

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 817

By Senator Chapman

[Reported March 22, 2025, from the Committee on
Health and Human Resources]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated §16B-22-1, §16B-22-2, §16B-22-3, §16B-22-4, §16B-22-5, and §16B-22-6,
3 relating to regulating private alternative adolescent residential or outdoor programs;
4 defining terms; requiring licensure; setting forth licensure requirements; requiring
5 rulemaking; permitting suspension of license; permitting revocation of license; permitting
6 criminal penalties for violation; and permitting fines for violation.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR
PROGRAMS.**

§16B-22-1. Definitions.

1 As used in the article:

2 "Critical incident" means an occurrence of any of the following:

3 (1) Self-harm or a suicide emergency;

4 (2) A restraint, seclusion, or emergency safety intervention occurring at the program
5 whether medical attention is or is not required;

6 (3) A denial or unreasonable medical delay of required medical attention to the child in the
7 program;

8 (4) An admittance or a transport of a child in the program to or from a medical facility;

9 (5) An incident or allegation of abuse or harm to a child while in the program;

10 (6) A use of force, coercion, or deception in transporting a child to or from the program,
11 unless the program did not conduct or pay for the transport;

12 (7) A police report or investigation involving a child or an individual who has or had access
13 to the program;

14 (8) A physical condition of the program's facility that jeopardizes the health, safety, or well-
15 being of a child; or

(9) Any additional occurrence or condition that the Director defines as a critical incident.

"Director" means the director of the Office of Health Facility Licensure and Certification or his or her designee.

"Direct access" means that an individual has or likely will have person-to-person spoken or physical contact with or access to a program participant.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

"License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for programs.

"Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

"Office of Health Facilities Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

"Person associated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

"Program" means each location of a facility or program operated by a public or private entity that, with respect to one or more youth who are unrelated to the owner or operator of the facility or program in a residential environment including but not limited to:

(1) A program with a wilderness or outdoor experience, expedition, or intervention;

(2) A bootcamp experience or other experience designed to simulate characteristics of basic military training or correctional regimes; or

(3) An education or therapeutic boarding school.

The term does not include: recreational programs such as Boy Scouts, Girl Scouts, or 4-H clubs; organizations, boarding schools, or residential schools with a sole focus on academics; residential training or vocational programs with a sole focus on education and vocational training; youth camps with a focus on recreation and faith-related activities; or an organization, boarding

school, or residential school that is an adjunct ministry of a church; or any programs operated pursuant to §15-1B-24 of this code.

"Program participant" means any adolescent to whom services are being provided by the program.

§16B-22-2. Programs to obtain license.

The Inspector General shall designate the Director of the Office of Health Facilities Licensure and Certification to enforce the provisions of this article, except as otherwise stated.

No person, partnership, association, or corporation, or any local governmental unit or any division, department, board, or agency thereof may operate a program unless the operation has been approved and annually licensed by the director in accordance with the provisions of this article and the rules lawfully promulgated hereunder.

§16B-22-3. Licensure requirements.

(a) The director shall require applicants and licensees to submit a set of fingerprints for each person associated with the program who has direct access to program participants for the purpose of conducting a criminal and child protection background check according to §16B-15-1 et seq. of this code.

(b) The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code that pertain to ensuring the health and safety of program participants, including:

(1) A procedure for a licensed program to report the use of a chemical, physical, mechanical, or environmental restraint or seclusion to the department within one business day after the day on which the use of the chemical, physical, mechanical, or environmental restraint or seclusion occurs;

(2) Guidelines for written policies and procedures of the licensed program, including policies and procedures on suicide prevention and for implementation of the requirements and restrictions in subsections (c) and (d) of this section;

15 (3) A procedure for the department to review and approve the licensed program's policies
16 and procedures;

17 (4) A procedure for submitting a complaint about a licensed program to the department and
18 law enforcement and a requirement that each licensed program publicly post information that
19 describes how to submit a complaint about the licensed program to the department and law
20 enforcement;

21 (5) Establish a licensure fee; and

22 (6) A procedure for responding to critical incidents.

23 (c) A licensed program may not:

24 (1) use physical discipline or the threat of physical discipline as a punishment, deterrent,
25 incentive, or to gain compliance;

26 (2) deprive a youth of basic necessity or inherent right, including education;

27 (3) admit a youth who is under the age approved in the licensure or has a condition not
28 allowed to be treated under the licensure; or

29 (4) sexually abuse, exploit, or harass an enrolled youth.

30 (d) A licensed program shall:

31 (1) allow a parent or guardian to remove a youth from the licensed program; and

32 (2) unless otherwise prohibited by law or court order, facilitate weekly confidential and
33 unsupervised video communication between a youth and the youth's parents, guardians, or foster
34 parents.

