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 2017 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 190

AN ACT to amend the Indiana Code concerning health.

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

SECTION 1. IC 12-8-1.5-6, AS ADDED BY P.L.160-2012, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 6. (a) The secretary and the commissioner of the state department of health shall cooperate to coordinate family and social services programs with related programs administered by the state department of health.

(b) The secretary, in cooperation with the commissioner of the state department of health, is accountable for the following:

(1) Resolving administrative, jurisdictional, or policy conflicts between a division and the state department of health.

(2) Formulating overall policy for family, health, and social services in Indiana.

(3) Coordinating activities between the programs of the division of family resources and the maternal and child health programs of the state department of health.

(4) Coordinating activities concerning long term care between the division of disability and rehabilitative services and the state department of health.

(5) Developing and implementing a statewide family, health, and social services plan that includes a set of goals and priorities.

(c) The office shall cooperate with the state department of health in providing the information required for the commissioner

of the state department of health or the commissioner's designee to complete the:

(1) state comprehensive care bed need rate calculation under IC 16-29-7-8; and

(2) county comprehensive care bed need calculation under IC 16-29-7-9.

SECTION 2. IC 16-18-2-67, AS AMENDED BY P.L.257-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 67. (a) "Comprehensive care bed", for purposes of IC 16-28-2.5, has the meaning set forth in IC 16-28-2.5-2.

(b) "Comprehensive care bed", for purposes of IC 16-29-2, has the meaning set forth in IC 16-29-2-1.

(c) "Comprehensive care bed", for purposes of IC 16-29-7, has the meaning set forth in IC 16-29-7-2.

SECTION 3. IC 16-18-2-67.1, AS ADDED BY P.L.257-2015, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 67.1. **(a)** "Comprehensive care health facility", for purposes of IC 16-28-2.5, has the meaning set forth in IC 16-28-2.5-3.

(b) "Comprehensive care health facility", for purposes of IC 16-29-7, has the meaning set forth in IC 16-29-7-3.

SECTION 4. IC 16-18-2-69.3, AS ADDED BY P.L.229-2011, SECTION 156, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 69.3. "Continuing care retirement community", for purposes of IC 16-28-15 **and IC 16-29-7,** has the meaning set forth in IC 16-28-15-2.

SECTION 5. IC 16-18-2-352.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 352.5. "Total comprehensive care bed days available at comprehensive care health facilities", for purposes of IC 16-29-7, has the meaning set forth in IC 16-29-7-4.**

SECTION 6. IC 16-18-2-352.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 352.7. "Total statewide inpatient days", for purposes of IC 16-29-7, has the meaning set forth in IC 16-29-7-5.**

SECTION 7. IC 16-28-2.5-8, AS AMENDED BY P.L.217-2017, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8. This chapter expires ~~June 30, 2019.~~ **on the date on which all rules required by the following have taken effect:**

(1) IC 16-29-7-13(f).

(2) IC 16-29-7-14(d).

(3) IC 16-29-7-19(a).

SECTION 8. IC 16-29-7 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:

Chapter 7. Certificate of Need for Comprehensive Care Health Facilities

Sec. 1. (a) This chapter does not apply to the following:

(1) A replacement comprehensive care health facility located in the same county as the original comprehensive care health facility, if the replacement comprehensive care health facility meets the following:

(A) The replacement comprehensive care health facility does not add any additional comprehensive care beds that were not contained in the original comprehensive care health facility unless additional beds are obtained from another comprehensive care health facility in the same county as provided for in subdivision (3).

(B) The original comprehensive care health facility that is being replaced by the replacement comprehensive care health facility will no longer be licensed as a comprehensive care health facility not later than sixty (60) days after the replacement comprehensive care health facility obtains a health facility license from the state department.

(2) A comprehensive care health facility:

(A) constructing a new addition for the existing comprehensive care health facility; or

(B) modifying or altering the structure of the existing comprehensive care health facility;

if the construction, modification, or alteration does not add one (1) or more new comprehensive care beds from outside of the county to the existing comprehensive care health facility. However, a comprehensive care health facility adding, modifying, or altering the facility's structure under this subdivision may add beds from within the same county as provided for in subdivision (3).

(3) A comprehensive care health facility that transfers any of the comprehensive care health facility's comprehensive care beds, including the Medicaid certification status of the comprehensive care beds, to another comprehensive care health facility in the same county, regardless of whether there is common ownership between the comprehensive care health facilities. A transfer of comprehensive care beds under this

subdivision must equally reduce the count of licensed comprehensive care beds in the transferring facility and increase the count of licensed comprehensive care beds in the receiving facility.

