

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2093**

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

PACK, TONEY, LONGANACRE, JENNINGS, SMITH,

WAMSLEY AND CLARK

[Passed April 7, 2021; in effect ninety days from passage.]



1 AN ACT 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 “Applicant” means an individual who is being considered for employment or engagement  
3 with the department, a covered provider or covered contractor.

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

6 “Bureau” means a division within the Department of Health and Human Resources.

7           “Covered contractor” means an individual or entity, including their employees and  
8 subcontractors, that contracts with a covered provider to perform services that include any direct  
9 access services.

10          “Covered provider” means the following facilities or providers:

11           (i) A skilled nursing facility;

12           (ii) A nursing facility;

13           (iii) A home health agency;

14           (iv) A provider of hospice care;

15           (v) A long-term care hospital;

16           (vi) A provider of personal care services;

17           (vii) A provider of adult day care;

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

20           (ix) An intermediate care facility for individuals with intellectual disabilities;

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

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

26          “Department” means the Department of Health and Human Resources.

27          “Department employee” means any prospective or current part-time employee, full-time  
28 employee, temporary employee, independent contractor, or volunteer of the department.

29          “Direct access” means physical contact with a resident, member, beneficiary, or client, or  
30 access to their property, personally identifiable information, protected health information, or  
31 financial information.

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

38           “Disqualifying offense” means:

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

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

43           “Negative finding” means a finding in the prescreening that excludes an applicant from  
44 direct access personnel positions.

45           “Notice of ineligibility” means a notice pursuant to §16-49-3 of this code that the secretary’s  
46 review of the applicant’s criminal history record information reveals a disqualifying offense.

47           “Prescreening” means a mandatory search of databases and registries specified by the  
48 secretary in legislative rule for exclusions and licensure status prior to the submission of  
49 fingerprints for a criminal history record information check.

50           “Rap back” means the notification to the department when an individual who has  
51 undergone a fingerprint-based, state or federal criminal history record information check has a  
52 subsequent state or federal criminal history event.

53           “Secretary” means the Secretary of the West Virginia Department of Health and Human  
54 Resources, or his or her designee.

55           “State Police” means the West Virginia State Police Criminal Identification Bureau.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

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*Governor*