

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]

1 A BILL to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended,
2 all relating generally to authorizing certain agencies of the Department of Health and
3 Human Resources to promulgate legislative rules; authorizing the rules as filed, as
4 modified by the Legislative Rule-Making Review Committee and as amended by the
5 Legislature; authorizing the Department of Health and Human Resources to promulgate a
6 legislative rule relating to behavioral health centers licensure; authorizing the Department
7 of Health and Human Resources to promulgate a legislative rule relating to hospital
8 licensure; authorizing the Department of Health and Human Resources to promulgate a
9 legislative rule relating to nursing home licensure; authorizing the Department of Health
10 and Human Resources to promulgate a legislative rule relating to food establishments;
11 authorizing the Department of Health and Human Resources to promulgate a legislative
12 rule relating to lead abatement licensing; authorizing the Department of Health and Human
13 Resources to promulgate a legislative rule relating to emergency medical services;
14 authorizing the Department of Health and Human Resources to promulgate a legislative
15 rule relating to client rights at state-operated mental health facilities; authorizing the
16 Department of Health and Human Resources to promulgate a legislative rule relating to
17 delegation of medication administration and health maintenance tasks to approved
18 medication assistive personnel; authorizing the Department of Health and Human
19 Resources to promulgate a legislative rule relating to diabetes self-management
20 education; authorizing the Department of Health and Human Resources to promulgate a
21 legislative rule relating to West Virginia clearance for access, registry, and employment
22 screening; authorizing the Department of Health and Human Resources to promulgate a
23 legislative rule relating to a recovery residence certification and accreditation program;
24 authorizing the Department of Health and Human Resources to promulgate a legislative
25 rule relating to child placing agencies licensure; authorizing the Department of Health and
26 Human Resources to promulgate a legislative rule relating to minimum licensing

27 requirements for residential child care and treatment facilities for children and transitioning
28 adults and vulnerable and transitioning youth group homes and programs in West Virginia;
29 authorizing the Department of Health and Human Resources to promulgate a legislative
30 rule relating to the procedure to contest the substantiation of child abuse or neglect; and
31 authorizing the Health Care Authority to promulgate a legislative rule relating to exemption
32 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.

1 (a) The legislative rule filed in the State Register on August 25, 2020, authorized under
2 the authority of §27-9-1 of this code, modified by the Department of Health and Human Resources
3 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
4 Register on January 4, 2021, relating to the Department of Health and Human Resources
5 (behavioral health centers licensure, 64 CSR 11), is authorized with the following amendments:

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

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

10 And,

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

15 And,

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

17 And,

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

20 And,

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

23 And,

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

26 And,

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

28 And,

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

31 And,

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

35 And,

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

39 (b) The legislative rule filed in the State Register on August 21, 2020, authorized under
40 the authority of §16-5B-8 of this code, relating to the Department of Health and Human Resources
41 (hospital licensure, 64 CSR 12), is authorized with the following amendments:

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

53 (c) The legislative rule filed in the State Register on August 25, 2020, authorized under
54 the authority of §16-5C-5 of this code, modified by the Department of Health and Human
55 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
56 in the State Register on December 16, 2020, relating to the Department of Health and Human
57 Resources (nursing home licensure, 64 CSR 13), is authorized.

58 (d) The legislative rule effective of July 1, 2019, authorized under the authority of §16-1-4
59 of this code, relating to the Department of Health and Human Resources (food establishments,
60 64 CSR 17), is authorized with the following amendments:

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

63 '3.1.h Chapter 6, section 6-501.115 is not applicable if the following conditions are met:

64 3.1.h.1. The dog is prohibited from entering any areas where food is being prepared.

65 3.1.h.2. An exterior play area is available for the dog;

66 3.1.h.3. The dog owner shall certify that his or her dog has a current rabies vaccination;

67 3.1.h.4. The dog owner will be asked to leave, if a dog creates a nuisance;

68 3.1.h.5. The establishment is licensed a private club, brew pub, or micro distillery;

69 3.1.h.6. The establishment has liability insurance for dog related incidents;

70 3.1.h.7. Dog accidents are cleaned and sanitized. Dog waste stations are available. A
71 written procedure shall be established and posted concerning dog accident cleanup;

72 3.1.h.8. Signage is present indicating that the establishment is dog friendly;

73 3.1.h.9. Dog rules are provided to customers upon entrance.'

74 And renumbering the remaining subdivisions accordingly.

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

80 (f) The legislative rule filed in the State Register on November 20, 2020, authorized under
81 the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources
82 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
83 Register on January 4, 2021, relating to the Department of Health and Human Resources
84 (emergency medical services, 64 CSR 48), is authorized.

