) Fire and environmental safety;
- (5) Equipment and program for the children in care; and
- (6) Health, sanitation and nutrition.

(e) Further inquiry and investigation may be made as the ~~secretary~~ West Virginia State Board of Education may direct and sees as necessary.

(f) The ~~secretary~~ West Virginia State Board of Education shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.

§49-2-115. Conditions of licensure, approval and registration.

(a) A license or approval is effective for a period up to two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with this chapter or any legislative rules promulgated by the ~~secretary~~ West Virginia State Board of Education. The license or approval shall be reinstated upon application to the ~~secretary~~ West Virginia State Board of Education and a determination of compliance.

(b) An initial six-month license or approval 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.

(c) A provisional license or approval may be issued when a licensee is not in compliance with the legislative rules promulgated by the ~~secretary~~ West Virginia State Board of Education but does not pose a significant risk to the rights, well-being, health and safety of a consumer. 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.

(d) A renewal license or approval may be issued of any duration up to two years at the discretion of the ~~secretary~~ West Virginia State Board of Education. In the event a renewal license is not issued, the facility must make discharge plans for residents and cease operation within thirty days of the expiration of the license.

(e) A certificate of registration is effective for a period up to two years from the date of issuance, unless revoked based on evidence of a failure to comply with this article or any rules promulgated pursuant to this article. The certificate of registration shall be reinstated upon application to the ~~secretary~~ West Virginia State Board of Education, including a statement of

assurance of continued compliance with the legislative rules promulgated pursuant to this article.

(f) The license, approval or registration issued under this article is not transferable and applies only to the facility and its location stated in the application. The license, registration or approval shall be publicly displayed. The foster and adoptive family homes, informal family child care homes and relative family child care homes shall be required to display registration certificates of registration or approval upon request rather than by posting.

(g) Provisional certificates of registration may be issued to family child care homes.

(h) The ~~secretary~~ West Virginia State Board of Education, as a condition of issuing a license, registration or approval, may:

(1) Limit the age, sex or type of problems of children allowed admission to a particular facility;

(2) Prohibit intake of any children; or

(3) Reduce the number of children which the agency, facility or home operated by the agency is licensed, approved, certified or registered to receive.

§49-2-115a. Head Start program licenses.

(a) A Head Start program in good standing with the United States Department of Health and Human Services pursuant to 42 USC § 9381 *et seq.* may request to be deemed a licensee to operate a child care program for the sole purpose of utilizing the West Virginia Clearance for Access: Registry and Employment Screenings program. At the discretion of the ~~secretary~~ West Virginia State Board of Education, a deemed license may not permit the licensee to access the other services provided by the Bureau for Family Assistance as it relates to the specific deemed child care license.

(b) The section may not be construed to prevent the department from investigating complaints regarding the health, safety, or welfare of children.

(c) The ~~department~~ West Virginia State Board of Education shall propose a legislative rule for promulgation by July 1, 2022, to effectuate this section.

§49-2-116. Investigative authority; evaluation; complaint.

1 (a) The ~~secretary~~ West Virginia State Board of Education shall enforce this article.

2 (b) An on-site evaluation of every facility regulated pursuant to this chapter, except
3 registered family child care homes, informal family child care and relative family child care homes
4 shall be conducted no less than once per year by announced or unannounced visits.

5 (c) A random sample of not less than five percent of the total number of registered family
6 child care homes, informal family child care homes and relative family child care homes shall be
7 monitored annually through on-site evaluations.

8 (d) The ~~secretary~~ West Virginia State Board of Education shall have access to the
9 premises, personnel, children in care and records of each facility subject to inspection, including at
10 a minimum, case records, corporate and financial records and board minutes. Applicants for
11 licenses, approvals, and certificates of registration shall consent to reasonable on-site
12 administrative inspections, made with or without prior notice, as a condition of licensing, approval,
13 or registration.

14 (e) When a complaint is received by the ~~secretary~~ West Virginia State Board of Education
15 alleging violations of licensure, approval, or registration requirements, the ~~secretary~~ West Virginia
16 State Board of Education shall investigate the allegations. The ~~secretary~~ West Virginia State
17 Board of Education may notify the facility's director before or after a complaint is investigated and
18 shall cause a written report of the results of the investigation to be made.

