



February 24, 2014

ENGROSSED SENATE BILL No. 173

DIGEST OF SB 173 (Updated February 21, 2014 9:34 am - DI 92)

Citations Affected: IC 16-18; IC 16-28; IC 16-29.

Synopsis: Nursing facility moratorium. Defines "under development" for purposes of the moratorium on nursing facility comprehensive care beds. Prohibits the state department of health from approving the licensure of comprehensive care health facilities or new or converted comprehensive care beds. Prohibits residential nursing care facility beds from being converted to comprehensive care beds. Adds exemptions for: (1) health facilities under development as of June 30, 2014; (2) certain replacement facilities; and (3) continuing care retirement communities. Specifies that the state department of health makes the final determination concerning whether an entity is under development. Postpones the expiration of the moratorium from June 30, 2014, to June 30, 2015.

Effective: Upon passage; June 30, 2014; July 1, 2014.

**Miller Patricia, Leising, Skinner,
Mishler, Merritt**

(HOUSE SPONSORS — BROWN T, CLERE, RIECKEN, BROWN C)

January 8, 2014, read first time and referred to Committee on Health and Provider Services.

January 16, 2014, amended, reported favorably — Do Pass.

January 21, 2014, read second time, amended, ordered engrossed.

January 22, 2014, engrossed.

January 23, 2014, read third time, passed. Yeas 33, nays 14.

HOUSE ACTION

February 11, 2014, read first time and referred to Committee on Public Health.

February 18, 2014, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

February 24, 2014, amended, reported — Do Pass.

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February 24, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 173

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-67.1 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: **Sec. 67.1. "Comprehensive care health**
4 **facility", for purposes of IC 16-28-16, has the meaning set forth in**
5 **IC 16-28-16-2.5.**

6 SECTION 2. IC 16-18-2-316.6 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2014]: **Sec. 316.6. "Replacement facility", for**
9 **purposes of IC 16-28-16, has the meaning set forth in**
10 **IC 16-28-16-3.2.**

11 SECTION 3. IC 16-28-16-2, AS ADDED BY P.L.229-2011,
12 SECTION 163, IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2014]: Sec. 2. As used in this chapter,
14 "comprehensive care bed" means a bed that:

15 (1) is **within a comprehensive care health facility that is**
16 licensed or is to be licensed under IC 16-28-2;

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- 1 (2) functions as a bed **within a comprehensive care health**
 2 **facility** licensed under IC 16-28-2; or
 3 (3) is **otherwise** subject to this article.

4 The term does not include a comprehensive care bed that will be used
 5 solely to provide specialized services and that is subject to IC 16-29.

6 SECTION 4. IC 16-28-16-2.5 IS ADDED TO THE INDIANA
 7 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 8 [EFFECTIVE JULY 1, 2014]: **Sec. 2.5. As used in this chapter,**
 9 **"comprehensive care health facility" means a health facility that**
 10 **provides nursing care, room, food, laundry, administration of**
 11 **medications, special diets, and treatments and that may provide**
 12 **rehabilitative and restorative therapies under the order of an**
 13 **attending physician.**

14 SECTION 5. IC 16-28-16-3, AS ADDED BY P.L.229-2011,
 15 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2014]: Sec. 3. As used in this chapter,
 17 "replacement bed" means a comprehensive care bed that is relocated
 18 **from one (1) comprehensive care health facility to a health facility**
 19 **another comprehensive care health facility** that is licensed or is to be
 20 licensed under this article. This term includes comprehensive care beds
 21 that are certified for participation in:

- 22 (1) the state Medicaid program; or
 23 (2) both the state Medicaid program and federal Medicare
 24 program.

25 SECTION 6. IC 16-28-16-3.2 IS ADDED TO THE INDIANA
 26 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 27 [EFFECTIVE JULY 1, 2014]: **Sec. 3.2. As used in this chapter,**
 28 **"replacement facility" means a new comprehensive care health**
 29 **facility licensed under or subject to this article after June 30, 2014,**
 30 **that:**

- 31 (1) **is constructed to take the place of an existing**
 32 **comprehensive care health facility that is licensed before July**
 33 **1, 2014;**
 34 (2) **is constructed within the same county of the existing**
 35 **comprehensive care health facility licensed before July 1,**
 36 **2014; and**
 37 (3) **contains no more comprehensive care beds than the**
 38 **existing comprehensive care health facility licensed before**
 39 **July 1, 2014.**

40 SECTION 7. IC 16-28-16-3.5 IS ADDED TO THE INDIANA
 41 CODE AS A **NEW SECTION TO READ AS FOLLOWS**
 42 [EFFECTIVE JULY 1, 2014]: **Sec. 3.5. As used in this chapter,**



