

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2093

BY DELEGATES GRAVES, HOTT, SYPOLT, MANDT, J.

PACK, TONEY, LONGANACRE, JENNINGS, SMITH,

WAMSLEY AND CLARK

[Passed April 7, 2021; in effect ninety days from passage.]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2021 APR 19 P 4: 49

FILED

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §16-5E-3a; and to amend and reenact §16-49-1 of said code, all relating to
3 the regulation of medical foster homes; defining terms; providing an exemption to medical
4 foster homes from the requirements for unlicensed health care homes; and requiring an
5 annual report.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN
LEGALLY UNLICENSED HEALTH CARE HOMES.**

**§16-5E-3a. Exemption for the United States Department of Veterans Affairs Medical Foster
Homes; reporting.**

1 (a) The provisions of this article do not apply to any home or facility approved and annually
2 reviewed by the United States Department of Veterans Affairs as a Medical Foster Home,
3 pursuant to 38 CFR §17.73, in which care is provided exclusively to three or fewer veterans.

4 (b) The West Virginia Department of Veterans Affairs shall report annually by December
5 1, to the Governor, outlining the scope and effectiveness of the Medical Foster Home Program
6 for veterans in West Virginia.

**ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND
EMPLOYMENT SCREENING ACT.**

§16-49-1. Definitions.

1 As used in this article:

2 "Applicant" means an individual who is being considered for employment or engagement
3 with the department, a covered provider or covered contractor.

4 "Background check" means a prescreening of registries specified by the secretary by rule
5 and a fingerprint-based search of state and federal criminal history record information.

6 "Bureau" means a division within the Department of Health and Human Resources.

7 "Covered contractor" means an individual or entity, including their employees and
8 subcontractors, that contracts with a covered provider to perform services that include any direct
9 access services.

10 "Covered provider" means the following facilities or providers:

- 11 (i) A skilled nursing facility;
- 12 (ii) A nursing facility;
- 13 (iii) A home health agency;
- 14 (iv) A provider of hospice care;
- 15 (v) A long-term care hospital;
- 16 (vi) A provider of personal care services;
- 17 (vii) A provider of adult day care;
- 18 (viii) A residential care provider that arranges for, or directly provides, long-term care
19 services, including an assisted living facility;
- 20 (ix) An intermediate care facility for individuals with intellectual disabilities;
- 21 (x) Any other facility or provider required to participate in the West Virginia Clearance for
22 Access: Registry and Employment Screening program as determined by the secretary by
23 legislative rule; and
- 24 (xi) Excludes medical foster home approved and annually reviewed by the United States
25 Department of Veterans Affairs pursuant to 38 CFR §17.73.

26 "Department" means the Department of Health and Human Resources.

27 "Department employee" means any prospective or current part-time employee, full-time
28 employee, temporary employee, independent contractor, or volunteer of the department.

29 "Direct access" means physical contact with a resident, member, beneficiary, or client, or
30 access to their property, personally identifiable information, protected health information, or
31 financial information.

32 “Direct access personnel” means an individual who has direct access by virtue of
33 ownership, employment, engagement or agreement with the department, a covered provider, or
34 covered contractor. Direct access personnel does not include volunteers or students performing
35 irregular or supervised functions or contractors performing repairs, deliveries, installations or
36 similar services for the covered provider. The secretary shall determine by legislative rule whether
37 the position in question involves direct access.

38 “Disqualifying offense” means:

39 (A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

40 (B) A conviction of any other crime specified by the secretary in rule, which shall include
41 crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses, and
42 financial crimes.

43 “Negative finding” means a finding in the prescreening that excludes an applicant from
44 direct access personnel positions.

45 “Notice of ineligibility” means a notice pursuant to §16-49-3 of this code that the secretary’s
46 review of the applicant’s criminal history record information reveals a disqualifying offense.

47 “Prescreening” means a mandatory search of databases and registries specified by the
48 secretary in legislative rule for exclusions and licensure status prior to the submission of
49 fingerprints for a criminal history record information check.

50 “Rap back” means the notification to the department when an individual who has
51 undergone a fingerprint-based, state or federal criminal history record information check has a
52 subsequent state or federal criminal history event.

53 “Secretary” means the Secretary of the West Virginia Department of Health and Human
54 Resources, or his or her designee.

55 “State Police” means the West Virginia State Police Criminal Identification Bureau.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Dean Jeffrey
.....
Chairman, House Committee

Mark Hargrett
.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Steve Harmon
.....
Clerk of the House of Delegates

Jee Linn
.....
Clerk of the Senate

By Hankins
.....
Speaker of the House of Delegates

C.P. Bass
.....
President of the Senate

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SECRETARY OF STATE

2021 APR 19 P 4:49

FILED

The within *is approved* this the *19th*
day of *April* 2021.

James Perdue
.....
Governor

PRESENTED TO THE GOVERNOR

(2014 23)

Time 4:41 pm