



CHAPTER 700 WV CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING (WV CARES)

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### BACKGROUND

West Virginia was one of 25 states awarded grant funds from the Centers for Medicare and Medicaid Services (CMS) to create a comprehensive background check program for employees who have direct access to patients. [Title VI, Subtitle B, Part III, Subtitle C, Section 6201 of the Patient Protection and Affordable Care Act of 2010 \(PL 111-148\)](#) established the framework for a nationwide program for states to conduct background checks, review the results and provide employers with a fitness determination for potential employees. The program's purpose is to protect members from neglect, abuse, and financial exploitation.

Per [West Virginia Code §16-49-1 et. seq.](#), covered providers licensed by the West Virginia Department of Health and Human Resources (DHHR) to perform services that include any direct access services are required to conduct employee background checks. These providers include:

- Nursing homes
- Skilled nursing facilities
- Home health agencies
- Hospice care
- Long-term care hospitals
- Long-term residential care
- Personal care services
- Adult daycare services
- Intermediate care facilities
- Substance Use Disorder Waiver providers
- Other facilities and providers required to participate by DHHR

### POLICY

[West Virginia Clearance for Access: Registry & Employment Screening \(WV CARES\)](#) is administered by the DHHR in consultation with the West Virginia State Police Criminal Investigation Bureau (CIB), CMS, the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI).

The web-based system provides an efficient and effective means for an employer to prescreen an applicant prior to paying the cost of fingerprints. Through fingerprinting, this program provides a comprehensive criminal history records search of national and state criminal history records that was not available under the previous reliance on name-based records searches.

In addition to the initial fingerprint based criminal history background check, WV CARES is able to monitor applicants and employees through RapBack for potential changes in criminal history and employment status. RapBack allows applicants/employees to move between providers covered by WV CARES without waiting for additional fingerprints.

A facility must receive documentation that fingerprints have been taken before hiring an individual. An applicant may be provisionally employed for up to 60 days while the WV CARES fitness determination is pending. Provisional employees must be directly supervised by an employee who has cleared both the criminal background and the required registry checks, completed at the time of their hire.

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The West Virginia State Police contracts with a private agency to securely capture and transmit fingerprints to be processed through the West Virginia State Police and the FBI.

Any covered provider that knowingly hires or retains a person who has been convicted of a disqualifying offense will be in violation of [West Virginia Code §16-49-3](#) and West Virginia Code of State Rules §69-10-2.10.

### 700.1 PRE-SCREENING

All direct access personnel will be prescreened for negative findings by way of an internet search of registries and licensure databases through WV CARES application process.

Direct access personnel includes individuals who have direct access by virtue of ownership, employment, engagement, or agreement with a covered provider or covered contractor. Direct access personnel do not include volunteers or students performing irregular or supervised functions, or contractors performing repairs, deliveries, installations or similar services for the covered provider.

Any applicant with a negative finding on any required registry or licensure database is not eligible to be employed.

### 700.2 FINGERPRINTING REQUIREMENT

If the applicant does not have a negative finding in the prescreening process, and the entity or independent health contractor, if applicable, is considering the applicant for employment, the applicant must submit to fingerprinting for a state and federal criminal history record check. An applicant may be employed as a provisional employee once fingerprints have been collected and documentation submitted to the provider. Provisional hire is not to exceed 60 days subject to the provisions of this policy.

Applicants considered for hire must be notified by the hiring entity that their fingerprints will be retained by the CIB and the FBI to allow for updates of criminal history record information according to applicable standards, rules, regulations, or laws.

**Note:** WV CARES may request a name-based search when two federal or two state rejections have been received. Once the name-based search results are received they will enter a fitness determination.

#### 700.2.1 Fees

The West Virginia State Police may assess a fee to applicants, covered providers, or covered contractors for conducting the criminal background check and for collecting and retaining fingerprints for Rap Back as authorized in [West Virginia Code § 16-49-8](#).

The Secretary or designee may assess a fee to applicants, covered providers, or covered contractors for the maintenance of the Internet-based system required by [West Virginia Code § 16-49-8](#).