(4) A comprehensive care bed that is:

(A) owned, operated, or sponsored by a religious organization that:

(i) is an Indiana nonprofit corporation;

(ii) was, before December 31, 2017, exempt from adjusted gross income taxation under IC 6-3-2-2.8 by virtue of the nonprofit organization's religious organization status;

(iii) is operated for bona fide religious purposes; and

(iv) is not controlled, owned, or operated by a hospital licensed under IC 16-21-2; or

(B) owned or operated by an Indiana nonprofit corporation that is owned by a religious organization described in clause (A);

if the majority of the comprehensive care beds are used to serve members of the religious organization.

(5) Comprehensive care beds that are owned, operated, or sponsored by a fraternal organization that:

(A) was, before December 31, 2017, exempt from adjusted gross income taxation under IC 6-3-2-2.8 by virtue of the fraternal organization's status as a fraternal organization; and

(B) is owned, operated, or sponsored by a health facility licensed under this article before December 31, 2017;

if the majority of the comprehensive care beds are used to serve members of the fraternal organization.

(6) Subject to section 16 of this chapter, a small house health facility that is applying to the state department for licensure or Medicaid certification for not more than fifty (50) comprehensive care beds for small house health facilities per year, including an entity related to the small house health facility through common ownership or control.

(7) A continuing care retirement community that:

(A) was registered under IC 23-2 before July 1, 2008;

(B) continuously maintains the registration under IC 23-2; and

(C) needs additional comprehensive care beds for purposes of fulfilling a continuing care contract.

If a continuing care retirement community fails to maintain registration under IC 23-2, the comprehensive care beds, including beds certified for use in the state Medicaid program or the Medicare program, that the continuing care retirement community previously operated are not forfeited as long as the continuing care retirement community continues to comply with the licensure and certification requirements of IC 16-28.

(b) Except as provided in subsections (c) and (d), the comprehensive care beds exempt from this chapter under subsection (a)(4) and (a)(5) may not be sold, leased, or otherwise conveyed to any person for at least twenty (20) years from the date the comprehensive care bed is licensed. A person that violates this subsection may not participate as a provider in the state Medicaid program.

(c) Subsection (b) does not prohibit the sale, lease, or conveyance of comprehensive care beds by a religious organization described in subsection (a)(4) to:

(1) another religious organization described in subsection (a)(4)(A); or

(2) an Indiana nonprofit corporation that is owned by a religious organization described in subsection (a)(4)(A).

However, a majority of the comprehensive care beds sold, leased, or conveyed under this subsection must be used to serve members of either the religious organization or the religious organization's nonprofit corporation to which the comprehensive care beds are sold, leased, or conveyed.

(d) Subsection (b) does not prohibit the sale, lease, or conveyance of comprehensive care beds described in subsection (a)(5) to another fraternal organization described in subsection (a)(5). However, a majority of the comprehensive care beds sold, leased, or conveyed under this subsection must be used to serve members of the fraternal organization to which the beds are sold, leased, or conveyed.

Sec. 2. (a) As used in this chapter, "comprehensive care bed" means a bed in a comprehensive care health facility that:

(1) is licensed or is to be licensed under IC 16-28-2; or

(2) functions as a bed licensed under IC 16-28-2.

(b) The term does not include comprehensive care beds in a hospital licensed under IC 16-21-2.

Sec. 3. As used in this chapter, "comprehensive care health facility" means a health facility that provides:

(1) nursing care;
(2) room;
(3) food;
(4) laundry;
(5) administration of medications;
(6) special diets; and
(7) treatments;

and that may provide rehabilitative and restorative therapies under the order of an attending physician.

Sec. 4. (a) As used in this chapter, "total comprehensive care bed days available at comprehensive care health facilities" refers to the sum of all licensed comprehensive care beds at comprehensive care health facilities in the state that filed a Medicaid cost report, including comprehensive care health facilities in the state that only filed a Medicare cost report, in a reporting year.

(b) The reporting year for each comprehensive care health facility must:

(1) correspond to the same cost report year as the year used to determine the total statewide inpatient days; and

(2) include only the number of calendar days that the comprehensive care health facility was authorized to provide care and was providing services.

(c) The term does not include comprehensive care beds in a hospital licensed under IC 16-21-2.

