

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2427

BY DELEGATE FOSTER

[Passed April 6, 2021; in effect from passage.]

1 AN ACT 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; directing the promulgation of a current legislative rule with amendments;
6 authorizing the Department of Health and Human Resources to promulgate a legislative
7 rule relating to behavioral health centers licensure; authorizing the Department of Health
8 and Human Resources to promulgate a legislative rule relating to hospital licensure;
9 authorizing the Department of Health and Human Resources to promulgate a legislative
10 rule relating to nursing home licensure; directing the Department of Health and Human
11 Resources to promulgate a legislative rule relating to food establishments; authorizing the
12 Department of Health and Human Resources to promulgate a legislative rule relating to
13 lead abatement licensing; authorizing the Department of Health and Human Resources to
14 promulgate a legislative rule relating to emergency medical services; authorizing the
15 Department of Health and Human Resources to promulgate a legislative rule relating to
16 client rights at state-operated mental health facilities; authorizing the Department of Health
17 and Human Resources to promulgate a legislative rule relating to delegation of medication
18 administration and health maintenance tasks to approved medication assistive personnel;
19 authorizing the Department of Health and Human Resources to promulgate a legislative
20 rule relating to diabetes self-management education; authorizing the Department of Health
21 and Human Resources to promulgate a legislative rule relating to West Virginia clearance
22 for access, registry, and employment screening; authorizing the Department of Health and
23 Human Resources to promulgate a legislative rule relating to a recovery residence
24 certification and accreditation program; authorizing the Department of Health and Human
25 Resources to promulgate a legislative rule relating to child placing agencies licensure;
26 authorizing the Department of Health and Human Resources to promulgate a legislative

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

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, subsection 1.7, after the words, “supports in the” by inserting the words, “state
7 of”;

8 On page 11, subdivision 4.5.5 by striking out the word, “alternations” and inserting in lieu
9 thereof the word, “alterations”;

10 On page 11, by adding a new subdivision 4.5.6 to read as follows:

11 “4.5.6. All plumbing shall meet the requirements of local plumbing codes or, in the
12 absence thereof, the National Plumbing Code and be maintained and repaired in a state to
13 conform with its intended purpose.”;

14 And,

15 By renumbering the remaining subdivisions;

16 On page 25, by striking out all of paragraph 9.5.1.f. and inserting in lieu thereof a new
17 paragraph 9.5.1.f. to read as follows:

18 "9.5.1.f. Documentation that information on the Child Abuse and Neglect Registry created
19 under W. Va. Code §15-13-1 *et seq.* was checked for that employee, student, or volunteer."

20 On page 28, paragraph 10.1.4.i, by striking out the word, "daily";

21 On page 28, by striking out all of paragraph 10.1.4.l.:

22 On page 29, paragraph 10.1.4.m, after the word, "vermin" by inserting the words, "that
23 stand to pose a threat to the health or safety of consumers or employees";

24 And,

25 By renumbering the remaining paragraph;

26 On page 30, subdivision 10.2.11, by striking out the word, "sued" and inserting in lieu
27 thereof the word, "used";

28 On page 45, subdivision 12.16.5, by striking out the word, "uses" and inserting in lieu
29 thereof the word, "use";

30 On page 45, subdivision 12.16.5, by striking out the word, "made" and inserting in lieu
31 thereof the word, "make";

32 On page 52, paragraph 12.28.2.f, after the word, "immediate" by inserting a comma, and
33 the words, "in-home";

34 On page 52, paragraph 12.28.2.f, after the word, "record" by inserting the words, "in order
35 to provide safe and appropriate care to consumers";

36 And,

37 On page 55, subdivision 13.3.1 by changing the period and to a colon and inserting the
38 following proviso: "*Provided*, That the Secretary may only suspend or revoke a license, if the
39 licensee commits a violation which endangers the health, safety or welfare of a person;";

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

43 'On page 13, by inserting a new subdivision 4.3.7 to read as follows;

44 "4.3.7. A hospital shall post signage in every patient room, patient care area or
45 department, and staff rest area information outlining the process for reporting patient safety
46 concerns via the facility's designated internal reporting mechanism and the process for reporting
47 unresolved patient safety concerns or complaints to the West Virginia Office for Health Facility
48 Licensure and Certification. The posting shall include the address and telephone number for the
49 West Virginia Office for Health Facility Licensure and Certification. Signage color and text shall
50 conform to the Office of Safety and Health Administration regulations for safety instruction signs
51 as provided in standard §1910.145. Nothing in the provision precludes any patient, patient
52 representative, or healthcare provider from making a good faith report pertaining to patient safety
53 concerns and/or alleged wrongdoing or waste to any other appropriate authorities as provided
54 §16-39-3".'

