

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2093

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[Originating in the Committee on Health and Human

Resources; Reported on February 25, 2021]

1 A BILL 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 (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) Any other facility or provider required to participate in the West Virginia Clearance for
21 Access: Registry and Employment Screening program as determined by the secretary by
22 legislative rule; and

23 (xi) Excludes medical foster homes approved and annually reviewed by the United States
24 Department of Veterans Affairs pursuant to 38 CFR §17.73.

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 section three of this article 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 allow West Virginia veterans to utilize the services of medical foster homes approved by the US Department of Veteran's Affairs, and to exempt medical foster home caregivers from duplicative background examination requirements of the WV CARES program.

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