Sec. 5. As used in this chapter, "total statewide inpatient days" means the sum of inpatient days for all payor sources for all comprehensive care health facilities that filed a Medicaid cost report, including comprehensive care health facilities that only file a Medicaid cost report, for the cost report year two (2) years prior to the year in which a county comprehensive care bed need is published for a review period.

Sec. 6. The comprehensive care health facility certificate of need program is established for the purpose of permitting movement between counties of existing comprehensive care beds based upon demographic need. The state department shall implement and administer the program.

Sec. 7. (a) The commissioner or the commissioner's designee shall calculate the total statewide comprehensive care bed supply rate and the total county comprehensive care bed supply by determining the number of licensed comprehensive care beds aggregated statewide by county.

(b) The commissioner or the commissioner's designee shall determine the projected statewide population and the projected county population that are at least sixty-five (65) years of age by using census bureau data or a similar data source for the year that is at least two (2) years after the year in which a county comprehensive care bed need is published for a review period.

(c) The state department shall publish the projections determined under this section on the state department's web site.

Sec. 8. (a) The commissioner or the commissioner's designee shall calculate the state comprehensive care bed need rate as follows:

STEP ONE: Divide:

(A) the total statewide inpatient days; by

(B) the total comprehensive care bed days available at comprehensive care health facilities;

to determine the statewide comprehensive care bed occupancy rate.

STEP TWO: Multiply the statewide comprehensive care bed occupancy rate determined in STEP ONE by the total statewide comprehensive care bed supply as determined under section 7(a) of this chapter to determine the total statewide number of comprehensive care beds occupied.

STEP THREE: Divide:

(A) the total statewide number of comprehensive care beds occupied determined in STEP TWO; by

(B) ninety percent (90%);

to determine the total statewide number of comprehensive care beds needed.

STEP FOUR: Divide:

(A) the total statewide number of comprehensive care beds needed as determined in STEP THREE; by

(B) the projected statewide population that is at least sixty-five (65) years of age as determined under section 7(b) of this chapter.

STEP FIVE: Multiply the number determined in STEP FOUR by one thousand (1,000) to determine the state comprehensive care bed need rate.

(b) The state comprehensive care bed need rate determined in STEP FIVE of subsection (a) shall be expressed as the number of comprehensive care beds per one thousand (1,000) persons who are at least sixty-five (65) years of age.

(c) The commissioner or the commissioner's designee shall

calculate the state comprehensive care bed need rate and may consult with third party private sector entities with expertise in Medicare and Medicaid cost reports.

Sec. 9. (a) The commissioner or the commissioner's designee shall calculate the county comprehensive care bed need as follows:

STEP ONE: Divide the projected county population that is at least sixty-five (65) years of age as determined under section 7(b) of this chapter by one thousand (1,000).

STEP TWO: Multiply the amount determined in STEP ONE by the state comprehensive care bed need rate calculated in section 8(a) of this chapter to determine the number of comprehensive care beds needed for the county per one thousand (1,000) people who are at least sixty-five (65) years of age.

STEP THREE: Subtract the comprehensive care bed supply for the county as determined under section 7(a) of this chapter from the amount determined in STEP TWO to determine the county comprehensive care bed need.

(b) The commissioner or the commissioner's designee shall calculate the county comprehensive care bed need and may consult with third party private sector entities with expertise in Medicare and Medicaid cost reports.

Sec. 10. Except as allowed in this chapter and under IC 16-28-2.5 until its expiration:

(1) comprehensive care beds may not be added;

(2) comprehensive care beds may not be transferred;

(3) certification of a comprehensive care bed to participate in the state Medicaid program may not be added or transferred;

(4) comprehensive care health facilities may not be constructed; and

(5) beds may not be converted to comprehensive care beds.

Sec. 11. (a) The commissioner or the commissioner's designee shall develop and review applications for certificate of need.

(b) The commissioner or the commissioner's designee shall accept for review only the following applications for certificate of need, if an application is attributable solely to the relocation of an existing comprehensive care bed from a county that has an excessive comprehensive care bed supply to a county of comprehensive care bed need:

(1) Applications to transfer at least one (1) comprehensive care bed.

(2) Applications to construct a new comprehensive care health

facility consisting of transferred beds.

Applications to add comprehensive care beds, certify comprehensive care beds to participate in the state Medicaid program, or convert beds to comprehensive care beds may not be submitted.

(c) An applicant shall submit an application described in this section regardless of whether the comprehensive care beds in the application will be certified for participation in a state or federal reimbursement program.

