

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4366**

BY DELEGATES ELLINGTON, HOUSEHOLDER AND FRICH

[Introduced January 30, 2018; Referred  
to the Committee on Health and Human Resources then  
the Judiciary.]

1 A BILL to amend and reenact §16-2D-9 of the Code of West Virginia, 1931, as amended, relating  
2 to the approval of additional beds for intermediate care facilities; authorizing the Secretary  
3 of the Department of Health and Human Resources to designate where the beds may be  
4 located; providing that eligibility will be determined on a case-by-case basis; providing that  
5 all other relevant regulatory laws apply; and providing that additional beds may be  
6 developed.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 2D. CERTIFICATE OF NEED.**

### **§16-2D-9. Health services that cannot be developed.**

1 (a) Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require  
2 a certificate of need but the authority may not issue a certificate of need to:

3 (1) A health care facility adding intermediate care or skilled nursing beds to its current  
4 licensed bed complement, except as provided in §16-2D-11(c)(23) of this code;

5 (2) A person developing, constructing, or replacing a skilled nursing facility except in the  
6 case of facilities designed to replace existing beds in existing facilities that may soon be deemed  
7 unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to  
8 meet the changing health care delivery system;

9 (3) Add beds in an intermediate care facility for individuals with an intellectual disability,  
10 except that prohibition does not apply to an intermediate care facility for individuals with  
11 intellectual disabilities beds approved under the Kanawha County circuit court order of August 3,  
12 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284  
13 S.E. 2d 232 (1981); and

14 (4) An opioid treatment program.

15 (b) Notwithstanding the prohibition set forth in §16-2D-9(a)(3) of this code, an additional  
16 24 beds in intermediate care facilities for individuals with an intellectual disability are approved  
17 without further action by the authority. The beds may be added by providers and in the areas the

18 Secretary of the Department of Health and Human Resources in his or her discretion designates  
19 in order to move individuals to a less restrictive setting or to prevent individuals from entry to a  
20 more restrictive setting. Eligibility for bed placement will be determined by a multidisciplinary team  
21 on a case-by-case basis based upon bed availability. Except to the extent provided in this  
22 subsection, the laws governing licensure, regulation, and Medicaid reimbursement apply to the  
23 facilities effected by this subsection. Additional beds may be added in the sole discretion of the  
24 secretary.

NOTE: The purpose of this bill is to provide a limited exception to the ban on new certificates of need for beds in intermediate care facilities, to authorize the Secretary of Health and Human Resources to designate where the 24 beds approved in the bill may be located, and to provide that the beds may only be used to move individuals to a less restrictive setting or to prevent individuals from entry to a more restrictive setting.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.