

RESIDENTIAL CHILD CARE LICENSING

INTRODUCTION

Licensing is the process by which a government agency regulates the activities of an enterprise that involves a public interest. Specifically, the licensing enabling law prohibits an activity but then sets up administrative methods to lift the general prohibition if certain conditions are met. Licensing requires the applicant to comply with established safety, program and staffing rules before opening and operating an agency, program or practice and before renewing an existing license. The aim is consumer protection, which is achieved through prevention. In human care regulation, states typically license a wide variety of day and residential programs for children and vulnerable adults.

In West Virginia, this regulatory function is specifically mandated for all children who are separated from their family unit for care or treatment purposes. All **Residential Child Care and Treatment Facilities** and **Child Placing Agencies** must be issued a Child Care License or Certificate of Approval to begin and continue operation in West Virginia.

The **Residential Child Care Licensing Unit**, located within the Division of Children and Adult Services of the Bureau for Children and Families within the West Virginia Department of Health and Human Resources is the entity responsible for licensing Residential Child Care and Treatment Facilities and Child Placing Agencies. WV Code 49-2B et.seq. defines, directs and authorizes the Child Care Licensing function. The rules for Residential Child Care and Treatment Facilities and Child Placing Agencies articulate the compliance requirements for licensure. The Licensing process includes rulemaking, inspection, evaluation and enforcement

DEFINITIONS

1. **Certificate of Approval** Means a statement issued by the Secretary that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.
2. **Child** For the purposes of residential services, any person under eighteen years of age or is a transitioning adult.

3. **Child Care** Means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of the child's rights and entitlements, but do not include secure detention or incarceration under the jurisdiction of the Division of Juvenile Services. It includes the provision of child care services or residential services.
4. **Child Placing Agency** Means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are sixteen or seventeen years old and living in unlicensed residences.
5. **Child Welfare Agency** Means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including without limitation, private homes, or any facility that provides care for unmarried mothers and their children.
6. **Facility** Means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose.
7. **Foster Family Home** Means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult member of the household.
8. **License** Means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.
9. **Residential Child Care** Or "child care on a residential basis" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis.
10. **Residential Child Care And Treatment Facility** A congregate program providing room, board, supervision and may provide behavioral health treatment to children or transitioning adults with behavioral, developmental and/or psychiatric challenges.

11. Transitioning Adult An individual with a transfer plan to move to an adult setting who meets one of the following conditions:

- a. Is eighteen years of age but under twenty-one years of age, was in departmental custody upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday.
- b. Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in departmental custody upon reaching eighteen years of age and enters into a contract with the Department to continue in an educational, training, or treatment program which was initiated prior to the eighteenth birthday.

12. Variance Means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

13. Waiver Means a declaration that a certain rule is inapplicable in a particular circumstance.

PROCEDURES

1. INITIAL APPLICATIONS

Any person, corporation, or agency which operates a residential child care and treatment facility or a child placing agency must obtain a license from the Department of Health and Human Resources, Bureau for Children and Families (BCF) prior to accepting children for care.

An initial application should be completed and returned to the Residential Child Care Licensing Unit.

2. RENEWAL APPLICATION

Existing licensed facilities and agencies need to complete a renewal application sixty days prior to the expiration of their license. Upon receipt of a completed application, an on-site review and evaluation will be scheduled.

3. AMENDED APPLICATION

Existing licensed facilities and agencies must complete an amended application for any expansion of services or significant change in services or programming. A change in ownership or location requires the submission of an initial application.

4. CERTIFICATE OF NEED

All new proposals for health care services, including residential child care services, require either a Certificate of Need (CON) or a determination that the proposal is exempt from review or non-reviewable. Applicants must request a ruling on the reviewability of their proposal from the Health Care Authority (HCA) before licensure can be considered. Requests may be addressed to the Health Care Authority, 100 Dee Drive, Suite 201, Charleston, WV 25311-1600 or you may contact the HCA by telephone @ (304)558-7980 or on-line at <http://www.hcawv.org>.

