

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

### **Introduced**

## **House Bill 2093**

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

PACK, TONEY, LONGANACRE, JENNINGS, SMITH,

WAMSLEY, AND CLARK

[Introduced February 10, 2021; Referred to the  
Committee on Veterans' Affairs and Homeland  
Security then Health and Human Resources]

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 providing exemption to medical foster homes approved and annually reviewed by the  
 4 United States Department of Veteran Affairs from requirements for unlicensed health care  
 5 homes; providing for annual reporting regarding operation of program; and excluding  
 6 medical foster homes from the definition of covered provider for purposes of WV CARES  
 7 Act.

*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 provide an annual report to the  
 5 Governor and Legislature by December 1 of each year, beginning on December 1, 2021, outlining  
 6 the scope and effectiveness of the Medical Foster Home Program 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.