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**West Virginia Developmental Disabilities Council**  
**Statement on HB 4408**  
**Creation of a Specialized Intermediate Care Facility**

The West Virginia Developmental Disabilities Council is a 31-member organization consisting of citizens with developmental disabilities, family members, and representatives from State agencies and private organizations concerned with the provision of services to people with developmental disabilities. Over 60% are citizen members who are appointed by the Governor.

The mission of the Council is to assure that West Virginians with developmental disabilities receive services, supports and other forms of assistance needed to achieve independence, productivity, integration, and inclusion in the community. One of the ways the Council carries out its mission is to provide information to policymakers on issues that may affect people with developmental disabilities.

**The Council strongly opposes HB 4408 and any legislation that would create institutional settings for people with developmental disabilities.** As defined by the Centers for Medicare and Medicaid Services (CMS), intermediate care facilities for individuals with intellectual and other developmental disabilities (ICF/IID) are institutions.

There is currently 70+ long-standing vacancies in existing ICF/IID facilities across the state. These could be utilized to serve the purpose of this bill. As of December 31, 2023, the IDD Waiver has over 580+ applicants waiting for a slot. In addition, in 2018 the Legislature passed HB 4366 to develop 24 additional ICF/IID beds across the state. Not one of these beds/facilities is currently open and in use. Based on the vacancy rates, failure to develop/open the additional 24-beds, and the IDD Waiver wait list, it is evident that people are not choosing this option.

The individuals targeted for this type of facility will most likely face the same eligibility challenges as under HB 4366 (2018). A high percentage of those individuals at Sharpe and Bateman Hospitals will not be eligible for ICF/IID level of care. It should also be noted the overwhelming majority of those stuck at Sharpe and Bateman are no longer deemed a danger to themselves or others. Most have active discharge plans and have been abandoned by their previous provider.

An argument for this 20-bed facility is it will be easier to provide appropriate staffing levels. However, 8-bed ICF/IID facilities, nursing homes, psychiatric hospitals and other facility types are experiencing staffing shortages at record high levels.

Studies and research in the past 30+ years show institutionalizing people does not result in them overcoming their behavioral challenges and improving their ability to function in more typical settings. In addition, study outcomes have shown that placing people together who have serious maladaptive behaviors often make their behavioral challenges more intense.

The bill states the reason this 20-bed facility is needed is because, "...there are individuals in this state who cannot adequately care for themselves and have trouble adjusting to already existing medical treatment facilities." Just because an individual finds themselves at Sharpe or Bateman Hospitals does not mean they cannot be successfully supported in the community. Many find themselves trapped in these facilities due to the failure of their provider to address their needs.

West Virginia could solve this problem by focusing funding on home and community-based services to make them more individualized and accountable to the people they serve in meeting their needs. **The Council believes all individuals with developmental disabilities should and can be served in integrated, inclusive settings in their communities with proper support rather than in institutions.**

West Virginia closed its state-run institutions (ICF/IIDs) in the 1990s as a result of civil rights lawsuits in federal and state courts. By 1995, the Legislature changed State Code due to the realization that those settings and services were fundamentally wrong for the people housed there. In addition, these institutional services were much more expensive than home and community-based services. We should not be moving backwards, but rather forwards to address those issues with home and community-based services that are not working.

In 1999, the U.S. Supreme Court ruled in *Olmstead v. L.C.* mandating states provide people with disabilities services and supports in the most integrated setting in the community and reduce or eliminate reliance on institutional settings. The Supreme Court did not create new law, rather it upheld existing federal law under the Americans with Disabilities Act (ADA).

This bill puts West Virginia in jeopardy of further class action litigation, and federal *Olmstead* enforcement by the Department of Justice. **The West Virginia Developmental Disabilities Council strongly opposes adding more institutional beds/facilities.**