- 1 **"under development" refers to an effort:**
 2 **(1) to add, construct, or convert comprehensive care beds in**
 3 **a comprehensive care health facility that is:**
 4 **(A) licensed under;**
 5 **(B) to be licensed under;**
 6 **(C) subject to; or**
 7 **(D) will be subject to;**
 8 **this article; and**
 9 **(2) that meets the following:**
 10 **(A) Architectural plans have been completed.**
 11 **(B) Funding to construct the comprehensive care health**
 12 **facility has been secured and is actively being drawn upon**
 13 **or otherwise used to further and complete construction.**
 14 **(C) Zoning requirements have been met.**
 15 **(D) Construction plans for the comprehensive care health**
 16 **facility have been submitted to the state department and**
 17 **the division of fire and building safety.**
 18 **(E) Active and ongoing construction activities progressing**
 19 **to completion of the project are occurring at the project**
 20 **site.**
- 21 SECTION 8. IC 16-28-16-4, AS ADDED BY P.L.229-2011,
 22 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) Except as provided in
 24 subsection (b), the state department may not approve **the following:**
 25 **(1) The licensure of comprehensive care health facilities or**
 26 **new or converted comprehensive care beds.**
 27 **(2) The certification of new or converted comprehensive care**
 28 **beds for participation in the state Medicaid program unless the**
 29 **statewide comprehensive care bed occupancy rate is more than**
 30 **ninety-five percent (95%), as calculated annually on January 1 by**
 31 **the state department of health.**
- 32 **Beds in a health facility that provides residential nursing care**
 33 **under IC 16-28 may not be converted to comprehensive care beds.**
 34 (b) This section does not apply to the following:
 35 **(1) A comprehensive care health facility that is:**
 36 **(A) licensed under;**
 37 **(B) to be licensed under;**
 38 **(C) subject to; or**
 39 **(D) will be subject to;**
 40 **IC 16-28 and that is under development as of June 30, 2014.**
 41 **(+) (2) A comprehensive care health facility that:**
 42 **(A) seeks a replacement bed exception;**



- 1 (B) is licensed or is to be licensed under this article **or is**
 2 **under development as of June 30, 2014;**
 3 (C) applies to the state department of health to certify a
 4 comprehensive care bed for participation in the Medicaid
 5 program if the comprehensive care bed for which the health
 6 facility is seeking certification is a replacement bed for an
 7 existing comprehensive care bed;
 8 (D) applies to the division of aging **before July 1, 2014**, in the
 9 manner:
 10 (i) described in subsection (c); and
 11 (ii) prescribed by the division; and
 12 (E) meets the licensure, survey, and certification requirements
 13 of this article.
- 14 ~~(2)~~ **(3)** A small house health facility approved under section 6 of
 15 this chapter.
- 16 **(4)** A replacement facility, whether or not the replacement
 17 facility is under development before July 1, 2014. The existing
 18 comprehensive care health facility that is being replaced by
 19 the replacement facility:
 20 (A) must no longer be licensed as a comprehensive care
 21 health facility sixty (60) days after the replacement facility
 22 obtains its license from the state department; and
 23 (B) may transfer, and the replacement facility may accept,
 24 all of the comprehensive care beds from the existing
 25 comprehensive care health facility to the replacement
 26 facility without seeking a replacement bed exception.
- 27 **(5)** A continuing care retirement community that was
 28 registered under IC 23-2 before July 1, 2014, and
 29 continuously maintains registration under IC 23-2. If a
 30 continuing care retirement community fails to maintain
 31 registration under IC 23-2 after June 30, 2014, the
 32 comprehensive care beds, including beds certified for
 33 Medicaid or Medicare, that the continuing care retirement
 34 community previously operated are not forfeited as long as
 35 the continuing care retirement community continues to
 36 comply with the licensure and certification requirements of
 37 this article.
- 38 (c) An application made under subsection ~~(b)(1)~~ **(b)(2)** for a
 39 replacement bed exception must include the following:
 40 (1) The total number and identification of the existing
 41 comprehensive care beds that the applicant requests be replaced
 42 by health facility location and by provider.



1 (2) If the replacement bed is being transferred to a different
 2 comprehensive care health facility with the same ownership, a
 3 provision that provides the division of aging written verification
 4 from the health facility holding the comprehensive care bed
 5 certification that the health facility has agreed to transfer the beds
 6 to the applicant health facility.

7 (3) If the replacement bed is being transferred to a different
 8 comprehensive care health facility under different ownership, a
 9 provision that provides the division of aging a copy of the
 10 complete agreement between the comprehensive care health
 11 facility transferring the beds and the applicant comprehensive
 12 care health facility.