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### 700.3 EMPLOYMENT FITNESS DETERMINATION

After an applicant's fingerprints have been compared with the state and federal criminal history record information, the West Virginia State Police shall notify WV CARES of the results to make an employment fitness determination.

If the review of the criminal history record information reveals the applicant does not have a disqualifying offense, the applicant will receive a fitness determination of "eligible" and may be employed.

If the review of the criminal history record information reveals a conviction of a disqualifying offense, the applicant will receive a fitness determination of "not eligible" and may not be employed, unless a variance has been requested or granted.

Negative findings that would disqualify an applicant in the WV CARES Rule:

1. State or federal health and social services program-related crimes;
2. Patient abuse or neglect;
3. Health care fraud;
4. Felony drug crimes;
5. Crimes against care-dependent or vulnerable individuals;
6. Felony crimes against the person;
7. Felony crimes against property;
8. Sexual Offenses;
9. Crimes against chastity, morality and decency;
10. Crimes against public justice;
11. Felony driving offenses;
12. Felony crimes against the peace; and
13. Falsification of the self-disclosure and consent form.

The hiring entity will receive written notice of the employment fitness determination. Although fitness determination is provided, no criminal history record information will be disseminated to the applicant or hiring entity.

A copy of the applicant's fitness determination must be maintained in the applicant's personnel file.

### 700.4 PROVISIONAL EMPLOYEES

Provisional basis employment for no more than 60 days may occur when:

- An applicant does not have a negative finding on a required registry or licensure database and the employment fitness determination is pending the criminal history record information; or
- An applicant has requested a variance of the employment fitness determination and a decision is pending.

All provisional employees shall receive direct on-site supervision by the hiring entity until an eligible fitness determination is received.



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The provisional employee, pending the employment fitness determination, must affirm, in a signed statement, that he or she has not committed a disqualifying offense, and acknowledge that a disqualifying offense shall constitute good cause for termination. Provisional employees who have requested a variance shall not be required to sign such a statement.

### 700.5 VARIANCE

The applicant, or the hiring entity on the applicant's behalf, may file a written request for a variance of the fitness determination with WV CARES within 30 days of an ineligible fitness determination. A variance may be granted if mitigating circumstances surrounding the disqualifying offense are provided, and it is determined that the individual will not pose a danger or threat to residents or their property. See [Chapter 504, Substance Use Disorder Services](#) for additional variance information for Peer Recovery Support Specialists.

Mitigating circumstances may include:

1. The passage of time;
2. Extenuating circumstances such as the applicant's age at the time of conviction, substance abuse, or mental health issues;
3. A demonstration of rehabilitation such as character references, employment history, education, and training; and
4. The relevancy of the particular disqualifying information.

The applicant and the hiring entity will receive written notification of the variance decision within 60 days of receipt of the request.

### 700.6 APPEALS

If the applicant believes that his or her criminal history record information within the State of West Virginia is incorrect or incomplete, he or she may challenge the accuracy of such information by writing to the West Virginia State Police for a personal review.

If the applicant believes that his or her criminal history record information from outside the State of West Virginia is incorrect or incomplete, he or she may appeal the accuracy of such information by contacting the FBI for instructions.

If the purported discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the West Virginia State Police.

The applicant shall not be employed during the appeal process.

### 700.7 RESPONSIBILITY OF THE COVERED PROVIDER OR CONTRACTOR

The covered provider or covered contractor is required to review monthly registry rechecks for any disqualifying offenses. The covered provider and covered contractor are to retain documentation in relation to background checks for all direct access personnel.



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### 700.7.1 Monthly Registry Rechecks

The WV CARES system will provide monthly rechecks of all current employees against the required registries. The covered provider or covered contractor will receive notification of any potential negative findings. The covered provider or covered contractor is required to research each finding to determine if the potential match is a negative finding for the employee. The covered provider or covered contractor must maintain documentation establishing no negative findings for current employees.

**NOTE:** This includes the Office of Inspector General List of Excluded Individuals and Entities (OIG LEIE) check.

### 700.7.2 Record Retention

Documents related to the background checks for all direct access personnel must be maintained by the covered provider or covered contractor for the duration of their employment. These documents include:

1. Documents establishing that an applicant has no negative findings on registries and licensure databases.
2. The employee's eligible employment fitness determination;
3. Any variance granted by the Secretary or designee, if applicable; and
4. For provisional employees, the covered provider or covered contractor shall maintain documentation that establishes that the individual meets the qualifications for provisional employment.