Sec. 12. (a) Before July 1, 2019, and before July 1 of each year thereafter, the commissioner or the commissioner's designee shall complete the following:

(1) Determine the state comprehensive care bed need rate as set forth in section 8 of this chapter.

(2) For each county, determine the county's comprehensive care bed need as set forth in section 9 of this chapter.

(b) The state department shall publish each county's comprehensive care bed need determined under subsection (a)(2) on the state department's Internet web site not later than one (1) month after the determination is made under subsection (a).

(c) In considering whether to approve a certificate of need application under this chapter, the commissioner or the commissioner's designee shall ensure that an application is in accordance with all of the following:

(1) The number of comprehensive care beds approved for a county must include only comprehensive care beds available for relocation from counties with an excess comprehensive care bed supply.

(2) The number of comprehensive care beds approved for a county shall not exceed the receiving county's comprehensive care bed need as determined under subsection (a)(2).

(3) A certificate of need may not be granted if in the receiving county:

(A) the existing occupancy rate for all comprehensive care beds is less than eighty-five percent (85%); or

(B) the addition of a proposed comprehensive care bed would reduce the existing occupancy rate for all comprehensive care beds below eighty-five percent (85%).

(4) The relocation of a comprehensive care bed to a different county may occur only if, after the relocation, the number of comprehensive care beds in the county from which the comprehensive care bed is relocated will still exceed the

county's comprehensive care bed need determined under subsection (a)(2) by at least fifty (50) comprehensive care beds.

(d) In determining need, the commissioner or the commissioner's designee shall consider the following criteria when reviewing a certificate of need application:

(1) The need that the population served or proposed to be served has for the services to be provided upon implementation of a project detailed in the certificate of need application.

(2) The quality of care provided in previous or existing comprehensive care health facilities owned or operated by the applicant, including responses to resident and family satisfaction surveys.

(3) The applicant's plan to meet staffing requirements for the project as required by 410 IAC 16.2-3.1-2(c)(6).

(4) The short term and long term financial feasibility, the cost effectiveness of the project, and the financial impact upon the applicant, other providers, health care consumers, and the state's Medicaid program. The applicant shall include the following with the certificate of need application:

(A) The availability and proof of financing for the project.

(B) The operating costs specific to the project and the effect of the costs on the operating budget of the facility based on review of available balance sheets, cash flow statements, and audited financial statements.

(C) The anticipated costs for the project that would be filed in Medicaid cost reports compared to the median Medicaid costs associated with other comprehensive care health facilities in the county.

(D) The applicant's historical ability to meet the working capital requirement under 410 IAC 16.2-3.1-2(c)(11).

(5) The historical, current, and projected use of the facility if the application is for a project that involves an existing comprehensive care health facility.

(6) The relationship of the project to the applicant's long range plan and the planning process employed.

(7) The effectiveness of the project in meeting the health care needs of medically underserved groups, including:

(A) low income individuals;

(B) individuals with disabilities; and

(C) minorities;

and, if applicable, the applicant's historical experience in meeting the needs of underserved groups.

(8) The availability of and impact on ancillary and support services that relate to the project, including the following services:

(A) Dental care.

(B) Diagnostics.

(C) Laboratory.

(D) Pharmaceutical.

(E) Therapy.

(F) Transportation.

(G) Vision.

(H) X-ray.

(9) The extent to which the project, the facility, and the applicant comply with applicable standards for licensure, certification, and other approvals.

(10) The historical performance of the applicant and affiliated parties in complying with previously granted certificate of need applications.

(11) The public comments submitted to the state department under section 13 of this chapter.

(12) The applicant's legal right or demonstration of a future legal right to the beds proposed to be transferred under the application.

(13) Any other information concerning the need for the comprehensive care beds or the comprehensive care health facility requested on the application.

Except for public comments under subdivision (11), the applicant has the burden of including with the application sufficient information for each of the criteria for the commissioner or the commissioner's designee to review.

(e) The certificate of need applicant has the burden of providing sufficient information under this section to enable the commissioner or the commissioner's designee to review the application under this section.

(f) The commissioner or the commissioner's designee shall approve a certificate of need application for:

(1) the transfer of comprehensive care beds; or

(2) the construction of a comprehensive care health facility consisting of transferred beds;

only after finding the transfer or construction is necessary as provided in this section.

Sec. 13. (a) The state department shall establish a review period for certificate of need applications beginning July 1, 2019, and every July 1 thereafter, and lasting until the following June 30.

(b) The state department shall accept certificate of need applications until July 31 of the review period.