19 (f) The ~~secretary~~ West Virginia State Board of Education may enter any unlicensed,
20 unregistered or unapproved child care facility or personal residence for which there is probable
21 cause to believe that the facility or residence is operating in violation of this article. Those entries
22 shall be made with a law-enforcement officer present. The ~~secretary~~ West Virginia State Board of
23 Education may enter upon the premises of any unregistered residence only after two attempts by
24 the ~~secretary~~ West Virginia State Board of Education to bring this facility into compliance.

§49-2-117. Revocation; provisional licensure and approval.

1 (a) The ~~secretary~~ West Virginia State Board of Education may revoke or make provisional
2 the licensure registration of any home facility or child welfare agency regulated pursuant to this
3 chapter if a facility materially violates this article, or any terms or conditions of the license,
4 registration or approval issued, or fails to maintain established requirements of child care. This
5 section does not apply to family child care homes.

6 (b) The ~~secretary~~ West Virginia State Board of Education may revoke the certificate of
7 registration of any family child care home if a facility materially violates this article, or any terms or
8 conditions of the registration certificate issued, or fails to maintain established requirements of
9 child care.

**§49-2-118. Closing of facilities by the ~~secretary~~ West Virginia State Board of Education;
placement of children.**

1 When the ~~secretary~~ West Virginia State Board of Education finds that the operation of a
2 residential care facility constitutes an immediate danger of serious harm to children served by the
3 facility, the ~~secretary~~ West Virginia State Board of Education shall issue an order of closure
4 terminating operation of the facility. When necessary, the ~~secretary~~ West Virginia State Board of
5 Education shall place or direct the placement of the children in a residential facility which has been
6 closed into appropriate facilities. A facility closed by the ~~secretary~~ West Virginia State Board of
7 Education may not operate pending administrative or judicial review without court order.

§49-2-119. Supervision; consultation; State Fire Marshall to cooperate.

1 (a) The ~~secretary~~ West Virginia State Board of Education shall provide supervision to
2 ascertain compliance with the rules promulgated pursuant to this chapter through regular
3 monitoring, visits to facilities, documentation, evaluation and reporting. The ~~secretary~~ West
4 Virginia State Board of Education is responsible for training and education, within fiscal limitations,
5 specifically for the improvement of care in family child care homes and facilities. The ~~secretary~~
6 West Virginia State Board of Education shall consult with applicants, the personnel of child welfare
7 agencies, and children under care to assure the highest quality child care possible.

(b) The State Fire Marshal shall cooperate with the ~~secretary~~ West Virginia State Board of Education in the administration of this article by providing reports and assistance as may be requested by the ~~secretary~~ West Virginia State Board of Education.

§49-2-120. Penalties; injunctions; venue.

(a) Any individual or corporation which operates a child welfare agency, residential facility or child care center without a license when a license is required is guilty of a misdemeanor and, upon conviction, shall be confined in jail not exceeding one year, or fined not more than \$500, or both fined and confined.

(b) Any family child care facility which operates without a license when a license is required is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.

(c) Where a violation of this article or a legislative rule promulgated by the ~~secretary~~ West Virginia State Board of Education may result in serious harm to children under care, the ~~secretary~~ West Virginia State Board of Education may seek injunctive relief against any person, corporation, child welfare agency, child placing agency, child care center, family child care facility, family child care home or governmental official through proceedings instituted by the Attorney General, or the appropriate county prosecuting attorney, in the Circuit Court of Kanawha County or in the circuit court of any county where the children are residing or may be found.

§49-2-121. Rule-making.

(a) The ~~secretary~~ West Virginia State Board of Education shall promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code regarding the licensure, approval, certification, and registration of child care facilities and the implementation of this article.

(b) The ~~secretary~~ West Virginia State Board of Education shall review the rules promulgated pursuant to this article at least once every five years, making revisions when necessary or convenient.

(c) The rules shall incorporate, by reference, the requirements of the Integrated Pest Management Program established by legislative rule by the Department of Agriculture under

9 §19-16A-4 of this code.

§49-2-122. Waivers and variances to rules.