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

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

64 On page 2, subsection 3.1, by adding a new subdivision 3.1.h, to read as follows:

65 '3.1.h Chapter 6, section 6-501.115 is not applicable if the following conditions are met:

66 3.1.h.1. The dog is prohibited from entering any areas where food is being prepared.

67 3.1.h.2. An exterior play area is available for the dog;

68 3.1.h.3. The dog owner shall certify that his or her dog has a current rabies vaccination;

69 3.1.h.4. The dog owner will be asked to leave, if a dog creates a nuisance;

70 3.1.h.5. The establishment is licensed a private club, brew pub, or micro distillery;

71 3.1.h.6. The establishment has liability insurance for dog related incidents;

72 3.1.h.7. Dog accidents are cleaned and sanitized. Dog waste stations are available. A
73 written procedure shall be established and posted concerning dog accident cleanup;

74 3.1.h.8. Signage is present indicating that the establishment is dog friendly;

75 3.1.h.9. Dog rules are provided to customers upon entrance.'

76 And,

77 By renumbering the remaining subdivisions.

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

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

88 On page 50, after subsection 12.4., by adding a new section 13 to read as follows:

89 "§64-48-13. Federal Model Program.

90 13.1. Any EMS agency licensed by the Bureau may seek approval from the Centers for
91 Medicare and Medicaid Services of the United States Department of Health and Human Services

92 to participate in the national Emergency Triage, Treat and Transport (ET3) Model program.
93 Services under the ET3 Model program shall specifically include, but not be limited to, the
94 transport of patients to alternative destinations such as federally qualified health centers, urgent
95 care centers, physician offices and clinics, and behavioral health care facilities. The ET3 Model
96 program has a five-year performance period and is not administered by the Bureau. Any EMS
97 agency approved to participate in the ET3 Model program shall be governed solely by the
98 standards and criteria established by the Centers for Medicare & Medicaid Services in its delivery
99 of ET3 services thereunder.”

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

105 (h) The legislative rule filed in the State Register on August 21, 2020, authorized under
106 the authority of §16-5O-11 of this code, modified by the Department of Health and Human
107 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
108 in the State Register on December 16, 2020, relating to the Department of Health and Human
109 Resources (delegation of medication administration and health maintenance tasks to approved
110 medication assistive personnel, 64 CSR 60), is authorized.

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

116 On page 1, subsection 1.2, by striking out, “53” and inserting in lieu thereof “59”.

117 (j) The legislative rule filed in the State Register on August 21, 2020, authorized under the
118 authority of §16-49-9 of this code, modified by the Department of Health and Human Resources
119 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
120 Register on November 20, 2020, relating to the Department of Health and Human Resources
121 (West Virginia clearance for access, registry, and employment screening, 69 CSR 10), is
122 authorized with the following amendment:

123 On page 2, by adding a new subsection 2.3 to read as follows:

124 “ 2.3. Covered Provider – means the following facilities or providers that are required to
125 participate in the WV CARES program: skilled nursing facilities; nursing facilities; home health
126 agencies; providers of hospice care; long-term care hospitals; providers of personal care services;
127 providers of adult day care; residential care providers that arrange for or directly provide long-
128 term care services including assisted living facilities; intermediate care facilities for individuals
129 with intellectual disabilities; persons responsible for the care of children as described in W. Va.
130 Code 49-2-114; chronic pain management clinics; behavioral health centers; neonatal abstinence
131 syndrome centers; opioid treatment centers; and any other facility or provider required to
132 participate in the West Virginia Clearance for Access: Registry and Employment Screening
133 program as determined by the secretary in legislative rule.”;

134 And,

135 By renumbering the remaining subsections;

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

141 (l) The legislative rule filed in the State Register on August 25, 2020, authorized under the
142 authority of §49-2-121 of this code, modified by the Department of Health and Human Resources

143 to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
144 Register on December 16, 2020, relating to the Department of Health and Human Resources
145 (child placing agencies licensure, 78 CSR 02), is authorized with the following amendments:

146 On page 11, by striking out paragraph 6.3.1.b;

147 And,

148 By renumbering the remaining paragraph;

149 On page 20, subsection 8.1, by striking out the sentence, "The agency shall require the
150 following qualifications for each position."