(c) The state department shall publish any certificate of need applications accepted for review on the state department's Internet web site before August 15 of the review period.

(d) The state department shall accept public comments on the certificate of need applications accepted for review through October 15 of the review period.

(e) The commissioner or the commissioner's designee shall issue any decision on an accepted certificate of need application not later than April 30 of the review period.

(f) The state department shall adopt emergency rules under IC 4-22-2-37.1 to implement a system for the submission of public comments under subsection (d).

Sec. 14. (a) The commissioner or the commissioner's designee shall perform a comparative review on a certificate of need application if:

(1) at least two (2) applications are submitted during the same review period;

(2) the applications propose to transfer comprehensive care beds into the same county; and

(3) the number of comprehensive care beds for which a certificate of need is requested totals more than the county comprehensive care bed need in the county where the comprehensive care beds are to be transferred.

(b) In determining which applicant will receive preference in the comparative review process, the commissioner or the commissioner's designee shall:

(1) review the applications to ensure compliance with section 12(c) of this chapter; and

(2) give weighted priority to the criteria set forth in section 12(d) of this chapter.

The commissioner or the commissioner's designee shall give preference in approving the application to a certificate of need application that complies with section 12 of this chapter and receives the most points under the point system established under subsection (d). If at least two (2) certificate of need applications requesting the same activity comply with section 12 of this chapter and are awarded the same number of points under subsection (d),

the commissioner or the commissioner's designee shall give preference to the application that demonstrates the greatest need for the activity being requested.

(c) The commissioner or the commissioner's designee shall approve a certificate of need application requesting the:

(1) transfer of comprehensive care beds; or

(2) construction of a comprehensive care health facility consisting of transferred beds;

subject to comparative review under this section only after finding that the request in the application is necessary as set forth in this chapter.

(d) The state department shall adopt emergency rules under IC 4-22-2-37.1 to establish and implement a certificate of need application point system in accordance with this section.

Sec. 15. A certificate of need that is approved under this chapter is valid for eighteen (18) months after approval is final. The certificate of need becomes void after eighteen (18) months unless:

(1) construction plans for the project are approved by the state department and the department of fire and building safety;

(2) the applicant has completed construction of the project's foundation in conformity with the approval plans and an independent:

(A) architect licensed under IC 25-4; or

(B) professional engineer licensed under IC 25-31;

has certified the completion; and

(3) construction work on the project is continuous and conforms with the approved plans.

However, modification of the approved plans to make technical changes, correct errors or omissions, or comply with zoning or other requirements of a governmental entity are allowable.

Sec. 16. (a) The commissioner or the commissioner's designee may not approve licensure or Medicaid certification of more than one hundred (100) new comprehensive care beds per year that are designated for small house health facilities.

(b) The commissioner or the commissioner's designee shall approve an application for licensure or Medicaid certification for a small house health facility:

(1) in the order of the completed application date; and

(2) if the small house health facility applicant meets the definition of a small house health facility and the requirements of this section.

(c) A person that fails to complete construction and begin operation of a small house health facility within twelve (12) months after the commissioner's or the commissioner's designee's approval of a license under this article forfeits the person's right to any licensed or Medicaid certified comprehensive care bed that was previously approved by the state department if:

(1) another person has applied to the state department for approval of licensed or Medicaid certified comprehensive care beds for a small house health facility; and

(2) the person's application was denied for the sole reason that the maximum number of Medicaid licensed or certified comprehensive care beds specified in this section has been approved by the state department.

Sec. 17. A certificate of need that is granted under this chapter:

(1) is valid only for the defined number of comprehensive care beds or construction as set forth in the approved certificate of need application; and

(2) is not transferable or assignable.

Sec. 18. A decision by the commissioner or the commissioner's designee under this chapter is subject to review under IC 4-21.5.

Sec. 19. (a) The state department shall adopt rules under IC 4-22-2 to implement this chapter, including establishing a reasonable fee for filing an application under this chapter.

(b) A rule adopted under this chapter may not be waived.

(c) Fees imposed for a certificate of need application are payable to the state department for use in the administration of the certificate of need program established under this chapter.

SECTION 9. [EFFECTIVE JULY 1, 2018] **(a) The legislative council is urged to assign to an appropriate interim study committee for study during the 2018 interim the question of whether unused or underused facilities at the Logansport State Hospital could feasibly be used as an inpatient treatment facility for Medicaid eligible substance and addictions based treatment.**

(b) This SECTION expires January 1, 2019.

President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 190 — Concur