



*Jim Justice*  
*Governor of West Virginia*

March 27, 2019

**VIA HAND DELIVERY**

The Honorable Mac Warner  
Secretary of State  
Building 1, Suite 157-K  
State Capitol  
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill No. 487

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 487.

Enrolled Committee Substitute for Senate Bill No. 487 amends §55-7B-7a the Medical Professional Liability Act, which involves liability cases from injuries or deaths resulting from falls in a healthcare facility. SB 487 provides a *conclusive presumption* that “appropriate staffing was provided” in any legal action alleging inappropriate staffing if a health care facility or provider demonstrates compliance with minimum staffing requirements under West Virginia law. Furthermore, Enrolled Committee Substitute for Senate Bill 487 also provides a rebuttable presumption that adequate supervision of patients to prevents falls was provided if minimum staffing levels are met.

The presumptions created in Enrolled Committee Substitute for Senate Bill 487 are poor public policy because compliance with minimum staffing state regulations do not ensure adequate and competent care to meet the needs of West Virginia’s nursing home population. Quality of care, based on the needs of the patient and their care plan, must be considered, in addition to nurse staffing levels.

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Furthermore, West Virginia state nurse staffing levels are often lower than federal staffing regulations or Centers for Medicare & Medicaid Services (CMS) recommendations. Granting an irrefutable presumption for all nurse staffing litigation based solely on state nursing regulations could result in dismissing litigation based on the staffing levels recommended by federal regulations or CMS recommendations when the state staffing levels are lower than the federal standards.

Establishing a conclusive presumption that cannot be refuted for nurse staffing levels is not justified by merely meeting the minimum staffing levels as defined by state law without taking quality of care provided the residents into consideration. Caring for West Virginia's vulnerable elderly population is of the utmost importance and requires better.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 487.

Sincerely,



Jim Justice  
Governor

cc: The Honorable Mitch Carmichael  
President of the Senate

The Honorable Roger Hanshaw  
Speaker of the House of Delegates