13 (4) Any other information requested by the division of aging
 14 necessary to evaluate the transaction.

15 **A replacement bed may be relocated after June 30, 2014, under**
 16 **this section only if the comprehensive care health facility applies to**
 17 **the division of aging before July 1, 2014, and complies with or will**
 18 **comply with section 5 of this chapter.**

19 **(d) The state department shall make the final determination**
 20 **concerning whether an entity has met or is meeting the**
 21 **requirements of this chapter of being under development.**

22 SECTION 9. IC 16-28-16-5, AS ADDED BY P.L.229-2011,
 23 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2014]: Sec. 5. Except in the case of an
 25 emergency or a disaster, Medicaid certification of an existing
 26 comprehensive care bed may not be transferred to a **new another**
 27 location until the **new receiving comprehensive care health** facility
 28 is seeking certification of the bed.

29 SECTION 10. IC 16-28-16-6, AS ADDED BY P.L.229-2011,
 30 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2014]: Sec. 6. (a) A person planning to
 32 construct a small house health facility shall apply to the state
 33 department for a license under this article.

34 (b) An applicant under this section, including an entity related to the
 35 applicant through common ownership or control, may apply to the state
 36 department for Medicaid certification of not more than fifty (50)
 37 comprehensive care beds for small house health facilities per year.

38 (c) The state department may not approve **Medicaid** certification of
 39 more than one hundred (100) new comprehensive care beds designated
 40 for small house health facilities per year.

41 (d) The state department shall approve an application for Medicaid
 42 certification for a small house health facility:



- 1 (1) in the order of the completed application date; and
 2 (2) if the applicant meets the definition of a small house health
 3 facility and the requirements of this section.
- 4 (e) A person that fails to complete construction and begin operation
 5 of a small house ~~comprehensive care~~ health facility within twelve (12)
 6 months after the state department's approval of the application forfeits
 7 the person's right to the Medicaid certified comprehensive care beds
 8 approved by the state department if:
- 9 (1) another person has applied to the state department for
 10 approval of certified comprehensive care beds for participation in
 11 the state Medicaid program **for** at least one (1) small house health
 12 facility; and
- 13 (2) the person's application was denied for the sole reason that the
 14 maximum number of Medicaid certified comprehensive care beds
 15 specified in subsection (c) had been approved for small house
 16 health facilities.
- 17 SECTION 11. IC 16-28-16-7, AS ADDED BY P.L.229-2011,
 18 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 19 [EFFECTIVE UPON PASSAGE]: Sec. 7. This chapter expires ~~June 30,~~
 20 ~~2014.~~ **June 30, 2015.**
- 21 SECTION 12. IC 16-29-6 IS REPEALED [EFFECTIVE JUNE 30,
 22 2014]. (Comprehensive Care Health Facilities and Medicaid Services).
- 23 SECTION 13. **An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 173, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 31, delete "operated by the" and insert "**licensed before July 1, 2014;**".

Page 2, delete lines 32 through 33.

Page 5, line 11, delete "7" and insert "**5**".

Page 6, after line 15, begin a new paragraph and insert: "**SECTION 13. An emergency is declared for this act.**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 173 as introduced.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 8, Nays 4.

 SENATE MOTION

Madam President: I move that Senate Bill 173 be amended to read as follows:

Page 2, line 29, after "licensed" insert "**under or subject to this article**".

Page 3, line 2, delete "licensed or to be licensed".

Page 3, line 3, delete "under" and insert "**that is:**

(A) licensed under;

(B) to be licensed under;

(C) subject to; or

(D) will be subject to;".

Page 3, line 3, beginning with "this" begin a new line block indented.

Page 3, line 30, delete "is licensed or to".

Page 3, line 31, delete "be licensed under" and insert "**is:**

(A) licensed under;

(B) to be licensed under;

(C) subject to; or

(D) will be subject to;".

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Page 3, line 31, beginning with "IC 16-28" begin a new line block indented.

Page 3, line 31, after "IC 16-28" insert "**and**".

Page 5, line 30, after "approve" insert "**Medicaid**".

(Reference is to SB 173 as printed January 17, 2014.)

MILLER PATRICIA

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 173, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 173 as printed January 22, 2014.)

Committee Vote: Yeas 8, Nays 1

Representative Clere

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Engrossed Senate Bill 173, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, line 20, delete "2019." and insert "**2015**".

and when so amended that said bill do pass.

(Reference is to ESB 173 as printed February 18, 2014.)

BROWN T, Chair

Committee Vote: yeas 12, nays 7.

