

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 436

FISCAL  
NOTE

BY SENATORS KARNES, AZINGER, AND BOSO

[Introduced January 31, 2018; Referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §16-54-1, §16-54-2, §16-54-3, and §16-54-4, all relating to creating the  
 3 Nondiscrimination in Involuntary Denial of Treatment Act; requiring the provision of  
 4 medical treatment under certain circumstances; requiring the disclosure of policies related  
 5 to the life-preserving treatment a patient may receive or be denied; and requiring the  
 6 Department of Health and Human Resources to maintain and report on certain  
 7 information.

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

**ARTICLE 54. NONDISCRIMINATION IN INVOLUNTARY DENIAL OF TREATMENT**

**ACT.**

**§16-54-1. Short title.**

1 This act may be known and cited as the “Nondiscrimination in Involuntary Denial of  
 2 Treatment Act.”

**§16-54-2. Discriminatory denial of life-preserving treatment.**

1 (a) If a patient, the terms of a patient's advance directive, or a person legally authorized to  
 2 make health care decisions on behalf of a patient directs the provision of medical treatment or  
 3 nutrition or hydration, the denial of which would, in reasonable medical judgment, be likely to  
 4 result in or hasten the death of the patient, the patient's physician or health care facility may not  
 5 deny provision of such treatment, nutrition or hydration:

6 (1) On the basis of a view that treats extending the life of an elderly, disabled, or terminally  
 7 ill individual as of lower value than extending the life of an individual who is younger, nondisabled,  
 8 or not terminally ill; or

9 (2) On the basis of the physician's or health care provider's disagreement with how the  
 10 patient or individual authorized to act on the patient's behalf values the tradeoff between extending  
 11 the length of the patient's life and the risk of disability.

12 (b) Nothing in this section requires the provision of health care:

13 (1) That the physician or health care facility is physically or legally unable to provide, or  
14 health care that the physician or other health care facility is physically or legally unable to provide  
15 without thereby denying the same health care to another patient;

16 (2) Against the wishes of the patient or the person legally authorized to make health care  
17 decisions for the patient;

18 (3) If in reasonable medical judgment the health care is futile because withholding or  
19 withdrawing the health care would not cause or hasten the death of the patient; or

20 (4) If in reasonable medical judgment the health care service is medically inappropriate  
21 because providing it to the patient would create a greater risk of causing or hastening the death  
22 of the patient than would withholding or withdrawing it.

23 (c) A cause of action for injunctive relief may be maintained against any physician who or  
24 health care facility which is reasonably believed to be about to violate, is in the course of violating,  
25 or has violated this section by an affected patient or a person legally authorized to make health  
26 care decisions on behalf of the patient. However, a violation of this section does not constitute  
27 negligence per se for purposes of a civil action for damages. In an action pursuant to this  
28 subsection, if the plaintiff pleads a prima facie case, the physician or other health care provider  
29 may defend his or her or its actions by pleading a legitimate, nondiscriminatory reason or reasons  
30 that provided a basis for the denial of treatment, subject to an opportunity for the plaintiff to plead  
31 that the reason or reasons for the denial of treatment are discriminatory in their application.

**§16-54-3. Disclosure requirements.**

1 (a) Upon the request of a patient or prospective patient, or of a person legally authorized  
2 to make health care decisions on behalf of a patient or prospective patient, a health care facility  
3 shall disclose in writing any policies related to the life-preserving treatment a patient may receive  
4 or be denied, including any policies related to health care deemed futile, inappropriate, or  
5 nonbeneficial.

6           (b) At the time a physician or health care facility communicates unwillingness to comply  
7 with a direction to provide life-sustaining treatment, nutrition or hydration to a patient by the  
8 patient, the terms of the patient's advance directive, or a person legally authorized to make health  
9 care decisions on behalf of a patient, the physician or health care facility shall provide a copy of  
10 the then-current registry list posted on the Department of Health and Human Resources' website  
11 under subsection (c) of this section, together with a written explanation of the reasons for  
12 unwillingness to comply.

13           (c) The Department of Health and Human Resources shall maintain a registry listing the  
14 identity of and contact information for organizations, inside and outside of this state, that have  
15 voluntarily notified the department that they may provide information and assistance to patients  
16 and persons legally authorized to make health care decisions on behalf of patients in cases in  
17 which the patient's health care provider may be unwilling to comply with the patient's or  
18 surrogate's wishes regarding the provision, withholding, or withdrawal of life-sustaining medical  
19 treatment, such as: referrals for independent medical examinations and medical record reviews,  
20 referrals for patient transfer, assistance with ethics committee reviews or judicial review,  
21 counseling, or mediation. Each organizational listing shall provide a brief description of the types  
22 of assistance it offers. The listing of an organization in the registry does not obligate the  
23 organization to provide assistance with regard to any particular patient.

24           (d) The Department of Health and Human Resources shall post the current registry list on  
25 its website in a form appropriate for easy comprehension by patients and persons responsible for  
26 the health care decisions of patients and shall provide a clearly identifiable link from its home  
27 page to the registry page. The registry list shall include the following disclaimer:

28           "This registry lists groups that have indicated to the Department of Health and Human  
29 Resources their interest in assisting patients and their health care agents and surrogates in the  
30 circumstances described, and is provided for information purposes only. Neither the Department  
31 of Health and Human Resources nor the State of West Virginia endorses or assumes any

32 responsibility for any representation, claim, or act of the listed providers or groups.”

**§16-54-4. Reporting.**

33 (a) The Department of Health and Human Resources shall propose rules for legislative  
34 approval under |29A-3-1 et seq. of this code requiring reporting by health care facilities of cases  
35 in which they do not comply with a direction to provide life-sustaining treatment, nutrition or  
36 hydration to a patient by the patient, the terms of the patient's advance directive, or a person  
37 legally authorized to make health care decisions on behalf of a patient. The rules shall provide for  
38 annual reporting of:

39 (1) The total number of cases during the reporting period;

40 (2) For each case:

41 (A) The diagnosis, race, gender, age, national origin, any disability, and financial status,  
42 including insurance status, of the patient;

43 (B) The specific health care denied and the reasons for the denial;

44 (C) The type or types of health care provider treating the patient;

45 (D) The type or types of health care provider, if any, to which a transfer was sought;

46 (E) The number of other health care providers contacted and asked to consider accepting  
47 transfer;

48 (F) To the extent known to the reporting health care provider, the reasons given by other  
49 health care providers contacted for refusing to accept or for accepting transfer; and

50 (G) Whether a transfer occurred.

51 (3) For each case in which a transfer was not made:

52 (A) Whether the patient died;

53 (B) The number of days between the date on which the patient or person legally authorized  
54 to make health care decisions on behalf of the patient was informed of the decision not to comply  
55 and the date of the patient's death, if applicable; and

56 (C) Whether directed life-sustaining care had been withdrawn or withheld before the

57 patient's death.

58 (b) The Department of Health and Human Resources shall annually issue a report, which  
59 is available on its website, summarizing the data reported to it under subsection (a) of this section  
60 for the previous year, in a manner that preserves confidentiality concerning any individual patient,  
61 unless the patient or person legally authorized to make health care decisions on behalf of the  
62 patient has waived that confidentiality.

NOTE: The purpose of this bill is to create the Nondiscrimination in Involuntary Denial of Treatment Act.

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