151 On page 20, by striking out subdivision 8.1.1,

152 And,

153 On page 20, by striking out subdivision 8.1.4. and inserting in lieu thereof a new
154 subdivision 8.1.4 to read as follows:

155 "8.1.4. Case Managers shall have a bachelor's or master's degree in social work or a
156 related human service field, or a Board of Regents degree with a human service concentration,
157 or a Bachelor's degree who has completed department approved training provided by the child
158 placing agency;

159 On page 21 by striking paragraph, 8.2.1.a:

160 And,

161 By renumbering the remaining paragraphs;

162 On page 36, by striking out subdivision, 11.4.5.;

163 And,

164 Renumbering the remaining subdivisions.

165 (m) The legislative rule filed in the State Register on August 25, 2020, authorized under
166 the authority of §49-2-121 of this code, modified by the Department of Health and Human
167 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled
168 in the State Register on December 15, 2020, relating to the Department of Health and Human

169 Resources (minimum licensing requirements for residential child care and treatment facilities for
170 children and transitioning adults and vulnerable and transitioning youth group homes and
171 programs in West Virginia, 78 CSR 03), is authorized with the following amendments:

172 On page 23, by striking out all of subdivision 6.1.1.;

173 And,

174 By renumbering the remaining subdivisions;

175 On page 26, subsection 7.1., by striking out “governing body shall be one of the following:”

176 On page 26, by striking out all of subdivisions 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5;

177 On page 36, by striking out all of subsection 10.6.;

178 On page 40, by striking out all of subdivision 11.3.2;

179 And,

180 By renumbering the remaining subdivisions;

181 On page 41, by striking out all of subsection 12.1 and inserting in lieu thereof a new
182 subsection 12.1. to read as follows:

183 12.1 The organization shall meet all applicable federal, state, and local, health, building,
184 safety, and fire codes.”

185 On page 42, by striking out all of subdivision 12.2.1 and inserting in lieu thereof a new
186 subsection 12.2.1 to read as follows:

187 “12.2.1 Food shall be stored, prepared, and served according to local health department
188 regulations;

189 On page 43, by striking out all of subdivision 12.2.2.;

190 And,

191 On page 43, by striking out all of subsection 12.3.;

192 (n) The legislative rule filed in the State Register on August 26, 2020, authorized under
193 the authority of §49-4-601b of this code, modified by the Department of Health and Human
194 Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled

195 in the State Register on December 15, 2020, relating to the Department of Health and Human
196 Resources (procedure to contest the substantiation of child abuse or neglect, 78 CSR 27), is
197 authorized with the following amendments:

198 On page 2, after subsection 2.14, by adding two new sections designated sections 3 and
199 4 to read as follows:

“§78-27-3. Substantiation of abuse and neglect.

1 The Bureau may consider an allegation against a person of abuse or neglect of a child to
2 have been substantiated for purposes of its records in either of the following two circumstances:

3 (a) The allegation of abuse or neglect has been the subject of a petition under chapter 49
4 of this code, that resulted in an adjudication finding that the person committed one or more acts
5 of abuse or neglect of a child, and that adjudication has not been reversed or vacated on appeal;
6 or

7 (b) The Bureau, as a result of its own investigation has determined that an allegation
8 against a person of abuse or neglect of a child has been substantiated, whether or not there has
9 a been adjudication under subsection (a) of this section: *Provided*, that when there has been no
10 adjudication, sections four and five of this rule apply.

§78-27-4. Allegations of abuse or neglect substantiated on or before July 1, 2021.

1 (a) Any person may write to the Bureau and inquire if the Bureau has included him or her
2 in its records of persons against whom there has been a substantiated claim of abuse or neglect
3 of a child. The person making the inquiry shall provide the Bureau with his or her full name, date
4 of birth, address, and social security number.

5 (b) Within 30 days of the request, the Bureau shall inform the person that: (1) the Bureau
6 has no record of any substantiated claim against the person of abuse or neglect of a child; or (2)
7 the Bureau does have a record of a substantiated allegation against the person of abuse or
8 neglect of a child. If the substantiation is not based upon an adjudication described in subsection
9 (a), section three of this rule, the Bureau shall provide the notice required under section five of

10 this rule, and all of the rights and obligations of the Bureau and the person apply as if the Bureau's
11 substantiation had occurred after July 1, 2021.”;

12 And,

13 By renumbering the remaining sections;

14 On page 2, section 3, by striking out all of subsection 3.1. and inserting in lieu thereof a
15 new subsection 3.1 to read as follows:

16 “3.1. After July 1, 2021, if the Bureau determines that an allegation against a person of
17 abuse or neglect of a child has been substantiated, the Bureau shall provide written notice to the
18 maltreater of its determination.”;

19 And,

20 On page 3, subsection 3.4., after the words “The notice shall” by striking out the remainder
21 of the sentence and inserting in lieu thereof “inform the maltreater that a finding of a substantiated
22 abuse and neglect is recorded with the Bureau. The notice shall also inform the maltreater that
23 the fact that a finding of a substantiated abuse and neglect is recorded with the Bureau may keep
24 the maltreater from certain types of employment and may also prevent him or her from foster or
25 kinship care of a child.”.

§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 authorized with the following amendments:

4 On page 1, by striking out all of subsections 3.1 and 3.2 and inserting in lieu thereof a new
5 subsection 3.1 and subsection 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 On pages 2 and 3, by striking out all of section 5 in its entirety;

13 And,

14 By renumbering the remaining sections.

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 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

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

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Governor