85 (g) The legislative rule filed in the State Register on August 26, 2020, authorized under
86 the authority of §27-5-9(g) of this code, modified by the Department of Health and Human
87 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
88 in the State Register on December 9, 2020, relating to the Department of Health and Human
89 Resources (client rights at state-operated mental health facilities, 64 CSR 59), is authorized.

90 (h) The legislative rule filed in the State Register on August 21, 2020, authorized under
91 the authority of §16-50-11 of this code, modified by the Department of Health and Human
92 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
93 in the State Register on December 16, 2020, relating to the Department of Health and Human

94 Resources (delegation of medication administration and health maintenance tasks to approved
95 medication assistive personnel, 64 CSR 60), is authorized.

96 (j) The legislative rule filed in the State Register on August 26, 2020, authorized under the
97 authority of §33-59-1(k) of this code, modified by the Department of Health and Human Resources
98 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
99 Register on November 20, 2020, relating to the Department of Health and Human Resources
100 (diabetes self-management education, 64 CSR 115), is authorized with the following
101 amendments:

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

103 (k) The legislative rule filed in the State Register on August 21, 2020, authorized under
104 the authority of §16-49-9 of this code, modified by the Department of Health and Human
105 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
106 in the State Register on November 20, 2020, relating to the Department of Health and Human
107 Resources (West Virginia clearance for access, registry, and employment screening, 69 CSR 10),
108 is authorized with the following amendments:

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

120 (l) The legislative rule filed in the State Register on July 1, 2020, authorized under the
121 authority of §16-59-2(g) of this code, modified by the Department of Health and Human Resources
122 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
123 Register on December 9, 2020, relating to the Department of Health and Human Resources
124 (recovery residence certification and accreditation program, 69 CSR 15), is authorized.

125 (m) The legislative rule filed in the State Register on August 25, 2020, authorized under
126 the authority of §49-2-121 of this code, modified by the Department of Health and Human
127 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
128 in the State Register on December 16, 2020, relating to the Department of Health and Human
129 Resources (child placing agencies licensure, 78 CSR 02), is authorized with the following
130 amendments:

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

133 And,

134 On page 20, by striking the sentence, "The agency shall require the following qualifications
135 for each position."

136 And,

137 On page 20, by striking subsections, 8.1.1,

138 And,

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

141 "8.1.4. Case Managers shall have a bachelor's or master's degree in social work or a
142 related human service field, or a Board of Regents degree with a human service concentration,
143 or a Bachelor's degree who has completed department approved training provided by the child
144 placing agency;

145 And,

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

148 And,

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

151 (n) The legislative rule filed in the State Register on August 25, 2020, authorized under
152 the authority of §49-2-121 of this code, modified by the Department of Health and Human
153 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
154 in the State Register on December 15, 2020, relating to the Department of Health and Human
155 Resources (minimum licensing requirements for residential child care and treatment facilities for
156 children and transitioning adults and vulnerable and transitioning youth group homes and
157 programs in West Virginia, 78 CSR 03), is authorized with the following amendments:

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

160 And,

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

162 And,

163 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;

164 And,

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

166 And,

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

169 And,

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

172 12.1 The organization shall meet all applicable federal, state, and local, health, building,
173 safety, and fire codes.”

174 And,

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

178 And,

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

180 And,

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

182 (o) The legislative rule filed in the State Register on August 26, 2020, authorized under
183 the authority of §49-4-601b of this code, modified by the Department of Health and Human
184 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
185 in the State Register on December 15, 2020, relating to the Department of Health and Human
186 Resources (procedure to contest the substantiation of child abuse or neglect, 78 CSR 27), is
187 authorized.

§64-5-2. Health Care Authority.

1 The legislative rule filed in the State Register on September 28, 2020, authorized under
2 the authority of §16-2D-4 of this code, relating to the Health Care Authority (exemption from
3 certificate of need, 65 CSR 29), is with the following amendments:

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

6 ‘3.1. A health service exempt from certificate of need review by W.Va. Code §16-2D-11
7 may not be acquired, offered or developed within this state unless notification of the performance
8 of the exemption is provided to the authority.

9 3.2. A person or health care facility may not knowingly charge or bill for a health service
10 exempted from certificate of need review by W.Va. Code §16-2D-11 without first submitting a
11 notification of performance of the exemption to the authority.'

12 And,

13 On page 2 and 3, by striking section 5 in its entirety, and renumbering the remaining
14 sections accordingly.'"