WEST virginia legislature

2021 regular session

Committee Substitute

for

House Bill 2427

By Delegate Foster

[Originating in the Committee on Government Organization; reported on March 18, 2021]

A BILL to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to behavioral health centers licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to lead abatement licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to client rights at state-operated mental health facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to delegation of medication administration and health maintenance tasks to approved medication assistive personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to diabetes self-management education; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access, registry, and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a recovery residence certification and accreditation program; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child placing agencies licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the procedure to contest the substantiation of child abuse or neglect; and authorizing the Health Care Authority to promulgate a legislative rule relating to exemption from certificate of need.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. Authorization for Department of health and human resources to promulgate legislative rules.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §27-9-1 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (behavioral health centers licensure, [64 CSR 11](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-11)), is authorized with the following amendments:

On page 1, section 1.7, after the words, “supports in the” by inserting the words, “state of”;

And,

On page 11, subsection 4.5.5 by striking the word, “alternations” and inserting the word, “alterations”;

And,

On page 11, by inserting a new subsection 4.5.6 to read as follows, “4.5.6. All plumbing shall meet the requirements of local plumbing codes or, in the absence thereof, the National Plumbing Code and be maintained and repaired in a state to conform with its intended purpose.”; and renumbering the remaining subsections accordingly;

And,

On page 28, subdivision 10.1.4.i, by striking the word, “daily”;

And,

On page 29, subdivision 10.1.4.m, after the word, “vermin” by inserting the words, “that stand to pose a threat to the health or safety of consumers or employees”;

And,

On page 29, by striking subdivision 10.1.4.l, in its entirety and renumbering the remaining subdivisions accordingly;

And,

On page 30, subsection 10.2.11, by striking the word, “sued” and inserting the word, “used”;

And,

On page 45, subsection 12.16.5, by striking the word, “uses” and inserting the word, “use”; And,

On page 45, subsection 12.16.5, by striking the word, “made” and inserting the word, “make”;

And,

On page 52, subdivision 12.28.2.f, after the word, “immediate” by inserting a comma, and the words, “in-home” and after the word, “record” by inserting the words, “in order to provide safe and appropriate care to consumers”;

And,

On page 55, subsection 13.3.1 by striking the period and inserting a colon and the following: “*Provided*, That the Secretary may only suspend or revoke a license, if the licensee commits a violation which endangers the health, safety or welfare of a person;”;

(b) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-5B-8 of this code, relating to the Department of Health and Human Resources (hospital licensure, [64 CSR 12](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-12)), is authorized with the following amendments:

‘On page 13, by inserting a new subdivision 4.3.7 to read as follows, “4.3.7. A hospital shall post signage in every patient room, patient care area/department, and staff rest area information outlining the process for reporting patient safety concerns via the facility’s designated internal reporting mechanism and the process for reporting unresolved patient safety concerns or complaints to the West Virginia Office for Health Facility Licensure and Certification. The posting shall include the address and telephone number for the West Virginia Office for Health Facility Licensure and Certification. Signage color and text shall conform to the Office of Safety and Health Administration regulations for safety instruction signs as provided in standard §1910.145. Nothing in the provision precludes any patient, patient representative, or healthcare provider from making a good faith report pertaining to patient safety concerns and/or alleged wrongdoing or waste to any other appropriate authorities as provided §16-39-3”.’

(c) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §16-5C-5 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (nursing home licensure, [64 CSR 13](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-13)), is authorized.

(d) The legislative rule effective of July 1, 2019, authorized under the authority of §16-1-4 of this code, relating to the Department of Health and Human Resources (food establishments, 64 CSR 17), is authorized with the following amendments:

On page 2, section 3, subsection 3.1, by inserting a new subdivision 3.1.h, to read as follows:

‘3.1.h Chapter 6, section 6-501.115 is not appliable if the following conditions are met:

3.1.h.1. The dog is prohibited from entering any areas where food is being prepared.

3.1.h.2. An exterior play area is available for the dog;

3.1.h.3. The dog owner shall certify that his or her dog has a current rabies vaccination;

3.1.h.4. The dog owner will be asked to leave, if a dog creates a nuisance;

3.1.h.5. The establishment is licensed a private club, brew pub, or micro distillery;

3.1.h.6. The establishment has liability insurance for dog related incidents;

3.1.h.7. Dog accidents are cleaned and sanitized. Dog waste stations are available. A written procedure shall be established and posted concerning dog accident cleanup;

3.1.h.8. Signage is present indicating that the establishment is dog friendly;

3.1.h.9. Dog rules are provided to customers upon entrance.’

And renumbering the remaining subdivisions accordingly.

(e) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-35-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2020, relating to the Department of Health and Human Resources (lead abatement licensing, 64 CSR 45), is authorized.