5. EVALUATIONS

All licensed facilities and agencies are monitored through on-site evaluations conducted once per year by announced or unannounced visits. Evaluation methods vary but could include assessments of the premises, personnel, and children in care, records, corporate and financial records, and board minutes. Results of the evaluation are compared to Licensing Requirements, and the areas of non-compliance and the need for a Corrective Action Plan are reported to the agency or facility. Evaluations are also completed prior to the renewal of a License. The Health Department, the Division of Nutrition (if food is served) and the State Fire Marshal's Office also conduct their own evaluations or inspections. A facility or

agency which provides behavioral health services is also licensed and may be evaluated by the Office of Health Facilities Licensure and Certification (OHFLAC) through the Bureau for Public Health. OHFLAC may also deem a behavioral health license to a facility or agency based upon licensure by the Bureau for Children and Families.

6. ISSUANCE OF LICENSE

Following the receipt and approval of an application and the on-site evaluation and approved corrective action plan, if indicated, a license shall be issued in one of three categories, if there is compliance with the regulations. A license may be amended at any time during the cycle to reflect changes in the program, structure or population

An **initial license** shall be issued to facilities or agencies establishing a new program and found to be in compliance with all relevant criteria.

A **provisional license** shall be issued when a facility or agency seeks a renewal license, and is not in full compliance with regulations, but does not pose a significant risk to the rights, well-being, health and safety of a consumer.

A **regular license** will be issued for up to two years, when a facility or agency is in compliance with regulations.

7. WAIVERS/VARIANCES

A licensed facility or agency may request that a specific regulation be waived or that the facility or agency receive a variance from a particular regulation.

Such requests should be written; should explain how the facility or agency will assure compliance with the intent of the regulation to be “waived” or “varied” and should clearly demonstrate how the waiver or variance does not negatively impact the health, safety or well-being of any child in care.

8. CHILD PROTECTIVE SERVICE REPORTS AND INVESTIGATIONS

All Child Care Professionals are mandated by WV Code to report Child Abuse and Neglect, when they have “reason to suspect” child abuse or neglect, to **Child Protective Services** within the WV DHHR. Reports should be made promptly to the Child Abuse Hot Line @ 1-800-352-6513.

Allegations of child abuse or neglect occurring within residential child care and treatment facilities, child placing agencies or foster family homes will be investigated by the Institutional Investigative Unit (IIU). The IIU will provide a written report of its investigation, including findings and recommendations, to the facility or agency to which the investigation pertains. An IIU investigation may result in the facility or agency being directed to formulate a Corrective Action Plan. Such a plan will be approved and monitored by the Licensing Specialist.

9. LICENSING COMPLAINTS AND INVESTIGATIONS

Licensing Complaints involving non-compliance with rules will be investigated by the Licensing Specialist. A Corrective Action Plan may be directed by the Licensing Specialist as a result of this investigation. Such a plan will be approved and monitored by the Licensing Specialist.

10. NEGATIVE ACTIONS

The Department may deny an application for licensure or licensure renewal; revoke or modify a license; and/or prohibit admissions or reduce resident census for one or more of the following reasons:

1. Fraud or other illegal action has been committed;
2. Violations of federal, state or local law relating to building, health, safety, sanitation or zoning, non-payment of worker's compensation or employment security taxes;
3. Practices that jeopardize the health, safety, well-being or clinical treatment of a resident;
4. Failure to submit reports or make records available as requested by the Department; or,
5. Refusal to provide access to its location or records as requested by the Department.

APPEALS

WV Code §49-2B-13, provides that "any person" corporation, governmental official or child welfare agency, aggrieved by a decision of the Commissioner made pursuant to the provisions of this article may contest the decision upon making a request for a hearing by the Commissioner within thirty days of receipt of notice of the decision. Administrative and judicial review shall be made in accordance with the provisions of article five, chapter twenty-nine of this code. Any decision issued by the commissioner may be made effective from the date of issuance. Immediate relief there from may be obtained upon a showing of good cause made by verified petition to the circuit court of Kanawha County or the circuit court of any county where the affected facility or child welfare agency may be located. The pendency of administrative or judicial review shall not prevent the commissioner from obtaining injunctive relief pursuant to section five of this article."

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