35 (e) A licensed program shall provide a fixed number telephone to the child abuse hotline
36 operated by the Department of Human Services that is readily available to enrolled participants 24
37 hours a day.

§16B-22-4. Inspector General to establish legislative rules.

1 The Inspector General shall propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 et seq. and §16B-22-3(b) of this code not in conflict with any provision of

3 this article, as he or she finds necessary in order to ensure adequate care and accommodations
4 for _____ consumers _____ of _____ programs.

§16B-22-5. _____ **Suspension;** _____ **revocation.**

1 (a) The director, in consultation with the Inspector General, may suspend or revoke a
2 license issued hereunder if the provisions of this article or of the rules are violated.

3 (b) Before any such license is suspended or revoked, however, written notice shall be
4 given the licensee, stating the grounds of the complaint, and the date, time, and place set for the
5 hearing on the complaint, which date may not be less than 30 days from the time notice is given.
6 The notice shall be sent by registered mail to the licensee at the address where the program
7 concerned is located. The licensee shall be entitled to be represented by legal counsel at the
8 hearing.

9 (c) If a license is revoked as herein provided, a new application for a license shall be
10 considered by the director, in consultation with the Inspector General, if, when, and after the
11 conditions upon which revocation was based have been corrected and evidence of this fact has
12 been furnished. A new license shall then be granted after proper inspection has been made and all
13 provisions of this article and rules promulgated hereunder have been satisfied.

14 (d) All of the pertinent provisions of §29A-5-1 et seq. of this code shall apply to and govern
15 any hearing authorized and required by the provisions of this article and the administrative
16 procedure in connection with and following any such hearing, with like effect as if the provisions of
17 §29A-5-1 et seq. of this code were set forth in extenso in this section.

18 (e) Any applicant or licensee who is dissatisfied with the decision of the Board of Review as
19 a result of the hearing provided in this section may, within 30 days after receiving notice of the
20 decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the
21 decision.

(f) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant or licensee or the Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

§16B-22-6. Violations; penalties; civil monetary penalty; injunctive relief.

(a) Any person, partnership, association, or corporation, and any local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing, or operating a program without first obtaining a license therefor as herein provided, or violating any provisions of this article or any legislative rule lawfully promulgated thereunder, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than \$1,500, with confinement in the county jail for a period of not more than 90 days, or both fined and confined. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The Director, in consultation with the Inspector General may deny the provider's application for licensure or licensure renewal; modify or revoke a license; or order any admission ban or reduction in consumer census for one or more of the following reasons:

(1) The provider fails to submit an adequate plan of correction without formally and timely notifying the director that the provider intends to exercise its due process rights of appeal;

(2) The director makes a determination that fraud or other illegal action has been committed;

(3) The provider violates federal, state, or local law relating to building, health, fire, safety, sanitation, or zoning; or is noncompliant with payment of workers' compensation or employment security taxes, and fails to remedy such violation given sufficient notice;

(4) The provider conducts practices which jeopardize the health, safety, welfare, or clinical treatment of consumer;

(5) The provider fails or refuses to make records related to compliance with this rule available within a reasonable period of time as requested by the Director; or

23 (6) The provider fails or refuses to provide access to its service locations within a
24 reasonable period of time as requested by the Director.

25 (c) Where the operation of the provider clearly constitutes an immediate danger of serious
26 harm to consumers served by the provider, the Director, in consultation with the Inspector General
27 may issue an order of closure terminating operation of the provider's program license clearly
28 giving rise to the immediate danger of serious harm. A provider appealing such a closure order
29 does not stay enforcement of the closure order.

30 (d) If the program conducts a practice which jeopardizes the health, safety, welfare, or
31 clinical treatment of consumers, which such practices clearly give rise to imminent danger of
32 serious harm or the immediate risk or danger of serious harm, the Director in consultation with the
33 Inspector General, may impose a civil monetary penalty not to exceed \$10,000 with criteria to be
34 developed in rulemaking.

35 (e) Notwithstanding the existence or pursuit of any other remedy, the Inspector General, in
36 the manner provided by law, maintain an action in the name of the state for an injunction against
37 any person, partnership, association, or corporation, to restrain or prevent the establishment,
38 conduct, management, or operation of any program or violation of any provision of this article
39 without first obtaining a license in the manner required by this article.

40 (f) The Inspector General may also seek injunctive relief if the establishment, conduct,
41 management, or operation of any provider, whether licensed or not, jeopardizes the health, safety,
42 or welfare of all of its consumers.

NOTE: The purpose of this bill is to license facilities treating youth in West Virginia.

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