WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

ENROLLED
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FOR

Senate Bill No. 349
(Senators Palumbo, Browning, McCabe, Foster, Laird, Wells, Stollings and D. Facemire, original sponsors)

[Passed March 5, 2010; in effect ninety days from passage.]
AN ACT to amend and reenact §49-2B-3 and §49-2B-8 of the Code of West Virginia, 1931, as amended, all relating to requiring licensed or registered child care centers to have an annually updated written plan for evacuation in the event of an emergency; providing for plan requirements; providing for plan distribution and availability requirements; and making the evacuation plan a point of investigation before a new license is received.

Be it enacted by the Legislature of West Virginia:

That §49-2B-3 and §49-2B-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR CHILD WELFARE.
§49-2B-3. Licensure, certification, approval and registration requirements.

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

5 (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: Provided, That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

17 (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.

21 (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.

25 (e) This section does not apply to:

26 (1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state 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 thirty 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; or

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(f) The secretary is hereby 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) 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 service’s license or registration until notice is provided and the child care service is given thirty 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.

§49-2B-8. 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 article. 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 shall prescribe 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 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 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;
(6) Health, sanitation and nutrition.

(e) Further inquiry and investigation may be made as the secretary may direct.

(f) The secretary shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within be approved this the 16th Day of March 2010.

Governor