1 Waivers or variances of rules may be granted by the ~~secretary~~ West Virginia State Board of
2 Education if the health, safety or well-being of a child would not be endangered thereby. The
3 ~~secretary~~ West Virginia State Board of Education shall promulgate by legislative rule criteria and
4 procedures for the granting of waivers or variances so that uniform practices may be maintained
5 throughout the state.

§49-2-123. Annual reports; directory; licensing reports and recommendations.

1 (a) The ~~secretary~~ West Virginia State Board of Education shall submit on or before January
2 1, of each year a report to the Governor and the Legislative Oversight Commission on Health and
3 Human Resources Accountability, concerning the regulation of child welfare agencies, child
4 placing agencies, child care centers, family child care facilities, family child care homes, informal
5 family child care homes, relative family child care homes and child care facilities during the year.
6 The report shall include at a minimum, data on the number of children and staff at each facility
7 (except family child care, informal family child care homes and relative family child care),
8 applications received, types of licenses, approvals and registrations granted, denied, made
9 provisional or revoked and any injunctions obtained or facility closures ordered.

10 (b) The ~~secretary~~ West Virginia State Board of Education also shall compile annually a
11 directory of licensed, certified and approved child care providers including a brief description of
12 their program and facilities, the program's capacity and a general profile of children served. A
13 listing of family child care homes shall also be compiled annually.

14 (c) Licensing reports and recommendations for licensure which are a part of the yearly
15 review of each licensed facility shall be sent to the facility director. Copies shall be available to the
16 public upon written request to the ~~secretary~~ West Virginia State Board of Education.

**§49-2-1007. Transfer of Child Care Services from Department of Human Services to Board
of Education; implementation of Early Childhood Education Centers; funding;**

certification.

1 (a) Legislative findings. – The Legislature finds that the current system for childcare in the
2 State of West Virginia is broken, and alternatives are necessary to correct this issue. Moving
3 childcare services from the care of the Department of Human Services to the West Virginia State
4 Board of Education is necessary to effectuate this change. By moving childcare services in this
5 manner and renaming it as "Early Childhood Education," this will create a better funding stream for
6 the Legislature. Additionally, this will advance children's learning and prepare them for entering
7 elementary school at an advanced level compared to what is currently observed.

8 (b) Implementation. –

9 (1) All childcare services in this state shall be transferred from the Department of Human
10 Services to the West Virginia State Board of Education, under the title of Early Childhood
11 Education.

12 (2) Parents may choose in home care for children rather than mandatory public childcare
13 services.

14 (3) Transportation shall not be provided to public childcare services.

15 (4) Early Childhood Education Centers are not required to be on public school grounds and
16 may be operated off-site.

17 (5) Early Childhood Education Centers may be conducted in licensed home businesses
18 that are registered with the West Virginia Secretary of State's office, as otherwise provided in this
19 code.

20 (c) Funding. – In order to provide funding for childcare services in this state as Early
21 Childhood Education, there is hereby established a three tiered funding formula.

22 (1) 33% of the funds for Early Childhood Education shall be taken from allocated funds that
23 were originally going to the Department of Human Services for this purpose.

24 (2) 33% of the funds for Early Childhood Education shall be provided from the employer of
25 the parent or guardian, and the employer shall be eligible to receive a state tax credit for

26 participating in the program.

27 (3) 33% of the funds for Early Childhood Education shall be provided from the parent or
28 guardian, or from the state, based off the current scholarship guidelines.

29 (4) Children who obtain a scholarship for Early Childhood Education shall have that
30 scholarship paid by the state based off of enrollment, not off of attendance.

31 (d) Certification. –

32 (1) The West Virginia State Board of Education shall be responsible for the certification of
33 providers and staff.

34 (2) Local health departments shall be responsible for inspections and food safety
35 standards at Early Childhood Education centers.

36 (3) There is hereby provided an exemption for in home day cares that have six or less kids
37 enrolled in the program.

NOTE: The purpose of this bill is to transfer all childcare services from the Department of Human Services to West Virginia State Board of Education. The bill provides for the implementation of Early Childhood Education Centers. The bill provides for funding. Finally, the bill provides for certification.

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