WEST VIRGINIA CODE: §49-2-113

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

(a) Any person, corporation, or child welfare agency, other than a state agency, which operates a residential child-care center shall obtain a license from the department.

(b) Any residential child-care facility, day-care center, or any child-placing agency operated by the state shall obtain approval of its operations from the secretary.

(c) Any family day-care facility which operates in this state, including family day-care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

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

(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

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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 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.

(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of operations and on an annual basis thereafter. The department 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 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;

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(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 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 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.

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