(f) The legislative rule filed in the State Register on November 20, 2020, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (emergency medical services, [64 CSR 48](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-48)), is authorized.

(g) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §27-5-9(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (client rights at state-operated mental health facilities, [64 CSR 59](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-59)), is authorized.

(h) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-50-11 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (delegation of medication administration and health maintenance tasks to approved medication assistive personnel, [64 CSR 60](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-60)), is authorized.

(j) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §33-59-1(k) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (diabetes self-management education, [64 CSR 115](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=64-115)), is authorized with the following amendments:

On page 1, section 1.2, by striking, “53” and inserting “59”.

(k) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-49-9 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (West Virginia clearance for access, registry, and employment screening, [69 CSR 10](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=69-10)), is authorized with the following amendments:

On page 2, by inserting a new section 2.3 to read as follows, “ 2.3. Covered Provider – means the following facilities or providers that are required to participate in the WV CARES program: skilled nursing facilities; nursing facilities; home health agencies; providers of hospice care; long-term care hospitals; providers of personal care services; providers of adult day care; residential care providers that arrange for or directly provide long-term care services including assisted living facilities; intermediate care facilities for individuals with intellectual disabilities; persons responsible for the care of children as described in W. Va. Code 49-2-114; chronic pain management clinics; behavioral health centers; neonatal abstinence syndrome centers; opioid treatment centers; and any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the secretary in legislative rule.”; and renumbering the remaining subsections accordingly;

(l) The legislative rule filed in the State Register on July 1, 2020, authorized under the authority of §16-59-2(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (recovery residence certification and accreditation program, [69 CSR 15](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=69-15)), is authorized.

(m) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (child placing agencies licensure, [78 CSR 02](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=78-02)), is authorized with the following amendments:

‘On page 11, by striking subdivision 6.3.1b and renumbering the remaining subdivisions accordingly;

And,

On page 20, by striking the sentence, “The agency shall require the following qualifications for each position.”

And,

On page 20, by striking subsections, 8.1.1,

And,

On page 20, by striking subsection 8.1.4 in its entirety and inserting in lieu thereof a new subsection 8.1.4 to read as follows:

“8.1.4. Case Managers shall have a bachelor’s or master’s degree in social work or a related human service field, or a Board of Regents degree with a human service concentration, or a Bachelor’s degree who has completed department approved training provided by the child placing agency;

And,

On page 21 by striking subdivision, 8.2.1.a and renumbering the remaining subdivisions accordingly;

And,

On page 36, by striking subsections, 11.4.5, renumbering the remaining subsections accordingly;

(n)\_The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources (minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia, [78 CSR 03](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=78-03)), is authorized with the following amendments:

On page 23, by striking subdivisions 6.1.1, in its entirety and renumbering the remaining subdivisions accordingly;

And,

On page 26, by striking “governing body shall be one of the following:”

And,

On page 26, by striking subdivisions 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5 in their entirety;

And,

On page 36, by striking subsection 10.6 in its entirety;

And,

On page 40, by striking subsection 11.3.2 in its entirety and renumbering the remaining subsections accordingly;

And,

On page 41, by striking subsection 12.1 in its entirety and inserting in lieu thereof the following:

12.1 The organization shall meet all applicable federal, state, and local, health, building, safety, and fire codes.”

And,

On page 42, by striking subsection 12.2.1 and inserting a new subsection 12.2.1 to read as follows: “12.2.1 Food shall be stored, prepared, and served according to local health department regulations;

And,

On page 43, by striking subsection 12.2.2 in its entirety;

And,

On page 43, by striking section 12.3 in its entirety;

(o) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §49-4-601b of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources (procedure to contest the substantiation of child abuse or neglect, [78 CSR 27](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=78-27)), is authorized.

§64-5-2. Health Care Authority.

The legislative rule filed in the State Register on September 28, 2020, authorized under the authority of §16-2D-4 of this code, relating to the Health Care Authority (exemption from certificate of need, [65 CSR 29](http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=65-29)), is with the following amendments:

On page 1, by striking subsection 3.1 and 3.2 in their entirety and inserting in lieu thereof a new subsection 3.1 and 3.2 to read as follows:

‘3.1. A health service exempt from certificate of need review by W.Va. Code §16-2D-11 may not be acquired, offered or developed within this state unless notification of the performance of the exemption is provided to the authority.

3.2. A person or health care facility may not knowingly charge or bill for a health service exempted from certificate of need review by W.Va. Code §16-2D-11 without first submitting a notification of performance of the exemption to the authority.’

And,

On page 2 and 3, by striking section 5 in its entirety, and renumbering the remaining sections accordingly.’”