Failure of a covered provider or covered contractor to ensure proper completion of the background check process for each individual employed as a direct access personnel may result in the imposition of civil money penalties of \$2,500 per occurrence. Engaging individuals knowing that they are ineligible to work may subject the employer to civil money penalties of \$2,500 per occurrence. Each civil money penalty will be levied by the Secretary or his designee.

## 700.8 CHANGE IN EMPLOYMENT

If an individual applies for employment with another eligible program, the applicant is not required to submit to fingerprinting and a criminal background check if:

1. The individual previously submitted to fingerprinting and a full state and federal criminal background check as required by this policy;
2. The prior criminal background check confirmed that the individual did not have a disqualifying offense;
3. The individual received prior approval from the Secretary or his designee to work for or with covered provider or covered contractor, if applicable; and
4. No new criminal activity that constitutes a disqualifying offense has been reported.

The WV CARES system retains all fitness determinations made for individuals.



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### GLOSSARY

Definitions in [Chapter 200, Definitions and Acronyms](#) apply to all West Virginia Medicaid services, including those covered by this chapter. Definitions in this glossary are specific to this chapter.

**Care-dependent individual:** A person, adult or child, who relies on medical or health care-related service provided by members of the health and/or direct access profession.

**Conviction:** A finding of guilty by a court, a plea of guilty or nolo contendere was accepted, or when the individual entered a first offender, deferred adjudication, or arrangement or program where the judgment of conviction is withheld, regardless of whether an appeal is pending.

**Covered Contractor:** An individual or entity, including their employees and subcontractors, who performs personal services for the covered provider in exchange for monetary compensation, where the covered provider has the right to specify the result to be accomplished by the work, but not the means by which the result is accomplished.

**Covered Provider:** The following facilities and providers 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, including any person providing services in exchange for monetary compensation, providers of adult day care, residential care providers that arrange for, or directly provide, long-term care services, including assisted living facilities, and intermediate care facilities for individuals with intellectual disabilities, and any provider authorized by the secretary or his designee.

**Direct access:** Physical contact with a resident, member, beneficiary or client of a covered provider, or access to their property, personally identifiable information, protect health information or financial information.

**Direct access personnel:** An individual who has direct access by virtue of ownership, employment, engagement, or agreement with a covered provider or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions, or contractors performing repairs, deliveries, installations or similar services for the covered provider. DHHR shall determine by legislative rule whether the position in question involves direct access.

**Direct On-site Supervision:** Uninterrupted observation of a provisional employee by another employee who has cleared all the required background checks. Provisional employees cannot have direct access without being supervised or observed as required by the provisions of [WV Code §16-49](#).

**Fingerprint-based criminal background check:** A prescreening of registries specified by the DHHR by rule and a fingerprint-based search of state and federal criminal history record information.

**Negative Finding:** A finding in the employment prescreening that excludes an applicant from direct access personnel positions.



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**Rap Back:** The notification to the DHHR when an individual who has undergone a fingerprint-based, state or federal criminal history record information check has a subsequent state or federal criminal history event.

**Vulnerable individual:** An adult or child who is at risk of abuse or harm due to life circumstances, such as underage, homeless, mentally ill, incapacitated, medical diagnosis, frail and elderly.

### REFERENCES

WV CARES website (<https://www.wvdhhr.org/oig/wvcares.html>)

The Patient Protection and Affordable Health Care Act of 2010 ( <https://www.congress.gov/bill/111th-congress/house-bill/3590>)

[West Virginia Code §16-49](#) West Virginia Clearance for Access: Registry and Employment Screening Act

[WV Secretary of State: Amendment to Existing Rule § 69-10](#)

### CHANGE LOG

REPLACE	TITLE	EFFECTIVE DATE
New Chapter	WV CARES	April 1, 2018
Entire Chapter	Change made to 700.5 to reference additional information for Peer Recovery Support Specialists to support policy in Chapter 504.	July 1, 2018