

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4463

BY DELEGATE ELDRIDGE

[Introduced February 7, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §16-49-1 of the Code of West Virginia, 1931, as amended, relating
 2 to the West Virginia Clearance for Access: Registry and Employment Screening Act; and
 3 adding applicants for child care and foster care subject to background checks.

Be it enacted by the Legislature of 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 (1) "Applicant" means an individual who is being considered for employment or
 3 engagement with a covered provider or covered contractor.

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

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

9 (4) "Covered provider" means the following facilities or providers:

10 (i) A skilled nursing facility;

11 (ii) A nursing facility;

12 (iii) A home health agency;

13 (iv) A provider of hospice care;

14 (v) A long-term care hospital;

15 (vi) A provider of personal care services;

16 (vii) A provider of adult day care;

17 (viii) A residential care provider that arranges for, or directly provides, long-term care
 18 services, including an assisted living facility;

19 (ix) An intermediate care facility for individuals with intellectual disabilities; ~~and~~
20 (x) A provider of child care;
21 (xi) A provider of foster care; and
22 ~~(xii)~~ Any other facility or provider required to participate in the West Virginia Clearance
23 for Access: Registry and Employment Screening program as determined by the secretary by
24 legislative rule.

25 (5) "Department" means the Department of Health and Human Resources.

26 (6) "Direct access" means physical contact with a resident, member, beneficiary, or client
27 of a covered provider, or access to their property, personally identifiable information, protected
28 health information, or financial information.

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

35 (8) "Disqualifying offense" means:

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

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

40 (9) "Negative finding" means a finding in the prescreening that excludes an applicant from
41 direct access personnel positions.

42 (10) "Notice of ineligibility" means a notice pursuant to §16-49-3 of this code that the
43 secretary's review of the applicant's criminal history record information reveals a disqualifying
44 offense.

45 (11) "Prescreening" means a mandatory search of databases and registries specified by
46 the secretary in legislative rule for exclusions and licensure status prior to the submission of
47 fingerprints for a criminal history record information check.

48 (12) "Rap back" means the notification to the department when an individual who has
49 undergone a fingerprint-based, state or federal criminal history record information check has a
50 subsequent state or federal criminal history event.

51 (13) "Secretary" means the Secretary of the West Virginia Department of Health and
52 Human Resources, or his or her designee.

53 (14) "State Police" means the West Virginia State Police Criminal Identification Bureau.

NOTE: The purpose of this bill is to add applicants for child care and foster care subject to background checks under the West Virginia Clearance for Access: Registry and Employment Screening Act.

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